

# Public Notice of FEMA’s Intended Procurement of Reinsurance January 2021 – Amended

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Release Date: 9? 16, 2020

*Updated as of 10/25/2020, if you have any questions or concerns regarding this document, please contact FEMA at [FEMA-NFIP-REINSURANCE@fema.dhs.gov](mailto:FEMA-NFIP-REINSURANCE@fema.dhs.gov)*

**ACTION: AMENDED NOTICE ANNOUNCING INTENDED PROCURMENT OF REINSURANCE FOR THE NATIONAL FLOOD INSURANCE PROGRAM AS REQUIRED UNDER THE AGREEMENT ON GOVERNMENT PROCUREMENT (MAR. 30, 2012).**

## **SUMMARY AMENDED NOTICE:**

The Federal Emergency Management Agency (“FEMA”) will be procuring reinsurance for the National Flood Insurance Program (“NFIP”) to be effective on or about January 1, 2021. To participate in the reinsurance procurement, vendors must submit a request to participate by November 24, 2020 (the date on or about FEMA anticipates Firm Order Terms will be issued), and final tenders by December 4, 2020 (the date on or about FEMA anticipates final authorizations will be due from the reinsurance markets).

FOR FURTHER INFORMATION CONTACT: [FEMA-NFIP-REINSURANCE@fema.dhs.gov](mailto:FEMA-NFIP-REINSURANCE@fema.dhs.gov).

## **NOTICE:**

Pursuant to the World Trade Organization (“WTO”), Agreement on Government Procurement (“GPA”), as amended on March 30, 2012, FEMA, the procuring entity, is hereby providing notice of its intended procurement of reinsurance for the NFIP, as amended. For more information, refer to Art. VII of the GPA, Exhibit A. FEMA is not securing reinsurance through the Federal Acquisition Regulations (“FAR”) and reinsurers will not be considered Federal contractors.



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FEMA provides Notice on the following:

- *The name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;*

FEMA intends to procure reinsurance for flood risk in the United States insured by the NFIP. Guy Carpenter and Company and Aon Benfield are FEMA's brokers and will act as the third-party intermediaries for the intended procurement of reinsurance referenced in this notice. For any information and relevant documentation relating to the procurement contact [FEMA-NFIP-REINSURANCE@fema.dhs.gov](mailto:FEMA-NFIP-REINSURANCE@fema.dhs.gov).

- *A description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;*

FEMA intends to procure reinsurance on or about January 1, 2021, to be effective for one or more years. The procurement of reinsurance will be an agreement of indemnity between FEMA and private reinsurance firms. FEMA will pay a reinsurance premium to transfer a portion of the NFIP's flood-risk to the counterparties (reinsurers). The reinsurers will be responsible for the payment of potential NFIP losses as defined by the reinsurance agreement. The amount of reinsurance and the design of the reinsurance program will remain undisclosed until determined otherwise by FEMA.

- *For recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;*

This provision is not applicable to this reinsurance procurement.

- *A description of any options;*

This provision is not applicable to this reinsurance procurement.

- *The time frame for delivery of goods or services or the duration of the contract;*

The duration of the reinsurance treaty will be one or more years to begin on or about January 1, 2021.



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- *The procurement method that will be used and whether it will involve negotiation or electronic auction;*

FEMA intends to procure reinsurance by following standard reinsurance industry practices. FEMA will determine Firm Order Terms and disseminate the terms via email to all reinsurers who meet the minimum criteria listed below in Section (j) interested in participating in the FEMA reinsurance program. This reinsurance procurement will not be available through Federal Business Opportunities, because FEMA will secure reinsurance outside the FAR.

- *Where applicable, the address and any final date for the submission of requests for participation in the procurement;*

The final date for the submission of request for participation will be November 24, 2020 (the date on or about FEMA anticipates Firm Order Terms will be issued). Refer to Section (a) for contact information.

- *The address and the final date for the submission of tenders;*

The final date for the submission of tenders is December 4, 2020 (the date on or about FEMA anticipates final authorizations will be due from the reinsurance markets). Refer to Section (a) for contact information.

- *The language or languages in which tenders or requests for participation may be submitted, if they may be submitted in a language other than an official language of the Party of the procuring entity;*

The notice and intended procurement will be in English (United States).

- *A list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement;*

Below is a list and brief description of conditions for participation of reinsurers:

### **Evaluating Criteria:**



1. Ability to write property catastrophic excess of loss reinsurance in the United States;
2. Fulfillment of minimum financial requirements measured by **an**
  1. AM Best financial strength rating of A- with a stable outlook or better, or
  2. S&P financial strength rating of A- with a stable outlook or **better** ,
  3. For Underwriting Members of Lloyd's, Lloyd's AM Best or S&P financial strength market rating of A- with a stable outlook or **better**,
  4. Policyholder Surplus or Shareholder Funds of at least \$500 million, or either in combination with other financial equivalents that **meet** FEMA's approval: or for Underwriting Members of Lloyd's a Stamp Capacity of at least £200 million;
3. Satisfactory outcome of appropriate financial analyses (e.g., measurements of liquidity, leverage, capital adequacy, rating outlook) and other considerations FEMA determines are reasonable and appropriate; and
4. Payment of taxes pursuant to country or jurisdiction in which the reinsurance company operates.

## **Conditions and restrictions:**

### **A. Office of Foreign Assets Control**

Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, potential reinsurance companies shall not acquire, for use in the performance of the intended NFIP reinsurance treaty, any supplies or services if any proclamation, Executive Order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx> .

### **B. Prohibition on Inverted Domestic Corporations**

FEMA will not secure reinsurance from reinsurance companies that are inverted domestic corporation or a subsidiary of an inverted domestic corporation as defined in 6 U.S.C. § 395(b)-(c).



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### **C. Delinquent Tax liability or a Felony Conviction under Federal Law**

FEMA will not secure reinsurance from reinsurance companies that have unpaid U.S. Federal tax liability, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

FEMA will not secure reinsurance from a reinsurance company where the entity has been convicted of a felony criminal violation under any Federal law in the preceding twenty- four (24) months.

### **D. Other Tax Matters**

Pursuant to section 523 of Division B of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and similar provisions, if contained in subsequent appropriations act, FEMA will not secure reinsurance from reinsurance companies that have:

- Not filed all Federal tax returns required during the three years preceding the certifications,
- Been convicted of a criminal offense under the Internal Revenue Code of 1986, and
- More than 90 days prior, been notified of any unpaid Federal tax assessment for which the liability remains unsatisfied, unless the assessment is subject to an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

### **E. Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements**

Pursuant to section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions), FEMA will not secure reinsurance from reinsurance companies that require employees or subcontractors seeking to report waste, fraud, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise



restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information. This prohibition does not contravene requirements applicable to Standard Form 312 (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

### III. Trade Agreement Act of 1979 and WTO GPA Conditions

1. Pursuant to the Trade Agreements Act of 1979 (TAA), 19 U.S.C. § 2501) and the WTO GPA, FEMA will only secure reinsurance from reinsurance companies that meet the following criteria:

- The potential reinsurance company must be established in a country approved as TAA-eligible. A list of TAA designated countries may be found at <http://gsa.federalschedules.com/resources/taa-designated-countries/>.<sup>[1]</sup> This list may be amended from time to time or be superseded by international agreements or events. The country in which a potential reinsurance company is “established” means the country in which it is incorporated and maintains its principal place of business or headquarters.
- The potential reinsurance company must perform the following tasks for the performance under such reinsurance agreement entirely within a TAA-eligible country:
  - underwriting, including any decisions and activities necessary to making the underwriting decision concerning the reinsurance (including for example, if applicable, modeling, pricing, quoting, and review of the terms and conditions of the Agreement);
  - accept and execute the Agreement;
  - accept payment of premiums from FEMA under the Agreement;
  - administer the reinsurance agreement; and
  - adjudicate and pay claims under the Agreement.
- Potential reinsurance companies will be evaluated on an ongoing basis during the term of such reinsurance agreement for their compliance with the conditions for participation under the standards set forth in the GPA and other TAA-Related Requirements.



- A potential reinsurance company may be disqualified and excluded from participation if any of the following occur at any time prior to or while an entity has responsibilities under such reinsurance agreement:
  - bankruptcy;
  - false declarations;
  - significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior reinsurance-related contract or contracts;
  - final judgments in respect of serious crimes or other serious offenses;
  - professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the entity;
  - failure to pay taxes; or
  - violation of or failure to comply with any TAA-related requirements or any other laws or regulations applicable either to such a reinsurance agreement or to the potential reinsurance company.
- *Where, pursuant to Article IX, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender.*

This Notice does not restrict FEMA’s allocation decisions as to the number of reinsurers or amount of reinsurance to be obtained from those reinsurers meeting the minimum requirements described in Section (j). FEMA may give program allocation preference to reinsurers with:

- Stronger financial metrics as measured by AM Best ratings and/or S&P financial strength ratings, including Lloyd’s market rating (as applicable), Policyholder Surplus, Shareholder Funds or Stamp Capacity, and financial ratio tests;
- Strong investment and/or history in flood reinsurance;
- Expertise in reinsurance flood underwriting; and
- Consistency in price and capacity between quoting and final terms offered.
- Amount of capacity offered and overall support of NFIP reinsurance placements.
  - *An indication that the procurement is covered by this Agreement.*

Reinsurance is a service covered by the WTO GPA.



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END OF NOTICE



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