

Purchasing Under a FEMA Award: OMB Revisions

FEMA declarations and awards issued on or after November 12, 2020 are subject to major revisions to the federal procurement rules found at 2 C.F.R. §§ 200.317 – 200.327 as well as a new provision at 2 C.F.R. § 200.216 effective August 13, 2020 for new, renewed, or extended procurements under all open declarations or awards.

OMB Revisions

The Office of Management and Budget (OMB) revised sections of *OMB Guidance for Grants and Agreements* found in *Title 2 of the Code of Federal Regulations* and these revisions are applicable to FEMA awards issued on or after November 12, 2020, unless specifically indicated otherwise. These revisions include changes to the federal procurement standards, which govern how FEMA award recipients and subrecipients must purchase under a FEMA award. This Fact Sheet is applicable to all FEMA award recipients and subrecipients purchasing under FEMA declarations or awards issued on or after November 12, 2020.

This Fact Sheet does not contain an exhaustive list of the revisions. FEMA award recipients and subrecipients are encouraged to review the [“Federal Register Notice 2020-17468”](#) and [“Reference Document for Federal Register Notice: 2020-17468”](#) for comprehensive information on the revisions to *OMB Guidance for Grants and Agreements*. FEMA will be issuing additional guidance on implementation in the coming months.

Summary of Applicable Federal Procurement

For a FEMA award recipient or subrecipient to determine which federal procurement rules to follow, it must first determine whether it is a state entity or a non-state entity. Below are the federal procurement rules applicable to state and non-state entities effective November 12, 2020:

- 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 socioeconomic affirmative steps (2 C.F.R. § 200.321), requirement for domestic preferences for procurement (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.



FEMA

In the case of noncompliance with the federal procurement rules, FEMA may apply a remedy, as appropriate, in accordance with its authorities found at 2 C.F.R. § 200.339 *Remedies for Noncompliance*.

New Rules and Major Revisions

Procurements by State Entities (2 C.F.R. § 200.317)

In addition to following their own procurement policies and procedures, the *Procurement of Recovered Materials* at 2 C.F.R. § 200.323, and the *Required Contract Clauses* at 2 C.F.R. § 200.327 as required in previous OMB Guidance, state entities must now comply with the *Socioeconomic Affirmative Steps* at 2 C.F.R. § 200.321 and the *Domestic Preferences for Procurements* at 2 C.F.R. § 200.322.

Thresholds for Micro-purchases and Small Purchases (2 C.F.R. § 200.320(a))

To align with legislation related to the federal procurement standards, the revisions increase the micro-purchase threshold from \$3,500 to \$10,000 and the simplified acquisition threshold from \$100,000 to \$250,000 for non-state entities (definitions for micro-purchase threshold and simplified acquisition threshold are now found at [2 C.F.R. § 200.1](#)). The revisions also allow non-state entities, which include local governments, tribes, institutions of higher education, and non-profit organizations to self-certify a micro-purchase threshold up to \$50,000 on an annual basis or request a micro-purchase threshold higher than \$50,000 consistent with the requirements at [2 C.F.R. 200.320\(a\)\(1\)\(ii\)-\(v\)](#). However, non-state entities must still ensure they follow any applicable state/tribal/local thresholds that may be lower than the federal micro-purchase or simplified acquisition threshold.

Domestic Preferences for Procurement (2 C.F.R. § 200.322)

As appropriate and to the greatest extent consistent with law, state and non-state entities should, to the greatest extent practicable under its FEMA award, provide a preference for the purchase of goods, products or materials produced in the United States (including but not limited to iron, aluminum, steel, cement and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. 2 C.F.R. § 200.322 also provides specific definitions for “Produced in the United States” and “manufactured products” that states should review.

Contract Provisions (2 C.F.R. § 200.327)

Two contract clauses were added to [Appendix II of 2 C.F.R. Part 200](#). In addition to the previous contract clauses contained in the 2014 version of Appendix II of 2 C.F.R. Part 200, FEMA award recipient and subrecipient contracts and purchase orders must now include contract provisions for *Domestic Preferences for Procurements* (2 C.F.R. § 200.322) and for the *Prohibition on Contracting for Covered Telecommunications or Services* (2 C.F.R. § 200.216).

All state and non-state entity purchase orders and other contracts must include applicable contract clauses as described in Appendix II of 2 C.F.R. Part 200. Some clauses are required depending on the dollar amount of the purchase, while others may be required depending on the goods or services being procured.

Prohibition on Contracting for Covered Telecommunications or Services (2 C.F.R. § 200.216) effective August 13, 2020 for new, extended, or renewed procurements under all open FEMA awards

Although not one of the regulations within the federal procurement standards, 2 C.F.R. § 200.216 prohibits state and non-state entities from obligating or expending loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or

essential component of any system, or as a critical technology as part of any system as identified in Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115-232 (2018) and 2 C.F.R. §§ 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. See [Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services- Interim Policy](#) for additional information.

DISCLAIMER: This Fact Sheet is intended to provide general information on procurement compliance and is not inclusive of every rule that FEMA award recipients and subrecipients may need to comply with. Additional information regarding the federal procurement rules can be found on the PDAT Website: www.fema.gov/grants/procurement.