Taking a Seat at the Table: FEMA Procurement Knowledge for Your Recovery Team
Why is Purchasing needed at the disaster recovery table?
Without Purchasing’s involvement in the recovery conversation, costly mistakes are being made that can jeopardize FEMA funding.
Why FEMA? Weigh the Options.
Why FEMA?

What you could be missing.

FEMA PA Grant
1998-2018

$91.8B

53%

42%

5%
FEMA Public Assistance Grant

Overview
Foundational Grant Principles

- Reimburse
- Supplement
- Cost share
- Last source
PA Grant Purchases (‘98-'18)

- Administrative: 53%
- Emergency Work: 42%
- Permanent Work: 5%
FEMA PA Purchases

Typically, over 80% of recovery funding will be used to reimburse goods or services that had to be purchased according to federal procurement rules.
Different Procurement Rules for State vs. Non-State Entities

**State Entities**
- Follow the same policies and procedures used for procurement for non-federal funds
- Comply with 2 C.F.R. § 200.322 Procurement of Recovered Materials
- Ensure that every purchase order or other contract includes any clauses required by 2 C.F.R. § 200.326

**Non-State Entities**
- Use their own documented procurement procedures
- Apply the most restrictive rules of Federal vs. State vs. Local
FEMA Procurement and Contracting Rules
Current Federal Thresholds*

Micro
Under $10K

Small
$10K - 250K

Large
$250K and over

*Follow requirements at state or local threshold, if more restrictive than the federal requirements.
With over 80% of FEMA reimbursement dollars being related to purchased goods or services, there is a lot of risk associated with procurement missteps.
Emergency and Exigent (EE) Purchases

- Written justification for use of EE non-competitive procurement exception
- Include applicable federal and FEMA contract clauses
- Cost/Price Analysis for all purchases over the Simplified Acquisition Threshold
- Documented Suspension and Debarment Check
- Immediate begin planning for transition to normal procurement procedures

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Fact Sheet

Public Assistance: Procurement Conducted Under Exigent or Emergency Circumstances

The Federal Emergency Management Agency (FEMA)’s Public Assistance (PA) Program provides supplemental assistance to states, territories, tribes, and local governmental entities, as well as certain private non-profit organizations (applicants) following major disasters and emergencies declared by the President. FEMA’s Public Assistance Program and Policy Guide: [https://www.fema.gov/public-assistance-order-and-policy] provides comprehensive information regarding assistance that FEMA can make available, and the requirements that applicants must follow in order to receive the assistance.

This Fact Sheet provides key information that applicants should consider when utilizing contracted resources under exigent or emergency circumstances.

Federal regulations (2 C.F.R. Part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements For Federal Awards) establish requirements for non-state applicants concerning the exigency or emergency exceptions that permit the use of noncompetitive procurements, frequently referred to as ‘sole-source contracting.’ These exceptions and associated procurement requirements are discussed further below. The information presented within applies to all categories of work under the PA Program. Exigency work funded under Category A (Direct Assistance) and Category B (Emergency Work) is most often associated with a public exigency or emergency. However, there may be instances where exigent or emergency circumstances necessitate the use of noncompetitive procurements for permanent work (Category C-G). The answers to the frequently asked questions below provide additional guidance on the acceptable use of noncompetitive procurements under exigent or emergency circumstances, which is described in regulations at 2 C.F.R. § 200.318(d)(2).

It is essential that all applicants understand that both FEMA and the U.S. Department of Homeland Security’s Office of Inspector General (OIG) closely review applicant procurement actions and contract selections, with a particular emphasis on noncompetitive procurement actions, to ensure compliance with Federal requirements. Failure to follow federal contracting and procurement requirements may preclude applicants from receipt of assistance, reimbursement for otherwise eligible disaster costs.

**What is the exigency or emergency exception?**

Non-state applicants must follow the procurement requirements found at 2 C.F.R. §§ 200.317 – 200.326. However, Federal regulations allow for noncompetitive procurements under certain circumstances, including when a non-state applicant determines that immediate action is required to address the public exigency or emergency cannot be delayed by a competitive solicitation. This represents an exception to requirements for full and open competition. FEMA approval is not required for use of noncompetitive procurements under the exigency or exigency exception, however, the use of noncompetitive procurements does not relieve non-state applicants from complying with other procurement requirements or from ensuring that costs are reasonable.

FEMA’s mission is to support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards.

[January 15, 2010]
Full and Open Competition

- Cast a wide net.
- No unreasonable requirements
- No geographical preference (exception for A&E services)
- Written standards of conduct covering conflicts of interest
- Don’t allow contractors that develop or draft specifications to then compete for the subsequent contract award.
Take Affirmative Steps – Socioeconomic Contracting
Independent Estimate
Before receiving proposals

Cost/Price Analysis
Above the simplified acquisition threshold

Documented Justification
Fair and reasonable pricing
Check for Suspension and Debarment

OR

Third-party Service
Beware of Prohibited Contract Structures

<table>
<thead>
<tr>
<th>Cost plus percentage of cost</th>
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<tbody>
<tr>
<td>Cost plus percentage of construction cost</td>
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<td>Cost plus incentive fee</td>
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<tr>
<td>Cost plus award fee</td>
<td>Yes</td>
</tr>
<tr>
<td>Cost plus fixed fee</td>
<td>Yes</td>
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</tbody>
</table>
Time and Materials Contracts – Special Considerations

- Document the reason no other type of contract was available to achieve the needed work.
- Use for a limited time.
- Include a ceiling price that the contractor exceeds at their own risk.
- Document oversight of the contractor and management of contract costs.
Include all required and recommended FEMA contract clauses.
Document, document, and then document some more.
The Uniform Rules, to foster greater economy and efficiency, encourage a NFE to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. 2 C.F.R. § 200.318(e).
This Federal Emergency Management Agency (FEMA) Public Assistance (PA) Program provides supplemental assistance to eligible entities — federal, state, local government, and certain non-profit organizations — impacted by major disasters. The program is designed to ensure that eligible assistance is provided to eligible applicants, in order to restore the pre-disaster base of public and private functions.

Applicants

Applicants are any entity eligible to receive assistance under the program. Entities must meet eligibility criteria set forth in the program guidelines and other applicable federal regulations.

Procedures

FEMA is committed to providing streamlined, transparent and efficient assistance to eligible applicants. This includes ensuring that all applicants have full access to all program-related information, as well as providing clear guidance on how to apply for assistance. To ensure this commitment, FEMA has established a comprehensive application process that includes:

- **Applicants are encouraged to review the program guidelines and other applicable federal regulations before applying.**
- **Applicants must provide clear and complete documentation to support their applications.**
- **Applicants must demonstrate compliance with all relevant federal requirements.**

Applicants should carefully review the program guidelines and other applicable federal regulations before applying. FEMA is committed to providing support and guidance to applicants during the application process. Applicants can contact FEMA’s customer service center for assistance.

**Proceed with caution.**

**Provide documentation.**

**Explain compliance with FEMA requirements.**
COVID-19
Special Considerations
FACT SHEET

Coronavirus (COVID-19) Pandemic: Eligible Emergency Protective Measures

Consistent with the President’s national emergency declaration for the coronavirus (COVID-19) pandemic on March 13, 2020, FEMA urges officials to, without delay, take appropriate actions that are necessary to protect public health and safety pursuant to public health guidance and conditions and capabilities in their jurisdictions. FEMA provides the following guidance on the types of emergency protective measures that may be eligible under FEMA’s Public Assistance Program in accordance with the COVID-19 Emergency Declaration in order to ensure that resource constraints do not inhibit efforts to respond to this unprecedented disaster.

FEMA Public Assistance Program

In accordance with section 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121–5207 (the “Stafford Act”), eligible emergency protective measures taken to respond to the COVID-19 emergency as directed or guidance of public health officials may be reimbursed under Category B of FEMA’s Public Assistance program. FEMA will not duplicate assistance provided by the U.S. Department of Health and Human Services (HHS) to include the Centers for Disease Control and Prevention (CDC), or other federal agencies.

State, territorial, tribal, and local government entities and certain private non-profit organizations are eligible to apply for Public Assistance. FEMA assistance will be provided at a 75 percent federal cost share. This assistance will require execution of a FEMA-tribal/Tribal/Tribal Agreement, as appropriate, and execution of an applicable emergency plan. Local governments and other eligible PR applicants will apply through their respective state, tribal or territorial jurisdictions.

Eligible Assistance

Under the COVID-19 Emergency Declaration described above, FEMA may provide assistance for emergency protective measures including, but not limited to, the following, if not funded by HHS/CDC or other federal agencies. While some activities listed may be eligible for funding through HHS/CDC, final reimbursement determinations will be coordinated by HHS and FEMA. FEMA will not duplicate any assistance provided by HHS/CDC.

- Management, control and reduction of immediate threats to public health and safety:
  - Emergency Operation Center costs

March 19, 2020 | 1 of 3
Eligible Cost Categories – CAT B

- Supplies
- Services
- Consumables
- Temporary medical Facilities
- Congregate Sheltering
- Transportation
- Health and safety management
- Security
- Search and Rescue
- Post-mortem care
Potential COVID-19 Recovery Avenues

Goal = Avoid Duplication of Benefits

FEMA PA Grant
Research Grants

CARES Act

Other
State/Local Programs
Determining Cost Reasonableness in a COVID-19 Market

Attorney – Advisor from FEMA Office of Chief Counsel has issued the following guidance (not an official response):

“We understand that prices are fluctuating right now. I think it’s important for applicants to do their market research, and do a price or cost analysis as required by 2 C.F.R. § 200.323(a). If applicants do their best and properly document all the steps they took to ensure that the price was reasonable based off of today’s conditions, there shouldn’t be any future issues.”
Determining Cost Reasonableness in a COVID-19 Market

Documentation of the current conditions is going to be important not only for FEMA approval now, but even more so for future OIG audits.

Documents the necessity of purchasing the supplies or equipment:

- **Potential outcome of waiting for more favorable market conditions**
- **If the supplies or equipment are only available through a single supplier, document what steps you took to try to obtain from multiple suppliers.**
- **If pricing is in excess of what it would be under normal conditions, document what you did to obtain the most cost effective price in the current market.**
In Conclusion
Procurement Professionals:

• You are needed.
• You are essential.
• Your presence is required at the disaster recovery table.

Take your seat!
Questions?

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