

AGENCY: FEDERAL EMERGENCY MANAGEMENT AGENCY, U.S. DEPARTMENT OF HOMELAND SECURITY

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

SUMMARY NOTICE:

The Federal Emergency Management Agency (“FEMA”) intends to pursue procurement of reinsurance for the National Flood Insurance Program (“NFIP”) via a reinsurer that will act as a transformer and transfer flood risk using a 144A catastrophe bond. 17 C.F.R. 230.144. Should FEMA elect to proceed with the procurement of reinsurance via a transformer reinsurer, the reinsurance is expected to be effective in Fiscal Year 2022, one day after the transformer reinsurer completes the issuance of the 144A catastrophe bond. To participate in the reinsurance procurement as a transformer reinsurer, eligible vendors must submit a request to participate by 5:00 pm Eastern Time on July 5, 2021 and submit final tenders by 5:00 pm Eastern Time on July 16, 2021.

FOR FURTHER INFORMATION CONTACT: A FEMA representative at [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. For more information, refer to Art. VII of the GPA, Exhibit A. FEMA intends to procure reinsurance via a reinsurer that meets the requirements of the Trade Agreements Act of 1979 (TAA), 19 U.S.C. § 2501-*et seq.*, and that will act as a transformer to transfer NFIP-insured United States flood risk through the issuance of a 144A catastrophe bond, and transfer the proceeds from such offering into a reinsurance trust account with FEMA as the sole beneficiary of such trust account for satisfying claims under the reinsurance agreement between the NFIP and transformer reinsurer. Should FEMA elect to proceed with the procurement of reinsurance via a transformer reinsurer, the reinsurance is expected to be effective in Fiscal Year 2022, one day after the transformer reinsurer completes the issuance of the 144A catastrophe bond. Through market research, FEMA became aware of potentially eligible entities that may be interested in participating in this effort. FEMA will send interested entities additional information following the publication of this notice. Any entity that meets the conditions for participation in Section (j) below and that is interested in receiving additional information should notify a FEMA representative ([FEMA-NFIP-REINSURANCE@fema.dhs.gov](mailto:FEMA-NFIP-REINSURANCE@fema.dhs.gov)) by 5:00 pm Eastern Time on July 5, 2021. FEMA is not securing reinsurance through the Federal Acquisition Regulations (“FAR”) and reinsurers will not be considered federal contractors.

FEMA provides Notice on the following:

- a. *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.

Contact a representative of FEMA regarding this procurement at [FEMA-NFIP-REINSURANCE@fema.dhs.gov](mailto:FEMA-NFIP-REINSURANCE@fema.dhs.gov).

- b. *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 via a transformer reinsurer in Fiscal Year 2022, to be effective for a term of likely three years. The procurement of reinsurance will be an agreement of indemnity between FEMA and the transformer reinsurer. FEMA will pay a reinsurance premium to the transformer reinsurer (that meets the requirements of the TAA) to assume a portion of the NFIP's flood risk that will be transferred to capital markets investors. The transformer reinsurer will transfer flood risk through, or by means of, a 144A catastrophe bond. The transformer reinsurer's responsibilities will include engagement and indemnification of third-party service providers and arrangement of a trust account in the United States in a bank domiciled within the United States funded with the 144A catastrophe bond proceeds and naming FEMA as the sole beneficiary. FEMA will require that payment for any reinsurance claims (based on potential NFIP losses as defined by the reinsurance agreement) under the reinsurance agreement between the NFIP and the transformer reinsurer be paid from this trust account. FEMA will provide guidelines as to the minimum size and other qualifications to serve as a trustee bank. The amount of reinsurance and the design of the reinsurance placement will remain undisclosed until determined otherwise by FEMA; however, FEMA is committed to making a significant placement if market capacity, pricing and other relevant terms are suitable. For information on FEMA's Reinsurance Program, please visit [www.fema.gov/nfip-reinsurance-program](http://www.fema.gov/nfip-reinsurance-program)

- c. *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.

- d. *A description of any options;*

This provision is not applicable to this reinsurance procurement.

- e. *The timeframe for delivery of goods or services or the duration of the contract;*

The duration of the reinsurance agreement will likely be for three years to begin in Fiscal Year 2022

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

FEMA intends to procure reinsurance by following standard industry practices in the private reinsurance and capital markets through a reinsurance agreement with a reinsurer that will operate as a transformer reinsurer to transfer flood risk through, or by means of, a 144A catastrophe bond. Under such a catastrophe bond structure, FEMA will require that the proceeds from the 144A catastrophe bond placement be ultimately deposited into a trust account located in the United States in a bank domiciled within the United States with FEMA being the sole beneficiary. If FEMA elects to proceed to procure reinsurance with a transformer reinsurer that meets the minimum criteria listed in Section (j) and such transformer reinsurer provides sufficient additional information as FEMA requests, the reinsurance agreement may include additional terms subject to further negotiations. This reinsurance procurement will not be available through Federal Business Opportunities, because FEMA will secure reinsurance outside the FAR.

- g. 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 requests for participation will be 5:00 pm Eastern Time on July 5, 2021. Refer to Section (a) for contact information.

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

The final date for the submission of tenders is 5:00 pm Eastern Time on July 16, 2021. Refer to Section (a) for contact information.

- i. 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).

- j. 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 and requirements:

I. Conditions to Participate:

- A. Ability to write property catastrophic excess of loss reinsurance in the United States; experience with issuance of a 144A catastrophe bond as a transformer reinsurer, and ability to serve in this role;

- B. Fulfillment of minimum financial requirements measured by an:
  - (a) AM Best financial strength rating of A- with a stable outlook or better, or
  - (b) S&P financial strength rating of A- with a stable outlook or better ,
  - (c) 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;
- C. 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;
- D. Payment of taxes pursuant to country or jurisdiction in which the reinsurance company operates;
- E. Ability to demonstrate that the transformer reinsurer meets the requirements of the TAA; and
- F. Ability to certify that third-party service providers meet the conditions and restrictions in Section (j)(II).

II. 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.

Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information>.

B. Prohibition on Conducting Restricted Business Operations in Sudan

Pursuant to the Sudan Accountability and Divestment Act of 2007, potential reinsurance companies must not conduct any restricted business operations in Sudan. For more information, refer to Pub. L. No. 110-174.

C. Prohibition on Engaging in Certain Activities or Transactions Related to Iran

Potential reinsurance companies, and any person owned or controlled by the potential reinsurance companies, must not engage in the following:

- Export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;
- Any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act. These sanctioned activities are in the areas of development of the petroleum resources of Iran, production of refined petroleum products in Iran, sale and provision of refined petroleum products to Iran, and contributing to Iran's ability to acquire or develop certain weapons or technologies; and
- Any transaction that exceeds \$3,500 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.). Refer to OFAC's Specially Designated Nationals and Blocked Persons List at <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>.

D. Prohibition on Inverted Domestic Corporations

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

E. 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.

F. Other Tax Matters

Pursuant to section 522 of Division B, Title V, of the Consolidated Appropriations Act, 2018 (Pub. L. 115-141), and similar provisions, if contained in subsequent appropriations acts, 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.

G. Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements

Pursuant to section 743 of Division E, Title VII, of the Consolidated Appropriations Act, 2018 (Pub. L. 115-141) 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 Agreements Act of 1979 and WTO GPA Conditions:

- A. 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 reinsurance company must be established in a TAA-designated country, and its activities with respect to this Reinsured must comply with the TAA. 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”

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<sup>1</sup> Please note, FEMA is not securing reinsurance through the Federal Acquisition Regulations and reinsurers will not be considered federal contractors.

means the country in which it is incorporated and maintains its principal place of business or headquarters.

- The reinsurance company must perform the following tasks under such reinsurance agreement entirely within a TAA-designated 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 reinsurance agreement);
  - accept and execute the reinsurance agreement;
  - accept payment of premiums from FEMA under the reinsurance agreement;
  - administer the reinsurance agreement; and
  - adjust and pay claims under the reinsurance agreement.
  
- Potential transformer reinsurers will be evaluated during the procurement process for their compliance with the conditions for participation under the standards set forth in the GPA and other TAA-related requirements.
  
- Once selected, the chosen transformer reinsurer must certify that it complies with the conditions for participation under the standards set forth in the GPA and other TAA-related requirements, and will maintain its compliance with said standards and requirements throughout the term of the placement.
  
- A 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.
  
- k. *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.*

If FEMA elects to proceed with procurement of reinsurance through a transformer reinsurer, FEMA will select only one reinsurer from the eligible reinsurers meeting the minimum requirements described in Section (j). If more than one eligible reinsurer is willing to participate, then FEMA will evaluate various attributes (including but not limited to the following items) with the key attributes utilized in the sole discretion of FEMA:

- A. 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;
- B. Strong investment and/or history in flood reinsurance;
- C. Expertise in reinsurance flood underwriting;
- D. Experience with issuance of a 144A catastrophe bond as a transformer reinsurer;
- E. Pricing and other applicable terms and conditions as evaluated in the sole discretion of FEMA;
- F. Amount of limit that the transformer reinsurer can facilitate and overall support of NFIP reinsurance placements; and
- G. Such other terms and conditions favorable to FEMA.

Reinsurance is a service covered by the WTO GPA.

END OF NOTICE