Subpart 26.2 - Major Disaster or Emergency Assistance Activities

Parent topic: Part 26 - Other Socioeconomic Programs

26.200 Scope of subpart.

This subpart implements the Robert T. Stafford Disaster Relief and *Emergency* Assistance Act (42U.S .C.5150), which provides a preference for local organizations, firms, and individuals when *contracting* for *major disaster* or *emergency* assistance activities.

26.201 Definitions.

Emergency response contract means a contract with private entities that supports assistance activities in a *major disaster or emergency area*, such as debris clearance, distribution of *supplies*, or reconstruction.

Local firm means a private organization, firm, or individual residing or doing business primarily in a *major disaster or emergency area*.

Major disaster or emergency area means the area included in the official Presidential declaration(s) and any additional areas identified by the Department of Homeland Security. *Major disaster* declarations and *emergency* declarations are published in the Federal Register and are available at https://www.fema.gov/disasters/disaster/declarations.

26.202 Local area preference.

(a) When awarding *emergency response contracts* during the term of a *major disaster* or *emergency* declaration by the President of the *United States* under the authority of the Robert T. Stafford Disaster Relief and *Emergency* Assistance Act (42 U.S.C. 5121, *et seq*.), preference *shall* be given, to the extent feasible and practicable, to *local firms*. Preference *may* be given through a local area set-aside or an evaluation preference.

(b) When using the authority under the Stafford Act, see the definitions of "*micro-purchase threshold*" and "*simplified acquisition threshold*" in 2.101 for the authority to use an increased *micro-purchase threshold* and *simplified acquisition threshold*.

26.202-1 Local area set-aside.

The *contracting officer may* set aside *solicitations* to allow only *local firms* within a specific geographic area to compete (see 6.208).

(a) The *contracting officer*, in consultation with the requirements office, *shall* define the specific

geographic area for the local set-aside.

(b) A *major disaster or emergency area may* span counties in several contiguous States. The set-aside area need not include all the counties in the declared disaster/*emergency* area(s), but cannot go outside it.

(c) The *contracting officer shall* also determine whether a local area set-aside *should* be further restricted to small business concerns in the set-aside area (see part 19).

26.202-2 Evaluation preference.

The *contracting officer may* use an evaluation preference, when authorized in agency regulations or procedures.

26.203 Transition of work.

(a) In anticipation of potential *emergency* response requirements, agencies involved in response planning *should* consider awarding *emergency response contracts* before a *major disaster* or *emergency* occurs to ensure immediate response and relief. These contracts *should* be structured to respond to immediate *emergency* response needs, and *should* not be structured in any way that *may* inhibit the transition of *emergency* response work to *local firms* (*e.g.*, unnecessarily broad scopes of work or long periods of performance).

(b) 42U.S.C.5 150(b)(2) requires that agencies performing response, relief, and reconstruction activities transition to *local firms* any work performed under contracts in effect on the date on which the President declares a *major disaster* or *emergency*, unless the head of such agency determines *in writing* that it is not feasible or practicable. This determination *may* be made on an individual contract or class basis. The written determination *shall* be prepared within a reasonable time given the circumstances of the *emergency*.

(c) In effecting the transition, agencies are not required to terminate or renegotiate existing contracts. Agencies *should* transition the work at the earliest practical opportunity after consideration of the following:

(1) The potential duration of the disaster or *emergency*.

(2) The severity of the disaster or *emergency*.

(3) The scope and structure of the existing contract, including its period of performance and the milestone(s) at which a transition is reasonable (*e.g.*, before exercising an *option*).

(4) The potential impact of a transition, including safety, *national defense*, and mobilization.

(5) The expected availability of qualified local *offerors* who can provide the *products* or services at a reasonable price.

(d) The agency *shall* transition the work to *local firms* using the local area set-aside identified in 26.202-1.

26.204 Justification for expenditures to other than local firms.

(a) 42U.S.C .5150(b)(1) requires that, subsequent to any Presidential declaration of a *major disaster* or *emergency*, any expenditure of Federal funds, under an *emergency response contract* not awarded to a *local firm*, *must* be justified *in writing* in the contract file. The justification *should* include consideration for the scope of the *major disaster* or *emergency* and the immediate requirements or needs of *supplies* and services to ensure life is protected, victims are cared for, and property is protected.

(b) The justification *may* be made on an individual or class basis. The *contracting officer* approves the justification.

26.205 Disaster Response Registry.

(a) *Contracting officers shall* consult the *Disaster Response Registry* via https://www.sam.gov to determine the availability of contractors for debris removal, distribution of *supplies*, reconstruction, and other disaster or *emergency* relief activities inside the *United States* and *outlying areas*.

(b) A list of prospective vendors voluntarily participating in the *Disaster Response Registry* can be retrieved using the *System for Award Management (SAM*) search tool, which can be accessed via https://www.sam.gov, Search Records, Advanced Search, *Disaster Response Registry* Search. These vendors *may* be identified by selecting the criteria for "Disaster Response Contractors". Contractors are required to register in SAM in order to gain access to the *Disaster Response Registry*.

26.206 Solicitation provision and contract clauses.

(a) The *contracting officer shall* insert the provision at 52.226-3, Disaster or *Emergency* Area Representation, in *solicitations* involving the local area set-aside. For *commercial products* and *commercial services*, see 12.301(e)(5).

(b) The *contracting officer shall* insert the clause at 52.226-4, Notice of Disaster or *Emergency* Area Set-aside in *solicitations* and contracts involving local area set-asides.

(c) The *contracting officer shall* insert the clause at 52.226-5, Restrictions on Subcontracting Outside Disaster or *Emergency* Area, in all *solicitations* and contracts that involve local area set-asides.