




An Exception to the Rules During Emergency or Exigent Circumstances

 English

[Emergency Vs. Exigent Circumstances](#)

[Steps to Take](#)

[Additional Rules that Apply](#)

When a disaster strikes, communities must often act quickly to protect life, public health or safety, and property. In such instances, going through a competitive procurement may be impractical and even worsen the potential threat. When faced with emergency or exigent circumstances, the rules allow non-state entities to sole-source or award a contract without engaging in full and open competition.

Non-state entities may use their own judgment when determining whether these conditions have been met but must document the rationale in the procurement record.

Non-state entities may use the emergency or exigency exception to full and open competition if it is determined that a public exigency or emergency will not permit a delay resulting from competitive solicitation.

Emergency vs. Exigent Circumstances

FEMA defines both exigent and emergency circumstances as situations that demand immediate aid or action. The differences between the two are outlined below:

Emergency

In the case of an emergency, there is a threat to life, public health or safety, improved property, or some other form of dangerous situation that requires immediate action to alleviate the threat. Emergency conditions are generally more short-lived than exigency circumstances.

Exigency

In the case of an exigency, there is a need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise, to the applicant, and use of competitive procurements would prevent the urgent action required to address the situation. Thus, a noncompetitive procurement may be appropriate.

Emergency Circumstances Example

Severe weather impacts a city and causes widespread and catastrophic damage, including loss of life, widespread flooding, loss of power, damage to public and private structures, and millions of cubic yards of debris across the city, leaving almost the entire jurisdiction inaccessible. The city needs to begin debris removal activities immediately to restore access to the community, support search and rescue operations, power restoration, and address health and safety concerns.

Under these circumstances, the city may find it necessary to award non-competitive contracts to address threats to life, improved property, and public health and safety.

Exigent Circumstances Example

A tornado impacts a city in June and causes widespread and catastrophic damage, including to a city school. The city wants to repair the school by the beginning of the school year in September. Awarding a contract using a sealed bidding process would require at least 90 days, and the repair work would be

another 60 days, extending the project beyond the beginning of the school year. Rather than conducting a sealed bidding process, the city—in compliance with state and local law—wants to sole-source with a contractor it has contracted with previously.

The city can demonstrate that this is an "exigent circumstance" because use of a sealed bidding process would cause an unacceptable delay, affecting children's education and the city's economy if parents must stay home with the children. Thus, procurement by non-competitive methods was necessary.

Steps to Take During Emergency or Exigent Circumstances

- **Write a justification to describe the emergency or exigent circumstances:** Explain why sole-sourcing is necessary based on the specific conditions and circumstances that demonstrate why immediate or urgent action is needed. Include the specific steps taken to determine why full and open competition could not have been used. A separate justification is required for every sole-sourced contract.
- **Provide a brief description of the goods or services:** Justify the need for the specific good or service being contracted to address the emergency or exigency circumstance.
- **Estimate the expected dollar amount of the goods or services:** A cost or price analysis is required for all procurement transactions above \$250,000.
- **Describe any known conflicts of interests** and efforts made to identify possible conflicts of interests. If no efforts were made, explain why.
- **Define and justify the period of emergency or exigency for the specific situation:** The period of emergency or exigent circumstances may vary per incident.
- **Transition to a competitively bid contract as soon as the emergency or exigent period ends:** Failure to plan for transition to a competitively bid contract cannot be the basis for continued use of the emergency or exigency exception.

Additional Rules that Apply When Sole-Sourcing

Sole-sourcing may be allowed for non-state entities during emergency or exigent circumstances, but they must still follow federal procurement regulations:

1. Contracts must include the required contract clauses.
2. Contract must include the federal bonding requirements if the contract is for construction or facility improvement.
3. Contract must be awarded to a responsible contractor.
4. Non-state applicant must complete a cost or price analysis to determine that the cost or price of the contract is fair and reasonable.
5. Contract must not be a cost-plus-percentage-of-cost contract type.
6. When using a time-and-materials contract, non-state applicants must comply with the applicable rules.
7. Document any known conflicts of interest and any efforts that were made to identify possible conflicts of interest before the sole-sourced contract was awarded.



View a [fact sheet](#) on emergency and exigent circumstances.

Last updated July 22, 2020

[Return to top](#)

Disasters & Assistance

Grants

Floods & Maps

Emergency Management

About

Work With Us



FEMA

[Contact FEMA](#)



FEMA.gov

An official website of the U.S. Department of Homeland Security

National Terrorism Advisory

[Accessibility](#)

[Accountability](#)

[Careers](#)

[Civil Rights](#)

[Contact Us](#)

[FOIA](#)

[Glossary](#)

[No FEAR Act](#)

[Plug-Ins](#)

[Privacy](#)

[Report Disaster Fraud](#)

[Website Information](#)

[DHS.gov](#)

[USA.gov](#)

[Inspector General](#)