

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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February 6, 2018

The Honorable Trey Gowdy  
Chairman  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

We are writing to request that you issue a subpoena to compel the Federal Emergency Management Agency (FEMA) to produce documents it has failed to produce for more than three months relating to its failure to provide tens of millions of emergency meals to U.S. citizens who were victims of the hurricanes in Puerto Rico.

As you know, President Donald Trump rated his Administration's response to the hurricanes in Puerto Rico as a "10" out of 10 and disparaged those who questioned his Administration's response as "ingrates" who "want everything done for them."<sup>1</sup> His claims directly contradict the facts on the ground.

**FEMA Awarded \$156 Million Contract to  
One-Person Company to Deliver 30 Million Meals**

Documents obtained by our staff indicate that FEMA failed to deliver tens of millions of emergency meals to the victims of the hurricanes in Puerto Rico. According to these documents, one of the primary reasons FEMA failed to deliver these meals is because it inexplicably awarded a contract worth approximately \$156 million to deliver 30 million emergency meals to a tiny, one-person company with a history of struggling with much smaller contracts.

On October 3, 2017, FEMA officials awarded a contract valued at \$155,982,000 to Tribute Contracting, LLC to deliver 30 million emergency meals.<sup>2</sup> Twenty days later, FEMA

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<sup>1</sup> *Donald Trump Awards Himself 10 out of 10 for Puerto Rico Hurricane Response*, The Guardian (Oct. 19, 2017) (online at [www.theguardian.com/world/2017/oct/19/donald-trump-puerto-rico-hurricane-response-10-out-of-10](http://www.theguardian.com/world/2017/oct/19/donald-trump-puerto-rico-hurricane-response-10-out-of-10)); *Puerto Rico Mayors Play Outsized Role in Hurricane Recovery*, Reuters (Oct. 4, 2017) (online at [www.reuters.com/article/us-usa-puertorico-mayors/puerto-rico-mayors-play-outsized-role-in-hurricane-recovery-idUSKBN1C92QS](http://www.reuters.com/article/us-usa-puertorico-mayors/puerto-rico-mayors-play-outsized-role-in-hurricane-recovery-idUSKBN1C92QS)).

<sup>2</sup> Federal Procurement Data System, *Tribute Contracting LLC No. 70FB7018C00000001* (Oct. 3, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/FEMA%20->

officials terminated the contract “for cause” after having accepted only 50,000 meals—more than 29 million meals short of their goal.<sup>3</sup>

During a phone call with our staff, the owner and sole employee of Tribute explained that FEMA awarded the contract “because I was able to submit a proposal to supply 30 million meals at the cheapest cost.” She stated that she “worked 24 hours a day, 7 days a week to try and provide these emergency meals.” She also explained that FEMA knew she could not independently finance the production and delivery of this many meals in such a short timeframe. She subcontracted to two companies, Cooking with a Star, LLC and Breedlove Foods Inc., but both stopped producing meals when they did not receive payment in a timely manner.

It is difficult to fathom how FEMA could have believed that this tiny company had the capacity to perform this \$156 million contract. There have been numerous examples of disastrous contracting decisions by agencies that selected the lowest bidder without conducting an adequate analysis of the company’s ability to deliver on the contract. For example, our Committee investigated the Bush Administration’s decision to award a contract worth \$300 million to a tiny company known as AEY, Inc. headed by a 21-year-old president and a 25-year-old former masseur.<sup>4</sup> This debacle later became the subject of the film *War Dogs*.

### **Tribute’s Problems with Past Performance**

The Federal Acquisition Regulation is “the primary regulation for use by all Federal Executive agencies in their acquisition of supplies and services with appropriated funds.”<sup>5</sup> It provides that contracts shall be awarded to “responsible prospective contractors only” and that “[n]o purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility.”<sup>6</sup> A contractor must “[h]ave adequate financial resources to perform the contract,” “[b]e able to comply with the required or proposed delivery or performance schedule,” and “have a satisfactory performance record.”<sup>7</sup>

Clearly, Tribute did not have sufficient financial resources of its own to support this expansive contract. Based on Tribute’s lack of experience in large-scale disaster relief and its limited financial capacity, FEMA should have raised serious questions about whether the company could meet the contract terms—especially since they concerned such a critical need.

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%20Tribute%20Contract%20Award.pdf).

<sup>3</sup> Federal Procurement Data System, *Modification of Contract No. 70FB7018C00000001* (Oct. 23, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/M7.jpg>).

<sup>4</sup> House Committee on Oversight and Government Reform, Opening Statement of Chairman Henry A. Waxman, *Hearing on Examination of AEY Contracts with the U.S. Government*, 110th Cong. (June 24, 2008) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/migrated/20080624100935.pdf>).

<sup>5</sup> Federal Acquisition Regulation, Volume 1, Parts 1 to 51, *Forward* (online at [www.acquisition.gov/sites/default/files/current/far/pdf/FAR.pdf](http://www.acquisition.gov/sites/default/files/current/far/pdf/FAR.pdf)) (accessed Jan. 30, 2018).

<sup>6</sup> 48 C.F.R. § 9.103 (a)-(b) (online at [www.law.cornell.edu/cfr/text/48/9.103](http://www.law.cornell.edu/cfr/text/48/9.103)) (accessed Jan. 30, 2018).

<sup>7</sup> 48 C.F.R. § 9.104-1 (a)-(c) (online at [www.law.cornell.edu/cfr/text/48/9.104-1](http://www.law.cornell.edu/cfr/text/48/9.104-1)) (accessed Jan. 30, 2018).

FEMA's decision is even more incomprehensible given the company's inability to fulfill previous government contracts that were only a fraction of the size. For example, both the Federal Prison System and the Government Publishing Office cancelled contracts with Tribute over the past five years valued at less than \$100,000:

- In 2013, the Federal Prison System cancelled a contract with Tribute valued at \$27,029 for "not delivering" required food (e.g., beans, flour, and spaghetti).<sup>8</sup>
- In 2014, the Federal Prison System "de-obligated" a contract valued at \$57,645 to provide bakery and cereal products due to Tribute's "inability to ship/deliver products."<sup>9</sup>
- In 2014, the Federal Prison System terminated "for default" a contract with Tribute valued at \$9,900 to provide meat products.<sup>10</sup>
- In 2014, the Federal Prison System terminated "for default" a contract with Tribute valued at \$30,610 to provide bakery and cereal products.<sup>11</sup>
- In 2014, the Government Publishing Office "terminated for default" a contract to produce 3,000 tote bags with a Marine Corps logo due to Tribute's "inability to produce the job per specifications."<sup>12</sup>

Even more troubling, the Government Publishing Office determined in 2016 that Tribute would be ineligible for any contracts worth more than \$30,000 through January 7, 2019, and it issued the following warning:

Agencies shall not solicit offers from, award contracts to renew, place new orders with, or otherwise extend the duration of current contracts, or consent to subcontracts in excess of \$ 30,000 (other than commercially available off-the-shelf items (COTS)), with these contractors unless the agency head (or designee) determines in writing there is a

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<sup>8</sup> USASpending.gov, Tribute Contracting LLC DJBP0211NA110006 (termination date of Oct. 16, 2013) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/27029%20Federal%20Prison%20System%20Default.pdf>).

<sup>9</sup> USASpending.gov, Tribute Contracting LLC DJBP0315NA120212 (termination date of Apr. 30, 2014) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/57645%20Federal%20Prison%20Default1.pdf>).

<sup>10</sup> USASpending.gov, Tribute Contracting LLC DJBP0117NA140257 (termination date of July 14, 2014) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/9900%20Federal%20Prison%20System%20Default.pdf>).

<sup>11</sup> USASpending.gov, Tribute Contracting LLC DJBP0111NA130248 (termination date of Apr. 9, 2014) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/M14.jpg>).

<sup>12</sup> Government Accountability Office, Contract Appeals Board, *Tribute Contracting, LLC v. U.S. Government Publishing Office* (July 22, 2015) (online at [www.gao.gov/assets/680/672967.pdf](http://www.gao.gov/assets/680/672967.pdf)).

compelling reason to do so.<sup>13</sup>

The Government Publishing Office also warned:

No agency in the Executive Branch shall enter into, renew, or extend primary or lower tier covered transactions to a participant or principal determined ineligible unless the head of the awarding agency grants a compelling reasons exception in writing. Additionally, agencies shall not make awards under certain discretionary Federal assistance, loans, benefits (or contracts there under); nor shall an ineligible person participate as a principal, including but not limited to, agent, consultant, or other person in a position to handle, influence or control Federal funds, or occupying a technical or professional position capable of substantially influencing the development or outcome of a funded activity; nor act as an agent or representative of other participants in Federal assistance, loans and benefits Page 2 of 2 programs. Contact the award agency for questions regarding the extent of Nonprocurement transaction award ineligibility. The period of ineligibility is specified by the termination date.<sup>14</sup>

A note at the end of this warning states that this prohibition is effective within the Government Publishing Office. It is unclear why FEMA or any agency would have proceeded with a contract worth \$156 million in light of this company's poor contracting history and these explicit warnings. It is also unclear whether FEMA was unaware of these previous problems or simply disregarded them in awarding the contract to Tribute.

All of this information on Tribute's previous contracts is publicly available on the USAspending.gov website, the Federal Awardee Performance and Integrity Information System (FAPIIS), and the System Award Management (SAM) system.

Moreover, when FEMA issued an amendment to its own solicitation for bids on the emergency meals contract on September 18, 2017, it asked each bidder to answer the following question: "Is the Vendor currently in System for Award Management (SAM)?"<sup>15</sup> If FEMA had checked the SAM system, it would have seen the same warnings about Tribute issued by the Government Publishing Office described above, noting that Tribute was ineligible for contracts through January 2019.<sup>16</sup>

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<sup>13</sup> Government Publishing Office, *System for Award Management Exclusions* (Feb. 4, 2016) (S4MR4B2LL) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/M1.pdf>).

<sup>14</sup> *Id.*

<sup>15</sup> Federal Business Opportunities, *Meals in Support of Hurricane Maria, Amendment 1* (Sept. 18, 2017) (online at [https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/Amendment\\_HSFE70-17-R-MARIAMEALS%20%281%29.pdf](https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/Amendment_HSFE70-17-R-MARIAMEALS%20%281%29.pdf)).

<sup>16</sup> System Award Management Website, *Tribute Contracting, LLC* (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/M16.jpg>) (accessed on Jan. 31, 2018).

Finally, the Federal Acquisition Regulation requires that a contracting officer review a company's background on FAPIIS before awarding a contract to that contractor.<sup>17</sup> The FAPIIS website also states that Tribute is "[i]neligible" for contracts through January 7, 2019.<sup>18</sup>

### **Effects of FEMA's Failure to Deliver Emergency Food**

The Committee has been unable to determine the full scope of the effects of FEMA's failure to deliver millions of emergency meals because FEMA has not produced key documents and communications to the Committee over the past three months. However, there are significant indications that FEMA's failure directly affected millions of hurricane victims.

By October 11, 2017, FEMA officials reportedly admitted facing massive food shortages of millions of meals per day. According to one report, "Federal officials privately admit there is a massive shortage of meals in Puerto Rico three weeks after Hurricane Maria devastated the island," and FEMA officials reported providing only 200,000 meals a day to more than 2 million people—"a daily shortfall of between 1.8m and 5.8m meals."<sup>19</sup>

This report quoted one FEMA official as stating, "We are 1.8 million meals short. ... That is why we need the urgency. And it's not going away. We're doing this much today, but it has to be sustained over several months."<sup>20</sup>

According to the same report, "The scale of the food crisis dwarfs the more widely publicized challenges of restoring power and communications," but FEMA "provides no details on food deliveries, keeping its public statements to the most general terms."<sup>21</sup>

Mayors from cities and towns across Puerto Rico repeatedly warned about the heart-breaking needs of their citizens. For example:

- Carmen Yulín, the mayor of San Juan—a city with approximately 350,000 people—stated: "What there is is hunger, thirst and despair in this country. ... I got tired of being polite. I got tired of being politically correct. I'm furious. That's why I ask members of the press to send an emergency call to the whole

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<sup>17</sup> 48 C.F.R. § 9.104-6(a) (1) (online at [www.law.cornell.edu/cfr/text/48/9.104-6](http://www.law.cornell.edu/cfr/text/48/9.104-6)) (accessed Jan. 30, 2018). See also 48 C.F.R. § 9.104-6(c) (online at [www.law.cornell.edu/cfr/text/48/9.104-6](http://www.law.cornell.edu/cfr/text/48/9.104-6)) (accessed Jan. 30, 2018).

<sup>18</sup> *Tribute Contracting, LLC*, Federal Awardee Performance and Integrity Information System (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/M15.jpg>) (accessed Jan. 31, 2018).

<sup>19</sup> *Puerto Rico: US Officials Privately Acknowledge Serious Food Shortage*, The Guardian (Oct. 11, 2017) (online at [www.theguardian.com/world/2017/oct/11/puerto-rico-food-shortage-hurricane-maria](http://www.theguardian.com/world/2017/oct/11/puerto-rico-food-shortage-hurricane-maria));

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

world. ... We are dying!”<sup>22</sup> She explained that the only commodities delivered a night earlier were “three pallets of meals and 12 pallets of infant food.”<sup>23</sup>

- María “Mayita” Meléndez, the mayor of Ponce, one of Puerto Rico’s biggest cities along the southern coast, stated, “It is worse than Katrina. ... It has to move faster. It has to move fast. ... Please hurry. We need water. We need food.”<sup>24</sup>
- Karilyn Bonilla Colón, the mayor of Salinas, a town of 30,000 people located 50 miles south of San Juan, stated, “People tell me, ‘I have money but I can’t get it, I can’t buy anything. ... This is my priority right now: Bring them water and food.’”<sup>25</sup>
- Francisco “Paco” López, the mayor of Barranquitas, when asked about his town, responded, “Devastated.” He added, “Where there are many elderly people [crying] ... The most that worries me is that once there is a lack of supply of food, foods ... that they go hungry.”<sup>26</sup>
- José “Joe” Román Abreu, the mayor of San Lorenzo, stated, “My priority is to get food because I fear that my citizens are going hungry.”<sup>27</sup>
- Lornna Soto, the mayor of Canóvanas, reported, “I received 10,000 meals so far, and we’re a city of 54,000.” She warned: “We need more food.”<sup>28</sup>

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<sup>22</sup> *Carmen Yulín: “Lo Que Hay Es Hambre, Sed y Desesperanza en Este País,”* El Nuevo Día (Sept. 29, 2017) (online at [www.elnuevodia.com/noticias/locales/nota/carmenyulinloquehayeshambresedydesesperanzaenestepais-2361741/](http://www.elnuevodia.com/noticias/locales/nota/carmenyulinloquehayeshambresedydesesperanzaenestepais-2361741/)).

<sup>23</sup> *Puerto Rico Crisis: San Juan Mayor Pleads for Federal Aid, Trump Hits Back,* NBC News (Sept. 30, 2017) (online at [www.nbcnews.com/storyline/puerto-rico-crisis/san-juan-s-mayor-pleads-trump-you-are-killing-us-n806116](http://www.nbcnews.com/storyline/puerto-rico-crisis/san-juan-s-mayor-pleads-trump-you-are-killing-us-n806116)).

<sup>24</sup> *Puerto Rico Mayor: “It Is Worse Than Katrina,”* CNN (Sept. 29, 2017) (online at [www.cnn.com/2017/09/29/us/ponce-mayor-damage/index.html](http://www.cnn.com/2017/09/29/us/ponce-mayor-damage/index.html)).

<sup>25</sup> *Puerto Rico Mayors Play Outsized Role in Hurricane Recovery,* Reuters (Oct. 4, 2017) (online at [www.reuters.com/article/us-usa-puertorico-mayors/puerto-rico-mayors-play-outsized-role-in-hurricane-recovery-idUSKBN1C92QS](http://www.reuters.com/article/us-usa-puertorico-mayors/puerto-rico-mayors-play-outsized-role-in-hurricane-recovery-idUSKBN1C92QS)).

<sup>26</sup> *Los Alcaldes Narran Sus Angustias y Necesidades Tras El Paso Del Ciclón,* El Nuevo Día (Sept. 23, 2017) (online at [www.elnuevodia.com/noticias/locales/nota/alcaldesnarransusangustiasynecesidadestraspasodelciclón-2359889/](http://www.elnuevodia.com/noticias/locales/nota/alcaldesnarransusangustiasynecesidadestraspasodelciclón-2359889/)).

<sup>27</sup> *San Lorenzo (Puerto Rico) Después del Paso del Huracán María: Últimas Noticias,* Univision (Sept. 22, 2017) (online at [www.univision.com/puerto-rico/wlii/noticias/huracan-maria/san-lorenzo-puerto-rico-despues-del-paso-del-huracan-maria-ultimas-noticias](http://www.univision.com/puerto-rico/wlii/noticias/huracan-maria/san-lorenzo-puerto-rico-despues-del-paso-del-huracan-maria-ultimas-noticias)).

<sup>28</sup> *Aid Is Getting to Puerto Rico. Distributing It Remains a Challenge,* New York Times (Oct. 3, 2017) (online at [www.nytimes.com/2017/10/03/us/puerto-rico-aid-fema-maria.html](http://www.nytimes.com/2017/10/03/us/puerto-rico-aid-fema-maria.html)).

### **Failure to Learn Key Lessons from Hurricane Katrina**

In 2005, Rep. Tom Davis, your Republican predecessor as Chairman of the Oversight Committee, was selected to lead the House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina. He and the other Members of the Select Committee issued a serious and hard-hitting report on the Bush Administration's similarly deficient response to Hurricane Katrina.<sup>29</sup>

A key conclusion of their report was this:

**Finding: The failure at all levels to enter into advance contracts led to chaos and the potential for waste and fraud as acquisitions were made in haste.**<sup>30</sup>

Their report also cited key testimony from the Director of the Alabama Emergency Management Agency at the time, Bruce Baughman, who recommended "having standing contracts in place and supplies at the ready so the states would not again fall victim to an inadequate FEMA response or supply shortages."<sup>31</sup>

It appears that the Trump Administration's response to the hurricanes in Puerto Rico in 2017 suffered from the same flaws as the Bush Administration's response to Hurricane Katrina in 2005. Food is one of the most basic necessities for victims of natural disasters. This need is completely foreseeable—and in fact it was foreseen.

### **Request for Subpoena**

On October 11, 2017, this Committee sent a bipartisan letter requesting documents from the Department of Homeland Security relating to FEMA's preparation for and response to Hurricanes Irma and Maria in Puerto Rico and the U.S. Virgin Islands.<sup>32</sup> On January 18, 2018, however, Department officials stunned Committee staff by informing them that the agency had not run a single search for email communications in the three months since the bipartisan document request was made.<sup>33</sup>

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<sup>29</sup> House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *A Failure of Initiative*, 109th Cong. (Feb. 15, 2006) (H. Rept. 109-377) (online at [www.gpo.gov/fdsys/pkg/CRPT-109hrpt377/pdf/CRPT-109hrpt377.pdf](http://www.gpo.gov/fdsys/pkg/CRPT-109hrpt377/pdf/CRPT-109hrpt377.pdf)).

<sup>30</sup> *Id.* (emphasis in original).

<sup>31</sup> *Id.*

<sup>32</sup> Letter from Chairman Trey Gowdy and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Acting Secretary Elaine C. Duke, U.S. Department of Homeland Security (Oct. 11, 2017) (online at <https://oversight.house.gov/wp-content/uploads/2017/10/2017-10-11-TG-EEC-to-Duke-DHS-Hurricane-Document-Request.pdf>).

<sup>33</sup> Conference call with House Committee on Oversight and Government Reform Staff and Office of Legislative Affairs, Department of Homeland Security (Jan. 18, 2018).

For the reasons set forth above, we request that you issue a subpoena to compel the Department to produce the following subset of previously-requested documents by February 13, 2018:

1. complete file of the contracting officer on the award and administration of the contract with Tribute Contracting LLC;
2. all bids submitted for the contract HSFE70-17-R-MARIAMEALS;
3. all communications relating to the contract HSFE70-17-R-MARIAMEALS, including communications within the Department and with individuals outside the Department; and
4. all documents relating to contracts (including modifications) that have been cancelled, or that have been or are currently in default, relating to Hurricanes Irma and Maria in Puerto Rico and the U.S. Virgin Islands.

Due to the gravity of these matters, we also request that the Committee expand the date range of our October 11, 2017, document requests to encompass the period from September 20, 2017, to December 1, 2017. If you choose not to issue this subpoena yourself, then we request that you place this matter on the agenda for our next regularly scheduled business meeting so that all Committee Members will have the opportunity to vote on a motion to issue this subpoena.

Thank you for your consideration of this request.

Sincerely,



Elijah E. Cummings  
Ranking Member



Stacey E. Plaskett  
Member of Congress