

SEP 10 2017



FEMA

MEMORANDUM FOR: Kevin L. Hannes
Federal Coordinating Officer
FEMA-4332-DR-TX

Michael Byrne
Federal Disaster Recovery Coordinator
FEMA-4332-DR-TX

THROUGH: George A. Robinson
Regional Administrator
FEMA Region VI

FROM: Alex Amparo
Assistant Administrator
Recovery Directorate

SUBJECT: Exigent and Emergency Conditions for FEMA-4332-DR-TX

This memorandum is in response to the State of Texas' request for FEMA to concur that exigent and emergency circumstances exist and allow both state and local governments in declared counties to procure contracts for goods and services that ensure life, safety, and the provision of basic needs for Texans coping with this catastrophic disaster.

The Federal procurement standards allow procurement by noncompetitive proposals (i.e., sole sourcing) under certain circumstances, including when a local government determines that the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (2 C.F.R. § 200.320(f)(2)). FEMA defines an emergency as an unexpected and unusually dangerous situation that calls for immediate action or an urgent need for assistance or relief. Emergencies typically involve a threat to life, public health or safety, improved property, and/or some other form of dangerous situation. Use of the emergency exception is only permissible during the actual emergency circumstances and a local government must maintain documentation supporting the existence of the emergency circumstances.

Based upon the information presented by the State of Texas and the wide scale destruction in the declared counties, I currently believe exigent and emergency circumstances exist and concur, for debris removal and emergency protective measures, with the use of non-competitively procured contracts through October 10, 2017, in all declared counties. During this period, local governments, eligible private non-profits, and tribal governments in the declared counties may proceed with new and existing non-competitively procured contracts in order to save lives, public health, safety, or improved property.

In addition, applicants need to be aware that during the 30 day period, they must take additional steps, which may be found in the attached *Frequently Asked Questions: Sole Sourcing In Exigency or Emergency Circumstances*. These steps are still required under emergency circumstances and are chiefly designed to ensure costs remain reasonable.

Please also be advised that where applicants use a time and materials contract to accomplish the work, they must: document that no other contracting mechanism was suitable, include a ceiling price within the contract which the contractor exceeds at its own risk, and assert a high degree of oversight to reasonably ensure that the contractor is using efficient methods and effective costs controls.

Because the exception is only available for the duration of the exigent and emergency circumstances, applicants must start the process of competitively procuring goods and services for long term recovery so that they can transition to the new competitively procured contracts when these circumstances cease to exist.

If you have any questions, please contact Chris Logan, Public Assistance Division Director, at (202) 320-2721.

cc: Jeffrey Byard, Associate Administrator, Office of Response and Recovery
Bobby McCane, Chief, Component Procurement Officer
Chris Logan, Director, Public Assistance Division
Christopher B. Smith, Director, Individual Assistance Division
Traci Brasher, Recovery Division Director, Region VI
William Boone, Public Assistance Branch Chief, Region VI

Attachment

(1) *Frequently Asked Questions: Sole Sourcing in Exigency or Emergency Circumstances*