Schuyler Community Schools
ALL STAFF Zoom Meeting: March 27th Update
Friday, March 27, 2020 8:00 AM
Schuyler Community Schools Board Room
120 West 20th Street
Schuyler, NE 68661

I. Discussion Items

Prepared by: Christina Bywater, Secretary to the Board

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 at the direction 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-State/Tribal/Territory Agreement, as appropriate, and execution of an applicable emergency plan. Local governments and other eligible PA 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 the HHS/CDC or other federal agency. *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

FEMA

- Training specific to the declared event
- Disinfection of eligible public facilities
- Technical assistance to state, tribal, territorial or local governments on emergency management and control of immediate threats to public health and safety

- Emergency medical care:
  - Non-deferrable medical treatment of infected persons in a shelter or temporary medical facility
  - Related medical facility services and supplies
  - Temporary medical facilities and/or enhanced medical/hospital capacity (for treatment when existing facilities are reasonably forecasted to become overloaded in the near term and cannot accommodate the patient load or to quarantine potentially infected persons)
  - Use of specialized medical equipment
  - Medical waste disposal
  - Emergency medical transport
- Medical sheltering (e.g. when existing facilities are reasonably forecasted to become overloaded in the near future and cannot accommodate needs)
  - All sheltering must be conducted in accordance with standards and/or guidance approved by HHS/CDC and must be implemented in a manner that incorporates social distancing measures
  - Non-congregate medical sheltering is subject to prior approval by FEMA and is limited to that which is reasonable and necessary to address the public health needs of the event, is pursuant to the direction of appropriate public health officials and does not extend beyond the duration of the Public Health Emergency
- Household pet sheltering and containment actions related to household pets in accordance with CDC guidelines
- Purchase and distribution of food, water, ice, medicine, and other consumable supplies, to include personal protective equipment and hazardous material suits
- Movement of supplies and persons
- Security and law enforcement
- Communications of general health and safety information to the public
- Search and rescue to locate and recover members of the population requiring assistance
- Reimbursement for state, tribe, territory and/or local government force account overtime costs

More Information

Further information about eligible emergency protective measures can be found in the Public Assistance Program and Policy Guide, FP 104-009-2 (April 2018).

For more information, visit the following federal government websites:

- Coronavirus (COVID-19) (CDC)
- Centers for Medicare & Medicaid Services

President Donald J. Trump Directs FEMA Support Under Emergency Declaration for COVID-19

Release date:
March 13, 2020
Release Number: HQ-20-017

The federal government continues to take aggressive and proactive steps to address the COVID-19 threat as the health and safety of the American people remain a top priority.

Today, President Trump declared a nationwide emergency pursuant to Sec. 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act"). This increases federal support to the Department of Health and Human Services (HHS) in its role as the lead federal agency for the ongoing COVID-19 pandemic response. As a result of the President's decisive, unprecedented action, FEMA is directed to assist state, local, tribal, territorial governments and other eligible entities with the health and safety actions they take on behalf of the American public. Today's declaration does not make direct financial assistance available to individuals.

The emergency declaration does not change measures authorized under other federal statutes and HHS remains the lead federal agency directing the federal response to COVID-19. FEMA actions will be in support of HHS and in coordination with state, tribal and territorial governments. Eligible emergency protective measures taken at the direction or guidance of public health officials in response to this emergency, and not supported by the authorities of another federal agency, will be reimbursed strictly under the FEMA Public Assistance program. FEMA assistance will be provided at a 75 percent Federal cost share. Reimbursable activities typically include emergency protective measures such as the activation of State Emergency Operations Centers, National Guard costs, law enforcement and other measures necessary to protect public health and safety.

For more information, visit the COVID-19 Emergency Declaration Fact Sheet.

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

Release date: March 19, 2020
Release Number: FACT SHEET

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Management, control and reduction of immediate threats to public health and safety
- Emergency Operation Center costs
- Training specific to the declared event

- Disinfection of eligible public facilities
- Technical assistance to state, tribal, territorial or local governments on emergency management and control of immediate threats to public health and safety

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Further information about eligible emergency protective measures can be found in the Public Assistance Program and Policy Guide, FP 104-009-2 (April 2018).

Last Updated:
March 19, 2020 - 15:09

U.S. Department of Homeland Security
Washington, DC 20472

FEMA

March 17, 2020

MEMORANDUM FOR: All States, Territories, Tribal Governments, Local Governments, and All Other Non-Federal Entities Receiving FEMA Financial Assistance

FROM: David Bibo
Acting Associate Administrator
Office of Response and Recovery

Bridget E. Bean
Assistant Administrator
Grant Programs Directorate

SUBJECT: Procurement Under Grants Conducted Under Emergency or Exigent Circumstances for COVID-19

Subsequent to the President's March 13, 2020 Nationwide Emergency Declaration for Coronavirus Disease 2019 (COVID-19), the Department of Homeland Security's Federal Emergency Management Agency (FEMA) is issuing the attached Fact Sheet addressing procurements made during periods of exigent or emergency circumstances. FEMA recognizes that noncompetitive procurements may be necessary to save lives, to protect property and public health, and to ensure public safety, as well as to lessen or avert the threat of a catastrophe. The attached Fact Sheet provides answers and guidance surrounding the need for such measures.

Current Federal procurement standards (found at 2 C.F.R. § 200.320(f)(2)) allow non-state entities to noncompetitively procure contracts (i.e., sole-sourcing) under certain emergency or exigent circumstances. FEMA defines an emergency or exigent circumstances as unexpected and unusually dangerous situations requiring immediate action or an urgent need for assistance or relief. Emergencies typically involve a threat to life, public health or safety, improved property, or some other form of dangerous situation. Exigencies, on the other hand, typically involve an urgent need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise. Under both an emergency and exigency, using a competitive procurement process would prevent a non-state entity from taking immediate action required to address the situation. However, use of the emergency/exigency exception is only permissible during the actual emergency or exigent circumstances.

The President's unprecedented Nationwide Emergency Declaration, and the Secretary of Health and Human Services' (HHS) declaration of a Public Health Emergency for COVID-19 establish that exigent and emergency circumstances currently exist.

For the duration of the Public Health Emergency, which began January 27, 2020 as determined by HHS, local governments, tribal governments, nonprofits, and other non-state entities may proceed with new and existing noncompetitively procured contracts in order to protect property and public health and safety, or to lessen or avert the threats created by emergency situations for 1) Emergency protective measures under FEMA's Public Assistance Program and 2) Use of FEMA non-disaster grant funds by non-state recipients and sub-recipients to respond to or address COVID-19.

Attachment:

(1) Fact Sheet: *Procurement Under Grants Conducted Under Exigent or Emergency Circumstances*

FEMA

Fact Sheet

Procurement Under Grants Conducted Under Exigent or Emergency Circumstances

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.

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 required contract provisions per 2 C.F.R. §§ 200.317, 200.322, and 200.326.

For purposes of the Federal procurement requirements, states are defined as the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Northern Mariana Islands, and any agency or instrumentality thereof except for local governments. Tribal governments are not considered to be states when applying Federal procurement standards required by 2 C.F.R. Part 200.

What Rules Apply to Non-State Entities?
For all other types of entities, referred to as "non-state entities" in this Fact Sheet, Federal regulations (2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) establish requirements for the exigency or emergency exception that permits the use of noncompetitive procurements, frequently referred to as "sole-source contracting." This exception and associated procurement requirements are discussed further below. In general, it will be fact-specific and entity-specific as to when exigent or emergency circumstances necessitate the use of noncompetitive procurements. The answers to the frequently asked questions below provide additional guidance on the acceptable use of noncompetitive proposals under exigent or emergency circumstances, which is described in regulation at 2 C.F.R. § 200.320(f)(2).

It is essential that all non-state entities understand that both FEMA and the U.S. Department of Homeland Security's Office of Inspector General (OIG) closely review procurement actions and contract selections, with a particular emphasis on noncompetitive procurement actions, to evaluate compliance with Federal requirements. ***Failure to follow Federal contracting and procurement requirements puts non-state entities at risk of not receiving reimbursement or not being able to use FEMA grant funds for otherwise eligible costs.***

What is the exigency or emergency exception?
Non-state entities 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 entity determines that immediate actions 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 emergency or exigency exception; however, the non-state entity must document its justification for using noncompetitive procurements and must still comply with other procurement requirements and ensure that costs are reasonable.

When referring to procurement activity, FEMA defines both exigency and emergency as situations that demand immediate aid or action. The difference between the two is that:

- In the case of an ***exigency***, there is a need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise, to the non-state entity, and use of competitive procurement proposals would prevent the urgent action required to address the situation. Thus, a noncompetitive procurement may be appropriate.
- In the case of an ***emergency***, a threat to life, public health or safety, or improved property requires immediate action to alleviate the threat.

While emergency conditions generally are short-lived, exigent circumstances can exist for a period of weeks or months.

> **Exigency Example:** A tornado impacts a city in June and causes widespread and catastrophic damage, including damage to a city school. The city wants to repair the school and have it ready for use by the beginning of the school year in September. The city estimates, based on past experience, that awarding a contract using a sealed bidding process would require at least 90 days, and the city's engineer estimates that the repair work would last another 60 days. This would extend the project beyond the beginning of the school year. Rather than conducting a sealed bidding process, the city—in compliance with state and local law—wants to sole source with a contractor it has contracted with previously. The city can demonstrate that this constitutes an "exigent circumstance" because use of a sealed bidding process would cause an unacceptable delay and thus procurement by noncompetitive methods was necessary based on the particular situation.
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> **Emergency Example #1 (Disaster Grants):** Severe weather impacts a city and causes widespread and catastrophic damage, including loss of life, widespread flooding, loss of power, damage to public and private structures, and millions of cubic yards of debris across the city, leaving almost the entire jurisdiction inaccessible. The city needs to begin debris removal activities immediately to restore access to the community, support search and rescue operations, power restoration, and address health and safety concerns. Under these circumstances, the city may find it necessary to award noncompetitive contracts to address threats to life, property, and public health.
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> **Emergency Example #2 (Non-Disaster Grants):** The weather in a city has been below freezing for the past 2 weeks, causing a pipe in the city's emergency operations center to burst and flood the first floor. This flood destroyed half of the city's radios that its emergency workers use to communicate with police and fire personnel. The city documented and demonstrated that it needed to replace these radios right away to avert an immediate threat to life, safety, or property as the city needed a full supply of radios in order to respond to emergencies. Under these circumstances, the city may find it necessary to award noncompetitive contracts to address threats to life, property, and public health.

When does the exigency or emergency exception apply and for how long?

Use of the public exigency or emergency exception *is only permissible during the actual exigent or emergency circumstances*. Exigency or emergency circumstances will vary for each incident, making it difficult to determine in advance or assign a particular time frame when noncompetitive procurements may be warranted. Exigent or emergency circumstances may exist for two days, two weeks, two months, or even longer in some cases. Non-state entities must ensure that work performed under the noncompetitively procured contracts is specifically related to the exigent or emergency circumstance in

effect at the time of procurement. Importantly, because the exception to competitive procurement is available only while the exigent or emergency circumstances exist, non-state entities should, upon awarding a noncompetitive contract, immediately begin the process of competitively procuring similar goods and services in order to transition to the competitively procured contracts as soon as the exigent or emergency circumstances cease to exist.

FEMA may review a non-state entity's justification that exigent or emergency circumstances warrant an exception to competitive procurement. If the agency determines that exigent or emergency circumstances did not exist or did not preclude a non-state entity from adhering to competitive procurement requirements, FEMA may disallow all or part of the non-state entity's cost related to the contract or take other actions permitted by statute and regulation. (*See* 2 C.F.R. § 200.338).

What documentation is required to support the use of the exigency or emergency exception?
While FEMA approval is not required for a non-state entity to use noncompetitive procurement proposals under the emergency or exigency exception, non-state entities must document and provide justification for the use of the exigent or emergency exception. A list of elements that non-state entities may wish to include as part of their written justifications can be found at the end of this Fact Sheet. The justification must be included in the non-state entity's records for each FEMA award, subaward, or project.

Do any Federal procurement requirements apply if a non-state entity is sole-sourcing a contract under exigent or emergency circumstances?
Yes, non-state entities must comply with the following requirements even when exigent or emergency circumstances exist:

- Contracts must include the required contract clauses (2 C.F.R. § 200.326 & Appendix II) (also applicable to states).
- Contracts exceeding the Federal simplified acquisition threshold must include the Federal bonding requirements if the contract is for construction or facility improvement (2 C.F.R. § 200.325).
- Contracts must be awarded to a responsible contractor (2 C.F.R. § 200.318(h)).
- The non-state entity must complete a cost or price analysis to determine that the cost or price of the contract is fair and reasonable if the contract exceeds or is expected to exceed the Federal simplified acquisition threshold (2 C.F.R. § 200.323(a) and (b)).
- The use of cost-plus-percentage-of-cost contracting is prohibited (2 C.F.R. § 200.323(c)).
- Use of time and materials contracts must comply with 2 C.F.R. § 200.318(j).
- The non-state entity must follow documentation, oversight, and conflict of interest requirements among other general procurement requirements in 2 C.F.R. § 200.318. If a conflict of interest is unavoidable due to the exigent/emergency circumstances, the non-state entity must explain that in the procurement documentation.

What if the non-state entity wants to use a pre-awarded or pre-existing contract in an exigency or emergency and that contract does not comply with the Federal procurement requirements?
If a pre-awarded or pre-existing contract is not in compliance with the Federal procurement requirements (e.g., the contract was not fully and openly competed (*see* 2 C.F.R. §§ 200.319, 200.320), the six affirmative socioeconomic contracting steps were not completed (2 C.F.R. § 200.321), there is a conflict of interest involved (2 C.F.R. § 200.318)), it may still be possible to use the contract for the duration of the exigency or emergency. FEMA recommends that non-state entities review the list of procurement requirements above and take actions to modify pre-awarded or pre-existing contracts where applicable. In addition, non-state entities must prepare the appropriate documentation to justify the use

of a noncompetitively procured contract.

Can non-state entities use time and materials (T&M) contracts in an exigency or emergency?
Yes, but only under certain circumstances. FEMA advises against the use of T&M contracts and generally limits the use of these contracts to a short time period where the scope or duration of the work is unclear. T&M contracts do not incentivize contractors to control costs or maximize labor efficiency. FEMA may reimburse costs incurred under a T&M contract only if all of the following apply:

- No other contract was suitable;
- The contract has a ceiling price that the contractor exceeds at its own risk; and
- The non-state entity can demonstrate it provided a high degree of oversight to obtain reasonable assurance that the contractor used efficient methods and effective cost controls.

Can a non-state entity award cost-plus-a-percentage-of-cost contracts or contracts with a percentage-of construction-cost method in an exigency or emergency?
No. This prohibition applies to all work, regardless of the circumstances (2 C.F.R. § 200.323(d)).

Can non-state entities use *piggyback* contracts in an exigency or emergency?
Piggyback contracting occurs when one entity with an existing contract assigns some or all of its contractual rights to another entity that was not previously party to the contract. Generally, FEMA discourages piggyback contracts because the original contract pertains to the needs of the original entity with a specific scope of work for that entity. While there may be circumstances when piggybacking is permissible, in almost all instances, the scope of work would need to be changed to include the needs of a non-state entity, and changes to the scope of work are generally not permitted as there is not likely to be full and open competition for the expanded scope of work. However, during emergency and exigency circumstances, non-state entities may be able to piggyback another entity's contract and expand the scope of a contract for the period of the emergency or exigency circumstance.

Note that a non-state entity may choose to enter into a separate contract with the same contractor as another entity, using the same terms and conditions as in that other entity's contract, with only a change in the scope of work and the associated costs. However, this is sole-source contracting rather than piggyback contracting, and it must meet the requirements for noncompetitive procurement under exigency or emergency circumstances as described elsewhere in this Fact Sheet.

If a non-state entity is contemplating the use of piggyback contracting, it should contact its state or territory liaison, or the applicable FEMA Program Office to request FEMA assistance with contract review. For assistance with FEMA contact information, the entity should contact the Centralized Scheduling and Information Desk (CSID) help line at (800) 368-6498 or askcsid@fema.dhs.gov. CSID hours of operation are from 9 a.m. to 5 p.m. ET, Monday through Friday.

Can states use time and materials (T&M) or cost-plus-percentage-of-cost (CPPC) contracts in an exigency or emergency?
While the Federal procurement rules do not prohibit the use of T&M contracts and CPPC contracts by states, FEMA discourages states from using these contracts because they generally lack provisions that control costs and maximize efficiency in performing work. FEMA and the OIG closely scrutinize these types of contracts for cost reasonableness.

Although T&M contracts are discouraged, there may be instances where T&M contracts are appropriate in the short term for activities such as debris removal, emergency power restoration, or other immediate actions required to address emergency health and safety threats under a Public Assistance award. States

entering into T&M contracts are encouraged to include language in the contract that specifies a ceiling price and limits the duration of the contract to a short time period, thus providing the state time to develop a scope of work and transition to the more competitive procurement procedures.

As a reminder, 2 C.F.R. § 200.317 requires states to follow: (1) the same policies and procedures they use for procurements using non-Federal funds; (2) 2 C.F.R. § 200.322 (procurement of recovered materials); and (3) 2 C.F.R. § 200.326 (required contract provisions). These requirements apply regardless of whether exigency or emergency circumstances exist. States must ensure that they are also in compliance with the cost principles in 2 C.F.R. §§ 200.400 – 200.474, including ensuring that costs are reasonable, as defined in 2 C.F.R. § 200.404.

Additional Information and Resources

Non-state entities should consult as soon as possible with all appropriate parties, including their own legal counsel, to review their procurement policies, actions, and contracts and compare them to the Federal procurement requirements. Non-state entities also should contact their state or territory liaisons, or applicable FEMA Program Office to request assistance with any procurement activity concerns. For assistance with FEMA contact information, the entity should contact the Centralized Scheduling and Information Desk (CSID) help line at (800) 368-6498 or askcsid@fema.dhs.gov. CSID hours of operation are from 9 a.m. to 5 p.m. ET, Monday through Friday.

Detailed procurement and contracting information is available on the FEMA website at www.fema.gov/procurement-disaster-assistance-team. While the guidance available at that website is specifically applicable to FEMA's Public Assistance Program, it is a useful resource for FEMA's other grant programs as the procurement requirements in 2 C.F.R. Part 200 apply to all of FEMA's grant programs. The current Code of Federal Regulations referenced in this guidance can be accessed at www.eCFR.gov. The annual Code of Federal Regulations is available at https://www.govinfo.gov/app/collection/cfr, and the applicable regulations will be the ones in place at the time FEMA issued the declaration or made the award.

Suggested Elements for Noncompetitive Procurement Justification

1. Identify which of the four circumstances listed in 2 C.F.R. § 200.320(f) justify a noncompetitive procurement:
    (1) The item is available only from a single source;
    (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
    (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
    (4) After solicitation of a number of sources, competition is determined inadequate.

2. Provide a brief description of the product or service being procured, including the expected amount of the procurement.

3. Explain why a noncompetitive procurement is necessary. If utilizing the exigency/emergency exception, the justification should explain the nature of the public exigency or emergency, including specific conditions and circumstances that clearly illustrate why procurement other than through noncompetitive proposals would cause unacceptable delay in addressing the public exigency or emergency. (Failure to plan for transition to competitive procurement cannot be the basis for continued use of noncompetitive procurement based on public exigency or emergency).

4. State how long the noncompetitively procured contract will be used for the defined scope of work and the impact on that scope of work should the noncompetitively procured contract not be available for that amount of time (e.g., how long do you anticipate the exigency or emergency circumstances will continue; how long will it take to identify your requirements and award a contract that complies with all procurement requirements; or how long would it take another contractor to reach the same level of competence).

5. Describe the specific steps taken to determine that full and open competition could not have been used, or was not used, for the scope of work (e.g., research conducted to determine that there were limited qualified resources available that could meet the contract provisions).

6. Describe any known conflicts of interest and any efforts that were made to identify possible conflicts of interest before the noncompetitive procurement occurred. If no efforts were made, explain why. If a conflict of interest is unavoidable, such as due to exigent/emergency circumstances, explain how it was unavoidable and any steps taken to address the impact of that conflict of interest.

7. Include any other information justifying the use of noncompetitive procurement in the specific instance.

NOTE: A separate justification is required for each instance of noncompetitive procurement.

7. Supplies and Commodities

The purchase of supplies and commodities required for emergency protective measures is eligible.



Costs related to the Applicant purchasing supplies or using its own stock to perform Emergency Work are eligible and reimbursed in accordance with Chapter 2:V.D. Examples include, but are not limited to, safety equipment, personal protective equipment, radios, power tools, sand, and tarps.

Purchasing and packaging life-saving and life-sustaining commodities and providing them to the impacted community are eligible. Examples of such commodities include, but are not limited to, food, water, ice, personal hygiene items, cots, blankets, tarps, plastic sheeting for roof damage, and generators, as well as food and water for household pets and service animals. The cost of delivering these same commodities to unsheltered residents in communities where conditions constitute a level of severity such that these items are not easily accessible for purchase is also eligible. This includes food and water for household pets whose owners are in shelters.

The cost of leasing distribution and storage space for the commodities is also eligible.

8. Meals

Applicants often provide meals for emergency workers. Provision of meals, including beverages and meal supplies, for employees and volunteers engaged in eligible Emergency Work, including those at EOCs, is eligible provided the individuals are not receiving per diem and one of the following circumstances apply:

- Meals are required based on a labor policy or written agreement that meets the requirements of Chapter 2:V.A.1;
- Conditions constitute a level of severity that requires employees to work abnormal, extended work hours without a reasonable amount of time to provide for their own meals; or
- Food or water is not reasonably available for employees to purchase.

FEMA only reimburses the cost of meals that are brought to the work location and purchased in a cost-effective and reasonable manner, such as bulk meals. FEMA does not reimburse costs related to group outings at restaurants or individual meals.[184]

9. Medical Care

When the emergency medical delivery system within a declared area is destroyed, severely compromised or overwhelmed, FEMA may fund extraordinary costs associated with operating emergency rooms and with providing temporary facilities for emergency medical care of survivors. Costs associated with emergency medical care should be customary for the emergency

[184] FEMA reimburses meal costs as part of a contract in accordance with the contract terms provided it meets the requirements in Chapter 2:V.G.

medical services provided. Costs are eligible for up to 30 days from the declaration date unless extended by FEMA.

Eligible medical care includes, but is not limited to:

- Triage and medically necessary tests and diagnosis
- Treatment, stabilization, and monitoring
- First-aid assessment and provision of first aid
- A one-time 30-day supply of prescriptions for acute conditions or to replace maintenance prescriptions
- Vaccinations for survivors and emergency workers to prevent outbreaks of infectious and communicable diseases
- Durable medical equipment
- Consumable medical supplies
- Temporary facilities, such as tents or portable buildings for treatment of survivors
- Leased or purchased equipment for use in temporary medical care facilities
- Security for temporary medical care facilities
- Use of ambulances for distributing immunizations and setting up mobile medical units



Terminology

Durable medical equipment is reusable medical equipment necessary for the treatment of an illness or injury or to prevent a patient's further deterioration. The equipment includes, but is not limited to:

- Oxygen equipment
- Wheelchairs
- Walkers
- Hospital beds
- Crutches
- Other medical equipment

Consumable medical supplies are medical supplies that are ingested, injected, or applied or are for one-time use only, including, but not limited to:

- Medical supplies
- Medications
- Diapers
- Adult incontinence briefs
- Bandages

Long-term medical treatment is not eligible. FEMA determines the reasonableness of these costs based on Medicare's cost-to-charge ratio (a ratio established by Medicare to estimate a medical service provider's actual costs in relation to its charges).

FEMA does not provide PA funding for these costs if underwritten by private insurance, Medicare, Medicaid, or a pre-existing private payment agreement.[185] The Applicant must take reasonable steps to provide documentation on a patient-by-patient basis verifying that insurance coverage or any other source funding including private insurance, Medicaid, or Medicare, has been pursued and does not exist for the costs associated with emergency medical care and emergency medical evacuations.

Ineligible costs include:

- Medical care costs incurred once a survivor is admitted to a medical facility on an inpatient basis
- Costs associated with follow-on treatment of survivors beyond 30 days of the declaration
- Administrative costs associated with the treatment of survivors

[185] Stafford Act § 312, 42 U.S.C. § 5155.

10. Evacuation and Sheltering

Evacuation and sheltering of survivors are eligible activities. This includes household pets and service and assistance animals, but not exhibition or livestock animals.

(a) Evacuation Including Accessible Transportation and Emergency Medical Transportation

Transportation of evacuees, household pets, service animals, luggage, and durable medical equipment is eligible. This includes emergency medical transportation. The mode of transportation should be customary and appropriate for the work required. Eligible activities include, but are not limited to:

Terminology

Household pets are domesticated animals that:

- Are traditionally kept in the home for pleasure rather than for commercial purposes
- Can travel in commercial carriers
- Can be housed in temporary facilities

Examples are dogs, cats, birds, rabbits, rodents, and turtles.

Household pets do not include reptiles (except turtles), amphibians, fish, insects, arachnids, farm animals (including horses), or animals kept for racing purposes.

Service animals are dogs that are individually trained to do work or perform tasks for people with disabilities or access and functional needs.

Assistance animals are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or provide emotional support that alleviates identified symptoms or effects of a person's disability.

Although dogs are the most common type of assistance animal, other animals can also be assistance animals.

- Transferring patients from inoperable, compromised, or overwhelmed eligible medical or custodial care facilities to another medical facility or to a shelter.
- Transferring patients back to original medical or custodial care facility, when appropriate.
- Transporting survivors, including shelterees, who require emergency medical care to and from the nearest existing or temporary medical care facility equipped to adequately treat the medical emergency. Transport may include emergency air, sea, or ground ambulance services if necessary.
- Use of equipment such as buses, trucks, or other vehicles (including accessible vehicles) to provide one-time transportation to evacuate survivors and their household pets and service and assistance animals to emergency shelters from pre-established pick-up locations. This includes stand-by time for drivers and contracted equipment while waiting to transport survivors.
- Paratransit transportation services, such as vans, minibuses, and buses, (including accessible vehicles) to transport senior citizens, individuals with disabilities (including mobility disabilities) or access and functional needs, individuals in nursing homes and assisted-living facilities, and homebound individuals impacted by the incident.
- Tracking of evacuees, household pets, service animals, luggage, and durable medical equipment. This includes the use of animal microchips for the purpose of tracking evacuated animals.
- Food and water provided during transport.
- Emergency medical care provided during transport, including emergency medical personnel and supply costs.
- Stabilization of individuals injured during evacuation.

- Costs incurred in advance of an incident necessary to prepare for evacuations in threatened areas. Costs may include mobilization of ambulances and other transport equipment. Contracts for staging ambulance services must be part of the State, Territorial, Tribal, or regional evacuation plan. Costs of staging ambulances are eligible even if the incident does not impact the area normally served by those ambulances. PA funding for activating, staging, and using ambulance services ends when any of the following occurs:



  - FEMA, and the State, Territorial, or Tribal Government, determines that the incident did not impact the area where it staged ambulances;
  - Evacuation and return of medical patients and individuals with disabilities or access and functional needs is complete; or
  - The immediate threat caused by the incident has been eliminated and the demand for services has returned to normal operation levels.

  FEMA does not provide PA funding for ambulance services that are covered by private insurance, Medicare, Medicaid, or a pre-existing private payment agreement.[186]

(b) Sheltering

FEMA provides PA funding to State, Territorial, Tribal, and local government Applicants for costs related to emergency sheltering for survivors. Typically such sheltering occurs in facilities with large open spaces, such as schools, churches, community centers, armories, or other similar facilities. FEMA refers to these shelters as congregate shelters.

Generally, FEMA does not provide PA funding for emergency sheltering in non-congregate environments, which are locations where each individual or household has living space that offers some level of privacy (e.g., hotels, motels, casinos, dormitories, retreat camps, etc.). In limited circumstances, such as when congregate shelters are not available or sufficient, FEMA may reimburse costs related to emergency sheltering provided in non-congregate environments. FEMA's Assistant Administrator for Recovery has the authority to approve this policy exception. The Applicant must submit a request for PA funding for costs related to emergency, non-congregate sheltering and obtain FEMA approval prior to sheltering survivors in non-congregate facilities. At a minimum, the Applicant should include the following information in its request:

Transitional Sheltering Assistance Program

FEMA's Transitional Sheltering Assistance program provides short-term lodging to eligible survivors who, after an evacuation, cannot return to their homes for an extended period of time because their community is either uninhabitable or inaccessible as a result of the incident.

FEMA implements and manages Transitional Sheltering Assistance directly through a contract agent.

- Justification for the necessity of non-congregate sheltering;
- Whether the State or Tribal Government has requested Transitional Sheltering Assistance;

[186] Stafford Act § 312, 42 U.S.C. § 5155.

- The type of non-congregate sheltering available and which type the Applicant intends to utilize;
- An analysis of the available options with the associated costs of each option; and
- The time frame requested (i.e., date of activation and length of time).[187]

FEMA will limit any approval to that which is reasonable and necessary to address the needs of the event (generally no more than 30 days). FEMA determines the eligible costs based on the contractual agreement, including reimbursement for repairing damage if it is the Applicant's legal responsibility based on the agreement. The Applicant must obtain FEMA approval for any time extensions, which should include a detailed justification for the continued need and a revised analysis of options, including the costs for each option.

If FEMA approves the request, the Recipient will need to maintain tracking mechanisms to provide sufficient data and documentation to establish eligibility (including the need for non-congregate sheltering resulting from the disaster, reasonableness, and costs). Sufficient documentation includes:

- The number of non-congregate shelterees:
  - By age groups 0-2, 3-6, 7-12, 13-17, 18-21, 22-65, and 66+;
  - With disabilities or access and functional needs;
  - Registered for assistance from FEMA's IA Programs; and
  - Referred to State or non-governmental organization programs for assistance.
- Number of household pets, and assistance and service animals sheltered and the type of shelter provided (e.g., stand alone, co-located, or co-habitational;
- Length of stay per "household unit;" and
- Number of meals and other services provided.

As with any activity, lack of full documentation may result in FEMA determining that some or all of the costs are ineligible.

Eligible costs related to sheltering include, but are not limited to, the items listed below, as necessary based on the type of shelter and the specific needs of the shelterees. If any of the items listed are donated, including labor, the Applicant may offset the non-Federal share of its eligible Emergency Work projects in accordance with Chapter 2:V.L. Sheltering and caring for household pets is only eligible while the pet owner is in an emergency shelter.

Shelter Facility Costs

- Facility lease or rent, including space for food preparation
- Utilities such as power, water, and telephone
- Minor facility modifications if necessary to make the facility habitable, compliant with the Americans with Disabilities Act (ADA), functional as a child care facility, or functional as an animal shelter
- Restoration to return the facility to its condition prior to use
- Generator costs
- Secure storage space for medical supplies

[187] 44 CFR §§ 206.225(a)(2) and 206.202(c) and (d).

If an eligible State, Territorial, Tribal, or local government Applicant owns or leases the shelter facility, and a volunteer agency operates the shelter, the facility costs described above are eligible. However, the labor costs for the volunteer agency's workers are not eligible (except as a donated resource in accordance with the criteria in Chapter 2:V.L).

Shelter Staff Costs

- Medical staff
- Personal assistance service staff
- Veterinary staff
- Public Information Officer
- Social workers
- Food service workers
- Custodial and facilities staff
- National Guard personnel (See Chapter 2:V.J)

Shelter Supplies and Commodities

- Hot and cold meals, snacks, beverages, and related supplies for survivors
- Cooking and serving supplies
- Food, water, and bowls for household pets and service and assistance animals
- Durable medical equipment
- Consumable medical supplies
- Medication for animal decontamination and parasite control
- Infant formula, baby food, and diapers
- Refrigerators, microwaves, and crock pots
- Cots, cribs, linens, blankets, pillows, tables, and chairs
- Crates, cages, leashes, and animal transport carriers
- Personal hygiene kits with items such as shampoo, soap, toothpaste, a toothbrush, towels, and washcloths
- Animal cleaning tables and supplies
- Televisions or radios – one per 50 shelterees
- Basic cable service
- Computers – one per 25 shelterees
- Internet service
- Washers and dryers – one of each per 50 shelterees
- Toys and books

Shelter Services

Shelter services are eligible for the time the facility is actively used to shelter survivors.

- Shelter management
- Supervision of paid and volunteer staff
- Cleaning the shelter, linens, and animal crates
- Shelter safety and security

- Use of equipment, such as ambulances, buses, trucks, or other vehicles, to provide sheltering support
- Phone banks for survivors
- Care for survivors with disabilities or access and functional needs, including the provision of the following personal assistance services:
    - Grooming, eating, walking, bathing, toileting, dressing, and undressing
    - Movement between a cot and wheelchair (transferring)
    - Maintaining health and safety
    - Taking medications
    - Communicating or accessing programs and services
- Emergency medical and veterinary services for sheltered survivors, household pets, and service and assistance animals, including:
    - Emergency and immediate life stabilizing care, including necessary prescriptions (not to exceed 30-day supply)
    - Triage, medically necessary tests, diagnosis, treatment, stabilization, and monitoring
    - First-aid assessment
    - Provision of first aid and health information
    - Care for evacuees with chronic conditions
    - Administering vaccinations to shelterees and workers for transmissible or contagious diseases, including, but not limited to, tetanus and hepatitis
    - Administering vaccinations to household pets, and service and assistance animals, for transmissible or contagious diseases, including, but not limited to, Bordetella (kennel cough)
    - Medical waste disposal
    - Mental-health care
    - Outpatient costs for sheltered survivors requiring emergency life-sustaining treatment not available at the shelter for the period of time that a survivor is housed in a congregate shelter. Eligible outpatient services are limited to:
        - Physician services in a hospital outpatient department, urgent care center, or physician's office;
        - Related outpatient hospital services and supplies, including X-rays, laboratory and pathology services, and machine diagnostic tests; and
        - Local professional transport services to and from the nearest hospital equipped to adequately treat the emergency.
- Sheltering self-evacuees (self-evacuee transportation costs are not eligible)
- Costs paid to the American Red Cross (ARC) or other Non-Governmental Organizations (NGO) to operate shelters under a written agreement [costs that ARC or other NGOs incur under their own authorities (i.e., independent of any Federal, State, Tribal, or local request) are not eligible for reimbursement]

(c) Child Care Services

FEMA reimburses State, Territorial, Tribal, and local governments for the cost of providing licensed child care services to support sheltered populations. This includes the cost of the labor, facility, supplies, and commodities. Additionally, FEMA may provide PA funding for the cost of

child care services that the eligible Applicant provides to other survivors, and beyond the period of emergency sheltering, with certification that temporary child care is necessary to meet immediate threats to life, public health and safety, or property.

Child care includes services such as:

- Day care for children
- Before- and after-school care

The Applicant may provide these services within a shelter facility or in a separate facility, as appropriate. FEMA PA staff will coordinate with IA staff to ensure there is no duplication with IHP assistance.

(d) Host-State or Host-Tribe Evacuation and Sheltering

If the impacted State or Tribe (Impact-State or Impact-Tribe)[188] has evacuation and sheltering needs beyond its ability to address within its jurisdictional area, it may request assistance either from another State or Tribal Government (Host-State or Host-Tribe)[189] through mutual aid agreements such as EMAC, or from FEMA.



If the Impact-State/Tribe requests assistance directly from another State or Tribal Government, FEMA reimburses costs based on the mutual aid agreement as described in Chapter 2:V.H. FEMA may also provide PA funding to a Host-State/Tribe directly, even if the Impact-State/Tribe already requested assistance directly from that Host-State/Tribe, provided that:

- The Host-State/Tribe agrees to accept evacuees based on need—without restriction;
- The Host-State/Tribe makes at least 10 percent of its normal day-to-day sheltering capacity available;
- An authorized official from the Host-State/Tribe transmits a written agreement of these two terms to FEMA; and
- The Governor or Tribal Chief Executive of the Host-State/Tribe signs the FEMA/Host-State or FEMA/Host-Tribe Agreement pursuant to the terms and conditions in 44 CFR § 206.44, FEMA-State Agreements, to establish the Host-State/Tribe as the Recipient.[190]

If the Impact-State/Tribe requests assistance from FEMA, FEMA determines whether potential Host-States/Tribes have sufficient capability to meet some or all of the sheltering and evacuation needs of the Impact-State/Tribe. If FEMA determines a potential Host-State/Tribe has sufficient

[188] Impact-State or Impact-Tribe means the State or Tribal Government for which the President declared an Emergency or Major Disaster and requested FEMA assistance because of a need to evacuate and/or shelter affected individuals outside the State.
[189] Host-State or Host-Tribe means a State or Tribal Government that by agreement with FEMA provides sheltering or evacuation support to evacuees from an Impact-State or Impact-Tribe.
[190] 44 CFR § 206.202(f)(1)(i).

capability and the Host-State/Tribe meets the three conditions described above, FEMA provides PA funding to the Host-State/Tribe directly.[191]

When FEMA provides PA funding directly to a Host-State/Tribe, FEMA reimburses 100 percent of the Host-State/Tribe's eligible costs, including straight-time and benefits of the Host-State/Tribe's permanent employees[192] so that they have no out-of-pocket costs. In these cases, the Impact-State/Tribe is responsible for the non-Federal cost share and must subsequently reimburse FEMA for the non-Federal cost share of the eligible costs incurred by the Host-State/Tribe. The non-Federal cost share is based on the Category B cost-share amount designated in the declaration. The Impact-State/Tribe cannot offset its non-federal cost share with the Host-State/Tribe's volunteer labor.

In addition to the evacuation and sheltering costs noted in Chapter 2:VI.B.10, FEMA also reimburses Host-States/Tribes for the following:

- Straight-time and benefits of entities' employees that provide assistance under a mutual aid agreement or a contract with the Host-State/Tribe such as a local government or PNP.
- Costs to provide the requested shelter capacity, even if the shelter was underused or not used at all.
- Costs related to arrest and incarceration of evacuees who commit unlawful acts in a Host-State/Tribe congregate shelter, including costs incurred by on-duty law enforcement officers in order to detain, take into custody, or make an arrest (costs of chemical tests, processing, charging, booking, and holding such persons are not eligible costs). Costs to transport a detainee back to the shelter is eligible if the individual was not charged.
- When patients in hospitals in the Impact-State/Tribe are evacuated, transported, and admitted into hospitals in the Host-State/Tribe through mission assignment with U.S. Department of Health and Human Services (HHS), and the patients are treated and discharged but require follow-on care while they await transport and shelters are not available, the costs that a Host-State/Tribe's hospital incurs for hotel rooms during patients' follow-on care until the patients can be transported back to the Impact-State/Tribe, provided that Medicare, Medicaid, or private insurance does not cover these costs.
- Bus or shuttle transport to pick up evacuees at the airport, train station, or bus terminal when the expected plane, train, or bus is re-routed, canceled, or rescheduled.
- Ambulance costs for hospital-to-hospital transfers, provided it is a transfer within the Host-State/Tribe.
- When the Impact-State/Tribe determines that it is safe for re-entry, it will coordinate with the Host-State/Tribe and FEMA to return evacuees, household pets, and service and assistance animals to the Impact-State/Tribe by air, rail, or bus. Return transportation costs are eligible along with food, water, and security during transport.
- Return transportation costs for family members of an Impact-State/Tribe evacuee who was admitted to a hospital after the congregate shelters close.
- When evacuees are discharged from a hospital after all congregate shelters have closed and transportation cannot be arranged for departure on the same day discharged, FEMA will reimburse up to five (5) nights of hotel lodging while awaiting return transport.

[191] 44 CFR § 206.208(c)(3).
[192] 44 CFR § 206.202(f)(1)(ii).

- FEMA will reimburse a State agency from the Impact-State/Tribe for the transportation costs and related expenses to transport deceased evacuees and accompanying family members to the Impact-State/Tribe. The costs of State/Tribe-mandated embalming or cremation of the body prior to return are also eligible.

The Host-State/Tribe must determine whether any ambulance or medical service costs are covered by a patient's private insurance, Medicare, Medicaid, or a pre-existing private payment agreement as FEMA will deduct this amount from the Host-State/Tribe's eligible cost.

Fees that a Host-State/Tribe waives for the use of State parks by self-evacuees with recreational vehicles (RVs) are not eligible. Additionally, purchase and distribution of gas cards, bus passes, cash vouchers, debit cards, food vouchers, or direct payments to evacuees are not eligible.

11. Infectious Disease Event

The HHS Centers for Disease Control and Prevention (CDC) has primary authority to enable support and assistance to States, Territorial, or Tribal Governments in response to an infectious disease event. FEMA may provide assistance for the rescue, evacuation, and movement of persons; movement of supplies; and care, shelter, and other essential needs of affected human populations. Any assistance provided by FEMA in response to an infectious disease event is done in coordination with the CDC. The Office of Response and Recovery Fact Sheet FP 104-009-001, *Infectious Disease Event*, provides additional details.[193]

12. Mosquito Abatement

Mosquito abatement measures may be eligible when a State, Territorial, Tribal, or local government public health official validates in writing that a mosquito population poses a specific health threat as discussed further in Appendix G: Mosquito Abatement. FEMA consults with the CDC to determine the eligibility of mosquito abatement activities. FEMA only provides PA funding for the increased cost of mosquito abatement. This is the amount that exceeds the average amount based on the last 3 years of expenses for the same period.

13. Residential Electrical Meters

To reduce the number of survivors needing shelter, FEMA may provide limited PA funding to a State, Territorial, Tribal, or local government to repair residential electrical meters. To receive PA funding, the State, Territorial, Tribal, or local government must:

- Issue a finding of an immediate threat to safety due to loss of power caused by damaged meters or weather heads;
- Request participation in this program; and
- Receive FEMA approval for each identified property.

Only residential properties are eligible for this program. Commercial properties, including apartment complexes, are not eligible.

If approved, the applicable State, Territorial, Tribal, or local government will:

- Obtain a signed right-of-entry from each residential property owner;
- Take reasonable measures to document any known insurance proceeds;
- Contract with licensed electricians to perform electrical meter repair;

[193] www.fema.gov/media-library/assets/documents/99710.

Public Assistance Applicant Procurement Compliance Checklist

Purpose:

Checklist for Reviewing Procurements under Grants by States, local and tribal governments, Institutions of Higher Education, Hospitals, and private non-profit organizations - 2 C.F.R. pt. 200. Revised on 11/21/18.

Complementary Resources:

- Procurement Rules Online: www.ecfr.gov

  2 C.F.R. 200.317-326 can be viewed in its entirety at this website.

  Title 2 → Subtitle A → Chapter II → Part 200 → Subpart D → Procurement Standards

- Field Manual and Supplement available at www.fema.gov/procurement-disaster-assistance-team

	Applicant Name:		
	Reviewer Name:	**Date Reviewed:**	
	Type of Entity Conducting the Procurement		
	The term "non-Federal entity" (NFE) below refers to the entity that is conducting the procurement action (i.e., the state, local, territorial or tribal government, or private-non-profit entity).		
Type of Entity 1	Is the NFE a **State** as defined by 2 C.F.R. § 200.90?	Yes ☐ → The NFE must comply with 2 C.F.R. 200.**317**, 200.**322**, and 200.**326** No ☐ → The NFE must comply with 2 C.F.R. 200.**318 through** 200.**326**	
2	Does the **procurement** comply with the State's own procurement laws, rules, and procedures? §200.317	Yes ☐ No ☐ → The procurement does not comply with federal requirements	
3	Does the **procurement** comply with the requirement to make maximum use of recovered/recycled materials? § 200.317, § 200.322	Yes ☐ No ☐ → The procurement does not comply with federal requirements N/A ☐ → Work does not involve the use of materials (e.g., debris removal or otherservices) or the NFE is not a political subdivision of a State	

Required Contract Clauses

	Contract Clauses		
4	**If the contract amount exceeds $250,000**, does it address **administrative, contractual, or legal remedies** in instances where contractors violate or breach contract terms, and provide for sanctions and penalties?	Yes ☐ No ☐ N/A ☐	The contract does not comply with federal requirements
5	**If the contract amount exceeds $10,000**, does it address **termination for cause and for convenience**, including the manner by which it will be effected and the basis for settlement?	Yes ☐ No ☐ N/A ☐	The contract does not comply with federal requirements
6	**If the contract is for construction**, does it include the required **Equal Employment Opportunity** clause?	Yes ☐ No ☐ N/A ☐	The contract does not comply with federal requirements
7	**For construction contracts exceeding $2,000** awarded under a Federal grant, does the contract include a **Davis-Bacon Act clause and Copeland "Anti- Kickback" Act** clause addressing prevailing wage rates?	Yes ☐ No ☐ N/A ☒	The contract does not comply with federal requirements Public Assistance and Hazard Mitigation Grant Program contracts do **NOT** require these clauses
8	**If the contract amount exceeds $100,000** and involves the **employment of mechanics or laborers**, does the contract include the required **Contract Work Hours and Safety Standards** clause?	Yes ☐ No ☐ N/A ☐	The contract does not comply with federal requirements
9	**Rights to Inventions Made Under a Contract or Agreement**	Yes ☐ No ☐ N/A ☒	The contract does not comply with federal requirements This requirement does **NOT** apply to the Public Assistance Grant Program
10	**If the contract or subrecipient amount exceeds $150,000**, does the contract include clauses addressing the **Clean Air Act and the Federal Water Pollution Control Act**?	Yes ☐ No ☐ N/A ☐	The contract does not comply with federal requirements

Required Contract Clauses	11	Does the contract include a **Suspension and Debarment** clause?	Yes ☐ No ☐	The contract does not comply with federal requirements
	12	Does the contract include a **Byrd Anti-Lobbying** clause?	Yes ☐ No ☐	The contract does not comply with federal requirements
	13	**For contracts exceeding $100,000,** have bidders submitted the **required Byrd Anti-Lobbying Certification**?	Yes ☐ No ☐ N/A ☐	The contract does not comply with federal requirements
	14	Does the contract include a clause requiring the contractor to maximize use of **recovered/recycled materials**?	Yes ☐ No ☐ N/A ☐	The contract does not comply with federal requirements Work does not involve the use of materials (e.g., debris removal or other services) or NFE is not a political subdivision of a State
Recommended Contract Clauses	15	Does the contract include a clause allowing for **changes or modifications** to the contract?	Yes ☐ No ☐ N/A ☐	The contract does not include provisions **recommended by FEMA**
	16	Does the contract include a clause requiring the contractor and any subcontractors to comply with applicable provisions governing **Department and FEMA access to records**?	Yes ☐ No ☐ N/A ☐	The contract does not include provisions **recommended by FEMA**
	17	Does the contract restrict any contractors and subcontractors from using **DHS's seal, logo, or flag** without express permission?	Yes ☐ No ☐ N/A ☐	The contract does not include provisions **recommended by FEMA**
	18	Does the contract contain a clause requiring the contractor to comply with all **applicable federal law, regulations, executive orders**, and FEMA policies, procedures and directives?	Yes ☐ No ☐ N/A ☐	The contract does not include provisions **recommended by FEMA**

Recommended Contract Clauses			
19	Does the contract contain a provision stating that the **Federal Government is not a party to the contract** and is not subject to any obligations or liabilities to any party under the contract?	Yes ☐ No ☐ ➡ N/A ☐	The contract does not include provisions **recommended by FEMA**
20	Does the contract include a provision in which the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for **False Claims and Statements**) applies to its actions pertaining to the contract?	Yes ☐ No ☐ ➡ N/A ☐	The contract does not include provisions **recommended by FEMA**



If a State agency is awarding the contract, STOP here.

The District of Columbia, USVI, the commonwealth of Puerto Rico, Guam, American Samoa, and the commonwealth of the Northern Mariana Islands are included in the definition of a state.

If the contract is being awarded by a local or tribal government or private nonprofit entity, CONTINUE with the checklist.

	General Requirements			
Type of Entity	21	Does the **procurement** comply with the NFE's own procurement laws, rules, and procedures which reflect applicable **state, local, and tribal laws and regulations**? §200.318(a)	Yes ☐ No ☐ ➡	The procurement does not comply with federal requirements
	22	Did the NFE maintain **contract oversight** to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders? §200.318(b)	Yes ☐ No ☐ ➡	The procurement does not comply with federal requirements
Written Standards of Conduct	23	**Does the NFE have written standards of conduct covering - §200.318(c)(1):**		
	24	**Conflicts of interest** and governing the actions of its employees engaged in the selection, award, and administration of contracts?	Yes ☐ No ☐ ➡	The standards do not comply with federal requirements
	25	Any employee, officer, or agent participating in the selection, award, or administration of a contract supported by a Federal award that has an **actual or apparent conflict of interest**?	Yes ☐ No ☐ ➡	The standards do not comply with federal requirements
	26	Any employee, officer, or agent that has solicited and/or accepted **gratuities, favors, or anything of monetary value** from contractors or parties to subcontracts?	Yes ☐ No ☐ ➡	The standards do not comply with federal requirements
	27	Do standards of conduct provide for **disciplinary actions** to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity?	Yes ☐ No ☐ ➡	The standards do not comply with federal requirements
	28	If the NFE has a **parent, affiliate, or subsidiary organization** that is not a state, local government, or Indian tribe, does the non-Federal entity have written standards of conduct covering **organizational conflicts of interest**? §200.318(c)(2)	Yes ☐ No ☐ ➡ N/A ☐	The standards do not comply with federal requirements
	29	The NFE must avoid acquisition of **unnecessary or duplicative items**. Has the NFE **considered** consolidating or breaking out procurements to obtain a more economical purchase? Where appropriate, has the NFE **considered** lease versus purchase alternatives? § 200.318(d)	Yes ☐ No ☐ ➡	The procurement does not comply with federal requirements

	30	Is the **contract** being awarded to a **responsible contractor** possessing the ability to perform successfully under the terms and conditions of the proposed procurement, giving consideration to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources? § 200.318(h)	Yes ☐ No ☐ →	The contract does not comply with federal requirements
	31	Is the **NFE** keeping **records sufficient** to detail the history of the procurement, including, but not limited to, records documenting the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price? § 200.318(i)	Yes ☐ No ☐ →	The procurement does not comply with federal requirements
T&M Contracts	32	Is the contract a **time-and-materials contract**? § 200.318(j)	Yes ☐ → No ☐ →	Answer questions 33 and 34 Skip to 35
	33	Has the NFE documented **why** no other contract is suitable?	Yes ☐ No ☐ →	The contract does not comply with federal requirements
	34	Does the contract include a **ceiling price** that the contractor exceeds at its own risk?	Yes ☐ No ☐ →	The contract does not comply with federal requirements
	35	Is the **NFE alone** responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements? §200.318(k)	Yes ☐ No ☐ →	The procurement does not comply with federal requirements
		Competition		
Full & Open Competition	36	All procurement transactions must be conducted in a manner providing **full and open competition** consistent with the standards of this section. Does the procurement involve any of the following - § 200.319(a):		
	37	Placing **unreasonable requirements** on firms in order for them to qualify to do business?	Yes ☐ → No ☐	The procurement does not comply with federal requirements
	38	Requiring **unnecessary experience** and **excessive bonding**?	Yes ☐ → No ☐	The procurement does not comply with federal requirements

Full & Open Competition	39	**Noncompetitive pricing** practices between firms or between affiliated companies?	Yes ☐ → No ☐	The procurement does not comply with federal requirements
	40	Noncompetitive contracts to consultants that are on **retainer contracts**?	Yes ☐ → No ☐	The procurement does not comply with federal requirements
	41	**Organizational conflicts of interest**?	Yes ☐ → No ☐	The procurement does not comply with federal requirements
	42	Specifying only a **"brand name"** product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement?	Yes ☐ → No ☐	The procurement does not comply with federal requirements
	43	Any **arbitrary action** in the procurement process?	Yes ☐ → No ☐	The procurement does not comply with federal requirements
	44	Was the contractor that is bidding on the contract also involved with developing or drafting the specifications, requirements, statement of work, invitation for bids, or request for proposals? § 200.319(a)	Yes ☐ → No ☐ N/A ☐	The procurement does not comply with federal requirements (That contractor must be excluded from competing for such procurement)
Geographic Preference	45	Does the **contract** include a state or local **geographic preference** for local contractors? § 200.319(b)	Yes ☐ → No ☐ →	Answer 46 Skip to 47
	46	Did the NFE document one of the allowed exceptions?	Yes ☐ No ☐ →	The contract does not comply with federal requirements
Written Procurement Procedures	47	Do the NFE's **written procurement procedures** ensure that all solicitations comply with the following - § 200.319(c):		
	48	Incorporate a clear and accurate description of the **technical requirements** for the material, product, or service to be procured? § 200.319(c)(1)	Yes ☐ No ☐ →	The procedures do not comply with federal requirements
	49	Identify **all requirements** which the offerors must fulfill and all other factors to be used in **evaluating bids or proposals**? § 200.319(c)(2)	Yes ☐ No ☐ →	The procedures do not comply with federal requirements

Pre-Qualified Lists	50	Is the NFE using a **prequalified list** of persons, firms, or products which are used in acquiring goods and services: § 200.319(d)?	Yes ☐ → No ☐ →	Answer questions 51-53 Skip to 54
	51	Is the list **current**?	Yes ☐ No ☐ →	The prequalified list does not comply with federal requirements
	52	Does the list include **enough qualified sources** to ensure maximum open and **free competition**?	Yes ☐ No ☐ →	The prequalified list does not comply with federal requirements
	53	Were any **potential bidders precluded from qualifying** during the solicitation period?	Yes ☐ → No ☐	The procurement does not comply with federal requirements
		Method of Procurement		
	54	Is the NFE using one of the following acceptable methods of procurement? § 200.320		
Micro-Purchase	55	**Micro-purchase** (i.e., purchases below $10,000, see, §200.67 Micro- purchases) § 200.320(a) **Note:** Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.	Yes ☐ → No ☐ →	Answer 56 Skip to next method
	56	To the extent practicable, is the NFE distributing micro-purchases equitably among qualified suppliers?	Yes ☐ No ☐ → N/A ☐	The procurement does not comply with federal requirements

Small Purchase	57	**Small purchase procedures** § 200.320(b) **Note:** Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the lesser of either (1) the federal small purchase threshold (i.e., $250,000), or (2) whatever amount State or local procurement rules set as the small purchase threshold— **if more restrictive than the federal threshold.**	Yes ☐ → No ☐ →	Answer 58 Skip to next method
	58	Did the NFE obtain price or rate **quotations from an adequate number** of qualified sources (at least 3 or more)?	Yes ☐ No ☐ →	 The procurement does not comply with federal requirements
Sealed Bids	59	**Sealed bids** § 200.320(c) **Note:** Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.	Yes ☐ → No ☐ →	Answer 60-71 Skip to next method
	60	Are **all** of the following conditions to use sealed bidding present? § 200.320(c)(1)	Yes ☐ → No ☐ →	Check if **all** answers between 61 and 63 are "Yes" If you answer "No" to any of the questions between 61 and 63, the procurement does not comply with federal requirements
	61	Is a complete, adequate, and realistic specification or purchase description is available?	Yes ☐ No ☐ →	 The procurement does not comply with federal requirements
	62	Are two or more responsible bidders willing and able to compete effectively for the business?	Yes ☐ No ☐ →	 The procurement does not comply with federal requirements
	63	Does the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price?	Yes ☐ No ☐ →	 The procurement does not comply with federal requirements
	64	If sealed bids are used, the following requirements apply: § 200.320(c)(2)		

Sealed Bids	65	Did the NFE solicit bids from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids?	Yes ☐ No ☐	The procurement does not comply with federal requirements
	66	If the NFE is a local or tribal government, was the invitation for bids publicly advertised?	Yes ☐ No ☐ N/A ☐	The procurement does not comply with federal requirements
	67	Did the invitation for bids include any specifications and pertinent attachments, and define the items or services in order for the bidder to properly respond?	Yes ☐ No ☐	The procurement does not comply with federal requirements
	68	Did the NFE open all bids at the time and place prescribed in the invitation for bids?	Yes ☐ No ☐	The procurement does not comply with federal requirements
	69	For **local and tribal governments**, were the bids opened publicly?	Yes ☐ No ☐ N/A ☐	The procurement does not comply with federal requirements
	70	Did the NFE award a firm fixed price contract award in writing to the lowest responsive and responsible bidder?	Yes ☐ No ☐	The procurement does not comply with federal requirements
	71	If any bids were rejected, was there a sound documented reason supporting the rejection?	Yes ☐ No ☐ N/A ☐	The procurement does not comply with federal requirements
Competitive Proposals	72	**Procurement by competitive proposals § 200.320(d)** **Note:** The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids.	Yes ☐ No ☐	Answer 73-76 Skip to next method

Competitive Proposals	73	Did the NFE publicize the Requests for Proposals (RFPs) and identify all evaluation factors and their relative importance?	Yes ☐ No ☐ →	The procurement does not comply with federal requirements
	74	Did the NFE solicit proposals from an adequate number of qualified sources?	Yes ☐ No ☐ →	The procurement does not comply with federal requirements
	75	Did the NFE have a written method for conducting technical evaluations of the proposals received and for selecting recipients?	Yes ☐ No ☐ →	The procurement does not comply with federal requirements
	76	Did the NFE award the contract to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered?	Yes ☐ No ☐ →	The procurement does not comply with federal requirements
	77	**Note regarding architectural/engineering (A/E) professional services:** The NFE may use competitive proposal procedures for qualifications-based procurement of A/E professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. **The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.**		
Noncompetitive Proposals	78	**Noncompetitive proposals** § 200.320(f) **Note:** Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one (or an improperly limited number of) source(s).	Yes ☐ → No ☐	Answer 79-83
	79	If using a noncompetitive proposal method, do **one or more of the following circumstances apply**?	Yes ☐ → No ☐ →	Check if **one or more of** answers to 80-83 are "Yes" If you answer "No" or "N/A" to 79-82, the procurement does not comply with federal requirements

Non-Competitive Proposals	80	The item is available only from a single source	Yes ☐ No ☐ N/A ☐	
	81	The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation	Yes ☐ No ☐ N/A ☐	
	82	The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity	Yes ☐ No ☐ N/A ☐	
	83	After solicitation of a number of sources, competition is determined inadequate	Yes ☐ No ☐ N/A ☐	
Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms (Not Required for Micro-Purchases)				
Affirmative Steps	84	Has the NFE taken the **following affirmative steps** to assure that minority businesses, women's business enterprises, and labor surplus area firms are used **when possible**? § 200.321	Yes ☐ No ☐ → The procurement does not comply with federal requirements N/A ☐ → Not required for procurements under $10,000. (Document)	
	85	Placing qualified small and minority businesses and women's business enterprises on solicitation lists?	Yes ☐ No ☐ → The procurement does not comply with federal requirements N/A ☐ → (Document)	

Affirmative Steps	86	Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources?	Yes ☐ No ☐ →	The procurement does not comply with federal requirements
			N/A ☐ →	No potential sources (Document)
	87	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?	Yes ☐ No ☐ →	The procurement does not comply with federal requirements
			N/A ☐ →	Not economically feasible (Document)
	88	Establishing delivery schedules, **where the requirement permits**, which encourage participation by small and minority businesses, and women's business enterprises?	Yes ☐ No ☐ →	The procurement does not comply with federal requirements
			N/A ☐ →	The requirement does not permit (Document)
	89	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?	Yes ☐ No ☐ →	The procurement does not comply with federal requirements
			N/A ☐ →	Not appropriate (Document)
	90	Requiring the prime contractor, **if subcontracts are to be let**, to take the affirmative steps listed above?	Yes ☐ No ☐ →	The procurement does not comply with federal requirements
			N/A ☐ →	No subcontractors will be let (Document)
		Contract Cost and Price		
Cost or Price Analysis	91	If the **contract amount** (including contract modifications) exceeds **$250,000**, did the NFE perform a cost or price analysis? § 200.323(a)	Yes ☐ No ☐ →	The procurement does not comply with federal requirements
			N/A ☐	
	92	Did the NFE **negotiate profit** as a separate element of the price for each contract in *which there is* **no price competition and, in all cases, where cost analysis is performed**? § 200.323(b)	Yes ☐ No ☐ →	The procurement does not comply with federal requirements
			N/A ☐	

CPPC Contract	93	Is the contract a **"cost plus a percentage of cost"** or "**percentage of construction cost"** contract?	Yes ☐ → No ☐	This form of contract is **prohibited** under the Federal procurement standards
		Bonding Requirements for Construction or Facility Improvement Contracts Exceeding $250,000		
Bonding Requirements	94	**Note: For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold** (i.e., $250,000), the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected.		
	95	If such a determination (see above) has not been made, does the procurement include the following?	Yes ☐ No ☐ → N/A ☐	The procurement does not comply with federal requirements
	96	A **bid guarantee** from each bidder equivalent to **five percent of the bid price**? The **"bid guarantee"** must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.	Yes ☐ No ☐ → N/A ☐	The procurement does not comply with federal requirements
	97	A **performance bond** on the part of the contractor for **100 percent of the contract price**? A **"performance bond"** is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.	Yes ☐ No ☐ → N/A ☐	The procurement does not comply with federal requirements
	98-	A **payment bond** on the part of the contractor for **100 percent of the contract price**? A **"payment bond"** is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.	Yes ☐ No ☐ → N/A ☐	The procurement does not comply with federal requirements

FEMA

Fact Sheet

Procurement Under Grants Conducted Under Exigent or Emergency Circumstances

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.

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 required contract provisions per 2 C.F.R. §§ 200.317, 200.322, and 200.326.

For purposes of the Federal procurement requirements, states are defined as the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Northern Mariana Islands, and any agency or instrumentality thereof except for local governments. Tribal governments are not considered to be states when applying Federal procurement standards required by 2 C.F.R. Part 200.

What Rules Apply to Non-State Entities?
For all other types of entities, referred to as "non-state entities" in this Fact Sheet, Federal regulations (2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) establish requirements for the exigency or emergency exception that permits the use of noncompetitive procurements, frequently referred to as "sole-source contracting." This exception and associated procurement requirements are discussed further below. In general, it will be fact-specific and entity-specific as to when exigent or emergency circumstances necessitate the use of noncompetitive procurements. The answers to the frequently asked questions below provide additional guidance on the acceptable use of noncompetitive proposals under exigent or emergency circumstances, which is described in regulation at 2 C.F.R. § 200.320(f)(2).

It is essential that all non-state entities understand that both FEMA and the U.S. Department of Homeland Security's Office of Inspector General (OIG) closely review procurement actions and contract selections, with a particular emphasis on noncompetitive procurement actions, to evaluate compliance with Federal requirements. ***Failure to follow Federal contracting and procurement requirements puts non-state entities at risk of not receiving reimbursement or not being able to use FEMA grant funds for otherwise eligible costs.***

What is the exigency or emergency exception?
Non-state entities 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 entity determines that immediate actions 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 emergency or exigency exception; however, the non-state entity must document its justification for using noncompetitive procurements and must still comply with other procurement requirements and ensure that costs are reasonable.

When referring to procurement activity, FEMA defines both exigency and emergency as situations that demand immediate aid or action. The difference between the two is that:

- In the case of an ***exigency***, there is a need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise, to the non-state entity, and use of competitive procurement proposals would prevent the urgent action required to address the situation. Thus, a noncompetitive procurement may be appropriate.
- In the case of an ***emergency***, a threat to life, public health or safety, or improved property requires immediate action to alleviate the threat.

While emergency conditions generally are short-lived, exigent circumstances can exist for a period of weeks or months.

> **Exigency Example:** A tornado impacts a city in June and causes widespread and catastrophic damage, including damage to a city school. The city wants to repair the school and have it ready for use by the beginning of the school year in September. The city estimates, based on past experience, that awarding a contract using a sealed bidding process would require at least 90 days, and the city's engineer estimates that the repair work would last another 60 days. This would extend the project beyond the beginning of the school year. Rather than conducting a sealed bidding process, the city—in compliance with state and local law—wants to sole source with a contractor it has contracted with previously. The city can demonstrate that this constitutes an "exigent circumstance" because use of a sealed bidding process would cause an unacceptable delay and thus procurement by noncompetitive methods was necessary based on the particular situation.
>
> **Emergency Example #1 (Disaster Grants):** Severe weather impacts a city and causes widespread and catastrophic damage, including loss of life, widespread flooding, loss of power, damage to public and private structures, and millions of cubic yards of debris across the city, leaving almost the entire jurisdiction inaccessible. The city needs to begin debris removal activities immediately to restore access to the community, support search and rescue operations, power restoration, and address health and safety concerns. Under these circumstances, the city may find it necessary to award noncompetitive contracts to address threats to life, property, and public health.
>
> **Emergency Example #2 (Non-Disaster Grants):** The weather in a city has been below freezing for the past 2 weeks, causing a pipe in the city's emergency operations center to burst and flood the first floor. This flood destroyed half of the city's radios that its emergency workers use to communicate with police and fire personnel. The city documented and demonstrated that it needed to replace these radios right away to avert an immediate threat to life, safety, or property as the city needed a full supply of radios in order to respond to emergencies. Under these circumstances, the city may find it necessary to award noncompetitive contracts to address threats to life, property, and public health.

When does the exigency or emergency exception apply and for how long?

Use of the public exigency or emergency exception *is only permissible during the actual exigent or emergency circumstances*. Exigency or emergency circumstances will vary for each incident, making it difficult to determine in advance or assign a particular time frame when noncompetitive procurements may be warranted. Exigent or emergency circumstances may exist for two days, two weeks, two months, or even longer in some cases. Non-state entities must ensure that work performed under the noncompetitively procured contracts is specifically related to the exigent or emergency circumstance in

effect at the time of procurement. Importantly, because the exception to competitive procurement is available only while the exigent or emergency circumstances exist, non-state entities should, upon awarding a noncompetitive contract, immediately begin the process of competitively procuring similar goods and services in order to transition to the competitively procured contracts as soon as the exigent or emergency circumstances cease to exist.

FEMA may review a non-state entity's justification that exigent or emergency circumstances warrant an exception to competitive procurement. If the agency determines that exigent or emergency circumstances did not exist or did not preclude a non-state entity from adhering to competitive procurement requirements, FEMA may disallow all or part of the non-state entity's cost related to the contract or take other actions permitted by statute and regulation. (*See* 2 C.F.R. § 200.338).

What documentation is required to support the use of the exigency or emergency exception?
While FEMA approval is not required for a non-state entity to use noncompetitive procurement proposals under the emergency or exigency exception, non-state entities must document and provide justification for the use of the exigent or emergency exception. A list of elements that non-state entities may wish to include as part of their written justifications can be found at the end of this Fact Sheet. The justification must be included in the non-state entity's records for each FEMA award, subaward, or project.

Do any Federal procurement requirements apply if a non-state entity is sole-sourcing a contract under exigent or emergency circumstances?
Yes, non-state entities must comply with the following requirements even when exigent or emergency circumstances exist:

- Contracts must include the required contract clauses (2 C.F.R. § 200.326 & Appendix II) (also applicable to states).
- Contracts exceeding the Federal simplified acquisition threshold must include the Federal bonding requirements if the contract is for construction or facility improvement (2 C.F.R. § 200.325).
- Contracts must be awarded to a responsible contractor (2 C.F.R. § 200.318(h)).
- The non-state entity must complete a cost or price analysis to determine that the cost or price of the contract is fair and reasonable if the contract exceeds or is expected to exceed the Federal simplified acquisition threshold (2 C.F.R. § 200.323(a) and (b)).
- The use of cost-plus-percentage-of-cost contracting is prohibited (2 C.F.R. § 200.323(c)).
- Use of time and materials contracts must comply with 2 C.F.R. § 200.318(j).
- The non-state entity must follow documentation, oversight, and conflict of interest requirements among other general procurement requirements in 2 C.F.R. § 200.318. If a conflict of interest is unavoidable due to the exigent/emergency circumstances, the non-state entity must explain that in the procurement documentation.

What if the non-state entity wants to use a pre-awarded or pre-existing contract in an exigency or emergency and that contract does not comply with the Federal procurement requirements?
If a pre-awarded or pre-existing contract is not in compliance with the Federal procurement requirements (e.g., the contract was not fully and openly competed (*see* 2 C.F.R. §§ 200.319, 200.320), the six affirmative socioeconomic contracting steps were not completed (2 C.F.R. § 200.321), there is a conflict of interest involved (2 C.F.R. § 200.318)), it may still be possible to use the contract for the duration of the exigency or emergency. FEMA recommends that non-state entities review the list of procurement requirements above and take actions to modify pre-awarded or pre-existing contracts where applicable. In addition, non-state entities must prepare the appropriate documentation to justify the use

of a noncompetitively procured contract.

Can non-state entities use time and materials (T&M) contracts in an exigency or emergency?
Yes, but only under certain circumstances. FEMA advises against the use of T&M contracts and generally limits the use of these contracts to a short time period where the scope or duration of the work is unclear. T&M contracts do not incentivize contractors to control costs or maximize labor efficiency. FEMA may reimburse costs incurred under a T&M contract only if all of the following apply:

- No other contract was suitable;
- The contract has a ceiling price that the contractor exceeds at its own risk; and
- The non-state entity can demonstrate it provided a high degree of oversight to obtain reasonable assurance that the contractor used efficient methods and effective cost controls.

Can a non-state entity award cost-plus-a-percentage-of-cost contracts or contracts with a percentage-of construction-cost method in an exigency or emergency?
No. This prohibition applies to all work, regardless of the circumstances (2 C.F.R. § 200.323(d)).

Can non-state entities use *piggyback* contracts in an exigency or emergency?
Piggyback contracting occurs when one entity with an existing contract assigns some or all of its contractual rights to another entity that was not previously party to the contract. Generally, FEMA discourages piggyback contracts because the original contract pertains to the needs of the original entity with a specific scope of work for that entity. While there may be circumstances when piggybacking is permissible, in almost all instances, the scope of work would need to be changed to include the needs of a non-state entity, and changes to the scope of work are generally not permitted as there is not likely to be full and open competition for the expanded scope of work. However, during emergency and exigency circumstances, non-state entities may be able to piggyback another entity's contract and expand the scope of a contract for the period of the emergency or exigency circumstance.

Note that a non-state entity may choose to enter into a separate contract with the same contractor as another entity, using the same terms and conditions as in that other entity's contract, with only a change in the scope of work and the associated costs. However, this is sole-source contracting rather than piggyback contracting, and it must meet the requirements for noncompetitive procurement under exigency or emergency circumstances as described elsewhere in this Fact Sheet.

If a non-state entity is contemplating the use of piggyback contracting, it should contact its state or territory liaison, or the applicable FEMA Program Office to request FEMA assistance with contract review. For assistance with FEMA contact information, the entity should contact the Centralized Scheduling and Information Desk (CSID) help line at (800) 368-6498 or askcsid@fema.dhs.gov. CSID hours of operation are from 9 a.m. to 5 p.m. ET, Monday through Friday.

Can states use time and materials (T&M) or cost-plus-percentage-of-cost (CPPC) contracts in an exigency or emergency?
While the Federal procurement rules do not prohibit the use of T&M contracts and CPPC contracts by states, FEMA discourages states from using these contracts because they generally lack provisions that control costs and maximize efficiency in performing work. FEMA and the OIG closely scrutinize these types of contracts for cost reasonableness.

Although T&M contracts are discouraged, there may be instances where T&M contracts are appropriate in the short term for activities such as debris removal, emergency power restoration, or other immediate actions required to address emergency health and safety threats under a Public Assistance award. States

entering into T&M contracts are encouraged to include language in the contract that specifies a ceiling price and limits the duration of the contract to a short time period, thus providing the state time to develop a scope of work and transition to the more competitive procurement procedures.

As a reminder, 2 C.F.R. § 200.317 requires states to follow: (1) the same policies and procedures they use for procurements using non-Federal funds; (2) 2 C.F.R. § 200.322 (procurement of recovered materials); and (3) 2 C.F.R. § 200.326 (required contract provisions). These requirements apply regardless of whether exigency or emergency circumstances exist. States must ensure that they are also in compliance with the cost principles in 2 C.F.R. §§ 200.400 – 200.474, including ensuring that costs are reasonable, as defined in 2 C.F.R. § 200.404.

Additional Information and Resources

Non-state entities should consult as soon as possible with all appropriate parties, including their own legal counsel, to review their procurement policies, actions, and contracts and compare them to the Federal procurement requirements. Non-state entities also should contact their state or territory liaisons, or applicable FEMA Program Office to request assistance with any procurement activity concerns. For assistance with FEMA contact information, the entity should contact the Centralized Scheduling and Information Desk (CSID) help line at (800) 368-6498 or askcsid@fema.dhs.gov. CSID hours of operation are from 9 a.m. to 5 p.m. ET, Monday through Friday.

Detailed procurement and contracting information is available on the FEMA website at www.fema.gov/procurement-disaster-assistance-team. While the guidance available at that website is specifically applicable to FEMA's Public Assistance Program, it is a useful resource for FEMA's other grant programs as the procurement requirements in 2 C.F.R. Part 200 apply to all of FEMA's grant programs. The current Code of Federal Regulations referenced in this guidance can be accessed at www.eCFR.gov. The annual Code of Federal Regulations is available at https://www.govinfo.gov/app/collection/cfr, and the applicable regulations will be the ones in place at the time FEMA issued the declaration or made the award.

Suggested Elements for Noncompetitive Procurement Justification

1. Identify which of the four circumstances listed in 2 C.F.R. § 200.320(f) justify a noncompetitive procurement:
    (1) The item is available only from a single source;
    (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
    (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
    (4) After solicitation of a number of sources, competition is determined inadequate.

2. Provide a brief description of the product or service being procured, including the expected amount of the procurement.

3. Explain why a noncompetitive procurement is necessary. If utilizing the exigency/emergency exception, the justification should explain the nature of the public exigency or emergency, including specific conditions and circumstances that clearly illustrate why procurement other than through noncompetitive proposals would cause unacceptable delay in addressing the public exigency or emergency. (Failure to plan for transition to competitive procurement cannot be the basis for continued use of noncompetitive procurement based on public exigency or emergency).

4. State how long the noncompetitively procured contract will be used for the defined scope of work and the impact on that scope of work should the noncompetitively procured contract not be available for that amount of time (e.g., how long do you anticipate the exigency or emergency circumstances will continue; how long will it take to identify your requirements and award a contract that complies with all procurement requirements; or how long would it take another contractor to reach the same level of competence).

5. Describe the specific steps taken to determine that full and open competition could not have been used, or was not used, for the scope of work (e.g., research conducted to determine that there were limited qualified resources available that could meet the contract provisions).

6. Describe any known conflicts of interest and any efforts that were made to identify possible conflicts of interest before the noncompetitive procurement occurred. If no efforts were made, explain why. If a conflict of interest is unavoidable, such as due to exigent/emergency circumstances, explain how it was unavoidable and any steps taken to address the impact of that conflict of interest.

7. Include any other information justifying the use of noncompetitive procurement in the specific instance.

NOTE: A separate justification is required for each instance of noncompetitive procurement.

U.S. Department of Homeland Security
Washington, DC 20472

FEMA

March 17, 2020

MEMORANDUM FOR: All States, Territories, Tribal Governments, Local Governments, and All Other Non-Federal Entities Receiving FEMA Financial Assistance

FROM: David Bibo
Acting Associate Administrator
Office of Response and Recovery

Bridget E. Bean
Assistant Administrator
Grant Programs Directorate

SUBJECT: Procurement Under Grants Conducted Under Emergency or Exigent Circumstances for COVID-19

Subsequent to the President's March 13, 2020 Nationwide Emergency Declaration for Coronavirus Disease 2019 (COVID-19), the Department of Homeland Security's Federal Emergency Management Agency (FEMA) is issuing the attached Fact Sheet addressing procurements made during periods of exigent or emergency circumstances. FEMA recognizes that noncompetitive procurements may be necessary to save lives, to protect property and public health, and to ensure public safety, as well as to lessen or avert the threat of a catastrophe. The attached Fact Sheet provides answers and guidance surrounding the need for such measures.

Current Federal procurement standards (found at 2 C.F.R. § 200.320(f)(2)) allow non-state entities to noncompetitively procure contracts (i.e., sole-sourcing) under certain emergency or exigent circumstances. FEMA defines an emergency or exigent circumstances as unexpected and unusually dangerous situations requiring immediate action or an urgent need for assistance or relief. Emergencies typically involve a threat to life, public health or safety, improved property, or some other form of dangerous situation. Exigencies, on the other hand, typically involve an urgent need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise. Under both an emergency and exigency, using a competitive procurement process would prevent a non-state entity from taking immediate action required to address the situation. However, use of the emergency/exigency exception is only permissible during the actual emergency or exigent circumstances.

The President's unprecedented Nationwide Emergency Declaration, and the Secretary of Health and Human Services' (HHS) declaration of a Public Health Emergency for COVID-19 establish that exigent and emergency circumstances currently exist.

For the duration of the Public Health Emergency, which began January 27, 2020 as determined by HHS, local governments, tribal governments, nonprofits, and other non-state entities may proceed with new and existing noncompetitively procured contracts in order to protect property and public health and safety, or to lessen or avert the threats created by emergency situations for 1) Emergency protective measures under FEMA's Public Assistance Program and 2) Use of FEMA non-disaster grant funds by non-state recipients and sub-recipients to respond to or address COVID-19.

Attachment:

(1) Fact Sheet: *Procurement Under Grants Conducted Under Exigent or Emergency Circumstances*