Procurements Under FEMA Awards During Periods of Emergency or Exigency
12 Steps through the process

Your Financial Condition

3 Stages of Financial Recovery

- BRIDGING
- REFORM
- TRANSFORM

1. Recognize
2. Mobilize
3. Generic Treatments
4. Initial Diagnosis
5. Fiscal First Aid
6. Detailed Diagnosis
7. Recovery Plan
8. Longer-Term Therapies
9. Long-Term Financial Planning
10. Recovery Leadership
11. Manage Recovery Program
12. Bankruptcy/Receivership
13. Decline

A Strong Financial Foundation for a Thriving Community
12 Steps through the process

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12. A Strong Financial Foundation for a Thriving Community
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Your Financial Condition

3 Stages of Financial Recovery

- Bridging
- Reform
- Transform

Financial Health vs. Distress over Time
Visit www.gfoa.org/ffa for...

- Access to slides and video replay for all Fiscal First Aid webinars, including this one
- Supplementary materials provided by FEMA, associated with this webinar
- A wealth of other materials about dealing with financial distress
Welcome
You will:

- Gain **general knowledge** of the procurement rules
- Increase your awareness of **risk areas**
- Learn about available **tools & resources**

**Game Plan**

**Hot Topics We’ll Discuss:**

- Sole-sourcing under E&E
- Additional requirements under E&E
- Use of pre-existing contracts during E&E
Kickoff: Uniform Rules

2 C.F.R. §§ 200.317 – 326

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>317</td>
<td>Procurements by States</td>
</tr>
<tr>
<td>318</td>
<td>General Procurement Standards</td>
</tr>
<tr>
<td>319</td>
<td>Competition</td>
</tr>
<tr>
<td>320</td>
<td>Procurement Methods</td>
</tr>
<tr>
<td>321</td>
<td>Socioeconomic Contracting</td>
</tr>
<tr>
<td>322</td>
<td>Recovered Materials</td>
</tr>
<tr>
<td>323</td>
<td>Contract Cost or Price</td>
</tr>
<tr>
<td>324</td>
<td>Review of Procurements</td>
</tr>
<tr>
<td>325</td>
<td>Bonding Requirements</td>
</tr>
<tr>
<td>326</td>
<td>Contract Provisions</td>
</tr>
</tbody>
</table>

Objectives:
- Reasonable Cost
- Other Policy Goals
Am I a State or Non-State Entity?
Rules that Apply to States

Are You a State Entity?

- Any State of the United States
- District of Columbia
- US Territories:
  - Commonwealth of Puerto Rico
  - U.S. Virgin Islands
  - Guam
  - American Samoa
  - Commonwealth of the Northern Mariana Islands
- State Agency
- State Instrumentality

Applicable Rules

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<thead>
<tr>
<th>Rule</th>
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</tr>
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<tbody>
<tr>
<td>317</td>
<td>Procurements by States</td>
</tr>
<tr>
<td>318</td>
<td></td>
</tr>
<tr>
<td>319</td>
<td></td>
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<td>324</td>
<td></td>
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<tr>
<td>325</td>
<td></td>
</tr>
<tr>
<td>326</td>
<td>Contract Provisions</td>
</tr>
</tbody>
</table>

Replay

A State must:

Follow State procurement policies and procedures

Recovered Materials

Contract Provisions
Rules that Apply to Non-State Entities

Are You a Non-State Entity?

- Local Governments
- Tribal Governments
- Institutions of Higher Education
- Hospitals
- Houses of Worship
- Other Private Non-Profit Organizations

Applicable Rules

- Must follow own procurement policies and procedures
- Must follow state or Tribal Law
- Must follow federal procurement standards (318-326)

- General Procurement Standards
- Competition
- Procurement Methods
- Socioeconomic Contracting
- Recovered Materials
- Contract Cost or Price
- Review of Procurements
- Bonding Requirements
- Contract Provisions
Key principle of procurement rules

All qualified and responsible sources are eligible to compete without restrictions

Cast the net broadly to reach fair and reasonable pricing from the most qualified contractor

Prevents favoritism, fraud, waste, and abuse
### Methods of Procurement

<table>
<thead>
<tr>
<th>Method</th>
<th>Up to $10K</th>
<th>Usually Over $250K</th>
<th>No Threshold</th>
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<tbody>
<tr>
<td>Micro-Purchase</td>
<td>Up to $10K</td>
<td>Usually Over $250K</td>
<td>No Threshold</td>
</tr>
<tr>
<td>Small Purchase</td>
<td>Up to $250K</td>
<td>Usually Over $250K</td>
<td>No Threshold</td>
</tr>
<tr>
<td>Sealed Bidding</td>
<td>Usually Over $250K</td>
<td>Usually Over $250K</td>
<td>No Threshold</td>
</tr>
<tr>
<td>Competitive Proposals</td>
<td>Usually Over $250K</td>
<td>Usually Over $250K</td>
<td>No Threshold</td>
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</tbody>
</table>

- **Independent Estimates** are required before receiving bids or proposals.
- **Price/Cost Analysis** is required for procurements over $250K.

Federal Emergency Management Agency
Sole-Source Procurement Under E&E

Situations that demand immediate aid or action

Emergency
Need to alleviate a threat to life, public health or safety, or improved property

Exigency
Need to avoid, prevent or alleviate serious harm or injury, financial or otherwise

If using sole sourcing due to emergency or exigency, non-state entities must:

- Justify with documentation
- Use only during the period of actual exigent or emergency circumstances
- Transition to a competitive method as soon as period ends
Sole-Sourcing Under E&E for COVID-19

The exception is applicable to contracts entered into or used on or after January 27, 2020

- For the duration of the current federal Public Health Emergency, the ongoing COVID-19 pandemic qualifies as an E&E circumstance
- Non-state entities may sole-source under that exception
- State entities have to follow their own state procurement rules
Non-State Entity Requirements When Sole-Sourcing under the E&E Exception for COVID-19
If sole-sourcing under the E&E exception, non-state entities MUST:

- Use only during the period of actual Public Health Emergency (HHS)
- Document and provide justification for the use of the exception (list of suggested elements for justification provided)
- Conduct a cost or price analysis if applicable
- Follow bonding requirements if applicable

FEMA Fact Sheet available at: www.fema.gov/procurement-disaster-assistance-team
If sole-sourcing under the E&E exception, non-state entities MUST:

- Include required **contract clauses**
- Follow **T&M contract requirements** if applicable
- **NOT enter into CPPC contracts**. They are prohibited!
- Award contract to a **responsible contractor**
- Follow **documentation, oversight, conflict of interest** requirements

FEMA Fact Sheet available at: www.fema.gov/procurement-disaster-assistance-team
Cost or Price Analysis

Cost or price analysis is required if your procurement is over $250K.

**Goal:**
Determine if the price is fair & reasonable.

**Price Analysis:**
- Simpler
- Examination of proposed price as a whole

**Cost Analysis:**
- More complex
- Evaluation of separate cost elements

**Profit must be negotiated**
- As a separate element of price for contracts with no price competition
- Always when doing cost analysis

323 Contract Cost or Price
Bonding Requirements

Applicability

- Construction or facility improvement contracts or subcontracts above $250K
- Must not unduly restrict competition

There Must Be:

- A **bid guarantee** from each bidder equivalent to 5% of the bid price
- A **performance bond** on the part of the contractor for 100% of the contract price
- A **payment bond** on the part of the contractor for 100% of the contract price
Contract Language: Provisions Applicable to PA

Required:

- Legal/contractual/administrative remedies for breach of contract
- Termination for cause or convenience
- Equal Employment Opportunity
- Contract Work Hours and Safety Standards Act
- Clean Air Act and Federal Water Pollution Control Act
- Debarment and Suspension
- Byrd Anti-Lobbying Amendment
- Procurement of Recovered Materials

Recommended:

- Contract Changes
- Access to Records
- DHS Seal, Logo, and Flags
- Compliance with Federal Law, Regulations and Executive Orders
- No Obligation by Federal Government
- Program Fraud and False or Fraudulent Statements or Related Acts

Provisions Template

Available at:
www.fema.gov/procurement-disaster-assistance-team

326 contract Provisions
Warning: You Cannot Limit Access to Records!

- Applies to contracts entered into after August 1, 2017
- FEMA cannot reimburse applicants for contract expenses where the contract prohibits the FEMA Administrator or U.S. Comptroller General from auditing or reviewing all aspects related to the contract
- **DO NOT** include such a provision in contracts
Rules by Contract Type: Time & Materials

**T&M Contract Cost:**
- Direct labor hours charged at **fixed hourly rates**
- Actual cost of materials

**Applicability:**
- When not possible to initially estimate extent or duration of work
- Use only after determining that **no other contract is suitable**

**Requirements**
- A **ceiling price**, that the contractor exceeds at own risk, must be established
- Must maintain high degree of **oversight** to avoid unneeded cost over-runs
- Use **only until the scope of work becomes clear**

318 General Proc. Standards
Cost Plus a Percentage of Cost Contracts Are Prohibited!

How to Spot a CPPC Contract:

- Payment is at a predetermined rate
- This rate is applied to actual performance costs
- Contractor's entitlement is uncertain at the time of contracting
- Rate increases with increased performance costs

Why Using CPPC Contracts Is Prohibited:

- There is no incentive to control costs
- The contractor has a financial interest in increasing the cost of performance

323 Contract Cost or Price
Must Award Only to Responsible Contractors

- Able to perform successfully under the procurement’s terms and conditions
- Evidence of integrity
- Has been compliant with public policy
- Has a good record of past performance
- Has adequate financial and technical resources

Must not have been debarred or suspended

Must not be listed on exclusions at www.sam.gov
### Other Basic Rules of Engagement

<table>
<thead>
<tr>
<th>Mandatory Standards</th>
<th>Encouraged Standards</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Contractor Oversight</td>
<td>1. Intergovernmental Agreements</td>
</tr>
<tr>
<td>2. Necessity</td>
<td>2. Use of Federal Excess and Surplus Property</td>
</tr>
<tr>
<td>4. Conflict of Interest</td>
<td></td>
</tr>
<tr>
<td>5. Gifts</td>
<td></td>
</tr>
<tr>
<td>6. Responsible Contractors Only</td>
<td></td>
</tr>
<tr>
<td>7. Records</td>
<td></td>
</tr>
<tr>
<td>8. Settlement of Issues</td>
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</tbody>
</table>

318 General Proc. Standards

Must maintain records sufficient to detail the history of the procurement

- Rationale for the Method of Procurement
- Selection of Contract Type
- Selection of Contractor
- Basis for Contract Price

- Sole Sourcing under E&E Justification
- Time & Materials Contract Justification
- Search at www.SAM.gov
- Independent Estimate; Cost or Price Analysis; Quotations

318 General Proc. Standards
Use of Pre-Awarded/Pre-Existing Contracts during E&E

FEMA recommends that non-state entities:

- Review the requirements applicable during E&E and **take actions to modify** pre-awarded or pre-existing contracts where applicable
- **Justify** the use of a sole-sourced contract with suggested documentation

If the pre-awarded/pre-existing contract is **not in compliance** with the federal procurement requirements, it may still be possible to use the contract for the duration of the E&E.
State Entity Requirements During E&E for COVID-19
Considerations for State Entities regardless of E&E circumstances:

- Follow **State procurement policies and procedures**
- Follow procurement of **recovered materials requirements**
- Include **required contract clauses**
- While the rules do not prohibit the use of T&M or CPPC contracts, **FEMA discourages states from using them** due to likelihood of unreasonable costs

FEMA Fact Sheet available at: www.fema.gov/procurement-disaster-assistance-team
Tools Made for You: Long Practice Strategy

Procurement Rules Online
www.ecfr.gov
2 C.F.R. §§ 200.317-326

PDAT Website
www.fema.gov/procurement-disaster-assistance-team
- Contract Provisions Template
- COVID-19 Guidance
- Fact Sheets, Checklists and more

Contractor Responsibility Determination
www.SAM.gov
Need More Help?

- **Contact Your State Emergency Management Agency**
  www.fema.gov/emergency-management-agencies

- **Contact Your FEMA Regional Office**
  www.fema.gov/fema-regional-contacts
Thank you for watching!
The End

- Use the chat feature of this webinar to ask questions

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12-Step Fiscal First Aid Recovery Process

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- Step 8: Long-Term Treatments
- Step 9: Long-Term Financial Planning
- Step 10: Recovery Leadership
- Step 11: Manage the Recovery Process
- Step 12: The Outcome of Recovery

New GFOA Research

- Working Remotely: A Guide for the Public Sector
- Cash is King: Short-Term Strategies to Slow the Flow of Money Out the Door and Keep the Budget Balanced

Upcoming Training

- April 13: Procurements Under FEMA Awards During Periods of Emergency or Exigency
- April 15: Assessing Risks Related to Cyber Crime

Past Training

Click on each webinar to access a recording of the webinar, the PowerPoint presentation, and other supporting materials.

- April 9, 2020. Take the 2020 Financial Policy Challenge