

# Federal Procurement Requirements

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# Slide Callouts Legend



**Key Concept**



**Regulation**



# Roadmap



**Introduction & General Requirements**



**Methods of Procurement**



**Contracting**



**Special Considerations**

# Introduction & General Requirements





# Procurement Under Federal Grants

**Procurement is the action of obtaining goods and services from a third party (vendor).**

**Common examples:**

- Construction services
- Engineering services
- Debris hauling





# Implementing Regulations

**1** Code of Federal Regulations (*CFR*)

**2** 2 CFR 200.317 – 200.327

**3** Uniform administrative requirements

**4** Cost Principles

# “State” vs “Non-State”

## States

- Follow same procedures for procurements from non-Federal funds
- M/WBE Outreach
- Domestic Preference
- Recovered Materials
- Contract Clauses

## Non-States

- Follow ALL requirements





# Procurement Standards

2 CFR 200.318(a)



**Must have  
written  
procurement  
policy**



**Must comply  
with local, state,  
and federal law /  
policies**



**When policies  
conflict, most  
stringent policy  
controls**

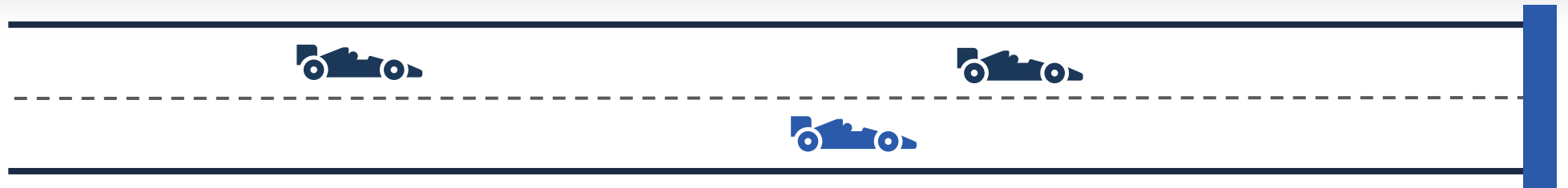




# Competition

2 CFR 200.319(a)

- “Full and open competition”
- Developers of specs/plans specifically excluded from bidding on them
- Numerous situations restrictive of competition





# Competition

2 CFR 200.319(b)



## Full and Open Competition

All opportunities should be publicly solicited, and all responsible sources that are interested in competing, are allowed to do so.



## Restricting Competition

- Excessive qualifications
- Unnecessary experience
- Unnecessary bonding
- Improper qualifications
- Retainer contracts
- In-state, local preference
- Conflicts of interest
- Any “arbitrary action”

# Methods of Procurement





# Methods of Procurement



**Micro-purchase**



**Small Purchase**



**Sealed Bids**



**Competitive Proposals**



**Noncompetitive Proposals / Sole Source**



# Procurement Thresholds

- Non-state entities must follow the stricter of local/federal/state procurement regulations.
- The federal guidelines currently set the simplified acquisition threshold at \$250,000
- For commodities, construction, printing, and waste-related service contracts, Mississippi state law sets the simplified acquisition threshold at \$75,000 for counties and municipalities.
- In this example, the stricter of the two thresholds is MS state law





# Thresholds in Mississippi

## Local Governments and Private Nonprofit Entities

- Procurements for commodities, construction, printing, and waste-related service contracts:

	Micro-purchase	Small Purchase	Procurement in excess of the simplified acquisition threshold
Local Entity	Up to \$5,000	\$5,000.01 - \$75,000	Above \$75,000
Private Nonprofit	Up to \$10,000	\$10,000.01 - \$250,000	Above \$250,000

- Procurements for personal and professional services:

	Micro-purchase	Small Purchase	Procurement in excess of the simplified acquisition threshold
Local Entity	Up to \$10,000	\$10,000.01 - \$250,000	Above \$250,000
Private Nonprofit	Up to \$10,000	\$10,000.01 - \$250,000	Above \$250,000





# Thresholds in Mississippi

State Entities

Type	Policy
Commodities	MS Procurement Manual
Personal and Professional Services	PPRB Rules and Regulations
Construction	DFA Bureau of Building, Grounds and Real Property Management Construction Manual





# Micro-Purchases

2 CFR 200.320(a)(1)

- No quotes needed
- Prices must still be reasonable
- Distribute purchases equitably when possible
- May not split purchases purposefully to remain under threshold





# Small Purchases

2 CFR 200.320(a)(2)

- Minimum of three quotes required
- May not split a larger purchase merely to bring the cost under SAT
- Threshold may vary depending on local/state policies





# Sealed Bids

2 CFR 200.320(b)(1)

- Typical for commodities and construction contracts.
- Bids publicly solicited.
- Contract awarded to lowest responsible bidder.
- Must be advertised 14+ days.
- Need two or more responsible bidders
- Justification needed if lowest bidder not selected





# Competitive Proposals

2 CFR 200.320(b)(2)

- Typical for indeterminate scope / professional services
- Proposals evaluated and awarded to most qualified firm
- Evaluation process and criteria must be clear in RFP
- Must be advertised 30+ days
- Price must be an evaluation factor





# Competitive Proposals

RFQ Exception – 2 CFR 200.320(b)(2)(iv)

**Qualification-  
based  
procurement  
allowed only for  
A&E services**

**Price not used  
as a selection  
factor**

**Not acceptable  
for other  
services  
provided by  
A&E firm**





# Noncompetitive Procurements

2 CFR 200.320(c)

Least-desirable  
method of  
procurement

Allowable uses:

## Procurement Under Grants: Under Exigent or Emergency Circumstances

Release Date: March 20, 2020

The Federal Emergency Management Agency (FEMA) provides financial assistance to states, territories, tribes, local governments, nonprofits, institutions of higher education, and other non-Federal entities. All FEMA grant programs are subject to the Federal procurement standards found at 2 C.F.R. §§ 200.317 – 200.326. Recognizing that FEMA's recipients and subrecipients may face exigencies or emergencies when carrying out a FEMA award, this Fact Sheet provides key information to consider when utilizing contracted resources under exigent or emergency circumstances.

[View an online tutorial](#) on how to properly contract during emergency or exigent circumstances when using federal funds.

### What Rules Apply to State Entities?

States are required to follow their own procurement procedures as well as the Federal requirements for procurement of recovered materials and inclusion of



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Micro  
purchases

Sole-source  
purchases

Public  
exigency or  
emergency

Authorization  
given by  
awarding  
agency

Inadequate  
competition  
after public  
solicitation



Page printed at [fema.gov/news-release/20200514/procurement-under-grants-under-exigent-or-emergency-circumstances](https://fema.gov/news-release/20200514/procurement-under-grants-under-exigent-or-emergency-circumstances)

Page 1 of 9

04/06/2022





# Emergency & Exigency

2 CFR 200.320(c)(3)



## **EMERGENCY**

An emergency is a threat  
to health, life  
or safety.



## **EXIGENCY**

An exigency is NOT an  
emergency but requires  
immediate actions.

These methods should not be used for ARPA funds



# Emergency & Exigency

1

**Costs must still be reasonable.**

2

**All efforts must be fully documented.**

3

**Once the documented exigency or emergency period ends, subrecipients must transition to a procurement process that includes full and open competition**

**These methods should not be used for ARPA funds**



# Noncompetitive Procurements

## Documentation Guidelines

1. Identify which of the circumstances justify a noncompetitive procurement.
2. Describe the product or service being procured, including the expected dollar amount.
3. Explain why the non-competitive procurement is necessary.
4. Document the impact that a competitive procurement would have on the progress of the scope of work.
5. Document the specific steps taken to determine this was the appropriate method of procurement.



# Minority/Women Owned Businesses

(M/WBE)

- ✓ Extremely common OIG finding
- ✓ “Affirmative steps” must be demonstrated
- ✓ Dedicated set-asides or quotas not allowed
- ✓ Not an excuse to subvert open procurement process





# Required Affirmative Steps

2 CFR 200.321(b)(1) – (6)

- 1 Placement on solicitation lists
- 2 Assurance that M/WBE firms are solicited
- 3 Dividing requirements when feasible
- 4 Establishing delivery schedules conducive to participation
- 5 Using SBA/MBDA
- 6 Requiring prime contractor to take same steps when subcontracting





# Cost/Price Analysis

2 CFR 200.324(a)

- Required for all procurement actions over simplified acquisition threshold
- Includes change orders and contract modifications
- Must make independent estimate before receiving bids or proposals





# Cost Analysis



## Cost Analysis

Review and evaluation of  
the separate cost elements  
(*such as labor hours,  
overhead, materials, etc.*).  
RFP/RFQ



## Price Analysis

Examination and evaluation  
of a proposed price without  
evaluating its separate cost  
elements and proposed  
profit (*Sealed Bids*).

# Contracting





# Contracting



Subrecipients must limit acquisitions to its expected needs to carry out the scope of work under the federal award.



Pre-positioned or pre-awarded contracts are eligible as long as contracts are awarded in accordance with the Federal regulations.



# Responsible Contractors

2 CFR 200.318(h)

Subrecipients must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the agreement.



Contractors that are debarred or suspended must be rejected (*SAM.gov*).





# Contract Types



## Fixed Price

Price remains regardless of contractor's actual costs of performing scope of work.

## Cost- Reimbursement

- Provide for the reimbursement of the contractor for its reasonable, allocable, actual, and allowable costs, with an agreed-upon fee.
- E.g., Cost-plus-award-fee & cost-plus-incentive-fee.



## Time and Materials

Actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.



# Time-and-Material Contracts

2 CFR 200.318(j)



**No other contract type is suitable**



**Contract contains not-to-exceed ceiling**

**Ceiling must not be so  
high as to render it  
meaningless**





# Cost Plus Percentage of Cost Contracts

2 CFR 200.324(d)



The use of cost-plus percentage of cost and cost plus a percentage of construction cost methods of contracting are prohibited.



Addition of ceiling price does not make these contracts acceptable





# Cost Plus Percentage of Cost Contracts

## Four-Part Analysis

- Payment is made at a pre-determined percentage rate
- The pre-determined 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 with increased performance costs





# Bonding Requirements

2 CFR 200.326



Applicable to  
contracts over

—  
**\$250K**  
/SAT



Bid  
guarantee

—  
**5%**  
of bid price



Performance  
bond

—  
**100%**  
of contract price



Payment  
bond

—  
**100%**  
of the contract  
price

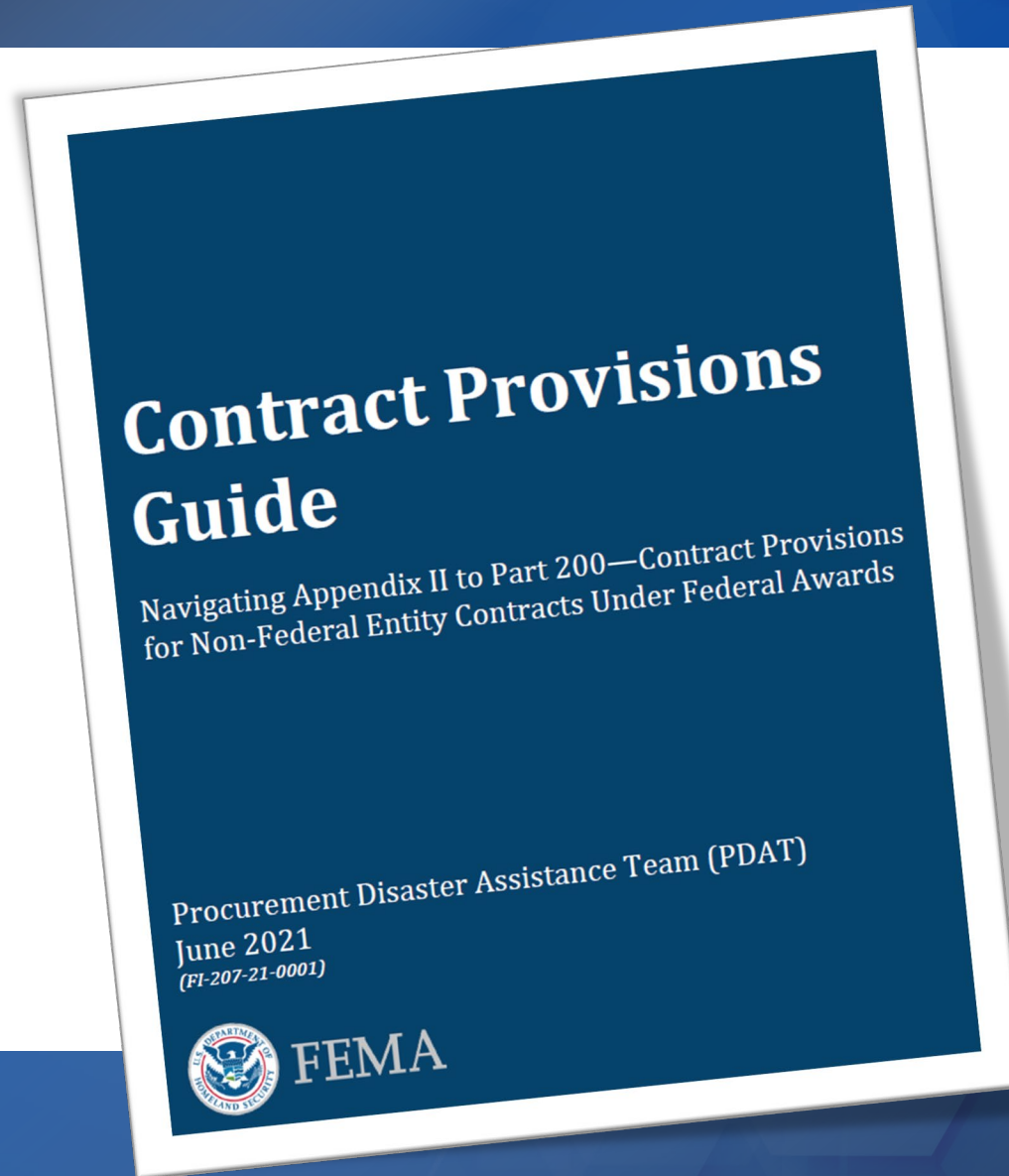




# Required Contract Provisions

All contracts must contain the applicable clauses described in Appendix II to the Uniform Rules.

FEMA offers a [“Contract Provisions Template.”](#)



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# Special Considerations





# Contract Changes / Modifications



**Must be within  
scope of original  
contract**

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**“Cardinal”  
changes:**

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Major deviation from  
original purpose

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Extensive revision of  
work, costs, or time



**Test**

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Within scope of  
contract?

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Within scope of  
competition?





# Construction Manager at Risk

(CMAR)

- One firm acts as general contractor
- Guaranteed maximum price (GMP)
- Price must be considered, except for A/E
- QBS for entire procurement may lead to finding





# Purchasing Cooperatives / Buy boards



Purchasing Cooperatives/Buy boards do not relieve the Applicants of procurement requirements.



Allowed with caution.



Difficult to support cooperative/buy board followed formal procurement standards.



Acceptable in complying with micro and small purchase procurements.



# Intergovernmental Agreements

2 CFR 200.318(e)



Intergovernmental  
agreements  
encouraged



Provides greater  
efficiency,  
economy of scale



Includes GSA  
schedules, state  
contracts, mutual  
aid agreements



“Piggybacking”  
allowable in certain  
circumstances



# Prequalified Lists

- Very tricky to comply
- Lists must be current and thorough
- Potential bidders must still be able to qualify
- Public solicitation still required



# Other Federal Requirements

- Full compliance with Treasury's Final Rule
- Facilitate Treasury reporting
- Subrecipient oversight responsibility
- Single audit requirements





# Other Federal Requirements

(Continued)

- Track program income
- Recordkeeping
- Internal controls
- Financial management system



# Questions?



# Helpful Resources

- **FEMA Procurement Under Grants Training**

<https://www.fema.gov/grants/procurement/training>

- **FEMA Reasonable Cost Evaluation Job Aid**

[https://www.fema.gov/sites/default/files/2020-07/fema\\_pa\\_reasonable-cost-evaluation-job-aid.pdf](https://www.fema.gov/sites/default/files/2020-07/fema_pa_reasonable-cost-evaluation-job-aid.pdf)

- **PDAT Field Manual**

[https://www.fema.gov/sites/default/files/documents/fema\\_PDAT-field-manual\\_102021.pdf](https://www.fema.gov/sites/default/files/documents/fema_PDAT-field-manual_102021.pdf)



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# Helpful Resources

- **Contract Provisions Template**

[https://www.fema.gov/media-library-data/1569959119092-92358d63e00d17639d5db4de015184c9/PDAT\\_ContractProvisionsTemplate\\_9-30-19.pdf](https://www.fema.gov/media-library-data/1569959119092-92358d63e00d17639d5db4de015184c9/PDAT_ContractProvisionsTemplate_9-30-19.pdf)

- **How to Avoid the Top 10 Procurement Mistakes**

[https://www.fema.gov/sites/default/files/2020-07/fema\\_pdat-key-points-to-avoid-top10-mistakes.pdf](https://www.fema.gov/sites/default/files/2020-07/fema_pdat-key-points-to-avoid-top10-mistakes.pdf)

- **Buying Right**

<https://www.hudexchange.info/resource/5614/buying-right-cdbg-dr-and-procurement-a-guide-to-recovery/>



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