



PUBLIC ASSISTANCE: CONTRACTING REQUIREMENTS CHECKLIST

FEMA's Public Assistance (PA) program provides supplemental assistance to states, tribes, and local governmental entities, as well as certain private non-profit organizations (hereinafter referred to as applicants) to assist them with recovering from emergencies and major disasters. FEMA's *Public Assistance Program and Policy Guide* (<http://www.fema.gov/public-assistance-policy-and-guidance>) provides comprehensive information regarding the types of assistance FEMA can provide and the requirements to receive assistance. The purpose of this Fact Sheet is to provide Public Assistance applicants with key information they need to consider when using contracted resources. Failure to follow federal contracting requirements when procuring and selecting contractors puts applicants at risk of not receiving full reimbursement for eligible disaster costs.

Understanding Which Federal Contracting Requirements Apply to Public Assistance Applicants

The federal procurement requirements are found at 2 C.F.R. §§ 200.317-200.326. In order for a Public Assistance applicant to determine which contracting rules apply, the applicant must first determine if it is a state or non-state entity. States must follow procurement requirements found at 2 C.F.R. § 200.317 and non-states must follow procurement requirements found at 2 C.F.R. §§ 200.318 through 200.326.

A “**STATE**” means any state or territory of the United States, and any agency or instrumentality of that state or territory.

A “**NON-STATE**” entity is any eligible Public Assistance applicant that does not meet the “state” definition. Non-state applicants include local governments, Indian tribal governments, institutions of higher education, hospitals, and other eligible private non-profit organizations.

State entity applicants should refer to “**Checklist A: State Entities**” on page 2 for additional information. Non-state entity applicants should refer to “**Checklist B: Non-State Entities**” on page 2 for additional information.

DISCLAIMER: This Fact Sheet is intended to provide general information on procurement compliance and is not inclusive of every rule that an applicant may need to comply with. Additional information regarding the federal procurement standards can be found at the following webpage: www.fema.gov/procurement-disaster-assistance-team.

ATTENTION: Potential Compliance Issues

State Entities:

- ☐ Not following their own procurement policies and procedures.
- ☐ Not including required contract provisions.

Non-state entities:

- ☐ Using Time & Materials (T&M) contracts without a ceiling price.
- ☐ Awarding sole-source contracts without ensuring the noncompetitive proposals method is appropriately followed.
- ☐ Using pre-awarded/pre-disaster contracts for supplies or services that are out of the contract scope.
- ☐ Awarding to contractors that drafted solicitation documents.
- ☐ Using geographic preferences in the evaluation of bids and proposals.
- ☐ Entering into Cost-Plus-Percentage of Cost (CPPC) contract types. These contract types are prohibited.
- ☐ Improper “piggybacking” of other entities’ contracts.
- ☐ Awarding to suspended or debarred contractors.

FEDERAL PROCUREMENT REQUIREMENTS CHECKLISTS

Checklist A: State Entities

- ☐ Follow **the same policies and procedures** used when contracting with non-Federal funds (2 C.F.R. § 200.317);
- ☐ Comply with the **procurement of recovered materials** guidelines (2 C.F.R. § 200.322);
- ☐ Must include **required contract provisions** in all purchase orders/contracts awarded (2 C.F.R. § 200.326); and
- ☐ **Reasonable cost** considerations:
 - ☐ While **T&M contracts** without a ceiling price and **CPPC contracts** may be allowable under state standards, the use of these contracting vehicles carry a higher risk of noncompliance with the requirement that costs be reasonable (2 C.F.R. § 200.404) and as such may be subject to a higher level of scrutiny.

Checklist B: Non-State Entities

- ☐ Maintain written standards of conduct covering **conflicts of interest** and governing the performance of employees who engage in the selection, award, and administration of contracts (2 C.F.R. § 200.318(c));
- ☐ Conduct procurements in a manner providing for **full and open competition** (2 C.F.R. § 200.319);
- ☐ Take six necessary steps to assure that **small and minority businesses, women's business enterprises, and labor surplus area firms** are used when possible (2 C.F.R. § 200.321):
 - ☐ Place such organizations that are qualified on solicitation lists;
 - ☐ Ensure such organizations are solicited whenever they are potential sources;
 - ☐ Divide total requirements, when economically feasible, into smaller tasks or quantities;
 - ☐ Establish delivery schedules, where the requirement permits, which encourage their participation;
 - ☐ Use the services and assistance, as appropriate, of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - ☐ Require prime contractor to take the above affirmative steps if subcontracting.
- ☐ Perform a **cost or price analysis** in connection with every procurement action in excess of the Simplified Acquisition Threshold, including contract modifications (2 C.F.R. § 200.323);
- ☐ Use allowable **procurement methods**, including procurement by micro-purchases, small purchases, sealed bidding, competitive proposals, and non-competitive proposals and ensure corresponding standards are met (2 C.F.R. § 200.320);
- ☐ If using a **T&M contract**, ensure that no other contract type is suitable and the contract includes a ceiling price that the contractor exceeds at their own risk (2 C.F.R. § 200.318(j));
- ☐ Follow the **bonding requirements** for all facility and improvement projects (2 C.F.R. § 200.325);
- ☐ Must include **applicable contract provisions** in all contracts awarded (2 C.F.R. § 200.326);
- ☐ Comply with the **procurement of recovered materials** guidelines (2 C.F.R. § 200.322);
- ☐ Maintain **oversight** to ensure contractors perform according to the terms, conditions, and specifications of their contracts or purchase orders (2 C.F.R. § 200.318(b)); and
- ☐ Maintain **records** sufficient to detail the history of the procurement. These records will include, but are not limited to the rationale for the method of procurement, selection of contract type; contractor selection or rejection; and basis for the contract price (2 C.F.R. § 200.318(i)).