



Department of
Health

Healthcare Resiliency Program

Procurement and Uniform Guidance Requirements

Roadmap

Procurement



Introduction & General Concepts



Methods of Procurement



Contracting



Special Considerations

Uniform Guidance Requirements



Introduction & General Concepts

Procurement Under Federal Grants

Procurement is the action of obtaining goods and services from a third party (vendor).

Common examples:

- Construction services
- Professional services
- Equipment purchases



Implementing Regulations

1 Code of Federal Regulations (*CFR*)

2 2 CFR 200.317 – 200.327

3 Uniform administrative requirements

4 Cost Principles

Procurement Standards



**Must have
written
procurement and
conflict of
interest policies**



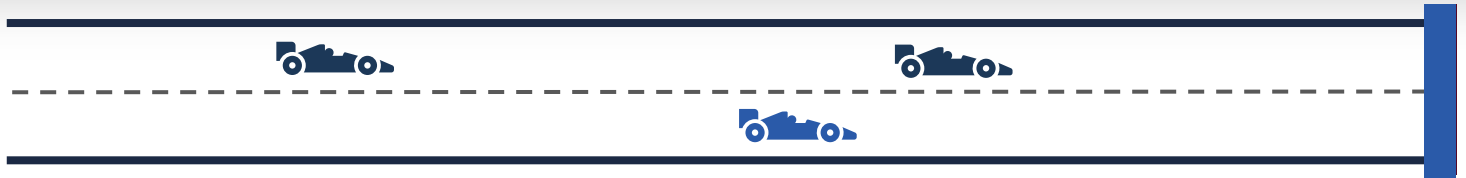
**Must comply
with local, state,
and federal law /
policies**



**When policies
conflict, most
stringent policy
controls**

Competition

- “Full and open competition”
- Developers of specs/plans specifically excluded from bidding on them
- Numerous situations restrictive of competition



Competition



Full and Open Competition



All opportunities should be publicly solicited, and all responsible sources that are interested in competing, are allowed to do so.



Restricting Competition



- Excessive qualifications
- Unnecessary experience
- Unnecessary bonding
- Improper qualifications
- Retainer contracts
- In-state, local preference
- Conflicts of interest
- Any “arbitrary action”



Methods of Procurement

Methods of Procurement



Micro-purchase



Small Purchase



Sealed Bids



Competitive Proposals



Noncompetitive Proposals / Sole Source

Procurement Thresholds

- Local government entities must follow the stricter of local/federal/state procurement regulations.
- The federal guidelines currently set the simplified acquisition threshold at \$250,000
- Tennessee state law gives wide deference to local governments in establishing procurement thresholds, but generally the simplified acquisition threshold is capped at \$50,000.
- In this example, the stricter of the two thresholds is TN state law

Thresholds in Tennessee

- Tennessee laws on procurement thresholds do not apply to for-profit or private non-profit entities.
- Local governments must know their thresholds, which in many cases will be stricter than those at the federal or state level and therefore must be followed.

	Micro-purchase	Small Purchase	Procurement in excess of the simplified acquisition threshold
Knoxville	Up to \$4,999.99	\$5,000 - \$24,999.99	\$25,000 and up
Memphis	Up to \$5,000.00	\$5,000.01 - \$49,999.99	\$50,000 and up
For-Profit / Private Nonprofit	Up to \$10,000	\$10,000.01 - \$250,000	Above \$250,000

Micro-Purchases

- No quotes needed
- Prices must still be reasonable
- Distribute purchases equitably when possible
- May not split purchases purposefully to remain under threshold

Small Purchases

- Minimum of three quotes required
- May not split a larger purchase merely to bring the cost under SAT
- Threshold may vary depending on local/state policies

Sealed Bids

- Typical for commodities and construction contracts.
- Bids publicly solicited.
- Contract awarded to lowest responsible bidder.
- Must be advertised 14+ days.
- Need two or more responsible bidders
- Justification needed if lowest bidder not selected

Competitive Proposals

- Typical for indeterminate scope / professional services
- Proposals evaluated and awarded to most qualified firm
- Evaluation process and criteria must be clear in RFP
- Must be advertised 30+ days
- Price must be an evaluation factor

Competitive Proposals – RFQ for A/E Services

Qualification-
based
procurement
allowed only for
A&E services

Price not used
as a selection
factor

Not
acceptable for
other services
provided by
A&E firm

Noncompetitive Procurements

Least-desirable
method of
procurement

Allowable uses:

Procurement Under Grants: Under Exigent or Emergency Circumstances

Release Date: March 20, 2020

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. All FEMA grant programs are subject to the Federal procurement standards found at 2 C.F.R. §§ 200.317 – 200.326. Recognizing that FEMA's recipients and subrecipients may face exigencies or emergencies when carrying out a FEMA award, this Fact Sheet provides key information to consider when utilizing contracted resources under exigent or emergency circumstances.

[View an online tutorial](#) on how to properly contract during emergency or exigent circumstances when using federal funds.

What Rules Apply to State Entities?

States are required to follow their own procurement procedures as well as the Federal requirements for procurement of recovered materials and inclusion of



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Micro
purchases

Sole-source
purchases

Public
exigency or
emergency

Authorization
given by
awarding
agency

Inadequate
competition
after public
solicitation



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Page printed at fema.gov/news-release/20200514/procurement-under-grants-under-exigent-or-emergency-circumstances

04/05/2022

Emergency & Exigency Procurements



EMERGENCY

An emergency is a threat to health, life or safety.



EXIGENCY

An exigency is NOT an emergency but requires immediate actions.

These methods should not be used for ARP funds

Noncompetitive Procurements - Documenting

1. Identify which of the circumstances justify a noncompetitive procurement.
2. Describe the product or service being procured, including the expected dollar amount.
3. Explain why the non-competitive procurement is necessary.
4. Document the impact that a competitive procurement would have on the progress of the scope of work.
5. Document the specific steps taken to determine this was the appropriate method of procurement.

Minority/Women Owned Businesses (M/WBE)

- ✓ Extremely common OIG finding
- ✓ “Affirmative steps” must be demonstrated
- ✓ Dedicated set-asides or quotas not allowed
- ✓ Not an excuse to subvert open procurement process

Required Affirmative Steps for M/WBE

- 1 Placement on solicitation lists
- 2 Assurance that M/WBE firms are solicited
- 3 Dividing requirements when feasible
- 4 Establishing delivery schedules conducive to participation
- 5 Using SBA/MBDA
- 6 Requiring prime contractor to take same steps when subcontracting

Cost/Price Analysis

- Required for all procurement actions over simplified acquisition threshold
- Includes change orders and contract modifications
- Must make independent estimate before receiving bids or proposals



Cost Analysis



Cost Analysis

Review and evaluation of the separate cost elements (such as labor hours, overhead, materials, etc.).
RFP/RFQ



Price Analysis

Examination and evaluation of a proposed price without evaluating its separate cost elements and proposed profit (*Sealed Bids*).



Contracting

Contracting



Subrecipients must limit acquisitions to its expected needs to carry out the scope of work under the federal award.



Pre-positioned or pre-awarded contracts are eligible as long as contracts are awarded in accordance with the Federal regulations.

Responsible Contractors

Subrecipients must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the agreement.



Contractors that are debarred or suspended must be rejected (*SAM.gov*).

Contract Types



Fixed Price

Price remains regardless of contractor's actual costs of performing scope of work.

Cost- Reimbursement

- Provide for the reimbursement of the contractor for its reasonable, allocable, actual, and allowable costs, with an agreed-upon fee.
- E.g., Cost-plus-award-fee & cost-plus-incentive-fee.



Time and Materials

Actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Time-and-Material Contracts



No other contract type is suitable



Contract contains not-to-exceed ceiling

Ceiling must not be so high as to render it meaningless

Cost Plus Percentage of Cost Contracts



The use of cost-plus percentage of cost and cost plus a percentage of construction cost methods of contracting are prohibited.



Addition of ceiling price does not make these contracts acceptable

Cost Plus – Four-Part Analysis

- Payment is made at a pre-determined percentage rate
- The pre-determined percentage rate is applied to actual performance costs
- The contractor's entitlement is uncertain at the time of contracting; and
- The contractor's entitlement increases with increased performance costs

Bonding Requirements



Applicable to
contracts over

**\$250K/
SAT**



Bid
guarantee

5%
of bid price



Performance
bond

100%
of contract price



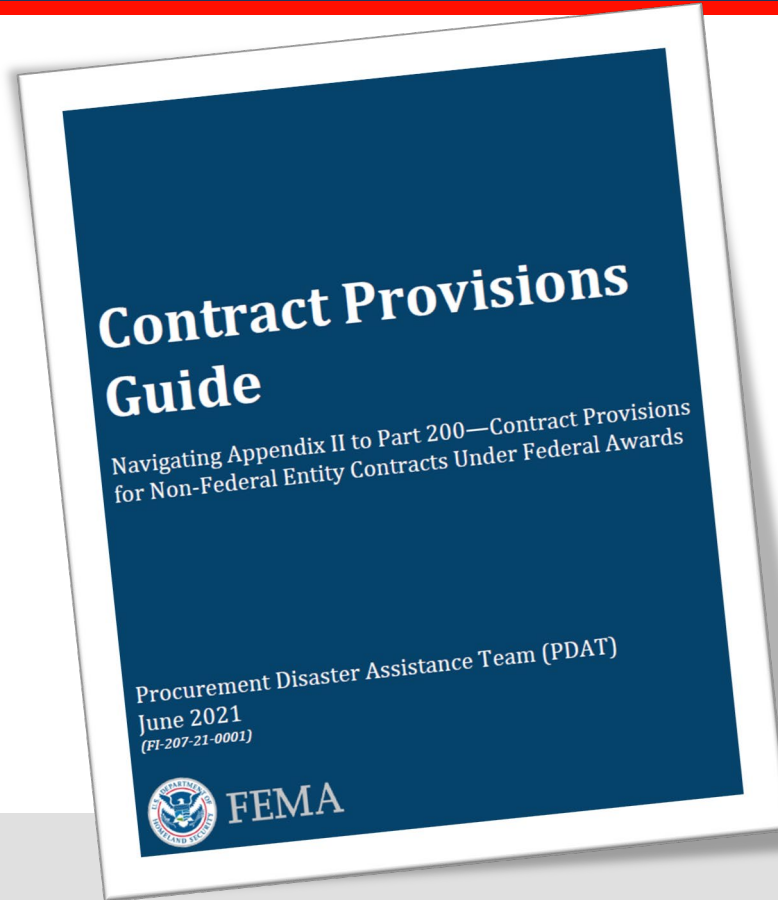
Payment
bond

100%
of the contract
price

Required Contract Provisions

All contracts must contain the applicable clauses described in Appendix II to the Uniform Rules.

FEMA offers a “Contract Provisions Template.”



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Special Considerations

Contract Changes / Modifications



**Must be within
scope of original
contract**



**“Cardinal”
changes:**

Major deviation from
original purpose

Extensive revision of
work, costs, or time



Test

Within scope of
contract?

Within scope of
competition?

Purchasing Cooperatives / Buy Boards



Purchasing Cooperatives/Buy boards do not relieve the Applicants of procurement requirements.



Allowed with caution.



Difficult to support cooperative/buy board followed formal procurement standards.



Acceptable in complying with micro and small purchase procurements.

Prequalified Lists

- Very tricky to comply
- Lists must be current and thorough
- Potential bidders must still be able to qualify
- Public solicitation still required





Uniform Guidance Requirements

Documentation

- Retain any and all documentation related to the project
- The documentation must speak for itself in event of audit
- If it's not documented, it didn't happen!
- Terms & Conditions: Keep for five years after all funds have been expended or are returned to Treasury, whichever is later.

Property Standards – Equipment

- Terms and Conditions require prior approval from TDH for equipment purchases
- “Equipment” is any article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition cost which equals or exceeds five thousand dollars (\$5,000)
- Subject to UG requirements on acquisition, title, use, asset management, and disposition

Property Standards – Equipment Title / Use

- Title
 - Conditional title
 - Vests with the entity that purchased the equipment
 - Title must not be encumbered
- Use
 - Must be used for the authorized purpose of the project or until no longer needed for project
 - When no longer needed for the project, the equipment may be used in other activities supported by federal grant funds, with priority given to ARP-funded activities

Property Standards – Equipment Management

- Asset Management
 - Maintain property records including description, serial number, source of funding, who holds title, acquisition date, cost of property, percentage of federal participation, location, use, and condition of property, and any ultimate disposition data including the date of disposal and sale price of the property.
 - Take physical inventory and reconcile against property records at least once every two years
 - Develop control system with safeguards to prevent loss, damage, or theft
 - Establish adequate maintenance procedures
 - Provide equivalent insurance coverage as provided to other equipment owned by the entity
 - If selling, follow proper sales procedures to ensure the highest possible return

Property Standards – Equipment Disposition

- Disposition
 - Triggered when equipment no longer needed for original project or other federally supported activities
 - Items with FMV of \$5,000 or less may be retained, sold, or disposed of with no further responsibility
 - Items with FMV in excess of \$5,000 may be retained or sold
 - Sale: Entities must repay proceeds from sale multiplied by Treasury's percentage in the cost of the original purchase, less \$500 or ten percent of the proceeds, whichever is less, for selling and handling expenses
 - Retain: Entities must repay the current market value multiplied by Treasury's percentage in the cost of the original purchase
 - If acquiring replacement equipment, entities may use the equipment to be replaced as a trade-in or sell the equipment and use the proceeds to offset the cost of the replacement property.

Program Income

- Income earned that is directly generated by a supported activity or earned as a result of the grant during the period of performance.
- Includes income from fees for services performed and the use of rental or real or personal property acquired with grant funds.
- Project outcomes will help determine and measure program income
- Any program income earned through December 31, 2026, must be tracked and reported.

Financial Mgmt, Internal Controls, Single Audit

- Financial Management System
 - Maintaining adequate records, financial statements, and source documentation to support expenses and compliance.
- Internal Controls
 - Provide reasonable assurance the grant is managed in compliance with Terms and Conditions
- Single Audit Requirement
 - Required if \$750k or more in federal funds is spent in one fiscal year
 - Not applicable to for-profit organizations

Helpful Resources

- **FEMA Procurement Under Grants Training**

<https://www.fema.gov/grants/procurement/training>

- **FEMA Reasonable Cost Evaluation Job Aid**

https://www.fema.gov/sites/default/files/2020-07/fema_pa_reasonable-cost-evaluation-job-aid.pdf

- **PDAT Field Manual**

https://www.fema.gov/sites/default/files/documents/fema_PDAT-field-manual_102021.pdf



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Helpful Resources

- **Contract Provisions Template**

https://www.fema.gov/media-library-data/1569959119092-92358d63e00d17639d5db4de015184c9/PDAT_ContractProvisionsTemplate_9-30-19.pdf

- **Top 10 Procurement Mistakes**

https://www.fema.gov/sites/default/files/2020-08/fema_top-10-mistakes_flyer.pdf

- **Buying Right**

<https://www.hudexchange.info/resource/5614/buying-right-cdbg-dr-and-procurement-a-guide-to-recovery/>



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Helpful Resources

- **Sample Procurement Policy**

https://www.sog.unc.edu/sites/default/files/general_media/Sample%20UG%20Procurement%20Policy_2.docx

- **Sample Conflict of Interest Policy**

https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/Sample%20UG%20Conflicts%20and%20Gifts%20Policy_0.docx

- **Tennessee Diversity Business Certified Directory**

<https://tn.diversitysoftware.com/FrontEnd/searchcertifieddirectory.asp?TN=tn>



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THANK YOU

Additional questions?

- For the HRP-PTE program, email HRP.Practice.Transformation@tn.gov
- For the HRP-CI program, mail HRP.Capital.Improvements@tn.gov