



April 16, 2020

Sent via email: fema-foia@fema.dhs.gov

FEMA Information Management Division
FOIA Request
500 C Street, S.W., Mailstop 3172
Washington, D.C. 20472

Re: Freedom of Information Act Request

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the U.S. Department of Homeland Security (“DHS”) regulations.

Specifically, CREW requests:

(1) a copy of the \$96 million no-bid contract FEMA awarded to AirBoss of America on or about March 30, 2020 for respirators and filters;

(2) documents providing the justification for awarding AirBoss of America the contract on a no-bid basis; and

(3) all records of communications between FEMA and the White House concerning the contract FEMA awarded to AirBoss of America for respirators and filters.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. See 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. See *Mead Data Central v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Please be advised that CREW intends to pursue all legal remedies to enforce its right under the FOIA to access the requested documents. Accordingly, because litigation reasonably is

foreseeable, FEMA should institute an agency-wide preservation hold on documents potentially responsive to this request.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and DHS regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

Reportedly at the direction of the White House, FEMA rushed through a \$96 million no-bid contract to AirBoss of America for respirators and air filters.¹ This appears to be the “the single largest no-bid purchase” awarded, and for FEMA represents two-thirds of the total amount FEMA has spent on responding to COVID-19 through April 8.² FEMA awarded the contract at the direction of the White House, after the company submitted its offer to a White House task force.³ According to a former FEMA deputy administrator, the involvement of the White House “in purchasing supplies is highly unusual, because the task of figuring out the best supplies is typically left to procurement professionals and acquisition lawyers who know the markets best[.]”⁴

The requested records are likely to contribute to greater public understanding of the pressure FEMA faces from the White House in the distribution of millions of dollars of contracts to address the COVID-19 pandemic and the extent to which the White House is directing FEMA to award contracts based on political considerations and factors that typically are not considered in awarding federal contracts. The requested records also will shed light on why FEMA made the award on a no-bid basis and whether it did so in compliance with applicable contracting rules and guidance. At a time when the government is spending many millions of dollars to address the pandemic, the public has a heightened interest in knowing whether the contract process is free from outside influence and consideration of factors that have nothing to do with whether a potential contract recipient is the most qualified. In the context of no-bid contracts like that FEMA awarded AirBoss, there is a heightened concern the government may be paying more than necessary for essential acquisitions.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public’s right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through

¹ J. David McSwane & Yeganeh Torbati, *The White House Pushed FEMA To Give its Biggest Coronavirus Contract to a Company That Never Had to Bid*, *Pro Publica*, Apr. 10, 2020, <https://www.propublica.org/article/the-white-house-pushed-fema-to-give-its-biggest-coronavirus-contract-to-a-company-that-never-had-to-bid>.

² *Id.*

³ *Id.*

⁴ *Id.*

its website, www.citizensforethics.org. The release of information obtained through this request is not in CREW's financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. *See Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a "representative of the news media" and broadly interpreting the term to include "any person or organization which regularly publishes or disseminates information to the public").

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes blogposts that report on and analyze newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts the documents it receives under the FOIA on its website.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records on an expedited basis, please contact me at (202) 408-5565 or aweismann@citizensforethics.org. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to either the email listed above or Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 1101 K Street, N.W., Suite 201 Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,



Anne L. Weismann Chief FOIA Counsel