

**PUBLIC ASSISTANCE DR-4708
PROCUREMENT AND CONTRACT GUIDES
BULLETIN #9 – 8/15/23**

FEMA award recipients and subrecipients are required to follow the federal procurement standards when procuring services and supplies. This includes contract. Failure to follow federal contracting requirements puts award recipients and subrecipients at risk of not receiving reimbursement or having funds recouped by FEMA.

To assist with the understanding of these requirements we have attached reference documents. These will assist subrecipients in ensuring they follow all procurement requirements and are eligible for reimbursement. Attached you will find:

- **DEM Procurement Policy**: This policy outlines the requirements that must be followed by all subrecipients of FEMA awards managed by the Division of Emergency Management (DEM).
- **DEM Contract Provisions Checklist**: A checklist DEM staff uses to ensure all required contract provisions are included in all contracts. The provisions listed are required by FEMA for Public Assistance grants. At the bottom of this checklist you will find a link to FEMA's Contract Provisions Guide for the criteria and required/sample language.
- **PDAT Training Reference**: This document is provided following FEMA's Procurement Disaster Assistance Training (PDAT). It is designed to help FEMA grant recipients and subrecipients navigate the federal procurement standards.

DIRECT CONTACTS:

Jared Franco jaredfranco@dem.nv.gov 775-434-4432	Shea Schultz seschultz@dem.nv.gov 775-232-0213	DEM Office 775-687-0300
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FOR QUESTIONS, PLEASE CONTACT:

Disaster Recovery	disaster-recovery@dem.nv.gov
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Procurement Policy for Grants Administered by Nevada Division of Emergency Management/Homeland Security

The following policy is in effect and in place until otherwise replaced by DEM. All Sub-recipients awarded a grant from the Division of Emergency Management will be held to the following policy for any consideration of reimbursement:

*Links providing guidance found below:

Purchase of Goods (Materials, Supplies, Equipment and/or a One Time Commodity)

Purchases with a Dollar Threshold of \$0 - \$50,000:

Obtain 3 informal quotes, or denials, from separate vendors and follow the Criteria for Choosing a Vendor described in this document. If there is no reply from a vendor, proof must be submitted of request.

Purchases with a Dollar Threshold Greater Than \$50,000:

Conduct a competitive solicitation/Request for Proposal (RFP) and enter a formal contract.

- Competitive Solicitation/RFP must comply with the following:
 - Must formally solicit no fewer than 3 vendors and demonstrate full and open competition when procuring goods. DEM Staff can and will assist with the process if needed.
 - The solicitation must include the project overview, goals and objectives, scope of work/deliverables, grant specific terms and conditions, and cost schedules.
 - Before solicitation is sent out Sub-Recipient must send DEM staff a scoring sheet of how Sub-Recipient will be scoring Sub-Recipient vendor submissions.
 - Vendor responses must be submitted with supporting documentation for Sub-Recipient grant reimbursement request.
 - Resulting contracts must include the contract provisions required by 2 CFR Part 200, Appendix II, including the manner by which it will be affected and the basis for settlement.

Note: If Sub-Recipient choose to join an already existing contract, Sub-Recipient must be able to prove that the contract Sub-Recipient are joining has conducted an adequate RFP process compliant with the above criteria. The contract Sub-Recipient choose must also meet the specific terms and conditions set forth in the grant award agreement with DEM and include the Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

Purchase of Services or Ongoing Costs

Purchases with a Dollar Threshold of \$0 - \$100,000:

Conduct a competitive solicitation/Request for Proposal (RFP) and enter a formal contract.

- Competitive Solicitation/RFP must comply with the following:
 - Must formally solicit no fewer than 3 vendors and demonstrate full and open competition when contracting for services or ongoing costs. DEM Staff can and will assist with the process, if needed.
 - The solicitation must include the project overview, goals and objectives, scope of work/deliverables, grant specific terms and conditions, and cost schedules.
 - Before solicitation is sent out Sub-Recipient must send DEM staff a scoring sheet of how Sub-Recipient will be scoring Sub-Recipient vendor submissions.

- Vendor responses must be submitted with supporting documentation for Sub-Recipient grant reimbursement request.
- Resulting contracts must include the contract provisions required by 2 CFR Part 200, Appendix II, including the manner by which it will be affected and the basis for settlement.

Purchases with a Dollar Threshold Greater Than \$100,000:

Formal competitive solicitation/RFP must be led by the purchasing authority. DEM Staff will work with the Purchasing Authority to ensure RFPs are adequate. These RFPs must include:

- Formally solicit no fewer than 3 vendors and demonstrate full and open competition when contracting for services or ongoing costs. DEM Staff can and will assist with the process, if needed.
- The solicitation must include the project overview, goals and objectives, scope of work/deliverables, grant specific terms and conditions, and cost schedules.
- Before solicitation is sent out, DEM staff a scoring sheet of how Sub-Recipient will be scoring Sub-Recipient vendor submissions.
- Vendor responses must be submitted with supporting documentation for Sub-Recipient grant reimbursement request.
- Resulting contracts must include the contract provisions required by 2 CFR Part 200, Appendix II, including the manner by which it will be affected and the basis for settlement.

Note: If Sub-Recipient choose to join an already existing contract, Sub-Recipient must be able to prove that the contract Sub-Recipient are joining has conducted an adequate RFP process compliant with the above criteria. The contract Sub-Recipient choose must also meet the specific terms and conditions set forth in the grant award agreement with DEM and include the contract provisions required by 2 CFR Part 200, Appendix II, including the manner by which it will be affected and the basis for settlement.

Criteria for Choosing a Vendor Will Be as Follows:

1. Accept the lowest quote or bid from the vendor who will furnish goods, commodities, or services in the State of Nevada.
2. Accept the lowest quote or bid from the vendor who will furnish goods, commodities, or services outside the State of Nevada.

Sole Source Contracts

Sole Source Contracts must be pre-approved by DEM Staff. If Sub-Recipient do not get prior authorization and choose to move forward with a Sole Source contract, Sub-Recipient funding may be jeopardized, and that contract may not be reimbursable.

Submit Contracts to DEM for Review

Once a competitive solicitation or RFP has been completed and a vendor has been chosen, please send all documentation to DEM Staff via email (DHSGrants@dem.nv.gov) so it can be vetted and approved prior to the purchase of any goods or services. This will ensure there will be no issue in reimbursement.

Jared Franco, CPM
Administrative Services Officer
JaredFranco@dem.nv.gov

*[Contract Provisions Guide](#)

*[NRS 333](#)

Required Contract Provision Checklist-PA Only

Contractor:	
PW#:	
DR#:	
Contract Amount:	

*Date Verified or N/A	CFR Required Provision	Contract Criteria	Sample Language?	Initial:
	Contract is signed by both parties	All	No	
	Debarment and Suspension	All	Yes	
	Byrd Anti-Lobbying Amendment	All (>\$100k: Certification)	Yes. Clause and certification	
	Equal Employment Opportunity	Construction work	Yes. 41 CFR Part 60-1.4(b)	
	Termination for cause or convenience	> \$10k	No. Based on applicant's procedures.	
	Procurement of Recovered Materials	> \$10k Applicant is state/political subdivision of state/work involves materials	Yes	
	Contract Work Hours and Safety Standards Act	> \$100k + mechanics or laborers	Yes. 29 CFR 5.5(b)	
	Clean Air Act and Federal Water Pollution Control Act	>\$150k	Yes	
	Legal/contractual/administrative remedies for breach of contract	> Simplified Acquisition Threshold (\$250k)	No. Based on applicant's procedures.	
	Prohibition on Contracting for Covered Telecommunications Equipment or Services	All FEMA declarations and awards issued on or after November 12,2020.	Yes	
	Domestic Preferences for Procurements	All FEMA declarations and awards issued on or after November 12,2020.	Yes	

For more information, please visit the [Contract Provisions Guide: Navigating Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards](#)

Procurement under Grants Training Replays

This document is designed to help FEMA grant recipients and subrecipients navigate the federal procurement standards as student notes following a FEMA procurement under grants training.



The Uniform Rules

FEMA award recipients and subrecipients often use contractors to help them carry out work to be performed. These contracts are commercial transactions between the FEMA award recipient and/or subrecipient and their contractor. FEMA has no role in the contractual relationship between the two; however, if federal funding is used to pay for the contract, the non-Federal entity (NFE) must comply with federal laws, including the federal procurement standards.

The federal procurement standards are found at [2 C.F.R. §§ 200.317-200.327](#). They apply to contracts under FEMA awards or Stafford Act disaster declarations issued on or after November 12, 2020. In addition to ensuring that costs are low and reasonable, the Uniform Rules also aim to promote participation among diverse businesses within affected communities in order to use federal funds more equitably.

Failure to follow federal contracting requirements when procuring and selecting contractors puts FEMA award recipients and subrecipients at risk of not receiving either their full reimbursement for associated disaster costs or having obligated funds recouped by FEMA. See [2 C.F.R. § 200.339](#) remedies for noncompliance.

Objectives

This document is intended to provide you with a broad overview of the federal procurement standards applicable to FEMA award recipients and subrecipients. In audits from 2010-2017, the Department of Homeland Security's Office of Inspector General (OIG) identified what it believed to be over \$800 million dollars of potentially ineligible contract costs due to non-compliance with the procurement requirements under the Public Assistance (PA) program. Some of the most common findings resulting from the OIG audits include:

- Noncompetitive contracting practices;
- Failure to include required contract provisions;
- Failure to perform required procedures to ensure small and minority businesses, women-owned enterprises, and labor surplus area firms are used when possible
- Cost plus percentage of cost contracting; and
- Failure to conduct a cost or price analysis.

NOTE: This document is not intended to be, nor should it be considered as legal advice. Please refer to your organization's legal counsel for resolution of any legal matters.



Applicability of the Federal Procurement Standards

The Office of Management and Budget (OMB) revised sections of *OMB Guidance for Grants and Agreements* found in *Title 2 of the Code of Federal Regulations*. These revisions are applicable to FEMA awards or Stafford Act disaster declarations issued on or after November 12, 2020, unless specifically indicated otherwise. These revisions include changes to the federal procurement standards, which govern how FEMA award recipients and subrecipients must

purchase under a FEMA award. This Training Replay document is applicable to all FEMA award recipients and subrecipients purchasing under FEMA declarations or awards issued on or after November 12, 2020. Further information regarding the federal procurement standards prior to these revisions can be accessed by visiting the [Code of Federal Regulations \(CFR\)](#).

There are different sets of procurement rules that apply to states and non-state entities. FEMA award recipients and subrecipients must determine whether they are a state or a non-state entity to determine which procurement standards apply in their case. Recipients and subrecipients should consult their legal counsel if they have questions regarding their entity. Definitions of state entity and non-state entity follow:

- **State Entity:** [2 C.F.R. § 200.90](#) defines a state entity as any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.
- **Non-State Entity:** Any eligible FEMA award recipient or subrecipient that does not meet the definition of a “state.” Examples of non-state entities include local and tribal governments, some institutions of higher education, some hospitals, and eligible private non-profit organizations.

Rules for State Entity Procurements

States must follow the procurement procedures found at [2 C.F.R. § 200](#), which include:

1. Following the same policies and procedures it uses for procurements from its non-federal funds found at [2 C.F.R. § 200.317](#) (procurement by states);
2. Following all necessary affirmative steps to assure that small and minority businesses, women’s business enterprises, and labor surplus area firms are used when possible found in [2 C.F.R. § 200.321](#) (contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms);
3. Providing a preference, to the greatest extent practicable, for the purchase, acquisition, or use of goods, products or materials produced in the United States found in [2 C.F.R. § 200.322](#) (domestic preferences for procurements);
4. Ensuring compliance with procurement of recovered materials guidelines found at [2 C.F.R. § 200.323](#) (procurement of recovered materials); and
5. Including all necessary contract provisions required by [2 C.F.R. § 200.327](#) (mandatory contract provisions).

Rules for Non-State Entity Procurements

The federal procurement standards that apply to a non-state entity’s procurement policies, solicitation phase, and contract award phase are found at [2 C.F.R. §§ 200.318-200.327](#) and are featured in [Table 1](#).

These standards only address a small portion of rules that may apply to a non-state procurement. The non-state entity should seek guidance from their own rules when the federal rules and applicable state and/or Tribal rules do not address a concept. If there is a difference between entity rules, applicable state and/or Tribal rules, and the federal procurement standards, non-state entities must follow the most restrictive rule as long as it allows for compliance at all levels.

318	General Procurement Standards
319	Competition
320	Procurement Methods
321	Socioeconomic Contracting
322	Domestic Preferences
323	Recovered Materials
324	Contract Cost or Price
325	Acquisition Review
326	Bonding Requirements
327	Contract Provisions

Table 1



FEMA



Competition

The standard at [2 C.F.R. § 200.319](#) requires that procurement transactions be conducted in a manner providing full and open competition. Although not defined in the regulation, “full and open competition” generally means that a complete requirement is publicly solicited, and all responsible contractors are permitted to compete.

There are numerous benefits to full and open competition which include:

1. Increasing probability of reasonable pricing from most qualified contractor;
2. Preventing favoritism, collusion, fraud, waste, and abuse; and
3. Allowing the opportunity for small and minority firms, women’s business enterprises, and labor surplus area firms to participate in federally funded work.

Non-state entities should have written procurement procedures governing their procurement transactions. These procedures must ensure that all solicitation documents incorporate a clear and accurate description of the needs for the goods or services being procured. These descriptions must not unduly restrict competition.



The federal procurement standards have identified seven situations under [2 C.F.R. §200.319\(b\)](#) that are restrictive of full and open competition, and therefore should be avoided. These include the following:

1. Requiring unnecessary experience;
2. Excessive bonding requirements;
3. Specifying only a brand name product;
4. Noncompetitive pricing practices;
5. Organizational conflicts of interest;
6. Noncompetitive contracts to contractors on retainer; and
7. Any arbitrary action in the procurement process.

To preserve full and open competition, the rules require that contractors who help draft the recipient or subrecipient’s requirements, statements of work, specifications, and solicitation documents be excluded from competing for such procurement.

NOTE: Non-state entities are prohibited from using statutorily or administratively imposed geographical preferences in the evaluation of bids or proposals. However, there are limited exceptions to this rule. State entities may use geographical preferences when considering state licensing requirements. The use of geographic location is also allowed when contracting for architectural and engineering (A/E) services, so long as its application leaves an appropriate number of qualified firms for consideration, given the nature and size of the project.



Methods of Procurement

New language divides the methods of procurement into three categories: informal, formal and noncompetitive procurements. Non-state entities must comply with one of the five methods of procurement set forth at [2 C.F.R. § 200.320](#), which include:

1. Informal Procurement Methods
 - Micro-Purchases
 - Small Purchases
2. Formal Procurement Methods
 - Sealed Bids
 - Competitive Proposals



3. Noncompetitive Procurement

- Micro-Purchases
- Single Source
- Emergency & Exigent Circumstances
- Awarding Agency Approval
- Inadequate Competition

Informal

a. Micro-Purchase Procedures

- i. A non-state entity may use the micro-purchase procedures for the acquisition of supplies or services where the total dollar amount of the services or supplies does not exceed the micro-purchase threshold. While the micro-purchase threshold is adjusted from time to time, it is currently \$10,000.
- ii. The rules allow for non-state entities to award micro-purchases without soliciting competitive bids or proposals so long as the price is reasonable.
- iii. To the extent practicable, micro-purchases should be distributed equitably among qualified suppliers.
- iv. New rules defined under [2 C.F.R. § 200.320\(a\)\(1\)\(iv\)](#) allow recipients and subrecipients to self-certify to allow micro-purchase procedures above \$10,000 and up to \$50,000.

b. Small Purchase Procedures

- i. For this method of procurement, the aggregate dollar amount of the acquisition of property or services is generally higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold (SAT), currently set at \$250,000.
- ii. When using this method, a non-state entity must obtain price or rate quotations from an adequate number of qualified sources as determined by the non-state entity under [2 C.F.R. § 200.320\(a\)\(2\)\(i\)](#). An adequate number of known suppliers depends on the facts and circumstances of the procurement.

NOTE: When seeking to use the micro-purchase and small purchase procedures, both state and non-state entities must avoid the intentional “splitting” of purchases or transactions to circumvent the dollar threshold limitations.

Formal

c. Sealed Bids

- i. The sealed bidding method of procurement is the preferred method of contracting when the requirements solicited by the non-state entity is known and specific in detail so that the procurement lends itself to a fixed price contract type. Selection of the successful offeror will be made principally based on price as outlined in [2 C.F.R. § 200.320\(b\)\(2\)\(i\)-\(iv\)](#).
- ii. The solicitation document known as an invitation for bids (IFB), must describe the specifications for the requirement and include instructions for interested offerors. All proposals will be opened at the time and place prescribed in the IFB. For local and tribal governments, proposals must be advertised and opened publicly.



- iii. Proposals must be solicited from an adequate number of qualified suppliers and provide them sufficient response time. An adequate number of known suppliers depends on the facts and circumstances of the procurement.

NOTE: Contracts under the sealed bid method, must be awarded to the lowest priced, most responsive and responsible bidder.

d. Proposals

- i. The proposal method is normally used when the conditions are not appropriate for sealed bidding, including when the requirement is not specific in detail.
- ii. The solicitation document used, known as a request for proposals (RFP), must be solicited from an adequate number of qualified sources as determined by the facts and circumstances of the procurement.
- iii. The RFP must publicize instructions for potential contractors to identify the evaluation factors that will be considered along with their relative importance. The non-state entity must have a written method for conducting technical evaluations of the proposals received.
- iv. Procurement of architectural/engineering (A/E) professional services is the only instance when price may be excluded as an evaluation factor. Under [2 C.F.R. § 200.320\(b\)\(2\)\(iv\)](#), offerors' qualifications are evaluated and the most qualified proposal is selected. However, this selection is subject to negotiation of fair and reasonable compensation, and the procurement must be limited to A/E professional services and cannot be used to purchase other types of services even though these A/E firms are potential sources to perform efforts beyond A/E professional services.

NOTE: Contracts under the competitive proposal method, must be awarded to the responsible offeror whose proposal is most advantageous to the non-state entity, with price and other factors considered.

Noncompetitive Proposals

- e. **Sole-Sourcing:** The federal procurement standards are clear regarding the need to have full and open competition. However, there are limited situations where noncompetitive procurement may be allowed where one or more of the following circumstances apply:
 - i. **Micro-purchases:** [\(covered in previous section\)](#).
 - ii. **Single Source:** The use of this exception to full and open competition is allowed when the non-state entity requires supplies or services that are only available from a single source.
 - iii. **Exigency or Emergency Circumstance:** The [public exigency or emergency](#) will not permit a delay resulting from the full and open competition process (*additional reference in subsequent section*).
 - iv. **Awarding Agency Approval:** The non-state entity may use this noncompetitive proposal method in the rare instance when the "awarding agency" or "pass-through entity" expressly authorizes the sole source in response to a written request from the non-Federal entity.
 - v. **Inadequate Competition:** This exception can be used when, after solicitation of several sources, competition is determined inadequate.



NOTE: It is extremely important for the non-state entity to thoroughly document the justification to utilize a noncompetitive proposal.

Exigency or Emergency Circumstance: The use of this exception to full and open competition is limited and only permissible during the period of actual exigency or emergency. Once this period ends, the non-state entity must transition to a procurement compliant with the requirements of full and open competition. Although the terms are often used interchangeably, “exigency” and “emergency” are not necessarily the same. *More information can be found on the [Procurement Under Grants: Under Exigent or Emergency Circumstances Fact Sheet](#).*



- **Emergency:** A dangerous situation that is a threat to life, public health or safety, or improved property that requires immediate action to alleviate the threat. Emergency situations are generally short in duration, requiring urgent action.
 - **Emergency Example #1 – Disaster Grants:** 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 noncompetitive contracts to address threats to life, property, and public health. Learn more at the [PDAT webpage](#).
 - **Emergency Example #2 – Non-Disaster Grants:** The weather in a city has been below freezing for the past 2 weeks, causing a pipe in the city’s emergency operations center to burst and flood the first floor. This flood destroyed half of the city’s radios that its emergency workers use to communicate with police and fire personnel. The city documented and demonstrated that it needed to replace these radios right away to avert an immediate threat to life, safety, or property as the city needed a full supply of radios in order to respond to emergencies. noncompetitive contracts to address threats to life, property, and public health.
- **Exigency:** A situation where there is a need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise, to the non-state entity, and use of competitive procurement proposals would prevent the urgent action required to address the situation. Exigent situations are longer in duration, existing for a period of weeks months.
 - **Exigency Example:** A tornado impacts a city in June and causes widespread and catastrophic damage, including damage to a city school. The city wants to repair the school and have it ready for use by the beginning of the school year in September. The city estimates, based on experience, that awarding a contract using a sealed bidding process would require at least 90 days, and the city’s engineer estimates that the repair work would last another 60 days. This would extend 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 constitutes an “exigent circumstance” because use of a sealed bidding process would cause an unacceptable delay and thus procurement by noncompetitive methods was necessary based on the particular situation.



NOTE: Documentation is required to justify the use of noncompetitive procurement procedures. Evaluations must account for why there is inadequate competition, whether the solicitation was sufficiently publicized and speaking with solicited firms to determine why they did not submit proposals to ensure the initial solicitation was not overly restrictive. *Page 78 of the [PDAT Field Manual](#) offers additional guidance on this matter and can be found in the [Detailed Resources section of the PDAT website](#).*



Socioeconomic Affirmative Steps

In addition to the requirements of full and open competition, both a state and a non-state entity must take the necessary affirmative steps found [2 C.F.R. § 200.321](#) to ensure small and minority businesses, women-owned enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

The Department of Labor's Employment and Training Administration has defined [labor surplus areas](#) (LSA) as localities that have a civilian average annual unemployment rate during the previous two calendar years of 20 percent or more above the average annual civil unemployment rate for all states during that same period. There is an "Exceptional Circumstance Consideration Provisions" that allows a civil jurisdiction to ask for inclusion in the LSA list after it is published, due to events such as COVID-19, natural disasters, and other adverse economic changes.

This is not a procurement rule that allows for a set-aside, but rather is a requirement aimed to adhere to full and open competition as defined under [2 C.F.R. § 200.319](#) and to ensure maximum participation by the business categories listed under [2 C.F.R. § 200.321](#).

NOTE: The OIG frequently finds that entities fail to take the required socioeconomic affirmative steps as required by the federal procurement standards.

Cost or Price Analysis

A non-state entity must perform a price or cost analysis in connection with every procurement action above the SAT, including contract modifications, as required by [2 C.F.R. § 200.324](#).

The method and degree of analysis is dependent on the facts and circumstances surrounding the procurement; however, as a starting point, the non-state entity must make independent estimates before receiving bids or proposals.





- **Price Analysis:** The examination and evaluation of a proposed price without evaluating its separate cost elements and proposed profit. Techniques may include comparing offers with one another; comparing prior proposed prices and contract prices with current proposed prices for the same or similar goods or services; comparing offers with competitive published price lists, published market prices, or similar indexes; comparing proposed prices with independently developed estimates of the non-state entity; and comparing proposed prices with prices of the same or similar items obtained through market research.
- **Cost Analysis:** The review and evaluation of the separate cost elements (such as labor hours, overhead, materials, etc.) and proposed profit in a proposal to determine a fair and reasonable price for a contract and the application of judgement to determine how well the proposed costs represent what the cost of the contract should be.
 - A non-state entity must negotiate profit as a separate element of the price for each contract in which there is no price competition, and in all cases where cost analysis is performed.
 - Documentation of cost or price analysis can be useful as evidence that costs are reasonable.

Contract Types

- **Time and Materials (T&M) Contract:** As defined in [2 C.F.R. § 200.318\(j\)](#), a contract whose cost to a non-state entity is the sum of:
 - The actual cost of materials; and
 - Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

A non-state entity may use T&M contracts only after a determination that:

- No other contract is suitable;
- The contracts include a ceiling price that the contractor exceeds at its own risk; and
- Maintain a high degree of oversight.

FEMA cautions against the use of T&M-style contracting because they provide no positive profit incentive to the contractor for cost control or labor efficiency, which is why the Uniform Rules require the inclusion of a contract ceiling price. The Uniform Rules also require the non-state entity to maintain a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

Use of T&M contracts are generally limited to a reasonable time based on the circumstances during which the FEMA award recipient or subrecipient cannot define a clear scope of work. OIG may recommend disallowance of costs based on the inappropriate use of T&M contracts beyond a limited period and where a scope of work can be determined.

Example: The electrical distribution system in the Town of X is destroyed in Hurricane John. The Town of X does not know the extent of the damage and therefore cannot fully define the scope of work. The Town of X enters a contract with Contractor X to repair the damage.

The contract includes:

- Hourly rates for all employees of Contractor X;



- Hourly rates to use the equipment that may be needed for repairs; and
- Cost of all materials that may be needed for the repairs.

The Town of X has determined that no other contract type is suitable based on the unclear scope of work, and the Town of X is prepared to assert a high degree of oversight over the contractor. However, the contract does not include a ceiling price because the magnitude of the work is unclear at the time of entering into the contract.



- **Cost Plus Percentage of Cost (CPPC) – PROHIBITED**
 - As found in [2 C.F.R. § 200.324\(d\)](#), a CPPC is defined as a cost reimbursement contract containing some element that obligates the subrecipient to pay the contractor an amount (in the form of either profit or cost), undetermined at the time the contract was made and to be incurred in the future, based on a percentage of future costs.
 - The cost plus a percentage of cost and percentage of construction cost methods of contracting **must not** be used by non-state entities.
 - There is no incentive for a contractor to control costs, which incentivizes a contractor to increase its profits by increasing costs of performance.
 - Criteria evidencing this type of contract include:
 - Payment is on a predetermined percentage rate;
 - The predetermined percentage rate is applied to actual performance costs;
 - The contractor's entitlement is uncertain at the time of contracting; and
 - The contractor's entitlement increases commensurately with increased performance cost.

NOTE: While a state entity is not prohibited from utilizing a CPPC contract, FEMA discourages use of this contract type as it may lead to unreasonable costs and could affect compliance with the *Cost Principles* found at [2 C.F.R. Part 200, Subpart E](#).



Required Contract Provisions

The required contract provisions apply to both state and non-state entities:

- Under [2 C.F.R. § 200.327](#), all contracts must contain the applicable provisions described in [Appendix II to Part 200—Contract Provisions](#) for non-Federal Entity Contracts Under Federal Awards;
- Both state and non-state entity contracts are required to contain certain provisions – some are based on sound contracting practices and others are required by federal law, executive order, and regulations;
- Failure to include the required contract provisions is one of the most common findings under OIG audits of Institutions of Higher Education, hospitals, and private non-profit organizations;
- The PDAT website includes a [Contract Provisions Template](#) that provides additional guidance including required contract provisions, sample language, and insight about which provisions might apply under various circumstances;
- This template provides information on potentially applicable required contract provisions, which may be determined by the type of entity involved, the project type, or contract price; and
- Always consult with your organization's legal counsel for resolution of any questions regarding contract provisions required in your specific circumstances.





Contractor Responsibility

The non-state entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Matters to be considered: (1) contractor integrity; (2) compliance with public policy; (3) record of past performance; and (4) financial and technical resources. [See 2 C.F.R. § 200.318\(h\).](#)

- **Suspension & Debarment:** NFEs are subject to the non-procurement debarment and suspension regulations implementing [Executive Orders 12549](#) and 12689, [2 C.F.R. Part 180](#). These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. [2 C.F.R. § 200.214](#).
 - Non-federal entities must not make any award or permit any award at any tier to parties listed on the government-wide exclusions in the System for Award Management (“SAM”), which can be found at www.sam.gov.
 - DHS has adopted debarment and suspension guidelines at [2 C.F.R. Part 3000](#), which adopt OMB’s regulations at 2 C.F.R. Part 180 and provide supplemental policies and procedures.
 - When searching for contractors on www.sam.gov, note that a search yielding no results only means that the contractor you are searching for has not registered and is not in and of itself proof that both the contractor and company you are searching for are in good standing.

General Procurement Standards

Non-state entities must use their own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided the procurement conforms to applicable Federal law and the standards set forth in [2 C.F.R. Part 200](#).

NOTE: NFEs must comply with all other applicable Federal laws, regulations, and executive orders when procuring services or property under a FEMA award. The requirements identified in this Replay Document only address the federal procurement standards.

For non-state entities, there are 12 general procurement standards found at [2 C.F.R. § 200.318](#); the following **eight are mandatory**.



1. **Contractor Oversight:** Must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
 - If non-state entities lack qualified personnel to undertake such oversight, then FEMA expects the non-state entity to acquire the necessary services from sources outside of the entity’s organization. Such contracts and services will remain subject to compliance with all procurement standards at [2 CFR Part 200](#).
2. **Necessity:** Must have procedures that avoid acquisition of unnecessary or duplicative supplies or services.
 - FEMA expects the non-state entity to limit procurements to current and reasonably expected needs to carry out the scope of work under the FEMA award. FEMA does not allow for the addition of quantities or options to the contract solely for needs unrelated to the scope of work under the FEMA award or for assignment to another party at a later date.



FEMA



3. **Standards of Conduct:** Must maintain written standards of conduct covering conflicts of interest and governing the actions of employees engaged in the selection, award, and administration of contracts.
 - These standards of conduct must include “organizational conflicts of interest.” Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the non-state entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
 - The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-state entity.



4. **Conflict of Interest:** No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.



5. **Gifts:** The officers, employees, and agents of the non-state entity must neither solicit nor accept gratuities, favors, or anything else of monetary value from contractors/subcontractors.



6. **Awards to Responsible Contractors:** Must award contracts only to **responsible** contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Matters that must be considered:
 - Contractor integrity
 - Compliance with public policy
 - Record of past performance
 - Financial and technical resources



7. **Records:** Must maintain records sufficient to detail the history of the procurement, which must include, but are not limited to, rationale for the method of procurement; selection of contract type; contractor selection or rejection; and the basis for the contract price. **Make sure to document, document, document!**



8. **Settlement of Issues:** Must alone be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual issues and administrative issues arising out of procurements. Neither FEMA nor the Uniform Rules relieve the non-federal entity of any contractual responsibilities under its contracts.

The Uniform Rules also include the following **four encouraged procurement standards**:

1. **Use of Intergovernmental Agreements:** To foster greater efficiency and promote cost-effective use of shared services, state and local intergovernmental agreements or inter-entity agreements are encouraged where appropriate for procurement or use of common or shared goods and services.
 - **Joint Procurements:** Is a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter a single contract with a vendor for the delivery of goods or services. This is typically done to obtain advantages unavailable for smaller procurements. Joint procurements encourage non-state entities to foster greater economy and efficiency by allowing the opportunity for a cost-effective use of shared resources.
 - **Piggybacking:** While piggybacking is not prohibited by the federal procurement standards, there are strict rules that a non-state entity must follow to be



compliant. Non-state entities must ensure that: 1) the original procurement complies with federal regulations, 2) the scope of work does not exceed what was contemplated by the original contract, 3) the original contract contains an assignability clause, and 4) the cost is reasonable.

2. **Use of Federal Excess/Surplus Property:** Non-state entities are encouraged to use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. Such equipment/property would be acquired through the [Federal Surplus Personal Property Donation Program](#) carried out by the General Services Administration (GSA).
3. **Value Engineering:** Non-state entities are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.
4. **Domestic Preferences:** Both states and non-state entities should, to the greatest extent practicable, procure goods, products, or materials produced in the United States pursuant to [2 C.F.R. § 200.322](#).



Records

[2 C.F.R. § 200.318\(i\)](#) requires the maintenance of records sufficient to detail the history of a procurement. These records should include, but are not limited to:

- Rationale for the method of procurement used for each contract (micro-purchase, small purchase procedures, sealed bidding, competitive proposals, and noncompetitive proposals), including a justification for using any procurement by noncompetitive proposal methods;
- Rationale for selecting the type of contract used (fixed price, cost reimbursement, or time and materials);
- Rationale for contractor selection or rejection, including written documentation that a prospective contractor qualifies as responsible and set forth the basis for that determination;
- Basis for the contract price, which will include the cost or price analysis for contracts exceeding the simplified acquisition threshold; and



FEMA expects that the non-state entity will maintain reasonable documentation, such that documents included in a procurement history should be commensurate with the size and complexity of the procurement.

Always ensure procurement records are retained for the minimum time frame dictated by local, state, and federal requirements, and at least three years from the date of submission of the final expenditure report for the award as outlined under [2 C.F.R. § 200.334](#).

Ensure recordkeeping processes for your organization are documented and well known, as this will assist in maintaining knowledge-retention in the absence of any person(s) who might typically handle procurement documentation for the organization.

The Uniform Rules provide that FEMA, DHS Office of Inspector General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the NFE which are pertinent to the FEMA award, to make audits, examinations, excerpts, and transcripts.



Tools & Resources



FEMA

- **PDAT Website:** <https://www.fema.gov/grants/procurement>
Several helpful resources, including those referenced throughout these Replays, can be found on the PDAT website. These resources will help to provide additional information on the federal procurement standards governing procurements under all FEMA awards. These resources include:
 - Contract Provisions Template;
 - Field Manual;
 - Checklists; and
 - [Online webinars](#) are available as refreshers on the materials covered today
- **Procurement Rules Online:** <https://ecfr.federalregister.gov>
 - Title 2 → Subtitle A → Chapter II → Part 200 → Subpart D → Procurement Standards
 - [2 C.F.R. 200.317-327](#) can be viewed in its entirety at this website.
 - Always refer to your organization's servicing legal counsel for resolution of any legal questions.
- **System for Award Management (SAM):** <https://www.sam.gov/SAM/>
 - Always check with [SAM](#) to confirm you are not entering into a covered transaction with a party listed on the government-wide exclusions list.
 - SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulator authority other than Executive Order 12549.
 - The regulations at [2 C.F.R. Part 180](#) and [2 C.F.R. Part 3000](#) specifically prohibit an NFE from entering a "covered transaction" with a party listed on the SAM Exclusions.
- **Other Points of Contact:** <https://www.fema.gov>
 - Contact Your [State Emergency Management Agency](#);
 - Contact Your [FEMA Regional Office](#)
 - Contact the Centralized Scheduling and Information Desk (CSID) help line at (800) 368-6498 or askcsid@fema.dhs.gov