

Purchasing Under a FEMA Award: Socioeconomic Contracting

FEMA award recipients and subrecipients must take all necessary affirmative steps to assure minority businesses, women’s business enterprises, and labor surplus area (LSA) firms are used when possible. This fact sheet illustrates guidance for state and non-state entities to follow when taking the six affirmative steps for socioeconomic contracting as detailed at [2 C.F.R. § 200.321](#).

Affirmative Steps

The federal procurement rules require that all non-federal entities (NFE), which include state, local, Tribal, territorial and nonprofit entities, take six affirmative steps to ensure small and minority businesses, women’s business enterprises, and LSA firms (collectively referred to as, target firms) are used when possible. This is not a requirement for a set-aside or a quota for certain classes of business but rather is a requirement to take the six affirmative steps to ensure maximum participation by such target firms. NFEs must, at a minimum, take the following six affirmative steps in Table 1 below to assure that target firms are considered when they are potential sources.

Affirmative Steps	Action
Solicitation Lists	Include target firms on solicitation lists. NFEs can demonstrate compliance by providing documentation of solicitation lists where target firms are included.
Soliciting Target Firms	Ensure target firms are solicited whenever they are potential sources. NFEs can demonstrate compliance by keeping records of communication, email, etc., soliciting to target firms.
Dividing Requirements	Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by target firms. Ex: NFE divides solicitation for repair work to a school into three separate contracts to allow for target firms participation.
Delivery Schedules	Establish delivery schedules, where the requirement permits, which encourage participation by target firms. Ex: NFE includes delivery schedule in solicitation document where 2,000 bottles of water should be delivered every five days rather than the original request of 100,000 to allow for target firm participation.

Obtaining Assistance	Use the services and assistance, as appropriate, of such organizations as the Small Business Administration (SBA) and the Minority Business Development Agency (MBDA) of the U.S. Department of Commerce.
Prime Contractor Requirements	Require the prime contractor, if subcontracts are anticipated or used, to take the five previous affirmative steps, as well as including this requirement in the solicitation to ensure contractor compliance. FEMA provides a sample recommended clause to help NFE compliance with this rule. See recommended clause Affirmative Socioeconomic Steps in the Contract Provisions Guide.

Table 1

NOTE: It is important to document each affirmative step of socioeconomic contracting to ensure verification of compliance with this federal requirement. It is a requirement that must be taken prior to the awarding of a contract and cannot be done retroactively.

Target Firm Definitions

- **Small Business:** A business that is independently owned and operated and is qualified as a small business under SBA criteria and size standards at 13 C.F.R. Part 121.
- **Women’s Business Enterprise:** A business enterprise that is (a) at least 51% owned by one or more women, or in the case of a publicly owned business, at least 51% of the stock is owned by one or more women; and (b) whose management and daily operations are controlled by one or more women.
- **Minority Business:** A business that is (a) at least 51% owned by one or more minority group members, or in the case of a publicly owned business, at least 51% of the stock is owned by one or more minority group members; and (b) whose management and daily operations are controlled by one or more minority group members.
- **Labor Surplus Area:** A locality, defined by the U.S. Department of Labor’s Employment and Training Administration, that has a civilian average annual unemployment rate during the previous two calendar years of 20% or more above the average annual civil unemployment rate for all states during that same period. There is an “Exceptional Circumstance Consideration Provision” that allows a civil jurisdiction to ask for inclusion in the LSA list after it is published, due to events such as pandemics, natural disasters, and other adverse economic changes.
- **Labor Surplus Area (LSA) Firm:** A firm that together with its first-tier subcontractors will perform substantially in LSAs as identified by the U.S. Department of Labor in accordance with 20 C.F.R. § 654. Performance is substantially in LSAs if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50% of the contract price.

NOTE: The definitions noted above are not defined in the federal procurement under grant rules. FEMA will either accept the definitions as defined in state, local, Tribal, and/or territorial laws and regulations, or if not defined, use the definitions listed above. See Definitions of Target Firms in [Chapter 6: Socioeconomic Contracting](#) of the Procurement Disaster Assistance Team (PDAT) Field Manual for additional information.

Additional Considerations

States with Prepositioned Contracts Before November 12, 2020

If a state entity is using a prepositioned contract before November 12, 2020, in support of declarations and FEMA awards issued on or after November 12, 2020, FEMA will generally consider it infeasible for the state entity to comply with the six affirmative steps since the requirement was not applicable to state entities prior to the release of recent Office of Management and Budget (OMB) guidance. While consideration may be given to such prepositioned contract(s), state entities must review their policies and procedures to ensure compliance with the socioeconomic affirmative steps at 2 C.F.R. § 200.321. See Additional Considerations in [Chapter 6: Socioeconomic Contracting](#) in the PDAT Field Manual.

Noncompetitive Procurement

Where there is sufficient justification warranting a non-state entity to use procurement through noncompetitive proposals, FEMA will generally consider it infeasible for the non-state entity to take the six affirmative steps to assure that target firms are used in those circumstances. Similarly, FEMA will generally consider it infeasible for state entities to comply with the six affirmative steps when awarding a noncompetitive procurement ("sole-source"). See Additional Considerations in [Chapter 6: Socioeconomic Contracting](#) in the PDAT Field Manual.

Indian Self-Determination and Education Assistance Act

When complying with the [Indian Self-Determination and Education Assistance Act](#), if using the preference, Tribal governments do not need to take additional steps to comply with the socioeconomic affirmative steps found within the federal procurement under grant rules. See Additional Considerations in [Chapter 6: Socioeconomic Contracting](#) in the PDAT Field Manual.