

FEMA Transportation Service Provider (TSP) Agreement & Certification Statement

1. INTRODUCTION

This agreement prescribes the general procedures and policies to be followed when Electronic Commerce (EC) is used for transmitting and receiving requests for offers, rate tenders, or other business information in lieu of creating one or more paper documents normally associated with conducting business with the Federal Emergency Management Agency (FEMA or the Agency).

FEMA will transmit and receive using the Internet such transaction sets or documents as it chooses and as established by the governing tender of service or the request for offers. These transaction sets will be transmitted to those firms, organizations, agencies, or other entities (TSPs) recognized by FEMA that agree to accept such documents and to be bound by the terms and conditions contained in those documents, this agreement, and any applicable tender of service.

2. PURPOSE

This agreement is to ensure that all EC obligations are legally binding on all TSPs. Further, the use of any electronic equivalent of a standard business document referenced in Paragraph 3 will be deemed an acceptable business practice and that no TSP will challenge the admissibility of the electronic information in evidence, except in circumstances in which an analogous paper document could be challenged.

3. FREIGHT REFERENCE

This agreement, in addition to the terms and conditions stated in Paragraph 4, is subject to the terms and conditions of the following documents: FEMA Standard Tender of Service (STOS), the FEMA Uniform Rules Tariff No. 200 (FEMA No. 200), and FEMA Request for Offers (RFO).

4. TERMS AND CONDITIONS

- A. FEMA will place electronic documents in a publicly accessible directory on FEMA's Freight Transportation webpage (www.fema.gov/transportation-programs). FEMA will receive documents and communication from confirmed TSPs via the established FEMA email box (FEMA-Transportation-Programs@fema.dhs.gov).
- B. FEMA will bear the costs of maintaining and managing the FEMA infrastructure. FEMA's TSPs are responsible for all costs associated with maintaining and sending required documents and communications to FEMA.

- C. When the transmissions are submissions of rate tenders, the submitting firm must have first met all applicable approval requirements set out in the applicable, governing FEMA STOS.
- D. FEMA will not be responsible for any damages incurred by a TSP as a result of missing or delayed transmissions.
- E. Any document placed in a directory or website maintained by FEMA is to be considered valid and authentic backed by the same guarantees of legitimacy as are found in a paper transaction. Likewise, any document from a TSP will be considered a valid and authentic document backed by the same guarantees of legitimacy as are found in a paper transaction.
- F. The carrier/freight forwarder that is the TSP party to this agreement authorizes FEMA or any other authorized Federal agency to offer the electronic rate file if required by any Federal agency charged with governance or regulation of the Interstate Commerce Act provisions under 49 U.S.C. § 10721 or 49 U.S.C. § 13712.
- G. In the event a carrier/freight forwarder uses a broker or filing service to file its rates with FEMA, documents submitted on behalf of the carrier/freight forwarder shall be accepted as though submitted by the carrier/freight forwarder and in accordance with the terms and conditions of the TSP agreement between the carrier/freight forwarder and FEMA. The use of a broker or filing service does not relieve the carrier/freight forwarder of any of its rights or obligations under the terms of this agreement, including the maintenance of a valid TSP agreement with FEMA.

5. FORCE MAJEURE

None of the parties in this agreement will be liable for failure to properly conduct EC in the event of war, accident, riot, fire, flood, epidemic, power outage, labor dispute, act of God, act of public enemy, malfunction or inappropriate design of hardware or software, or any other cause beyond such party's control. If standard business cannot be conducted by EC, FEMA may at its discretion return to a paper-based system.

6. EFFECTIVE DATE

The agreement shall be effective either on: (1) the date both parties sign the agreement, or (2) the later of the two signature dates, if the parties sign the agreement on different dates.

7. AGREEMENT REVIEW

This agreement will be effective on a continuing basis, except as provided in Paragraph 8, below;

provided, however, that FEMA may from time to time make such changes to the agreement as are necessary and the TSP may request a review of the agreement at any time.

8. TERMINATION

- A. In the event that FEMA terminates a firm's participation in the FEMA Tender of Service Program, this agreement shall be considered terminated as of the date notice is given to a firm of its participation termination.
- B. In the event that a firm terminates its participation in the FEMA Tender of Service Program, this agreement shall be considered terminated as of the date notice of such termination is received by FEMA.
- C. Except as provided above, this agreement may be terminated by either FEMA or its TSP, effective 30 days after receipt of written notice by either party. Termination will have no effect on transactions occurring prior to the effective date of termination.

9. WHOLE AGREEMENT

This agreement constitutes the entire agreement between the parties. No addenda, amendments, or changes in the terms and conditions of this agreement shall be effective without mutual written approval signed and dated by both parties. Any such addendum, amendment, or change of this agreement shall be effective either on: (1) the date both parties sign, or (2) the later of the two signature dates, if it is signed by the parties on different dates.

10. TRANSPORTATION SERVICE PROVIDER

Applicability: All paragraphs of this TSP Agreement will apply and are binding, except those stated next to the activity of your firm under this FEMA TSP Agreement:

- Freight Common Carrier
- Freight Forwarder
- Freight Broker (except Paragraph 4G)

11. FEMA TRANSPORTATION SERVICE PROVIDER CERTIFICATION STATEMENT

- A. TSP Agreement to Abide by the Terms and Conditions of The Federal Emergency Management Agency (FEMA) Tender of Service Program:
 - 1. I certify that I have read and will comply with all of the provisions contained in the following documents:
 - i. The FEMA Standard Tender of Service (FEMA STOS)
 - ii. The FEMA Uniform Rules Tariff No. 200 (FEMA No. 200)

2. I have also read, will comply with, the requirements for filing rate tenders and rate quotations as described in 41 C.F.R. Parts 102-117 and 102-118. Only active rates from accepted filed rate tenders and rate quotations will apply to shipments. I further certify that the undersigned company has the operating authority and insurance as required by the FEMA STOS.

B. TSP Certification of Eligibility for the Award of Contracts for Transportation

1. By signing this document, the TSP certifies that:
 - i. Neither the TSP, nor any of its subsidiaries, officers, directors, principal owners, or principal employees is currently suspended, debarred, or in receipt of a notice of proposed debarment from any Federal agency as a result of a civil judgment or criminal conviction or for any cause, or has been placed in temporary nonuse status by FEMA for the routes offered to FEMA by the TSP as of this date (date of signature).
 - ii. The TSP is not a corporation, partnership, sole proprietorship or any other business entity which has been formed or organized following the suspension or debarment of, a subsidiary, officer, director, principal owner, or principal employee thereof (or from such an entity formed after receipt of a notice of proposed debarment).
2. The following definitions are applicable to this certification:
 - i. A subsidiary is a business entity whose management decisions are influenced by the TSP through legal or equitable ownership of a controlling interest in the firm's stock, assets, or otherwise.
 - ii. A principal owner is an individual or company which owns a controlling interest in the TSPs stock, or an individual who can control, or substantially influence, the TSPs management, through the ownership interest of family members or close associates.
 - iii. A principal employee is a person acting in a managerial or supervisory capacity (including consultants and business advisors) who is able to direct, or substantially influence, the TSPs performance of its obligations under its contracts for transportation with the Federal Government.

C. The knowledge of the person who executes this certification is not required to exceed the knowledge which that person can reasonably be expected to possess, following inquiry, regarding the suspended or debarred status of the parties defined in (B), above.

1. The TSP has a continuing obligation to inform FEMA of any change in circumstances which results in its ineligibility for the receipt of tenders or

- 2. contracts for transportation.
- 3. An erroneous certification of eligibility or failure to notify FEMA of a change in eligibility may result in a recommendation for administrative action against the TSP. Additionally, false statements to an agency of the Federal Government are subject to criminal prosecution pursuant to 18 U.S.C. § 1001, as well as possible civil penalties.

By signing this document, you affirm that you: (1) have read the agreement and the certifications, (2) agree to the agreement's terms and conditions and make the certifications stated above, (3) intend to enter into the agreement and make the above-referenced certifications, and (4) are legally authorized to sign to enter this agreement and make the above-referenced certifications on behalf of the named company.

(Signature of Authorized Official) (Date)

(Signature of Authorized FEMA Official) (Date)

(Printed Name & Title of Authorized Official)

(Printed Name & Title of FEMA Official)

(Printed Company Name)