



GOVERNMENT OF PUERTO RICO

Puerto Rico Highway and Transportation Authority

DEPARTMENT OF STATE

No: 9011

Date: February 26, 2018

Approved, Hon. Luis G. Rivera Marín
Secretary of State

A handwritten signature in black ink, appearing to read "Eduardo Arosemena Muñoz".

By Eduardo Arosemena Muñoz
Assistant Secretary

EMERGENCY RELIEF PROCUREMENT RULE

ARTICLE I

TITLE

This document will be known as Emergency Relief Procurement Rule

ARTICLE II

LAW

This Rule is being enacted by the Authority of Act No. 74 of June 23, 1965, as amended, known as the *Puerto Rico Highway and Transportation Authority Law*, Act No. 76 of May 5, 2000, as amended, known as *Procedure for Situations or Events of Emergency Act* and in compliance with the provisions of Act No. 38 of June 30, 2017, known as the *Uniform Administrative Procedure Act of the Government of Puerto Rico*.

ARTICLE III

PURPOSE AND SCOPE



The purpose is to create the procedures and procurement alternatives implementation of the provisions of the Federal Highway Administration's Emergency Relief Program for Federal-aid highways. It is a guide for PRHTA personnel for obtaining and administering ER funds during or after major disaster declaration by the President under the Stafford Act (42 U.S.C. 5121 et. seq.) or after the Governor issues an emergency proclamation and FHWA concurs on the declaration. Currently the ER Program establishes an itinerary for the disaster assessment and a 180-day period after the occurrence of the event for 100 percent eligibility for federal share on emergency repairs, unless extended administratively or by Act of Congress. This rule will also be applicable once the FHWA Regional Office provide authorization which shall be required in each disaster, for Permanent Repairs that require minimum or no design or the work

can be easily defined in technical terms in a scope of work. This regulation will apply in lieu of existing PRHTA regulation applicable to negotiated bids (Regulation 4500) and Formal Bids (Regulation 5263) as authorized by Article 11 of Act 74 of June 23, 1965.

A. Program Overview

Congress authorized the Emergency Relief Program (23 USC § 125 and 23 USC § 120 (e)), to provide funds from the Highway Trust Fund for the repair or reconstruction on Federal-aid highways and of roads of Federal Lands that suffered serious damage from natural disasters or catastrophic failures from external causes. ER Program funding is administered by the Federal Highways Administration separate from other resources from States, localities and other Federal agencies to help in the repair and construction of facilities damaged by eligible events.

There are two categories of emergency relief: 1) emergency repairs and 2) permanent repairs. Emergency repairs are repairs undertaken during or immediately after a disaster to restore essential traffic, to minimize the extent of damage, or to protect the remaining facilities. Permanent repairs are those repairs undertaken after the occurrence of a disaster to restore the highway to its pre-disaster condition.

B. PRHTA's roles and responsibilities during the ER process are to:

1. Administer the ER funds acquired through coordination of disaster relief policies and procedures with Federal Highway Administration (FHWA) and Federal Emergency Management Agency (FEMA).
2. Manage a procurement system that fully complies with free and open competition based on pre-qualified contractors.

ARTICLE IV

DEFINITIONS

The following terms or acronyms utilized in this Emergency Procurement Rule will have the following definitions except that express otherwise:

- 1. A.A.S.H.T.O.** - American Association of State Highway and Transportation Officials. Soil Classification System used as a guide for the classification of soils and soil-aggregate mixtures for highway construction purposes
- 2. APTO** - Alternative Procurement Task Order as a competitive work quote order for construction works using Emergency Relief Funds for either emergency repairs or permanent repairs that require minimum or no design or the work can be easily defined in technical terms in a scope of work.
- 3. Betterments** – Added protective features or changes that modify the function or character of a facility from what existed prior to the catastrophic failure
- 4. Emergency Repair** – Repairs undertaken during or immediately after a disaster to restore essential traffic, to minimize the extent of damage, or to protect the remaining facilities.
- 5. ER Catastrophic Failure** - sudden failure of a major element, or segment of the highway, due to external cause.
- 6. ER Program** - Highway Trust Fund monies used for the repair or reconstruction of Federal-aid highways and of roads on federal lands that suffered damage from natural disasters or catastrophic failures from external causes under emergency relief in accordance with 23 C.F.R. art 668.
- 7. FHWA** - Federal Highway Administration. Agency responsible for administering the ER Program through coordination and implementation of disaster relief policies and procedures
- 8. Permanent Repair** – Repairs undertaken after the occurrence of a disaster to restore the highway to its pre-disaster condition.

- 9. PRHTA-** Puerto Rico Highway and Transportation Authority also known as "the Authority". Agency of the Government of Puerto Rico created by Law No. 74 of June 23, 1965 as amended responsible for administrating when activated ER Program funds.
- 10. Resilience** – Defined by the United Stated Department of Transportation as the capability to anticipate, prepare for, respond to, and recover from significant multi-hazard threats with minimum damage to social well-being, the economy, and the environment.
- 11. RFWQ-** Request for Work Quote under competitive procurement in ER Program for construction contracts for either emergency repairs or permanent repairs that require minimum or no design or the work can be easily defined in technical terms in a scope of work

ARTICLE V PROCUREMENT PROCEDURE FOR EMERGENCY RELIEF
PROGRAM CONTRACTS

When an eligible emergency is declared, PRHTA is eligible for an allocation of funds from the Federal Highway Administration Emergency Relief Program which includes, but is not limited to, Quick Release Funds for the performance of work related to the aftermath of a major disaster declaration by the President under the Stafford Act (42 U.S.C. 5121 et. seq.) or after the Governor issues an emergency proclamation and FHWA concurs on the declaration.

To initiate the relief activities PRHTA selects contractors according to the emergency procedures to begin reconstruction works. The PRHTA deems on its fiduciary interest and that of the Government of Puerto Rico to use the prequalified contractors to participate in the ER Program funded Projects to expedite the recovery efforts and responsibly obligate the available funding before its due date.



To optimize the use of its resources, PRHTA will utilize one of four optional contract procurement methods best suited for the individual situation. Optional procurement methods include the following:

1. NEGOTIATED CONTRACTS

When the PRHTA Executive Director deems it to be in the best interest of the Government of Puerto Rico for safety or security reasons that construction work needs to be performed in an expedited manner, it can select any contractor ready, willing and able to perform the necessary work and directly negotiate the terms and cost of the work to be performed.

In these cases, independent estimates will be prepared either by PRHTA internal staff or PRHTA consultants.

2. WORK FORCE ACCOUNT

Direct performance of highway construction work by PRHTA's use of labor, equipment, materials and supplies either from PRHTA's internal resources or furnished by the contractor accomplishing the work under sole control of the Authority.

3. FIXED PRICE CONTRACT

CONTRACTOR agrees to complete the PROJECT according to the prices of items and services in Exhibit A (UNIT PRICES FOR ER PROJECTS) of the Agreement and in conformity with the General Contracting Conditions of the AUTHORITY and agrees to execute all Work and provide all materials, equipment and labor required by the AUTHORITY to complete the PROJECT. The Unit Prices for ER Projects will be revised at least once a year prior to the Hurricane Season as established by the National Weather Service.



The contract is based upon task order basis duly approved and authorized by the PRHTA's Construction Area Director. The CONTRACTOR shall perform the following duties:

- A.** Perform an assessment report in conjunction with PRHTA's representatives of works that should be performed in the designated locations. This assessment shall include but is not limited to:
 - a. Photographs of the affected areas.
 - b. Written description for the works to be performed.
 - c. Cost breakdown for the works to be performed. This shall be done using the pay items included in Exhibit A (UNIT PRICES FOR ER PROJECTS) included with the contract.
 - d. List of equipment and number of personnel to be used for performing the task.
 - e. Time necessary to perform the works.
- B.** The assessment report shall be submitted for approval to the AUTHORITY and used to issue an approved task order duly approved by the PRHTA's Construction Area Director, prior to execution of the works.
- C.** The CONTRACTOR shall perform only work included in approved task order. Any extra work or change work to the task order shall be approved by the PRHTA's Construction Area Director or its designated representative.
- D.** Due to the nature of the required emergency work, the Contractor shall submit for approval of the Authority, the credentials of two AASHTO accredited or PRHTA Qualified testing laboratories to perform acceptance testing required by PRHTA's specifications. These tests include, but are not limited to, concrete, asphalt mixes, soils and aggregate (gradations and compaction). The approved Laboratory shall be used if PRHTA's Materials Testing laboratories are not available to perform the testing. Costs for each test to be performed using these laboratories shall be included as part of the breakdown for the

assessment report. Accredited or Qualified laboratories used in the acceptance testing as provided above will be subject to PRHTA's independent Assurance Program.

- E.** The CONTRACTOR shall submit for approval of the PRHTA's Construction Area Director or its designated representative any variation to the task orders that might exceed ten percent (10%) of the estimated Cost and/or the excess Time necessary to perform the works. The CONTRACTOR acknowledges that they waive the right to any additional compensation for any work executed without the aforementioned approval by the Authority.

4. COMPETITIVE QUOTE CONTRACTS

The AUTHORITY will use a competitive approach to award Emergency Repairs or Permanent Repairs that require minimum or no design or the work can be easily defined in technical terms in a scope of work. When selecting a competitive approach, PRHTA will solicit from three (3) or more ER Program Contractors, as established in the Federal-Aid Manual, work quotations or offers to be considered as described in the Notice, known as Request for Work Quote. The PRHTA will include in the Request for Work Quote the following:

- Specification of the duration of the contract for the Task Order;
- A statement of work, specifications, or other description, that reasonably describes the general scope, nature, complexity, and purpose of the services the AUTHORITY will acquire under the Task Order;
- A proposal form including specification, line item and estimated amount will be included as part of the Request for Work Quote.

The task order will be granted to the lowest responsive work quote. The Task Order will include the unit prices contained in the selected quotation. TO's under this alternative procurement will be identified as Alternative Procurement Task Order (APTO).

If while performing a Competitive Quote Process, less than three quotes are received, PRHTA will proceed to select from the quotes received; if all Contractors are non-respondent, the PRHTA will then proceed to use the direct negotiation approach, using the results of the process as validation for the need to proceed in such manner.

The processes and terms provided for in Sections 4.1-4.7 of Act No. 38 of June 30, 2017, known as the *Uniform Administrative Procedure Act of the Government of Puerto Rico* will be applicable to the awards made under the alternative provided for in this section.

ARTICLE VI PREQUALIFICATION PROCESS

The PRHTA will use the following contractor selection criteria to establish or add contractors to the Prequalified List:

1. Demonstrate that they possess technical capability to successfully complete the work required for ER Program. Proposer shall show effective and substantive (relative to key objectives) experience of the Proposer in the provision of similar services under consideration for the previous five (5) years or Contractors without the required specific highway experience may be considered based on their available equipment, related experience, and personnel with related construction experience.
2. The Proposer shall have no debt with the Internal Revenue Service and the Department of Treasury of the Government of Puerto Rico.
3. The Proposer shall have no debt with the Municipal Revenue Collection Center (CRIM).

4. Comply with Act. No. 428 of September 22, 2004, as amended or any other legal provision penalizing crimes against the treasury and the public trust.
5. Proposer shall have authorization to do business in Puerto Rico and that is in good standing with the Department of State.
6. Any other document required by law or the Authority deems appropriate to request to protect public interest involved in government transactions.
7. Contractor shall not be debarred.

ARTICLE VII CONTRACTS REQUIREMENTS

Once an award has been made under any of the procurement alternatives provided for in this Rule, the PRHTA will enter into a Contract including all the governmental compliance language, including but not limited to, bonding requirements, Equal Employment, State Insurance Fund, Insurance Policy, Conflict of Interests, Contractors Ethics Rules and Record Retention.

ARTICLE VIII ENFORCEMENT

This rule is enacted under §2.13 of the *Uniform Administrative Procedure Act of the Government of Puerto Rico*, which allows an Agency to adopt an emergency rule without previously compliance with the enactment procedure established by law. Therefore, this rule will have full force and effect and can be implemented as of the date of filing in the Department of State of the Government of Puerto Rico.

Approved in San Juan, Puerto Rico on the 23th day of February of 2018.



Carlos M. Contreras Aponte, P.E.
Executive Director