DENTON COUNTY
DEPARTMENT OF EMERGENCY SERVICES
Fire Marshal ▪ Homeland Security ▪ Emergency Management

Eric M. Gildersleeve
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To: Scott Arledge, Director of Purchasing

From: Eric Gildersleeve, Emergency Management Coordinator

CC: Jody Gonzalez, Deputy County Administrator - Operations

Date: December 03, 2020

RE: Novel Coronavirus SARS-CoV2 (COVID-19) Exigent Circumstances for Large Procurement

This memorandum is a justification of Exigent Circumstances for a non-competitive procurement of items related to the Novel Coronavirus (COVID-19). These items will provide the most benefit to the residents of Denton County if purchased and delivered without having to wait for a multi-week/month procurement process. The justifications below are the recommended elements from the Federal Emergency Management Agency (FEMA).

1. Identify which of the four circumstances listed in 2 C.F.R. § 200.320(f) justify a noncompetitive procurement:

- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

2. Provide a brief description of the product or service being procured, including the expected amount of the procurement.

- The items being procured are personal sized liquid hand sanitizer with a spray top lid to facilitate the safety and wellbeing of Denton County Governments, Medical Care Facilities, and non-profit partners and clients.

3. Explain why a noncompetitive procurement is necessary. If utilizing the exigency/emergency exception, the justification should explain the nature of the public exigency or emergency, including specific conditions and circumstances that clearly illustrate why procurement other than through noncompetitive proposals would cause unacceptable delay in addressing the public exigency or emergency. (Failure to plan for transition to competitive procurement cannot be the basis for continued use of noncompetitive procurement based on public exigency or emergency).

- This procurement is requested under “exigent” circumstances due to the Novel Coronavirus (COVID-19) a globally declared pandemic by the World Health Organization, the President of the United States, the Governor of Texas, and the Denton County Judge and Commissioner’s Court.

- The purchase of supplies for COVID-19 is a fluid environment with suppliers unable to meet delivery through normal procurement channels. We have found that purchases are often needing to be made within minutes or the items are being sold to others ready to make purchases immediately. Multiple vendors have indicated that the inventory changes in less than an hour and multiple orders are now running on multi-week delivery dates. Additionally, most vendors are requiring up-front payment to secure orders.

4. State how long the noncompetitively procured contract will be used for the defined scope of work and the impact on that scope of work should the noncompetitively procured contract not be available for that amount of time (e.g., how long do you anticipate the exigency or emergency circumstances will continue; how long will it take to identify your requirements and award a contract that complies with all procurement requirements; or how long would it take another contractor to reach the same level of competence).

- The noncompetitively procured purchases of hand sanitizer will be made as needed to secure the quantities deemed to be appropriate. The scope of work is to procure equipment that will aid in our response to COVID-19, the normal procurement process will prevent obtaining the equipment within a reasonable amount of time during a period where it is needed. We anticipate the exigent circumstances to continue until rescinded by the President of the United States.

5. Describe the specific steps taken to determine that full and open competition could not have been used, or was not used, for the scope of work (e.g., research conducted to determine that there were limited qualified resources available that could meet the contract provisions).

- Discussions with manufacturer about availability of product and delivery during the timeline specified would prevent the use of a competitive procurement. The normal open procurement process used by Denton County would take a minimum of six weeks, in which time the manufacturer would not be manufacturing the equipment or supplies. At this time most vendors are working off a Just-In-Time inventory process with items being landed in the USA and delivered to customers within hours or days creating a very fluid inventory and pricing structure.

6. Describe any known conflicts of interest and any efforts that were made to identify possible conflicts of interest before the noncompetitive procurement occurred. If no efforts were made, explain why. If a conflict of interest is unavoidable, such as due to exigent/emergency circumstances, explain how it was unavoidable and any steps taken to address the impact of that conflict of interest.

- There are no conflicts of interest with the product requested. We are purchasing from any vendor that meets the SAM.GOV and DUNS registration requirements that can deliver products in a timely fashion.

7. Include any other information justifying the use of noncompetitive procurement in the specific instance.

- On March 17, 2020 FEMA released a memorandum titled “Procurement Under Grants Conducted under Emergency or Exigent Circumstances for COVID-19” and it states;

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> "The President's unprecedented Nationwide Emergency Declaration, and the Secretary of Health and Human Services' (HHS) declaration of a Pubic Health Emergency for COVID-19 establish that exigent and emergency circumstances currently exist. For the duration of the Public Health Emergency, which began January 27, 2020 as determined by HHS, local governments, tribal governments, nonprofits, and other non-state entities may proceed with new and existing noncompetitively procured contracts in order to protect property and public health and safety, or to lessen or avert the threats created by emergency situations for 1) Emergency protective measures under FEMA's Public Assistance Program and 2) Use of FEMA non-disaster grant funds by non-state recipients and sub-recipients to respond to or address COVID-19."

This memorandum serves to justify the Denton County procurement of hand sanitizer as it relates to an exigent circumstance.

Respectfully,

Eric M. Gildersleeve