

**GOVERNMENT OF PUERTO RICO
LA FORTALEZA
SAN JUAN, PUERTO RICO**

Administrative Bulletin No. OE-2017-066

EXECUTIVE ORDER ISSUED BY THE GOVERNOR OF PUERTO RICO, HONORABLE RICARDO A. ROSSELLÓ NEVARES, TO EXERCISE THE POWERS CONFERRED UNDER ACT 5-2017, AS AMENDED, WITH RESPECT TO THE PROCUREMENT DIVISION OF THE PUERTO RICO ELECTRIC POWER AUTHORITY, TO DELEGATE SUCH POWERS TO THE PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY AND FOR OTHER RELATED PURPOSES

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- WHEREAS:** This Government is implementing all the necessary measures to safeguard the public order, and to protect the life, safety and property of the citizens and the State.
- WHEREAS:** On September 19 and 20, 2017, Hurricane María made landfall in Puerto Rico as the most devastating weather event in the past eighty (80) years. Hurricane María caused devastating damages to our infrastructure, particularly the electric system.
- WHEREAS:** At this time, there are great risks to the safety, health and general wellbeing of our citizens as a result of the lack of electricity in most of the Island. The Puerto Rico Electric Power Authority ("PREPA") estimates that nearly eighty percent (80%) of Puerto Rico's electric power transmission and distribution infrastructure was damaged as result of Hurricane María.
- LCR*
- WHEREAS:** Reestablishing the electric system requires an investment of billions of dollars and will take months to be completed. These works are being performed in coordination with, and with the support of, the Federal Emergency Management Agency ("FEMA"), the United States of America Corps of Engineers ("USACE") and other federal agencies, and entail the purchase of a great number of goods and services by PREPA. A significant part of these acquisitions are being paid for initially by PREPA and will be reimbursed by the federal authorities subsequently.
- WHEREAS:** Even before Hurricane María passed through Puerto Rico, PREPA's financial situation was critical; for this reason, the Puerto Rico Fiscal Oversight and Management Board, created pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA"), requested and certified a Fiscal Plan for this public corporation. For this same reason, PREPA is immersed in the process of restructuring its debt under Title III of PROMESA. On top of this, PREPA is experiencing reduced revenues due to the damages suffered by the Island's electrical infrastructure.

WHEREAS: It is necessary that all PREPA procurement processes for goods and services, particularly those related to reestablishing the electric service, be expeditious, trustworthy, effective, transparent and in compliance with all applicable federal and state laws. Otherwise, PREPA's financial health may become even worse if the Federal Government refuses to reimburse expenses incurred due to lack of compliance with the applicable laws.

WHEREAS: Act 5-2017, as amended ("Act 5"), known as the Puerto Rico Financial Emergency and Fiscal Responsibility Act provides that, during the Emergency Period, the Governor shall exercise general oversight control over the functions and activities of all government entities within the Executive Branch. Likewise, Section 206(a) of Act 5 grants the Governor broad receivership powers to rectify the financial emergency declared by said law and to guarantee the provision of essential services. Without detriment to the duties and faculties of the Legislative Assembly, the Governor, together with the Fiscal Agency and Financial Advisory Authority ("FAFAA"), may take all the measures deemed necessary to correct the financial emergency. For example, the following measures are among those authorized by Section 206(a) of Act 5: approve or disapprove executory contracts of an entity of the Executive Branch, issue directives related to the disbursement or disposition of funds by an entity of the Executive Branch, and employ or hire, in the name and at the expense of an entity of the Executive Branch, auditors and other technical personnel.

WHEREAS: Article 209 of Act 5 authorizes the Governor to delegate to FAFAA, through an Executive Order, any power or responsibility included in said statute.

WHEREAS: Given PREPA's dire financial situation, which was aggravated by the destruction caused by Hurricane María, it is of the utmost importance to exercise such powers conferred by Act 5 in order to conduct fiscal oversight and reform the procedures for the procurement of goods and services by PREPA.

WHEREFORE: I, RICARDO ROSSELLÓ NEVARES, Governor of Puerto Rico, by virtue of the powers vested in me by the Constitution and the laws of the Government of Puerto Rico, hereby decree and order the following:

SECTION 1 Pursuant to Section 209 of Act 5, the Governor's receivership powers under Section 206(a) of said act are hereby delegated to FAFAA so that it may, through the officer it designates for such purpose, act as receiver of PREPA's procurement division and of any other division

or office whose duties affect PREPA's procurement processes for goods and services (the "Receiver"), in order to supervise and reform the processes for the purchase of goods and services by PREPA. To facilitate such receivership, an administrative division will be established within PREPA, to be known as the Office for Contract and Procurement Compliance (the "OCPC"), and which will be directed by the Receiver.

SECTION 2

In accordance with Section 206(a), the Receiver will only have the following faculties:

- a) Evaluate the regulations, manuals, rules, procedures, processes and other similar documents regarding the procurement of goods and services by PREPA in order to ensure compliance with applicable federal and state laws and provide recommendations with respect thereto to the Board of Directors of PREPA and to FAFAA;
- b) Ensure compliance with the laws and guidelines applicable to all transactions relative to the procurement of goods and services of PREPA. This faculty includes evaluating and certifying any transaction that requires the approval of the Board of Directors of PREPA before said Board considers such transaction. Be it expressly provided that neither the Board of Directors of PREPA nor any officer of PREPA may authorize transactions related to the procurement of goods and services that have not been previously reviewed and certified by the Receiver;
- c) In coordination with FAFAA, hire experts, auditors, inspectors, external consultants, and other technical personnel to assist in the implementation of this Executive Order, to ensure the integrity, economy, efficiency and effectiveness of PREPA's operations in detecting and preventing squandering, fraud and abuse. Be it provided that hiring will be in the name and at the expense of PREPA;
- d) Require the payment by PREPA of the OCPC's expenses incurred in the performance of its functions under this Executive Order;
- e) If necessary, take all the measures needed in order that PREPA may procure goods and services through the Federal General Service Administration ("GSA"), as authorized by Section 406 of PROMESA;

- f) Examine all accounting books and records of PREPA, and demand the appearance of witnesses and the production of books, papers, contracts, and other documents relevant to the analysis of PREPA's financial condition;
- g) Reject, change or terminate one or more terms or conditions of an existing executory contract;
- h) Submit reports to FAFAA on a regular basis, as required by FAFAA;
- i) Request documents, information or cooperation from employees and officers of PREPA;

SECTION 3

The Office of Management and Budget and the Office of the Chief of Staff are instructed to give expedited consideration to any contract request coming from the OCPC. Likewise, the OCPC and The Governor's Authorized Representative ("GAR"), as defined in Act 20-2017 and the applicable federal laws and regulations, must work together expeditiously on all matters related to the procurement of goods and services by PREPA related to the rebuilding of Puerto Rico's electrical system.

SECTION 4

Unless gross negligence is shown, no person will incur civil, criminal or other liability towards any entity or person, and without the need for further notice or order, they shall be exonerated for actions or omissions in their official capacity and within their authority in connection with, regarding, or arising under, or as allowed by this Executive Order. The Receiver and the other officers of the OCPC will be defended and indemnified by PREPA and exonerated from all civil liability for good-faith actions or omissions while in their official capacities and within their authority.

SECTION 5

REPEAL. This Executive Order leaves without effect any other Executive Order which may be incompatible with this one, in whole or in part, to the extent of such incompatibility.

SECTION 6

EFFECTIVENESS. This Executive Order shall become effective immediately and shall remain in force during the Emergency Period or until it is amended, revoked by a subsequent executive order or by operation of law, whichever takes place first.

SECTION 7

SEVERABILITY. The provisions of this Executive order are independent and separate from each other, and in the event a court of competent jurisdiction were to declare any part, section, provision or sentence of this Executive Order unconstitutional, null or void, the decision to that effect shall not affect the validity of the remaining provisions, which shall remain in full force and effect.

SECTION 8

DEFINITIONS. Capitalized terms used herein and not otherwise defined shall have the meanings provided in Act 5.

SECTION 11

PUBLICATION. This Executive Order shall be immediately filed with the Department of State and published generally.



IN WITNESS WHEREOF, I hereby issue the present Executive Order under my signature and cause the great seal of the Government of Puerto Rico to be stamped hereunto, in San Juan, Puerto Rico, this 8th day of the month of November 2017.


RICARDO ROSSELLO NEVARES
GOVERNOR

Enacted pursuant to Law, this 8th day of the month of November 2017.


LUIS GERARDO RIVERA MARÍN
SECRETARY OF STATE