



# Procurement and Contracting

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(almost as) Easy as 1-2-3

# ***Did you know ...***

After a declared event, FEMA may  
provide PA funding for

***CONTRACT COSTS***

to State, Territorial, Tribal and Local  
Governments (SLTT), as well as  
certain Non-Profit agencies.



COMPLIANCE

# Applicants must comply with Federal regulations.

To be eligible for reimbursement, expenses incurred must be event-related.

Contracts should cover activities associated with preparation, response, and recovery.

- Debris removal and hauling
- Debris monitoring
- Repair of uninsured structures
- Search and rescue services
- Leasing of temporary facilities
- Security patrols
- Shelter commodities
- Category Z consulting services

# COMPLIANCE



# Tribal and local governments, including Tribal Recipients, and PNPs must follow

- Their established, documented procurement procedures
  - *If your agency doesn't have a current procurement policy, develop one ASAP!*
- Applicable SLTT government laws and regulations
- Applicable Federal laws and regulations

# COMPLIANCE



**COMPLIANCE**  
**is Key!**

COMPLIANCE



# ***Before procuring goods or services via contract, local and Tribal Applicants should***

- Establish or update written procedural guidance for procurement
  - Must adhere to State, Local, Territorial, or Tribal laws and regulations
- Establish and maintain written standards of conduct regarding
  - Potential conflicts of interest
  - Standards for employees who engage in vendor selection process
  - Contract administration

# COMPLIANCE





If Federal requirements  
are different than your  
agency's guidance,



the more restrictive  
requirement of the two  
must be followed.

COMPLIANCE

**2 CFR § 200.318**

***Code of  
Federal  
Regulations***

**2 CFR § 200.326**





## ***2 CFR § 200.318***

# ***General Procurement Standards***

Use agency's own documented procedures reflecting applicable State and local laws and regulations which conform to applicable 2 CFR and Federal law.

Maintain oversight to ensure contractors perform according to terms, conditions, and specs of contracts or purchase orders.

Maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts.

Procedures must avoid acquisition of unnecessary or duplicative items. Efforts should be made to ensure transactions are most economical options.

Foster greater economy, efficiency, and promote cost-effectiveness through shared services and intergovernmental agreements, using Federal excess and surplus property when feasible to reduce costs.

COMPLIANCE



## ***2 CFR § 200.318***

# ***General Procurement Standards***

Use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.

Award contracts only to responsible contractors with the ability to perform successfully under the terms and conditions of proposed procurement.

Maintain records sufficient to detail the history of procurement, including rationale for procurement method, contract type, contractor selection, basis for contract price.

Time & Materials contracts can only be used when no other contract is suitable. Contract of this type must have a ceiling price that the contractor exceeds at its own risk.

Agency is solely responsible for good administrative practices and sound business judgement in all contractual and administrative issues arising from procurement.

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## ***2 CFR § 200.319***

# ***Competition***

Conduct all procurement transactions in full and open competition consistent with the standards of this section of 2 CFR.

Procurements should prohibit use of statutorily or administratively imposed state or local geographic preferences in bids or proposals, except where expressly mandated or encouraged by Federal statutes.

Establish written procedures for procurement transactions. Use clear, accurate requirements that do not unduly restrict competition but establish minimum standards for conformity.

Identify all requirements bidders must fulfill, as well as all factors to be used evaluating bids or proposals.

Include enough qualified vendors to ensure maximum open and free competition.

# COMPLIANCE



## ***2 CFR § 200.320***

# ***Methods of Procurement***

One of the following methods must be used.

- Micro-purchase – Acquisition of supplies or services not to exceed \$10,000. Must be equitably distributed to qualified vendors. Competitive solicitations are not required.
- Small purchase – Simple, informal procurement method where value does not exceed established Simplified Acquisition Threshold (SAT). Current SAT is \$250K (summer 2022). Price or rate quotes must be obtained from an adequate number of qualified vendors.
- Sealed bids – Publicly solicited for a firm fixed price. Contract is awarded to bidder that meets all material terms and conditions at the lowest price. Preferred method for construction contracts.
- Competitive proposals – Conducted with more than one vendor. Offer is either fixed price or cost reimbursement. Only used when sealed bid method is not appropriate.



# ***2 CFR § 200.321***

## ***Small, Minority, Women-Owned Businesses***

## ***Labor Surplus Firms***

Take all necessary affirmative steps to ensure these types of vendors are included whenever possible.

- Include small, minority, and women-owned businesses and labor surplus firms on solicitation lists.
- Ensure these businesses are solicited when they are potential sources.
- Divide requirements into smaller tasks or quantities when economically feasible to permit maximum participation by these type businesses.
- Establish delivery schedules which encourage participation by small, minority, and women-owned businesses and labor surplus firms as requirements permit.
- Use services such as Small Business Administration and Minority Business Development Agency to assist in solicitation efforts.
- If subcontracts are to be let, require prime contractors to take affirmative steps, as noted above.



## ***2 CFR § 200.322***

### ***Recovered Materials***

Non-Federal agencies and contractors for those agencies must comply with section 6002 of Solid Waste Disposal Act.

Items procured must meet designated EPA guidelines (40 CFR part 247) that include highest portion of recovered material practicable.

Methods should be consistent with satisfactory level of competition.

Solid waste management services should maximize energy and resource recovery.

Establish affirmative procurement methods for recovered materials as identified by EPA guidelines.

# COMPLIANCE





## **2 CFR § 200.323**

# ***Contract Cost and Price***

Perform a cost or price analysis in connection with every procurement exceeding SAT. At minimum, independent estimates should be made prior to receiving bids.

Negotiate profit as a separate element of price for each contract where there was no price competition. To establish fair and reasonable profit, complexity of work, risk borne by the contractor, contractor's investment, industry rates according to geographic location, and other factors should be considered.

Estimated contract prices under Federal awards are only allowed when incurred or estimated costs include negotiated prices as allowable under Subpart E – Cost Principles. Agencies may reference their own cost principles if these comply with Subpart E.

# COMPLIANCE



# ***2 CFR § 200.324***

## ***Federal Awarding Agency or VDEM Review***

Make available upon request to Federal awarding agency (FEMA) or pass-through entity (VDEM) technical specifications and procurement methods for review.

Provide to FEMA or VDEM procurement documents such as proposals or invitations to bid, independent cost estimates when:

- Procurement methods or operations fail to comply with Federal standards
- Procurement is expected to exceed the SAT and will be awarded without competition or only one bid or offer is received
- Procurement is expected to exceed the SAT and a “brand name” product is specified.
- Proposed contract exceeds SAT and will be awarded to other than the apparent low bidder under sealed bid.
- Modification of scope changes proposed contract or increases amount over SAT.

COMPLIANCE



# ***2 CFR § 200.324***

## ***Federal Awarding Agency or VDEM Review***

Agency is exempt from pre-procurement review if FEMA or VDEM determines its procurement standards comply with Federal regulations.

- Agency may request that its procurement system be reviewed by FEMA or VDEM to determine whether Federal standards are met in order to certify system
- Agency may self-certify its own procurement system, but this does not limit FEMA's or VDEM's right to survey the system. Under self-certification, FEMA may rely on written assurances from the agency that it complies with Federal standards. Specific policies, procedures, regulations, or standards within the system available for review must be cited.

# COMPLIANCE



## ***2 CFR § 200.325***

# ***Bonding Requirements***

For construction contracts or subcontracts exceeding the SAT, FEMA or VDEM may accept the agency's bonding policy and requirements provided FEMA or VDEM have determined the Federal interest is adequately protected. If no such determination is made, these minimum requirements must be followed:

- Guarantee from each bidder equal to 5% of bid price firmly committed through a bid bond or certified check, or other negotiable instrument as assurance the bidder will, on acceptance of the bid, execute required contractual documents with the specified time.
- Performance bond from contractor for 100% of contract price.
  - "Performance bond" is executed to secure fulfillment of all the contractor's obligations.
- Payment bond from contractor for 100% of contract price.
  - "Payment bond" is executed to assure all persons supplying labor and material in the execution of the work are paid as required by law.



## ***2 CFR § 200.326***

### ***Contract Provisions***

The agency's contracts must contain applicable provisions for non-Federal entities (Appendix II, Part 200) including:

- Administrative, contractual, or legal remedies when terms are breached or violated to include appropriate penalties and sanctions.
- Termination for cause and for convenience for contracts exceeding \$10,000
- Equal Employment Opportunity clause
- Contract Work Hours and Safety Standards Act
- Clean Air Act to include reporting of violations
- Exclusion of parties suspended, debarred, or excluded from the System for Award Management (SAM).
- Byrd Anti-Lobbying Amendment and certification

# COMPLIANCE

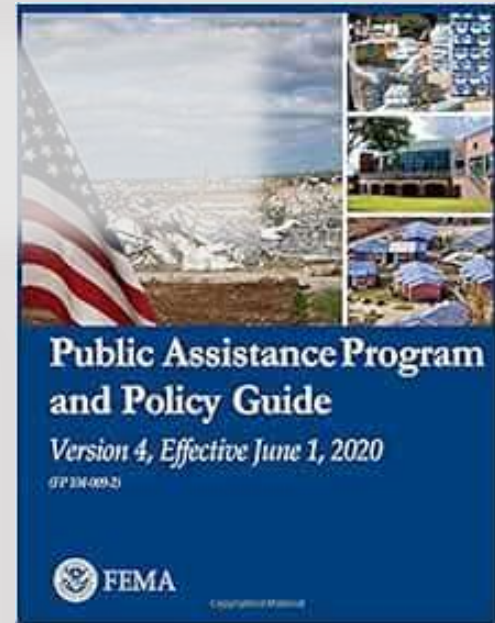


# FEMA Policy - Procuring and Letting Contracts

FEMA requires all contracts to be cost reasonable.

Using the following contract types - *which may be allowable under your internal standards* - carries a high risk of non-compliance

- Time and material (T&M) without a ceiling (NTE) price
- Cost-plus-percentage-of-cost
- Cost-plus-percentage-of-construction



COMPLIANCE





# Best Practices - Procuring and Letting Contracts

- Establish a written procurement policy that reflects SLTT laws and regulations with regular update reviews.
- Maintain written standards of conduct regarding
  - Conflicts of interest
  - Rules for employees who engage in selection, award, and administration of contracts
- Create a pre-qualified list of trusts vendors based on experience, capabilities, and past performance
  - Is NOT a “standby” contract
  - Must perform procurement with full and open competition
  - Bidders not on the pre-qualified list cannot be excluded
- Do NOT use suspended or debarred contractors



COMPLIANCE



# Best Practices - Procuring and Letting Contracts

- Always provide full and open competition.
  - Tribal governments may give preference to Indian-owned enterprises
  - Ensure use of small, minority, and women-owned businesses by
    - Including these organizations on pre-qualified vendor list
    - Soliciting whenever they are potential sources
    - Accommodate them by dividing total scope into smaller tasks
    - Establish delivery schedules that enable their participation
    - Reference SBA and Minority Business Development Agency
    - Require prime contractor to solicit subs using these criteria
- Perform a cost or price analysis for every procurement above SAT
- Do not use unreasonable geographic limitations
- Exclude contractors that develop draft specifications
- Maintain records to detail history of rationale, contract type, selection or rejection criteria, basis or contract price



# Top 10 Mistakes\*

- 1) Restricting full and open competition
- 2) Not conducting detailed price/cost analysis for procurements over \$250K
- 3) Using sole-source contracting in non-exigent situations
- 4) Continuing a sole-source agreement after the urgent need is over
- 5) Not making and documenting efforts to include small, minority, women-owned businesses
- 6) Awarding T&M contracts without a ceiling price
- 7) Not including all required contract clauses in terms and conditions
- 8) Awarding cost-plus-percentage contracts
- 9) Extending agreements to suspended or debarred vendors
- 10) Not documenting all procurement steps to ensure any future questions can be suitably addressed



## Procurement Disaster Assistance Team (PDAT) Field Manual

Procurement Information for FEMA Award Recipients and Subrecipients

October 2021

(FM-207-21-0002)



FEMA

*\*According to FEMA's Procurement Disaster Assistance Team*



# Questions?

## Contact VDEM

<https://www.vaemergency.gov>



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Information for this presentation was sourced from FEMA's Public Assistance Program and Policy Guide, Version 4, June 1, 2020, Part 200 of the Code of Federal Regulations, and

