

# Purchasing Under a FEMA Award: State Entities

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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 provides information on the federal procurement rules applicable to state entities when purchasing under FEMA awards and disaster declarations issued on or after November 12, 2020.

## 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 indicated otherwise. These revisions include changes to the federal procurement rules, which govern how FEMA award recipients and subrecipients must purchase under a FEMA award. 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*.

If purchasing under FEMA awards or disaster declarations issued between December 26, 2014 - November 11, 2020, please see [Code of Federal Regulations, Title 2, Grants and Agreements- January 2020](#) and the [PDAT Website](#) for information on applicable federal procurement rules.

## Applicable Federal Procurement Rules

For a FEMA award recipient or subrecipient to determine which federal procurement rules to follow, it must first determine if it is a state entity or a non-state entity.

- For purposes of the federal procurement requirements in 2 C.F.R. Part 200 (also known as the Uniform Administrative Requirements), a state means any state or territory of the United States and any agency or instrumentality of that state or territory, *exclusive of local governments, as defined in 2 C.F.R. § 200.1* (previously 2 C.F.R. § 200.90). Non-state entities are any other eligible FEMA award recipients and subrecipients that do not meet the definition of a state. Non-state entities, which include tribes, local governments, nonprofits, some institutions of higher education, and other non-federal entities, and for-profit



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organizations must follow the federal procurement rules at 2 C.F.R. §§ 200.318 – 200.327. (See 2 C.F.R. § 200.317 and [PDAT Field Manual](#))

State entities serving as pass-through entities should be familiar with the full set of procurement requirements at 2 C.F.R. §§ 200.317 – 200.327 for purposes of pass-through entity responsibilities for subaward management and oversight per 2 C.F.R. § 200.332.

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*.

## Rules for State Entities

When purchasing under a FEMA award, a state entity must follow its own procurement policies and procedures pursuant to 2 C.F.R. § 200.317 as well as all other applicable state and federal laws, executive orders, and implementing regulations. FEMA may review procurements purchased under a FEMA award to determine whether costs conform to the *Cost Principles* at 2 C.F.R. Part 200, Subpart E. Additional requirements for state entities are detailed below:

- **Socioeconomic affirmative steps (2 C.F.R. § 200.321)- (New rule)**

States must take all necessary affirmative steps to make sure small and minority businesses, women-owned enterprises, and labor surplus area firms are used when possible (see [PDAT Field Manual](#) for definitions). Affirmative steps must include at least the following six steps:

1. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
2. Assuring that small and minority businesses and women’s business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontracts are to be let, to take the same affirmative steps as listed in numbers 1 through 5.

- **Domestic preferences (2 C.F.R. § 200.322)- (New rule)**

As appropriate and to the extent consistent with law, states 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.

- **Procurement of recovered materials (2 C.F.R. § 200.323)**

State agencies, agencies of political subdivisions of a state, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act requirements:

- For purchases above \$10,000, procuring items designated in Environmental Protection Agency guidelines with the highest percentage of recovered materials practicable;
- Procuring solid waste management services in a way that maximizes energy and resource recovery; and
- Establishing an affirmative procurement program for procurement of recovered materials.

State agencies can find additional information on the PDAT website under [“Additional Resources”](#) (Procurement of Recovered Materials).

▪ **Contract provisions (2 C.F.R. § 200.327) – (New clauses)**

All 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. States can find a list of required clauses and sample language for some clauses in the PDAT Contract Provisions Template.

## Additional Rules that Impact State Procurements

In addition to the federal procurement rules found at 2 C.F.R. § 200.317, there are other important sections of 2 C.F.R. Part 200 that apply to states when considering purchasing under a FEMA award. Here are a few:

- States may not award contracts to contractors that are suspended or debarred as listed on SAM.gov (2 C.F.R. § 200.213);
- States must ensure all contract costs are necessary, allocable, reasonable, adequately documented, and otherwise allowable (2 C.F.R. § 200.403); and
- States are prohibited from contracting for covered telecommunications equipment or services (2 C.F.R. § 200.216) effective August 13, 2020. (See [Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services- Interim Policy](#)).

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