



Federal Insurance and Mitigation Administration

Hazard Mitigation Assistance Procurement Standards

Purpose

This Job Aid describes the procurement standards for non-Federal entities that obtain property and services under a Hazard Mitigation Assistance (HMA) Federal award. Procurement includes the selection, award, and administration of contracts. A “**non-Federal entity**” is a State or local government, federally-recognized tribe, institution of higher education, or nonprofit organization that carries out a Federal award as a Recipient or subrecipient.

The procurement standards covered in this Job Aid are required by the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200). They apply to all Pre-Disaster Mitigation (PDM) and Flood Mitigation Assistance (FMA) awards made on or after December 26, 2014, and to all Hazard Mitigation Grant Program (HMGP) awards authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) and made under Presidential major disaster declarations declared on or after December 26, 2014.

Grace Period: Non-Federal entities may continue to comply with the applicable procurement standards in 44 CFR Section 13.36 (for States, local, and federally-recognized tribes) or 2 CFR Sections 215.40 to 48 (for institutions of higher education, hospitals, and other nonprofit organizations) for one additional fiscal year after December 26, 2014. If a non-Federal entity chooses to use the previous procurement standards for an additional fiscal year before adopting the procurement standards in 2 CFR Part 200, the non-Federal entity must document this decision in its internal procurement policies.

Procurement by States

When procuring property and services under a Federal award, a State (acting as either a Recipient or subrecipient) must comply with the requirements of 2 CFR Section 200.317. This regulation requires a State to follow the same policies and procedures it uses for procurements issued from its non-Federal funds. Further, the State must comply with 2 CFR Section 200.322 (Procurement of Recovered Materials) and ensure that every purchase order or other contract includes any clauses required by 2 CFR Section 200.326 (Contract Provisions).

Procurement by Non-Federal Entities Other Than States

When procuring property and services under a Federal award, all non-Federal entities that are not States must follow 2 CFR Sections 200.318 through 200.326. Nonprofit organizations, institutions of higher education, and hospitals that were previously subject to the procurement standards set forth at 2 CFR Part 215 are now subject to the procurement standards set forth at 2 CFR Sections 200.318 through 200.326. These requirements differ from previous requirements, and the affected non-Federal entity should educate its employees on these new standards.

Conflict of Interest Policy

The non-Federal entity must 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 as required in 2 CFR Section 200.318. 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.

If the non-Federal entity has a parent, affiliate, or subsidiary organization (that is not a State, federally-recognized tribe, or local government), then the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest occur when the non-Federal entity is unable, or appears to be unable, to be impartial in conducting a procurement action involving a related organization because of relationships with a

parent company, affiliate, or subsidiary organization.

To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft design plans and specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements as required in 2 CFR Section 200.319(a).

Methods of Procurement

A non-Federal entity must use one of the following five methods of procurement described at 2 CFR Section 200.320: (1) procurement by micro-purchases, (2) procurement by small purchase procedures, (3) procurement by sealed bids, (4) procurement by competitive proposals, or (5) procurement by noncompetitive proposals. The following applies to procurement by micro-purchases and procurement by noncompetitive proposals:

- The non-Federal entity may use procurement by micro-purchases, as defined in 2 CFR Section 200.67, for acquisition of supplies or services that do not exceed the micro-purchase threshold. Such purchases may be awarded without soliciting competitive quotations when the non-Federal entity considers the price to be reasonable. Micro-purchases must be distributed equally among qualified suppliers to the extent practicable.
- Procurement by noncompetitive proposals, which is a procurement through solicitation of a proposal from only one source, may be used only when one or more of the following circumstances apply pursuant to 2 CFR Section 200.320(f):
 - The item is available from only one source
 - The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation
 - FEMA or the pass-through entity (defined as a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program) expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity
 - After solicitation of a number of sources, competition is determined inadequate

FEMA Review of a Pass-Through Entity's Approval of Noncompetitive Procurement

A pass-through entity may approve a subrecipient's written request to procure a product or service through a noncompetitive proposal method. In cases where a pass-through entity approves a request to use a noncompetitive proposal, the approval must be consistent with all applicable State, local, and federally-recognized tribal laws and regulations, as well as the pass-through entity's and subrecipient's written procurement standards. Additionally, pass-through entities' and subrecipients' procurements must continue to comply with the requirements of 2 CFR Sections 200.318 through 200.326, even in cases where the pass-through entity approves a request to use noncompetitive proposals.

FEMA may review a pass-through entity's decision to allow a procurement using noncompetitive proposals, such as during the grant monitoring process, in response to an audit finding or other similar circumstances, or for the reasons specified in 2 CFR Section 200.324. During its review, FEMA will inspect the written procurement records for the transaction, including the rationale for the method of procurement, selection of contract type, and contractor selection or rejection.

FEMA will not substitute its judgment for that of the pass-through entity in cases where the pass-through entity has documented justification for allowing a noncompetitive procurement. However, FEMA will review the documented justification for approving the noncompetitive procurement to ensure it otherwise complies with the requirements of 2 CFR Sections 200.318 through 200.326. FEMA may also require the pass-through entity to demonstrate that the decision to approve the noncompetitive proposal is consistent with applicable State, local, and federally-recognized tribal laws and regulations, as well as all applicable written procurement standards. FEMA may also assess whether the costs incurred under the procurement are reasonable.