

Purchasing Under a FEMA Award: Prepare Before a Disaster

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. When purchasing under a FEMA award, all FEMA award recipients and subrecipients are subject to the federal procurement rules found at 2 C.F.R. §§ 200.317 – 200.326. This Fact Sheet is intended to provide information on contracting actions FEMA award recipients and subrecipients can take before a disaster strikes.

Contracting Actions an Applicant Can Take Before a Disaster

Taking appropriate contracting actions before a disaster strikes enables FEMA award recipients and subrecipients to respond quickly in emergency situations, make recovery decisions in a lower-pressure environment, and protect their budget from unplanned disaster expenditures. Below are three contracting actions an entity can take to prepare for a disaster.

1. Review Applicable Federal Rules

Entities are better positioned to contract in response to an emergency or major disaster when they have written procurement policies and procedures and understand which federal rules apply to them. The following bulleted statements outline the federal rules applicable to states and territories versus the federal rules applicable to non-state entities.

- States and territories, including their agencies and instrumentalities, must follow their own documented procurement policies and procedures when purchasing under a FEMA award pursuant to 2 C.F.R. § 200.317. These entities must also comply with Environmental Protection Agency guidelines on procurement of recovered materials (2 C.F.R. § 200.322) and ensure that all necessary contract provisions are included in their contracts (2 C.F.R. § 200.326).
- Non-state entities, which include local governments, tribes, and eligible private nonprofit organizations, must have documented procurement policies and procedures, which reflect applicable local, state or tribal law, and ensure compliance with the federal requirements listed at 2 C.F.R. §§ 200.318 - 200.326.

2. Create Prequalified Lists

FEMA award recipients and subrecipients may use prequalified lists of persons, firms, and products when purchasing under a FEMA award. Having a list of prequalified vendors may save a recipient or subrecipient time because they allow them to review contractor qualifications (including financial and technical resources) before a disaster. When using prequalified lists, non-state entities must:

- Ensure that all prequalified lists are current and include enough qualified sources to ensure maximum full and open competition; and
- Not exclude potential vendors from qualifying during the solicitation period.



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3. Award Prepositioned Contracts

FEMA encourages recipients and subrecipients to award prepositioned contracts, or advance contracts, before an incident occurs for the potential performance of work under the FEMA award. Use of prepositioned contracts allows entities to conduct a deliberate procurement process outside of the pressure and immediate demands of a disaster and helps to ensure contractors are readily available to perform work quickly after an incident occurs. When using a prepositioned contract, recipients and subrecipients must ensure that:

- The contract was procured in compliance with the applicable procurement under grant rules for its entity type (state or non-state); and
- The contract’s scope of work must adequately encompass the type and extent of future work. Failure to do so may result in a cardinal/substantive change (State entities should ensure out of scope changes are consistent with their own procurement policies and procedures).

If using a prepositioned contract, entities must ensure the price is considered reasonable in the current market environment. They must also check SAM.gov to verify that the contractor is not suspended or debarred.

Prepositioned Contracts v. Post-Incident Contracts

	Prepositioned Contracts	Post-Incident Contracts
Benefits	When an entity solicits and awards a contract before the incident occurs for the potential performance of post-disaster work	When an entity solicits and awards a contract after the incident occurs for the performance of post-disaster work.
Areas of Concern	<ul style="list-style-type: none"> ▪ Respond quickly in emergency situations ▪ Make recovery decisions in a low-pressure environment ▪ Protect your budget from unplanned disaster costs 	<ul style="list-style-type: none"> ▪ Scope of work consistent with recovery needs
	<ul style="list-style-type: none"> ▪ Scope of work must include future disaster work (State entities should ensure scope changes are consistent with their own procurement policies and procedures) 	<ul style="list-style-type: none"> ▪ Impedes the ability to respond quickly in emergency situations ▪ Negotiated costs may be reflective of a high-demand environment (increased costs due to increase in demand) ▪ Unplanned expenditures may have negative impact on your budget

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 under grants standards can be found at the following webpage: www.fema.gov/procurement-disaster-assistance-team.