



December 8, 2022

AGC-PR Responses to Questions from Committee Members

Questions from Rep. Westerman:

1. Q. Can you further expand on your testimony about the design-build system and how that has improved the timeline of projects your members have worked on?

A. *The Design-Build delivery method has multiple benefits vs. the design-bid-build approach, including, among other:*

- ***Faster delivery and lower costs***, because the contractor and the design firm work together as a team and, in the process, they identify best construction methods, determine the availability of materials, reduce procurement of long-lead items, and promptly solve RFIs (Requests for Information) and site conditions.
- ***Effective project and cost management***, because the designer and the contractor are working together through every phase of the project – from design to construction - the project is designed according to budget and design constructability, communication between the design build team and the owner tends to more fluid and transparent, and changes and cost estimates are discussed and revised in real time.

2. Q. How have interruptions in the supply chain affected your members in Puerto Rico during the past year? How do you expect any changes to the supply chain to affect recovery post-Fiona?

A. *Given that Puerto Rico imports around 80% of the construction materials, our industry is extremely vulnerable to external market conditions over which we do not have any control. The Covid-19 pandemic and the war in Ukraine caused significant disruptions in the supply chain of construction materials worldwide, and Puerto Rico was no exception. Said situation have reduced the availability, increased the costs, and delayed the delivery of materials which has affected construction calendars. As public and private construction activity continues to*

increase during the next few years, demand for construction materials will remain high. Therefore, it is important to note that any unresolved issues in the supply chain will be a factor in our industry and the P.R. government's capacity to accelerate the pace of reconstruction projects. Furthermore, while the U.S. and foreign markets stabilize, it is important that the local and the federal governments identify how the application of current laws and regulations could be specifically aggravating the situation in Puerto Rico, such as local inventory taxes.

3. Q. From your experience and the experience of your members, can you tell us more about how interruptions in electrical power affected you and your members both pre- and post- June 2021, when LUMA took over the grid?

- A. Puerto Rico's electrical power service has been unreliable and expensive for many years, even before the devastating hurricanes of 2017. Since 2017, Puerto Rico in general has suffered the effects of deteriorating customer services and continuous power outages.*
- *Under LUMA customer service has worsened. For example, if you call LUMA to request a new connection or a disconnection it takes them a long time to fulfill the request. This affects economic development and new investment.*
 - *Moreover, as contractors we hoped and were looking forward to participating in the historic transformation of Puerto Rico's power grid under the strong leadership of a qualified private company with the ability to act outside of political affiliations. However, our expectations are very distant from the reality.*
 - *First, LUMA has not been able to promptly identify issues and implement solutions, power outages continue to affect residential and business consumers island-wide, sometimes for hours and even days, electrical lines and posts are fragile, and communication with clients and stakeholders is highly deficient.*
 - *Second, LUMA is limiting the participation of local contractors by imposing unnecessary conditions that have led to the cancellation of contracts with local contractors, and preference for mainland-based partners or affiliated companies. For example, in October 2021 LUMA wrote to major highly experienced electrical contractors in Puerto Rico announcing it had signed a PLA with IBEW, a mainland-based labor union, which would apply to all contractors, and subcontractors working with LUMA in the transformation of the electrical power grip.*

Furthermore, the letter stated that LUMA would be cancelling the contracts of the companies that refused to sign the agreement. AGC-P.R. reiterates that said arbitrary and unnecessary condition will increase costs substantially and reduce the expected impact of the federal investment.

4. Q. Please further expand your experience of working with FEMA or COR3 on recovery and rebuilding efforts. What has the experience been like for your association and members?

A. AGC-PR's experience working with FEMA and COR3 has been one of effective communication and collaboration. Both agencies have diligently provided regular status updates of their plans, progress and upcoming projects and have paid attention to our concerns and recommendations. We acknowledge and must point that, in the process (since 2017), both agencies have faced significant challenges regarding procedures, funding approval, cost estimates, approvals, and implementation of guidelines, among other. Given Puerto Rico's fiscal reality (PROMESA, Oversight Board, Title III, etc.) and lack of qualified personnel in government agencies and municipalities to navigate the complexities of federal procurement and funding, we have significantly less ability to fund and procure projects vs. other mainland states, where reconstruction processes tend to move faster. Finally, we must note three things:

- the complexity and number of required procedures continues to affect the agility of the processes*
- the recently implemented working capital advances are having a palpable positive impact*
- the appointment of Jennifer Granholm to lead reconstruction efforts for the U.S. Government is a positive step*

Questions from Rep. González-Colón

1. Q. Can you discuss how increased costs due to inflation are impacting the rebuilding and reconstruction process in Puerto Rico?

A. Increased costs due to inflation in labor and material prices are severely impacting every construction project, both public and private. According to AGC of A the producer price index for nonresidential construction – not

*including added costs for delays in delivery schedule, raising wages rates and overtime pay, and financial costs associated with delays – has soared 11.2 year over year (from October 2021 to October 2022). For example, nationally the producer price index for diesel fuel soared 61.5 percent year over year, for cement rose year-over-year increase to 13.4 percent, and for architectural coatings, such as paint, surged 27.5 percent over 12 months. **The unforeseen and sudden increases in prices pose a major burden on projects with 428 FEMA funding that have fixed budgets established before 2020. Therefore, the budgets for projects with 428 FEMA funding need to be revised according to current price rates, because incoming bids are well above the established budgets halting the projects awards.***

2. Q. In your written testimony you briefly discuss how unnecessary steps and requirements by both the Federal and State government are complicating, delaying, and increasing the cost of reconstruction.

A. The federal funds assigned to Puerto Rico are very much appreciated and needed to address the drastic effects of Hurricane María, earthquakes, and housing and infrastructure needs. The processes established to use and disburse said funds have taken longer than expected in part due to FEMA's alternate use of Section 428 of the Stafford Act (based on fixed costs), lack of personnel with experience in said process, and the sudden and drastic inflation of prices during the last two years. AGC-PR understands that the following steps could be major game changers to expedite the pace of the reconstruction process:

- The appointment of Energy Secretary, Jennifer Granholm, to expedite decision making and resolve any potential impasse, such as the 25% Working Capital Advance, which was recently approved and implemented.*
- The revision of the budgets previously approved for projects under Section 428 of the Stafford Act (fixed costs) to update the amounts to current market conditions, which is under the effects of a sudden inflationary wave that started two years ago.*
- Consolidate funding programs (hurricanes Irma, María and Fiona, as well as earthquakes) to avoid further complications in the use and disbursement of funds.*
- Prioritize improvements to the approval and revision processes for projects in FEMA's Accelerated Awards Strategy (FAAST), especially those related to environmental approvals.*

- *Allow using the small project definition approved for Hurricane Fiona (projects of \$1 million or less) vs. the one required for Hurricane Maria (projects of \$123,000 or less) to accelerate processing.*

3. Q. In the discussion about the Project Labor Agreements, can you clarify what is the specific effect that this has upon the sector, and how is it that the effect happens? Is there an actual imposition of a binding requirement that IBEW labor terms be applied to all the contractors' workforce or projects, or is it more that the higher payments for LUMA contracts creates an increased market pressure on businesses?

A. First, there is an actual imposition because accepting the PLA between IBEW and LUMA is currently a binding requirement established by LUMA for contractors who want to participate in the transformation of the electrical grid. Said imposition will have several effects of significant importance that will affect both workers and companies:

- ***Unionize thousands of employees*** who are currently working in open shop projects under free market conditions to benefit one mainland-based union that will be expanding membership and monthly quotas at the expense of Puerto Rican workers and the investment of federal funds.
- ***Take away workers' rights*** to decide if they want to belong to a union and choose which union will represent them.
- ***Increase costs and reduce the participation of local contractors and labor*** who do not want to work under the imposed conditions, because they were negotiated by mainland-based parties and do not take into consideration Puerto Rico's specific needs and realities and the negative implications they will have in the transformation of the electric grid, and people's access to reliable service at competitive costs.
- ***Disrupt free market conditions in Puerto Rico***, because effective in October 2021, LUMA arbitrarily and unilaterally cancelled the contracts it had with all major local electrical contractors who did not accept the conditions established in the PLA without taking into consideration their expertise and capacity or the impact this unnecessary action would have on cost, and schedule
- ***Limit the participation of local contractors and the expected economic impact of federal reconstruction funds***, because LUMA is replacing local contractors for mainland-based partners and

subsidiaries that will import their own resources and repatriate the profits instead of investing them in Puerto Rico to build a solid economic basis for future progress and sustainability.

Last, Puerto Rico-based contractors are asking to be given the opportunity to participate in LUMA's bids and show - with facts - our capacity to perform the required tasks for a lower price, on schedule and efficiently, outside of the PLA.