

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

August 23, 2018

The Honorable Brock Long
Administrator
Federal Emergency Management Agency
500 C Street SW
Washington, DC 20024

Dear Mr. Long:

I am writing to request additional information about noncompetitive contracts awarded by the Federal Emergency Management Agency (FEMA) during the response to the 2017 hurricane season. As of August 22, 2018, FEMA had obligated over \$4 billion on contracts supporting the response to Hurricanes Harvey, Irma, and Maria. Noncompetitive contracts account for approximately \$600 million of this total.¹

I have previously raised concerns about FEMA's failure to establish adequate prepositioned contracts – contracts competitively awarded in advance of a disaster.² I was pleased to see that FEMA recognized this shortcoming in its recent After-Action Report³ and that the agency has awarded 27 new prepositioned contracts since the 2017 hurricanes.⁴

As you know, expanding the use of prepositioned contracts was one of the reforms required by the Post-Katrina Emergency Management Reform Act (PKEMRA). Another key provision in PKEMRA placed limits on noncompetitive contracts awarded in the wake of a disaster.⁵ Agencies facing an “urgent need” are permitted to award emergency-response contracts without competition; however, PKEMRA requires that the contract period for these

¹ Data obtained from the Federal Procurement Data System-Next Generation (fpds.gov) (accessed Aug. 22, 2018).

² See, e.g., Minority Staff, Senate Committee on Homeland Security and Governmental Affairs, *Government Oversight: Failures in FEMA Contracting for Emergency Tarps & Sheeting During the 2017 Hurricane Season* (Apr. 10, 2018); Letter from Claire McCaskill, Ranking Member, Senate Committee on Homeland Security and Governmental Affairs, to Brock Long, Administrator, Federal Emergency Management Agency (July 17, 2018).

³ Federal Emergency Management Agency, *2017 Hurricane Season: FEMA After-Action Report* (July 12, 2018).

⁴ Senate Committee on Homeland Security and Governmental Affairs, Questions for the Record to Administrator Brock Long, Federal Emergency Management Agency, *Hearing on FEMA: Prioritizing a Culture of Preparedness* (Apr. 11, 2018).

⁵ Pub. L. No. 109-295 Sec. 695 (2006).

noncompetitive awards not exceed 150 days, unless otherwise justified by the Head of Contracting Activity.⁶ For years, FEMA has struggled to successfully implement this requirement. For example, a 2015 audit by the Government Accountability Office (GAO) found that more than half of noncompetitive disaster support contracts reviewed exceeded the 150 day time limit and lacked the required justification and approval.⁷

Following your April 11, 2018, testimony before this committee, I asked you to provide basic information regarding noncompetitive contracts awarded by FEMA in response to the 2017 hurricanes. In response to my questions, you stated:

FEMA awarded 355 non-competitive contracts in response to Hurricanes Harvey, Irma, and Maria. There is no mechanism readily available to report out on which of the 355 contracts were transitioned to a competed award within 150 days. Before award, FEMA ensures, to the greatest extent practicable, no periods of performance exceed the 150 day limit set forth in PKEMRA.⁸

Your response indicates that FEMA lacks the capability to track basic information about its noncompetitive contracts. Further, by stating that FEMA takes steps to limit the time periods of these contracts “before award,” you suggest that FEMA does not have controls in place to track these awards on an ongoing basis. This inability to monitor basic compliance with a key PKEMRA provision designed to prevent wasteful contract spending is unacceptable. I urge you to take swift action to address this deficiency.

I appreciate your continued cooperation with this committee’s oversight of disaster contracting and your ongoing efforts to strengthen FEMA’s contract management. However, I remain concerned that FEMA is not taking sufficient steps to properly limit the use of noncompetitive contracts. In order to better understand how FEMA is implementing this important PKEMRA provision, I request the following documents and information:

1. Please describe how FEMA determines to award a contract without competition, including the specific levels of supervisory review required prior to award. Please describe any specific policies or procedures related to consideration of the 150 day time limit during FEMA’s pre-award process.
2. What specific steps does FEMA take—after an award is made—to ensure that the periods of performance for its noncompetitive contracts do not exceed 150 days? Please describe

⁶ Pub. L. No. 109-295 Sec. 691 (2006).

⁷ Government Accountability Office, *Disaster Contracting: FEMA Needs to Cohesively Manage Its Workforce and Fully Address Post-Katrina Reforms* (GAO-15-783) (Sept. 2015).

⁸ Senate Committee on Homeland Security and Governmental Affairs, Questions for the Record to Administrator Brock Long, Federal Emergency Management Agency, *Hearing on FEMA: Prioritizing a Culture of Preparedness* (Apr. 11, 2018).

any specific policies or procedures related to ensuring compliance with the 150 day time limit after a noncompetitive contract is awarded.

3. Please describe how FEMA ensures that the period of performance identified at the time a contract is awarded accurately reflects the actual performance period. Please describe any specific policies or procedures related to ensuring the accuracy of documented periods of performance.
4. Does FEMA have plans to assess the current status of the 355 noncompetitive contracts awarded in response to the 2017 hurricanes, including verification of compliance with the 150 day time limit?
5. When will FEMA be able to report on how many of the 355 noncompetitive contracts have been: (a) completed or closed within the 150 day limit; (b) transitioned to a competitive award within the 150 day limit; or (c) extended beyond the 150 day limit?
6. Please provide copies of all policies, procedures, training materials, and other guidance documents related to noncompetitive emergency response contracts.

I ask that you provide the requested information no later than September 13, 2018. If you have any questions related to this request, please contact Claudine Brenner of my staff at Claudine_Brenner@hsgac.senate.gov or (202) 224-2627. Please send any official correspondence related to this request to Rina_Patel@hsgac.senate.gov. Thank you for your prompt attention to this matter.

Sincerely,



Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman