

# Purchasing Under a FEMA Award: Managing Fraud Risks

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FEMA grant programs are subject to the federal procurement rules found at 2 C.F.R. §§ 200.317 – 200.327. This Fact Sheet is intended to inform FEMA award recipients and subrecipients on common findings of procurement fraud, recipient responsibilities, and how fraud and suspicious activities can be reported.

## Procurement Fraud

When purchasing under a FEMA award, recipients and subrecipients are often susceptible to fraud, waste and abuse. The [Generally Accepted Government Auditing Standards \(GAGAS\)](#) describes fraud as, “a type of illegal act involving the obtaining of something of value through willful misrepresentation,” and it can occur during any point in the procurement process. Therefore, it is important that FEMA award recipients and subrecipients are aware of the federal procurement rules and learn actions to take to help identify and mitigate fraud as well as how to report suspicious activities.

### Common Examples of Fraud Throughout the Procurement Process

Procurement fraud can be difficult to detect for a number of reasons. When purchasing under a FEMA award, recipients and subrecipients should be aware of the various fraud risks and exercise caution to help prevent fraud, waste and abuse. The following are common examples of procurement fraud that occur during the various phases of a procurement:

- **Corrupt influence and kickbacks** can include buying more items than are needed, selecting unqualified suppliers, or excluding qualified bidders. The perpetrator might also tailor or narrow specifications to ensure only their chosen bidder can win a contract. A corrupt payment is promised to influence the recipient for a successful bid. It can be monetary but can also take the form of goods or services in kind such as gifts, potential career opportunities, sexual favors and overpaying for reciprocal purchases.
- **Bid rigging** occurs when competitors engage in collusion and agree in advance who will submit the lowest priced or winning bid on a contract.
- **Billing fraud** is the intentional submission of false, duplicate or inflated invoices by a supplier or contractor. This can also happen via collusion with the representatives of the buyer who will profit in some way from the fraud.



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- **Delivery fraud** occurs when fraudulent contractors deliver subpar goods or services and are aware that the goods fail to meet the quality expected or required. In order to succeed, the quality of the items or works is concealed or falsely represented.
- **Certain contract types are prone to fraud** due to the contract having a higher likelihood of unnecessary and sometimes fraudulent cost overruns. These contract types, such as time-and-materials and cost plus a percentage of cost contracts, often create an incentive for contractors to increase costs because their profit is directly tied to these costs.

## The Federal Procurement Standards

For a FEMA award recipient or subrecipient to determine which federal procurement rules to follow, it must first determine if it is a state or a non-state entity. Below are the federal procurement rules applicable to state and non-state entities with awards made under disasters declared on or after November 12, 2020:

### Federal Procurement Rules Applicable to State and Non-State Entities

- States, the District of Columbia, territories and 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 socioeconomic affirmative steps ([2 C.F.R. § 200.321](#)), requirement for domestic preferences ([2 C.F.R. § 200.322](#)), the requirements for procurement of recovered materials ([2 C.F.R. § 200.323](#)), and ensure that all necessary contract provisions are included in their contracts ([2 C.F.R. § 200.327](#)).
- Non-federal entities other than states (collectively referred to as 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 – 200.327](#).

One of the objectives of the federal procurement standards is to reduce the risk of fraud, waste and abuse. Although not an exhaustive list, the federal procurement rules listed below (further explained in the [PDAT Field Manual](#)), help non-state entities identify and combat procurement fraud:

**Table 1: Federal Procurement Standards & Purposes**

Federal Procurement Rules	Purpose
Full and Open Competition	All procurement transactions for the acquisition of property or services required under a federal award must be conducted in a manner providing full and open competition. This rule is critical to helping prevent favoritism, collusion, fraud, waste and abuse in the procurement process. ( <a href="#">2 C.F.R. § 200.319</a> )

<p><b>Contractor Oversight</b></p>	<p>A non-state entity must maintain oversight to ensure that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders. Examples of this oversight include making sure contractors adhere to the contractual obligations regarding the scope of work, invoices are accurate for the work performed, and services are delivered in a timely manner. <a href="#">(2 C.F.R § 200.318(b))</a></p>
<p><b>Conflicts of Interest</b></p>	<p>No employee, officer or agent may participate in the selection, award or administration of a contract supported by federal award if he or she has a real or apparent conflict of interest. The purpose of this prohibition is to ensure, at a minimum, that employees involved in the award and administration of contracts are free of undisclosed conflicts of interest. <a href="#">(2 C.F.R § 200.318(c)(1))</a></p>
<p><b>Organizational Conflicts of Interest</b></p>	<p>Organizational conflict of interest occurs when, because of relationships with a parent company, affiliate or subsidiary organization the non-state entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. <a href="#">(2 C.F.R § 200.318(c)(2))</a> Organizational conflicts of interest can be broadly summed up into the following categories:</p> <ul style="list-style-type: none"> <li>• <b>Impaired objectivity</b> arises where a contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the non-state entity due to other relationships, contract, or circumstances.</li> <li>• <b>Unequal access to information</b> occurs when a contractor has access to nonpublic information as part of its performance under another agreement with the non-state entity and where that information may provide the contractor with a competitive advantage.</li> <li>• <b>Biased ground rules</b> issues arise where a contractor has set the ground rules for a contract as part of its performance of work under another agreement with the non-state entity. An example of this is when a contractor prepares a statement of work or specifications for a non-state entity and later competes for that contracts.</li> </ul>
<p><b>Prohibition on Gifts from Contractors</b></p>	<p>The officers, employees and agents of non-state entities may neither solicit nor accept gifts or gratuities, favors or anything of monetary value from contractors or parties to subcontracts. This would include entertainment, hospitality, loans and forbearance. These gifts present a very clear fraud risk to the procurement and should be avoided. <a href="#">(2 C.F.R § 200.318(c)(1))</a></p>
<p><b>Cost or Price Analysis</b></p>	<p>Non-state entities must perform and document a cost or price analysis in connection with every procurement action above the simplified acquisition threshold, including contract modifications. There are many benefits to a non-state entity performing a cost or price analysis, including decreasing the likelihood of unreasonably high or low prices, contractor misrepresentations, and errors in pricing relative to scope. <a href="#">(2 C.F.R § 200.324)</a></p>

<p><b>Time-and-Materials Contracts</b></p>	<p>A T&amp;M contract provides no incentive for the contractor to control costs or find labor efficiencies, because the contractor’s profit increases as the labor hours increase. To prevent fraud or abuse, this contract type is only allowable for non-state entities after determining that no other contract type is suitable and if a contract ceiling price is included that the contractor exceeds at their own risk. Additionally, because this is a risky contract type, non-state entities must maintain a high degree of oversight. (<a href="#">2 C.F.R § 200.318(j)</a>)</p>
<p><b>Cost Plus a Percentage of Cost Contracts</b></p>	<p>Non-state entities are prohibited in the federal procurement rules from using a CPPC contract. This is a cost-reimbursement contract containing some element that commits the non-state entity to pay the contractor an amount (in the form of either profit or cost), undetermined at the time of the contract award, based on a percentage of future costs. (<a href="#">2 C.F.R § 200.324(d)</a>)</p>
<p><b>Contractor Drafting Solicitations or specifications</b></p>	<p>Contractors that develop solicitations or specifications are prohibited from competing for and receiving an award for the associated work. Such a contractor, whether intentionally or not, restricting competition in favor of itself by drafting the specifications in a way that will make their own bid the most advantageous. (<a href="#">2 C.F.R § 200.319(b)</a>)</p>

## Awarding Only to Responsible Contractors

A non-state entity must also ensure that contracts are awarded only to responsible contractors, who possess the ability to perform successfully under the terms and conditions of a proposed procurement. In accordance with ([2 C.F.R § 200.318\(h\)](#)), the non-state entity must consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources when making a responsibility determination. **NOTE:** Additional resources are provided within the [PDAT Field Manual](#).

- **Contractor Integrity** – A contractor must have a satisfactory record of integrity and business ethics. In analyzing a contractor’s integrity, the non-state entity may consider whether the contractor has:
  - Committed fraud or a criminal offense in connection with obtaining or attempting to obtain a contract;
  - Committed embezzlement, theft, forgery, bribery, falsification or destruction of records, or tax evasion;
  - Committed any other offense indicating lack of business integrity or business honesty that seriously and directly affects the present responsibility of the contractor; or
  - Been indicted for any of the above-mentioned offenses.
- **Public Policy** – A contractor must have complied with the public policies of the federal government as well as the public policies of appropriate states, local governments, or Indian tribal governments. The non-state entity should look at the contractor’s past and current compliance with matter such as:

- Equal opportunity and nondiscrimination laws; and
- Applicable prevailing wage laws, regulations, and executive orders.
- **Record of Past Performance** – A contractor must be able to demonstrate that it has sufficient resources (i.e., personnel, equipment), with adequate experience, to perform the required work. In addition, the contractor must provide that it has adequate prior experience carrying out similar work. Adequate past performance can be demonstrated by:
  - Having the necessary organization, accounting, and operational controls;
  - Adhering to schedules, including the administrative aspects of performance;
  - Exhibiting business-like concern for the interest of the customer; and
  - Meeting quality requirements.
- **Financial and Technical Resources** – Part of determining whether a contractor is responsible is to ensure the contractor has adequate financial and technical resources to perform the work under the contract. Contractors must be able to accurately demonstrate they have the financial and technical resources to complete the job.
- **Suspension and Debarment** – State and non-state entities must ensure the contractor is not suspended or debarred as required by [2 C.F.R. Part 180](#). Non-federal entities must not make any award or permit any award at any tier to parties listed on the government-wide exclusions in the System for Award Management (SAM), which can be found at [www.sam.gov/SAM](http://www.sam.gov/SAM). **NOTE:** All contracts above \$25,000 must also include the suspension and debarment clause.

## Report Fraud

FEMA award recipients and subrecipients play a critical role in helping to identify fraud and are highly encouraged to report suspicious activities at any time during the procurement process by contacting:

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| ▪ <b>The FEMA Fraud and Investigation Division</b><br><a href="mailto:FEMA-OCSO-Tipline@fema.dhs.gov">FEMA-OCSO-Tipline@fema.dhs.gov</a><br>1-866-223-0814 | ▪ <b>FEMA Suspension and Debarment</b><br><a href="mailto:femas&amp;d@fema.dhs.gov">femas&amp;d@fema.dhs.gov</a>        |
| ▪ <b>The DHS OIG Hotline</b><br><a href="https://hotline.oig.dhs.gov/#step-1">https://hotline.oig.dhs.gov/#step-1</a><br>1-800-323-8603                    | ▪ <b>U.S. Department Justice National Center for Disaster Fraud</b><br><a href="#">Complaint Form</a><br>1-866-223-0814 |

**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/grants/procurement](http://www.fema.gov/grants/procurement).