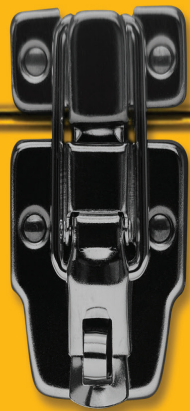


PROCUREMENT TOOLBOX

A COMPREHENSIVE GUIDE TO GETTING +
KEEPING YOUR FEMA GRANT DOLLARS



Getting
it right!

**LOCAL + TRIBAL
SUBRECIPIENTS**



INTRODUCTION LETTER FROM THE GOVERNOR'S OFFICE OF HOMELAND SECURITY AND EMERGENCY PREPAREDNESS (GOHSEP)

Dear Procurement Stakeholder,

When a disaster occurs, its magnitude may overwhelm the resources of local and Tribal entities. Multiple disasters taking place over a short period, such as the unnamed severe storms and flooding that occurred in Louisiana in 2016, exponentially stretch precious local resources.

Disaster recovery assistance is available to local governments through grants from **FEMA Public Assistance (PA)** and **Hazard Mitigation (HM)** Grant Programs following a **Presidential Disaster Declaration**. Funding received for these programs is administered in Louisiana by the **Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP)**. For local governments, **GOHSEP** recognizes how tracking and following the large body of Federal law, regulation and policy requirements that accompany participation in these grant programs can be a daunting task. Furthermore, we understand how complex procurement under **FEMA's** Federal assistance programs can be.

As a result of these complex rules governing procurement and the negative financial consequences of improper procurement practices, **GOHSEP** has dedicated significant resources to create and conduct education training programs to address these procurement challenges. **GOHSEP** has complemented its education training programs by producing the *Procurement ToolBox: A Comprehensive Guide to Getting + KEEPING Your FEMA Grant Dollars for local and Tribal Subrecipients (Applicants)*. It is a job aid designed to simplify the procurement process and assist Subrecipients (Applicants) in maintaining regulatory compliance. The ToolBox can be downloaded here: gohsep.la.gov/RESPOND/REQUEST-RESOURCES/Volunteer-Relief-Organizations.

Additionally, a video series in conjunction with the written materials has been produced. Furthermore, we are building out even more digital resources that will include real-life SAMPLES of *Request for Proposals (RFP)*, *Request for Qualifications (RFQs)*, contracts and more. Stay connected by checking out gohsep.la.gov/RESOURCES/DATraining.

As you familiarize yourself with this ToolBox, you will see that the first five (5) sections give specific technical assistance to you regarding procurement and contract execution. These topics are designed to chronologically guide you through your procurement process. Section six (6) of the ToolBox includes common topics we hope are both useful and informative as we have found they often affect your grant dollars and procurement.

We trust you will find this ToolBox instructive and helpful regarding procurement under **FEMA grants**. With the right education and preparation, **FEMA's Federal assistance programs** can help your community or organization achieve the new normal after a disaster.

As always GOHSEP stands by to assist you through the entire recovery process. You may contact the GOHSEP legal team at any time by emailing gohseplegal@la.gov.



Scan here to learn more about PROCUREMENT.



THIS PAGE INTENTIONALLY LEFT BLANK.

TABLE OF CONTENTS

ACRONYMS

KEY-WORDS GLOSSARY

INTRODUCTION

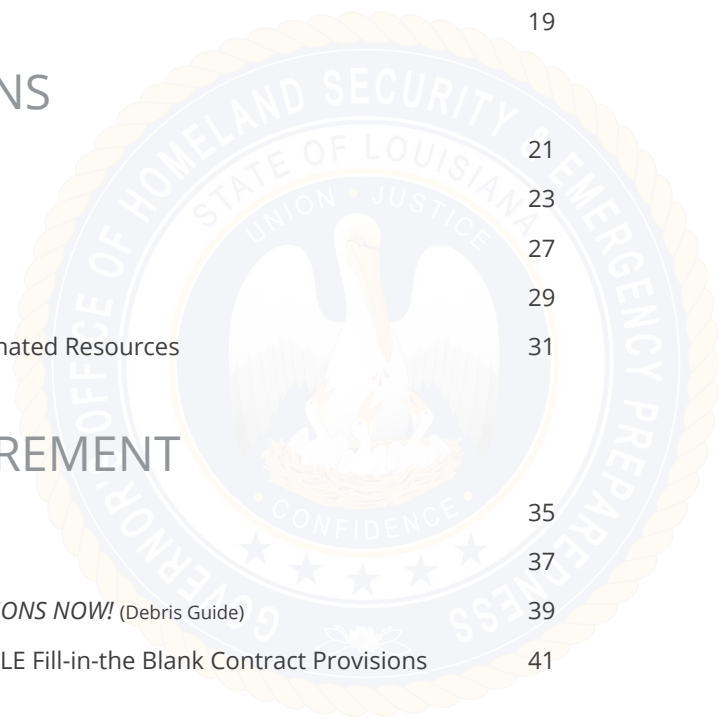
- Welcome to the **Procurement ToolBox** 1
- *Public Assistance (PA) 101* 3
- New FEMA Public Assistance (PA) Model 9
- *The NEW 10 Things to Know About Funding Hazard Mitigation* 11
- *Robert T. Stafford Disaster Relief + Emergency Assistance Act (Stafford Act) Process* 17
- What is a Federal Disaster Declaration? 19

I. PRE-DISASTER ACTIONS

- Introduction to Pre-disaster Actions 21
- Required Written Procedures 23
- Payroll + Overtime Policy 27
- Debris Operations Before the Disaster 29
- Offsetting the Local Match – Volunteer + Donated Resources 31

II. EMERGENCY PROCUREMENT

- Emergency + Exigency 35
- Debris Considerations 37
- *What you need to know about DEBRIS OPERATIONS NOW!* (Debris Guide) 39
- Emergency Procurement Made Easy – SAMPLE Fill-in-the Blank Contract Provisions 41



III. FOUR (4) PREFERRED METHODS OF PROCUREMENT

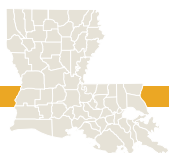
• What Do I Need? Categories + Size of Contracts	57
• How Much is this Contract Going to Cost?	59
» Cost Analysis (CA) Flowcharts	60
» Cost Analysis (CA) Checklist	61
» EXAMPLE Cost Analyses	63
• How Do I Properly Procure?: Four (4) Preferred Methods of Competitive Procurement	69
• Minority + Disadvantaged Business Enterprise (DBE)	71
• EXAMPLE <i>Request for Proposals (RFP) for ____ Services</i>	75
» EXAMPLE RFP Advertisement	85
• EXAMPLE <i>Request for Qualifications (RFQ) Statements for Architecture + Engineering (A + E) Services</i>	87
» EXAMPLE RFQ Advertisement	97

IV. CONTRACT EXECUTION

• Types of Contracts	99
• Required Contract Provisions	101
• EXAMPLE Contract with FEMA Required Clauses	105
• EXAMPLE FEMA Required Clauses Addendum	119

V. OTHER THINGS YOU NEED TO KNOW THAT MAY EFFECT YOUR FEMA DOLLARS

• When We Disagree – Appeals Process	127
• Audits	129
• How to Get Reimbursed for Direct Administrative Costs (DAC)	131
• Procurement – Things to Do! NOT to Do!	133
• Insurance Considerations	135
» <i>Stafford Act Insurance Commissioner's Certification Process (ICC)</i>	137
• IMAC + EMAC	143










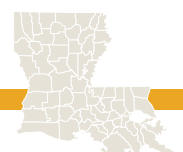
- *FEMA Public Assistance 406 Hazard Mitigation Opportunities* 145
- *Environmental + Historic Preservation (EHP)* 151
- *Alternate + Improved (A/I) Projects* 159

VI. RESOURCES

- *Procurement Checklist* 167
- *Report Fraud, Scams and Abuse* 171
- *Procurement + Contracting – More Resources* 173
- *FEMA PA Guides Listed by Disaster* 175

APPENDIX

-  **FEMA** Checklist for reviewing procurements under grants by non-Federal entities – *Code of Federal Regulations* (CFR) Part 200 (*Procurement Disaster Assistance Team [PDAT] Checklist*)
-  **FEMA** Memorandum: *Exigent and Emergency Conditions for FEMA-4332-DR-TX* (September 10, 2017)
-  **FEMA** *Frequently Asked Questions (FAQ): Sole Sourcing in Exigency or Emergency Circumstances*
-  **FEMA** Fact Sheet: *Public Assistance: Contracting Requirements Checklist*
-  **FEMA** Fact Sheet: *Debris Removal Tips*
-  **FEMA** Fact Sheet: *Grants Manager and Grants Portal Tool*
-  Office of Inspector General, *Audit Tips for Managing Disaster-Related Project Costs* (DHS-OIG)
- Louisiana Legislative Auditor's (LLA's) *Summary of the Louisiana Procurement Code*
- Louisiana Legislative Auditor's (LLA's) *FAQ - Public Bid Law*
- Louisiana Legislative Auditor's (LLA's) *FAQ - Public Assistance (PA) Grant Program*
- Louisiana Legislative Auditor's (LLA's) *Office Guidance on Emergency Declarations*



THIS PAGE INTENTIONALLY LEFT BLANK.

ACRONYMS

It is important to know “the language.” Below, you will find a list of commonly used acronyms in this ToolBox.

A + E	Architecture and Engineering	NFIA	<i>National Flood Insurance Act</i>
CEF	Cost Estimating Factor	O + P	Overhead and Profit
CDBG	Community Development Block Grant	OMB	Office of Management and Budget
CFR	<i>Code of Federal Regulation</i>	OSP	Office of State Purchasing
CPI	Consumer Price Index	PA	FEMA Public Assistance
DHS-OIG	U.S. Department of Homeland Security – Office of Inspector General	PDA	Preliminary Damage Assessment
DRS	Disaster Recovery Specialist	PDAT	Procurement Disaster Assistance Team
EEO	Equal Employment Opportunity	PE	Professional Engineer
EHP	Environmental and Historic Preservation	PNP	Private Nonprofit
EMAC	Emergency Management Assistance Compact	PW	<i>Project Worksheet</i>
EPA	Environmental Protection Agency	RFP	<i>Request for Proposals</i>
FAR	<i>Federal Acquisition Regulation</i>	RFQ	<i>Request for Qualifications</i>
FEMA	Federal Emergency Management Agency	RPA	<i>Request for Public Assistance</i>
FIPS	Federal Information Processing Standard	SAL	State Applicant Liaison
GSA	General Services Administration	SAM	System for Award Management
HM	FEMA Hazard Mitigation	SAT	Simplified Acquisition Threshold
ICC	Insurance Commissioner’s Certification	SBA	U.S. Small Business Administration
IMAC	Intrastate Mutual Aid Compact	SCO	State Coordinating Officer
LED	Louisiana Department of Economic Development	SCP	State Cooperative Purchase
LLA	Louisiana Legislative Auditor	SOW	Scope of Work
MBDA	Minority Business Development Agency	SRIA	<i>Sandy Recovery Improvement Act of 2013</i>
MOA	<i>Memorandum of Agreement</i>	Stafford Act	<i>Robert T. Stafford Disaster Relief and Emergency Assistance Act</i>
MOU	<i>Memorandum of Understanding</i>	T + M	Time and Materials
NEPA	<i>National Environmental Policy Act</i>		



THIS PAGE INTENTIONALLY LEFT BLANK.

KEY-WORDS GLOSSARY

To ensure we are all on the same page, we need to understand keywords similarly. Here are ones important to the understanding of this Toolbox.

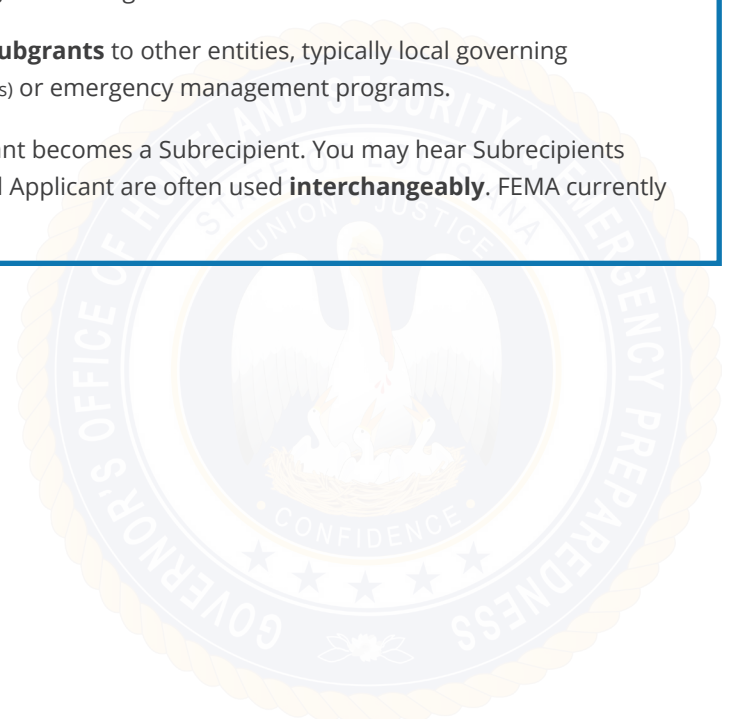
When discussing procurement, you will hear entities referred to as the Grantee OR Recipient or the Applicant OR Subgrantee OR Subrecipient. Here's what you need to know:

Grantee / Recipient – Federal emergency and disaster grants are typically awarded to **States** and Federally recognized **Tribal** authorities or **Territories**. The entity receiving the grant award is called the **Recipient**. You may also hear Recipients referred to as the Grantee. FEMA currently prefers the term Recipient.

Applicant – An Applicant is an entity applying for a **subgrant** through the Grantee.

Subgrants – Recipients or Grantees sometimes award **subgrants** to other entities, typically local governing authorities, State agencies, certain private nonprofits (PNPs) or emergency management programs.

Subrecipient – Once a subgrant is awarded, the Applicant becomes a Subrecipient. You may hear Subrecipients referred to as Subgrantees. Subgrantee, Subrecipient and Applicant are often used **interchangeably**. FEMA currently prefers the term **Subrecipient** (Applicant).



THIS PAGE INTENTIONALLY LEFT BLANK.

INTRODUCTION

INTRODUCTION



PROCUREMENT **TOOLBOX**

WELCOME TO THE PROCUREMENT TOOLBOX

The PROCUREMENT TOOLBOX: A COMPREHENSIVE GUIDE TO GETTING + KEEPING YOUR FEMA GRANT DOLLARS! (ToolBox for Local + Tribal Subrecipients) was created to assist the Subrecipient (Applicant) to better understand and meet Federal regulatory requirements in the procurement process. If you procure materials, supplies, goods and services using Federal funds, you need this ToolBox.

Scope of this Publication + Disclaimer

This document provides **guidance** on **Federal procurement regulations** as stated in *Code of Federal Regulations (CFR) 44 CFR 13.36* and *2 CFR 200*.

Please remember that this publication addresses **Federal procurement requirements** *only*. The use of State and local funds may have **different requirements**. **FEMA requires that the Subrecipient (Applicant) follow the most restrictive process. You must also refer to your local Municipal Code and Procurement Policy.**

It is the responsibility of the Subrecipient (Applicant) to know and ensure that all Federal regulations are followed.

Purpose of this Publication

This ToolBox is intended to assist Subrecipients (Applicants) in **identifying** and **applying** the required Federal regulations for the proper **procurement** of **materials, supplies, goods** and **services** when using Federal funds.

How to Use this Publication

Do you know what methods of procurement you should use for different kinds of purchases? Do you know the **procurement requirements** based on **type** and **size** of purchase? Are you familiar with which types of **contracts** to use and when? Do you know which provisions **MUST** be included in your **contract documents** or which **procedures** you are **required** to have in *writing* ready for inspection? Do you know what to do to *ensure* procured materials, supplies, goods and services are **cost reasonable** or, for that matter, what “cost reasonable” means?

This publication provides *easy-to-read* and *follow* **charts, checklists, job aids, sample contracts** and **“What to Do! What Not to Do!”** to help you meet regulatory requirements regarding procurement using Federal funds.

References + Citations

You must know what is required by **statute** or **regulation**. You will find throughout this ToolBox source references to learn more about individual subjects.



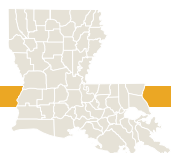
Intended Audience

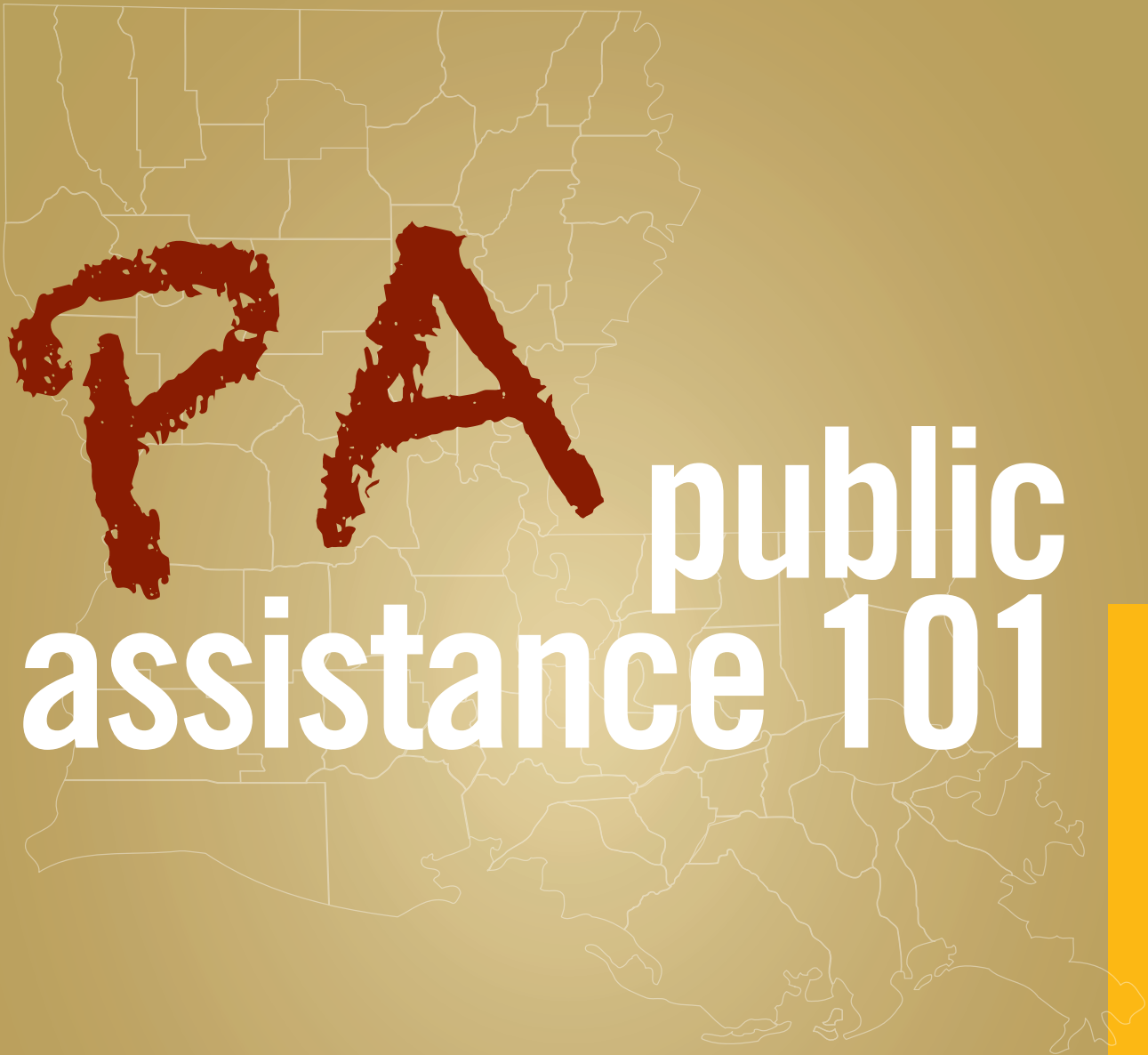
Intended audiences include Louisiana **local governing authorities** and Federally recognized **Tribal** governing authorities who receive funding from the **FEMA Public Assistance (PA)**, **FEMA Hazard Mitigation Assistance (HMA)** and **Preparedness Grant Programs**.

To the extent possible, GOHSEP will work with the Subrecipient (Applicant) to resolve procurement issues when identified.

Possible penalties for unresolved improper procurement may include:

- Withholding payments
- Suspending grant
- Repayment of disbursed funds
- Deobligating funds
- Withholding *future* grants





public assistance 101



PURPOSE OF THIS PUBLICATION

To raise **awareness** of **assistance available** through the Federal Emergency Management Agency (FEMA) **Public Assistance (PA) program** authorized under the *Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act)*.

INTENDED AUDIENCE

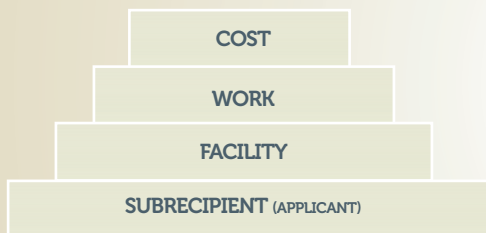
This publication is intended for **local** and **State** officials, Federally recognized **Tribal governments**, those **applying** for and/or **receiving** recovery-funding grants through the **FEMA PA** program and other disaster-recovery and mitigation **stakeholders**.

Public Assistance (PA) grant program

The **Public Assistance (PA) Grant Program** provides *supplemental* **Federal assistance** to States and local communities to **return** an area impacted by disaster to its *pre-disaster* **conditions** and **function**. PA supports initiatives that protect against *immediate* threats to **life, public safety** and **improved property**; the removal of **debris** as a result of a disaster and the **restoration** – through **repair** or **replacement** – of disaster-damaged **structures** and **facilities**.

WHO CAN PARTICIPATE IN THE PA PROGRAM?

There are **four (4) eligibility requirements** that must be met to participate in the **PA program**. The **Subrecipient (Applicant)** *must* be eligible for the **facility** to be eligible. The **facility** *must* be eligible for the **work** to be eligible. The **work** *must* be eligible for the **cost** to be eligible.



ELIGIBLE APPLICANTS

State of Louisiana	✓
Federally Recognized Tribal Governments	✓
Local Governments	Able to apply through State jurisdiction
Private Nonprofit Organizations	Able to apply through State jurisdiction

The cost of **eligible work** is typically a *shared cost*. The Federal share of assistance is no *less than 75%* of the eligible cost for **emergency measures** and **Permanent work**. Under certain circumstances, the Federal share may be **90%** or even **100%**.



CAMERON PARISH COURTHOUSE IN CAMERON, LA



LOUISIANA SUPERDOME IN NEW ORLEANS, LA

ELIGIBILITY REQUIREMENTS

APPLICANT

There are **four (4) types** of **eligible** Subrecipients (Applicants) for PA. If an entity meets the requirements of **one (1)** of the types, the Subrecipient (Applicant) may be **eligible** to receive **Federal disaster assistance**.

- **State government agencies.**
- **Local governments and special districts** – for example **school districts, irrigation districts, fire districts** and **utility districts**.
- **Private nonprofit (PNP) organizations.** PNPs must own or operate facilities that are open to the **general public** and that provide certain *essential* and *critical* services otherwise performed by a government agency.
- **Federally recognized Native American Indian Tribes or authorized Tribal organizations.**

WORK

To be **eligible** for PA funding, disaster recovery work performed on an **eligible facility** *must* be:

- *Required* as a *direct* result of a **major disaster** event.
- Located within a **designated disaster area**.
- The **legal responsibility** of an **eligible** Subrecipient (Applicant).

FACILITY

The facility must be:

- Located in the **designated disaster area**.
- **Damaged** by the declared disaster or emergency.
- In *active* use and **open** to the **general public** at the time of the disaster.

COST

Generally, costs that can be *directly* tied to the performance of **eligible work** are **eligible**. Costs must be:

- **Reasonable** and *necessary* to accomplish the work.
- Compliant with **Federal, State** and **local requirements** for procurement.
- *Reduced* by all applicable credits, such as **insurance proceeds** and **salvage values**.

Cost is **reasonable** if it is a cost that is both **fair** and **equitable** for the type of work being performed.

What projects/activities are funded through PA grants?

There are **two (2) broad categories** of eligible work – **Emergency work** and **Permanent work**. Each category is further subdivided as shown in the graphic to the right.

- **Emergency work** must be performed to **reduce or eliminate** an **immediate** threat to **life, protect public health and safety** and to **protect improved property** that is threatened in a significant way as a result of a disaster.
 - » **Temporary facilities** may also be eligible for PA when **services** provided at public, Tribal and critical PNPs are **disrupted** due to a major emergency or disaster event.
- **Permanent work** is **required** to **restore** a damaged facility to its **pre-disaster** design and **function** and **capacity** – in accordance with applicable codes or standards.

APPLICATION PROCESS

An **Applicant Briefing** is conducted by the Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP) as soon as *feasible* following a **Presidential Declaration (PD)**. At the briefing, both the Federal Emergency Management Agency (FEMA) and GOHSEP staff are available to **assist** potential Subrecipients (Applicants) in determining eligibility for PA funding.

Local communities, State agencies, Tribal authorities and eligible **PNPs** apply for assistance from **FEMA** through **GOHSEP** by completing a *Request for Public Assistance (RPA)*. The RPA is FEMA's **official** application form. The form can be submitted at the Applicant Briefing or through **LouisianaPA.com** – GOHSEP's PA grants management portal.

PA projects must meet **environmental** and **historic regulations**. To learn more, download the **EHP environmental + historic preservation** brochure and visit *Environmental and Historic Preservation Guidance for FEMA Grant Applicants* at fema.gov/office-environmental-planning-and-historic-preservation.

WHEN IS THE APPLICATION PERIOD?

An RPA must be submitted to FEMA within **30 days** after **Presidential-declaration designation** of the area where the damage occurred.

FEMA PA WORK CATEGORIES	
EMERGENCY WORK	
Category A	Debris Removal
Category B	Emergency Protective Measures
PERMANENT WORK	
Repair Restoration of Disaster-damaged Public Facilities and Property	
Category C	Roads + Bridges
Category D	Water Control Facilities
Category E	Buildings + Contents + Equipment
Category F	Utilities
Category G	Parks + Recreational + Other

DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY
REQUEST FOR PUBLIC ASSISTANCE

EXAMPLES OF ELIGIBLE PA WORK

Eligibility rules are sometimes complex and can be confusing. To learn more, refer to the FEMA *Public Assistance Program and Policy Guide* (PAPPG), Chapter 2, IV. General Work Eligibility OR visit [fema.gov/media-library/assets/documents/111781](https://www.fema.gov/media-library/assets/documents/111781) OR contact your GOHSEP PA State Applicant Liaison (SAL) OR call 225-925-7590.

EMERGENCY WORK

CATEGORY A: DEBRIS REMOVAL

Trees + woody debris	✓
Building components or contents	✓
Sand + mud + silt + gravel	✓
Wreckage produced during conduct of emergency protective measures (for example, drywall)	✓

CATEGORY B: EMERGENCY PROTECTIVE MEASURES

Alerts + warning of risks + hazards	✓
Building stabilization	✓
Emergency communications	✓
Emergency evacuations of medical and custodial care facilities	✓
Emergency mass care and shelter operations	✓
Emergency medical facilities	✓
Food + water + ice + other essential needs	✓
Blue roofs	✗
PNP facility emergency protective measures IF the facilities are otherwise eligible	✓
Rescue + care + shelter + essential needs for household pets and service animals	✓
Search + rescue	✓
Security in the declared disaster area	✓
Transportation of disaster victims	✓

Temporary generators for facilities that provide health and safety services

✓

Removal of dead animals

✓

Vector control when serious threat

✓

Under certain conditions, ice removal

✓

PERMANENT WORK

CATEGORY C: ROADS + BRIDGES

Road surfaces + bases + shoulders	✓
Road ditches	✓
Road drainage structure + low-water crossings	✓
Bridge approaches	✓
Bridge decking + pavement	✓
Bridge piers + girders + abutments	✓
Bridge slope protection	✓

CATEGORY D: WATER CONTROL FACILITIES

Canals + aqueducts + sediment basins	✓
Certain irrigation facilities	✓
Dams + reservoirs + levees	✓
Engineered drainage channels	✓
Pumping facilities	✓
Shore protective devices	✓

CATEGORY E: BUILDING + EQUIPMENT

Codes + standards upgrades or a portion of that work	✓
Contents or a portion thereof	✓

Equipment

✓

Mold remediation

✓

Restoration through repair or replacement of damaged facilities to pre-disaster design + function

✓

Routine maintenance

✗

Temporary or permanent relocation

✓

Under certain circumstances, ADA compliance work or a portion of that work

✓

CATEGORY F: UTILITIES

Communications	✓
Power generation + distribution	✓
Sewage collection systems	✓
Water treatment plants + distribution	✓

CATEGORY G: PARKS + RECREATION + OTHER

Fish hatcheries	✓
Golf courses	✓
Mass transit facilities	✓
Picnic tables	✓
Piers + boat docks	✓
Playground equipment	✓
Swimming pools + bath houses	✓
Tennis courts	✓
Trees + ground cover + landscaping	✗
Other facilities that do not fit in Categories C – F	✓

ADA	Americans with Disabilities Act
EHP	Environmental and Historic Preservation
FEMA	Federal Emergency Management Agency
GOHSEP	Governor's Office of Homeland Security and Emergency Preparedness
LAPA	Louisiana Public Assistance
PA	Public Assistance
PD	Presidential Declaration
PDA	Preliminary Damage Assessment
PNP	Private Nonprofit
RPA	Request for Public Assistance
SAL	State Applicant Liaison

FEMA Public Assistance Program and Policy Guide (PAPPG) – FP 104-009-2 / April 2017
[fema.gov/media-library/assets/documents/111781](https://www.fema.gov/media-library/assets/documents/111781)

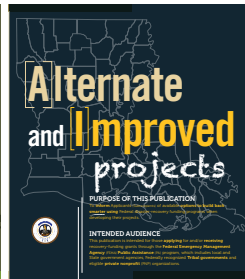
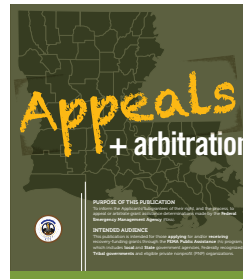
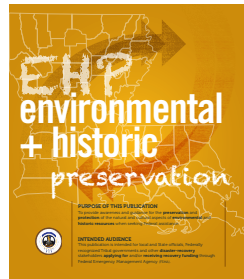
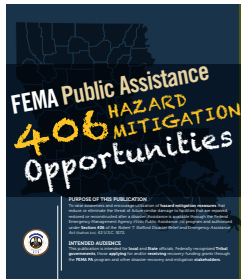
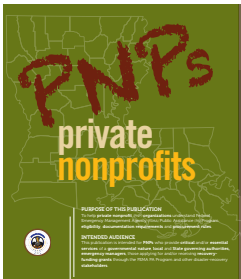
FEMA PA: Local, State, Tribal and Private Nonprofit
[fema.gov/public-assistance-local-state-tribal-and-non-profit](https://www.fema.gov/public-assistance-local-state-tribal-and-non-profit)

FEMA RPA Application Form
[fema.gov/library/viewRecord.do?id=2658](https://www.fema.gov/library/viewRecord.do?id=2658)

Louisiana Public Assistance (LAPA)
[LouisianaPA.com](https://www.LouisianaPA.com)

Stafford Act
[fema.gov/media-library/assets/documents/15271](https://www.fema.gov/media-library/assets/documents/15271)

PUBLIC ASSISTANCE TOOLBOX



ALTERNATE AND IMPROVED PROJECTS *Coming Soon!*

NEED HELP?

If you need **assistance** with a **PA application** or want to **know more** about PA funding opportunities, contact your GOHSEP PA SAL or call 225-925-7590.



NEW FEMA PUBLIC ASSISTANCE (PA) MODEL



FEMA has changed the way it administers the Public Assistance (PA) Program through the introduction of a new PA model. The new model enhances performance and includes continuous improvements from Lessons Learned over time to achieve maximum potential of PA funds invested in communities after a declared emergency or disaster.

Beginning **September 12, 2017**, FEMA implemented a new delivery model for all *future* declared disasters. Under this model, projects are segmented based on the **complexity** of the type of work; workflows are transparent and accountable through the **Grants Manager** and **Grants Portal Tool**; specialized staff, roles and responsibilities are paired to fit Subrecipients' (Applicants') needs; and, **Consolidated Resource Centers (CRCs)** are used to ensure **consistency** across multiple disaster operations. To learn more, see the **Grants Manager** and **Grants Portal Tool** in the APPENDIX of this publication.

WHAT'S CHANGED	WHAT HAS NOT CHANGED
<ul style="list-style-type: none"> • Process • Roles + Responsibilities • Tools + Templates • Systems 	<ul style="list-style-type: none"> • Law • Regulations • Policy

Projects are now processed through an assembly line.

- Specialized and skilled personnel are aligned to each task.
- The process is streamlined.
- Span of control is established.

Phase I: Operational Planning: The identification of disaster impacts and Subrecipient (Applicant) recovery priorities.

Phase II: Intake Damage and Eligibility Analysis: Codify disaster-related damages – completion within **60 days** of the Recovery Scoping Meeting (RSM). Facilitation of Site Inspections.

Phase III: Scoping and Costing: Development and validation of Subrecipient (Applicant) — provided *scopes of work* and costs based on codified damage.

Phase IV: Reviews: Eligibility review queues and project obligation.

A NEW APPROACH



Segmentation: Projects divided by work type + complexity.



Standardization: New tools + checklists guide staff through work flow.

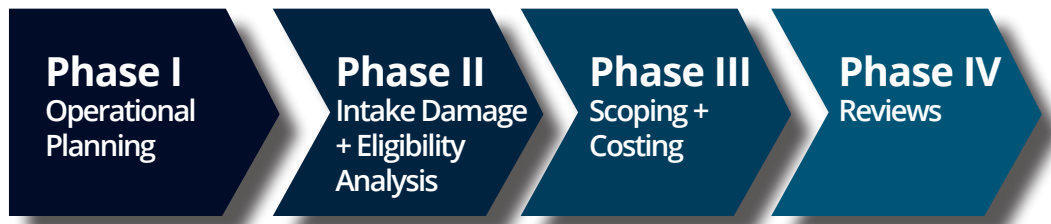


Specialization: New positions created for specific, customer-forward duties.



Consolidation: Document validation + technical review experts available across multiple disasters.





The following are new terms and acronyms used for FEMA's New PA Delivery Model:

Exploratory Call – Program Delivery Manager (PDMG) makes contact with assigned Applicant representatives to obtain general information about the Applicant and disaster impacts, and to identify the next steps.

PA Group Supervisor (PAGS) – Provides Disaster Overview Briefing to PDMGs and other PA staff including Recipient staff, Environmental and Historical Preservation (EHP) and Hazard Mitigation Assistance (HMA) staffs.

Program Delivery Manager (PDMG) – Applicant's primary point of contact (POC).

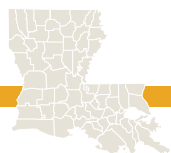
Program Delivery Task Force Leader (PD TFL) – Conducts an initial "Sit-With" for each PDMG to assess skill sets and experience and then makes a recommendation to the PAGS for Applicant assignments.

Recovery Scope Meeting (RSM) – Formerly Kickoff Meeting.

Site Inspector Task Force Leader (SI TFL) – Coordinates with the PDMG to ensure requested time for site visit is available after which the PDMG submits the *Site Inspection Work Order*.

Specialized Project Manager (SPPM) – Formerly Project Officer.

See [fema.gov/new-public-assistance-delivery-model](https://www.fema.gov/new-public-assistance-delivery-model) for more information.



**BUILDING SAFER,
STRONGER
COMMUNITIES**



the **NEW** 10 things to know about **funding** hazard mitigation

EDUCATE
to
MITIGATE™



getagameplan.org



PURPOSE OF THIS PUBLICATION: It is an introductory guide to hazard mitigation funding.

THIS PUBLICATION IS INTENDED: For Office of Homeland Security and Emergency Preparedness (OHSEP) Directors, parish-level officials and staff and other hazard mitigation stakeholders who may be involved in the identification of local hazard mitigation projects and management of FEMA Hazard Mitigation Assistance (HMA) grants. Its purpose is to help create a better understanding of available funding, who can apply, how to apply, the benefits of applying and how each grant can be used.

10 things to know about hazard mitigation

1 WHAT IS HAZARD MITIGATION?

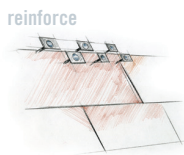
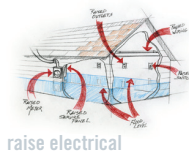
Hazard mitigation is **any sustained action taken to reduce or eliminate future risk to people and property** from natural and man-made hazards and their effects. **Raising** homes, wind retrofits (roof tie-downs, window shutters, etc.) for critical facilities, drainage improvements, acquiring flood-prone structures and **flood control** are some of the more visible examples of mitigation.

Mitigation is smart, responsible and it's **cost-effective!**

For every \$1 spent on mitigation, approximately \$4 are saved in future reduced losses.

*United States Congressional Budget Office, *Potential Cost Savings from the Pre-Disaster Mitigation Program, 2007.*

CLEARLY IT PAYS TO MITIGATE!



2 WHAT IS THE DIFFERENCE BETWEEN MITIGATION AND PREPAREDNESS?

They are similar. Both are intended to **reduce disaster impacts**. Planning where government services will be housed if established offices are damaged or destroyed in the wake of a disaster is an example of a **preparedness strategy**. Planning how to **locate, connect** with and **organize** staff after a disaster is a **preparedness strategy**.

Building and retrofitting so that structures can **withstand hurricane-force winds; elevating structures above flood waters; and relocating** structures to avoid the path of destruction are examples of **mitigation strategies**.

Levees — an important mitigation strategy — are included under other programs and are not in the Hazard Mitigation Assistance (HMA) program.

3 WHY IS HAZARD MITIGATION IMPORTANT?

- Louisiana has a history of **major hurricanes**, has experienced **hundreds of flooding events** and felt the impacts of damaging high winds, **tornadoes** and **ice storms**.

- Louisiana topography places Louisiana structures at risk for repetitive damage from flooding and high winds.
- Disaster impacts to Louisiana have totalled **BILLIONS** of dollars in damages and well over a thousand lost lives.
- While most disasters cannot be avoided, hazard mitigation strategies can **break** the cycle of destruction, **lessening the loss of life and property damage**.

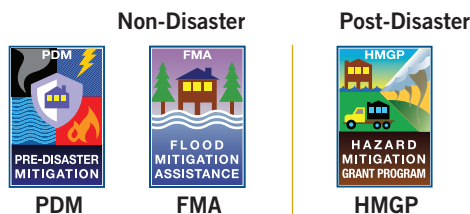
The bottom line: Hazard mitigation strategies help us build safer, stronger, smarter and more resilient communities better prepared to withstand future disasters.

4 ARE THERE FUNDS OR RESOURCES TO HELP COMMUNITIES IMPLEMENT HAZARD MITIGATION STRATEGIES?

YES! Federal Emergency Management Agency (FEMA) **Hazard Mitigation Assistance (HMA)** programs are important opportunities and resources.

- There are **TWO non-disaster grants** available on **annual funding** cycles.
- Plus, there is the Hazard Mitigation Grant Program (HMGP) available **after a Presidentially declared disaster**.

We call these programs **the big 3**. The Louisiana Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP) administers them.



Non-Disaster Grants:

Pre-Disaster Mitigation (PDM)

Flood Mitigation Assistance (FMA)

Post-Disaster Grant:

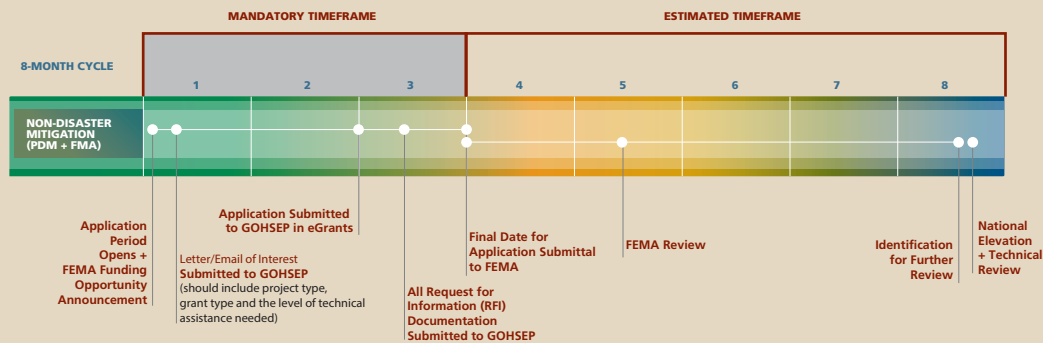
Hazard Mitigation Grant Program (HMGP)

There are also a number of other **grants** that may include mitigation or mitigation-related **technical assistance** and **funding** resources within other Federal agencies and programs. Check out the following link: www.fema.gov/library/viewRecord.do?id=2152 and download the document: *Disaster Assistance: A Guide to Recovery Programs*; OR visit www.cfda.gov and download *Catalog of Federal Domestic Assistance*.

5 WHAT ACTIVITIES CAN BE FUNDED BY HAZARD MITIGATION GRANT DOLLARS?

- At-Risk Property Acquisition (including demolition and relocation)
- Structure Elevation
- Dry Floodproofing (e.g. sealing a building) of Historic Residential and Non-Residential Structures
- Minor Localized Flood Reduction Projects (e.g. drainage projects)
- Hazard Mitigation Planning
- Retrofitting of Existing Buildings and Facilities (roof straps, hurricane screens, elevate HVAC and utility panels, etc.)
- Safe Room Construction
- Soil Stabilization (e.g. erosion control, sinkhole mitigation, etc.)
- Wildfire Mitigation
- Elevate Roads
- Culvert/Bridge Enlargements, etc.
- 5% Initiative Projects (flex projects such as code enforcement, community education, generators, outreach, etc.)

sample non-disaster ANNUAL grant cycle (FY14)



There is some overlap between grants. For help in determining which grant is best for you contact your GOHSEP Hazard Mitigation State Applicant Liaison (HM SAL) for assistance.

6 WHO CAN APPLY FOR the big 3?

State and local governments, certain private nonprofits and Federally recognized Native American tribes are eligible to apply for grants or sub grants.

Individuals are NOT eligible to apply for hazard mitigation funding. However, an eligible Applicant may apply for funding to mitigate private structures.

7 UNDER WHAT CONDITIONS AM I ELIGIBLE TO APPLY FOR ONE OF THE TWO (2) NON-DISASTER ANNUALLY FUNDED HAZARD MITIGATION GRANTS?

You are an eligible Applicant if:

- You are a parish or local jurisdiction and have a FEMA-approved *Hazard Mitigation Plan (HMP)*.
- You are a **municipality** that participated in the development of your parish HMP and your governing authority has formally adopted it.
- You are a **State agency, Federally recognized tribal government** or **local government**.
- You are a **nonprofit organization** that provides governmental-type services (e.g. hospitals, schools, day care, etc.). Check with your local Office of Homeland Security and Emergency Preparedness (OHSEP) or the GOHSEP HM SAL for your region to learn more.
- Your project is located in a **National Flood Insurance Program (NFIP)-participating community**.

NOTE: If you are a homeowner and have flood insurance, contact your parish to inquire about non-disaster grants.

non-disaster grants

ELIGIBLE APPLICANTS	PDM	FMA	HMGP
State Agencies	✓	✓	✓
Federally Recognized Tribal Governments	✓	✓	✓
Local Governments	✓	✓	✓
Private Nonprofit Organizations	*Able to apply through local jurisdiction.		✓

8 DOES MY HAZARD MITIGATION ACTIVITY HAVE TO BE INCLUDED IN OUR LOCAL, FEMA-APPROVED HMP TO BE ELIGIBLE FOR GRANT FUNDING?

YES. If your proposed activity is not listed in your local *Hazard Mitigation Plan*, contact your OHSEP Director.

9 IF MY PARISH IS THE RECIPIENT OF A HAZARD MITIGATION GRANT PROGRAM (HMGP) ALLOCATION, ARE WE STILL ELIGIBLE TO APPLY FOR NON-DISASTER GRANTS?

YES. The TWO (2) non-disaster grants (PDM, FMA) are available on annual funding cycles and independent of post-disaster HMGP allocations.

10 GRANTS OFTEN REQUIRE A NON-FEDERAL MATCH. HOW CAN MY COMMUNITY MEET THE MATCH?

In addition to simply writing a check, there are many other ways to meet the non-Federal match **withOUT** writing a check.

For example:

- State, local government, homeowner **contributions**, or any combination of these can be used to meet the non-Federal match.
- **In-kind** labor, equipment, supplies and materials (owned, controlled and operated by the Applicant) used on the project can be applied to the non-Federal match.
- Third-party contributions of **volunteer services**, **donated supplies** or **loaned equipment** or **space** are possibilities for meeting the match.
- **Community Development Block Grant (CDBG)** funds may also be used.

Do not let a non-Federal match requirement prevent your community from applying for hazard mitigation grants.

For more information, contact your HM SAL.

find us on the web!

getagameplan.org



family
PLAN

business
PLAN

mitigation
PLAN

kids
PLAN

the big 3

eligible activities

Eligible activities for funding under the Hazard Mitigation Assistance (HMA) programs fall into the following categories. Check with your GOHSEP Hazard Mitigation State Applicant Liaison (HM SAL) for details.

NON-DISASTER ANNUAL GRANTS



	PDM	FMA	HMGP
1. Mitigation Projects	✓	✓	✓
At-Risk Property Acquisition and Structural Demolition	✓	✓	✓
At-Risk Property Acquisition and Structural Relocation	✓	✓	✓
Structure Elevation	✓	✓	✓
Mitigation Reconstruction		✓	
Dry Floodproofing of Historic Residential Structures	✓	✓	✓
Dry Floodproofing of Non-Residential Structures	✓	✓	✓
Minor Localized Flood Reduction Projects	✓	✓	✓
Structural Retrofitting of Existing Buildings	✓		✓
Non-Structural Retrofitting of Existing Buildings and Facilities	✓	✓	✓
Safe Room Construction	✓		✓
Wind Retrofit for One- and Two-Family Residences	✓		✓
Infrastructure Retrofit	✓	✓	✓
Soil Stabilization	✓	✓	✓
Wildfire Mitigation	✓		✓
Post-Disaster Code Enforcement			✓
Generators	✓		✓
5% Initiative Projects			✓
2. Hazard Mitigation Planning	✓	✓	✓
3. Management Costs	✓	✓	✓

Pre-Disaster Mitigation (PDM):

The PDM Grant Program, provides resources to assist States, Tribal governments, territories and local communities to reduce overall risk to the population and structures from future hazard events, while also reducing the reliance of Federal funding from future disasters.

Flood Mitigation Assistance (FMA):

The FMA Grant Program provides resources to assist States, Tribal governments, territories and local communities in their efforts to reduce or eliminate the risk of repetitive flood damage to buildings and structures insurable under the National Flood Insurance Program (NFIP) as authorized by the National Flood Insurance Act of 1968, as amended.

Hazard Mitigation Grant Program (HMGP):

The HMGP provides grants to states and local governments after a major disaster declaration. HMGP was created to reduce the loss of life and property due to natural disasters and provides resources for the implementation of mitigation measures during recovery from a disaster. The State determines how projects are selected for funding and FEMA reviews for eligibility.

HOW NON-DISASTER GRANTS COMPARE



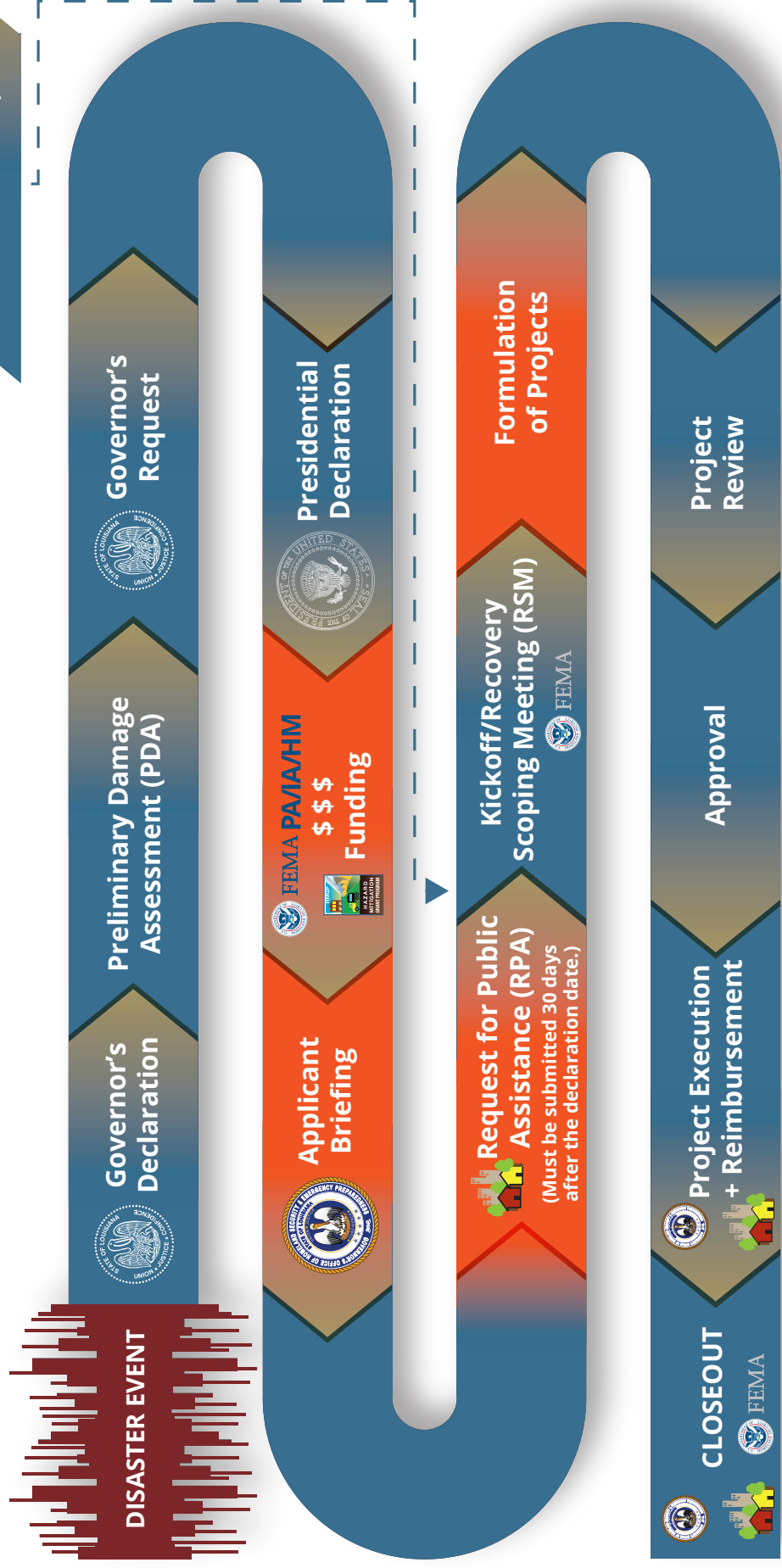
- 75% Federal share/ 25% non-Federal match required.
- 90% Federal share/ 10% non-Federal match
- *If small impoverished community.
- Grant determination is nationally competitive.

- 75% Federal share/ 25% non-Federal match required.
- RL: 90% Federal share/ 10% non-Federal match required.
- SRL: 100% Federal share/ 0% non-Federal match required.
- Grant determination is nationally competitive.

ROBERT T. STAFFORD DISASTER RELIEF + EMERGENCY ASSISTANCE ACT (STAFFORD ACT) PROCESS

The following chart represents the flow of Federal assistance before and after a Presidential Declaration has been made for an emergency or disaster.

Exploratory Call
(Effective for disasters after 08/12/17)



THIS PAGE INTENTIONALLY LEFT BLANK.

WHAT IS A FEDERAL DISASTER DECLARATION?



There are TWO (2) types of Federal Disaster Declarations. BOTH REQUIRE THIS MINIMUM STANDARD: The incident is of such *severity* and *magnitude* that effective response is beyond the capabilities of the State and affected local or Tribal governments.

EMERGENCY 44 CFR 206.35	MAJOR 44 CFR 206.36
<ul style="list-style-type: none"> Threat to the State OR event occurs that does not reach the major declaration threshold. 	<ul style="list-style-type: none"> Once a catastrophe has occurred, Federal assistance is necessary to supplement the efforts and available resources of State, local governments, disaster relief organizations, and compensation by insurance for disaster-related losses.
<ul style="list-style-type: none"> Must be submitted by the Governor within five (5) days of the need (but no longer than 30 days after the incident). 	<ul style="list-style-type: none"> Must show an estimate of the amount and severity of damages.
<ul style="list-style-type: none"> Federal assistance is required to save lives and protect property, public health and safety, or to <i>lessen or avert</i> the threat of a disaster. 	<ul style="list-style-type: none"> Must describe the nature and amount of State and local resources already committed.
<ul style="list-style-type: none"> Only possible assistance: Category A, Category B and Direct Federal Assistance (DFA)*. 	<ul style="list-style-type: none"> Possible assistance: Categories A - G and Direct Federal Assistance (DFA)*.

*When the State and local government lack the capability to perform or to contract for eligible emergency work and/or debris removal, the Subrecipient (Applicant) may request that the work be accomplished by a Federal agency. DFA is subject to cost sharing provisions and eligibility criteria.

Governor's Requests

Factors considered when evaluating a **Governor's Request** for a **Major Disaster Declaration** (44 CFR 206.48):

 FEMA PUBLIC ASSISTANCE (PA)	 FEMA INDIVIDUAL ASSISTANCE (IA)
<ol style="list-style-type: none"> Estimated cost of the assistance (per capita indicator threshold). Localized impacts. Insurance coverage in force. Hazard Mitigation (HM). Recent multiple disasters. Programs of other Federal assistance. 	<ol style="list-style-type: none"> Concentration of damages. Trauma. Special needs population. Voluntary agency assistance. Insurance. Average amount among Individual Assistance (IA) by State.

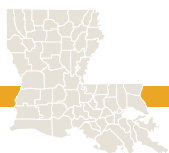
A Governor may request an **Emergency Declaration** and subsequently request a **Major Declaration**. **FEMA** may roll the Emergency Declaration into a **Major Declaration**.

Appealing a denial of a Disaster Declaration (44 CFR 206.46): An appeal must be made within **30 days** after the denial and is a one-time request for consideration. It must include a justification and/or additional information from the original request for declaration.



Tribal Rule

A Tribe has the option to request an **Emergency** or **Major Disaster Declaration** independently of the State. For more information or assistance in requesting an independent Tribal Emergency or Major Disaster Declaration, please contact Tribal Affairs — Phone: 202-646-3444 Online: [fema.gov/tribal](https://www.fema.gov/tribal)



I. PRE-DISASTER ACTIONS

I. PRE-DISASTER ACTIONS



PROCUREMENT **TOOLBOX**

INTRODUCTION TO PRE-DISASTER ACTIONS

The time to determine how to properly procure using Federal funds and to craft your procurement plan is *before* disaster strikes and resources are stretched to the limit by the demands of emergency response. Successful pre-disaster actions should include the following:

- Adopting **written procedures** for contract administration and oversight.
- **Establishing a policy** for paying employee **overtime**.
- Developing a **procurement plan** and pilot program for **debris operations**.
- Creating a plan to **track** and **document volunteer** and **donated resources** to help offset your local match requirement for Federal grant funds – also called the non-Federal cost share.



WRITTEN PROCEDURES, POLICIES AND PLANS ARE CRITICAL TO EMERGENCY AND DISASTER MANAGEMENT SUCCESS.



THIS PAGE INTENTIONALLY LEFT BLANK.

REQUIRED WRITTEN PROCEDURES

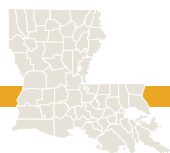
Federal law, regulations and policies require the Subrecipient (Applicant) to follow general procurement standards and have “documented procurement procedures” when using Contractors to help them carry out their FEMA Public Assistance (PA) project awards. Documented procurement procedures should include:

WRITTEN PROCEDURES OVERVIEW
Contract Administration / Oversight
<ul style="list-style-type: none"> • Employee + organizational conflicts of interest standards. • Avoiding acquisition of unnecessary or duplicative items. • Granting awards to responsible Contractors. • Maintaining records to detail history of the procurement. • Use of time + material (T + M) Contracts. • Protest procedures. • Selection procedures for procurement transactions. • Methods for conducting technical evaluations.
Utilizing Small Businesses, Minority-Owned Firms + Women’s Business Enterprises
Procurement of Recovered Materials
Payroll + Overtime Policy

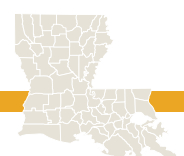
REQUIRED WRITTEN PROCEDURES	FOR PRE- 12/26/2014 PRESIDENTIAL DECLARATIONS	FOR POST- 12/26/2014 PRESIDENTIAL DECLARATIONS
Contract Administration / Oversight	Recipients and Subrecipients (Applicants) must maintain a contract system that ensures Contractors perform in accordance with terms of their <i>Contracts</i> or <i>Purchase Orders</i> , provided procurements conform to the applicable Federal law and standards. [SOURCE: 44 CFR 13.36(b)(2) + 2 CFR 215.47]	



REQUIRED WRITTEN PROCEDURES	FOR PRE- 12/26/2014 PRESIDENTIAL DECLARATIONS	FOR POST- 12/26/2014 PRESIDENTIAL DECLARATIONS
<ul style="list-style-type: none"> Employee + Organizational Conflicts of Interest Standards 	<p>Generally, the following is required:</p> <ul style="list-style-type: none"> Recipients and Subrecipients (Applicants) must maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees or agents of the Recipient. In addition, none of these individuals may participate in the selection, award or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. <p>[SOURCES: 44 CFR 13.36(b)(3) + 2 CFR 215.42 + 2 CFR 318(c)]</p>	
<ul style="list-style-type: none"> Avoiding Acquisition of Unnecessary or Duplicative Items 	<p>Recipient and Subrecipient (Applicant) procedures provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. All Recipients and Subrecipients must establish written procurement procedures.</p> <p>[SOURCES: 44 CFR 13.36(b)(4) + 2 CFR 215.44(a)(1)]</p>	<p>Regulations <i>require</i> consideration be given to consolidating or breaking out procurements to obtain a more economical purchase.</p> <p>[SOURCE: 2 CFR 200.318 (d)]</p>
<ul style="list-style-type: none"> Granting Awards to Responsible Contractors 	<p>Recipients and Subrecipients (Applicants) must make awards <i>only</i> to responsible Contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.</p> <p>Some form of cost or price analysis <i>must</i> be made and <i>documented</i> in the procurement files in connection with <i>every</i> procurement action.</p> <p>[SOURCES: 44 CFR 13.36(b)(8) + 2 CFR 215.45 + 2 CFR 200.318(h)]</p>	
<ul style="list-style-type: none"> Maintaining Records to Detail History of the Procurement 	<p>Recipients and Subrecipients (Applicants) must <i>maintain records</i> sufficient to detail the significant history of a procurement. These records must include, but are not necessarily limited to the following:</p> <ul style="list-style-type: none"> Rationale for the method of procurement; Selection of the contract type; Contractor selection or rejection; and Basis for the contract price. <p>[SOURCES: 44 CFR 13.36(b)(9) + 2 CFR 215.46 + 2 CFR 200.318(i)]</p>	



REQUIRED WRITTEN PROCEDURES	FOR PRE- 12/26/2014 PRESIDENTIAL DECLARATIONS	FOR POST- 12/26/2014 PRESIDENTIAL DECLARATIONS
<ul style="list-style-type: none"> • Use of Time + Material (T+M) Contracts 	<p>Recipients and Subrecipients (Applicants) must use time and material type contracts only:</p> <ul style="list-style-type: none"> • After a determination that no other contract is suitable; and • If the contract includes a ceiling price that the Contractor exceeds at its own risk. <p>[SOURCE: 44 CFR 13.36(b)(10)]</p>	<p>The non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the Contractor is using efficient methods and effective cost-controls.</p> <p>[SOURCE: 2 CFR 200.318(a)]</p>
<ul style="list-style-type: none"> • Protest Procedures 	<p>Recipients and Subrecipients (Applicants) have protest procedures to handle and resolve disputes relating to their procurements and must in all instances disclose information regarding the protest to the awarding agency.</p> <p>The Recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement.</p> <p>[SOURCES: 44 CFR 13.36(b)(11)(12) + 2 CFR 200.318(k)]</p>	
<ul style="list-style-type: none"> • Selection Procedures for Procurement Transactions 	<p>Recipients must have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:</p> <ul style="list-style-type: none"> • Incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured; and • Identify all requirements which the offerers must fulfill and all other factors to be used in evaluating bids or proposals. <p>[SOURCES: 44 CFR 13.36(c)(3) + 44 CFR 215.44(a) + 2 CFR 200.219(c)]</p>	
<ul style="list-style-type: none"> • Methods for Conducting Technical Evaluations 	<p>Recipients and Subrecipients (Applicants) must have a method for conducting technical evaluations of the proposals received and for selecting awardees. Whenever practicable the method must:</p> <ul style="list-style-type: none"> • Identify technical requirements in terms of functions to be performed or performance required; and • Include the range of acceptable characteristics or minimum acceptable standards which must be included in solicitations for goods and services. <p>[SOURCES: 2 CFR 215.44(a)(3)(iii) + 2 CFR 200.320.3(d)(3)]</p>	



REQUIRED WRITTEN PROCEDURES	FOR PRE- 12/26/2014 PRESIDENTIAL DECLARATIONS	FOR POST- 12/26/2014 PRESIDENTIAL DECLARATIONS
Utilizing Small Business + Minority Owned Firms + Women’s Business Enterprises	<p>The Recipient and Subrecipient (Applicant) must take all necessary affirmative steps to assure that minority firms, women’s business enterprises and labor surplus area firms are used when possible. See 2 CFR 200.321 for a list of the <i>Affirmative Steps</i>.</p> <p>[SOURCES: 44 CFR 13.36(e) + 2 CFR 215.44(b)]</p>	
Procurement of Recovered Materials	<p>Contracts and subgrants of amounts in excess of \$100,000 must be in compliance with the standards, orders or requirements issued under Section 306 of the <i>Clean Air Act</i> and other Environmental Protection Agency (EPA) regulations.</p> <p>Local institutions must give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to EPA guidelines.</p> <p>[SOURCES: 44 CFR 13.36(i)(12) + 2 CFR 215.16 + 2 CFR 200.322]</p> <p>Contractors must comply with the <i>Resource Conservation and Recovery Act</i>, specifically procuring only items designated in guidelines of the EPA that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item <i>exceeds \$10,000</i> OR the value of quantity acquired during the preceding fiscal year <i>exceeded \$10,000</i>.</p>	
Payroll + Overtime Policy	<p>FEMA refers to the Subrecipient’s (Applicant’s) personnel as “force account.” FEMA reimburses Force Account Labor (FAL) based on <i>actual</i> hourly rates plus the cost of the employee’s <i>actual</i> fringe benefits. FEMA calculates the fringe benefit cost based on a percentage of the hourly pay rate.</p> <p>Because certain items in a benefit package are not dependent on hours worked, the percentage of overtime is usually different than the percentage of straight time. Fringe benefits may include:</p> <ul style="list-style-type: none"> • Holiday Leave • Accrued Vacation Leave • Sick Leave • Social Security Matching • Medicare Matching • Unemployment Insurance • Workers’ Compensation • Retirement • Health Insurance • Life and Disability Insurance • Administrative Leave 	



PAYROLL + OVERTIME POLICY

Subrecipients (Applicants) must have a written payroll and overtime policy to be eligible for reimbursement under FEMA.

A Subrecipient (Applicant) / employer must establish a workweek (**seven [7] consecutive 24-hour periods**) and must pay **overtime** when hours worked **exceed 40** in the workweek. The practice of paying overtime only after 80 hours in a bi-weekly pay period is *generally* not allowed. **Each workweek must stand alone.** The *Fair Labor Standards Act* (FLSA) provides for certain exceptions. In addition, Subrecipients (Applicants) / Employers who are covered under the FLSA must comply with the **recordkeeping** requirements (which include minimum wage and overtime pay) – as provided in 29 CFR Part 516.

As noted previously, FEMA refers to the Subrecipient’s (Applicant’s) personnel as “force account.” FEMA **reimburses** Force Account Labor (FAL) based on **actual hourly rates plus the cost of the employee’s actual fringe benefits**. FEMA calculates the fringe benefit cost based on a **percentage** of the hourly pay rate.

FEMA determines the eligibility of overtime, premium pay, **and** compensatory time costs based on the Subrecipient’s (Applicant’s) **pre-disaster written labor policy**, provided the policy:

- Does not include a **contingency clause** that payment is subject to Federal funding;
- Is applied **uniformly** regardless of a Presidential Declaration; and
- Has set **non-discretionary criteria** for when the Subrecipient (Applicant) activates various pay types.

If these requirements are not met, FEMA limits Public Assistance (PA) funding to the Subrecipient’s (Applicant’s) **non-discretionary, uniformly applied pay rates**. All costs must be **reasonable** and **equitable** for the type of work performed.

FEMA’s criteria for reimbursing straight-time labor costs differ depending on the **type of employee** and whether that employee is performing **Emergency Work** or **Permanent Work**.

TYPE OF EMPLOYEE	EMERGENCY WORK		PERMANENT WORK	
	Overtime	Straight-time	Overtime	Straight-time
BUDGETED EMPLOYEE	-			
• Permanent Employee	✓	✗	✓	✓
• Seasonal Employee Working During Normal Season of Employment	✓	✗		
UNBUDGETED EMPLOYEE	-			
• Essential Employee Called Back from Administrative Leave	✓	✓		
• Permanent Employee Funded from External Source	✓	✓	✓	✓
• Temporary Employee Hired to Perform Eligible Work	✓	✓		
• Seasonal Employee Working Outside Normal Season of Employment	✓	✓		



THIS PAGE INTENTIONALLY LEFT BLANK.

DEBRIS OPERATIONS BEFORE THE DISASTER

Communities with a *Debris Management Plan* are better prepared to restore public services and ensure public health and safety in the aftermath of a disaster, AND they are better positioned to receive the full level of assistance available to them from FEMA and other participating entities.

During your pre-disaster planning process, it is recommended to cover the following items for debris operations:

- Complete your *Debris Management Plan*;
- Have **debris contracts in place** prior to an emergency or disaster; and
- Select **debris disposal sites**.

Questions for GOHSEP regarding debris removal may be sent to debris.help@la.gov.

Alternative Procedures Pilot Program

FEMA is currently piloting:

- The use of a **sliding scale** for determining the Federal share for removal of debris and wreckage based on the time it takes to complete debris and wreckage removal. FEMA is changing the basis for when this provision will be implemented effective **60 days** from issuance of this guidance;
- The use of program income from **recycled debris** without offset to the award amount;
- Reimbursing **base** and **overtime wages** for the employees of State, Tribal or local governments, or owners or operators of private nonprofit (PNP) facilities performing or administering debris and wreckage removal; and

ALTERNATIVE PROCEDURE FEDERAL COST SHARE	
DEBRIS REMOVAL WORK (DAYS FROM START OF INCIDENT PERIOD)	FEDERAL COST SHARE
1 — 30	85%
31 — 90	80%
91 — 180	75%
Federal dollars will NOT be provided for debris removal after 180 days [unless an extension is authorized by FEMA Headquarters (HQ)]	

Using the guidelines of the *Alternative Procedures Pilot Program*, East Baton Rouge (EBR) Parish saved hundreds of thousands of dollars recovering from the August 2016 Severe Storms and Flooding (DR-4277).



- Providing **incentives** to a State, Tribal or local government to have a *Debris Management Plan* **accepted** by the FEMA Administrator, and have **pre-qualified** one (1) or more debris and wreckage removal Contractors *before* the start of a declaration's incident period.

These procedures contain provisions intended to increase the effectiveness of debris removal operations and **reduce** Federal administrative costs. Although some provisions are most effective when used together, such as employing a *Debris Management Plan* in an accelerated debris removal operation, Subrecipients (Applicants) may elect to use one (1) or more of the procedures for their debris removal projects.

Utilizing multiple debris removal alternative procedures is **not required** for any given debris removal project in order to receive the incentive for any of the other provisions.

Applicant must notify FEMA of their **intent** to participate.

- This program may offer the possibility of *increased* Federal cost share linked to **accelerated** completion of debris removal, if the disaster:
 - » Generated large quantities of debris, *exceeding* **1.5 million cubic yards** or **\$20 million** in removal costs;
 - » Caused a high concentration of **localized damage**; and
 - » Was declared within **eight (8) days** after the incident.
- Reimbursement is allowed for **straight-time** Force Account Labor (FAL).
- Subrecipients (Applicants) may **retain** income generated from recycling debris.
- The program offers a one-time **two (2) percent** *increased cost share incentive* for a FEMA-accepted *Debris Removal Plan*.
 - » The plan must have **prequalified contractors** to qualify for the two (2) percent **incentive**.

Learn More

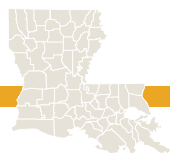
Since this is a pilot program, FEMA makes changes annually to the requirements. Visit [fema.gov/media-library/assets/documents/115868](https://www.fema.gov/media-library/assets/documents/115868) to review the most recent program guide for debris removal.

- **FEMA Public Assistance Alternative Procedures (PAAP) Documents**
[fema.gov/media-library/assets/documents/115868](https://www.fema.gov/media-library/assets/documents/115868)

**Public Assistance
Alternative Procedures
Pilot Program
Guide for Debris Removal (Version 5)**
June 28, 2017



Federal Emergency Management Agency
Department of Homeland Security
500 C Street, S.W.
Washington, DC 20472

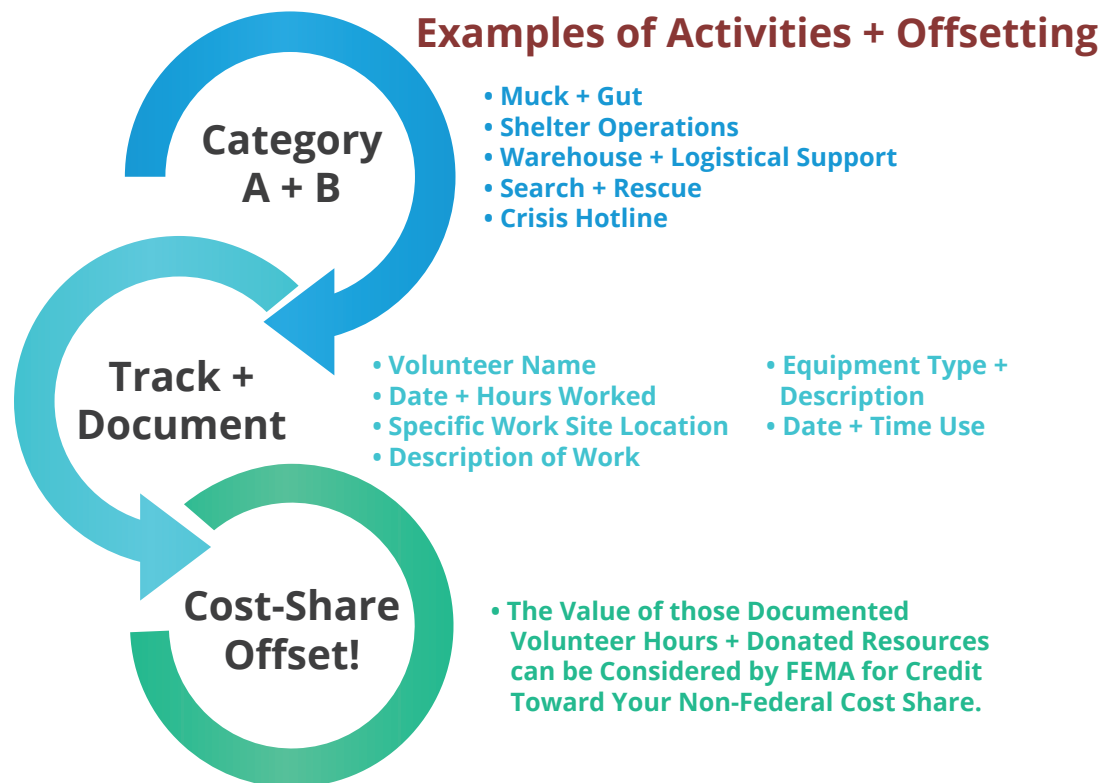


OFFSETTING THE LOCAL MATCH – VOLUNTEER + DONATED RESOURCES

Emergencies and disasters can be financially draining on States, local governments, communities and residents. We have all felt the effects of rising disaster-related costs and declining Federal, State and local resources, when responding to what seems to be an *increasing* number of emergency and disaster events.

In the aftermath of an emergency or disaster, especially a large scale event, individuals and organizations often donate resources – **equipment, goods, materials, services** and/or **volunteer labor** – to assist with **response activities**. The key to *maximizing* those gifts of time and materials is **documentation**.

When local communities, Parishes and the State successfully **capture, quantify, document** and assign **value** to donated volunteer time and other donated resources, they open the door for those resources to **offset** (*reduce*) the **non-Federal cost share** of **FEMA Public Assistance (PA)** grants. Those offsets can save local governments and the State MILLIONS of dollars.



Scan here to learn more about Volunteer and Donated Resources.




What is the Offset?

FEMA allows individuals and organizations to donate resources to assist with response and recovery activities. Donated resources can include **donated equipment, goods, materials** or **labor**.

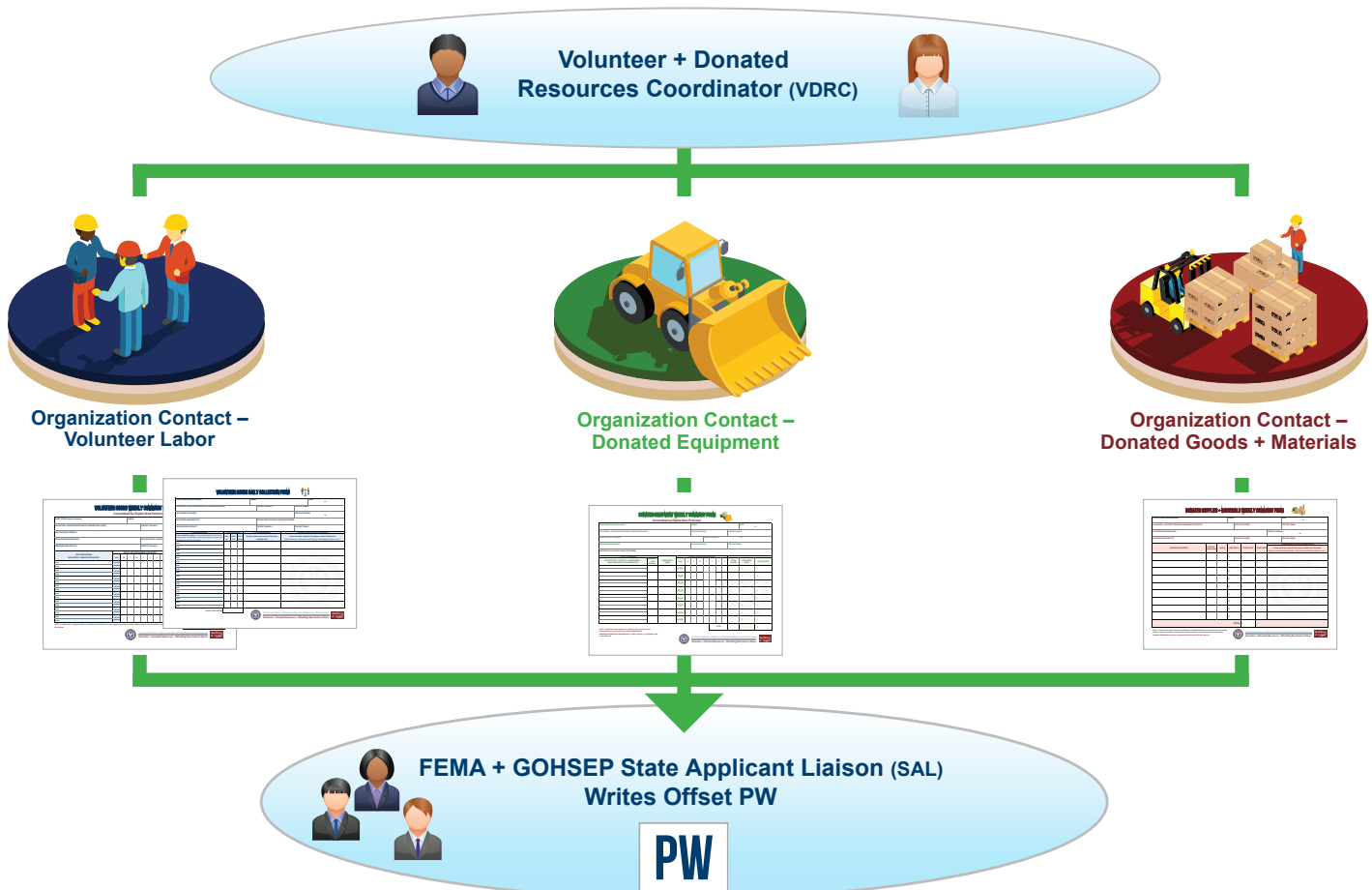
While FEMA does NOT provide FEMA PA funding for donated resources, Subrecipients (Applicants) may use the **value** of donated resources to offset (*reduce*) the Subrecipient's (Applicant's) non-Federal cost share of its eligible **Emergency Work** – Category A and B – projects and **Direct Federal Assistance** (DFA).

Requirements for Offsetting

As noted previously, FEMA has determined that the value of volunteer hours and donation of goods, services, supplies and materials may be **credited** to offset (*reduce*) a portion or all of the non-Federal cost share of a  **FEMA** Public Assistance (PA) grant. These are the requirements:

- Donated resources may include **volunteer labor, donated equipment, goods** and **materials**.
- These “in-kind” donations must come from a **third party** organization or individual that has no obligation to the Subrecipient (Applicant).

CAPTURE + QUANTIFY + DOCUMENT + VALUE OF VOLUNTEER + DONATED RESOURCES



- They are limited to **eligible Emergency Work** – Category A (Emergency Protective Measures) and Category B (Debris).
- The eligible work must also be the **legal responsibility** of the Subrecipient (Applicant) and must be *essential* to meeting *immediate* threats to life and property resulting from a major disaster.

The Subrecipient (Applicant) may apply the offset if all of the following conditions are met:

- Work provided through *Mutual Aid Agreement (MAA)* is **eligible**, provided there is NO COST to the Subrecipient (Applicant).
- Resources and work performed are **tracked** and **documented**.

[SOURCE: FEMA Donated Resources Criteria for Public Assistance.]

Six (6) Steps to Offsetting

To help local authorities offset the non-Federal cost share of their FEMA PA Emergency Work grants, GOHSEP has created a **Six- (6) Step Process** for capturing, quantifying, documenting and determining value of donated volunteer time, equipment, materials, supplies, services and goods that can be applied to the offset. See the chart to the right.

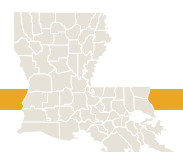
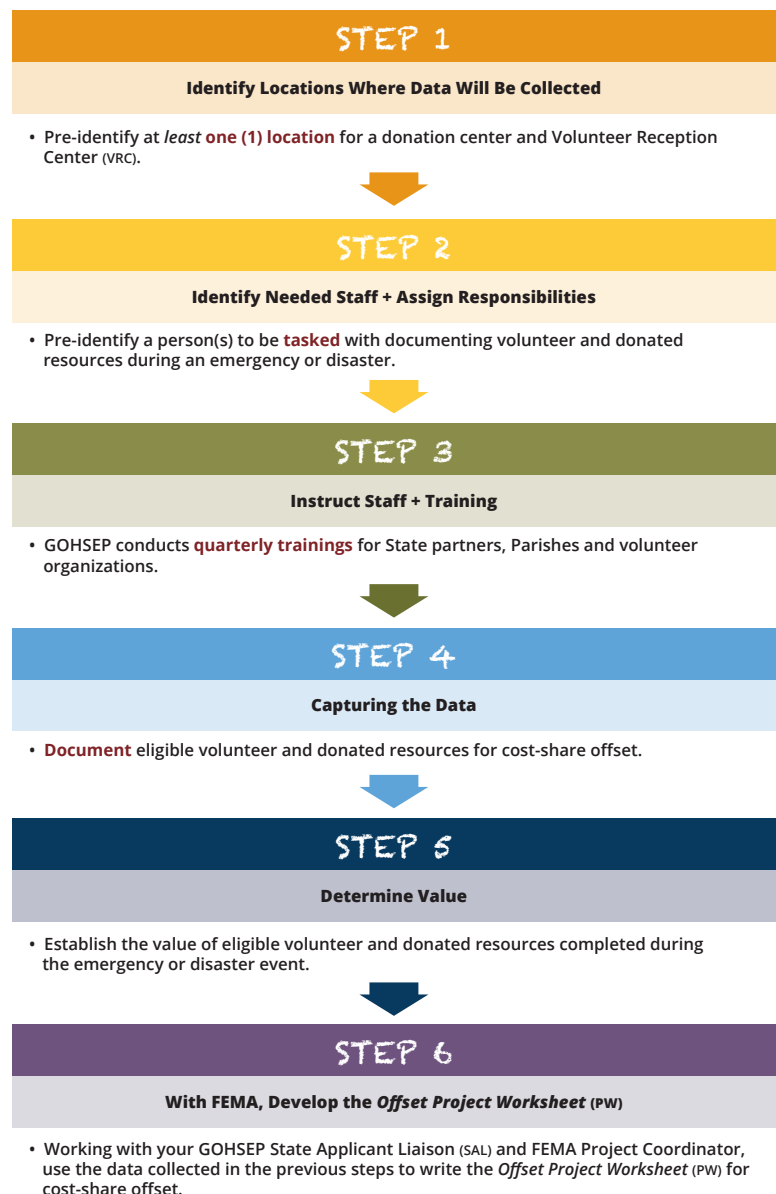
Plan Ahead

Effectively organizing and managing volunteers and keeping track of donated goods, supplies, materials and equipment requires some **thought** and **planning**.

GOHSEP encourages local authorities to develop a local *Volunteer + Donated Resources MANAGEMENT Plan*. Planning helps ensure the **highest** and **best use** of volunteer time and donated resources, using **sound management practices** and **systems** to address **registering, organizing, managing** and **overseeing** “all things” related to volunteer and donated resources, including but *not limited to* **documentation**.

The graphic on the next page identifies some key elements you may want to consider in your plan.

THE PROCESS



DISASTER CYCLE OF VOLUNTEERS + DONATED RESOURCES

PRE-EVENT

- Identify and collaborate with key volunteer partners.
- Begin Volunteer Reception Centers (VRCs) activation.
- Identify resources needed.
- Activate key staff.
- Participate in "Just-in-Time" Training (JTT)
- Activate MOUs / contracts.
- Volunteer registration/badging begins
- With VDRC, activate documentation and submission protocols

- Implement + activate of Volunteer + Donated Resources MANAGEMENT Plan. (i.e.: training plan, staffing chart created)
- Post job descriptions
- Define roles and responsibilities
- Begin / continue "vetting" of volunteers (pre-registration, pre-screen and background checks)
- Pre-training workshop begins.
- Communications Plan developed
- Insurance addressed (determine insurance coverage).
- Begin outreach to all partners.

- Complete onboarding process.
- Just in Time Training (JTT) completion.
- Training and development in role.

DURING EVENT

- Continue activation of Volunteer + Donated Resources MANAGEMENT Plan – course correcting as needed.
- Continue daily updates (from volunteers + first responders).
- Continue media messaging – announcements regarding changing needs of volunteers, donations, drop-off locations, etc.
- Continue coordinating with all partners.

- Continue activation of Volunteer + Donated Resources MANAGEMENT Plan – course correcting as needed.
- Continue / activate recruitment and "vetting" of volunteers (registration, pre-screen and background checks).
- Continue activation of communications plan – course correcting as needed.
- With Subrecipient (Applicant), continue implementing documentation and submission protocols.

- Continue onboarding process as needed
- Begin assigned duties
- Follow documentation and submission protocols, including sign-in/out procedures

POST-EVENT

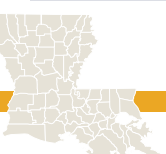
- Stand down VRCs.
- Continue media messaging – update announcements re: donations still needed, drop-off locations, etc.
- Continue communications with all partners
- With VDRC, complete documentation and submission protocols.
- With FEMA / GOHSEP, write Offset Project Worksheet (PW).

- Activate plan review process.
- Update plan as appropriate.
- Stand-down begins – thank volunteers and donors.
- Review risk mitigation strategies.
- With Subrecipient (Applicant), complete documentation and submission protocols.
- With FEMA / GOHSEP, write Offset Project Worksheet (PW).

- Submit any remaining documentation to VDRC.
- Participate in Hotwash / After Action Report (AAR).
- Participate in GOHSEP and other ongoing training and workshops and relationship building opportunities

LEGEND

- Subrecipient
- Volunteer and Donated Resources Coordinator(s) (VDRC)
- Volunteer



II. EMERGENCY PROCUREMENT

II. EMERGENCY PROCUREMENT



PROCUREMENT **TOOLBOX**

EMERGENCY + EXIGENCY

In emergency and exigent circumstances, there may be an *immediate* need for goods and services where noncompetitive or limited competition proposals [2 CFR 200.320(f)] would be the best procurement method to use.

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

Exigency: An exigency is NOT an emergency but requires **immediate** actions.

When a Subrecipient (Applicant) has cause and uses exigency or emergency procurement procedures, be reminded that once the documented exigency or emergency period ends, Subrecipients (Applicants) **must transition** to a procurement process that includes **full** and **open competition**.

All efforts must be **fully documented**.

EMERGENCY	EXIGENCY
<ul style="list-style-type: none"> An unexpected and unusually dangerous situation that calls for immediate actions or an urgent need for assistance or relief. 	<ul style="list-style-type: none"> Something that is necessary in a particular situation that requires or demands immediate aid or actions.
<ul style="list-style-type: none"> Involve threat to life, public health or safety, improved property, and/or represents some other form of dangerous situation. 	<ul style="list-style-type: none"> Not limited to life, health or safety, improved property and/or some other form of dangerous situation.
<ul style="list-style-type: none"> The use of emergency procurement procedures is an exception and should be used only during the actual emergency circumstances. Documentation supporting the existence of the emergency circumstances must be maintained by the Subrecipient (Applicant). 	
<ul style="list-style-type: none"> Costs must still be reasonable. 	
<ul style="list-style-type: none"> Procurement must still comply with all other procurement standards including: <ul style="list-style-type: none"> » Contract clauses; » Federal bonding requirements (construction / facility improvement); » Awarded to a responsible contractor; » Cost is fair and reasonable; and » No prohibited contracts used. 	
<ul style="list-style-type: none"> Do not use a piggyback contract* or give a local preference. <p>* The post-award use of a contract that allows for an entity that was not contemplated in the original procurement to purchase the same supplies or equipment through that original document or process.</p>	



THIS PAGE INTENTIONALLY LEFT BLANK.

DEBRIS CONSIDERATIONS

In many cases, debris removal is the most expensive part of response and recovery efforts, so it is important to get it right!

Eligibility

Removal of debris falls under **Category A of Emergency Work**. To be **eligible** for reimbursement, debris removal must:

- Eliminate *immediate* threats to lives, public health and safety;
- Eliminate *immediate* threats of significant damage to improved public or private property;
- Ensure **economic recovery** of the affected community; or
- **Mitigate risk** to life and property by removing substantially damaged structures.

DEBRIS REMOVAL IS GENERALLY ELIGIBLE FROM:	DEBRIS REMOVAL IS GENERALLY NOT ELIGIBLE FROM:
<ul style="list-style-type: none"> • Improved public property; • Public right-of-way (ROW); and • If Subrecipient (Applicant) allows residents to place debris in public ROW, removal of that debris is eligible for a <i>limited</i> period of time. 	<ul style="list-style-type: none"> • Private property; • Federally maintained navigable channels and waterways; • Agricultural land; or • Natural, unimproved land, such as heavily wooded areas and unused areas.

Emergency Work, including debris removal, must be **completed within six (6) months** from the declaration date unless an extension is granted.

Debris Impact Locations

Subrecipients (Applicants) are responsible for identifying **locations** of debris impacts.

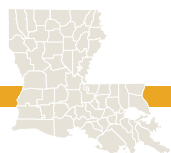
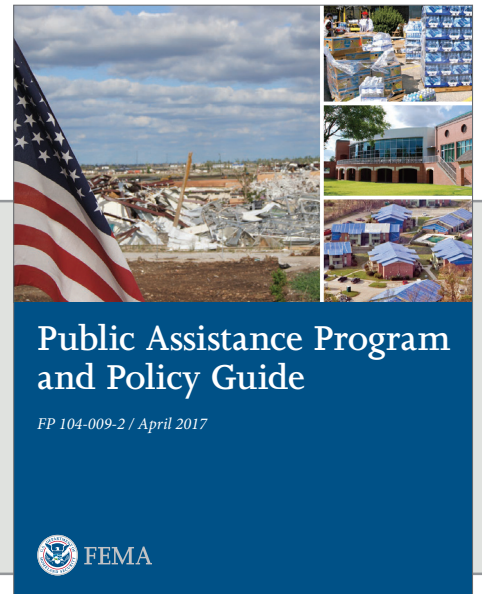
- Costs associated with the initial survey are considered **indirect, management costs** and are not reimbursable.
- Costs of further detailed **inspections** to determine **quantity** of debris and method of removal are **eligible** as Direct Administrative Costs (DAC).



Learn More

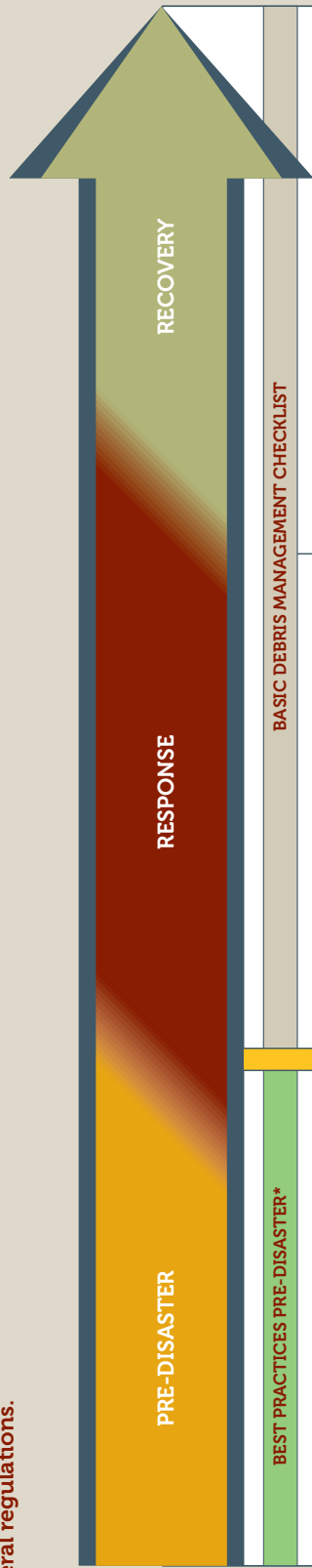
To learn more about debris management **download:**

- FEMA *Public Assistance Program and Policy Guide (PAPPG)*: [fema.gov/media-library/assets/documents/111781](https://www.fema.gov/media-library/assets/documents/111781)
- FEMA *Debris Management Guide*: [fema.gov/public-assistance-local-state-tribal-and-non-profit/debris-management-guide](https://www.fema.gov/public-assistance-local-state-tribal-and-non-profit/debris-management-guide)
- FEMA *Debris Monitoring Guide*: [fema.gov/pdf/government/grant/pa/fema_327_debris_monitoring.pdf](https://www.fema.gov/pdf/government/grant/pa/fema_327_debris_monitoring.pdf)
- GOHSEP - produced Debris Guide: *What you need to know about Debris Operations. NOW!*: gohsep.la.gov/Portals/0/Documents/Publications/GOHDebrisGuide.pdf



What you need to know about DEBRIS OPERATIONS. NOW!

Purpose of this document: To provide summary guidance on debris management monitoring and operations. You are responsible for following all local + State + Federal regulations.



PRE-DISASTER

BEST PRACTICES PRE-DISASTER*

- Develop a debris management plan.
- A better practice is to develop a FEMA-approved debris management plan.
- Identify a Louisiana Department of Environmental Quality (LDEQ) permitted debris management site.
- Prequalify your debris monitoring contractors + maintain list.
- Prequalify debris contractors + maintain list.
- Develop a Request for Proposal (RFP) template for debris removal + monitoring contracts.
- Establish collection priorities.

*The above represent Best Practices to assist in assuring that Subrecipient (Applicant) maximize the funds they are eligible to receive and retain those funds through the reimbursement and audit processes.

RESPONSE

BASIC DEBRIS MANAGEMENT CHECKLIST

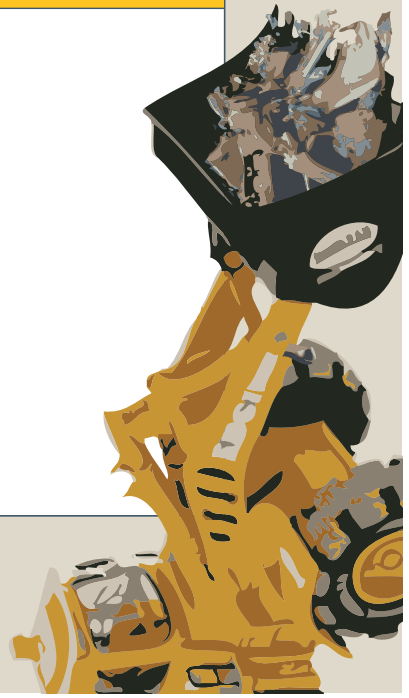
- Establish debris operation priorities to eliminate immediate threat to lives and public property.
- Consider using in-house force account labor (FAL) prior to awarding debris contract(s). Subrecipient (Applicant) is responsible for up to 25% of contract costs.
- Time + material costs are limited to work performed during the first 70 hours of actual work following a disaster.
 - After 70 hours, contracts should be unit price (strongly recommended) or lump sum.
- Use RFPs for ALL WORK other than first 70 hours.
- Use fair + open competitive procurement process.
- Assure that all work is reflected in the Project Worksheet (PW) scope of work (SOW).
- The RFP + contract SOW should be consistent with the PW SOW. Differences may cause reimbursement delays.
- Cubic yards recommended as unit of measurement for most debris.
- Award contract to most responsive bidder based on your established criteria.
- All contracts are subject to cost reasonableness analysis (44 CFR 13.36(f) and 2 CFR 200.323).
- Monitoring contract must provide for reporting requirements that demonstrate eligible work.
- Recommend FEMA approve monitoring requirements to demonstrate eligible work.
- Coordinate with LDEQ for all debris disposal permitting requirements.
- DOCUMENT, DOCUMENT, DOCUMENT!

RECOVERY

- Monitor all debris removal closely. Your debris monitoring contractor should provide qualified and trained field monitors.
- Ensure use of load tickets for both FAL + contracted debris operations.
- Ensure debris operations are restricted to event-related debris.
- Ensure debris operations are restricted to property + right of ways that are the responsibility of the Subrecipient (Applicant).
- Encourage citizens to separate debris brought to the curb (e.g., vegetative debris, white goods, tires, etc.).
- Ensure monitoring contractor conducts daily reconciliation of all debris operations documentation (e.g., load tickets, pictures, vehicle certifications, etc.).
- DOCUMENT, DOCUMENT, DOCUMENT!

See GOHSEP Procurement Guide for additional assistance.

NOTE: Only FEMA-eligible and reasonable debris costs will be reimbursed. ONLY FEMA DECIDES WHAT IS ELIGIBLE and REASONABLE.



Useful FEMA debris-related references.

DISASTER ASSISTANCE POLICIES (DAP)

- FEMA Public Assistance (PA) 9500 Series Policies 1998-2015 <https://www.fema.gov/media-library/assets/documents/128488>

FEMA GUIDANCE DOCUMENTS

- FEMA 325: *Public Assistance Debris Management Guide* (July 2007) <http://www.fema.gov/pdf/government/grant/pa/demagde.pdf>
- FEMA 327: *Public Assistance Debris Monitoring Guide* (October 2010) http://www.fema.gov/pdf/government/grant/pa/fema_327_debris_monitoring.pdf
- FEMA 329: *Debris Estimating Field Guide* (September 2010) http://www.fema.gov/pdf/government/grant/pa/fema_329_debris_estimating.pdf
- 44 CFR 13.36: <http://www.gpo.gov/fdsys/pkg/CFR-2014-title44-vol1/pdf/CFR-2014-title44-vol1-sec13-36.pdf>
- 2 CFR 200: http://www.ecfr.gov/cgi-bin/text-idx?SID=5fbbdbb07f3dd43dd43dd47dea9fd4d835d963a&mc=true&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY (LDEQ)

- LDEQ: <http://www.deq.louisiana.gov>



EMERGENCY PROCUREMENT MADE EASY – SAMPLE FILL-IN-THE-BLANK CONTRACT PROVISIONS

The following contract is intended for use during the exigent or emergency period. It is a **BASIC**, bare bones contract that contains the required FEMA contract provisions.

Once contracting for Permanent Work or larger projects, a more complex contracting vehicle may be necessary.



THIS PAGE INTENTIONALLY LEFT BLANK.

STATE OF LOUISIANA

PARISH OF _____

TRIBE OF _____

Contract

Be it known, that effective upon date of last signature below,

(AGENCY / PARISH / CITY / TOWN / TRIBE) hereinafter referred to as SUBRECIPIENT (Applicant)

and

(CONTRACTOR'S name and legal address including zip code) (hereinafter sometimes referred to as "CONTRACTOR") do hereby enter into Contract under the following terms and conditions.

Scope of Service

CONTRACTOR hereby agrees to furnish the following services: [INSERT OR ATTACH]

Contract Modifications

No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required by law. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.

Changes to the Contract include any change in a) compensation; b) beginning / ending date of the Contract; c) scope of work; and/or d) Contractor change through the assignment of Contract process. Any such changes, once approved, will result in the issuance of an amendment to the Contract.

Payment Terms

The CONTRACTOR shall invoice the SUBRECIPIENT (Applicant) directly and payment shall be made by the SUBRECIPIENT (Applicant) directly to the CONTRACTOR in accordance with the payment terms agreed to in this Contract.

Late Payments

Deliverables

CONTRACTOR will deliver the item(s) or service(s) as described below (or per the attached) per the following schedule.

Taxes

CONTRACTOR agrees that all applicable taxes are included in the schedule pricing, if applicable.

Termination for Cause

The SUBRECIPIENT (Applicant) may terminate this Contract for cause based upon the failure of CONTRACTOR to comply with the terms and / or conditions of the Contract, or failure to fulfill its performance obligations pursuant to this Contract, provided that the SUBRECIPIENT (Applicant) shall give the CONTRACTOR written notice specifying the CONTRACTOR'S failure. If within thirty (30) days after receipt of such notice, the CONTRACTOR shall not have corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct such failure and thereafter proceeded diligently to complete such correction, then the SUBRECIPIENT (Applicant) may, at its option, place the CONTRACTOR in default and the Contract shall terminate on the date specified in such notice.

The CONTRACTOR may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the SUBRECIPIENT (Applicant) to comply with the terms and conditions of this Contract, provided that the CONTRACTOR shall give the SUBRECIPIENT (Applicant) written notice specifying the SUBRECIPIENT'S (Applicant)'s failure and a reasonable opportunity for the SUBRECIPIENT (Applicant) to cure the defect.

Termination for Convenience

The SUBRECIPIENT (Applicant) may terminate this Contract at any time by giving **thirty (30) days** written notice to the CONTRACTOR of such termination or negotiating with the CONTRACTOR an effective date.

The CONTRACTOR shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.

Ownership

All records, reports, documents, or other material related to this contract and/or obtained or prepared by CONTRACTOR in connection with the performance of the services contracted for herein shall become the property of SUBRECIPIENT (Applicant), and shall, upon request, be returned by CONTRACTOR to SUBRECIPIENT (Applicant), at CONTRACTOR'S expense, at termination or expiration of this Contract.

All records, reports, documents and other material delivered or transmitted to CONTRACTOR by the SUBRECIPIENT (Applicant) shall remain the property of the SUBRECIPIENT (Applicant), and shall be returned by CONTRACTOR to the SUBRECIPIENT (Applicant) at CONTRACTOR'S expense, at termination or expiration of this Contract.

Waiver

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified or deleted except by the written consent of both parties.

Indemnification + Limitation of Liability

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under this Contract.

CONTRACTOR shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the SUBRECIPIENT (Applicant) from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by CONTRACTOR, its agents, employees, partners or subcontractors in the performance of this Contract, without limitation; provided, however, that the CONTRACTOR shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the SUBRECIPIENT (Applicant).

CONTRACTOR will indemnify, defend and hold the SUBRECIPIENT (Applicant) harmless, **without limitation**, from and against any and all damages, expenses (including reasonable attorneys' fees), claims judgments, liabilities and costs which may be finally assessed against the SUBRECIPIENT (Applicant) in any action for infringement of a United States Letter Patent with respect to the Products, Materials, or Services furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the SUBRECIPIENT (Applicant) shall give the CONTRACTOR: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at CONTRACTOR'S sole expense, and (iii) assistance in the defense of any such action at the expense of CONTRACTOR. Where a dispute or claim arises relative to a real or anticipated infringement, the SUBRECIPIENT (Applicant) may require CONTRACTOR, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The CONTRACTOR shall not be obligated to indemnify that portion of a claim or dispute based upon: (i) SUBRECIPIENT'S (Applicant)'s unauthorized modification or alteration of a Product, Material, or Service; (ii) SUBRECIPIENT'S (Applicant)'s use of the Product, Material, or Service in combination with other products, materials, or services not furnished by CONTRACTOR; (iii) SUBRECIPIENT'S (Applicant)'s use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if CONTRACTOR believes that it may be enjoined, CONTRACTOR shall have the right, at its own expense and sole discretion as the SUBRECIPIENT'S

(Applicant)'s exclusive remedy to take action no later than six (6) months after the issuance of an injunction in the following order of precedence: (i) to procure for the SUBRECIPIENT (Applicant) the right to continue using such item(s) or part(s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the SUBRECIPIENT (Applicant) up to the dollar amount of the Contract. Any injunction that is issued against the SUBRECIPIENT (Applicant) which prevents the SUBRECIPIENT (Applicant) from utilizing the CONTRACTOR'S product in excess of six (6) months and for which the CONTRACTOR has not obtained for the SUBRECIPIENT (Applicant) or provided to the SUBRECIPIENT (Applicant) one (1) of the alternatives set forth in the foregoing sentence is cause for the SUBRECIPIENT (Applicant) to terminate the Contract. In the event of such termination, the SUBRECIPIENT (Applicant) will not be obligated to compensate the CONTRACTOR for any costs incurred by the CONTRACTOR.

For all other claims against the CONTRACTOR where liability is not otherwise set forth in the contract as being "without limitation", and regardless of the basis on which the claim is made, CONTRACTOR'S liability **for direct damages, shall be the greater of \$100,000, the dollar amount of the Contract, or two (2) times the charges for services rendered by the CONTRACTOR under the Contract.** Unless otherwise specifically enumerated herein mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the CONTRACTOR is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The SUBRECIPIENT (Applicant) may, in addition to other remedies available to them at law or equity and upon notice to the CONTRACTOR, retain such monies from amounts due CONTRACTOR, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

Insurance

CONTRACTOR will be required to provide the SUBRECIPIENT (Applicant) with Certificates of adequate insurance indicating coverage required. The CONTRACTOR shall maintain the insurance for the full term of this contract. Failure to comply shall be grounds for termination of this contract.

Performance Bond

CONTRACTOR shall provide a Performance Bond (Surety Bond) in the amount of _____ dollars (\$_____) to insure the successful performance under the terms and conditions of this Contract. The performance bond shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Services list of approved bonding companies which is published annually in the Federal Register, or by a Louisiana domiciled insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of policyholder's surplus as shown in the A.M. Best's Key Rating Guide or by an insurance company that is either domiciled in Louisiana or owned by Louisiana residents and is licensed to write surety bonds.

No surety or insurance company shall write a performance bond which is in excess of the amount indicated as approved by the U.S. Department of the Treasury Financial Management Service list or by a Louisiana domiciled insurance company with an A-rating by A.M. Best up to a limit of 10 percent of policyholders' surplus as shown by A.M. Best; companies authorized by this Paragraph who are not on the treasury list shall not write a performance bond when the penalty exceeds 15 percent of its capital and surplus, such capital and surplus being the amount by which the company's assets exceed its liabilities as reflected by the most recent financial statements filed by the company with the Department of Insurance.

In addition, any performance bond furnished shall be written by a surety or insurance company that is currently licensed to do business in the State of Louisiana.

The CONTRACTOR shall maintain the performance bond for the full term of this contract. Failure to comply shall be grounds for termination of this contract.

Licenses + Permits

CONTRACTOR shall secure and maintain all licenses and permits, and pay inspection fees required to do the work required to complete this Contract, if applicable.

Severability

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application; to this end the terms and conditions of this Contract are declared severable.

Subcontractors

The CONTRACTOR may enter into subcontracts with third parties for the performance of any part of the CONTRACTOR'S duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of the CONTRACTOR to the SUBRECIPIENT (Applicant) for any breach in the performance of the CONTRACTOR'S duties. The CONTRACTOR will be the single point of contact for all subcontractor work.

Compliance with The Contract Work Hours + Safety Standards Act

1. Overtime requirements. No contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one (1) and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. Withholding for unpaid wages and liquidated damages. The SUBRECIPIENT (Applicant) upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such Contract or any other Federal

contract with the same prime contractor, or any other Federally-assisted contract subject to the *Contract Work Hours and Safety Standards Act*, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. Subcontracts. The CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Assignment

CONTRACTOR shall not assign any interest in this contract by assignment, transfer, or novation, without prior written consent of the SUBRECIPIENT (Applicant). This provision shall not be construed to prohibit the CONTRACTOR from assigning his bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the SUBRECIPIENT (Applicant).

Contract Controversies

Standard: Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where Contractors violate or breach Contract terms, and provide for such sanctions and penalties as appropriate. See 2 CFR Part 200, Appendix II, A.

Right to Audit

Access to Records. The following access to records requirements apply to this Contract:

1. The CONTRACTOR agrees to provide GOHSEP, SUBRECIPIENT (Applicant), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The CONTRACTOR agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Contract.

Contractor's Certification of No Federal Suspension or Debarment

CONTRACTOR has a continuing obligation to disclose any suspensions or debarment by any government entity, including but not limited to General Services Administration (GSA). Failure to disclose may constitute grounds for suspension and/or termination of this Contract and debarment from future Contracts.

Contractor's Cooperation / Close-Out

The CONTRACTOR has the duty to fully cooperate with the SUBRECIPIENT (Applicant) and provide any and all requested information, documentation, etc. to the SUBRECIPIENT (Applicant) when requested. This applies even if this Contract is terminated and/or a lawsuit is filed. Specifically, the CONTRACTOR shall not limit or impede the SUBRECIPIENT's (Applicant)'s right to audit or to withhold SUBRECIPIENT (Applicant) owned documents.

Term of Contract

This Contract is effective upon approval and will end no later than _____ unless otherwise terminated in accordance with the Termination provision of this Contract. The SUBRECIPIENT (Applicant) has the option, upon acceptance by the Contractor, to extend for _____.

Commencement of Work

No work shall be performed by CONTRACTOR and the SUBRECIPIENT (Applicant) shall not be bound until such time as this Contract is fully executed between the SUBRECIPIENT (Applicant) and the CONTRACTOR and all required approvals are obtained.

E-Verify

CONTRACTOR acknowledges and agrees to comply with Federal law pertaining to E-Verify in the performance of services under this Contract.

Compliance with Civil Rights Laws

During the performance of this Contract, the CONTRACTOR agrees as follows:

1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

3. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR'S commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The CONTRACTOR will comply with all provisions of *Executive Order 11246 of September 24, 1965*, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The CONTRACTOR will furnish all information and reports required by *Executive Order 11246 of September 24, 1965*, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering SUBRECIPIENT (Applicant) and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the CONTRACTOR'S noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government Contracts or Federally assisted construction Contracts in accordance with procedures authorized in *Executive Order 11246 of September 24, 1965*, and such other sanctions as may be imposed and remedies invoked as provided in *Executive Order 11246 of September 24, 1965*, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The CONTRACTOR will include the portion of the sentence immediately preceding paragraph one (1) and the provisions of paragraphs one (1) through seven (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of *Executive Order 11246 of September 24, 1965*, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering SUBRECIPIENT (Applicant) may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering SUBRECIPIENT (Applicant) the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

Record Retention

The CONTRACTOR shall maintain all records in relation to this Contract for a period of at least **THREE (3) years** after final payment.

Clean Air Act

1. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the *Clean Air Act*, as amended, 42 U.S.C. § 7401 et seq.
2. The CONTRACTOR agrees to report each violation to the SUBRECIPIENT (Applicant) and understands and agrees that the SUBRECIPIENT (Applicant) will, in turn, report each violation as required to assure notification to GOHSEP, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
3. The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Energy Policy + Conservation Act

The CONTRACTOR hereby recognizes the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the *Energy Policy and Conservation Act* (P.L. 94-163).

Clean Water Act

The CONTRACTOR hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders, or requirements issued under Section 508 of the *Clean Water Act* which prohibits the use under non-exempt Federal Contracts, grants or loans of facilities included on the EPA List of Violating Facilities.

FEDERAL WATER POLLUTION CONTROL ACT

1. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the *Federal Water Pollution Control Act*, as amended, 33 U.S.C. 1251 et seq.
2. The CONTRACTOR agrees to report each violation to the SUBRECIPIENT (Applicant) and understands and agrees that the SUBRECIPIENT (Applicant) will, in turn, report each violation as required to assure notification to the GOHSEP, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
3. The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Anti-Lobbying + Debarment Act

The CONTRACTOR will be expected to comply with Federal statutes required in the *Anti-Lobbying Act* and the *Debarment Act*.

The CONTRACTOR hereby agrees to adhere to the mandate dictated by the *Copeland "Anti-Kickback" Act* which provides that each CONTRACTOR or SUBRECIPIENT (Applicant) shall be prohibited from inducing, by any means, any person employed in the completion of work, to give up any part of the compensation to which he is otherwise entitled.

SUSPENSION + DEBARMENT

1. This Contract is a covered transaction for purposes of 2 CFR Part 180 and 2 CFR Part 3000. As such the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals (defined at 2 CFR § 180.995), or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).
2. The CONTRACTOR must comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by CONTRACTOR. If it is later determined that the CONTRACTOR did not comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C, in addition to remedies available to GOHSEP serving as Recipient and name of SUBRECIPIENT (Applicant), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The bidder or proposer agrees to comply with the requirements of 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)

CONTRACTORS who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any SUBRECIPIENT (Applicant), a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Recipient.

Procurement of Recovered Materials

1. In the performance of this Contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –
 - i. Competitively within a timeframe providing for compliance with the Contract performance schedule;
 - ii. Meeting Contract performance requirements; or
 - iii. At a reasonable price.
2. Information about this requirement, along with the list of EPA-designate items, is available at EPA's *Comprehensive Procurement Guidelines* web site, epa.gov/smm/comprehensive-procurement-guideline-cpg-program.

DHS Seal + Logo + Flags

The CONTRACTOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS Agency officials without specific FEMA pre-approval.

Compliance with Federal Law + Regulations + Executive Orders

This is an acknowledgement that FEMA financial assistance will be used to fund the Contract only. The CONTRACTOR will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

No Obligation by Federal Government

The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, CONTRACTOR, or any other party pertaining to any matter resulting from the Contract.

Contract Monitoring

PERFORMANCE MEASURES

The performance of the Contract will be measured by the Contract Manager (CM), authorized on behalf of the SUBRECIPIENT (Applicant), to evaluate the CONTRACTOR'S performance against the criteria in the Statement of Work and are identified as:

Performance Requirements

CONTRACTORS shall provide staffing to support timely and accurate assistance to the SUBRECIPIENT (Applicant) as required to fulfill Task Order requirements. The expected performance metric numbers will be based on current work requirements.

Performance Measurement/Evaluation

The performance of the Contract will be measured by the CM, to evaluate the CONTRACTOR'S performance against the criteria in the Scope of Services. Performance measures for this contract shall include CONTRACTOR'S timely and successful completion, submission, and performance of any work product being sought and provided through this agreement, consistent with the provisions, goals and objectives of this Contract.

MONITORING PLAN

The CM will monitor the services provided by the CONTRACTOR and the expenditure of funds under this contract. The CM will be primarily responsible for the day-to-day contact with the CONTRACTOR and day-to-day monitoring of the CONTRACTOR'S performance. The monitoring plan is the following:

CONTRACT MANAGER (CM)

_____ is appointed as the CM for this contract. SUBRECIPIENT (Applicant) reserves the right to replace the CM at its discretion. The CONTRACTOR shall continue to be responsible for the management, supervision and performance of CONTRACTOR personnel.

GOHSEP PROJECT MONITOR (PM)

_____ is appointed as the Project Monitor (PM) for GOHSEP. SUBRECIPIENT reserves the right to replace the PM at its discretion.

RESPONSIBILITIES OF SUBRECIPIENT (APPLICANT) PERSONNEL

RESPONSIBILITIES OF CM:

- Monitors performance of the Contract.
- Provides guidance and assistance to the PM.

RESPONSIBILITIES OF PM:

- Provides oversight and direction on the activities of CONTRACTOR personnel.
- Serves as SUBRECIPIENT'S (Applicant's) principal point of contact for CONTRACTOR PM and as monitor of CONTRACTOR'S performance under this Contract.
- Regularly monitors the staffing levels of the CONTRACTOR and maintains/adjusts those staffing levels in accordance with the needs of SUBRECIPIENT (Applicant).

ASSIGNED CONTRACTOR PERSONNEL

The Project Manager for the CONTRACTOR is _____.

RESPONSIBILITIES OF CONTRACTOR PM:

- Serves as the day-to-day principal point of contact for the CONTRACTOR and to assure that CONTRACTOR'S personnel are performing within the Contract's scope of services.
- Ensure that the deliverables are produced.

Program Fraud + False or Fraudulent Statements or Related Acts

The CONTRACTOR acknowledges that 31 U.S.C. Chap. 38 (*Administrative Remedies for False Claims and Statements*) applies to the CONTRACTOR'S actions pertaining to this contract.

The undersigned Contractor certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and Contracts under grants, loans, and cooperative agreements) and that all SUBRECIPIENTS (Applicants) shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the *Lobbying Disclosure Act of 1995*). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the CONTRACTOR understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Signature of CONTRACTOR'S Authorized Official

Name and Title of CONTRACTOR'S Authorized Official

Date

Complete Contract

This is the complete Contract between the parties with respect to the subject matter and all prior discussions and negotiations are merged into this Contract. This Contract is entered into with neither party relying on any statement or representation made by the other party not embodied in this Contract and there are no other agreements or understanding changing or modifying the terms. This Contract shall become effective upon final statutory approval.

Controlling Law-Venue

This agreement shall be governed by the laws of the State of Louisiana. Exclusive jurisdiction and venue for any and all suits arising out of, or related to, this agreement shall be in the _____ Court, Parish of _____ State of Louisiana.

For Tribal Applicant Contracts: This agreement shall be governed by _____. Exclusive jurisdiction and venue for any and all suits arising out of, or related to, this agreement shall be in the _____ Court.

THUS DONE AND SIGNED AT _____ on this ____ day of ____, 20__, and, IN WITNESS WHEREOF, the parties have executed this Contract.

WITNESSES' SIGNATURES:

CONTRACTOR SIGNATURE:

By: _____
Title: _____

THUS DONE AND SIGNED AT _____, Louisiana on this _____ day of ____, 20__, and, IN WITNESS WHEREOF, the parties have executed this Contract.

WITNESSES' SIGNATURES:

SUBRECIPIENT (APPLICANT) SIGNATURE:

By: _____
Title _____

THIS PAGE INTENTIONALLY LEFT BLANK.

III. FOUR (4) METHODS OF PROCUREMENT

III. FOUR (4) METHODS OF PROCUREMENT



PROCUREMENT **TOOLBOX**

WHAT DO I NEED? CATEGORIES + SIZE OF CONTRACTS

Both the category of purchase and size of the contract determine the requirements for procurement.

It is important to know:

- **Check local procurement rules. If local rules are more restrictive than Federal or State law, follow the MOST restrictive rule.**
- **Responses ONLY count if they are responsive and responsible.**
- FEMA requires a *minimum* of **two (2) responses** for **Contracts** in **excess** of the **Simplified Acquisition Threshold (SAT)** and a *minimum* of **three (3) responses** for Contracts *equal* to or *less* than the SAT.
 - » The SAT is currently \$150,000. This threshold is periodically adjusted for inflation. Check with your GOHSEP State Applicant Liaison (SAL) for current threshold. [SOURCE: 2 CFR 200.88]
- Currently, FEMA publishes the following guidance regarding procurement rules as applicable to Tribal governments: Irrespective of whether a Tribal government is designated as a Recipient or Subrecipient (Applicant), they will always follow the procurement standard found in this document.

CATEGORY OF PURCHASE	SIZE OF CONTRACT	FEDERAL REGULATIONS (44 CFR 13.36 + 2 CFR 200.318-323)	LOUISIANA STATE LAW REQUIREMENTS (LA RS 38:2211-2296)	LOCAL LAW
MATERIALS + SUPPLIES	Less than \$1,000 and \$1,000 - \$9,999	Quotes required.	No competitive procedure or cost analysis for commercial items. However, Louisiana Legislative Auditor (LLA) recommends the Best Practice of three (3) written quotes.	Check local procurement rules. If the rule is more restrictive than Federal or State law, follow the most restrictive rule.
	\$10,000 - \$30,000		Three (3) telephone or FAX quotes.	
	Greater than \$30,000		Bid required.	
	Greater than \$100,000/ \$150,000			
PUBLIC WORKS	Less than OR equal to \$150,000	Quotes required.	No competitive requirement. However, LLA recommends an RFP process and/or three (3) solicited bids as a Best Practice.	
	Greater than \$150,000	Bid required.	Bid required – no minimum number of responses.	
SERVICES (EXCEPT FOR A/E)	Less than OR equal to \$150,000	Quotes required.	No competitive requirement. However, LLA recommends an RFP process and/or three (3) solicited bids as a Best Practice.	
	Greater than \$150,000	Bid required.		
A/E SERVICES	ANY size	Bid required.	Qualifications based procedure.	
STATE COOPERATIVE PURCHASE (SCP)	ANY size	Authorized under 44 CFR 13.36(b)(5) and 2 CFR 200.318(e)	<ul style="list-style-type: none"> • Authorized under Louisiana Revised Statute (LA RS) Title 38:2212.1(F) (Louisiana bid law). • Limited to public entities as defined by LA RS 38:2211. • ONLY Office of State Procurement (OSP) SCP contracts. • Can be used for materials, supplies and equipment. 	



THIS PAGE INTENTIONALLY LEFT BLANK.

HOW MUCH IS THIS CONTRACT GOING TO COST?

Cost or price analysis is an essential component of the process associated with procurements under Federal disaster assistance.

Cost Analysis

Subrecipients (Applicants) must perform a **cost** or **price analysis** in connection with every procurement action (including contract modifications). The method and degree of analysis depends on the facts of each situation. Here's what you need to know:

- A cost analysis is simply a **comparison** of the Subrecipient's (Applicant's) costs to the **current market prices**, with an explanation of why the Subrecipient (Applicant) feels their costs were **reasonable**.
- The Subrecipient (Applicant) is responsible for **submitting documentation** to support the reasonableness of its costs in complying with the scope of work.
- FEMA considers numerous factors in determining the **reasonableness** of a Subrecipient's (Applicant's) costs. Some of the most important factors include:
 - » A **comparison** of the costs to **current market price** for similar goods or services based on:
 - **Historical documentation** from the Subrecipient (Applicant) or from the area;
 - **Published unit costs** from national cost estimating databases, such as RSMeans, CostWorks and Exactimate; and/or
 - **Internet searches** showing current prices.
 - » Whether costs were **escalated** because of any of the following factors:
 - **Shortages** in equipment, materials, supplies, labor or Contractors — and whether the Subrecipient (Applicant) had opportunity to obtain more reasonable pricing;
 - **Project-specific complexities** such as environmental / historic issue, remote location, unique service with few providers, extraordinary level of effort, etc.; and
 - Whether the Subrecipient (Applicant) **deviated** from its established practices.

Emergency + Exigent Circumstances

Did **emergency or exigent circumstances** exist? Both emergency and exigent circumstances mean circumstances that call for **immediate actions**.

- An emergency means an unexpected and usually dangerous situation that typically involves a threat to lives, public health or safety, or improved property.
- Exigent circumstances are urgent, however, they are not limited to dangerous situations. For example, **FEMA has determined that reopening schools may qualify as an exigent circumstance**.

As noted previously, during emergency or exigent circumstances, **competitive solicitation** of goods or services is sometimes NOT feasible. **If Subrecipients (Applicants) practice non-competitive procurement during an exigent period, they will have to conduct a Cost Analysis to show that costs were reasonable under the circumstances.**

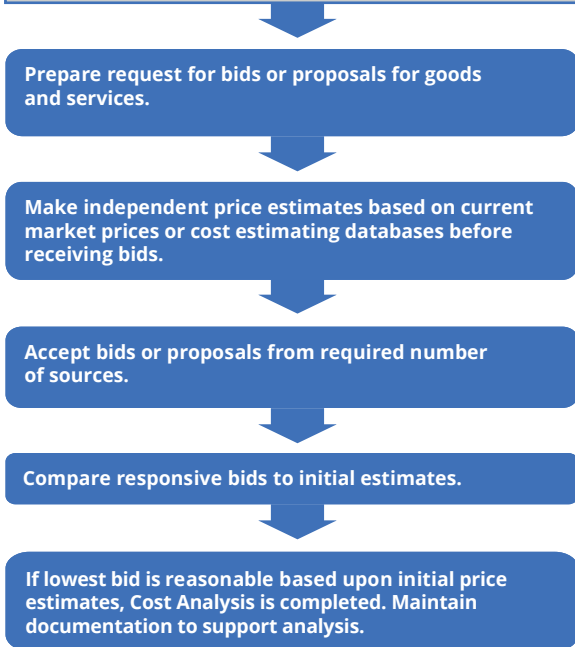


COST ANALYSIS FLOWCHARTS

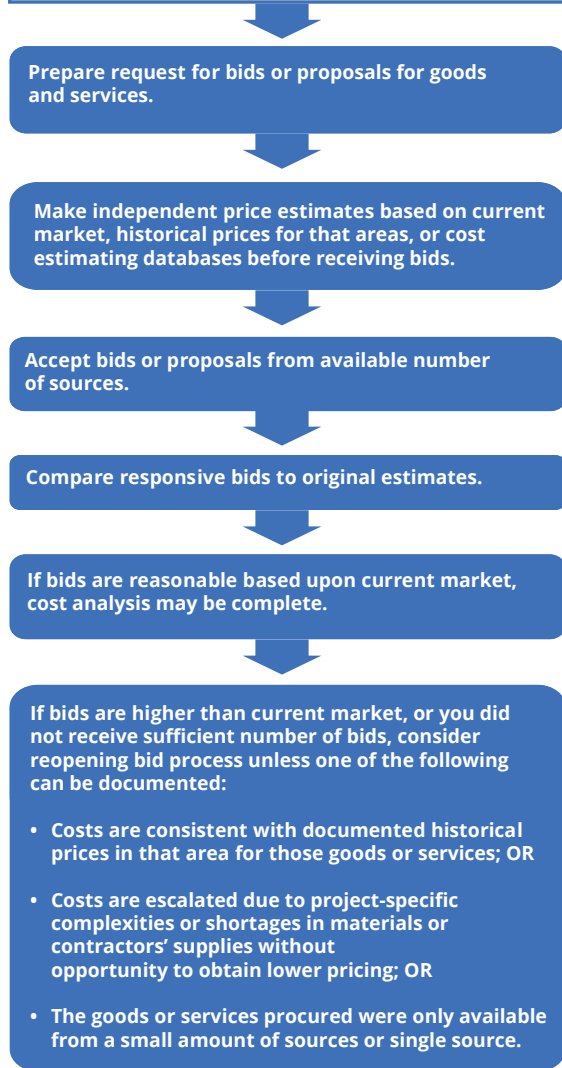
EMERGENCY PROCUREMENT



PRICE ANALYSIS WITH COMPETITIVE PROCUREMENT



COST ANALYSIS WITHOUT ADEQUATE COMPETITION, OR USING A SOLE SOURCE PROCUREMENT



COST ANALYSIS CHECKLIST

Cost Analysis establishes cost reasonableness through comparison to recognized standards. To ensure your *Cost Analysis* is complete, use this checklist.

1. BACKGROUND OF PROJECT:	
<input type="checkbox"/>	Date prepared
<input type="checkbox"/>	Prepared by
<input type="checkbox"/>	FEMA disaster number
<input type="checkbox"/>	Subrecipient (Applicant)
<input type="checkbox"/>	Federal Information Processing Standard (FIPS) code
<input type="checkbox"/>	Project title and name of facility
<input type="checkbox"/>	Facility address
<input type="checkbox"/>	Category of work and Project Worksheet (PW) number
<input type="checkbox"/>	Vendor's cost analyzed
<input type="checkbox"/>	Attachments (references, supporting documentation, etc.)
2. DESCRIBE KEY POINTS OF YOUR COST ANALYSIS:	
<input type="checkbox"/>	Project history (focus on vendor[s] <i>Scope of Work</i> [SOW])
<input type="checkbox"/>	Issue: State the reason for the <i>Cost Analysis</i>
<input type="checkbox"/>	<i>Cost Analysis</i> process
<input type="checkbox"/>	• State the SOW as it appears in the PW
<input type="checkbox"/>	• Segregate the Project's eligible and ineligible costs . It is important to identify and include both.
<input type="checkbox"/>	• Identify costs expended by the Subrecipient (Applicant) that require Cost Analysis.
<input type="checkbox"/>	• Identify the methods to justify the comparable cost estimation: <ul style="list-style-type: none"> » Use like and in-kind comparisons from various resources (i.e., RSMMeans, BNI Costbooks, Marshal & Swift, Internet, catalogues, historical data, average market prices, etc.)
<input type="checkbox"/>	Adjust those comparables to account for any relevant differences such as: <ul style="list-style-type: none"> • Inflation (time value of money) • Price volatility in raw materials
<input type="checkbox"/>	Explain ways in which your selected comparables are alike
3. CONCLUSION + RECOMMENDATION (IF APPLICABLE):	
<input type="checkbox"/>	Is the cost reasonable or not?



THIS PAGE INTENTIONALLY LEFT BLANK.

EXAMPLE COST ANALYSES

The following examples are NOT a specific format for *Cost Analysis*. The examples are offered as Best Practices and are not comprehensive.

EXAMPLE 1: COST OF LABOR + EQUIPMENT

Date Prepared:	[MM/DD/YY]
Prepared By:	GOHSEP Technical Team
FEMA Disaster No.:	[# AND NAME]
Subrecipient (Applicant):	[THE PARISH]
FIPS:	[123-456789-00]
Project Title/Facility:	[VARIOUS PARISH BUILDINGS]
Facility Address:	[VARIOUS LOCATIONS]
Category of Work & PW Number(s):	[CAT B, PW#1234]
Cost Analyzed:	\$16,125.00
Purpose:	Cost reasonableness
Attachment(s):	Attachment 1

PROCUREMENT BACKGROUND

Hurricane [XXXX] delivered very high wind velocities and heavy flooding throughout [THE PARISH]. [THE PARISH] lost electrical service to several buildings. It was necessary for [THE PARISH] to maintain fully operational capacity for the protection, public safety and health of the population of [THE PARISH]. To facilitate essential services, [THE PARISH] contracted with [THE VENDOR] to energize emergency power generators.

Due to the resulting damage caused by Hurricane [XXXX], namely the lack of electrical power, [THE PARISH] contracted with The Vendor to supply labor and the necessary equipment to connect and disconnect numerous generators to various buildings at several locations throughout the Parish.

The public exigency or emergency for the requirement did not permit a delay resulting from competitive solicitation and as such [THE PARISH] entered into a noncompetitive procurement, according to 2 CFR 200.320(f)(2) (Procurement by Noncompetitive Proposals).

COST ANALYSIS

- Develop a detailed list of tasks and subtasks, based on the services requested in the RFP/RFQ.
- Estimate the number of hours needed to complete each task and divide among staff with a variety of hourly rates.
- Estimate materials, supplies, services or other direct costs to complete each task.
- Apply overhead rate if applicable to appropriate cost base for each task.
- Apply profit rate if applicable to appropriate base for each task.
- Sum all the elements of cost and profit for the task.



PROCUREMENT TOOLBOX

A comparative cost analysis was prepared based on RSMeans Commercial New Construction 1st, 2nd, 3rd or 4th Quarter **20XX** (as appropriate) which was been adjusted to the City index code location using non-union open shop rates (or union rates if stated in contract) and RSMeans Crew **20XX** Open-Shop. The **20XX** pricing was adjusted by using the United States Department of Labor, Bureau of Labor Statistics CPI (Consumer Price Index)/RSMeans Historical Cost Index (as the case may be) inflation calculation factor to reflect the **20XX** value.

The FEMA *Cost Estimating Format* (CEF) is used as a cost analysis, reasonableness tool. Using the CEF system, a minimum of six (6) of the ten (10) largest item costs, from **[THE VENDOR]**'s invoice, are checked against industry standard construction cost data. Secondly, a minimum of 25 percent of the remaining cost items were checked against industry standard construction data. Effectively, 50 percent of the total invoices or contract must be analyzed. The item costs checked are deemed reasonable when they are not greater than 10 percent of the industry standard construction cost data (see FEMA CEF for Large Projects Instructional Guide V2.1, September 2009 Part E: Cost Escalation Allowance page 8-1). For this *Cost Analysis*, **XX%** of the invoiced amount was sampled using the CEF tool.

Given the nature of the emergency and the utmost urgency to restore electricity, **[THE VENDOR]** was called out in adverse conditions resulting in overtime charges. This "after-hours call out" rate equals one and one-half times the regular hourly billable rate. The rate of 150% is nationally recognized as a standard for overtime. RSMeans #012157500020 grants an allowance up to double the regular hourly rate.

INVOICE ITEMS	APPLICANT'S CONTRACTOR PRICE ELECTRIC	ADJUSTED 20XX COMPARISON PRICE	TOLERANCE RATIO
Labor + Equipment	\$13,125.00	\$12,708.21	+3%

Acceptable tolerance ratio is not to exceed +10% of the adjusted comparison price.

Attachment #1 – The Cost Comparison Worksheet which compares **[THE VENDOR]** invoiced amount with **20XX** RSMeans adjusted values. **[THE VENDOR]** invoiced bundled the individual elements which included labor and transportation to and from the job site. Using RSMeans, each element of the job was individually listed.

CONCLUSION

Following a complete review of **[THE VENDOR]**'s invoices and comparing those line items to adjusted values, **[THE PARISH]** paid a fair and reasonable amount for the services billed.

APPROVAL

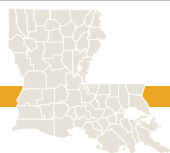
Print Name

Signature

Date

Title

Comments:



EXAMPLE 2: ONLINE QUOTE COMPARISON

To:	GOHSEP
From:	[THE PARISH]
Date:	April 13, 2015
RE:	Cost Reasonableness for Flood Control Measures, [THE PARISH] PW #1234, Hurricane Vic

During the emergency period for Hurricane Vic, to protect homes and business from rising storm surge, I contacted Tiger Dams R Us on July 28, 2007, to rent an inflatable levee system. Without obtaining these items, thousands of homes would have suffered from massive flooding.

The price I was quoted was \$350.00 per day for Tiger Dams™. I opted to rent the inflatable levee system with Tiger Dams™ for that price. A copy of the invoice has been attached to this memo for your review.

Prior to Hurricane Vic, in 2004 during Hurricane Taz, we had also rented tiger dams from this same vendor at the rate of \$350.00 per day. Please find attached to this memo a copy of the invoice from that occurrence.

On today, January 4, 2015, I got a quote via the internet from another vendor, Inflatable Levees R Us, for the same Tiger Dams™ and their rate is \$365.00 per day. Attached to this memo is a copy of that internet search for your review. Considering inflation, the additional \$15.00/day is not considered excessive. This can be verified by adding the Consumer Price Index (CPI) to the 2007 price. The new price can be determined by multiplying the \$350.00 cost times CPI over 8 years.

PRICE COMPARISON

The below chart is a recap of the price comparison which we performed:

COST COMPARISON FOR TIGER DAM™ RENTAL		
2004, Tiger Dams R Us	2007, Tiger Dams R Us	2015, Inflatable Levees R Us
\$350.00/day	\$350.00/day	\$365.00/day

ADDITIONAL COMMENTS

Tiger Dams R US was the only vendor who could meet our urgent need and time line during the rising storm surge of Hurricane Vic in 2007. Additionally, and moreover, the price that they charged [THE PARISH] during Hurricane Vic has been proven to be reasonable based on the above comparisons. Therefore, please accept this Memo as demonstrating cost reasonableness for the \$350.00/day Tiger Dams™ that we rented during the emergency period of Hurricane Vic.



EXAMPLE 3: A + E SERVICES ADDITIONAL TO FEE CURVE

COSTS ANALYSIS:

Date Prepared:	MM/DD/YY
Prepared By:	[OWNER]
FEMA Disaster No.:	DR1603 - LA Hurricane Katrina
Subrecipient (Applicant):	[OWNER]
FIPS:	99999
Project Title/Facility:	TOWN OF OWNER- SOIL BORING AND GEOTECHNICAL STUDY
Facility Address:	[VARIOUS LOCATIONS]
Category of Work + PW Number(s)	CATEGORY D - 9999, 9999, 9999
Analyzed:	Cost for Soil Boring and geotechnical study
Purpose:	Determine cost reasonableness for soil boring invoiced by contractor
Attachment(s):	1. Contract Amendment 2. Invoice

PROJECT HISTORY

On 29 August 2005, high winds, heavy rains and a storm surge from Hurricane Katrina caused damages to the town of [THE OWNER]'s drainage pumping system. The entire system was submerged in saltwater. The system consists of 10 pump stations with electric pumps mounted on platforms.

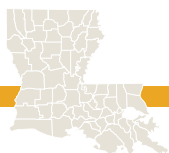
To facilitate the repair, [THE OWNER] contracted with [NAME OF ENGINEERING FIRM] to provide preliminary engineering analyses and design, final design, and construction inspection and administration for all 10 pump stations. The scope of work as part of the Hazard Mitigation effort was to elevate the equipment platforms by an additional five (5) feet. The new platforms were constructed using pilings which depend on the soil properties underneath. In order to select pile diameter and maintain adequate pile bearing capacities, a soil investigation was necessary for each proposed equipment platform. The [NAME OF ENGINEERING FIRM] sub-contracted with [NAME OF SUB-CONTRACTED SPECIALTY FIRM] to provide these additional services. Geotechnical services consisted of soil test borings, laboratory testing, engineering analyses and reporting. The sub-contractor provided soil testing services at a Fixed Price of \$3,500.00 per site totaling \$35,000.00 for 10 sites.

ISSUES

After Hurricane Katrina, [THE OWNER] engaged the services of [NAME OF ENGINEERING FIRM] to assess damages and provide technical assistance and project management. [NAME OF ENGINEERING FIRM] secured a sub-contract from [NAME OF SUB-CONTRACTED SPECIALTY FIRM] to provide additional specialty services. Therefore a Cost Analysis is necessary to show cost reasonableness. Note that a Cost Analysis performed on MM/DD/YYYY showed that the cost for basic engineering services provided by [NAME OF ENGINEERING FIRM] was reasonable based on FEMA cost curves for A/E services.

COST ANALYSIS

Soil exploration is categorized by FEMA as a special engineering service and not part of the basic professional services for design and construction presented in the FEMA curves. In addition to the basic engineering services, special engineering



services such as engineering survey, soil investigation, inspection, and feasibility studies are eligible for funding per *FEMA Public Assistance Cost Estimating Tool for Engineering and Design Services*, pg.3 (12/18/2015).

The costs associated with special engineering services should demonstrate cost reasonableness. In order to determine the cost reasonableness for the soil investigation services, the sub-contract was reviewed to determine the scope of work. The scope of work per invoices is as follows:

Soil boring shall consist of:

- A total of 10 soil borings shall be completed;
- Each soil boring shall be 75 ft;
- Soil boring shall be sampled at 5-ft intervals using a 3-in tube sampler; and
- Soil boring shall be grouted upon completion.

Geotechnical analysis shall consist of:

- A location plan of the performed soil borings with Global Positioning System (GPS);
- Boring logs reflecting sample depth in North American Vertical Datum of 1988 (NAVD 88);
- A summary of the laboratory test data;
- A discussion of the subsoil and ground water conditions at the site;
- Modulus of horizontal reaction;
- Pile curves for different pile diameters;
- Estimate of settlement; and
- Recommendation and conclusion.

Based on the scope of work (SOW) provided by the sub-contractor, **THE OWNER**'s Technical Team developed a line item cost estimate using RSMeans/CostWorks cost estimation resources. The cost estimated for soil investigation for each location is \$4,545.00 (see table below). Therefore, the cost expended by the applicant for soil investigation services is reasonable.

COSTWORKS 2011 - [OWNER - SOIL INVESTIGATION]						
QTY	CSI NUMBER	DESCRIPTION	UNIT	BARE LABOR	BARE EQUIP.	TOTAL INCL. O&P
1.0	01 450 500 5150	Soil testing, shear tests, triaxial, maximum	Ea.	0.00	0.00	525.00
1.0	01 450 500 5350	Soil testing, shear tests, direct shear, ASTM D 3080, maximum	Ea.	0.00	0.00	395.00
1.0	02 210 120 0100	Subsurface investigation, boring and exploratory drilling, drawings showing boring details	Total	264.00	0.00	330.00
1.0	02 210 120 0200	Subsurface investigation, boring and exploratory drilling, report and recommendations from Professional Engineer (PE)	Total	615.00	0.00	770.00
1.0	02 210 120 0300	Subsurface investigation, boring and exploratory drilling, mobilization and demobilization, minimum	Total	180.00	206.00	500.00
1.0	02 210 120 1400	Subsurface investigation, boring and exploratory drilling, drill rig and crew with truck mounted auger, includes bit, layout and set up	Day	715.00	825.00	2,025.00
Totals				\$1,774.00	\$1,031.00	\$4,545.00



PROCUREMENT TOOLBOX

Contract Cost: \$3,500.00

Owner's Estimated Cost: \$4,545.00

Variance: \$1,545.00

Management Approval:

Print Name

Signature

Date

Title

Comments:

DISCLAIMER: The analysis for Additional Services may be obscured since such costs are incurred before the project begins and accurate comparisons to overall project costs cannot be obtained.



HOW DO I PROPERLY PROCURE?: FOUR (4) PREFERRED METHODS OF COMPETITIVE PROCUREMENT

There are several methods for procuring goods and services. The chart below identifies four (4) methods of procurement – and the exception – and describes when to use each.

METHOD OF PROCUREMENT	WHEN TO USE
MICRO-PURCHASES	<ul style="list-style-type: none"> Does not apply to grant awards OR Presidential Declarations (PDs) prior to 12/26/2014. Applies to purchases less than OR equal to \$3,000 (increased to \$3,500 on 10/1/2015). No solicitation required. Subrecipient (Applicant) determines reasonableness.
SMALL PURCHASES	<ul style="list-style-type: none"> Applies to purchases less than OR equal to the Simplified Acquisition Threshold (SAT).¹ Only quotes required. A minimum of three (3) written or telephone quotes from qualified sources. Purchases of commercial products sold in substantial quantities to the general public. <ul style="list-style-type: none"> » Limited by State law to contracts for supplies and materials <i>less than \$10,000</i>. » Item must meet the definition of commercial product.
SEALED BIDS	<ul style="list-style-type: none"> Preferred for construction. Fixed price. Publicly advertised and publicly opened. Two (2) or more responsive and responsible bidders. (Rejected bidders are not considered responsive.) Awarded to lowest, responsive, responsible bidder. Any OR all bids may be rejected for a sound, documented reason.
COMPETITIVE PROPOSALS	<p>General</p> <ul style="list-style-type: none"> Must have more than one (1) responsive and responsible bidder. Must be publicized to maximum extent practical. Must have written procedure for conducting evaluations and award (See REQUIRED Written Procedures). <p><i>Request for Proposals (RFP)</i></p> <ul style="list-style-type: none"> Price a criteria for selection. Contract awarded to firm offering best value. <p><i>Request for Qualifications (RFQ)</i></p> <ul style="list-style-type: none"> Limited to Architecture and Engineering (A/E) services. Qualifications only criteria selection. Price negotiated after selection based on cost analysis.
EXCEPTION: NONCOMPETITIVE PROPOSALS	<ul style="list-style-type: none"> Available only from a single source. Used when insufficient number of responses received. Used in emergency or exigent circumstances. Always requires a cost analysis.

¹ The threshold is dependent upon the date of issuance of the grant or the Presidential Declaration. For grants awarded before 12/26/2014, the SAT is \$100,000. For grants awarded after 12/26/2014, the threshold is \$150,000. Adjusted annually for inflation according to the Consumer Price Index (CPI).



THIS PAGE INTENTIONALLY LEFT BLANK.

MINORITY + DISADVANTAGED BUSINESS ENTERPRISE (DBE)

2 CFR 200.321 requires grant applications to take all affirmative steps to assure small and minority businesses, women’s business enterprises, and labor surplus area firms are used when possible.

Specific steps to fulfill this vendor diversity requirement include:

- Placing **qualified** small and minority businesses and women business enterprises on **solicitation lists**;
- Assuring that small and minority businesses and women business enterprises are **solicited** whenever they are potential sources;
- **Dividing total requirements**, when economically feasible, into **smaller tasks** or **quantities** to permit participation by small and minority business and women’s business enterprises;
- Establishing **delivery schedules** – where the requirement permits – which encourage participation by small and minority businesses and women’s enterprises;
- Using the **services** and **assistance**, as appropriate, of such organizations as the **Small Business Administration** (SBA) and the **Minority Business Development Agency** of the **U.S. Department of Commerce** (DOC); and
- Requiring the **Prime Contractor**, if subcontracts are to be let, to take the **affirmative steps** listed in items (1) through (5) of this section.

Minority + DBE: Contact Information

Contact these resources for more information on minority and disadvantaged business enterprises.

BATON ROUGE

Legislative Black Caucus

Cynthia Buggage, Executive Director
 State Capitol Building
 P.O. Box 44003
 Baton Rouge, LA 70804
 225-342-7342

lbc.louisiana.gov

Louisiana Women’s Caucus

Trin Johnson, Executive Director
 P.O. Box 44188
 Baton Rouge, LA 70804
 225-342-0334

llwc@legis.la.gov

Louisiana Department of Transportation

Dr. Shawn Wilson, Secretary
 1201 Capitol Access Road
 Baton Rouge, LA 70802
 225-379-1232

dotd.la.gov

City of Baton Rouge Purchasing Dept.

Patti Wallace, Director
 222 St. Louis St. , Room 826
 Baton Rouge, LA 70802
 225-389-3259

purchasinginfo@brgov.com



Louisiana Economic Development

Mandi Mitchell, Assistant Secretary
617 North Third Street
Baton Rouge, LA 80802
800-339-3146
opportunitylouisiana.com

East Baton Rouge Parish School System

John Smith, Fair Share Coordinator
1120 Government St., Bldg. C, Room 210
Baton Rouge, LA 70802
225-226-3725
ebschools.org

Louisiana Municipal Association

700 North 10th Street
Baton Rouge, LA 70802
800-234-8274
lma.org

LAFAYETTE

Procurement Technical Asst. Center

John Gallagher, Executive Director
635 Cajundome Blvd., Room 127
Lafayette, LA 70506
337-482-6422

Greater Southwest Louisiana Black Chamber of Commerce

Courtney Reynolds, President
100 Surrey Street
Lafayette, LA 70501
337-314-9499
gslbcc.org

LAKE CHARLES

Southwest Louisiana Entrepreneurial and Economic Development (SEED)

Center of Lake Charles
Adrian Wallace, Director
4310 Ryan Street
Lake Charles, LA 7065
337-433-0977
seedcenterswla.com

MONROE

North East African American Chamber of Commerce

Learles Lloyd, Principal
602 North 5th Street
Monroe, LA 71201
318-323-0214
louisiana.gov

NEW ORLEANS

Goodwork Network

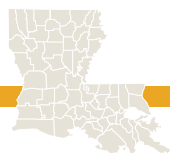
Hermione Malone, Executive Director
2028 Oretha Castle Haley Blvd.
New Orleans, LA 70113
504-309-2073
goodworknetwork.org

City of New Orleans Office of Supplier Diversity

1340 Poydras Street, Suite 1800
New Orleans, LA 70112
504-658-4904
supplierdiversity@nola.gov

New Orleans Regional Black Chamber of Commerce

P.O. Box 58035
New Orleans, LA 70158
504-948-0991
info@norbchamber.org



Minority Business Development Agency

Alvin Williams, Project Director
 400 Poydras St., Suite 1965
 New Orleans, LA 70130
 504-293-0400
mbda.gov

Small Business Administration

Michael Ricks, District Director
 365 Canal St. Suite 2820
 New Orleans, LA 70130
 504-589-6685
sba.gov/offices/district/new-orleans

Southern Regional Minority Supplier Development Council

400 Poydras, Street, Suite 1960
 New Orleans, LA 70130
 504-293-0400
srmsdc.org

Urban League Women's Business Ctr.

Klassi Duncan, Director
 Tulane Ave, Suite 301
 New Orleans, LA 70130
 504-620-9647
urbanleagueneworleans.org

Women's Business Enterprise Council South

Phala K. Mire, President
 2800 Veterans Memorial Blvd, Suite 180
 Metairie, LA 70002
 504-830-0149
wbcsouth.org

SHREVEPORT

Shreveport Fair Share

Attention: Karen M. Barnes, Coordinator
 P.O. 31109
 Shreveport, LA 71130
 318-673-5060
shreveportla.gov

Caddo Parish Purchasing

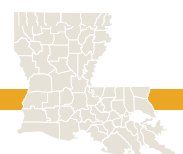
Valerie Jamison-Gunn, Purchasing Manager
 505 Travis St., Suite 850
 Shreveport, LA 71101
 318-226-6903, ext. 2
caddo.org

Shreveport-Bossier African American Chamber of Commerce

Jonathan Reynolds, Director
 1315 Milam St.
 Shreveport, LA 71101
 318-220-9098
sbaacc.org

Learn More

- sam.gov
(Central Contractor Registration)
- dotd.louisiana.gov/business.html
(LA DOTD - Certified DBE Contractors)
- wbcsouth.org
(Women's Business Council Gulf Coast)
- smallbiz.louisianaeconomicdevelopment.com
(Certified Small and Emergency Businesses)
- minorityprofessionalnetwork.com/batonrouge.asp
(Metro Area Multicultural Diversity)
- blackownedbiz.com
(Black Owned Businesses in New Orleans)



THIS PAGE INTENTIONALLY LEFT BLANK.

EXAMPLE REQUEST FOR PROPOSALS (RFP) FOR SERVICES

[DESCRIBE]

When the nature of a procurement does NOT *lend* itself to sealed bidding and the SUBRECIPIENT (Applicant) expects more than one (1) source will be willing and able to submit an offer of proposal, a *Request for Proposal* (RFP) may be used.

This method is most often used for professional services associated with construction, including project management and construction management.

Essential to the RFP process are:

- Public announcement;
- Solicitation from adequate sources; and
- Disclosure of the evaluation factors and their importance.

Award to the best responsive and responsible firm is expected to result.



THIS PAGE INTENTIONALLY LEFT BLANK.

Request for Proposals (RFP) for _____ services
 [DESCRIBE]

Instructions to Proposers

_____ hereinafter referred to SUBRECIPIENT (Applicant) announces this
 [CITY / PARISH / TOWN]
 request for proposals for _____ services.
 [DESCRIBE]

I. Proposal Instructions

A. CRITERIA FOR EVALUATION

The proposal should address each of the following criteria:

1. **Costs**
2. **Qualifications**
3. **Prior Experience and References**
4. **Required Information**
5. **Methodology**

Read each Section carefully and provide detailed information. Complete this *Request for Proposal (RFP)* form in its entirety.

B. SUBMISSION OF PROPOSAL

Each proposal shall be in a sealed envelope and clearly marked as follows:

1. Company name and address
2. Date and time of proposal opening
3. RFP #

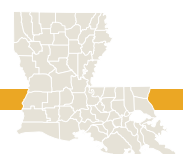
Each sealed envelope shall contain one (1) original proposal and two (2) copies. Sealed proposals will be received at the
 SUBRECIPIENT (Applicant) at _____ and _____.
 [ADDRESS] [DATE] [TIME]

All proposals which have been duly received will be publicly opened in the Conference Room at the SUBRECIPIENT (Applicant) Office.

C. PROPOSAL CONFERENCE MEETING (MAY BE INCLUDED AT SUBRECIPIENT'S DISCRETION - IF USED, MAKE MANDATORY)

A Proposal Conference Meeting will be held at _____ in the
 [CITY / PARISH / TOWN]

 [ROOM] [ADDRESS] [DATE]
 and _____. **Attendance at this proposal conference is MANDATORY.**
 [TIME]



II. Evaluation

Proposals will be evaluated and scored by a committee appointed by the Superintendent, based upon the content of the proposals. Each area will be weighted as follows:

Costs	%
Qualifications	%
Prior Experience/References	%
Required Information	%
Methodology	%
TOTAL	100%

III. Requests For Proposals

A. DEFINITIONS

1. Services means work rendered by an independent Contractor who possesses specialized knowledge, experience, and expertise to perform _____ services.
[DESCRIBE]
2. Proposal means the written response to a *Request For Proposals Submitted To* the SUBRECIPIENT (Applicant).
3. Proposer is one who submits a proposal for a Contract with the SUBRECIPIENT (Applicant) to furnish the services and such incidental reports thereto which are required for the performance of any such services.

B. PROPOSER'S QUALIFICATIONS/REFERENCES

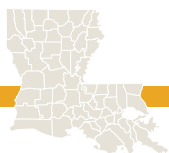
1. Proposers shall include with their proposals a description of the firm's qualifications to include a specific list of personnel assigned to this project and their qualifications.
2. Proposers shall supply a list describing previous, similar work done by subject area, with whom (governmental agency or private business), the names and addresses of contact persons for each client listed, and the number of years prior experience doing emergency work.

C. LENGTH OF TIME

Each proposer should include information in their proposal as to the length of time needed to initiate services, broken down by phases, if phasing is necessary.

D. METHODOLOGY

Each proposer should include the proposed methodology for accomplishing the project with a precise statement of what the SUBRECIPIENT (Applicant) will receive as an end product of the project.



E. INTERPRETATION OF THE PROPOSAL

1. Proposers shall promptly notify the designated individual of the SUBRECIPIENT (Applicant) of any ambiguity, inconsistency or error that they discover upon examination of the request for proposals.
2. Proposers requiring clarification or interpretation of the *Request For Proposals* shall make a written request to the SUBRECIPIENT (Applicant) Attn: _____ at least seven (7) days prior to the date for receipt of the proposal.
[NAME]
3. Any interpretations, corrections or changes of the *Request For Proposals* will be made in writing. Interpretations, corrections or changes of the request for proposals made in any other manner will not be binding and proposer shall not rely upon such interpretations, corrections or changes.

F. CONSIDERATION OF PROPOSALS

Proposals will be opened publicly on the assigned date. Each proposal remains valid and binding up to and including [___ days] after the date set for the receipt of any proposal. The SUBRECIPIENT (Applicant) may accept any proposals and award a Contract within one hundred twenty days of the date for receipt of any proposal. If the SUBRECIPIENT (Applicant) does not make an award within [___ days] of the date set for the receipt of any proposal, all proposals will be considered rejected.

G. FORM OF AGREEMENT

The form of the Contract to be used will depend upon the nature and scope of the services selected by the SUBRECIPIENT (Applicant).

IV. Required Information From Proposers

- A. Name, address, and telephone number.
- B. If a corporation, the State of incorporation and date, a list of the shareholders, the names, and addresses of its Board of Directors and its officers; if a partnership, the names and addresses of all general and limited partners; and if a joint venture, the names and addresses of all parties participating in the venture.
- C. All information required in Section I. B of preceding instruction section of this request for proposals.
- D. Identification, names, and addresses of all subcontractors or other parties engaged or to be engaged by the proposer.
- E. Outline of proposed services and mechanism and alternate mechanisms, if any to perform the required services.
- F. Description of the previous experience of the proposer, especially involvement with public or municipal entities.



- G. List of present and past clients including a contact person with name, address, and telephone number, and other references.
- H. Vitae, including any special license information of the proposed project director, key project personnel, and/or Contractors.
- I. Certificate of Insurance as outlined in the attached **Contractor Contractual Insurance Requirements** and proof of its ability to provide performance bonds.
- J. The fee or compensation to be paid to the Contractor for all or any of the proposed services must be included in the proposal. Compensation rates shall include taxes and insurance and must be based on unit prices.
- K. Proposers shall include with their proposals a description of the firm's qualifications to include a specific list of personnel to be used in this project and their qualifications.
- L. Proposers shall supply a list describing previous, similar work done by subject area, with whom (governmental agency or private business) and the names and addresses of contact persons for each client listed.

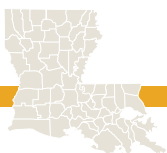
V. Additional Information For Proposers

- A. Any proposer should be prepared for a formal interview with the staff, if so required.
- B. All proposers are required to sign the attached **Non-Collusion Statement** and any other attached statement(s).
- C. Supplies and equipment necessary to perform operational services shall be the responsibility of the contracted firm(s).

VI. Scope Of Work

The scope of work includes, but is not limited to, the following:

[CLEAR SCOPE OF WORK THAT DOES NOT UNFAIRLY LIMIT COMPETITION IS REQUIRED.
ACCURATELY DESCRIBE SCOPE OF WORK TO BE PREFORMED]



VII. Criteria + Costs Specifications/Proposals

The following specifications have been prepared by SUBRECIPIENT (Applicant) setting forth those items deemed necessary by our personnel.

Only Contractors with experienced, trained, professional personnel directly employed or supervised by the Contractor will be considered. The Contractor or its subcontractors shall have the skill, knowledge, proficiency, and other necessary qualifications to perform the services as specified.

The successful Contractor, herein referred to as the Contractor, must have been in the business of

[_____ services] for [___ years].
[DESCRIBE]

The Contractor shall exercise all required safety measures to conduct work in a safe manner and shall adhere strictly to all Federal, State, and Parish regulations, rules, and requirements. Safe tools and personal protection equipment must be provided for the job by the Contractor. The Contractor shall do everything necessary to protect the life, health, safety, and welfare of their employees, of the SUBRECIPIENT (Applicant) employees, and of the public.

The Contractor must provide copies of reference numbers, licenses, and a *Certificate of Insurance* as outlined in the attached *Contractor Contractual Insurance Requirements*. The Contractor shall not commence the work until he has obtained all insurance required by this proposal and until such insurance has been approved by the SUBRECIPIENT (Applicant). The Contractor is responsible for any permits and meeting the parish and state code standards.

Proper certificates showing such insurance is in effect shall be furnished to the SUBRECIPIENT (Applicant) prior to the commencement of work at the site, which certificates shall incorporate a provision that no cancellation or change in such insurance shall be effected for any cause without **ten (10) days** written notice first being given to the SUBRECIPIENT (Applicant). Copies of any and all exclusions under the policies shall be furnished with the certificate of insurance. All insurance policies shall be written by companies legally authorized to do business in Louisiana. The Contractor shall procure and maintain insurance until completion of the awarded Contract.

After **thirty (30) days** from delivery of written notice to either the SUBRECIPIENT (Applicant) or the successful proposer without cause and without prejudice to any other right or remedy, either party may elect to abandon and terminate the Contract.

The Contractor must supply ALL materials for each item. The Contractor must submit a copy of their vendor’s invoice for materials/supplies. All Contractors are required to maintain documentation to ensure that every effort has been made by the Contractor to secure the lowest possible price for all parts and/or equipment used in this Contract.

Only precision, high quality, professional workmanship shall be acceptable. It is the objective to obtain emergency services.

Proposer agrees, to the fullest extent permitted by law, to defend, indemnify and hold the SUBRECIPIENT (Applicant), its officers, agents and employees, harmless from and against any and all claims, suits, liabilities, losses, expenses, liens, costs, demands and causes of action of every kind and character including those of the Proposer, its agents and employees for death, bodily injury, personal injury, damage or destruction of real or personal property, including costs, attorneys’ fees, and settlements arising out of or in any way connected with the negligent performance of the work performed under this, or any Contract executed by the Proposer and the _____, by any negligent act or omission,



whether performed by the Proposer, or any other Subcontractor of the Proposer, or any independent Contractor or any agent, employee, invitee or licensee of the Proposer, whether resulting from or contributed to by the negligence in any form by its officers, agents or employees whether active or passive.

The Insurance required to be maintained under this Contract by proposer shall insure the performance of this indemnification as set forth herein, but nothing in the insurance shall in any way limit the indemnification provided for hereunder. Proposer shall pay all reasonable legal fees and costs incurred by the SUBRECIPIENT (Applicant) under the Contract to enforce the indemnification articulated under this section.

The Contractor must submit a proposal on all items specified. Rates must be based on unit prices or presented as a lump sum. The total proposal will be awarded to one (1) Contractor.

All pricing rates shall include taxes and insurance. All payment provisions must be based on unit prices.

In order to receive payment of any kind on any and all services, products, transactions, and invoices, Proposer agrees and understands that he or she must submit invoices adhering to the guidelines below. Proposer agrees and understands that he or she will not receive payment of any kind until satisfactory invoices have been submitted.

INVOICING REQUIREMENTS – EXAMPLES BELOW

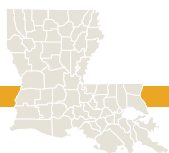
Any and all documentation of work and invoices for payment must be submitted to the SUBRECIPIENT (Applicant) [within ____ days] of the completion of the work to which the invoices and documentation corresponds.

Proposer agrees and understands that it is his or her sole responsibility to ensure his or her invoices meet the requirements set herein. Proposer may, and is further encouraged to, submit sample invoices with his or her proposal in order to determine sufficiency of any invoicing or documentation method currently in use by his or her company. Proposer agrees and understands that he or she will be expected to implement the best known practices, with the utmost attention to detail, as it pertains to every aspect of his or her Contract and/or proposal related to the SUBRECIPIENT (Applicant), especially and specifically as it concerns documentation, invoicing, and the monitoring and tracking of work performed, goods sold, and products used.

Again, invoices must meet the requirements set herein, as well as any local, parish, state, national, and any other applicable industry specific requirements in order for the invoice to receive payment of any kind. As with all Contracts, time is of the essence.

PROPOSED RATES

[LIST DETAILED PROPOSED RATES ABOVE]



Proposer must provide the number of each piece of equipment listed above that they currently own. If the proposer has established a rental agreement for the equipment listed above, a copy of the agreement must be provided which includes the number of each piece of equipment.

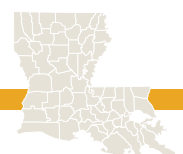
AWARDING OF PROPOSAL

Each item for proposal shall be awarded to the proposer who best meets specifications.

The term of this agreement shall be for one (1) year beginning _____ with **[a ___ year]** renewal option, if agreed upon by both parties in writing. [DATE]

REJECTION OF PROPOSALS

The SUBRECIPIENT (Applicant) reserves the right to reject any or all proposals and to waive any informality in the proposal.



THIS PAGE INTENTIONALLY LEFT BLANK.

EXAMPLE RFP ADVERTISEMENT

NO IMAGE

Bids-Proposals

HOUSING AUTHORITY OF THE CITY OF WESTWEGO (WHA) REQUEST FOR PROPOSALS FOR PLUMBING SERVICES - REPLACE SEWER LINES AND WATER SUPPLY MAIN LINES RFP #17-013 ADVERTISEMENT FOR PROPOSALS The Housing Authority of the City of Westwego (WHA) is hereby issuing this Request for Proposals in accordance with its small purchase procedures, whereby competition is received through an informal solicitation process. The Housing Authority of the City of Westwego (WHA) is soliciting competitive proposals from qualified and experienced Plumbing Contractors properly licensed pursuant to LA R.S. 37:2150-2192. Respondents must document experience providing the required services, preferably for public housing authorities or apartment complexes, through the Request for Proposals (RFP) process. Proposals should demonstrate the Respondent's capacity and readiness to perform the Scope of Services immediately upon execution of a Contract with WHA. The proposal shall include evidence of the Respondent's previous experience and qualifications relative to the provision of such services. Once selected, the successful Respondent(s) will enter into an Indefinite Delivery Indefinite Quantity type contract with WHA to perform the required scope of services on an "on-call" basis, which will provide for the payment of direct labor hours at fixed hourly rates, and will provide for the payment of materials at cost. Sealed responses to this solicitation will be received by the Housing Authority of the City of Westwego (WHA) until 1:30 PM Central Standard Time on December 6, 2017. Deliver four (4) complete sets (one original clearly marked or stamped "original", and three (3) copies) of the required submittals in a sealed envelope clearly marked with the words "RFP Documents", to the following address: Housing Authority of the City of Westwego Dorian Rawles, Executive Director 1010 Sixth Street Westwego, Louisiana 70094 The following information must be printed in the upper, left-hand corner on the outside of the envelope when submitting proposals: Respondent's Company Name Respondent's Company Address RFP Number Proposal Due Date and Time All responses submitted are subject to these Instructions and Supplemental Instructions to Offerors, General and Supplemental Conditions, and all other requirements contained in the RFP documents - all of which are made a part of this Request for Proposals by reference. The Housing Authority of the City of Westwego reserves the right to reject any or all proposals for just cause and to waive any informalities in the submission process if it be in the public interest to do so. Complete RFP documents will be provided in digital PDF format upon request. Requests for the RFP documents and any questions about the RFP shall be e-mailed to michael@volumezero.com with the Subject line, "WHA RFP 17-013", and the body text shall include the requester's name, company name, and phone number. The e-mail address from which the request is received shall be the e-mail address to which the bidding documents (including any addenda) are sent. There will be no pre-proposal conference. Housing Authority of the City of Westwego Dorian Rawles, Executive Director Publish dates: November 8, 2017 November 15, 2017 November 22, 2017

Notices and Announcements - Legal Notice



THIS PAGE INTENTIONALLY LEFT BLANK.

EXAMPLE REQUEST FOR QUALIFICATION (RFQ) STATEMENTS FOR ARCHITECTURE + ENGINEERING (A + E) SERVICES

A *Request for Qualifications* (RFQ) can be used as a qualifications-based procurement where competitors' qualifications are evaluated and the most qualified competitor is selected, subject to fair and reasonable compensation.

This method is ONLY for use when procuring architectural or engineering services.



THIS PAGE INTENTIONALLY LEFT BLANK.

Request for Qualification (RFQ) Statements for A + E Services

Introduction

The _____ hereafter referred to SUBRECIPIENT (Applicant) is seeking qualification statements from firms relative to _____ .
 [INSERT SUBRECIPIENT/APPLICANT NAME] [INSERT PROJECT DESCRIPTION]

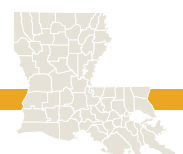
The SUBRECIPIENT (Applicant) is interested in contracting with a firm to provide the professional engineering services associated with projects including the design and inspection all in compliance with the Federal Emergency Management Agency (FEMA) requirements and the Louisiana Governor’s Office of Homeland Security & Emergency Preparedness (GOHSEP) requirements. The specific publicly owned facilities include, but are not limited to:

Part One (1): Scope of Services

[TAILOR TO WHAT YOU NEED - THE FOLLOWING ARE EXAMPLES OF ARCHITECTURAL SERVICES]

The services to be provided by the Architect for this project will include, but not be limited to:

1. Assist the SUBRECIPIENT (Applicant) with identifying and prioritizing the needed improvements to each damaged publicly owned facility.
2. On behalf of the SUBRECIPIENT (Applicant), if required, prepare all necessary environmental permits that may be needed including but not limited to, the State of Louisiana Department of Natural Resources Coastal Use Permit and the U.S. Department of Army Corps of Engineers permit(s).
3. Assist the SUBRECIPIENT (Applicant) with providing information to the SUBRECIPIENT (Applicant) or their Contractor for submission of Direct Administrative Costs (DAC) tasks associated with this disaster.
4. Prepare preliminary architectural drawings for review approval by the SUBRECIPIENT (Applicant).
5. Prepare a final *Project Manual*, specifications and plans to be submitted for review to both the Louisiana Office of the State Fire Marshal and the Louisiana GOHSEP within no later than ___ months of the receipt of a *Notice to Proceed* from the SUBRECIPIENT (Applicant). The construction bid package shall be prepared in conformance with the applicable Federal, State and local requirements, including the provisions required by FEMA.
6. Assist the SUBRECIPIENT (Applicant) with the bid advertisements, including preparing the advertisement for bids solicitation, conduct the bid opening and comply with all the requirements of the *Louisiana Public Bid Law* and FEMA procurement requirements, attend and conduct the bid opening, prepare a tabulation of the bids, provide a written recommendation, assist with the award process, prepare all the necessary contracts and issue the notice to proceed.
7. Conduct the pre-bid and pre-construction conferences as necessary.
8. Coordinate and/or conduct any surveying, field staking and testing needed.
9. Provide construction oversight (inspection) throughout the life of the project(s) to ensure work is completed in an acceptable manner and provide written inspection reports to the SUBRECIPIENT (Applicant), perform a final inspection providing the



SUBRECIPIENT (Applicant) with the final inspection report (punch list) and prepare the *Act of Substantial Completion* along with a formal recommendation to the SUBRECIPIENT (Applicant) relative to the completion/acceptance of the project(s).

10. Review and approve all Contractor requests for payment and submit approved requests to the SUBRECIPIENT (Applicant).
11. Prepare the necessary requests for payment to process with the SUBRECIPIENT (Applicant) and GOHSEP.
12. Provide the SUBRECIPIENT (Applicant) or their Consultant performing the Direct Administrative Costs (DAC) task with any information needed for project close-out.
13. Provide the SUBRECIPIENT (Applicant) with a reproducible set of 'as-built' drawings upon project completion.

Part Two (2): Proposals

[THE FOLLOWING ARE EXAMPLES -TAILOR TO LOCAL REQUIREMENTS, ORDINANCES, POLICIES OR PROCEDURES]

Respondents are to provide a transmittal letter and the Respondent's response needs to be formatted by numbering the three (3) following items as the items are presented herein along with any subparts (letters). Interested Respondents are to submit responses that contain the following information:

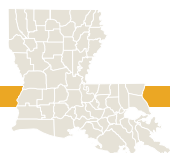
Transmittal Letter

1. Introduction
2. Experience and Specialized Knowledge
3. Personnel/Professional Qualifications

TRANSMITTAL LETTER

By signing the letter and/or offer, the Respondent certifies that the signatory is authorized to bind the Respondent. The proposal should include:

- a. A brief statement of the Respondent's understanding of the scope of the work to be performed;
- b. A confirmation that the Respondent is willing to perform these services and enter into a contract with the SUBRECIPIENT (Applicant);
- c. A confirmation that the Respondent has not had a record of substandard work within the last **five (5) years**;
- d. A confirmation that the Respondent has not engaged in any unethical practices within the last **five (5) years**;
- e. A confirmation that, if awarded the contract, the Respondent acknowledges its complete responsibility for the entire contract, including the term of the contract, including payment of any and all charges resulting from the contract;
- f. A confirmation that the Respondent took affirmative steps to include small, minority and women-owned businesses;
- g. Any other information that the Respondent deems appropriate;
- h. The signature of an individual who is authorized to make offers of this nature in the name of the Respondent submitting the proposal.



1. INTRODUCTION

Respondent needs to list the following:

- a. Name of Respondent
- b. Respondent Address
- c. Respondent Telephone Number
- d. Respondent Federal Tax Identification Number
- e. Name, title address, telephone number, fax number, and email address of contact person authorized to contractually obligate the Respondent on behalf of the Respondent.
- f. Describe Respondent's firm and the personnel to be assigned to this project by providing its type of entity and business expertise, short history, current ownership structure and any recent or materially significant proposed change in ownership.

2. EXPERIENCE + SPECIALIZED KNOWLEDGE

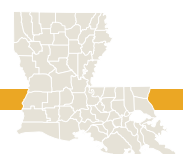
Respondents needs to:

- a. Provide the date the Architect (to be assigned as Project Manager to this project) became a licensed Architect.
- b. Describe or list any prior engagements that the Firm assisted an entity with the type of project for which architectural design and inspection services are being requested as described in the Introduction providing examples of similar type projects in the last 10 years.

Respondent should provide the name of the entity, contact person, year completed, a short description of the services provided, a description of the project and the approximate total cost of the project.

- c. Describe or list any prior and/or on-going engagements that the Firm assisted a governmental entity with architectural design and inspection services for Federal Emergency Management Agency (FEMA) funded projects in the last 10 years. Respondent should provide the name of the governmental entity, contact person, year completed or to be completed, a short description of the services provided, a short description of the FEMA projects and FEMA program and the approximate total cost of the project.
- d. Describe the Firm's (and if applicable the team-Subcontractors) workload and current capacity (including any Subcontractors utilized) to accomplish the work in the required time as outlined in Part One (1). Respondent shall indicate specifically how long he/she proposes to complete/submit the final plans and specifications, along with providing what type of assurance (including self-imposed liquidated damages) the Firm will propose for not meeting the time schedules presented.
- e. Provide documentation regarding either the Respondent (i) is a small, minority or woman-owned business; or (ii) has included as a subcontractor on the Respondent's team a small, minority or woman-owned business; or (iii) has made a good faith efforts to undertake the required steps to include small, minority or woman-owned businesses.

FEMA requires recipients and sub-recipients of federal assistance to take affirmative steps to ensure small businesses, minority and women's business enterprises are utilized as outlined under 2 CFR 200.321 when possible and the SUBRECIPIENT (Applicant) agrees with this policy. To this end, Respondent's that are not eligible for certification are encouraged to use small, minority or women-owned businesses as subcontractors for this project.



To be responsive to this RFQ, if Respondent isn't a small, minority or women-owned business, the Respondent certify that they have put forth a good faith effort to use small, minority or women-owned businesses as subcontractors. By submitting a response to this RFQ, the Respondent shall certify that they are in compliance with this requirement.

Written notification is the preferred method to inform small, minority and women-owned businesses of potential subcontracting opportunities. Not all inclusive, the following list of resources is provided for informational purposes:

- i. Small Business Administration (SBA):
sba.gov/offices/district/new-orleans
- ii. Louisiana Economic Development (LED):
smallbiz.louisianaeconomicdevelopment.com
- iii. State of Louisiana's DOTD Disadvantaged Business Enterprise (DBE) Program:
http://wwwsp.dotd.la.gov/Inside_LaDOTD/Divisions/Administration/Compliance/Pages/DBE_Certification.aspx
- iv. City of New Orleans' DBE Program:
neworleans.dbesystem.com/FrontEnd/VendorSearchPublic.asp?TN=neworleans&XID=5545

Copies of notification to at least three (3) (or more) certified small, minority or women-owned businesses will satisfy the notification requirements. Notification must be provided to the certified entrepreneurship by the Respondent in writing no less than five working days prior to the date of proposal deadline. Notification must include the scope of work, information about required qualifications and the name of a person to contact.

- f. Describe any additional information the characteristics of which would be uniquely relevant in evaluating the experience of Respondent's firm to handle the proposed project.

3. PERSONNEL/PROFESSIONAL QUALIFICATIONS

[TAILOR TO WHAT YOU NEED- THE FOLLOWING ARE EXAMPLES OF POSITIONS]

Respondents should:

Identify staff members (as applicable), in the job classifications of (1) Principal in Charge, (2) Professional Architect, (3) Senior Architect, (4) Mid-level Architect, (5) Senior CAD Technician, (6) CAD Technician, (7) Inspector and (8) Administrative Staff; who would be assigned to act for Respondent's firm in key management, technical and field positions providing the services described in the Proposal, and the functions to be performed by each.

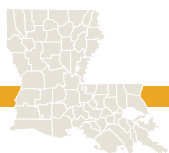
Part Three (3): Selection Criteria

[THE FOLLOWING ARE EXAMPLES -TAILOR TO LOCAL REQUIREMENTS, ORDINANCES, POLICIES OR PROCEDURES AND BASED ON YOUR NEEDS AND PRIORITIES]

Respondent's response will be evaluated on the basis of the written materials submitted and according to the following factors:

1. Length of time the Architect has been a Licensed Architect (Response in Item 2.a)

Less than five (5) years	0 pts
Five (5) to 10 years	5 pts
Over 10 years	10 pts



2. Experience of the Firm with providing architectural design and inspection services for this type of project, i.e. major renovations of buildings (major being considered construction costs greater than \$300,000) in last 10 years. (Response in Item 2.b)

No previous experience	0 pts
Performed one (1)-five (5) such major renovation projects	10 pts
Performed six (6)-10 such major renovation projects	20 pts
Performed more than 10 such major renovation projects	30 pts

3. Experience of the Firm with providing architectural design and inspection services on Federal Emergency Management Agency (FEMA) projects in the last 10 years. (Response in Item 2.c.)

No previous experience	0 pts
Performed or currently under contract performing one (1)-five (5) projects	10 pts
Performed or currently under contract performing six (6)-10 projects	20 pts
Performed or currently under contract performing more than 10 projects	30 pts

4. Current capacity of the Firm along with assurance provided by the Firm that the Firm will complete the architectural design within the time period prescribed. (Response in Item 2.d)

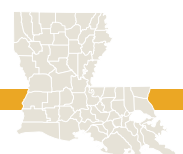
Complete / submit final plans and specifications in more than 12 months	0 pts
Complete / submit final plans and specifications in more than nine (9) months but less than 12 months	15 pts
Complete / submit final plans and specifications in less than nine (9) months	25 pts
Complete / submit final plans and specifications in less than nine (9) months with self-imposed liquidated damages	30 pts

Part Four (4): Submittal Information:

All questions pertaining to this RFQ must be submitted in writing no later than _____ on _____ and addressed to:
 [TIME] [DATE]

 [NAME]

 [ADDRESS]



All responses to this RFQ will be evaluated according to *Part Three (3) - Selection Criteria* in this RFQ and corresponding point system. The responses will be evaluated on the basis of written materials and the responses submitted. Sufficient information must be included in the response to Part Two to assure that the correct number of points are assigned to the Selection Criteria. Incomplete or incorrect information may result in a lower score and not properly responding in the format as required in Part Two (2) may result in the Respondents response being deemed non-responsive and thus not scored. Written or oral discussions / presentations for clarification may be conducted at the discretion of the SUBRECIPIENT (Applicant) to enhance the SUBRECIPIENT'S (Applicant's) understanding of any or all of the responses submitted.

The SUBRECIPIENT (Applicant) reserves the right to reject any and all responses / proposals.

SUBRECIPIENT (Applicant) reserves the right to amend the RFQ at anytime. Any amendments to or interpretations of the RFQ shall be described in written addenda. Notification of the addenda will be mailed or delivered to all such prospective consultants officially known to have received the RFQ and to the address provided by each prospective consultants. Failure of any prospective consultants to receive the notification or addenda shall not relieve the consultants from any obligation under its proposal as submitted or under the RFQ, as clarified, interpreted or modified. All addenda issued shall become part of the RFQ. Prospective consultants shall acknowledge the receipt of all addenda in their submittal. It will be

_____ sole option to disqualify a submittal of qualifications for failure to
[CITY / PARISH / TOWN]
acknowledge in the submittal the receipt of addendum.

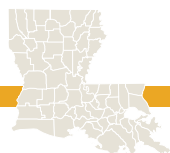
If SUBRECIPIENT (Applicant) determines that the addenda may require significant changes in the preparation of the submittal of qualifications, the deadline for submitting may be postponed by **seven (7) days** to allow Consultants sufficient time to revise their submittal. Proposals stating conditions, exceptions, reservations or understandings (hereinafter "deviations") relating to the RFQ may be rejected. Consultants may propose alternates either within one (1) overall proposal or by submitting more than one (1) proposal. Any and all deviations must be explicitly, fully, and separately stated in the proposal, setting forth at a minimum the specific reasons for each deviation so that it can be fully considered and, if appropriate, evaluated by SUBRECIPIENT (Applicant). All deviations found to be acceptable by SUBRECIPIENT (Applicant) shall be evaluated in accordance with the appropriate evaluation criteria and procedures, and may result in the consultants receiving a less favorable evaluation.

The SUBRECIPIENT (Applicant) may require the most favorable Respondents to provide oral interviews following the submission of the responses, but if not, all responses will be scored and ranked with the highest rated firm being awarded the contract.

Unsuccessful offers will be notified as soon as possible.

In the event that oral interviews will be held, the SUBRECIPIENT (Applicant) will determine which firm will be awarded the contract with twenty-five percent of the rating based on the Respondent's score of the Selection Criteria in Part Three of the RFQ and twenty-five percent of the rating to be based on the Respondents response to Item 2.g in Part Two of this RFQ and the other fifty (50) percent of the rating based on the results of the oral interviews.

The SUBRECIPIENT (Applicant) will then begin to negotiate a contract with the Firm selected. The negotiations will include the development of a contract including the scope of services and the fee(s) to be paid along with establishing a maximum fee. If the negotiations to develop a contract to the satisfaction of the SUBRECIPIENT (Applicant) cannot be reached and / or cannot be reached in a timely manner [___ days], the SUBRECIPIENT (Applicant) will then discontinue the negotiations with the highest ranked Firm and begin to negotiate a Contract with the next highest ranked Firm (Respondent) and so on.



The term of a Contract resulting from this solicitation shall begin upon a fully executed contract between the SUBRECIPIENT (Applicant) and the Firm and shall cover through close-out of the final project.

Five (5) copies of the response and any supplemental information should be provided. Proposals and subsequent offers shall be valid for a **period of ___ days**. All responses should be sealed and marked on the outside:

QUALIFICATION STATEMENT FOR A + E SERVICES

It is not required, but the SUBRECIPIENT (Applicant) may request each Respondent to also submit one (1) electronic copy of their response. This response can be sent via email to _____ [EMAIL ADDRESS]

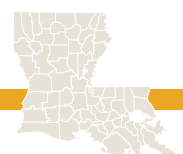
Responses to this *Request for Qualification Statements for A + E Services* must be hand-delivered or mailed so that the Respondent's proposal is received no later than

_____ on _____:
[TIME] [DATE]

_____ [NAME]

_____ [SUBRECIPIENT (APPLICANT)]

_____ [ADDRESS]



THIS PAGE INTENTIONALLY LEFT BLANK.

EXAMPLE RFQ ADVERTISEMENT

CERTIFICATE OF PUBLICATION

DATE 11-10, 2016

**STATE OF LOUISIANA
PARISH OF VERMILION**

BEFORE ME THE UNDERSIGNED AUTHORITY, PERSONALLY
CAME AND APPEARED

Kayla Case

WHO, BEING DULY SWORN, DEPOSES AND SAYS:
THAT SHE IS THE

Classified Manager

OF THE ABBEVILLE MERIDIONAL A NEWSPAPER
PUBLISHED AT ABBEVILLE, PARISH OF VERMILION,
LOUISIANA.

THAT THE HERETO ATTACHED NOTICE WAS PUBLISHED
IN EVERY COPY OF EACH ISSUE OF SAID NEWSPAPER IN
THE ISSUES DATED

November 10, 2016

SIGNED Kayla Case
SWORN AND SUBSCRIBED BEFORE ME IN ABBEVILLE,

LOUISIANA, ON THIS 10th DAY OF
November A.D., 2016

Theresa Milliman NOTARY PUBLIC
THERESA MILLIMAN #66230

MY COMMISSION EXPIRES AT DEATH

PUBLIC NOTICE

As a result of the flooding event in August, 2016, Vermilion Parish was included in the Major Disaster Declaration (DR-4277). The Village of Maurice is interested in procuring a firm to assist with the architectural services associated with the Federal Emergency Management Agency Public Assistance Grant Program.

The procedures for the selection of this firm will be in accordance with the procurement requirements under 2 CFR 200. All responses received will be evaluated in accordance with the selection criteria and corresponding point system that is identified in the Request for Qualification Statement for Architectural Services for the Village of Maurice for the FEMA Public Assistance Grant Program package. The package also identifies the scope of services to be performed by the selected firm. The Village will award a contract to the respondent obtaining the highest score in the evaluation process for this project.

Interested parties are invited to secure a package from Mayor Wayne Theriot, at villageofmaurice.mayor@cox-internet.com or at the Maurice Village Hall, 405 Laetie Avenue, Maurice, Louisiana 70555. A response to this request must be hand-delivered or mailed to the above named person at the above listed physical address in such a manner that it is received no later than noon on December 12, 2016. The Village of Maurice is an Equal Opportunity Employer and encourages all small, minority and women owned business enterprises to apply.

November 10, 2016



THIS PAGE INTENTIONALLY LEFT BLANK.

IV. CONTRACT EXECUTION

IV. CONTRACT EXECUTION



PROCUREMENT **TOOLBOX**

TYPES OF CONTRACTS

Not only is the way you procure important, the resulting type of contract you use is also important. There are five (5) types of contracts allowed by Federal regulations and three (3) commonly used contract types to avoid.

CONTRACTS TO USE	
LUMP SUM	Contract for work within a prescribed boundary with a <i>clearly</i> defined scope of work and a total price .
UNIT PRICE	Work done on an item-by-item basis, with cost determined per unit – e.g., box, cubic yard, etc.
COST PLUS FIXED FEE	Total known cost with a defined fixed fee <i>added</i> to the price.
TIME + MATERIALS (T + M)	<p>Must make a written determination that no other type of contract is suitable. Must contain a <i>not-to-exceed</i> (ceiling) clause. Payment based on hourly rate schedule and cost of materials.</p> <ul style="list-style-type: none"> • Maintain <i>high</i> degree of oversight. • Contracts used for Debris Removal (Category A) and Emergency Protective Measures (Category B) can not exceed 70 hours continuous of actual work immediately following the emergency or disaster incident.
INTERGOVERNMENTAL AGREEMENTS	<p>Subrecipients (Applicants) are <i>encouraged</i> to enter into State and local intergovernmental agreements for procurement or use of common goods and services.</p> <p>Visit LA eCat's website to search State contracts: https://wwwcfprd.doa.louisiana.gov/osp/lapac/ecat/dsp_eCatSearchLagov.cfm</p>
CONTRACTS TO AVOID	
PIGGYBACK	<p>Piggybacks are generally ineligible.</p> <p>There is a <i>very rare</i> exception that allows the use of this type of contract. This should <i>only</i> be done in consultation with the GOHSEP Legal Team.</p>
COST-PLUS-PERCENTAGE-OF-COSTS	Strictly prohibited.
PERCENTAGE-OF-CONSTRUCTION-COST	Strictly prohibited.



THIS PAGE INTENTIONALLY LEFT BLANK.

REQUIRED CONTRACT PROVISIONS

Governing regulations for procurement are dependent upon the type of grant received.

For disaster-related grants, such as funding for Public Assistance (PA) the effective date is dependent on the issuance of the *Presidential Declaration*. For nondisaster grants, such as funding for Hazard Mitigation (HM) and Preparedness, the effective date is dependent on the date the grant award is issued.

All **FEMA-funded contracts** must include the following contract provisions:

CONTRACT PROVISION	GRANT AWARDS OR PRESIDENTIAL DECLARATION <i>BEFORE</i> 12/26/2014		GRANT AWARDS OR PRESIDENTIAL DECLARATION <i>ON OR AFTER</i> 12/26/2014	APPLICATION
	44 CFR	2 CFR	2 CFR 200	
Equal Employment Opportunity (EEO)	13.36(i)(3)	-	-	All construction contracts awarded in excess \$10,000.
	-	215 Appendix A(1)	-	All contracts.
	-	-	Appendix II(C)	All construction contracts.
Compliance with Reporting Requirements	13.36(i)(7)	215.51-52	200.327 - .329	Contracts and/or grants must include the Subrecipient (Applicant) responsibility to provide the required reports, i.e. program performance, financial and progress reports.
Byrd Anti-Lobbying Amendment	-	215 Appendix A(7)	Appendix II(I)	Contractors that apply or bid for a contract must certify that it will not and has not used any Federal funds to influence an employee or member of Congress in obtaining any Federal award.
Access to Records	13.36(i)(10)	215.53	DHS Grant Alert 15-05 paragraph 200.336	Allows the Federal government, the Recipient (Grantee) or Subrecipient (Applicant) access to a Contractor's records. Subrecipient (Applicant) must include provision in contract stating this requirement by the Contractor.
Retention of Records	13.36(i)(11)	215.53	200.333	Where applicable, contract clause requiring the Subrecipient (Applicant) to retain all records for <i>at least three (3) years</i> from the date of the State's final expenditure report <i>closing the disaster</i> and a Contractor to retain records for <i>three (3) years after</i> the termination date of the contract (OCC PA Field Manual page 95 referring to responsibility of Contractor). The State is subject to Audit under the <i>Stafford Act</i> for up to three (3) years after the closure of the entire disaster grant.
Energy Efficiency	13.36(i)(13)	215.44(a)(3)(vi)	—	Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan (LA RS 40:1730.49).




PROCUREMENT TOOLBOX

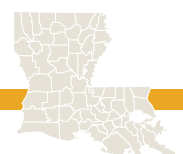
CONTRACT PROVISION	GRANT AWARDS OR PRESIDENTIAL DECLARATION <i>BEFORE</i> 12/26/2014		GRANT AWARDS OR PRESIDENTIAL DECLARATION <i>ON OR AFTER</i> 12/26/2014	APPLICATION
	44 CFR	2 CFR	2 CFR 200	
Prohibition of Awards to Debarred + Suspended Parties	13.35	215 Appendix A(8)	Appendix II(H)	Subrecipient (Applicant) must require and Contractor must make a declaration that the Contractor, its principles or affiliates (subcontractors), are currently not disqualified as a result of debarment or suspension. The two (2) places you should check are: lslbc.louisiana.gov SAM.gov
Procurement of Recovered Materials	13.36(i)(12)	215.16	Appendix II(J) See 200.322	This does not apply to Tribes and private nonprofits (PNPs). It only applies to local and State government entities and their Contractors if work involves the use of materials.
Bonding Requirements	13.36(h)	215.48(c)	200.325	Contracts for construction or facilities improvement in excess of the simplified acquisition threshold (SAT). The bonding requirements include: bid guarantee, performance bond and payment bond.
<i>Copeland Anti-Kickback Act</i>	13.36(i)(4)	-	Appendix II(D)	All construction or repair contracts.
	-	215 Appendix A(2)	Appendix II(D)	All construction or repair contracts in excess of \$2,000 .
Termination for Cause + Convenience	13.36(i)(2)	215.48(b)	Appendix II(B)	Applies to all contracts in excess of \$10,000 .
Administrative + Legal Remedies for Violation or Breach of Contract	13.36(i)(1)	215.48(a)	Appendix II(A)	All contracts <i>greater</i> than the SAT.
<i>Contract Work Hours + Safety Standards Act</i>	13.36(i)(6)	215 Appendix A(4)	-	Construction contracts <i>greater than</i> \$2,000 and for other contracts <i>greater than</i> \$2,500 where mechanics and laborers are employed.
	-	-	Appendix II(E)	All construction Contracts <i>greater than</i> \$100,000 where mechanics and laborers are employed.
<i>Clean Air Act + Clean Water Act</i>	13.36(i)(12)	215 Appendix A(6)	-	Applies to all contracts <i>greater than or equal to</i> \$100,000 .
	-	-	Appendix II(G)	Applies to all contracts <i>greater than or equal to</i> \$150,000 .



When **applicable**, contracts are **required** to include certain provisions as stated **below**:

CONTRACT PROVISION	GRANT AWARDS OR PRESIDENTIAL DECLARATION <i>BEFORE</i> 12/26/2014		GRANT AWARDS OR PRESIDENTIAL DECLARATION <i>ON OR AFTER</i> 12/26/2014	APPLICATION
	44 CFR	2 CFR	2 CFR 200	
Compliance with Regulations Pertaining to Patent Rights (Inventions) + Copyrights + Rights to Data	13.36(i)(8)(9)	215.36 Appendix A(5)	Appendix II(F)	The PA Program does not authorize any experimental, developmental or research work that would give rise to patents, inventions, copyrights or data. Therefore, there is NO REQUIREMENT for such clauses (OCC PA Field Manual page 94).
 <i>Davis-Bacon Act</i>	13.36(i)(5)	215 Appendix A(3)	Appendix II(D)	FEMA DOES NOT require compliance with this Act and therefore no clauses are required. However, if the disaster is large enough Community Development Block Grant (CDBG) dollars may be granted by Congress to assist the State in recovery – it may include funding to repay State and local cost share. If this is the case, Davis-Bacon should be included in the contract.

For even more assistance with contract execution see the **PROCUREMENT CHECKLIST in the RESOURCES Section** and **CHECKLIST FOR REVIEWING PROCUREMENTS UNDER GRANTS BY NON-FEDERAL ENTITIES (STATES, LOCAL AND TRIBAL GOVERNMENTS, INSTITUTIONS FOR HIGH EDUCATION, HOSPITALS, AND PRIVATE NON-PROFIT ORGANIZATIONS) – CFR PT. 200 in the APPENDIX Section of this publication.**



THIS PAGE INTENTIONALLY LEFT BLANK.

EXAMPLE CONTRACT WITH FEMA REQUIRED CLAUSES

This contract is based on the contract recommended by the Office of State Procurement and may be used as a framework for contracting after a full and open procurement process takes place. This contract contains the required FEMA contract provisions.



THIS PAGE INTENTIONALLY LEFT BLANK.

STATE OF LOUISIANA

PARISH OF _____

TRIBE OF _____

Contract

Be it known, that effective upon date of last signature below,

[AGENCY / PARISH / CITY / TOWN / TRIBE] hereinafter referred to as SUBRECIPIENT (Applicant)

and

[CONTRACTOR's name and legal address including zip code] hereinafter sometimes referred to as "CONTRACTOR" do hereby enter into Contract under the following terms and conditions.

Scope of Service

CONTRACTOR hereby agrees to furnish the following services: [INSERT OR ATTACH]

PERFORMANCE REQUIREMENTS

Per your own policies and as agreed upon.

PERFORMANCE MEASUREMENT / EVALUATION

Per your own policies and as agreed upon.

Contract Modifications

No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required by law. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.

Changes to the Contract include any change in a) compensation; b) beginning/ending date of the Contract; c) scope of work; and/or d) CONTRACTOR change through the assignment of Contract process. Any such changes, once approved, will result in the issuance of an amendment to the Contract.

Headings

Descriptive headings in this Contract are for convenience only and shall not affect the construction of this Contract or meaning of contractual language.



Payment Terms

The CONTRACTOR shall invoice the SUBRECIPIENT (Applicant) directly and payment shall be made by the SUBRECIPIENT (Applicant) directly to the CONTRACTOR in accordance with the payment terms agreed to in this Contract.

Per your own policies and as agreed upon.

Late Payments

Per your own policies and as agreed upon.

Deliverables

CONTRACTOR will deliver the item(s) or service(s) as described below (or per the attached) per the following schedule. As agreed upon.

[INSERT SCHEDULE]

Taxes

CONTRACTOR agrees that all applicable taxes are included in the schedule pricing, if applicable.

Termination

Per your own policies and as agreed upon.

TERMINATION OF THIS CONTRACT FOR CAUSE

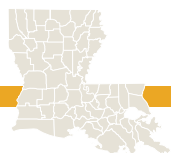
The SUBRECIPIENT (Applicant) may terminate this Contract for cause based upon the failure of CONTRACTOR to comply with the terms and/or conditions of the Contract, or failure to fulfill its performance obligations pursuant to this Contract, provided that the SUBRECIPIENT (Applicant) shall give the CONTRACTOR written notice specifying the CONTRACTOR's failure. If within **30 days** after receipt of such notice, the CONTRACTOR shall not have corrected such failure or, in the case of failure which cannot be corrected in **30 days**, begun in good faith to correct such failure and thereafter proceeded diligently to complete such correction, then the SUBRECIPIENT (Applicant) may, at its option, place the CONTRACTOR in default and the Contract shall terminate on the date specified in such notice.

The CONTRACTOR may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the SUBRECIPIENT (Applicant) to comply with the terms and conditions of this Contract, provided that the CONTRACTOR shall give the SUBRECIPIENT (Applicant) written notice specifying the SUBRECIPIENT's (Applicant's) failure and a reasonable opportunity for the SUBRECIPIENT (Applicant) to cure the defect.

TERMINATION OF THIS CONTRACT FOR CONVENIENCE

The SUBRECIPIENT (Applicant) may terminate this Contract at any time by giving thirty (30) days written notice to the CONTRACTOR of such termination or negotiating with the CONTRACTOR an effective date.

The CONTRACTOR shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.



Ownership

All records, reports, documents, or other material related to this Contract and/or obtained or prepared by CONTRACTOR in connection with the performance of the services contracted for herein shall become the property of SUBRECIPIENT (Applicant), and shall, upon request, be returned by CONTRACTOR to SUBRECIPIENT (Applicant), at CONTRACTOR's expense, at termination or expiration of this Contract.

All records, reports, documents and other material delivered or transmitted to CONTRACTOR by the SUBRECIPIENT (Applicant) shall remain the property of the SUBRECIPIENT (Applicant), and shall be returned by CONTRACTOR to the SUBRECIPIENT (Applicant) at CONTRACTOR's expense, at termination or expiration of this Contract.

Use of SUBRECIPIENT'S (Applicant's) Facilities

Any property of the SUBRECIPIENT (Applicant) furnished to the CONTRACTOR shall, unless otherwise provided herein, or approved by the SUBRECIPIENT (Applicant), be used only for the performance of this Contract.

The CONTRACTOR shall be responsible for any loss or damage to property of the SUBRECIPIENT (Applicant) which results from willful misconduct or lack of good faith on the part of the CONTRACTOR or which results from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices, to ensure that the property will be returned to the SUBRECIPIENT (Applicant) in like condition, except for normal wear and tear, to that in which it was furnished to the CONTRACTOR. Upon the happening of loss, or destruction of, or damage to property of the SUBRECIPIENT (Applicant), the CONTRACTOR shall notify the SUBRECIPIENT (Applicant) thereof and shall take all reasonable steps to protect that property from further damage.

The CONTRACTOR shall surrender to the SUBRECIPIENT (Applicant) all property of the SUBRECIPIENT (Applicant) prior to settlement upon completion, termination, or cancellation of this Contract. All reference to the CONTRACTOR under this section shall include any of its employees, agents, or subcontractors.

Waiver

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified or deleted except by the written consent of both parties.

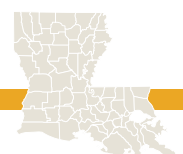
Warranties

Per your own policies and as agreed upon.

CONTRACTOR warrants that all services shall be performed in a workmanlike manner, and according to its current description (including any completion criteria) contained in the scope of work.

CONTRACTOR further warrants that it has the right to provide and or license its product to the SUBRECIPIENT (Applicant) and that it will operate in accordance with this Contract. In the event of a material failure of CONTRACTOR's product to function and operate, and / or failure by the CONTRACTOR to perform its obligations, in accordance with the terms and conditions of the Contract that results in the termination of the Contract for cause by the SUBRECIPIENT (Applicant), the SUBRECIPIENT (Applicant) will not be obligated to compensate the CONTRACTOR of any costs incurred by CONTRACTOR.

Extent of Warranty: THESE WARRANTIES REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE



Indemnification + Limitation of Liability

Per your own policies and as agreed upon.

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under this Contract.

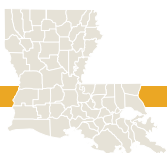
CONTRACTOR shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the SUBRECIPIENT (Applicant) from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by CONTRACTOR, its agents, employees, partners or subcontractors in the performance of this Contract, **without limitation**; provided, however, that the CONTRACTOR shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the SUBRECIPIENT (Applicant).

CONTRACTOR will indemnify, defend and hold the SUBRECIPIENT (Applicant) harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees), claims judgments, liabilities and costs which may be finally assessed against the SUBRECIPIENT (Applicant) in any action for infringement of a United States Letter Patent with respect to the Products, Materials, or Services furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the SUBRECIPIENT (Applicant) shall give the CONTRACTOR: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at CONTRACTOR's sole expense, and (iii) assistance in the defense of any such action at the expense of CONTRACTOR. Where a dispute or claim arises relative to a real or anticipated infringement, the SUBRECIPIENT (Applicant) may require CONTRACTOR, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The CONTRACTOR shall not be obligated to indemnify that portion of a claim or dispute based upon: (i) SUBRECIPIENT's (Applicant's) unauthorized modification or alteration of a Product, Material, or Service; (ii) SUBRECIPIENT (Applicant)'s use of the Product, Material, or Service in combination with other products, materials, or services not furnished by CONTRACTOR; (iii) SUBRECIPIENT's (Applicant's) use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if CONTRACTOR believes that it may be enjoined, CONTRACTOR shall have the right, at its own expense and sole discretion as the SUBRECIPIENT's (Applicant's) exclusive remedy to take action no later than six (6) months after the issuance of an injunction in the following order of precedence: (i) to procure for the SUBRECIPIENT (Applicant) the right to continue using such item(s) or part (s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the SUBRECIPIENT (Applicant) up to the dollar amount of the Contract. Any injunction that is issued against the SUBRECIPIENT (Applicant) which prevents the SUBRECIPIENT (Applicant) from utilizing the CONTRACTOR's product in excess of six (6) months and for which the CONTRACTOR has not obtained for the SUBRECIPIENT (Applicant) or provided to the SUBRECIPIENT (Applicant) one (1) of the alternatives set forth in the foregoing sentence is cause for the SUBRECIPIENT (Applicant) to terminate the Contract. In the event of such termination, the SUBRECIPIENT (Applicant) will not be obligated to compensate the CONTRACTOR for any costs incurred by the CONTRACTOR.

For all other claims against the CONTRACTOR where liability is not otherwise set forth in the Contract as being "without limitation", and regardless of the basis on which the claim is made, CONTRACTOR's liability **for direct damages, shall be the greater of \$100,000, the dollar amount of the Contract, or two (2) times the charges for services rendered by the CONTRACTOR under the Contract.** Unless otherwise specifically enumerated herein mutually agreed between the parties,



neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the CONTRACTOR is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The SUBRECIPIENT (Applicant) may, in addition to other remedies available to them at law or equity and upon notice to the CONTRACTOR, retain such monies from amounts due CONTRACTOR, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

Insurance + Bonds

As applicable.

INSURANCE

CONTRACTOR will be required to provide the SUBRECIPIENT (Applicant) with Certificates of adequate insurance indicating coverage required. The CONTRACTOR shall maintain the insurance for the full term of this Contract. Failure to comply shall be grounds for termination of this Contract.

PERFORMANCE BOND

CONTRACTOR shall provide a Performance Bond (Surety Bond) in the amount of _____ **dollars (\$_____)** to insure the successful performance under the terms and conditions of this Contract. The performance bond shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Services list of approved bonding companies which is published annually in the Federal Register, or by a Louisiana domiciled insurance company with at least an A-rating in the latest printing of the *A.M. Best's Key Rating Guide* to write individual bonds up to 10 percent of policyholder's surplus as shown in the *A.M. Best's Key Rating Guide* or by an insurance company that is either domiciled in Louisiana or owned by Louisiana residents and is licensed to write surety bonds.

No surety or insurance company shall write a performance bond which is in excess of the amount indicated as approved by the U.S. Department of the Treasury Financial Management Service list or by a Louisiana domiciled insurance company with an A-rating by *A.M. Best* up to a limit of 10 percent of policyholders' surplus as shown by *A.M. Best*; companies authorized by this Paragraph who are not on the treasury list shall not write a performance bond when the penalty exceeds 15 percent of its capital and surplus, such capital and surplus being the amount by which the company's assets exceed its liabilities as reflected by the most recent financial statements filed by the company with the Louisiana Department of Insurance.

In addition, any performance bond furnished shall be written by a surety or insurance company that is currently licensed to do business in the State of Louisiana.

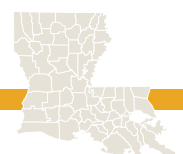
The CONTRACTOR shall maintain the performance bond for the full term of this Contract. Failure to comply shall be grounds for termination of this Contract.

Licenses + Permits

CONTRACTOR shall secure and maintain all licenses and permits, and pay inspection fees required to do the work required to complete this Contract, if applicable.

Severability

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application; to this end the terms and conditions of this Contract are declared severable.



Subcontractors

The CONTRACTOR may enter into Subcontracts with third parties for the performance of any part of the CONTRACTOR's duties and obligations. In no event shall the existence of a Subcontract operate to release or reduce the liability of the CONTRACTOR to the SUBRECIPIENT (Applicant) for any breach in the performance of the CONTRACTOR's duties. The CONTRACTOR will be the single point of contact for all subcontractor work.

Substitution of Personnel

If, during the term of this Contract, the CONTRACTOR or subcontractor cannot provide the personnel as proposed and requests a substitution, that substitution shall meet or exceed the requirements stated herein. A detailed resume of qualifications and justification is to be submitted to the SUBRECIPIENT (Applicant) for approval prior to any personnel substitution. It shall be acknowledged by the CONTRACTOR that every reasonable attempt shall be made to assign the personnel listed in the CONTRACTOR's proposal.

The SUBRECIPIENT (Applicant) shall reserve the right to require removal and replacement of any Contract personnel whose performance it considers unacceptable.

As agreed upon.

Assignment

CONTRACTOR shall not assign any interest in this Contract by assignment, transfer, or novation, without prior written consent of the SUBRECIPIENT (Applicant). This provision shall not be construed to prohibit the CONTRACTOR from assigning his bank, trust company, or other financial institution any money due or to become due from approved Contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the SUBRECIPIENT (Applicant).

Confidentiality

The following provision will apply unless the SUBRECIPIENT (Applicant) statement of work specifically indicates that all information exchanged will be non-confidential:

All financial, statistical, personal, technical and other data and information relating to the SUBRECIPIENT's (Applicant's) operations which are designated confidential by the SUBRECIPIENT (Applicant) and made available to the CONTRACTOR in order to carry out this Contract, shall be protected by the CONTRACTOR from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the SUBRECIPIENT (Applicant). The identification of all such confidential data and information as well as the SUBRECIPIENT's (Applicant's) procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the SUBRECIPIENT (Applicant) in writing to the CONTRACTOR. If the methods and procedures employed by the CONTRACTOR for the protection of the CONTRACTOR's data and information are deemed by the SUBRECIPIENT (Applicant) to be adequate for the protection of the SUBRECIPIENT's (Applicant's) confidential information, such methods and procedures may be used, with the written consent of the SUBRECIPIENT (Applicant), to carry out the intent of this paragraph. The CONTRACTOR shall not be required under the provisions of the paragraph to keep confidential any data or information, which is or becomes publicly available, is already rightfully in the CONTRACTOR's possession, is independently developed by the CONTRACTOR outside the scope of the Contract, or is rightfully obtained from third parties.



Contract Controversies

Per your own policies.

Remedies.

Standard: Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, Contractual, or legal remedies in instances where CONTRACTORS violate or breach Contract terms, and provide for such sanctions and penalties as appropriate. See 2 CFR Part 200, Appendix II, ¶ A.

Right to Audit Per Your Own Policies

The State Legislative auditor, DHS-OIG, FEMA and Federal auditors and GOHSEP or State internal auditors shall have the option to audit all accounts directly pertaining to the Contract for a period of **three (3) years** from the date of final payment or as required by applicable State and Federal Law. Records shall be made available during normal working hours for this purpose.

Access to Records. The following access to records requirements apply to this Contract:

1. The CONTRACTOR agrees to provide GOHSEP, SUBRECIPIENT (Applicant), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The CONTRACTOR agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

Contractor's Certification of No Federal Suspension or Debarment

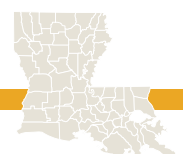
CONTRACTOR has a continuing obligation to disclose any suspensions or debarment by any government entity, including but not limited to General Services Administration (GSA). Failure to disclose may constitute grounds for suspension and/or termination of this Contract and debarment from future Contracts.

Contractor's Cooperation / Closeout

The CONTRACTOR has the duty to fully cooperate with the SUBRECIPIENT (Applicant) and provide any and all requested information, documentation, etc. to the SUBRECIPIENT (Applicant) when requested. This applies even if this Contract is terminated and/or a lawsuit is filed. Specifically, the CONTRACTOR shall not limit or impede the SUBRECIPIENT'S (Applicant's) right to audit or to withhold SUBRECIPIENT (Applicant) owned documents.

Term of Contract

This Contract is effective upon approval and will end no later than <length of term specified in the RFP, unless otherwise terminated in accordance with the Termination provision of this Contract. The SUBRECIPIENT (Applicant) has the option, upon



acceptance by the CONTRACTOR, to extend for _____.

[EXTENSION LANGUAGE AS SPECIFIED IN THE RFP]

Per your own policies and as agreed upon.

Commencement of Work

No work shall be performed by CONTRACTOR and the SUBRECIPIENT (Applicant) shall not be bound until such time as this Contract is fully executed between the SUBRECIPIENT (Applicant) and the CONTRACTOR and all required approvals are obtained.

E-Verify

CONTRACTOR acknowledges and agrees to comply with Federal law pertaining to E-Verify in the performance of services under this Contract.

Compliance with Civil Rights Laws

During the performance of this Contract, the CONTRACTOR agrees as follows:

1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
3. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR'S commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The CONTRACTOR will comply with all provisions of *Executive Order 11246 of September 24, 1965*, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The CONTRACTOR will furnish all information and reports required by *Executive Order 11246 of September 24, 1965*, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering SUBRECIPIENT (Applicant) and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the CONTRACTOR'S noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in *Executive Order 11246 of September 24, 1965*, and such other sanctions as may be imposed and remedies invoked as provided in *Executive Order 11246 of September 24, 1965*, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.



- The CONTRACTOR will include the portion of the sentence immediately preceding paragraph one (1) and the provisions of paragraphs one (1) through seven (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of *Executive Order 11246 of September 24, 1965*, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering SUBRECIPIENT (Applicant) may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering SUBRECIPIENT (Applicant) the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

Record Retention

The CONTRACTOR shall maintain all records in relation to this Contract for a period of at least **three (3) years** after final payment.

Clean Air Act

[The following provides a sample Contract clause concerning compliance for Contracts of amounts in excess of \$150,000.]

- The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the *Clean Air Act*, as amended, 42 U.S.C. § 7401 et seq.
- The CONTRACTOR agrees to report each violation to the SUBRECIPIENT (Applicant) and understands and agrees that the SUBRECIPIENT (Applicant) will, in turn, report each violation as required to assure notification to GOHSEP, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
- The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Energy Policy + Conservation Act

The CONTRACTOR hereby recognizes the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the *Energy Policy and Conservation Act* (P.L. 94-163).

Clean Water Act

The CONTRACTOR hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders, or requirements issued under Section 508 of the *Clean Water Act* which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the Environmental Protection Agency (EPA) *List of Violating Facilities*.

FEDERAL WATER POLLUTION CONTROL ACT

- The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the *Federal Water Pollution Control Act*, as amended, 33 U.S.C. 1251 et seq.
- The CONTRACTOR agrees to report each violation to the SUBRECIPIENT (Applicant) and understands and agrees that the SUBRECIPIENT (Applicant) will, in turn, report each violation as required to assure notification to the GOHSEP, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
- The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.



Anti-Lobbying + Debarment Act

The CONTRACTOR will be expected to comply with Federal statutes required in the *Anti-Lobbying Act* and the *Debarment Act*.

The CONTRACTOR hereby agrees to adhere to the mandate dictated by the *Copeland "Anti-Kickback" Act* which provides that each CONTRACTOR or subgrantee shall be prohibited from inducing, by any means, any person employed in the completion of work, to give up any part of the compensation to which he is otherwise entitled.

SUSPENSION + DEBARMENT

1. This Contract is a covered transaction for purposes of 2 CFR Part 180 and 2 CFR Part 3000. As such the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals (defined at 2 CFR § 180.995), or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).
2. The CONTRACTOR must comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by CONTRACTOR. If it is later determined that the CONTRACTOR did not comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C, in addition to remedies available to GOHSEP serving as Recipient and name of SUBRECIPIENT (Applicant), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The bidder or proposer agrees to comply with the requirements of 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)

CONTRACTORS who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any SUBRECIPIENT (Applicant), a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Recipient.

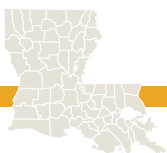
Governing Law

Per your own policies and as agreed upon

(For example- State of LA, Venue in __JDC).

Procurement of Recovered Materials

1. In the performance of this contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –
 - i. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - ii. Meeting contract performance requirements; or
 - iii. At a reasonable price.
2. Information about this requirement, along with the list of EPA-designate items, is available at EPA's *Comprehensive Procurement Guidelines* web site, epa.gov/smm/comprehensive-procurement-guideline-cpg-program.



DHS Seal + Logo + Flags

The CONTRACTOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS Agency officials without specific FEMA pre-approval.

Compliance with Federal Law + Regulations + Executive Orders

This is an acknowledgment that FEMA financial assistance will be used to fund the Contract only. The CONTRACTOR will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures and directives.

No Obligation by Federal Government.

The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, CONTRACTOR, or any other party pertaining to any matter resulting from the Contract.

Program Fraud + False or Fraudulent Statements or Related Acts

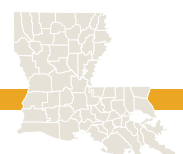
The CONTRACTOR acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONTRACTOR's actions pertaining to this Contract.

Complete Contract

This is the complete Contract between the parties with respect to the subject matter and all prior discussions and negotiations are merged into this Contract. This Contract is entered into with neither party relying on any statement or representation made by the other party not embodied in this Contract and there are no other agreements or understanding changing or modifying the terms. This Contract shall become effective upon final statutory approval.

Order of Precedence

The *Request for Proposals* (RFP), [dated _____] and the CONTRACTOR's Proposal [dated _____], are attached hereto and incorporated into this Contract as though fully set forth herein. In the event of an inconsistency between this Contract, the RFP and/or the CONTRACTOR's Proposal, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence first to this Contract, then to the RFP and finally, the CONTRACTOR's Proposal.



THUS DONE AND SIGNED AT _____ on this ____ day of ____, 20__, and, IN WITNESS WHEREOF, the parties have executed this Contract.

WITNESSES' SIGNATURES:

CONTRACTOR SIGNATURE:

By: _____

Title: _____

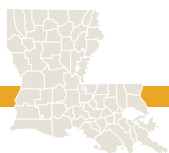
THUS DONE AND SIGNED AT _____, Louisiana on this _____ day of ____, 20__, and, IN WITNESS WHEREOF, the parties have executed this Contract.

WITNESSES' SIGNATURES:

SUBRECIPIENT (APPLICANT) SIGNATURE:

By: _____

Title _____



EXAMPLE FEMA REQUIRED CLAUSES ADDENDUM

All SUBRECIPIENT contracts must contain the applicable contract clauses described in Appendix II to the *Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards)*, which are set forth in this document.

Please be aware that this is SAMPLE language ONLY and that the SUBRECIPIENT alone is responsible for ensuring that all language included in their contracts meets the requirements of 2 CFR 200.326 and 2 CFR Part 200, Appendix II.



THIS PAGE INTENTIONALLY LEFT BLANK.

STATE OF LOUISIANA

PARISH OF _____

TRIBE OF _____

Termination for Cause

The SUBRECIPIENT (Applicant) may terminate this Contract for cause based upon the failure of Contractor to comply with the terms and/or conditions of the Contract, or failure to fulfill its performance obligations pursuant to this Contract, provided that the SUBRECIPIENT (Applicant) shall give the Contractor written notice specifying the Contractor's failure. If within thirty (30) days after receipt of such notice, the Contractor shall not have corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct such failure and thereafter proceeded diligently to complete such correction, then the SUBRECIPIENT (Applicant) may, at its option, place the Contractor in default and the Contract shall terminate on the date specified in such notice.

The Contractor may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the SUBRECIPIENT (Applicant) to comply with the terms and conditions of this Contract, provided that the Contractor shall give the SUBRECIPIENT (Applicant) written notice specifying the SUBRECIPIENT's (Applicant's) failure and a reasonable opportunity for the SUBRECIPIENT (Applicant) to cure the defect.

Termination for Convenience

The SUBRECIPIENT (Applicant) may terminate this Contract at any time by giving thirty (30) days written notice to the Contractor of such termination or negotiating with the Contractor an effective date.

The Contractor shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.

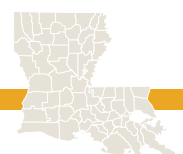
Ownership

All records, reports, documents, or other material related to this Contract and/or obtained or prepared by Contractor in connection with the performance of the services Contracted for herein shall become the property of SUBRECIPIENT (Applicant) and shall, upon request, be returned by Contractor to SUBRECIPIENT (Applicant), at Contractor's expense, at termination or expiration of this Contract.

All records, reports, documents and other material delivered or transmitted to Contractor by the SUBRECIPIENT (Applicant) shall remain the property of the SUBRECIPIENT (Applicant), and shall be returned by Contractor to the SUBRECIPIENT (Applicant) at Contractor's expense, at termination or expiration of this Contract.

Performance Bond

Contractor shall provide a Performance Bond (Surety Bond) in the amount of [_____ dollars (\$_____)] to insure the successful performance under the terms and conditions of this Contract. The performance bond shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Services list of approved bonding companies which is published annually in the Federal Register, or by a Louisiana domiciled insurance company with at least an A-rating in the latest printing of the *A.M. Best's Key Rating Guide* to write individual bonds up to 10 percent of policyholder's surplus as shown in the *A.M. Best's Key Rating Guide* or by an insurance company that is either domiciled in Louisiana or owned by Louisiana residents and is licensed to write surety bonds.



No surety or insurance company shall write a performance bond which is in excess of the amount indicated as approved by the U.S. Department of the Treasury Financial Management Service list or by a Louisiana domiciled insurance company with an A-rating by *A.M. Best* up to a limit of 10 percent of policyholders' surplus as shown by *A.M. Best*; companies authorized by this paragraph who are not on the treasury list shall not write a performance bond when the penalty exceeds 15 percent of its capital and surplus, such capital and surplus being the amount by which the company's assets exceed its liabilities as reflected by the most recent financial statements filed by the company with the Louisiana Department of Insurance.

In addition, any performance bond furnished shall be written by a surety or insurance company that is currently licensed to do business in the State of Louisiana.

The Contractor shall maintain the performance bond for the full term of this Contract. Failure to comply shall be grounds for termination of this Contract.

Contract Conveniences

Per your own policies

Remedies.

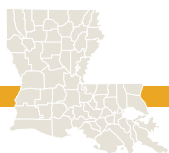
Standard: Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where Contractors violate or breach Contract terms, and provide for such sanctions and penalties as appropriate. See 2 CFR Part 200, Appendix II, A.

Right to Audit

The State Legislative auditor, DHS-OIG, FEMA and Federal auditors and GOHSEP or State internal auditors shall have the option to audit all accounts directly pertaining to the Contract for a period of **three (3) years** from the date of final payment or as required by applicable State and Federal Law. Records shall be made available during normal working hours for this purpose.

Access to Records. The following access to records requirements apply to this Contract:

1. The CONTRACTOR agrees to provide GOHSEP, SUBRECIPIENT (Applicant), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The CONTRACTOR agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.



Contractor's Certification of No Federal Suspension or Debarment

Contractor has a continuing obligation to disclose any suspensions or debarment by any government entity, including but not limited to General Services Administration (GSA). Failure to disclose may constitute grounds for suspension and/or termination of this Contract and debarment from future Contracts.

Compliance with Civil Rights Laws

During the performance of this Contract, the Contractor agrees as follows:

1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
3. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR'S commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The CONTRACTOR will comply with all provisions of *Executive Order 11246 of September 24, 1965*, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The CONTRACTOR will furnish all information and reports required by *Executive Order 11246 of September 24, 1965*, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering SUBRECIPIENT (Applicant) and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the CONTRACTOR'S noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in *Executive Order 11246 of September 24, 1965*, and such other sanctions as may be imposed and remedies invoked as provided in *Executive Order 11246 of September 24, 1965*, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The CONTRACTOR will include the portion of the sentence immediately preceding paragraph one (1) and the provisions of paragraphs one (1) through seven (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of *Executive Order 11246 of September 24, 1965*, so that



such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering SUBRECIPIENT (Applicant) may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering SUBRECIPIENT (Applicant) the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

Record Retention

The Contractor shall maintain all records in relation to this Contract for a period of at least **three (3) years** after final payment.

Clean Air Act

1. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the *Clean Air Act*, as amended, 42 U.S.C. § 7401 et seq.
2. The CONTRACTOR agrees to report each violation to the SUBRECIPIENT (Applicant) and understands and agrees that the SUBRECIPIENT (Applicant) will, in turn, report each violation as required to assure notification to GOHSEP, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
3. The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Energy Policy + Conservation Act

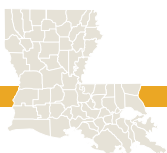
The Contractor hereby recognizes the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the *Energy Policy and Conservation Act* (P.L. 94-163).

Clean Water Act

The Contractor hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders, or requirements issued under Section 508 of the *Clean Water Act* which prohibits the use under non-exempt Federal Contracts, grants or loans of facilities included on the EPA List of Violating Facilities.

FEDERAL WATER POLLUTION CONTROL ACT

1. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the *Federal Water Pollution Control Act*, as amended, 33 U.S.C. 1251 et seq.
2. The CONTRACTOR agrees to report each violation to the SUBRECIPIENT (Applicant) and understands and agrees that the SUBRECIPIENT (Applicant) will, in turn, report each violation as required to assure notification to the GOHSEP, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
3. The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.



Anti-Lobbying + Debarment Act

The Contractor will be expected to comply with Federal statutes required in the *Anti-Lobbying Act* and the *Debarment Act*.

The Contractor hereby agrees to adhere to the mandate dictated by the *Copeland "Anti-Kickback" Act* which provides that each Contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the completion of work, to give up any part of the compensation to which he is otherwise entitled.

SUSPENSION + DEBARMENT

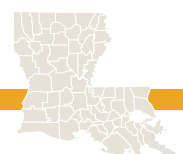
1. This Contract is a covered transaction for purposes of 2 CFR Part 180 and 2 CFR Part 3000. As such the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals (defined at 2 CFR § 180.995), or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).
2. The CONTRACTOR must comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by CONTRACTOR. If it is later determined that the CONTRACTOR did not comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C, in addition to remedies available to GOHSEP serving as Recipient and name of SUBRECIPIENT (Applicant), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The bidder or proposer agrees to comply with the requirements of 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any SUBRECIPIENT (Applicant), a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

Procurement of Recovered Materials

1. In the performance of this contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –
 - i. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - ii. Meeting contract performance requirements; or
 - iii. At a reasonable price.
2. Information about this requirement, along with the list of EPA-designate items, is available at EPA's *Comprehensive Procurement Guidelines* web site, epa.gov/smm/comprehensive-procurement-guideline-cpg-program.



DHS Seal + Logo + Flags

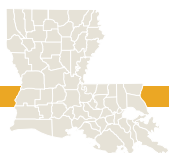
The CONTRACTOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS Agency officials without specific FEMA pre-approval.

Compliance With Federal Executive Orders

This is an acknowledgment that FEMA financial assistance will be used to fund the Contract only. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

No Obligation by Federal Government

The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the Contract.



V. OTHER THINGS YOU NEED TO KNOW THAT MAY EFFECT YOUR FEMA DOLLARS



PROCUREMENT **TOOLBOX**

V. OTHER THINGS YOU NEED TO KNOW THAT MAY EFFECT YOUR FEMA DOLLARS

WHEN WE DISAGREE — APPEALS PROCESS

What do you do when you disagree with a FEMA decision regarding a project funded through FEMA Public Assistance (PA)? You can file an appeal.

When agreement cannot be reached, as a Subrecipient (Applicant) for FEMA PA grants, you can **appeal** a determination made by FEMA relating to FEMA grant assistance.

What You Need to Know

The FEMA PA **administrative appeals** process is governed by 44 CFR 206.206. The process provides **two (2) opportunities** (1st and 2nd appeals) for you to have a decision with which you disagree resolved.

- First (1st) appeal decisions are rendered by **FEMA Region VI**.
- Second (2nd) appeal decisions are determined by **FEMA Headquarters**.

When to Consider an Appeal

An appeal can be made at **any time** while participating in the FEMA PA program.

Any eligible **Recipient** or **Subrecipient** (Applicant) may appeal any determination previously made related to an application for or the provision of **Federal assistance**. [SOURCE: 44 CFR 206.206]

Time is Critical!

When you receive a **written determination** of eligibility for assistance – and that determination is one with which you **disagree** – you have **60 days** from YOUR receipt of the notification letter of determination to appeal.

- FEMA’s **written notification** comes to the GOHSEP.
- GOHSEP then **notifies you**.

The clock starts ticking when you receive notification from GOHSEP of the action taken by FEMA.

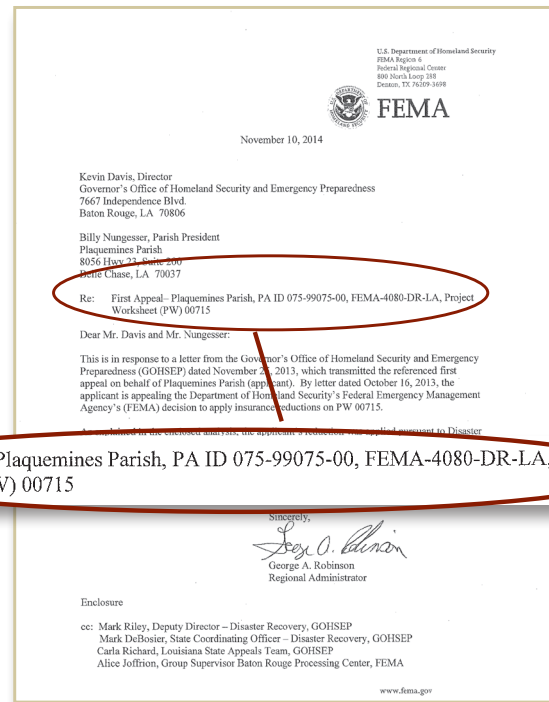
Three (3) Simple Steps to Your Appeal

1. Explain in **writing** (see chart below) why you think FEMA’s decision is incorrect.
2. Include the FEMA *Federal Information Processing Standards* (FIPS) number and **disaster number** (shown at the top of your decision letter) in your letter of appeal.



3. Mail your appeal letter within **60 days** of receipt of your determination letter from FEMA through GOHSEP to:

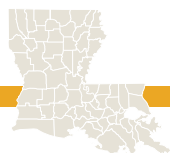
GOHSEP
(ATTENTION: Public Assistance)
Louisiana Recovery Office (LRO)
1500 Main Street
Baton Rouge, LA 70802



First Appeal- Plaquemines Parish, PA ID 075-99075-00, FEMA-4080-DR-LA, Project Worksheet (PW) 00715

ROLES + RESPONSIBILITIES [SOURCE: 44 CFR 206.206]

ACTION	FROM	TO	TIMEFRAME	DESCRIPTIONS OF REQUIREMENTS
WRITTEN APPEAL	Subrecipient (Applicant)	GOHSEP	To be received by GOHSEP within 60 days from your RECEIPT of written notification from GOHSEP of a FEMA determination.	<p>Written appeal should include:</p> <ul style="list-style-type: none"> • Description of historical facts. • FEMA determination at issue. • Narrative refuting the basis of FEMA's determination. • Analysis supporting Subrecipient (Applicant) position. • Any relevant documents referenced in appeal.
REVIEW	GOHSEP	FEMA	60 days	GOHSEP reviews appeal and submits its evaluation and recommendation to FEMA.
DECISION	FEMA	Subrecipient (Applicant)	90 days	FEMA renders a decision. (If FEMA requires additional information from you, you will receive a letter. Once FEMA receives the requested information, it has 90 days to render a decision.)



AUDITS

Federal grant Subrecipients (Applicants) are responsible for understanding and complying with a significant amount of rules and regulations applicable to FEMA disaster grants, which include those for Public Assistance (PA) and Hazard Mitigation (HM). Subrecipients (Applicants) are subject to Audits by GOHSEP, Louisiana Legislative Auditors (LLA), Office of State Inspector General (State-OIG) and the Department of Homeland Security – Office of Inspector General (DHS-OIG) to assist with regulatory compliance.

A non-Federal entity that expends **\$750,000 or more** during the **non-Federal entity's fiscal year** must have a **single audit** conducted in accordance with 2 CFR 500 et. seq. These audits are conducted by the **Louisiana Legislative Auditor (LAA); Local Office of Inspector General (Local-OIG);** and/or DHS-OIG.

Several factors are considered when determining which activities to audit. These factors include:

- The risk of **fraud, waste** and **abuse** of Federal funds;
- **Statutory** and **regulatory requirements**;
- Current or potential **dollar magnitude**;
- Requests from **Congressional, FEMA** or **State officials**; and
- Reports or allegations of **impropriety** or **problems** implementing FEMA programs.

If a Subrecipient (Applicant) is selected for audit, GOHSEP will provide an **audit liaison** to assist the Subrecipient (Applicant) in walking through the process.

Learn More

Additional information regarding **audits** can be found at:

oig.dhs.gov
lla.la.gov

Contact GOHSEP at GohsepLegal@la.gov for any questions.

Audits, Inspections, and Evaluations

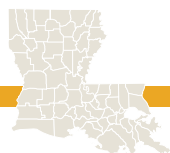
Report Number	Title	Issue Date	Fiscal Year
OIG-18-14	Management Alert - CBP's Use of Examination and Summons Authority Under 19 U.S.C. § 1509	11/16/2017	2018
OIG-18-16	Independent Auditors' Report on DHS' FY 2017 Financial Statements and Internal Control over Financial Reporting	11/16/2017	2018
OIG-18-14	Coast Guard IT Implementations Risk Failure Without Required Oversight	11/14/2017	2018
OIG-18-14	Management Alert - Concerns with Potential Duplicate or Ineligible FEMA Public Assistance Funding for Facilities Damaged by Back-to-Back Disasters	11/14/2017	2018
OIG-18-12	Special Report: Lessons Learned from Previous Audit Reports on Insurance under the Public Assistance Program	11/07/2017	2018
OIG-18-11	Major Management and Performance Challenges Facing the Department of Homeland Security	11/03/2017	2018
OIG-18-10	Biennial Report on DHS' Implementation of the Cybersecurity Act of 2015	11/01/2017	2018
OIG-18-09	Management Alert - FEMA Should Recover \$6.2 Million in Public Assistance Funds for Disaster Repairs That Are Not the Legal Responsibility of Richland County, North Dakota	10/30/2017	2018
OIG-18-08	FEMA and California Need to Assist CalRecycle, a California State Agency, to Improve Its Accounting of \$230 Million in Disaster Costs	10/30/2017	2018
OIG-18-07	DHS Needs a More Unified Approach to Immigration Enforcement and Administration	10/30/2017	2018
OIG-18-06	Summary and Key Findings of Fiscal Year 2016 FEMA Disaster Grant and Program Audits	10/27/2017	2018
OIG-18-05	DHS' Controls Over Firearms and Other Sensitive Assets	10/27/2017	2018



TIPS TO PREPARE FOR AN AUDIT INCLUDE:

1. Maintaining a **contract administration system** to ensure that contractors perform in accordance with **terms, conditions** and **specifications** of their contracts or purchase orders.
2. Taking all **necessary affirmative steps** to assure the use of **small, minority, women's business enterprises** and **labor-surplus area firms** when possible.
3. Having **identified methods for monitoring** the **performance** of the Contractor to ensure that the work conforms to project design and the scope of work in the *Project Worksheet (PW)*, **quality controls** are being met, and potential delays or costs overruns are identified.
4. Maintaining **written standards of conduct** covering **conflicts of interest** and governing the **performance** of employees.
5. Maintaining **records** sufficient to detail the history of the **procurement**.
6. Designating a person to coordinate the **accumulation of records**.
7. Establishing a **separate** and **distinct account** for recording revenue and expenditures, and a **separate identifier** for each distinct FEMA project.
8. Ensuring that the **final claim** for each project is supported by amounts **recorded** in the accounting system.
9. Ensuring that each **expenditure** is recorded in the accounting system and is referenced to **supporting source documentation** such as checks and invoices that can readily be retrieved.
10. Researching **insurance** coverage and submit claims for the **maximum coverage amount**. **Credit** the appropriate FEMA project with that amount.
11. Ensuring that materials taken from **existing inventories** for use under FEMA projects are **documented** by inventory withdrawal and usage records.
12. Ensuring that expenditures claimed under a FEMA project are **reasonable** and **necessary**, are authorized under the **scope of work**, and directly benefit the project.

To read more regarding audits, see the **DHS-OIG REPORT, AUDIT TIPS FOR MANAGING DISASTER-RELATED PROJECT COSTS** in the **APPENDIX Section** of this ToolBox.



HOW TO GET REIMBURSED FOR DIRECT ADMINISTRATIVE COSTS (DAC)

Administrative costs that are associated with grant management and can be tracked and charged to a specific eligible project are reimbursable as Direct Administrative Costs (DAC). Here's what you need to know.

- Project management costs are **NOT** reimbursable as DAC. Management costs should be **tracked** on the *Project Worksheet* (PW) as a regular cost associated with the project.
- Funding for DAC is subject to **same cost share** as other Public Assistance (PA) funding.

• Examples of **eligible activities for DAC reimbursement:**

- | | |
|--|--|
| <ul style="list-style-type: none"> » Site inspections. » Developing detailed site-specific damage description. » Evaluating Section 406 hazard mitigation (HM) measures. » Reviewing the PW. » Preparing small projects. » Preparing correspondence. | <ul style="list-style-type: none"> » Travel expenses. » Collecting, copying, filing, or submitting documents to support the claim. » Requesting disbursement of PA funds. » Grant Closeout activities. |
|--|--|

- If the Subrecipient (Applicant) has tracked similar costs in the past as **indirect costs**, then those costs cannot be claimed as DAC in **subsequent projects**.
- Both **labor** and **travel expenses must** be tracked for individual employees, and must be applicable to a **single project**.
 - » NOTE: If a Subrecipient (Applicant) chooses to fly in a Consultant / Specialist to address an issue that spans several projects, the travel for that Specialist would NOT be eligible for DAC.
- Claimed DAC must be **reasonable** to be approved:
 - » The **type of employee** and **skill level** must be appropriate for activity performed. For example if a highly skilled engineer performs basic clerical functions, FEMA will only fund based on clerical employee pay rate.
 - » The **level of effort** required to perform the activity is considered. FEMA states that it will base its determination on the effort that FEMA staff uses to perform similar activities.
 - » FEMA generally considers **3%** of the total project costs to be **reasonable DAC**. Any Subrecipient (Applicant) seeking a higher percentage for DAC needs to document the extra costs and provide a persuasive explanation of why they are reasonable.
- A Subrecipient's (Applicant's) costs associated with appealing a FEMA decision **may** be eligible for **reimbursement** as DAC. The costs will only be held eligible if the appeal results in an **increase** in grant funding.



THIS PAGE INTENTIONALLY LEFT BLANK.

PROCUREMENT – THINGS TO DO! NOT TO DO!

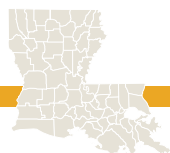
Pre-Disaster Contracts

DO'S	DON'TS
<ul style="list-style-type: none"> • Comply with FEMA, State and local procurement laws, regulations, rules and ordinances. Follow the most restrictive rule. • Include all required contract provisions in resulting Contract. • Regularly review and rebid to ensure market-driven reasonable prices. • Coordinate with other like jurisdictions to possibly undertake a joint procurement. • Undertake the six (6) required affirmative steps to include small, women-owned and minority business enterprises and labor surplus firms (see page 71). • Contact GOHSEP Legal with questions and for compliance assistance. 	<ul style="list-style-type: none"> • Use and then not review and rebid <i>at least every three (3) years</i>. Some may need to be reviewed and rebid more often. • Use geographic or local preferences.



Emergency Contracting

DO'S	DON'TS
<ul style="list-style-type: none"> • Have pre-positioned contracts in place that you procured <i>prior</i> to the disaster incident period. These can be used right away and for the duration of the need. • Use contracts from Office of State Procurement. • If you do not use proper procurement once the emergency or exigency period is over, transition to a competitive procurement with full and open competition. • If possible, even during the incident period, use proper procurement methods. • Award time and materials (T + M) contracts only when <i>necessary</i> and always include a ceiling or not-to-exceed clause. • Include the required contract provisions, even in emergency contracts. • Contact GOHSEP Legal with questions and for compliance assistance. 	<ul style="list-style-type: none"> • Award contracts to those with whom you have a conflict of interest. • Keep an improperly procured Contractor simply because you do not want to undertake a full and open procurement. • Make cardinal changes (very significant changes) to a contract scope or amount without re-procuring. • Piggybacking off of another jurisdiction's existing contract.



INSURANCE CONSIDERATIONS

Insurance proceeds are an important component of emergency and disaster recovery. It is important to know . . .

- FEMA requires Subrecipients (Applicants) located in a Special Flood Hazard Area (SFHA) to carry flood insurance **equal to** either the value of their property or **\$500,000**, whichever is **lower**:
 - » **SFHA Zones** are generally designated as “AE” or “V” Zones.
 - » Public Assistance (PA) funding for which the Subrecipient (Applicant) is eligible are *reduced* by proceeds from **insurance claims**.
- If a Subrecipient (Applicant) in an SFHA does **not carry** the required level of flood insurance, FEMA reduces **funding** of the PA project by the amount of insurance that the Applicant was *required* to carry.
- Regardless of flood zone designation, a Subrecipient (Applicant) who received PA funding in the past is required to **obtain** and **maintain** (O + M) **sufficient insurance** to cover the amount of *previous* damages.
 - » The type of insurance obtained after previous assistance must cover the **same type of damage** (flood vs. non-flood).
- If a Subrecipient (Applicant) cannot afford to maintain the level of insurance required, the Subrecipient (Applicant) may seek an *Insurance Commissioner’s Certification* (ICC). The ICC *reduces* the level of insurance required of a Subrecipient (Applicant) when the Insurance Commissioner determines that the required level of insurance is **not reasonably available** to the Subrecipient (Applicant).
 - » To qualify for an ICC, a Subrecipient (Applicant) *must* obtain the **maximum amount** of *National Flood Insurance Program* (NFIP) insurance or other, similar, insurance available to them.

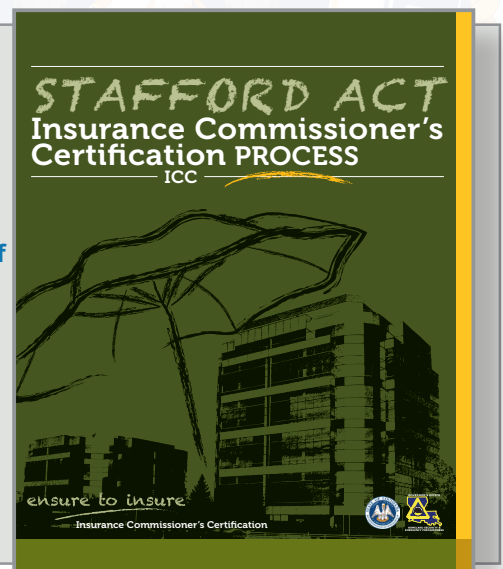
Learn More

To **learn** more about **FEMA PA insurance requirements**:

- **Download** the GOHSEP produced Stafford Act: Insurance Commissioner’s Certification (ICC) Process brochure: gohsep.la.gov/Portals/0/Documents/Publications/ICCbroschure.pdf
- **Contact** your **GOHSEP Insurance Specialist** at **225.379.4028** or LAPAInsurance@la.gov

To learn more about **Public Assistance Program** (PA), please **visit**:

- **PA Insurance Requirement** page: gohsep.la.gov/GRANTS/RECOVERY-GRANTS/Public-Assistance/Insurance-Requirements



THIS PAGE INTENTIONALLY LEFT BLANK.

STAFFORD ACT

Insurance Commissioner's Certification PROCESS

ICC



PURPOSE OF THIS PUBLICATION

To raise **awareness** and to serve as a job aid so users better understand **when** and **how** to apply for an *Insurance Commissioner's Certification* (ICC).

INTENDED AUDIENCE

For any Subrecipient (Applicant) or entity that has received, or might receive, **Federal Emergency Management Agency (FEMA) Public Assistance (PA) funds**; State, Parish, city or other local government officials, including elected leadership, chief administrative officers (CAOs), chief financial officers (CFOs), risk managers and insurance professionals; private nonprofits (PNPs) that have received or might receive FEMA PA funds; and other disaster recovery stakeholders.

ensure to insure

Insurance Commissioner's Certification

What YOU need to know NOW!

Dear Louisiana Disaster Recovery Stakeholder,

As a **condition** of receiving FEMA Public Assistance (PA) funding, Subrecipients (Applicants) must **obtain** and **maintain** insurance coverage, often called the O + M requirement, **at least equal to the amount of the eligible damage** to the facility receiving Federal assistance.

The purpose of the O + M requirement is to **protect against future loss** from the same type of peril.

INSURANCE COMMISSIONER'S CERTIFICATION (ICC)

Sometimes insurance market conditions prevent your ability to **reasonably** meet the O + M requirement. The *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (Stafford Act) then allows you to apply for an *Insurance Commissioner's Certification* (ICC). **The ICC acts as a declaration that some portion of the O + M requirement is not reasonably available** to a FEMA PA Subrecipient (Applicant). It may be the best way to ensure your *continued* eligibility for FEMA PA funding if you incur damage to insurable assets in a **subsequent disaster**.

The **Louisiana Commissioner of Insurance**, working with the **Governor's Office of Homeland Security and Emergency Preparedness** (GOHSEP), has established **criteria** you must meet to be eligible for an ICC. **This brochure is designed to help you understand the criteria and the process when applying for an ICC.**

Check with your risk manager and/or insurance professionals to see if an ICC is right for you. If you believe you qualify for an ICC, you must submit your application and **required** documentation to GOHSEP.

If the insurance required by the *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (Stafford Act) is not **reasonably available**, the Subrecipient (Applicant) must **demonstrate compliance with the Insurance Commissioner's established criteria and follow the *Insurance Commissioner's Certification* process.**

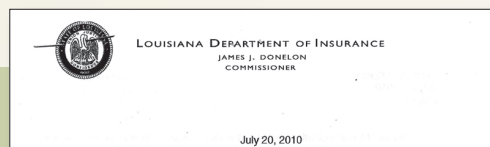
ensure to insure

Insurance Commissioner's Certification



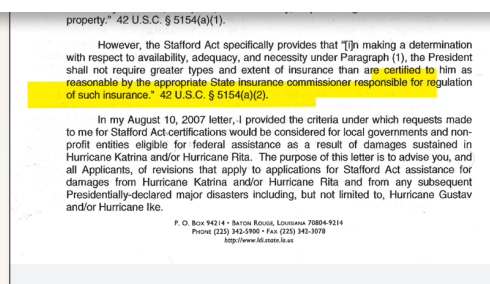
Why an ICC may be needed

- A Subrecipient (Applicant) who has not *obtained and maintained* required insurance (for the full amount of FEMA PA eligible damages) in a **current disaster** is at risk for **de-obligation of that funding**.
- **Eligibility for future FEMA PA funding** requires Subrecipients (Applicants) to *obtain and maintain* insurance for **each damaged facility** (in at least the amount of *previously* eligible damages) that has received FEMA PA funding in a *prior* disaster of the same type.
- A Subrecipient (Applicant) that cannot **reasonably obtain and maintain** the required level of insurance coverage can apply for an ICC. For future PA eligibility, FEMA does not require greater amounts of insurance than certified as reasonable by the State Insurance Commissioner.
- Facilities that sustained **eligible damages less than \$5,000** do not have an O + M requirement.



"... the President shall not require greater types and extent of insurance than are certified to him as reasonable by the appropriate State insurance commissioner ..."

"... I hereby certify that commercial insurance coverage for the perils of flood and wind is not reasonably available to Applicants in order to procure property insurance coverage for the full amount of their eligible disaster assistance ..."



How it works

An ICC **applies only** to the O + M requirements applicable to the **storm** or **hazard specified** in the application.

Once a Subrecipient (Applicant) **provides evidence** that the **type** and **extent** of insurance required by the **FEMA PA Program** are **not reasonably available**, the Insurance Commissioner can issue an ICC. It's important to know:

- If granted an ICC, a Subrecipient (Applicant) must maintain **insurance coverage consistent with that in place at the time of the initial certification**.
- Should another major disaster strike, resulting in the Subrecipient's (Applicant's) need for additional Stafford Act assistance, a **new application** for a certification applicable to that disaster is required.

Roles + responsibilities

SUBRECIPIENT (APPLICANT)

You are responsible for **risk management**.

It is important to know that **private insurance** is the first source of help after a disaster. FEMA PA (and other Federal support) is supplemental in nature and available when communities are overwhelmed by a disaster and after insurance benefits and other local or State resources have been exhausted.

INSURANCE COMMISSIONER

The Louisiana Commissioner of Insurance is charged with determining whether required O + M insurance is **reasonably available**. Stafford Act Section 311 states, *"... the President shall not require greater types and extent of insurance than are certified ... as reasonable by the appropriate State Insurance Commissioner."* The Louisiana Commissioner of Insurance issued a *Letter to the President* July 20, 2010 certifying that certain types and amounts of insurance were not **reasonably available** to Louisiana FEMA PA Subrecipients (Applicants).

Blanket policies

Subrecipients (Applicants) utilizing **blanket** or **scheduled policies, pooling arrangements** and **layered programs** should also consider an ICC.

Increased deductibles

In a post-disaster insurance market, insurance carriers attempt to protect themselves from future losses of the same type. One of the methods they use is to **increase deductibles**. This results in a significant increase in out-of-pocket cost to the Subrecipient (Applicant) in the event of future damage. The Insurance Commissioner stipulates that the **deductible cannot exceed 15% of property insurance coverage** and **cannot be combined with business interruption insurance coverage**.

Not a guarantee . . .

Demonstrating you have met the criteria set by the Insurance Commissioner and followed the process is not a guarantee that an ICC will be granted. If granted, **an ICC does not exempt a Subrecipient (Applicant) from procuring insurance coverage. You still must carry insurance to the extent that it is reasonably available to you.**

REMEMBER:

- FEMA PA is **supplemental**. It does not replace other assistance (including insurance).
- FEMA PA grants are only provided for **Presidentially declared disasters**.

ESTABLISH
MINIMUM
BUDGET



ICC REQUEST



INSURANCE COMMISSIONER'S
DECISION



PROCUREMENT

DOCUMENTATION
REVIEW



Certification criteria

The ICC process requires that you spend what the Insurance Commissioner has determined is a minimum amount on appropriate insurance coverage based on the **type of entity you are**.

GOHSEP has worked closely with the Insurance Commissioner to **develop a process** allowing Subrecipients (Applicants) to pursue an ICC when **full O + M requirements cannot reasonably be met**.

The Subrecipient (Applicant) must **demonstrate compliance** with the criteria set by the Insurance Commissioner and follow the Commissioner's **certification process** to be considered for an ICC.

MINIMUM INSURANCE BUDGET

- A Subrecipient (Applicant) must allocate a **reasonable portion of its current annual operating budget** to the purchase of **property insurance**, including **wind and flood coverage**, for each of its properties that are the subject of FEMA PA grants.
 - The required yearly minimum insurance budget is expressed as a **percentage of annual operating budget**.
 - The percentage is defined specifically for **different entities**.
 - **The schedule** established by the Insurance Commissioner for Subrecipient (Applicant) to use in determining a minimum insurance budget is shown in the table below.

- When calculating a minimum insurance budget . . .
 - DO base it on your **prior year's audited financial statement**.
 - Do NOT include **capital outlays**.

INSURANCE PROCUREMENT GUIDELINES

- A Subrecipient (Applicant) must also follow **guidelines** defined by the Insurance Commissioner for the **type of insurance** procured:
 - Obtain and maintain **maximum amount** of insurance **available** through the **National Flood Insurance Program (NFIP)** for:
 - **Building and contents** for **every facility** that sustained flood damage as a result of the disaster.
 - Procure **property** coverage (including wind and other perils, exclusive of flood) up to **replacement costs**.
 - With **remaining funds**, procure excess flood coverage.

NOTE: Cost of business interruption insurance is separate and cannot be used to meet your percentage of budget requirement.

TABLE: Minimum budget for insurance expressed as a percentage of annual operating budget

Organization Type	Percentage of Operating Budget
Local Government	0.33%
Elementary and Secondary Education	0.29%
Post-Secondary Education	0.17%
Health Care	0.26%
Nonprofit Association	2.91%
Nonprofit Trust	1.41%
Nonprofit Religious	2.61%

*Please note that this is a **minimum percentage** schedule for the purpose of determining a reasonable insurance budget. It **cannot** be used as rationale to reduce insurance if the current expenditure exceeds the listed percentage amounts.*

Contact your risk manager or insurance professional if you think an ICC might be right for you.

If you have questions regarding an ICC, please contact:



Governor's Office of Homeland Security and
Emergency Preparedness (GOHSEP) Insurance Team

225-376-5330
lapainurance@la.gov

Louisiana Department of Insurance (LDI)



Warren Byrd
225-342-5203
wbyrd@ldi.la.gov

lapainurance@la.gov
Visit LouisianaPA.com for an ICC application.



getagameplan.org



IMAC + EMAC

Both **Intrastate Mutual Aid Compact (IMAC)** the **Emergency Management Assistance Compact (EMAC)** are tools to **connect resources** for the **prevention** of, **response** to and **recovery** from an emergency or any other event that exceeds resource capacity.

IMAC: *Intrastate Mutual Aid Compact; Parish-to-Parish assistance.*

EMAC: *Emergency Management Assistance Compact; State-to-State assistance.*

The below chart identifies what each does and how to access these valuable response and recovery tools.

<p style="text-align: center;">IMAC LA RS 29:739</p>	<p style="text-align: center;">EMAC LA RS 29:733 PL 104-321</p>
<ul style="list-style-type: none"> • By executing an IMAC request, authorized representatives from <i>both</i> the assisting and requesting Parish, enter into a Contract to provide and reimburse for services to be rendered under the IMAC. • <i>Requesting</i> Parish must: Declare a state of emergency <i>prior</i> to requesting assistance, document the mutual aid process from declaration through reimbursement, identify the resources needed and agree on a price and scope. • <i>Assisting</i> Parish must: Verify the details of the request for assistance, ensure receipt of proper authorization from a requesting Parish <i>prior</i> to deploying resources and agree on a price and scope. • Both <i>requesting</i> and <i>assisting</i> Parish must: Utilize the State emergency management process (WebEOC), adhere to the guidelines set out in the National Incident Management System (NIMS), and participate in an <i>After Action Review (AAR)</i> and implement corrective actions. • The requesting Parish reimburses the assisting Parish. 	<ul style="list-style-type: none"> • EMAC is a nationally adopted mutual aid agreement that enables States to share resources during emergency events or disasters. • <i>Requesting</i> State must: Declare a state of emergency due to a natural or man-made emergency or disaster, identify the resource need and identify the shortfalls in which assistance is needed, request resources through the National EMAC system, and agree to a price and scope. • <i>Assisting</i> State must: Identify available resources in response to a request made in the system and mobilize and deploy in accordance with the agreement. • Requesting State reimburses the assisting State. <p>See the new Louisiana Administrative rules governing EMAC at doa.la.gov/Pages/osr/reg/regs2017.aspx.</p>



Mission Ready Packages (MRPs)

MRPs are **specific response and recovery capabilities** that are **organized, developed, trained** and **exercised prior** to an emergency or disaster. MRPs are **based on NIMS resource typing** – defining and **categorizing, by capability**, the resources requested, deployed and used in incidents – and taking the concept one (1) step further by considering the:

MISSION

- **Limitations** that might impact the mission;
- Needed **equipment, commodities** and required **support** to successfully achieve the mission;
- Footprint of the space needed to **stage** and complete the mission; and
- Estimated costs.

MRPs also include **credentialed personnel** – those who are identified by the resource provider as having the **knowledge, skills and abilities** needed to conduct the specific mission for which MRP is to be deployed.

Resource providers should work in cooperation with State emergency management agencies to develop MRPs.

Learn More

To learn more about **IMACs** contact:

- Your **Parish Office of Homeland Security and Emergency Preparedness (OHSEP)** or
- GOHSEP-Operations@la.gov

To learn more about **EMACs** and **Mission Ready Packages (MRPs)**, visit the following websites:

- emacweb.org/
- fema.gov/pdf/emergency/nrf/EMACoverviewForNRF.pdf

OR Contact:

- GOHSEP EMAC Coordinator at 225.925.7517 or
- Email Victoria.Carpenter@la.gov

GOVERNOR'S OFFICE OF HOMELAND SECURITY & EMERGENCY PREPAREDNESS
STATE OF LOUISIANA

ABOUT - PREPARE - PREVENT - RESPOND - RECOVER - MITIGATE - GRANTS - RESOURCES

LOUISIANA.GOV > GOHSEP > RESPOND > REQUEST RESOURCES > IMAC + EMAC

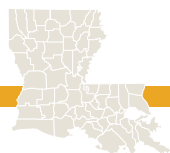
IMAC + EMAC
Both Intrastate Mutual Aid Compact (IMAC) (the Emergency Management Assistance Compact (EMAC) are tools to connect Parishes with needed resources.

Difference Between IMAC + EMAC
Created by an act of the State Legislature, IMAC is an intrastate agreement that enables Parish-to-Parish assistance when a mutual aid agreement (MAA) between Parishes is not already in place.
EMAC is an interstate mutual aid compact providing State-to-State assistance and requiring an agreement between States.

LOUISIANA STATE POLICE OFFICERS WERE DEPLOYED TO ASSIST THE STATE OF NEW JERSEY FOLLOWING HURRICANE SANDY IN RESPONSE TO A DIRECT REQUEST THROUGH EMAC.

IMAC
IMAC is a developing program that provides and promotes mutual assistance in the prevention of, response to and recovery from an emergency or any other event that exceeds a Parish's resource capability. The system was created by Louisiana Revised State Code Title 28:739 and enables Parish-to-Parish assistance when a mutual aid agreement between Parishes is not already in place.
By executing an IMAC request, authorized representatives from both the assisting and requesting Parish, enter into a contract to provide and reimburse for services to be rendered under the IMAC.
Parishes requesting assistance, Parishes providing assistance and the State have specific responsibilities when using the IMAC system.

Related Links
Louisiana Election Officials Emergency Management Manual
Louisiana Homeland Security and Emergency Assistance and Disaster Act
Emergency Management Assistance Compact
Emergency Management Assistance Compact Overview
National Incident Management System (NIMS)



FEMA Public Assistance 406 HAZARD MITIGATION Opportunities

PURPOSE OF THIS PUBLICATION

To raise awareness and encourage utilization of **hazard mitigation measures** that reduce or eliminate the threat of *future* similar damage to facilities that are repaired, restored or reconstructed after a disaster. Assistance is available through the Federal Emergency Management Agency (FEMA) Public Assistance (PA) program and authorized under **Section 406** of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (Stafford Act), 42 U.S.C. 5172.

INTENDED AUDIENCE

This publication is intended for **local** and **State** officials, Federally recognized **Tribal governments**, those **applying** for and/or **receiving** recovery-funding grants through the **FEMA PA** program and other disaster-recovery and mitigation **stakeholders**.



Here's how.

GETTING STARTED IS AS EASY AS 1, 2, 3, 4 . . .

Step 1: When **evaluating disaster damages**, Subrecipients (Applicants) are encouraged and **responsible to identify potential hazard mitigation opportunities**.

Step 2: Hazard mitigation opportunities are then **evaluated** for cost effectiveness and **applicability** (see previous panel).

Step 3: Subrecipients (Applicants) prepare a **Hazard Mitigation Proposal (HMP)**.

The HMP must:

- Identify cause + damages to be **mitigated**;
- Include **proposed** mitigation measures;
- Demonstrate **methodology** (including scope of work [SOW], determination of cost effectiveness, etc.) used to **determine applicability** of proposed mitigation measures.

Step 4: HMP is **submitted** through GOHSEP to FEMA.

Proposed 406 HM measure(s) **must be approved** by FEMA **prior** to start of work to ensure **eligibility** and **compliance** with Federal requirements.

IMPORTANT TO KNOW

- Frequently, due to the urgency of repair, potential mitigation measures are **not fully explored**, leaving the disaster damage/repair cycle to repeat in future events.
- **Both 404 + 406** HM funding can be used in **combination** on certain projects. FEMA will help you determine the appropriate split. (To learn more, please visit [fema.gov/media-library/assets/documents/15271](https://www.fema.gov/media-library/assets/documents/15271) and [fema.gov/pdf/government/grant/pa/9526_1.pdf](https://www.fema.gov/pdf/government/grant/pa/9526_1.pdf).)
 - You must be able to identify **specific mitigation** work to be accomplished under **each separate program**.
- Those applying for 406 HM funding through the FEMA PA program should be **aware** there may be a **non-Federal** or **local cost share**.

HAZARD MITIGATION PROPOSAL (HMP) TEMPLATE

- If the approved project involves a **completely new** or **replacement facility** on the same or different site, 406 HM funding cannot be used.
- 406 HM funding **may be approved** for an **Improved Project (IP)** – any project where **additional improvements** are made to the facility while making disaster repairs.
- 406 HM funding **will NOT** be applied toward an **Alternate Project (AP)** – the alternative use of project funding to repair, replace or newly construct **alternative public infrastructure** on the same or different site.
- **If mitigation work begins prior to FEMA approval, funding for the entire project may be jeopardized.**



AFTER MITIGATION: PUMP STATIONS WITH ELEVATED CONTROL BOX



AFTER MITIGATION: ROLL-DOWN SHUTTERS ADDED TO STOREFRONT

Hazard mitigation (HM) defined . . .

Hazard Mitigation (HM) is defined in Federal law [44 Code of Federal Regulations (CFR) 201.2] as any *sustained action* taken to **reduce** or **eliminate** the **long-term risk** to human **life** and **property** from hazards.

Funding sources

There are **multiple funding sources** available to **eligible Subrecipient (Applicant)** for BOTH *post-disaster* as well as *non-disaster HM activities*.

Funding sources are **authorized** through the *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (Stafford Act), Sections 404, 406 and 203; Sections 1323, and 1366 of the *National Flood Insurance Act of 1968* (NFIA).
[SOURCE: FEMA Recovery Policy (RP) 9526.1]

POST-DISASTER MITIGATION FUNDING

- FEMA PA 406 HM ASSISTANCE GRANTS**

Stafford Act provides **authority** to fund the repair, restoration or replacement of **damaged** facilities as a **result of a disaster**. **Additional funding** for **HM measures** may be available through Section 406 of the Stafford Act. This is typically referred to as 406 HM. [SOURCES: Stafford Act §406(c) (1)(B)(iii); 44 CFR 206.226; FEMA RP 9526.1 – *Hazard Mitigation Funding Under Section 406* (Stafford Act)]

- FEMA 404 HAZARD MITIGATION GRANT PROGRAM (HMGP)**

There is also funding for **post-disaster** hazard mitigation measures through the **FEMA Hazard Mitigation Grant Program (HMGP)**, authorized under **Section 404** of the Stafford Act. This is also called 404 HM.

Because **both** the 406 HM program and the 404 HMGP program are available as a result of a disaster, it is easy to get them **confused**. It is important to know that **BOTH of these resources may be available** to fund **post-disaster** mitigation initiatives.

POST-DISASTER MITIGATION	
406 Hazard Mitigation (HM)	404 Hazard Mitigation Grant Program (HMGP)
Post-disaster	Post-disaster
Funding through FEMA PA Program	Funding through FEMA HMGP Program <i>Funding is limited.</i>
Incident-specific Grants	Multi-hazard/Area-wide Grants
Funding available for Disaster-damaged Elements of Facilities Only	Funding available for Damaged + Non-damaged Facilities

NON-DISASTER RELATED MITIGATION FUNDING

- FEMA ANNUAL HM GRANTS**

There are other grant opportunities available through the FEMA annual competitive grants process for non-disaster mitigation measures.

This publication focuses on PA post-disaster 406 HM.

For more information about other grant opportunities, please see the Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP) publication **the NEW 10 things to know about funding hazard mitigation** at: gohsep.la.gov/publications.aspx OR go to **FEMA's Hazard Mitigation Assistance (HMA)** page at: fema.gov/hazard-mitigation-assistance

Fundamentals of FEMA PA 406 hazard mitigation (HM)

APPLICABILITY

406 HM funding can **only** be spent on **eligible permanent repair work**. [SOURCE: FEMA RP 9526.1]

406 HM measures MUST be **cost effective**.

406 HM can be used **only** to fund protective measures that **reduce or eliminate** the threat of *future similar* damages to a **disaster-damaged** element or facility.

COST EFFECTIVENESS

FEMA requires all HM projects to be **cost effective**. Cost effective simply means that benefits (avoidance of future damages) of a mitigation measure are appropriate to the expenditure. Benefits must **equal** or **exceed** the cost of the hazard mitigation measure.

Cost-effective mitigation measures include:

- Applicable mitigation measures that cost up to **15%** of the **total eligible repair cost** (e.g. equipment elevation, window shutters, hurricane clips, headwalls, floodwalls, erosion control, etc.).
- Certain mitigation measures (see Appendix A of FEMA RP 9526.1) are **predetermined** as cost effective *if* the cost of the mitigation measure:
 - **Does not exceed 100%** of the **total eligible cost** of the **eligible repair work** on the project;
 - Is **appropriate** to the disaster damage (e.g. wind, flood, rain, etc.);

- Prevents **future** similar damage;
- Is **directly related** to the eligible damaged elements;
- **Does not** increase risks or cause adverse effects to surrounding areas or damage from another hazard;
- Is technically **feasible** for the hazard + location; and
- Meets **requirements** stipulated in policy + law + regulation.

Those measures include:

- **Drainage + crossings + bridges**
- Sanitary/storm **sewer systems**
- **Wastewater treatment plants**
- **Potable** water systems
- **Electrical** power distribution systems
- Above ground **storage tanks**
- Underground **pipelines**

For those mitigation measures that **do not fall within** the above two (2) categories, an **acceptable Benefit-Cost Analysis (BCA) methodology must be used to demonstrate cost effectiveness**.

To learn more, please visit: [fema.gov/benefit-cost-analysis](https://www.fema.gov/benefit-cost-analysis).

EXAMPLE

SCENARIO 1: A project cost **\$2M** to restore a flooded building to its pre-disaster condition. FEMA can approve **up to an additional \$2M** in 406 HM funding for cost-effective, mitigation measures.

SCENARIO 2: A project cost **\$2M** to restore. The proposed mitigation measures cost **more than \$2M** – an analysis is **required** to determine if the additional expenditure is **cost effective**.



BEFORE MITIGATION: ROAD NEAR HOLLY BEACH ERODED



AFTER MITIGATION: ROAD NEAR HOLLY BEACH EROSION CONTROL MATS

406 HM is an important post-disaster funding opportunity!

Here's why.

Damage to **public infrastructure** can vary greatly, **depending upon the location, condition** and **magnitude** of a disaster. Mitigation helps **fund solutions** to safeguard your community.

VALUE OF MITIGATION MEASURES

- Hazard mitigation measures result in **safer + stronger** communities by **reducing loss of life** and/or **property** due to an **emergency** or **disaster**.
 - Stronger communities **lessen physical** and financial impacts of disaster at the State + Federal level and to local + Tribal communities.
- Hazard mitigation measures result in **more resilient communities**, enabling them to **recover** more rapidly from future disasters.

PERMANENT
WORK
CATEGORIES

C
D
E
F
G

Roads + Bridges
Water Control Facilities
Buildings + Equipment
Utilities
Parks + Recreational
+ other

It makes sense to break the cycle of damage-repair-damage-repair . . .

For every \$1 spent on mitigation, approximately \$4 are saved in future reduced losses.*

(SOURCE: *United States Congressional Budget Office, *Potential Cost Savings from the Pre-Disaster Mitigation Program*, 2007.)



BEFORE MITIGATION: CULVERTS WASHED OUT DURING EVENT



AFTER MITIGATION: NEW CULVERT WITH PROTECTIVE HEADWALL

ACRONYMS

AP	Alternate Project
BCA	Benefit-Cost Analysis
CFR	Code of Federal Regulations
FEMA	Federal Emergency Management Agency
GOHSEP	Governor's Office of Homeland Security and Emergency Preparedness
HM	Hazard Mitigation
HMA	Hazard Mitigation Assistance
HMGP	Hazard Mitigation Grant Program
HMP	Hazard Mitigation Proposal
IP	Improved Project
NFIA	National Flood Insurance Act
PA	Public Assistance
PACL	Public Assistance Crew Leader
RP	Recovery Policy
SAL	State Applicant Liaison
SOW	Scope of Work

REFERENCES

44 CFR
ecfr.gov/cgi-bin/text-idx?SID=55b626c34d6c81858c72b0fddaaeff485mc=true&tpl=/ecfrbrowse/Title44/44chapter1.tpl

FEMA Benefit-Cost Analysis
fema.gov/benefit-cost-analysis

FEMA Benefit-Cost Analysis Toolkit Version 5.1
fema.gov/media-library/assets/documents/92923

FEMA Public Assistance Program and Policy Guide (PAPPG) – FP 104-009-2 / April 2017
fema.gov/media-library/assets/documents/111781

FEMA 549 – Hurricane Katrina in the Gulf Coast: Mitigation Assessment Team Report – Building Performance Observations, Recommendations, and Technical Guidance – 2006
fema.gov/media-library/assets/documents/4069

FEMA P-787 – *Catalog of FEMA Building Science Branch Publications and Training Courses* – April 2015.
fema.gov/media-library/assets/documents/12909

Small Business Toolkit: Tools and Resources to Plan, Prepare and Protect
fema.gov/preparedness-checklists-toolkits

Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288) as amended
fema.gov/media-library/assets/documents/15271



**For more information on 406 Hazard Mitigation (HM),
contact your GOHSEP Public Assistance (PA) State Applicant Liaison (SAL) OR
FEMA Public Assistance Coordinator
OR
Call GOHSEP at 225-925-7500.**



EHP environmental + historic preservation

PURPOSE OF THIS PUBLICATION

To provide awareness and guidance for the **preservation** and **protection** of the natural and cultural aspects of **environmental** and **historic resources** when seeking Federal assistance.



INTENDED AUDIENCE

This publication is intended for local and State officials, Federally recognized Tribal governments and other **disaster-recovery** stakeholders **applying for** and/or **receiving recovery funding** through Federal Emergency Management Agency (FEMA).

Environmental + Historic Preservation (EHP) review

All Federally funded projects **must** comply with the *National Environmental Policy Act* (NEPA) of 1970, as amended. [42 USC 4321 & 4331-4335] Under NEPA, the Federal agency responsible for funding a project **must consider** the project's *impacts* on the **natural, cultural** and **socioeconomic** conditions. In the environmental and historic preservation (EHP) world, you may hear that called **impact**.

Failure to comply with NEPA can result in project **delays** and **denial** of funding. The Federal Emergency Management Agency (FEMA), through the Environmental and Historic Preservation (EHP) Program, engages in a **review process** (EHP review) to ensure FEMA-funded activities comply with NEPA.

To understand the **FEMA EHP review** and formulate a **project schedule** that adheres to **Federal grant-funding requirements**, you need to know about EHP concerns that could have an impact on your project.

WHAT DETERMINES THE DEPTH OF EHP REVIEW?

All projects funded through FEMA receive an **EHP review** that identifies if and what **conditions** are needed to ensure compliance. The depth of EHP review is dependent on a number of factors.

- *Special Consideration Questions* form as a tool to trigger reviews for **possible negative impacts to protected resources** from your proposed project.
- Other FEMA-funded grant programs utilize the project *Scope of Work* (SOW) to determine the level of EHP review needed.

Regardless of the FEMA grant program to which you are applying, the SOW and the **project's location** determine the depth of EHP review.

The FEMA EHP Team considers a range of Federal laws, regulations and *Executive Orders* (EOs) to ensure **compliance** prior to funding.

AVOID DELAYS WITH EHP REVIEW

Those applying for (Applicants) or those receiving (Subrecipients) FEMA assistance can greatly aid FEMA in *streamlining* the EHP review by:

- Writing detailed **project descriptions**.
- **Anticipating requirements** under applicable laws (see insert).
- Designing projects to **address requirements** or **avoid problem areas** by involving FEMA EHP during the early planning stages of your project.

DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY
SPECIAL CONSIDERATION QUESTIONS

APPLICANT: _____ PROJECT NO.: _____ DATE: _____
PROJECT NAME: _____ LOCATION: _____

Form must be filled out - for each project.

1. Does the damaged facility or item of work have insurance and/or is it an insurable risk? (e.g., buildings, equipment, vehicles, etc.)
 Yes No Unsure
Comments: _____

2. Is the damaged facility located within a floodplain or coastal high hazard area or does it have an impact on a floodplain or wetland?
 Yes No Unsure
Comments: _____

3. Does the applicant have a mitigation proposal or does the applicant have a mitigation proposal for a hazard mitigation proposal?
 Yes No Unsure

8. Are there any hazardous materials at or adjacent to the damaged facility and/or item of work?
 Yes No Unsure

7. Are there any pristine or undisturbed areas on, or near, the project site? Are there large tracts of forestland?
 Yes No Unsure
Comments: _____

6. Are there any hazardous materials at or adjacent to the damaged facility and/or item of work?
 Yes No Unsure
Comments: _____

5. Are there any other environmental or controversial issues associated with the damaged facility and/or item of work?
 Yes No Unsure
Comments: _____

FEMA Form 90-120, FEB 96 PREVIOUS EDITION OBSOLETE

U.S. DEPARTMENT OF HOMELAND SECURITY
(DHS) FEMA SPECIAL CONSIDERATIONS
QUESTIONS, FF 90-120

Remember . . . any changes to approved SOW results in an additional EHP review!



FEMA ROLE

FEMA EHP reviews the **proposed SOW** for **compliance** with Federal environmental and historic preservation laws and EOs. The FEMA EHP program integrates the protection and enhancement of environmental, historic and cultural resources into FEMA's mission, programs and activities, to include disaster response, recovery and emergency preparedness.

FEMA consults with **regulatory agencies** and **other interested parties** to determine the impacts and requirements for project compliance. FEMA is required to notify **the public, Tribal government** representatives, **historic societies** and **other stakeholders**. [44 CFR Parts 9 &10]

FEMA EHP provides environmental and historic preservation **technical assistance** to local, State, and Federal partners, grantees, and Subrecipients for compliance with Federal environmental and historic preservation laws and EOs. [44 CFR 200.207(c)]



GOHSEP ROLE

We can help.

The **Governor's Office of Homeland Security and Emergency Preparedness** (GOHSEP) has a vested interest in the **success** of your projects and in helping you **keep** eligible funding obligated for your project.

- GOHSEP EHP staff monitors projects to ensure appropriate **implementation**. **Technical support** is available for compliance with FEMA regulations and grant supported activities. [2 CFR 200.328(a)]

HISTORIC JACKSON SQUARE IN NEW ORLEANS, LA



EXCLUSIONS TO ENVIRONMENTAL ASSESSMENTS (EAs)

REVIEW EXCLUSIONS	
STATEX	CATEX
Emergency/critical + essential needs.	<ul style="list-style-type: none"> • Project will not have significant effect on the environment. • FEMA creates a list of project tasks with no adverse effects on EHP concerns. [40 CFR 1500]
Must comply with applicable local + State + Federal regulations.	Stipulations may be attached to the grant to ensure that the project is performed as proposed in compliance with CATEX regulations + all local + State + Federal regulations.
Examples: <ul style="list-style-type: none"> • Emergency debris removal. • Establishing a temporary medical triage/clinic. 	Examples: <ul style="list-style-type: none"> • Window/roof replacement on a non-historic facility. • Procurement of goods/services for emergency operational activities.

Action taken or assistance provided in support of local and State **emergency assistance** efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe [40 CFR 1500] can be **statutorily excluded** (STATEX) from an *Environmental Assessment* (EA).

Other projects may be **categorically excluded** (CATEX) because they are so common and have **little** or **no effect** on environmental and historic preservation concerns. [40 CFR 1500]

FEMA EHP reviews the *Special Considerations Questionnaire* to determine the **level of impact** a proposed project might have on the landscape.

If a project is granted a STATEX or CATEX, the project is allowed to **move forward** through the grant approval process.

PERMITS

Prior to starting work, you must **obtain** and **retain** the appropriate **permits** and **approval letters** from the **respective agencies** for compliance with NEPA requirements. [2 CFR 200.333]

GOHSEP **encourages** Subrecipient (Applicant) to upload all **important grant documentation** to the **documents** tab on the appropriate Louisiana grants management website – LouisianaPA.com or LouisianaHM.com.

These permits must be retained for **future project compliance verification** and grant closeout.

Approvals + permits first
Do not act first and then seek forgiveness!

Outcomes of EHP review

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

FEMA EHP reviews the proposed project to determine if the undertaking has the potential to pose *adverse impacts* to **protected resources**. If the project work does not pose any known adverse impacts, FEMA issues a record of environmental consideration (REC) and the project is allowed to *move forward* through the approval process.

PROJECT AGREEMENTS

Some projects may *require* certain measures to be taken to meet compliance. FEMA may request the Subrecipient (Applicant) and other stakeholders sign an agreement that specifies measures to take in order to **avoid**, *minimize*, or **mitigate** the adverse effects resulting from the undertaking. For example: FEMA will coordinate programmatic agreements, memorandums of understanding (MOUs), or memorandums of agreement (MOAs) to comply with Federal regulations.

ENVIRONMENTAL ASSESSMENT (EA)

Projects with **complex** concerns to consider require a more **in-depth** project evaluation. In these cases, an environmental assessment (EA) is used to analyze the SOW and consider alternatives.

Regulatory agencies and stakeholders are consulted about possible **impacts** to the protected resources being considered. If the resulting analysis produces no significant impact to the protected resources, then a **finding of no significant impact** (FONSI) is issued under the EA. FEMA **prepares and submits an EA if required** [44 CFR 10.5(a)] and allows the project to **continue** through the approval process.

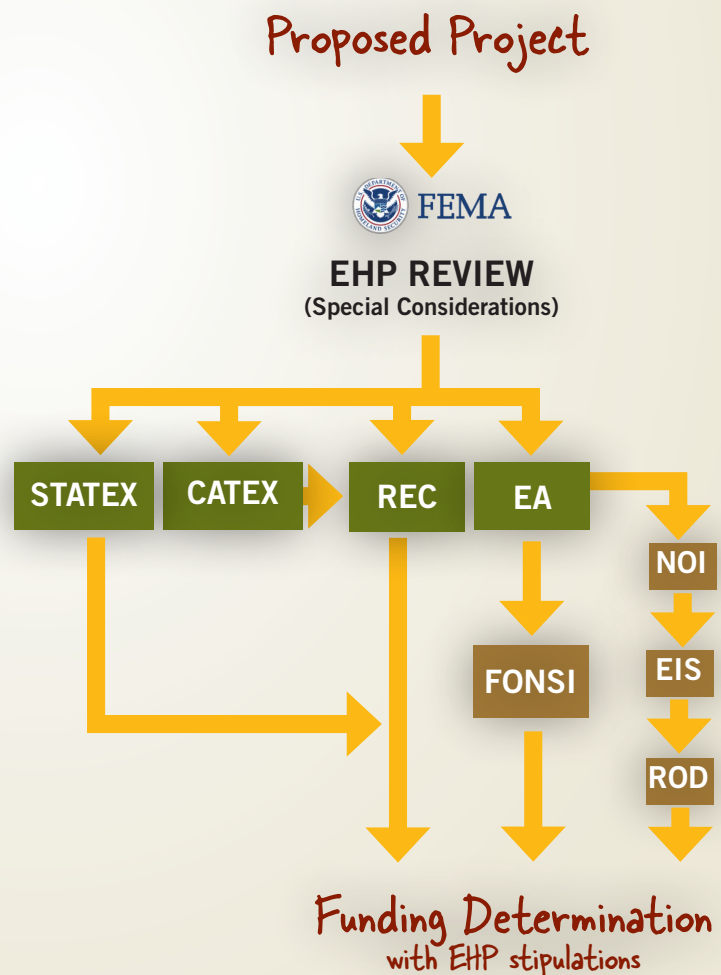
If an EA has a finding of **significant impact**, an environmental impact statement (EIS) will be required. A notice of intent (NOI) to implement an EIS will be issued by the agency through **public notice** and to the Subrecipient (Applicant) stating reasons why an EIS is required.

ENVIRONMENTAL IMPACT STATEMENT (EIS)

An *Environmental Impact Statement* (EIS) is **required** when the project work has an *irreversible* and **negative effect** on **protected resources**, as well as the **community**.

A detailed study of the project's impact to the environment, historic resources, economy and landscape is conducted with **proposed alternatives** identified. This study is open to the public for review and comments.

The final EIS will result in a record of determination (ROD) after all **sensitive issues** are **evaluated**, **studied** and public **meetings** are conducted.



Four (4) Steps to compliance

(Failure to comply can jeopardize funding.)

1 Plan your project with sufficient detail!

Depending on the project, most reviews that require design need sufficient **plans** that include:

- **To-scale drawings**
- **Elevation views**
- **Site location** along with a narrative of the proposed SOW

2 Obtain permits and FEMA approval before proceeding with non-emergency work!

Regardless of the project (STATEX or CATEX included), *all* regulatory permits and **consultation letters** must be obtained **prior** to physical work.

3 Comply with permit requirements!

You must **comply** with *all* stipulations identified in the permits, consultation letters and grant requirements.

4 Retain documentation!

All permits and consultation letters must be **retained** for *future* **project compliance verification** and grant closeout.

You may elect to proceed without FEMA approval. However, failure to meet EHP regulations puts Federal funding at extreme risk.

What else do I need to know?

It is **YOUR** responsibility to have a working knowledge of **AND** comply with local + State + Federal laws, regulations and policy.

ACRONYMS

APE	Area of Potential Effect
CATEX	Category Exclusion
CFR	<i>Code of Federal Regulations</i>
DHS	U.S. Department of Homeland Security
EA	Environmental Assessment
EIS	Environmental Impact Statement
EHP	Environmental and Historic Preservation
FEMA	Federal Emergency Management Agency
FONSI	Finding of No Significance Impact
GOHSEP	Governor's Office of Homeland Security and Emergency Preparedness
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
NOI	Notice of Intent
REC	Record of Environmental Consideration
ROD	Record of Determination
SOW	Scope of Work
STATEX	Statutory Exclusion

REFERENCES

- 2 CFR
ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl
- 40 CFR 1500 –1508
gpo.gov/fdsys/granule/CFR-2011-title40-vol33/CFR-2011-title40-vol33-part-id1102/content-detail.html
- 42 USC
<http://uscode.house.gov/browse/prelim@title42/chapter55&edition=prelim>
- 44 CFR
ecfr.gov/cgi-bin/text-idx?SID=55b626c34d6c81858c72b0fddaaff48&mc=true&tpl=/ecfrbrowse/Title44/44chapterI.tpl
- Clean Air Act* (CAA)
epa.gov/air/caa/
- Clean Water Act* (CWA)
epa.gov/oecaagct/lcwa.html
- Coastal Barriers Resources Act* (CBRA)
fws.gov/cbra/
- Coastal Zone Management Act* (CZMA)
epa.gov/oecaagct/lzma.html
- Endangered Species Act* (ESA)
fws.gov/ENDANGERED/laws-policies/index.html
- EO 11988 *Floodplain Management*
fema.gov/environmental-planning-and-historic-preservation-program/executive-order-11988-floodplain-management
- EO 11990 - *Protection of Wetlands*
fema.gov/executive-order-11990-protection-wetlands-1977
- EO 12898 - *Environmental Justice*
fema.gov/environmental-planning-and-historic-preservation-program/executive-order-12898-environmental-justice
- EO 13690 – *Flood Risk Standards*
[obamawhitehouse.archives.gov/the-press-office/2015/01/30/executive-order-establishing-federal-flood-risk-management-standard-and-Farmland-Protection-Policy-Act-\(FPPA\)](http://obamawhitehouse.archives.gov/the-press-office/2015/01/30/executive-order-establishing-federal-flood-risk-management-standard-and-Farmland-Protection-Policy-Act-(FPPA))
ecfr.gov/cgi-bin/text-idx?SID=56ce33b5e99e8b6a50471df99176f272&node=7:6.1.3.6.28&rgn=div5
- Fish and Wildlife Conservation Act* (FWCA)
fws.gov/laws/lawsdigest/fwcon.html
- Louisiana Historic Cemetery Preservation Act*
crt.state.la.us/cultural-development/archaeology/state-legislation/chapter-21-B/index
- Louisiana Unmarked Human Burial Sites Preservation Act*
crt.state.la.us/cultural-development/archaeology/state-legislation/chapter-10-A/index
- National Environmental Policy Act* (NEPA)
epa.gov/compliance/basics/nepa.html
- National Historic Preservation Act* (NHPA)
achp.gov/docs/nhpa%202008-final.pdf
- Resource Conservation and Recovery Act* (RCRA)
epa.gov/oecaagct/lrca.html



For more information on EHP, contact GOHSEP at 225-925-7500.

Who to call?



Please use the following contacts for further information on your specific project concerns.

Environmental + historic preservation regulatory agencies

	PROJECT CONCERNS	WHO TO CALL
Historic	<ul style="list-style-type: none"> • Ground-disturbing activities. • Impact to archaeological resources, to include shipwrecks within State waterways. • Impact/repairs to properties – 45 years or older or that have cultural significance to history and eligible for listing on the National Register of Historic Place (NRHP). • Impact to historic districts. • Human remains 50 years or older. • Unmarked + marked cemeteries. 	<ul style="list-style-type: none"> • Louisiana Office of Cultural Development – Louisiana State Historic Preservation Office (SHPO)  • Division of Historic Preservation – Structures and Historic Districts • Division of Archaeology – Ground Disturbance Activities and Discovery Human Remains crt.state.la.us/cultural-development/historic-preservation/ (225) 342-8160
	<ul style="list-style-type: none"> • Discovery of human remains. 	<ul style="list-style-type: none"> • Local Coroner + Police louisianasca.org/parish-offices/
	<ul style="list-style-type: none"> • Activities within or along the boundary of a designated national park. 	<ul style="list-style-type: none"> • National Parks Service (NPS) nps.gov/contacts.htm  • Southeastern Archaeology Center (SEAC) nps.gov/seac/index.htm 
	<ul style="list-style-type: none"> • Conflicts associated with: <ul style="list-style-type: none"> - Archaeological discoveries. - Inadvertent discovery of human remains. - Unmarked burials. 	<ul style="list-style-type: none"> • Louisiana Governor’s Office of Indian Affairs gov.louisiana.gov/page/indian-affairs (225) 219-8715
	<ul style="list-style-type: none"> • Conflicts associated with: <ul style="list-style-type: none"> - Impact to historic properties. - Impact to archaeological resources. - Unmarked burials. 	<ul style="list-style-type: none"> • Advisory Council of Historic Places (ACHP) achp.gov 
	<ul style="list-style-type: none"> • Unmarked cemeteries. • Human remains. 	<ul style="list-style-type: none"> • Louisiana Attorney General (225) 326-6079 https://www.ag.state.la.us
Environmental	<ul style="list-style-type: none"> • Impact to navigable water-ways and tributaries to include lakes/ponds + stock tanks + mining pits. • Wetlands/floodplains. 	<ul style="list-style-type: none"> • U.S. Army Corps of Engineers (USACE) usace.army.mil 
	<ul style="list-style-type: none"> • Bridges over navigable water-ways. 	<ul style="list-style-type: none"> • U.S. Coast Guard (USCG) uscg.mil (225) 298-5400 
	<ul style="list-style-type: none"> • Impact within wetlands/floodplains. • Flood elevation requirements. 	<ul style="list-style-type: none"> • Local Floodplain Manager lfma.org 
	<ul style="list-style-type: none"> • Impact to natural + scenic ivers. • Hazardous material spills. 	<ul style="list-style-type: none"> • Louisiana Department of Transportation and Development (DOTD) http://wwwsp.dotd.la.gov/Inside_LaDOTD/Pages/Contact_Us.aspx (877) 452-3683 
	<ul style="list-style-type: none"> • Environmental justice – impact to minority + low income populations. 	<ul style="list-style-type: none"> • U.S. Department of Justice (202) 514-2000 http://www.justice.gov 
	<ul style="list-style-type: none"> • Conflicts associated with: <ul style="list-style-type: none"> - Impacts to the natural environment. - Remediation of contaminants. 	<ul style="list-style-type: none"> • Environmental Protection Agency (EPA), Council of Environmental Quality epa.gov/nepa/forms/contact-us-about-national-environmental-policy-act 

Environmental + historic preservation regulatory agencies

PROJECT CONCERNS		WHO TO CALL	
Environmental	<ul style="list-style-type: none"> Wetlands/floodplains. Endangered species – threats to the wildlife + fishery. Impact to coastal barrier resources. Impacts to coastal zone resources. 	<ul style="list-style-type: none"> Louisiana Department of Wildlife and Fisheries (LDWF) wlf.louisiana.gov/ (225) 765-2800 Environmental Protection Agency (EPA), Council of Environmental Quality epa.gov/compliance/contact/nepa.html Louisiana Department of Natural Resources (LDNR) wlf.louisiana.gov/ (225) 765-2800 U.S. Fish and Wildlife Services (USFWS) fws.gov/offices/Directory/ListOffices.cfm?statecode=22 	   
	<ul style="list-style-type: none"> Hazardous spills. 	<ul style="list-style-type: none"> Louisiana State Police (LSP) lsp.org/contact.html Louisiana Department of Transportation and Development (DOTD) http://wwwsp.dotd.la.gov/Inside_LaDOTD/Pages/Contact_Us.aspx (877) 452-3683 Louisiana Department of Environmental Quality (LDEQ) deq.louisiana.gov (866)-896-LDEQ Environmental Protection Agency (EPA), Council of Environmental Quality epa.gov/compliance/contact/nepa.html 	   
	<ul style="list-style-type: none"> Endangered marine species. Disposal of dredged soil. 	<ul style="list-style-type: none"> National Marine Fisheries Service (NMFS) nmfs.noaa.gov U.S. Army Corps of Engineers (USACE) usace.army.mil U.S. Fish and Wildlife Services (USFWS) fws.gov/offices/Directory/ListOffices.cfm?statecode=22 	  
	<ul style="list-style-type: none"> Protection of farmlands. Impact to coastal zone resources. Coastal use permits. 	<ul style="list-style-type: none"> U.S. Department of Agriculture (USDA) usda.gov/wps/portal/usda/usdahome?navtype=MA&navid=AGENCIES_OFFICES National Resources Conservation Service nrcs.usda.gov 	
	<ul style="list-style-type: none"> Impact to drinking water. 	<ul style="list-style-type: none"> Louisiana Department of Health and Hospitals (DHH) http://new.dhh.louisiana.gov (225) 342-9500 Louisiana Department of Environmental Quality (LDEQ) deq.louisiana.gov/portal/ABOUT/ContactInformation.aspx (866)896-LDEQ 	 
	<ul style="list-style-type: none"> Cremation + burial of animal carcasses. Animal carcasses. Termite infested demolition properties. 	<ul style="list-style-type: none"> U.S. Department of Agriculture (USDA) usda.gov/wps/portal/usda/usdahome?navtype=MA&navid=AGENCIES_OFFICES Louisiana Department of Environmental Quality (LDEQ) deq.louisiana.gov/portal/ABOUT/ContactInformation.aspx (866) 896-LDEQ Louisiana Department of Agriculture and Forestry (LDAF) (225) 922-1234 	  
	<ul style="list-style-type: none"> Debris + solid waste disposal. Hazardous materials + hazardous waste. Contaminants + discharges + spills. Cremation of animal carcasses. 	<ul style="list-style-type: none"> Louisiana Department of Environmental Quality (LDEQ) deq.louisiana.gov/portal/ABOUT/ContactInformation.aspx (866) 896-LDEQ Environmental Protection Agency (EPA), Council of Environmental Quality epa.gov/compliance/contact/nepa.html 	 

DISCLAIMER – Subrecipient (Applicant) is required to comply with all local, State and Federal laws, regulations and policies regardless of whether concerns are referenced or not. Example: Local tree protection ordinances may be imposed by Parish and city government agencies and is not referenced under this brochure. Many laws and regulations require compliance regardless of FEMA funding like the Clean Water Act (CWA), Resource Conservation and Recovery Act (RCRA) and National Flood Insurance Program (NFIP). This brochure is to offer assistance only and should not be considered all inclusive.



Alternate and Improved projects

PURPOSE OF THIS PUBLICATION

To **inform** Subrecipients (Applicants) using Federal disaster recovery funds, of **options to build back smarter** when developing their projects.

INTENDED AUDIENCE

This publication is intended for those **applying** for and/or **receiving** recovery funding grants through the **Federal Emergency Management Agency (FEMA) Public Assistance (PA)** program, which includes local and State government agencies, Federally recognized **Tribal governments** and eligible **private nonprofit (PNP)** organizations.



So, what's next?

- ✓ **Review** your **Project Worksheets (PWs)**.
- ✓ **Determine** if you want to **rebuild** or **restore** in kind or consider something different.
- ✓ If considering **Alternate** or **Improved projects**, **identify** what you want to do.
- ✓ **Talk** to your GOHSEP **State Applicant Liaison (SAL)** to formulate an Alternate/Improved (A/I) project request and complete the *Special Projects Checklist*.
- ✓ **Submit a letter** to the **State Coordinating Officer (SCO)** along with the *Special Projects Checklist*. Your letter should include:
 - Which **original projects** you want to include.
 - Any **supporting documentation** for your proposed A/I project. Include **drawings, sketches, maps** and any other available **details** of your project plans.



ST. BERNARD IMPROVED PROJECT – CHANGING A ONE-STORY FIRE STATION TO A TWO-STORY FIRE STATION

Do you want options?

After a disaster, our focus is to return our **lives, businesses** and **communities** to what they were pre-disaster or pre-event. FEMA and the Governor's Office Of Homeland Security and Emergency Preparedness (GOHSEP) help Subrecipients (Applicants) respond to and recover from major disasters declared by the President through PA grants.

Do you want to rebuild smarter – better, different, stronger? You have options.

IF YOU ANSWERED **"YES"** TO THE ABOVE QUESTION . . .

THERE IS GOOD NEWS!

The FEMA PA program allows you to use grant funding from disaster damages in ways that better meet your community's recovery needs.

You have **two (2)** options that may help you **better** utilize your project funding . . . an **Alternate** or an **Improved** project. [44 CFR 206.203(d) and PAPPG]



ALTERNATE PROJECT – USE FUNDS FROM OUTDATED STORM DAMAGED AIRPORT TO EXPAND A WASTE WATER TREATMENT FACILITY

WHAT ARE A/I PROJECTS?

An **ALTERNATE** project is the use of your obligated grant funding for use on **other community needs or priorities**, such as:

[44 CFR 206.203(d)(2)]

- **Constructing new** public facilities.
- **Repairing** or **expanding** other public facilities.
- **Purchasing capital equipment** over \$5,000 (e.g. buses, backhoes, ambulances, police cars, fire trucks, etc.).
- Funding mitigation measures on **non-damaged** elements.

An **IMPROVED** project **restores** pre-disaster function and capacity of a damaged facility and further **enhances** the facility.

[44 CFR 206.203(d)(1)]

Some examples include:

- **Laying asphalt** on a gravel road.
- **Expanding a facility** such as two (2) bays to three (3) bays on a damaged fire house.
- **Adding a heliport** to a repaired hospital.
- **Upgrading** capital equipment such as replacing a 10 year-old bus with a new bus.

NOTE: **Incremental costs** – cost beyond returning a disaster-damaged eligible facility to its pre-disaster function and capacity – are funded by the Subrecipient (Applicant).

Do not begin work on an Alternate or Improved Project until approval is received from the State and/or FEMA.

To be eligible for the Alternate/Improved (A/I) funding option, your Project Worksheet (PW) must be for permanent work.

PERMANENT WORK CATEGORIES

C
D
E
F
G

Roads + Bridges
Water Control Facilities
Buildings + Equipment
Utilities
Parks + Recreational
+ Other

When reviewing your recovery needs, consider the following to decide which option [Alternate Project or Improved Project] may work best for you.

ALTERNATE PROJECT

You should request an **Alternate Project** if:

- ✓ Your **damaged facility** is no longer needed by the community and you want to use the funding for a **different facility**.

EXAMPLE: Tearing down an administrative building to create a much needed water treatment plant.

- ✓ Your **damaged equipment** is no longer needed but the community needs **other equipment**.

EXAMPLE: Buy new ambulances instead of replacing damaged fire trucks.

- ✓ You want to **use funding** from damaged facilities or equipment to **restore** an existing facility, **build a new** or different facility, **purchase new** equipment or any combination.

EXAMPLE: Purchasing buses instead of rebuilding a facility.

IMPROVED PROJECT

You should request an **Improved Project** if:

- ✓ You want to **increase** the **size** of the **facility**.

EXAMPLE: Adding a cafeteria or additional classrooms to a damaged school.

- ✓ You want to **move** a school or fire station due to **demographic changes**.

EXAMPLE: Move a fire station across town to better support an increased population.

- ✓ You want to **restore** or **rebuild** a damaged facility plus add **enhanced features** or materials.

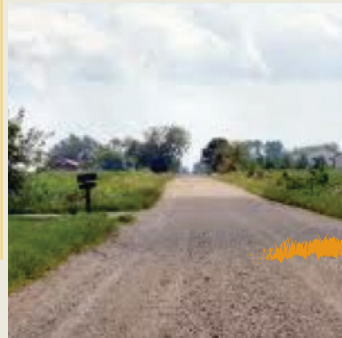
EXAMPLE: Adding solar panels to a restored facility; adding asphalt to a gravel road; rebuilding a damaged timber bridge with a concrete structure.



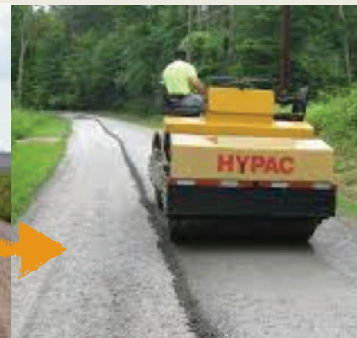
DAMAGED FACILITY



NEW BUSES



GRAVEL ROAD



ADDING ASPHALT

Things you must know that will impact your A/I project selection

	Alternate	Improved
Authorized Funding	<p>For governmental entities, the amount of dollars available for your Alternate Project is equal to 90% of the original obligated PW.</p> <p>For PNPs, the amount of dollars available for your Alternate Project is equal to 75% of the original obligated PW.</p> <p>Insurance: You are not required to apply funds received from insurance on the original facility towards the Alternate Project.</p>	<p>All Subrecipients (Applicants) that request an Improved Project are limited to the obligated dollars stated in your PW.</p> <p>Funding for such projects is limited to the Federal share of the costs that would be associated with repairing or replacing the damaged facility to its pre-disaster design, or to the actual costs of completing the Improved Project, whichever is less.</p> <p>Insurance: You are required to apply funds received from insurance on the original facility towards the Improved Project.</p>
406 Hazard Mitigation (HM)	<p>If your original project contains funding for 406 HM, those funds will not be transferred to the Alternate Project.</p>	<p>If your original facility was eligible for repair, FEMA may provide 406 HM funds which transfer to the Improved Project.</p> <p>Replacement and relocated facilities are not eligible for 406 HM funds.</p>
Funding Usage	<p>Funds for an Alternate Project may not be used for operating costs.</p> <p>If you decide to build a new facility or repair a different facility, you must make the original facility safe and secure, or sell or demolish the facility.</p> <p>Funds for an Alternate Project can be combined with a grant from another Federal agency.</p> <p>Alternate Project funding cannot be used to meet the FEMA PA non-Federal cost share.</p>	<p>Funds for an Improved Project must be used to restore the facility to pre-disaster function and, at a minimum, pre-disaster capacity.</p> <p>Funds for an Improved Project can be combined with a grant from another Federal agency.</p>
Approvals	<p>PRIOR to beginning any construction on either an Alternate or Improved project, you must have FEMA's Environmental and Historic Preservation (EHP) review completed.</p>	

ACRONYMS

A/I	Alternate/Improved
CFR	Code of Federal Regulations
EHP	Environmental and Historic Preservation
FEMA	Federal Emergency Management Agency
GOHSEP	Governor's Office of Homeland Security and Emergency Preparedness
HM	Hazard Mitigation
PA	Public Assistance
PNP	Private Nonprofit
PW	Project Worksheet
SAL	State Applicant Liaison
SCO	State Coordinating Officer

REFERENCES

44 CFR

http://www.ecfr.gov/cgi-bin/text-idx?SID=e1deb7aaa23bd920bbd362fe325adcf2&mc=true&tpl=/ecfrbrowse/Title44/44cfrv1_02.tpl#0

FEMA *Public Assistance Program and Policy Guide* (PAPPG) – FP 104-009-2 / April 2017
fema.gov/media-library/assets/documents/111781



**For more information or help with your A/I questions,
contact GOHSEP at 225-925-7500**

Alternate/Improved (A/I) project checklist

1
2
3

ITEMS IN THE PACKAGE SHOULD FOLLOW THE ORDER OF THE CHECKLIST.	
PROJECT TYPE	
<input type="checkbox"/> Alternate Project	<input type="checkbox"/> Improved Project
DISASTER	
<input type="checkbox"/>	DR # _____
PROJECT/CONSTRUCTION DATA	
<input type="checkbox"/>	Applicant Name _____
<input type="checkbox"/>	FIPS # _____
<input type="checkbox"/>	Proposed Project Address _____
<input type="checkbox"/>	Four (4) Corner Coordinates of the Proposed Project _____
<input type="checkbox"/>	Applicant Request Letter to GOHSEP
<input type="checkbox"/>	List of donor Project Worksheet (PW) Number(s) _____ _____
<input type="checkbox"/>	Vicinity map showing proposed location, disturbed areas, waterways and wetlands
<input type="checkbox"/>	Map or drawing showing existing footprint and proposed footprint
<input type="checkbox"/>	New Special Consideration Form (9 Questions) for A/I Project Request
<input type="checkbox"/>	New Scope of Work (SOW) for Proposed Project, including any available costs, plans, specifications, contracts, functional area square footage comparisons between damaged and proposed facilities, and additional information as requested by GOHSEP/FEMA
<input type="checkbox"/>	Explanation of all ground disturbing activities including maximum depth, if applicable (digging, excavation, structure removal, soil replacement, site work, access roads, staging areas)

4

SUPPORTING DOCUMENTATION	
<input type="checkbox"/>	Copies of all Federal and State environmental and regulatory permits and approvals and/or other relevant documentation (e.g., environmental site assessments or Phase I environmental baseline surveys or other environmental reports) (if applicable and available)*
<input type="checkbox"/>	Documentation of consultation with the State Historic Preservation Officer (SHPO) and/or other relevant State and local agencies by Subrecipient (Applicant), State or FEMA personnel (if applicable and available)*
<input type="checkbox"/>	Projected construction project schedule (timeline) from approval to completion (if applicable)*
<input type="checkbox"/>	Copies of Project Worksheets (PWs) and applicable photos (clear pictures or digital format)
<input type="checkbox"/>	Copies of insurance settlement documents (particularly Statements of Loss), including adjuster estimate of damages

*Information not required for equipment or contents projects

5

CONTACT (NAME/PHONE)	
<input type="checkbox"/>	State Applicant Liaison (SAL) _____
<input type="checkbox"/>	FEMA PA Coordinator (PAC) _____



VI. RESOURCES

VI. RESOURCES



PROCUREMENT **TOOLBOX**

PROCUREMENT CHECKLIST

This checklist addresses the *Uniform Administrative Requirements* (UAR) for FEMA grants.

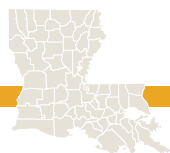
PROJECT TITLE:			
PROJECT NUMBER:			
PROJECT DESCRIPTION:			
Document Your FILE OR BE PREPARED to Demonstrate the Following:			
SOLICITATION		PRE-DECEMBER 26, 2014	POST-DECEMBER 26, 2014
<input type="checkbox"/>	Is the solicitation (<i>Request for Proposals</i> [RFP] or <i>Request for Qualifications</i> [RFQ], (advertisement) properly DETAILED in your file?	2 Code of Federal Regulations (CFR) 215.44(e); 44 CFR 13.36(c)(3)(i)(ii)	2 CFR 200.318(h)(i)
<input type="checkbox"/>	• Were prospective respondents allowed SUFFICIENT TIME to respond?	44 CFR 13.36(d)(2)(ii)(A)	-
<input type="checkbox"/>	• Does solicitation contain a clear and accurate description of the TECHNICAL REQUIREMENTS for the material, product or services and <i>scope of work</i> (sow)?	2 CFR 215.44(a)(3)(i); 44 CFR 13.36(c)(3)(i)	2 CFR 200.319(c)(1)
<input type="checkbox"/>	• Specifications may not contain features that unduly restrict competition .	2 CFR 215.43; 44 CFR 13.36(c)(3)(i)	2 CFR 200.319(c)(1)
<input type="checkbox"/>	» Are there unreasonable requirements or unnecessary experience or excessive bonding requirements?	44 CFR 13.36(c)(1)(i-ii)	2 CFR 200.319(a)(1)-(2)
<input type="checkbox"/>	» Are there any "brand name" products specified without also listing "or equivalent"?	44 CFR 13.36(c)(3)(i)	2 CFR 200.319(c)(1)
<input type="checkbox"/>	» Does the solicitation file evidence the following:		
<input type="checkbox"/>	▪ Positive efforts in hiring small-business, minority-owned business or women-owned business enterprises and labor surplus firms to the maximum extent practical?	2 CFR 215.44(b)(1); 44 CFR 13.36(e)	2 CFR 200.321
<input type="checkbox"/>	▪ If your Prime Contractor has decided to use a subcontractor, did they take the above affirmative steps?	-	2 CFR 200.321(b)(6)
<input type="checkbox"/>	Do you have a record OF RESPONDENTS that were rejected as not responsible or not responsive and the reasons for rejection included in your file?	2 CFR 215.44(d); 44 CFR 13.36(b)(8)(9)	2 CFR 200.318(i)
<input type="checkbox"/>	Are there an ADEQUATE NUMBER of responses documented in the file (two [2] or more for large purchases and three [3] for small purchases)? Keep records of proposals in your file.	2 CFR 215.43; 44 CFR 13.36(d)(2)(i)(B); 44 CFR 13.36(d)(3); 44 CFR 13.36(d)(3)(ii); <i>Disaster Assistance Policy</i> (DAP) 9580.212	2 CFR 200.320(c)(1)(ii); 2 CFR 200.320(d)(2)
<input type="checkbox"/>	Are copies of all proposals, including METHODOLOGY OF EVALUATION and selection process (e.g., bid summary, tabulation sheet, scoring sheet, cost analysis if needed [see COST ANALYSIS REQUIRED section] and recommendation), included in your file?	2 CFR 215.44; 44 CFR 13.36(d)(3)	2 CFR 200.320(d)
<input type="checkbox"/>	Are there any potential CONFLICTS OF INTEREST?	2 CFR 215.42; 44 CFR 13.36(b)(3)	2 CFR 200.318(c)(1)



PROCUREMENT TOOLBOX

WHAT IS THE METHOD OF PROCUREMENT?		PRE-DECEMBER 26, 2014	POST-DECEMBER 26, 2014
<input type="checkbox"/>	Procurement by micro-purchase . (<i>less than \$3,000</i>)	-	2 CFR 200.320(a)
<input type="checkbox"/>	Procurement by small purchase procedures . (<i>less than or equal to \$100,000 / \$150,000</i>)	2 CFR 215.44(2); 44 CFR 13.36(d)(1)	2 CFR 200.320(b)
<input type="checkbox"/>	Procurement by sealed bids (preferred method for construction contracts). Contract awarded to the lowest responsive and responsible bidder with a firm fixed price contract (lump sum or unit price).	44 CFR 13.36(d)(2)	2 CFR 200.320(c)
<input type="checkbox"/>	Procurement by competitive proposals .	44 CFR 13.36(d)(3)	2 CFR 200.320(d)
<input type="checkbox"/>	• If solicitation was for other than "Architectural and Engineering (A + E) professional services", was price included as a selection criteria?	44 CFR 13.36(d)(3)(v)	2 CFR 200.320(d)(4)
<input type="checkbox"/>	• If solicitation was for A + E services, is a cost estimate included in your file?	44 CFR 13.36(d)(3)(v)	2 CFR 200.323(b)
<input type="checkbox"/>	• Does the solicitation clearly outline the scoring criteria and associated weights used for selection?	2 CFR 215.44(a)(3)(ii); 44 CFR 13.36(d)(3)(i); 44 CFR 13.36(c)(3)(ii)	2 CFR 200.320(d)(1)
<input type="checkbox"/>	Procurement by noncompetitive proposals .	44 CFR 13.36(d)(4)	2 CFR 200.320(f)
<input type="checkbox"/>	• Is there a justification for the use of this method of procurement included in your file?	2 CFR 215.46(b); 44 CFR 13.36(d)(4)(i)-(iii)	2 CFR 200.318(i); 2 CFR 200.320(f)
<input type="checkbox"/>	• Are intergovernmental agreements and Federal surplus property (if applicable) included in your file?	44 CFR 13.36(b)(5)-(6)	-

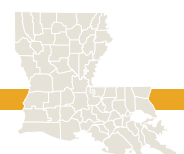
TYPES OF CONTRACTS FOR REIMBURSEMENT		PRE-DECEMBER 26, 2014	POST-DECEMBER 26, 2014
<input type="checkbox"/>	Lump Sum.	2 CFR 215.44(c); <i>Public Assistance Guide - FEMA 322 / June 2007, pages 52-53</i>	2 CFR 200.320(c)
<input type="checkbox"/>	Unit Price.	2 CFR 215.44(c); <i>Public Assistance Guide - FEMA 322 / June 2007, pages 52-53</i>	2 CFR 200.320(c)
<input type="checkbox"/>	Cost Plus a Fixed Fee.	2 CFR 215.44(c); <i>Public Assistance Guide - FEMA 322 / June 2007, pages 52-53</i>	2 CFR 200.320 (c)+(d)
<input type="checkbox"/>	Time + Materials (T + M) Contracts: Does it meet all the requirements (see citation)?	44 CFR 13.36(b)(10); <i>Public Assistance Policy Digest - FEMA 321 / January 2008, page 23</i>	2 CFR 200.318(j)
<input type="checkbox"/>	Intergovernmental Agreements	44 CFR 13.36 (b)(5)	2 CFR 200.318(e)



PROHIBITED CONTRACTS		PRE-DECEMBER 26, 2014	POST-DECEMBER 26, 2014
<input checked="" type="checkbox"/>	Piggyback (NOT RECOMMENDED, MAY BE INELIGIBLE).	DOLR, Version 2.0, page 5-128; <i>Public Assistance Policy Digest - FEMA 322 / January 2007</i> , page 52-53	DOLR, Version 2.0, page 5-128; <i>Public Assistance Policy Digest - FEMA 322 / January 2007</i> , page 52-53
<input checked="" type="checkbox"/>	Cost-Plus-a-Percentage-of-Cost (MUST NOT BE USED).	2 CFR 215.44(c); 44 CFR 13.36(f)(4)	2 CFR 200.323(d)
<input checked="" type="checkbox"/>	Percentage-of-Construction-Cost (MUST NOT BE USED).	2 CFR 215.44 (c); 44 CFR 13.36(f)(4)	2 CFR 200.323(d)
<input checked="" type="checkbox"/>	Cost Plus (MUST NOT BE USED).	-	LA RS Title 38:2221

BONDING REQUIREMENTS		PRE-DECEMBER 26, 2014	POST-DECEMBER 26, 2014
<input type="checkbox"/>	Is this a construction or facilities improvement Contract that exceeds small purchase threshold ? If so:	2 CFR 215.48; 44 CFR 13.36(h)	2 CFR 200.325
<input type="checkbox"/>	• Did the bid response include a five percent (5%) bid bond ?	2 CFR 215.48(c)(1); 44 CFR 13.36(h)(1); LA RS 38:2218	2 CFR 200.325(a); LA RS 38:2219
<input type="checkbox"/>	• Did the winning Contractor execute a performance bond for one hundred percent (100%) of the Contract?	2 CFR 215.48(c)(2); 44 CFR 13.36(h)(2); LA RS 38:2219	2 CFR 200.325(b); LA RS 38:2214
<input type="checkbox"/>	• Did the winning Contractor execute a payment bond for one hundred percent (100%) of the Contract?	2 CFR 215.48(c)(3); 44 CFR 13.36(h)(3); LA RS 38:2219	2 CFR 200.325(c); LA RS 38:2219

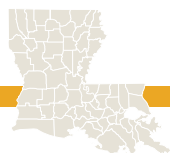
REQUIRED CONTRACT PROVISIONS		PRE-DECEMBER 26, 2014	POST-DECEMBER 26, 2014
<input type="checkbox"/>	If bonding is required, have copies of the bond(s) been provided with the Contract?	2 CFR 215.48(c); 44 CFR 13.36(h)	2 CFR 200.325
<input type="checkbox"/>	Does the Contract (<i>greater than</i> simplified acquisition threshold) contain a provision for administrative and legal remedies for violation or breach of contract?	2 CFR 215.48(a); 44 CFR 13.36(i)(1)	2 CFR 200 Appendix II(A)
<input type="checkbox"/>	Does the Contract (<i>greater than</i> \$10,000) contain a provision for termination of Contract for cause and for convenience?	2 CFR 215.48(b); 44 CFR 13.36(i)(2)	2 CFR 200 Appendix II(B)
<input type="checkbox"/>	Does the Contract contain a provision to COMPLY with <i>Executive Order (EO) 11246 and 11375, Equal Employment Opportunity (EEO)</i> ?	2 CFR 215 Appendix A(1); 44 CFR 13.36(i)(3)	2 CFR 200 Appendix II(C)
<input type="checkbox"/>	Does the Contract (applies to all construction or repair Contracts <i>greater than</i> \$10,000) contain a provision to comply with the <i>Copeland Anti-Kickback Act</i> ?	2 CFR 215 Appendix A(2); 44 CFR 13.36(i)(4)	2 CFR 200 Appendix II(D)
<input type="checkbox"/>	Is the Contract required to comply with Sections 103 and 107 of the <i>Contract Work Hours and Safety Standards Act</i> ?	2 CFR 215 Appendix A(4); 44 CFR 13.36(i)(6)	2 CFR 200 Appendix II(E)
<input type="checkbox"/>	Does the Contract (applies to Contracts, subcontracts and grants <i>greater than</i> small purchase threshold) contain a provision to comply with Section 306 of the <i>Clean Air Act</i> and Section 508 of the <i>Clean Water Act</i> ?	2 CFR 215 Appendix A(6); 44 CFR 13.36(i)(12)	2 CFR 200 Appendix II(G)
<input type="checkbox"/>	Does the Contract certify that the Contractor has complied with the <i>Byrd Anti-Lobbying Amendment</i> ?	2 CFR 215 Appendix A(7)	2 CFR 200 Appendix II(I)
<input type="checkbox"/>	Does the Contract contain a provision stating record retention and access requirements to all records?	2 CFR 215.53; 44 CFR 13.36(i)(10)-(11)	2 CFR 200.333; 200.336



PROCUREMENT TOOLBOX

<input type="checkbox"/>	Does the Contract contain a provision that the Contractor agrees to comply with mandatory energy efficiency standards and policies contained within the <i>State Energy Conservation Plan</i> ?	2 CFR 215.44(a)(3)(vi); 44 CFR 13.36(i)(13)	
<input type="checkbox"/>	Does the Contract include a declaration by the Contractor stating that it, its principles or affiliates (subcontractors) are currently not disqualified as a result of debarment or suspension?	2 CFR 215 Appendix A(8); 44 CFR 13.35	2 CFR 200 Appendix II(H)
<input type="checkbox"/>	Does the Contract include a provision stating the Subrecipient (Applicant) has a responsibility to include required reports (i.e. program performance, financial and progress reports)?	2 CFR 215.51-52; 44 CFR 13.36(i)(7)	2 CFR 200.327-.329
<input type="checkbox"/>	Does the Contract include a provision stating the Subrecipient (Applicant), if a local or State government entity, has a responsibility to use recycled/recovered materials?	2 CFR 215.16; 44 CFR 13.36(i)(12)	2 CFR 200.322
<input checked="" type="checkbox"/>	Compliance with the <i>Davis-Bacon Act</i> : There is NO REQUIREMENT for such compliance with the FEMA Public Assistance (PA) or Hazard Mitigation (HM) programs.	2 CFR 215 Appenix A (3); 44 CFR 13.36 (i)(5); <i>Public Assistance Guide - FEMA 322 / June 2007</i> , page 44	2 CFR 200 Appendix II(D); FEMA 322 / June 2007 Page 44

COST ANALYSIS REQUIRED		Pre-December 26, 2014	POST-December 26, 2014
<input type="checkbox"/>	Is the Contract a noncompetitive proposal?	2 CFR 215.45; 44 CFR 13.36(d)(4)(ii); 44 CFR 13.36(f)	2 CFR 200.323(a)
<input type="checkbox"/>	Were additional services performed by the A/E firm?	2 CFR 215.45; 44 CFR 13.36(f)	2 CFR 200.323(a)
<input type="checkbox"/>	Did the Contract <i>Statement of Work</i> change? Are there <i>Change Orders</i> ?	2 CFR 215.45; 44 CFR 13.36(f)	2 CFR 200.323(a)





REPORT FRAUD, SCAMS, and ABUSE

Department of Homeland Security Office of the Inspector

General:

<https://oig.hhs.gov/fraud/report-fraud/>

1-800-HHS-TIPS (1-800-447-8477)

Louisiana Office of the Inspector General:

1-866-801-2549

<http://oig.louisiana.gov/index.cfm?md=complaint&tmp=complaintform>

Louisiana Legislative Auditor:

<https://www.la.la.gov/hotline/>

1-844-50-FRAUD

Attorney General Office: Consumer Protection Division

<https://www.ag.state.la.us/ConsumerDisputes>

1-800-351-4889

Louisiana State Licensing Board for Contractors

1-800-256-1392

<https://www.lslbc.louisiana.gov/consumers/complaints/>

Or file online complaints@lslbc.louisiana.gov

National Center for Disaster Fraud

<https://www.justice.gov/criminal-oilspill/national-center-disaster-fraud-ncdf>

1-866-720-5721

And your local law enforcement

THIS PAGE INTENTIONALLY LEFT BLANK.

PROCUREMENT + CONTRACTING – MORE RESOURCES

There are many procurement resources available to Subrecipients (Applicants). We have listed direct links to Best Practice job aids, materials and policies below:

Job Aids + Materials

GOHSEP Procurement Videos

gohsep.la.gov/RESOURCES/DATraining

GOHSEP Job Aids

gohsep.la.gov/RESOURCES/OVERVIEW/PUBLICATIONS

FEMA Procurement Disaster Assistance Team (PDAT) Materials

fema.gov/procurement-disaster-assistance-team

Louisiana Legislative Auditor State Procurement Guidance (Public Bid Law, Public Assistance Grant Program and Louisiana Procurement Code)

lla.la.gov/legal-faqs/all-faqs/

FEMA Policies

Public Assistance (PA)

fema.gov/public-assistance-policy-and-guidance

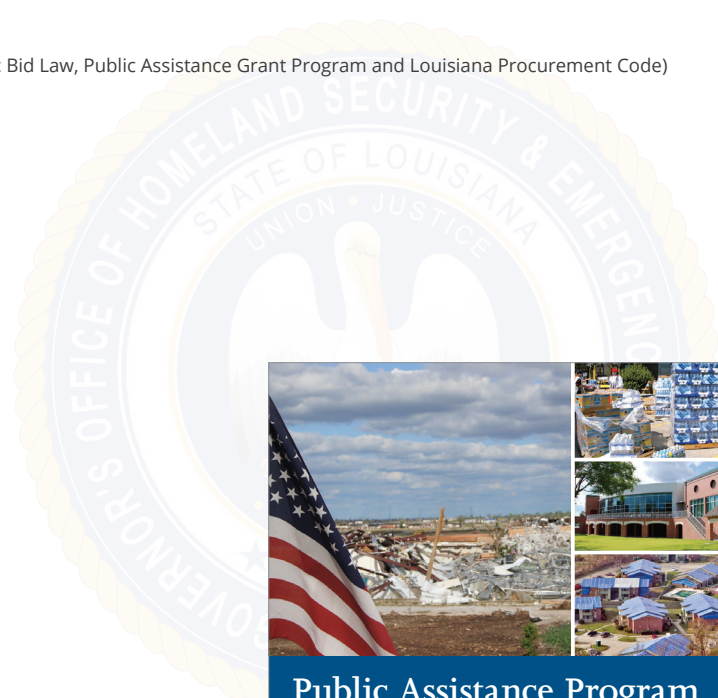
Hazard Mitigation Assistance (HMA)

fema.gov/hazard-mitigation-assistance-grants-policy

Contractor Search Engines

lsbc.louisiana.gov/contractor-search/

sam.gov



Public Assistance Program and Policy Guide

FP 104-009-2 / April 2017



fema.gov/media-library/assets/documents/111781



THIS PAGE INTENTIONALLY LEFT BLANK.

FEMA PA GUIDES LISTED BY DISASTER*

The policy guide in effect at the time of the disaster is the FEMA policy guide that applies to the grant dollars for the entirety of the grant, regardless of whether FEMA publishes a new guide. Make sure you are looking at the correct policy when working your particular grant.

DISASTER NAME	DISASTER NUMBER	DATE DECLARED
PUBLIC ASSISTANCE (PA) PROGRAM + POLICY GUIDE (APRIL 1, 2017) (Effective for ALL disasters declared on or after April 1, 2017)		
<ul style="list-style-type: none"> Tropical Storm Harvey Tropical Storm Nate 	<p>DR-4345</p> <p>EM-3392</p>	<p>10/16/17</p> <p>10/6/17</p>
PA PROGRAM + POLICY GUIDE (JANUARY 1, 2016) (Effective for all disasters declared between January 1, 2016 and March 31, 2017)		
<ul style="list-style-type: none"> Severe Storms + Tornadoes, + Straight-line Winds Severe Storms + Flooding Severe Storms + Flooding Severe Storms + Flooding 	<p>DR-4300</p> <p>DR-4277</p> <p>DR-4263</p> <p>EM-3376</p>	<p>2/11/17</p> <p>8/14/16</p> <p>3/13/16</p> <p>2/5/16</p>
FEMA PA POLICY GUIDE – FEMA 322 + PUBLIC ASSISTANCE 9500 SERIES (Effective for all disasters declared between January 1, 1998 and December 31, 2015)		
<ul style="list-style-type: none"> Severe Storms + Flooding Severe Storms + Flooding Hurricane Isaac Tropical Storm Lee Mississippi River Flooding Mississippi River Flooding Severe Storms + Tornadoes + Flooding Hurricane Ike Hurricane Gustav Severe Storms + Flooding Hurricane Rita Hurricane Katrina 	<p>DR-4228</p> <p>DR-4102</p> <p>DR-4080</p> <p>DR-4041</p> <p>DR-4015</p> <p>EM-3322</p> <p>DR-1863</p> <p>DR-1792</p> <p>DR-1786</p> <p>DR-1668</p> <p>DR-1607</p> <p>DR-1603</p>	<p>7/13/15</p> <p>2/22/13</p> <p>8/29/12</p> <p>10/28/11</p> <p>8/18/11</p> <p>5/6/11</p> <p>12/10/09</p> <p>9/13/08</p> <p>9/2/08</p> <p>11/2/06</p> <p>9/24/05</p> <p>8/29/05</p>

*Open disasters as of November 2017.

[SOURCES: louisiana.com/site/opengrants.cfm + fema.gov/disasters]



THIS PAGE INTENTIONALLY LEFT BLANK.

APPENDIX

APPENDIX



PROCUREMENT **TOOLBOX**



Checklist for Reviewing Procurements Under Grants by Non-Federal Entities (States, local and tribal governments, Institutions of Higher Education, Hospitals, and private non-profit organizations) – 2 CFR pt. 200

This checklist was created to assist FEMA recipients and subrecipients in complying with the federal requirements that procurements must meet in order for FEMA to reimburse eligible expenses. Importantly, this checklist is intended to provide general guidance only and does not provide a detailed explanation of the Federal procurement requirements – it is not intended to serve as legal advice and FEMA makes no guarantee that adherence to this checklist will result in full reimbursement of eligible expenses. To understand the requirements fully, the user should review the provisions of [2 C.F.R. § 200.317 – 326](#), which is the source of these requirements. FEMA’s in – depth guidance on these provisions can be found in its *Supplement to the Public Assistance Field Manual*. In addition, the user may review FEMA’s Field Manual, [Public Assistance Grantee and Subgrantee Procurement Requirements](#), which is available on the internet by searching for “FEMA Procurement Field Manual.” While the Field Manual was drafted to specifically address the Federal procurement standards that were in effect prior to 26 December 2014 ([44 C.F.R. § 13.36\(a\)-\(i\) – States, Local and Tribal Governments](#); and [2 C.F.R. § 215.40-48 – Institutions of Higher Education, Hospitals, and other Non-Profit Organizations](#)), many of the concepts are similar or identical in substance, and thus remains an excellent tool for navigating the current Federal procurement standards. If any questions arise, please contact your servicing attorney or legal counsel for assistance.

2 C.F.R. § 200.317 – 326 became effective on December 26, 2014. For disasters (and their associated projects) declared prior to that date, the relevant procurement standards can continue to be found in 44 C.F.R. § 13.36(a)-(i) (States, local and tribal governments) and 2 C.F.R. § 215.40-48 (Institutions of Higher Education, Hospitals, and Private Non-Profits).¹ As indicated above, while many of the concepts are similar or identical, there are some substantive differences between the old and the new standards. Accordingly, this checklist should not be used for procurements associated

¹ This includes projects associated with declarations issued prior to 26 December 2014, regardless of project start date. For example, if a disaster was declared on 1 November 2014, but contracting for a project under that declaration did not begin until 1 April 2015, then a State (or state agency/instrumentality) would still utilize the old procurement standards found at 44 C.F.R. § 13.36(a); local and tribal governments would follow § 13.36(b)-(i); and Institutions of Higher Education, Hospitals, and Private Non-Profits would use 2 C.F.R. §§ 215.40-48.

with declarations issued prior to 26 December 2014. Instead, see procurement standards Checklists 13.36 and 215.²

Instructions: Each standard below is followed by a block for “Yes”, “No”, or in some cases, “Not applicable”. **Red font** is used to indicate the response which, if checked, indicates that the contract does not comply with federal requirements.

The term “non-Federal entity” (NFE) below refers to the entity that is conducting the procurement action (i.e., the state, local, or tribal government or private-non-profit entity).

1. Does the procurement comply with the State’s own procurement laws, rules, and procedures? §200.317 **Yes** **No**
2. Does the procurement comply with the requirement to make maximum use of recovered/recycled materials? § 200.317, § 200.322. **Yes** **No** **N/A – work does not involve the use of materials (e.g., debris removal or other services)**
3. **Does the contract include the following clauses?**³
 - a. *If the contract amount exceeds \$150,000*⁴, 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
 - b. *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**
 - c. *If the contract is for construction*, does it include the required **Equal Employment Opportunity clause?**⁵ **Yes** **No** **N/A**
 - d. *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**⁶ addressing prevailing wage rates? [Note that Public

² 2 C.F.R. §200.110 provides prospective applicants with the option of exercising a “grace period,” which allows the prospective applicant to continue to use the old procurement standards at 13.36 or 215 for an additional two (2) fiscal years beginning on the first fiscal year after 26 December 2014. The fiscal year is based upon the prospective applicant’s own fiscal year. In order to utilize this exception, the prospective applicant is required to affirmatively elect its use through the documentation of this decision in its contract records.

³ See [Appendix II of 2 CFR part 200](#). See also, PDAT Field Manual, section IV.H for a detailed discussion of these clauses. Sample clauses and templates can be found in the [Required Contract Clauses 2 CFR 200.326 and 2 CFR Part 200 Appendix II](#).

⁴ \$150,000 is the current dollar threshold for the simplified acquisition threshold, as authorized by 41 U.S.C. § 1908.

⁵ The EEO clause can be found at [41 C.F.R. § 60-1.4\(b\)](#).

⁶ The clause may read as follows:

Compliance with the Copeland “Anti-Kickback” Act

Assistance and Hazard Mitigation Grant Program contracts do NOT require these clauses.] Yes No N/A

- e. *If the contract amount exceeds \$100,000 and involves the employment of mechanics or laborers, does the contract include a **Contract Work Hours and Safety Standards clause**?⁷* Yes No N/A
- f. Rights to Inventions Made Under a Contract or Agreement.⁸ N/A
- g. *If the contract or subgrant amount exceeds \$150,000, does the contract include clauses addressing the **Clean Air Act and the Federal Water Pollution Control Act**?⁹* Yes No N/A
- h. *Does the contract include a **Suspension and Debarment clause**?¹⁰* Yes No¹¹
- i. *Does the contract include an **Anti-Lobbying clause**?¹²* Yes No

(1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

⁷ Must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation.

⁸ As FEMA does not award grants or subgrants associated with research and development projects, this contract clause is inapplicable.

⁹ The clause may read as follows:

Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

¹⁰ See, PDAT Manual, pps. 99-100 for sample text.

¹¹ A prospective contractor that is listed on the government-wide Excluded Parties List System in the System for Award Management (www.SAM.gov) as suspended or debarred, **CANNOT** be awarded a contract funded with Federal assistance.

¹² See PDAT Manual, pgs. 127-129. The clause may read substantially as follows:

- i. For contracts exceeding \$100,000, have bidders submitted an Anti-Lobbying Certification? **Yes** **No** **N/A**
- j. *Does the contract include a clause requiring the contractor to maximize use of recovered/recycled materials?* **Yes** **No** **N/A – work does not involve the use of materials (e.g., debris removal or other services)**

If a State agency is awarding the contract, stop here. If the contract is being awarded by a local or tribal government or private nonprofit entity, continue with the checklist.



4. General requirements¹³

- a. *Does the procurement comply with the NFE's*¹⁴ *own procurement laws, rules, and procedures?* §200.318(a) **Yes** **No**
- b. *Does 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**
- c. *Does the NFE have - §200.318(c)(1):*
 - i. *Written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts?* **Yes** **No**
 - ii. *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?*¹⁵ **Yes** **No**

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

¹³ [See, 2 C.F.R. § 200.318](#)

¹⁴ Non-Federal Entity (NFE)

¹⁵ Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

- iii. Any employee, officer, or agent that has solicited and/or accepted gratuities, favors, or anything of monetary value from contractors or parties to subcontracts?¹⁶ Yes No
- iv. Written standards of conduct that provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity. Yes No
- d. *If the non-Federal entity 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)¹⁷ Yes No N/A
- e. 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
- f. *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
- g. *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
- h. *Is the contract a time-and-materials contract?*¹⁸ § 200.318(j) Yes No

¹⁶ However, NFEs may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.

¹⁷ Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the NFE is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

¹⁸ Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of: (i) The actual cost of materials; and (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Because this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, a time-and-materials contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls. **[Note that FEMA previously reimbursed costs under a time-and-materials contract for only the first 70 hours of work performed. See, FEMA PA Guide (2007 ed.), pg. 53. However, FEMA's new Public Assistance Guide, published on 1 January 2016, has eliminated this requirement and replaced it with a reasonable period of time standard. Please engage your FEMA Public Assistance POC for additional information]**

- i. If so, has the NFE documented why no other contract is suitable?
 Yes No
- ii. Does the contract include a ceiling price that the contractor exceeds at its own risk? Yes No
- i. *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
- j. *Encouraged*, but not required standards at § 200.318(e), (f), and (g).¹⁹

5. **Competition:**

- a. 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*²⁰ § 200.319(a):
 - i. Placing unreasonable requirements on firms in order for them to qualify to do business? Yes No
 - ii. Requiring unnecessary experience and excessive bonding? Yes No
 - iii. Noncompetitive pricing practices between firms or between affiliated companies?²¹ Yes No
 - iv. Noncompetitive contracts to consultants that are on retainer contracts?²² Yes No
 - v. Organizational conflicts of interest?²³ Yes No

¹⁹ §200.318(e) – to foster greater economy and efficiency, the NFE is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services (this section provides the authority for state schedule and mutual aid agreements, for example); §200.318(f) – NFEs are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs; and §200.318(g) – NFEs are encouraged to use value engineering clauses in contracts for construction projects (value engineering is a systematic and creative analysis of each contract item or task to encourage the contractor to develop more cost effective means to produce or procure requirements.).

²⁰ This list is non-exclusive and only serves as an example of some of the types of situations that are considered to be restrictive of competition.

²¹ For example, bid suppression or bid rigging.

²² For example, out-of-scope disaster work added to the consultant's work on retainer.

²³ See, fn 18.

- vi. 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**
- vii. Any arbitrary action in the procurement process? **Yes** **No**
- b. 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? (If so, that contractor must be excluded from competing for such procurements) § 200.319(a) **Yes** **No**
 N/A
- c. *Does the contract include* a state or local geographic preference for local contractors?²⁴ § 200.319(b) **Yes** **No**
- d. Do the NFE’s written procurement procedures ensure that all solicitations comply with the following: § 200.319(c)
 - i. 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**
 - ii. 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**
- e. If the NFE is using a prequalified list of persons, firms, or products which are used in acquiring goods and services: § 200.319(d) N/A
 - i. Is the list current? **Yes** **No**
 - ii. Does the list include enough qualified sources to ensure maximum open and free competition? **Yes** **No**
 - iii. Were any potential bidders precluded from qualifying during the solicitation period?²⁵ **Yes** **No**

6. **Method of Procurement**

²⁴ Geographic preferences are generally not allowed under FEMA grants. The only exception is that when contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

²⁵ Pre-qualified lists are **NOT** contracts. Accordingly, once the decision to solicit and award a contract is made, the NFE may issue the solicitation directly to the contractors on the pre-qualified list, but must also allow any interested contractor (not on the pre-qualified list) to submit its qualifications, and if deemed qualified, allow that contractor to submit a bid or proposal in response to the solicitation. Contract award will then be made to one of the contractors submitting a bid or proposal, IAW the evaluation/award criteria identified in the solicitation.

- a. Is the NFE using one of the following acceptable methods of procurement?
§ 200.320
- i. **Micro-purchase** (i.e., purchases below \$3,500, see, §200.67 Micro-purchases). § 200.320(a) **Yes** **No**
1. [Note: Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.]
 2. To the extent practicable, is the NFE distributing micro-purchases equitably among qualified suppliers? **Yes** **No**
 N/A – not practicable
- ii. **Small purchase procedures** § 200.320(b) **Yes** **No**
1. [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., \$150,000), or (2) whatever amount State or local procurement rules set as the small purchase threshold – *if more restrictive than the federal threshold.*]
 2. Did the NFE obtain price or rate quotations from an adequate number of qualified sources?²⁶ **Yes** **No**
- iii. **Sealed bids** § 200.320(c)²⁷ **Yes** **No**
1. [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. Sealed bidding is the preferred method for procuring construction]
 2. Are *all* of the following conditions to use sealed bidding present?
§ 200.320(c)(1) **Yes** **No**
 - a. A complete, adequate, and realistic specification or purchase description is available **Yes** **No**

²⁶ FEMA has determined that for simplified purchase procedures, an adequate number of qualified sources is considered to be three (3). See, [FEMA Recovery Fact Sheet 9580.212 – Public Assistance Grant Contracting Frequently Asked Questions \(FAQ\)](#), FAC No. 3 and the PDAT Field Manual.

²⁷ Sealed bidding is generally used where price is the most important evaluation factor for the NFE. Accordingly, contract award under the sealed bidding method of procurement is made to the bidder submitting *the lowest priced, responsive and responsible bid*. “Responsive” refers to whether the bidder meets all the material requirements of the Invitation for Bid (IFB), while “Responsibility” is described at § 200.318(h).

- b. Two or more responsible bidders are willing and able to compete effectively for the business **Yes** **No**
 - c. 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**
3. *If sealed bids are used*, the following requirements apply: § 200.320(c)(2)
- a. Did the NFE solicit bids from an adequate number²⁸ of known suppliers, providing them sufficient response time prior to the date set for opening the bids? **Yes** **No**
 - b. If the NFE is a local or tribal government, was the invitation for bids publically advertised? **Yes** **No** **N/A**
 - c. 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**
 - d. Did the NFE open all bids at the time and place prescribed in the invitation for bids? **Yes** **No**
 - e. For local and tribal governments, were the bids opened publicly? **Yes** **No** **N/A**
 - f. Did the NFE award a firm fixed price contract award in writing to the lowest responsive and responsible bidder? **Yes** **No**
 - g. If any bids were rejected, was there a sound documented reason supporting the rejection? **Yes** **No** **N/A**
- iv. **Procurement by competitive proposals**²⁹ § 200.320(d) **Yes** **No**
- 1. [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

²⁸ Unlike, for simplified purchase procedures, FEMA has not defined an “adequate number” of known sources under the sealed bidding method. While left undefined, a NFE is likely to meet this requirement through the application of “full and open competition.” (See fn. 27)

²⁹ Whereas contract awards under sealed bidding are focused on selecting the lowest responsive responsible bid, NFEs under the competitive procurement method may prioritize non-price factors, such as technical capability or past performance, over price and therefore award a contract to a contractor whose proposal is more expensive but reflects a better overall value to the NFE (e.g. “best value” contracting).

awarded. It is generally used when conditions are not appropriate for the use of sealed bids.]

2. Did the NFE publicize the Requests For Proposals (RFPs) and identify all evaluation factors and their relative importance? **Yes** **No**
 3. Did the NFE solicit proposals from an adequate number of qualified sources?³⁰ **Yes** **No**
 4. Did the NFE have a written method for conducting technical evaluations of the proposals received and for selecting recipients? **Yes** **No**
 5. 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**
 6. [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.]**
- v. **Noncompetitive proposals** § 200.320(f)³¹ **Yes** **No**
1. [Note: Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one (or an improperly limited number of) source(s)]
 2. Do one or more of the following circumstances apply? **Yes** **No**
 - a. The item is available only from a single source **Yes** **No**

³⁰ Unlike, for simplified purchase procedures, FEMA has not defined an “adequate number” of qualified sources under the competitive procurement method. While left undefined, a NFE is likely to meet this requirement through the application of “full and open competition.”

³¹ § 200.320(e) is reserved.

- b. The public exigency or emergency³² for the requirement will not permit a delay resulting from competitive solicitation **Yes** **No**
- c. 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**
- d. After solicitation of a number of sources, competition is determined inadequate.³³ **Yes** **No**

7. **Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms**

- a. Has the NFE taken the following affirmative steps³⁴ to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible?³⁵ § 200.321 **Yes** **No** **N/A (document)**
 - i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists? **Yes** **No** **N/A (document)**
 - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources? **Yes** **No** **N/A – no potential sources (document)**
 - iii. 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?³⁶ **Yes** **No** **N/A – not economically feasible (document)**

³² For an explanation of what "emergency" and exigency" mean, see PDAT Field Manual, pg. 68.

³³ Before utilizing this exception, Applicants should review their solicitation and the publicizing of their solicitation to ensure that it was not inadvertently drafted in a manner to reduce or eliminate competition, which resulted in the receipt of one or no proposals. If this is found to be the case, the Applicant should revise the solicitation and re-publicize the solicitation in order to resolve the competitive concerns.

³⁴ The following affirmative steps are non-exclusive; while these steps must be taken, additional steps, as determined by the NFE, local, state, or tribal government regulations or procedures, may also be taken.

³⁵ Collectively referred to as "socioeconomic contractors" or "socioeconomic contracting," this requirement does not impose an obligation to set aside either the solicitation or award of a contract to these types of firms; this requirement only imposes an obligation to carry out and document the six identified affirmative steps. Failure to do so has been frequently identified as a justification to de-obligate funding by the Department of Homeland Security (DHS), Office of Inspector General (OIG).

³⁶ This is not the same as breaking a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds to utilize their streamlined acquisition procedures (e.g. "project splitting.")

- iv. Establishing delivery schedules, *where the requirement permits*, which encourage participation by small and minority businesses, and women's business enterprises? **Yes** **No** **N/A – the requirement does not permit (document)**
- v. 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** **N/A – not appropriate (document)**
- vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above? **Yes** **No** **N/A – no subcontracts will be let (document)**

8. **Contract cost and price**³⁷

- a. *If the contract amount (including contract modifications) exceeds \$150,000, did the NFE perform a cost or price analysis?* § 200.323(a) **Yes** **No** **N/A**
- b. 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** **N/A**
- c. Is the contract a “cost plus a percentage of cost” or “percentage of construction cost” contract?³⁸ **[Note: This form of contract is prohibited under the Federal procurement standards and is ineligible for FEMA reimbursement]**
 Yes **No**

9. **Bonding requirements for construction or facility improvement contracts exceeding \$150,000**

- a. **[Note: For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (i.e, \$150,000), the Federal awarding agency or pass-through entity may accept the bonding policy and**

³⁷ See, [Pricing Guide for Recipients and Subrecipients Under the Uniform Rules](#) for guidance on cost or price analysis.

³⁸ This type of contract is separate and distinct from cost plus fixed fee, cost plus incentive fee, and cost plus award fee type contracts, which are permissible and used to incentivize contractors to perform to a higher standard of quality, lower cost, or faster performance. Cost plus percentage of cost contracts on the other hand provide none of these incentives; instead, there is a reverse incentive for the contractor to increase its costs as the higher its costs go, the more profit it earns, as its potential earnings are uncapped. The following characteristics are suggestive of a prohibited cost plus percentage of cost contract: (1) payment is on a predetermined percentage rate; (2) the predetermined percentage rate is applied to actual performance costs; (3) the contractor's entitlement is uncertain at the time of contracting; and (4) the contractor's entitlement increases commensurately with increased performance costs.

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.]

- b. If such a determination (see above) has not been made, does the procurement include the following? **Yes** **No** **N/A**
- i. A bid guarantee from each bidder equivalent to five percent of the bid price? **Yes** **No** **N/A**
1. 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.
- ii. A performance bond on the part of the contractor for 100 percent of the contract price? **Yes** **No** **N/A**
1. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- iii. A payment bond on the part of the contractor for 100 percent of the contract price. **Yes** **No** **N/A**
1. 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.

END OF CHECKLIST³⁹

³⁹ All FEMA PDAT Reference Materials can be found at the following website: www.fema.gov/procurement-disaster-assistance-team

THIS PAGE INTENTIONALLY LEFT BLANK.

SEP 10 2017



FEMA

MEMORANDUM FOR: Kevin L. Hannes
Federal Coordinating Officer
FEMA-4332-DR-TX

Michael Byrne
Federal Disaster Recovery Coordinator
FEMA-4332-DR-TX

THROUGH: George A. Robinson
Regional Administrator
FEMA Region VI

FROM: Alex Amparo
Assistant Administrator
Recovery Directorate

SUBJECT: Exigent and Emergency Conditions for FEMA-4332-DR-TX

This memorandum is in response to the State of Texas' request for FEMA to concur that exigent and emergency circumstances exist and allow both state and local governments in declared counties to procure contracts for goods and services that ensure life, safety, and the provision of basic needs for Texans coping with this catastrophic disaster.

The Federal procurement standards allow procurement by noncompetitive proposals (i.e., sole sourcing) under certain circumstances, including when a local government determines that the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (2 C.F.R. § 200.320(f)(2)). FEMA defines an emergency as an unexpected and unusually dangerous situation that calls for immediate action or an urgent need for assistance or relief. Emergencies typically involve a threat to life, public health or safety, improved property, and/or some other form of dangerous situation. Use of the emergency exception is only permissible during the actual emergency circumstances and a local government must maintain documentation supporting the existence of the emergency circumstances.

Based upon the information presented by the State of Texas and the wide scale destruction in the declared counties, I currently believe exigent and emergency circumstances exist and concur, for debris removal and emergency protective measures, with the use of non-competitively procured contracts through October 10, 2017, in all declared counties. During this period, local governments, eligible private non-profits, and tribal governments in the declared counties may proceed with new and existing non-competitively procured contracts in order to save lives, public health, safety, or improved property.

In addition, applicants need to be aware that during the 30 day period, they must take additional steps, which may be found in the attached *Frequently Asked Questions: Sole Sourcing In Exigency or Emergency Circumstances*. These steps are still required under emergency circumstances and are chiefly designed to ensure costs remain reasonable.

Please also be advised that where applicants use a time and materials contract to accomplish the work, they must: document that no other contracting mechanism was suitable, include a ceiling price within the contract which the contractor exceeds at its own risk, and assert a high degree of oversight to reasonably ensure that the contractor is using efficient methods and effective costs controls.

Because the exception is only available for the duration of the exigent and emergency circumstances, applicants must start the process of competitively procuring goods and services for long term recovery so that they can transition to the new competitively procured contracts when these circumstances cease to exist.

If you have any questions, please contact Chris Logan, Public Assistance Division Director, at (202) 320-2721.

cc: Jeffrey Byard, Associate Administrator, Office of Response and Recovery
Bobby McCane, Chief, Component Procurement Officer
Chris Logan, Director, Public Assistance Division
Christopher B. Smith, Director, Individual Assistance Division
Traci Brasher, Recovery Division Director, Region VI
William Boone, Public Assistance Branch Chief, Region VI

Attachment

(1) *Frequently Asked Questions: Sole Sourcing in Exigency or Emergency Circumstances*

FREQUENTLY ASKED QUESTIONS: SOLE SOURCING IN EXIGENCY OR EMERGENCY CIRCUMSTANCES

What is the exigency or emergency exception?

The Federal procurement standards allow procurement by noncompetitive proposals (commonly known as sole sourcing) under certain circumstances, including when a local or tribal government or private non-profit (non-State applicant) determines that the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. FEMA defines an “*emergency*” as an unexpected and unusually dangerous situation that calls for immediate action or an urgent need for assistance or relief. FEMA defines an “*exigency*” as something that is necessary in a particular situation that requires or demands immediate aid or action. An emergency will typically involve a threat to life, public health or safety, improved property, and/or some other form of dangerous situation, whereas an exigency is not necessarily so limited.

When can I use the exigency or emergency exception?

Use of the public exigency or emergency exception *is only permissible during the actual exigent or emergency circumstances*. Once the exigent or emergency circumstances cease to exist, the local or tribal government or private non-profit is expected to transition to a more appropriate method of contracting using full and open competition.

How should I document this in my contract file?

In order to justify using the emergency or exigency exception, the non-State applicant must include a justification in its contract file. Attachment A provides a template for justification for a noncompetitive procurement. For a debris removal requirement, the non-State applicant could alternatively obtain and provide documentation from its public health authority explaining any public health threat posed by debris from the disaster, the location of such threat, and include the anticipated duration of such threat.

Do any of the Federal procurement standards still apply if I am sole sourcing my contract under emergency or exigent circumstances?

Yes, for non-State applicants (local or tribal governments or private non-profits), you still must comply with the following requirements:

1. Your contract must include the required contract clauses (2 CFR 200.326 & Appendix II);
2. Your contract must include the Federal bonding requirements, if the contract is for construction or facility improvement (2 CFR 200.325);
3. You must award to a responsible contractor (2CFR 200.318(h));

4. You must complete a cost or price analysis to determine that the cost or price of the contract is fair and reasonable; (2 CFR 200.323(a) and (b))
5. You may not use cost-plus-percentage-of-cost contracting (2 CFR 200.323(c)).

What if I want to use a pre-awarded or pre-existing contract in an exigency or emergency that may not comply with the Federal procurement standards?

If your pre-awarded or pre-existing contract is not in compliance with the Federal procurement standards (e.g. you did not fully and openly compete the requirement or follow the six affirmative socioeconomic contracting steps), you may likely still use your contract for the duration of the exigency or emergency. FEMA recommends that you review the list above and assess whether you can modify your pre-awarded or pre-existing contract or add additional documentation to your contract file to address the pre-awarded or pre-existing contract's non-compliance issues.

What if I have further questions?

Additional questions on this topic may be directed to your State Public Assistance Officer. However, you should consult your attorney throughout this entire process.

ATTACHMENT A

Justification for Non-Competitive Procurement Template

1. Insert a brief description of the product or service you are procuring, including the expected amount of the procurement.
2. Identify which of the four circumstances listed in 2 C.F.R. § 200.320(f) you are relying on for your non-competitive procurement.
3. Explain why it is necessary to contract non-competitively.
 - A justification based on public exigency or emergency should explain the nature of the public exigency or emergency, including why procurement other than through noncompetitive proposals would cause unacceptable delay in addressing the public exigency or emergency. (Failure to plan does not justify noncompetitive procurement based on public exigency or emergency.)
4. State how long you will need to use the non-competitive procurement, and the impact it will have on your community if you are not able use the non-competitive procurement for that amount of time (e.g., how long do you anticipate the exigency or emergency will continue; how long will it take to identify your requirements and award a competed procurement; or how long would it take another contractor to reach the same level of competence).
5. Describe the results of any market survey or research conducted to help you determine whether you could have used full and open competition consistent with applicable law (or, if you did not conduct a market survey or research, explain why not).
6. Describe the results of any conflicts of interest and organizational conflict of interest reviews you conducted (or, if you did not complete a conflict of interest and organizational conflict of interest review, explain why not).
7. Include any other points you think are necessary for the justification.

THIS PAGE INTENTIONALLY LEFT BLANK.



PUBLIC ASSISTANCE: CONTRACTING REQUIREMENTS CHECKLIST

The Federal Emergency Management Agency (FEMA) Public Assistance (PA) Program provides supplemental assistance to states, tribes, and local governmental entities, as well as certain private non-profit organizations (hereinafter referred to as applicants). FEMA’s *Public Assistance Program and Policy Guide* (<http://www.fema.gov/public-assistance-policy-and-guidance>) provides comprehensive information regarding assistance that FEMA can provide and the requirements that applicants must follow in order to receive the assistance. The purpose of this Fact Sheet is to provide key information that applicants need to consider when utilizing contracted resources.

Avoid the Risk of Not Being Reimbursed for Contract Costs in a Time of Need

Failure to follow federal contracting requirements when procuring and selecting contractors puts applicants at risk of not receiving full reimbursement for associated disaster costs. Both FEMA and the U.S. Department of Homeland Security’s Office of Inspector General (OIG) closely review applicant procurement actions and contract selections to evaluate whether Federal requirements were met. Where requirements were not met, funding can be disallowed and, in some cases, taken back even years after the event. Due to the frequency of applicants not following contracting requirements and the millions of dollars subsequently put at risk, FEMA and the OIG are increasing their efforts to ensure applicants understand Federal requirements for contracting resources. In addition to this Fact Sheet, FEMA has extensive procurement and contracting resources for applicants, including the *Procurement Under Grants Field Manual Supplement*, which are available at www.fema.gov/procurement-disaster-assistance-team. Additionally, the OIG in July 2016 issued its *Audit Tips for Managing Disaster-Related Project Costs* (OIG-16-109-D-Jul16).

FEMA reimburses costs incurred using fixed-price or cost-reimbursement contracts. FEMA advises against the use of Time and Materials (T&M) contracts and generally limits the use of these contracts to a reasonable time based on the circumstances during which the applicant could not define a clear scope of work because T&M contracts do not adequately incentivize contractors to control costs or maximize labor efficiency.

AVOIDANCE CHECKLIST

DO NOT:

- “Piggyback” on other jurisdiction’s contracts.
- Award cost-plus-a-percentage-of-cost contracts or contracts with a percentage-of-construction-cost method.
- Include local preference.

AVOID:

- Time & Material (T&M) Contracts (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 Applicant provides a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- Sole-Source Contracts unless you can support their use under the procurement rules.
- Pre-disaster/stand-by contracts with price proposals that increase when awarded post-disaster.

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

REQUIREMENTS CHECKLIST

- Provide full and open competition;
- Place qualified small and minority businesses and women's business enterprises on solicitation lists;
- Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- Use 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;
- Maintain oversight to ensure contractors perform according to the terms, conditions, and specifications of their contracts or purchase orders;
- Maintain written standards of conduct covering conflicts of interest and governing the performance of employees who engage in the selection, award, and administration of contracts;
- 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;
- Perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold, including contract modifications. The Federal threshold is currently \$150,000, if state or local procurement law is more restrictive, then the state or local law must be followed;
- Include required provisions in all contracts awarded; and
- Maintain records sufficient to detail the history of the procurement. These records will include, but are not limited to the rationale for the method of procurement, selection of contract type; contractor selection or rejection; and basis for the contract price.

Noncompetitive procurement may be used under certain circumstances, one of which is when the public exigency or emergency will not permit a delay resulting from competitive solicitation.

Examples Illustrating the Meaning of Exigency and Emergency

Emergency: A tornado impacts the City and causes widespread and catastrophic damage, including loss of life, 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 clearance activities immediately to restore access to the community and support search and rescue operations and power restoration.

Exigency: A tornado impacts the 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 the beginning of the following school year in September. The City estimates, based on past experience, that the sealed bidding process will take at least 90 days, and the City's engineer estimates that the repair work would take another 60 days. This would bring the project completion to well after the beginning of the school year. Rather than going through sealed bidding, the City—in compliance with State and local law—wants to solicit bids from five contractors that have previously constructed schools in the State and award the contract to the lowest bidder among those five. This would be an example of an "exigency", such that sealed bidding would cause a delay under the circumstances and the use of some other procurement method was necessary based on the particular situation.

Applicants should ensure their attorneys review all procurement actions and contracts. FEMA has a Procurement Disaster Assistance Team that is available to review contracts to ensure they include required provisions. Applicants may contact the State or Territory to request FEMA assist with review.



PUBLIC ASSISTANCE: DEBRIS REMOVAL TIPS

The Federal Emergency Management Agency (FEMA) Public Assistance (PA) Program provides supplemental assistance to states, tribes, and local governmental entities, as well as certain private non-profit organizations (hereinafter referred to as applicants). FEMA's *Public Assistance Program and Policy Guide* (<http://www.fema.gov/public-assistance-policy-and-guidance>) provides comprehensive information regarding assistance that FEMA can provide and the requirements that applicants must follow in order to receive the assistance. The purpose of this Fact Sheet is to provide key information to consider when planning and initiating debris removal operations.

Costs to remove incident-related debris (including, but not limited to, vegetative debris, components of structures, sand, mud, silt, gravel, rocks, boulders, vehicles, and vessels) from improved public property and public rights-of-way (ROWs), including Federal-aid roads, are reimbursable. FEMA also reimburses a limited timeframe for vehicle and vessel storage when necessary to provide applicants time to identify the owner.

If applicants authorize residents to place incident-related debris on the public ROW, including Federal-aid roads, costs to subsequently remove the debris from the ROW are reimbursable. In such cases, local governments should provide guidance to citizens to avoid placing hazardous waste on the ROW and to avoid placing debris near fire hydrants and power poles. Applicants should consider placing large roll-off trash bins on public property and ROW for use by the citizens to minimize significant debris piles on the ROW and establishing debris drop-off sites for household hazardous waste.

Various types of resources are reimbursable, including the applicants' employees, temporary hires, mutual aid, and contractors. Additionally, the value of volunteer hours or donated equipment may be used to offset the non-Federal cost share (usually 25%).

Monitoring Debris Operations

FEMA requires that applicants monitor all contracted debris removal operations. If it does not monitor contracted debris removal operations, it jeopardizes FEMA funding. Applicants may use employees (including temporary hires), contractors, or a combination for monitoring. FEMA will provide debris monitor training to an applicant's employees upon request. It is not necessary, or cost-effective, to have Professional Engineers or other certified professionals perform debris

DOCUMENT THESE ITEMS

Applicants need to document the following information to support debris removal claims:

- Quantity and type of debris:
 - Hauled to a temporary staging site
 - Reduced, including reduction method (e.g., chipped, burned)
 - Hauled to a final disposal site
 - Recycled
- Pick-up locations
- Disposal locations (temporary staging, recycling, and final disposal)
- Owned ("Force Account") equipment:
 - Type of equipment and attachments used
 - Year, make, model, size/capacity
 - Days and hours used
 - Operator name
- Contracted equipment
 - Certifications of truck size/capacity
- Labor:
 - Name
 - Days and hours worked
 - Work performed

monitoring. FEMA considers costs unreasonable when associated with the use of staff that are more qualified than necessary.

SELECTING DISPOSAL SITES

- DO: If burning debris as a reduction method, obtain guidance from applicable State, Territorial, Tribal, or local regulatory agencies to determine if and where burning can be conducted.
- DO: Obtain permits from applicable Federal, State, Territorial, Tribal, and local regulatory agencies.
- AVOID: Areas such as endangered species' critical habitats, archeologically sensitive areas, rare ecosystems, contaminated sites, well fields, or surface waters. If near these areas, establish buffer and/or turbidity barriers.
- AVOID: Areas of close proximity to schools, nursing homes, hospitals, historic buildings, residences, or public water supplies especially in windy areas due to dust and odor.
- DO NOT: Dispose of debris in floodplains or wetlands.

Alternative Procedures Pilot Program for Debris Removal

FEMA is currently conducting the Alternative Procedures Pilot Program for Debris Removal. Under this pilot program, applicants may elect to participate in one or more of the following:

- Reimbursement of straight-time for employees (limited to overtime under standard program)
- Retention of income generated from recycling debris
- 2-percent increased cost-share incentive for applicants with a FEMA-accepted debris management plan with pre-qualified debris removal contractors before the start of the incident period
- Increased Federal cost share based on a sliding scale to accelerate completion of debris removal (This procedure must be authorized in the President's major disaster declaration for declarations requested on or after August 28, 2017):

Debris Removal Conducted (Days from Start of Incident)	Federal Cost Share
1-30	85%
31-90	80%
91-180	75%
FEMA will NOT provide funding for debris activities after 180 days (unless FEMA grants an extension)	

FEMA's *Public Assistance Alternative Procedures Pilot Program Guide for Debris Removal*, <http://www.fema.gov/alternative-procedures> provides detailed guidance on the pilot program.

Additional Fact Sheets are available for debris removal from waterways, removal of animal carcasses, and contract requirements.



FEMA

Fact Sheet

Public Assistance

GRANTS MANAGER AND GRANTS PORTAL TOOL



A critical component of the new Public Assistance (PA) Program delivery model is standardizing project workflows with improved technology. FEMA focused on developing a new information-technology system to document PA Program projects in formulation with a seamless transition to grant obligation. The result is a two-part platform—the PA Grants Manager and Grants Portal tool—that promotes transparency and accountability for all stakeholders involved in the PA grant process.

The PA Grants Manager is used internally by FEMA specialists to formulate projects, and the PA Grants Portal is the forward-facing platform used by State/Local/Tribal/Territorial governments and eligible non-profit organizations to manage grant applications. EMMIE remains the official system of record for obligation.

The PA Grants Manager and Grants Portal began operation in October 2016, and was piloted on new delivery model disasters in the State of Georgia. The system was built utilizing “agile project management principles”. This method promotes planning, evolutionary development, continuous improvement, and encourages rapid and flexible responses to changes identified by subject matter experts. In Georgia, end users identified issues and submitted ideas through the *Change Control Tool* to improve functionality in the PA Grants Manager and Grants Portal. Over 2,000 enhancements have been made to the system to date. End users working in future delivery operations will also have the opportunity to use the *Change Control Tool*.

Overall, the PA Grants Manager and Grants Portal will establish baseline data to measure performance and make informed adjustments to increase simplicity, accuracy, efficiency, accessibility, and timeliness in the PA Program.

PA GRANTS MANAGER

FEMA uses the PA Grants Manager to track incident-related data after an area receives a federal declaration. FEMA specialists are capable of entering and managing various types of information including, but not limited to, the following:

- Recipient and applicant profiles for the assessment of disaster recovery needs

- Daily status reports to manage progress of PA Program implementation
- *Request for Public Assistance* submission reminders
- Notification messages to applicants on the formulation and progress of their projects
- Updates to *Essential Elements of Information* for applicants' projects
- Exporting comprehensive spreadsheets on the PA Program status and progress
- Recordation of *Exploratory Calls* and *Recovery Scoping Meetings* with applicants

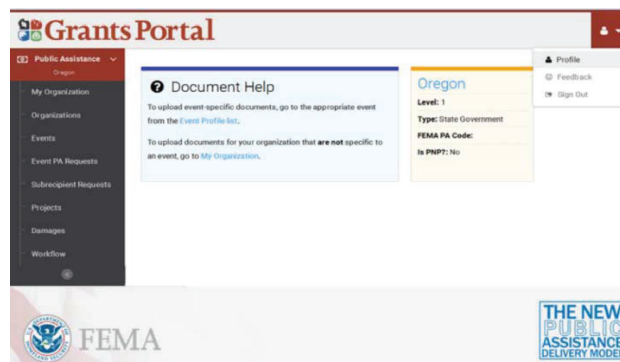
PA GRANTS PORTAL

With the tool, applicants now have the ability to account for all activities associated with their damage claims. Unlike in the past, both recipients and applicants can now register to monitor the project development process in parallel with the assigned FEMA Program Delivery Manager. Applicants will be able to perform actions to include, but not limited to:

- Complete and update profile information
- Submit the *Request for Public Assistance*
- Upload required project documentation
- Obtain daily oversight of project statuses
- Approve workflow items for concurrence/acknowledgement
- Update *Essential Elements of Information* for projects
- Notify the assigned *Program Delivery Manager* of an applicant's actions

ACCESS TO PA GRANTS PORTAL TRAINING

By the end of 2017, each FEMA Region will coordinate a two-day, new delivery model training for State/Local/Tribal/Territorial government stakeholders. An On-Site Refresher Training will also be available to be offered when Joint Field Offices operating under the new delivery model are established.



FOR MORE INFORMATION

Please contact your FEMA Regional Officer or FEMA Program Delivery Manager.

You may also visit us [online at https://www.fema.gov/new-public-assistance-delivery-model](https://www.fema.gov/new-public-assistance-delivery-model)

OFFICE OF INSPECTOR GENERAL

Audit Tips for Managing Disaster-Related Project Costs



**Homeland
Security**

**September 29, 2017
OIG-17-120-D**

<https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-120-D-Sep17.pdf>

THIS PAGE INTENTIONALLY LEFT BLANK.



The Legislative Auditor's Summary of the Louisiana Procurement Code

[R.S. 39:1551-1755](#)

LAC 34:I.5101-5513 and 34:V.101-3301

Executive Order JBE 2017-18

Overview

This paper is a summary of the laws related to the [Louisiana Procurement Code \(LPC\)](#). The summary is presented as a series of questions that include references to key statutes, Attorney General Opinions and case law to facilitate understanding of the LPC. The summary provides general principles of state procurement law that serve as a framework for the unique facts and circumstances encountered during an audit.

To facilitate your use of this document, numerous links will direct your attention to document text and to related documents posted on the LLA website and on external websites. For example, under the Table of Contents section, clicking the title of the section that you wish to view will take you directly to that section's text. Within a question, links will point to other areas of the document and to relevant external documents. Placing a mouse pointer over a link will open a box that will explain the use of the link.

Table of Contents

Introduction	3
Small Purchases	8
Competitive Sealed Bidding	9
Information Technology Procurement	10
Emergency Procurements	10
Sole Source Procurements	11
Local Political Subdivisions, Quasi-Public Entities and the LPC	11
Cooperative Purchasing	13
Right to Prohibit Procurement with Individuals Convicted of Certain Felonies	15
Reverse Auction	16
Change Orders	17
Unemployment Compensation	17
Independent Contractor or Employee Status	17
Cooperative Purchasing	18
Legislative Review/Approval of Contracts	18
Recent Attorney General Opinions	18
Select Definitions	19
Executive Orders	20
JBE 17-18 Small Purchase Procedures	21
JBE 16-55 Emergency Procedures for Conducting State Business	21

Introduction

What is the procurement code?

State and local governmental entities must follow specific requirements in order to properly expend public funds for purchases. These requirements are found in statutes, rules, and executive orders issued by the governor. The objective of procurement law is to increase the public's confidence in the government's ability to purchase materials and services for the best price. These laws also help ensure that all persons who are involved with procurement are treated fairly.

This summary identifies the key sources of the Louisiana Procurement Code (LPC or Code) that include: statutes, regulations, case law, Attorney General Opinions and executive orders. It also highlights major topics, such as how goods and services are purchased, and how otherwise exempt political subdivisions may choose to be subject to the Louisiana Procurement Code.

What laws make up the Louisiana Procurement Code?

Statutes and Rules

[R.S. 39:1551-1755](#)
LAC 34:I.5101-5513
and 34:V.101-3301

The Louisiana Procurement Code is a set of laws that govern the purchase of certain services, materials and supplies, and major repairs by most state agencies. For example, the Department of Natural Resources and the Attorney General are state agencies that must follow the LPC. Services contracts typically relate to operations. Examples of services subject to the LPC include janitorial services and maintenance services. Examples of major repairs subject to the LPC include repairs to a pipeline in a plumbing system and repairs to a boardwalk in a nature preserve. Major repairs do not, however, include construction funded through Capital Outlay.

The LPC applies to expenditures of both state and federal monies. In addition to the legal requirements found in statutes (R.S. 39:1551-1755), numerous administrative rules that must be followed are found in Title 34 of the Louisiana Administrative Code (See LAC 34:I.5101-5513 and 34:V.101-3301). These rules may provide definitions and procedures that are not found in the statutes.

Executive Orders

In addition to the LPC statutes and administrative rules, executive orders are also an important source of law. For example, [Executive Order JBE 17-18](#) provides the procedures required when making certain purchases (including small purchases). Executive orders issued by a governor terminate on the date provided in the order or in a later order. If the order does not contain a

termination date, the order terminates 60 days after the legislature's regular session adjourns after the issuing governor leaves office. See R.S. 49:215(C).

[Executive Order JBE 17-18](#)

Which entities must follow the Public Bid Law for public works?

All public entities must follow the Public Bid Law for the construction of public works. Please see the LLA's Public Bid Law FAQ for more information concerning contract requirements for constructions of public works.

Which entities must follow the procurement code?

The answer to this question depends on the type of public entity involved. The LPC generally applies to the executive branch and its agencies. Universities and colleges must also follow the LPC, subject to certain exceptions and exemptions. See R.S. 39:1572B. Further, some agencies within the executive branch and some services are exempt from the requirements of the LPC. For example, construction is exempt from the LPC because it is governed by the Public Bid Law. Likewise, those exempt agencies follow the Public Bid Law.

R.S. 17:3139.5(B) provides that eligible institutions of higher education may participate in the Higher Education Procurement Code established by LSU (See Part XIII of [Title 34 of the Louisiana Administrative Code](#)) in lieu of the State Procurement Code.

Which entities are exempt from the LPC?

The LPC does not apply to the legislative and judicial branches of state government nor to any agency within the legislative branch. However, these two branches of government may choose to subject themselves to the LPC.

Political subdivisions and quasi-public entities are also exempt from the LPC. They also may choose to subject themselves to the LPC.

R.S. 17:3139.5(B) provides that eligible institutions of higher education may participate in the Higher Education Procurement Code established by LSU (See Part XIII of [Title 34 of the Louisiana Administrative Code](#)) instead of the State Procurement Code.

How is "political subdivisions" defined?

Political subdivision is not defined in the LPC. Political subdivisions are, however, defined in Art. VI, §44 to mean a parish, municipality, incorporated city, town, or village, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions. Political subdivision also refers to quasi-public entities that are also exempt from the LPC. The only definition of quasi-public entity is found in the audit law

(R.S. 24:511, et seq.)). R.S. 24:513(A)(1)(b). The courts and the Attorney General have generally found that a quasi-public entity is an entity that performs a governmental function.

Political subdivisions are exempt from the LPC. For example, fire protection districts would be exempt from the LPC. See R.S. 39:1554 for exclusions. Though exempt, political subdivisions may choose to make themselves subject to the LPC.

Which laws do exempt entities follow?

Entities that are exempt from the LPC follow the Public Bid Law (R.S. 38:2211-2296). The Public Bid Law governs procurement related to public works (R.S. 38:2212) and to the purchase of certain services, materials and supplies (R.S. 38:2212.1). (For more information see the LLA Summary of the [Public Bid Law FAQ](#).)

Political subdivisions, however, may choose to opt into all or part of the LPC (R.S. 39:1554E). For more information related to public entities that opt into the LPC **see Section III of this Summary**.

Which laws address the construction of public works?

The Public Bid Law addresses the construction of public works. See the LLA's Public Bid Law FAQ for more information.

Which laws address the purchase of certain services, materials and supplies?

The Louisiana Procurement Code addresses the purchase of services, including professional, personal, consulting and social services, material and supplies for most state agencies within the Executive Branch. The Public Bid Law addresses the purchase of materials and supplies for all other public entities. Please see the LLA's Public Bid Law FAQ for additional information.

What is the Office of State Procurement?

Although much procurement occurs at the agency level, the Office of State Procurement (OSP), located within the Division of Administration, is the main hub of purchasing in Louisiana. The OSP supervises the procurement of certain services, materials and supplies. The main page for the OSP is found at <http://www.doa.la.gov/Pages/osp/Index.aspx>.

Act 864 of the 2014 Regular Session combined the Office of State Purchasing and the Office of Contractual Review into the current Office of State Procurement.

Does the law provide for exemptions from the OSP and its regulations?

Yes. Some entities are exempt from OSP and its regulations. For example, the Department of Transportation and Development has authority to procure materials and supplies for component

parts of roads, bridges and highways. Other examples include the New Orleans Food Center Authority and the Louisiana Crawfish Market Development Authority.

Some entities are exempt from OSP but are still subject to state purchasing regulations. For example, the LSU System, Southern University System and the Board of Trustees of State Colleges and Universities System are subject to OSP rules but not to the OSP.

Where may one find more information on OSP?

OSP's web site is a source of much useful purchasing information. There one can find a variety of resources including access to the procurement law, administrative rules, and various vendor lists. Go to <http://www.doa.la.gov/Pages/osp/Index.aspx>. A copy of OSP's Rules and Regulations may be found at <http://www.doa.la.gov/Pages/osp/legal-Index.aspx>

How does an entity make purchases under the LPC?

The answer to this question depends on:

- ❖ the type of public entity involved;
- ❖ the type of materials and supplies being purchased;
- ❖ the amount of materials and supplies to be purchased;
- ❖ the conditions under which the agency is operating (For example, is there an emergency going on? See page 9 for information on emergencies.).

How these questions are answered determines the type of purchasing process that is required by the law, regulation and/or Executive Order. Most purchases will be made from the state contracts list provided by OSP. To view the state contracts list, go to:

<https://wwwcfprd.doa.louisiana.gov/osp/lapac/pubMain.cfm>

What are state contracts?

The OSP provides a state contracts list from which public entities may purchase certain services, materials and supplies. The items that are available for purchase through state contract have been subjected to a competitive process conducted by the OSP. The list saves the public entity time and money that would otherwise be spent on performing the required competitive procedures. Entities that are subject to the LPC are generally required to purchase from state contract. Commodities and entities that are exempt from OSP's control but that are still subject to the LPC are found in R.S. 39:1572.

May an agency purchase outside of the state contract list?

In general, agencies that are subject to the LPC must purchase items from OSP's state contract list. Agencies that want to make a purchase that is not on state contract must first submit a written request to OSP asking permission. An agency must submit a letter that provides a sound business reason for not purchasing an item that is on state contract. OSP will review the request and the agency will be notified if OSP has approved its making a "non-contract" purchase.

R.S. 38:321.1 authorizes State agencies, municipalities, parishes, and other political subdivisions to purchase items through existing (Louisiana) public contracts of other political subdivisions within one year of the opening of bids. State agencies may rely on certificates from the Office of State Procurement that the contract is in compliance with the Procurement Code and has been adopted as a statewide cooperative contract pursuant to R.S. 39:1702, et seq, or from a local political subdivision that the contract was bid in compliance with State law. State agencies should consult with OSP prior to utilizing this new provision.

What happens if an equivalent item appears to be on the state contract list?

Occasionally, public entities want to purchase a specific commodity that it is not on the state contract list although an equivalent item appears to be available for purchase on the list. To issue bids instead of purchasing the commodity from the state contract list, public entities that are subject to the OSP must provide a written valid business case. If OSP approves the entity's bidding out the item, the entity must use open specifications.

What are open specifications?

A public entity must use open specifications when soliciting bids. If doing so is clearly in the public interest, public entities may specify a particular brand, make, or manufacturer in the specifications let for public bid. While the entity may specify a model and catalog number in the bid, the bid documents must clearly state that equivalent products are acceptable.

How does a public entity purchase something that is not on the state contract list?

The type of procurement procedure that a public entity, subject to the provisions of the Procurement Code, must use depends on several factors. One consideration is the cost of the items to be procured, another is the type of contract in question, i.e. purchasing materials and supplies versus contracts for personal, professional, consulting, or social services. The law does not require competitive bidding for purchases that are \$5,000 or less. Purchases that are greater than \$5,000, and up to \$15,000, require quotes from at least three vendors by telephone, fax or other means. Purchases greater than \$15,000, but less than \$25,000, should use OSP's state contract list when feasible. However, if the state contract vendor list cannot be used, then written invitations for bids must be sent to at least five bidders. Contracts that are greater than \$25,000 generally must be awarded through competitive sealed bidding, however there are exceptions. For example, contracts for professional services, as defined under the Procurement Code, are not required to be let through competitive sealed bidding, regardless of the amount of the contract. Additionally, the Procurement Code in R.S. 39:1595 authorizes the Commissioner of Administration to allow a State Agency to use competitive sealed proposals for supplies, services or major repairs when the State Chief Procurement Officer substantiates through written documentation that doing so would be in the best interest of the State.

R.S. 38:321.1 authorizes State agencies, municipalities, parishes, and other political subdivisions to purchase items through existing (Louisiana) public contracts of other political subdivisions within one year of the opening of bids. State agencies may rely on certificates from the Office of State Procurement that the contract is in compliance with the Procurement Code and has been adopted as a statewide cooperative contract pursuant to R.S. 39:1702, et seq, or from a local political subdivision that the contract was bid in compliance with State law. State agencies should consult with OSP prior to utilizing this new provision.

A summary of the required procurement procedures is provided in the table below.

Amount of purchase	Method
\$0-\$5,000 per single transaction	No competitive bidding is required.*
>\$5,000 to \$15,000	Quotes from 3 or vendors by telephone, facsimile, or other means*
>\$15,000 to \$25,000	If possible, use OSP computerized vendor list; otherwise obtain <u>written</u> quotes from at least 5 vendors*
>\$25,000	Advertise according to R.S. 39:1594

Source: *[Executive Order JBE 17-18](#).

What documentation should an entity maintain?

Agencies should maintain documentation of each quote received. Procurement amounts may not be artificially divided in order to circumvent the LPC. Quotes may be taken by telephone, facsimile or other means. The quotes must, however, be in writing if the price exceeds \$5,000. Awards shall be made to the lowest responsive quotation. Subject to some exceptions, the Executive Order provides an extensive list of items that are not subject to competitive bid regardless of price. (See Section 5 of [Executive Order JBE 17-18](#).)

Small Purchases

What does the LPC consider to be small purchases? [R.S. 39:1596](#) **LAC 34: V.701**

Small purchases are procurements priced below \$25,000 or as defined in the Governor’s Small Purchases Executive Order. The most current executive order addressing small purchase procedures is **JBE 17-18**. (The executive order declares that items covered by an existing state contract and public works contracts that are greater than \$5,000 and which are governed by R.S. 38:2241 are not subject to the procedures in the order.) Small purchases are specifically exempted from the competitive sealed bidding requirements of the LPC. In general, small purchases require a non-sealed bid solicitation. [E.O. JBE 17-18](#)

Competitive Sealed Bidding

What is competitive sealed bidding, and when is it used? [R.S. 39:1594](#) [LAC 34:V 301-339](#)
When state contracts are not used and no exceptional circumstances apply (Small Purchase, Sole Source, and Emergency Procurement) and the purchase is greater than \$25,000, competitive sealed bidding should be used. Competitive sealed bidding is a method that uses formal advertising in order to solicit bids from a variety of contractors to capture the best price.

What steps are involved?

Under competitive sealed bidding, public entities issue invitations for bids (IFB). The bid documents must contain a description of the services, materials, and supplies that the entity seeks to procure. The bid documents should also contain all terms and conditions that must be in the final contract. Except for emergency procurements, the time between the date of the IFB and the date set for opening bids may not be less than ten days. For bids greater than \$25,000, the bidding time should typically be no shorter than twenty days.

When may bids be modified?

Bids may not be modified within three working days before the opening of bids. This period excludes Saturdays, Sundays and legal holidays. However, if bids must be modified within the three working day period, the opening of bids is extended by one week without a requirement to re-advertise. The bid modification must be sent to all prospective bidders (LAC 34:I.305).

Does the law provide exceptions to competitive sealed bidding?

Some exceptions to the competitive sealed bidding requirement exist. Some of the exceptions are found in the group purchasing portion of the Other Procurement Methods statute (R.S. 39:1600(B)) that uses a competitive request for proposal process. The preference statutes provide another exception. Public entities are allowed to make selections based on preferences for certain Louisiana goods or services based on specific criteria. (see R.S. 39:1601 – 1604.7)



For example, in general, Louisiana's Public Bid Law applies to purchases of materials and supplies purchased from Prison Enterprises. Prior to 2017, state agencies were required to purchase from Prison Enterprises those available goods and services if the goods are available and if the prices are less than those of central purchasing. [Act 248 of 2017](#) amended R.S. 15:1157 to provide that state agencies that operate a state prison may purchase goods and services from vendors located in the parish in which the prison facility is located if the prices are less than those of central purchasing or Prison Enterprises, and the vendor meets the requirements of the Hudson Initiative (R.S. 39:2001 et seq.) and the Veteran Initiative (R.S. 39:2171 et seq.).

Contractor certification

[Act 49 of 2017](#) amended R.S. 37:2163 to provide that all architects, engineers, and awarding authorities shall place in their bid specifications the requirement that a contractor shall certify that he holds an active license by displaying his license number on the bid envelope. If the bid does not display the contractor's license number the bid shall be automatically rejected.

Information Technology Procurement

R.S. 39:196 through R.S. 39:200

- Provides for the procurement of data processing equipment, related services, and software using a request for proposals (RFP) process (R.S. 39:198).
- Applicable to all state agencies in the executive branch, as defined in 36:3(1), except for any agency of a statewide elected official, with respect to the purchase, lease, and rental of all information technology equipment, related services, and software.
- The office of technology services has the sole authority and responsibility for defining the specific information technology systems and information technology services to which the provisions of this law shall apply. Rules and regulations shall be promulgated as necessary to carry out the provisions of the law.
- The office of technology services, through the office of state procurement, may, on behalf of any state agency, enter into contracts under R.S. 39:198.
 - The Office of Telecommunications Management (OTM) is under the Office of Technology Services.
- R.S. 39:199, in order to ensure the lowest price, states:
 - ❖ Any agency seeking to procure a new contract, a contract extension, or any other contract modification for software, software maintenance, and support services must show that the price received or negotiated is the lowest available price by exhibiting prices that may appear in a catalog, price list, schedule, Internet, or other form.

Emergency Procurement

R.S. 39:1598

LAC 34: V.1101-1111

How does an entity make purchases during an emergency?

In order to expedite purchases so that order may be restored, the ordinary rules of procurement do not apply during a state of emergency.

What is considered an emergency?

LAC 34: V.1103

An emergency is a threat to "...public health, welfare, safety, or public property..." Many types of conditions, including floods, epidemics, and equipment failures, can create an emergency. The agency's chief procurement officer may identify other emergency conditions, which are those that create an immediate need for services, materials or supplies.

Which emergency purchases must the chief procurement officer approve?

Whenever it is practical, the chief procurement officer must approve procurements up to \$5,000. It is mandatory, however, that the chief procurement officer, or the equivalent person, approve all emergency procurements of \$5,000 or more.

What documentation is necessary for an emergency purchase?

The chief procurement officer must document the facts and circumstances of the emergency. Public entities subject to the Procurement Code are required to document and maintain in their contract files that they have followed the following steps for emergency procurements:

- Every effort shall be made to obtain quotations from three or more vendors when supplies, services, or major repairs (except for standard equipment parts for which prices are established) are to be purchased on an emergency basis,;
- Immediate purchasing shall be discouraged to the extent practicable;
- When supplies, services, or major repairs are urgently required and time does not permit obtaining written quotations, a procurement officer may obtain quotations by telephoning or otherwise, but those quotations shall be made on the related purchase requisitions; and
- So far as practicable, quotations shall be secured from institutions of the state as provided by law.

Additional information on emergency procurements is available from the Office of State Procurement: <http://www.doa.la.gov/osp/agencycenter/publications/emergencyprocurement.pdf>
(Rev. August 2016)

Sole Source Procurements

[R.S. 39:1597](#)
LAC 34: V.901-907

What are sole source procurements?

Sole source procurement is used when only one source is available from which to make a particular purchase. Sole source procurement, like emergency procurement, does not require competition. An agency may use sole source when it submits to the OSP in writing that only one source can fill the need. The agency may not make sole source procurement until it receives approval from OSP. For a discussion of Sole Source consideration, see AG Op. No. 13-0078.

Which reporting requirements apply to sole source procurement?

An agency must submit a sole source procurement report to the Legislature annually. The report must include:

- each contractor's name;
- the amount and type of each contract;
- a list of the supplies, services or major repairs procured under each contract; and
- the identification number of each contract file.

Local Political Subdivisions, Quasi-Public Entities and the LPC

[R.S. 39:1554](#)
[R.S. 39:1572](#)

Which entities or branches of government are exempt from the LPC?

The following are exempt from the LPC:

- the legislative branch and its agencies;

- the judicial branch; and
- local political subdivisions and quasi-public entities.

May an exempt entity choose to adopt all or part of the LPC?

Yes. As noted earlier, the LPC does not apply to all public entities. Exempt entities must follow the Public Bid Law (R.S. 38:2211-2296) that governs the purchase of public works and materials and supplies. Local political subdivisions and quasi-public entities, however, may adopt all or any part of the LPC and its regulations for the procurement of supplies, services, or major repairs.

Also, the law exempts some entities from the requirement to make procurements through the OSP and its regulations. Other entities are exempt from OSP but required to follow its regulations.

What procedure should an exempt entity use to adopt all or part of the LPC?

A local political subdivision or quasi-public entity should provide written documentation showing that it has adopted the LPC and its regulations. For example, a police jury, parish council, or board of a local political subdivision or quasi-public entity may pass an ordinance or a resolution confirming adoption of all or part of the LPC.

What happens after an exempt entity adopts the LPC?

Once a local political subdivision or quasi-public entity has formally decided to become subject to all or part of the LPC and its regulations, the entity must follow the rules that apply to state agencies, until the local political subdivision or quasi-public entity formally rescinds such adoption. If a local political subdivision or quasi-public entity formally rescinds its adoption of all or part of the LPC, the political subdivision or quasi-public entity will resume being subject to the provisions of the Public Bid Law.

How else may an otherwise exempt entity become subject to the LPC?

In addition to making itself subject through resolution or ordinance, a public entity that is a “local public procurement unit” that enters into a state procurement contract causes the contract to be subject to the LPC. (LAC 34:V.2705).

For example, R.S. 38:2212.1(F) allows any public entity not subject to the Procurement Code to purchase materials, supplies, and equipment under the cooperative purchasing provisions of the Procurement Code found at R.S. 39:1702 – 1710. The contract thus entered into is subject to the relevant laws of the Procurement Code.

May a local governmental entity purchase an item from a local vendor at the state bid price?

R.S. 39:1710

Yes, R.S. 39:1710 allows this purchase, but also limits it. The statute provides that:

When a local governing authority purchases an item at the state bid price through a local vendor, the local governing authority may pay to the local vendor the costs for shipping, preparation, and delivery of the item, provided that these costs shall not exceed the state bid price by seven

percent on purchases up to ten thousand dollars, five percent on purchases over ten thousand dollars and up to twenty thousand dollars, and three percent on purchases over twenty thousand dollars.

The Attorney General examined this statute in AG Op. No. 96-44, opining that the following steps would be required for compliance:

In order to facilitate use of these provisions, we would advise that the following steps be taken by a local governing authority:

1. Determine from State Central Purchasing if there is a competitively bid state contract for the needed material or supply and obtain the State Contract Number and the specification for the item on state contract.

2. Contact a local vendor for the item to determine if he/she can provide the item meeting the exact same specification as the state contract item and obtain a written price quote for delivery of the item to the local governing authority. While the statute provides no definition for the word “local”, it is interpreted in this context to mean a vendor situated within the boundaries of the governing authority seeking to make the purchase.

3. If the delivered price offered by the local vendor is within the percentages set forth in the statute for contracts of various values, a purchase order may be issued by the local governing authority to the local vendor, reflecting the state contract number, state contract specification, state contract price and the markup allowed to the local vendor for shipping, preparation and delivery of the item(s).

4. A copy of the local governing authority's purchase order shall be furnished to the State Central Purchasing Office for monitoring compliance with the provisions of [R.S. 39:1710](#).

The statute in question is an exception to the otherwise sweeping requirement of R.S. 38:2212A(1)(a) that all purchases above the contract amount (presently \$10,000) [Now \$30,000] made by a public entity with public funds be made by sealed bid pursuant to advertising. The procedures set forth above are intended to assure compliance with the letter and spirit of both the Public Bid Law ([R.S. 38:2211-2237](#)) and [R.S. 39:1710](#).

Cooperative Purchasing

What is Cooperative Purchasing?

[R.S. 39:1702 -1710](#)

LAC 34: V.2701-2707

Cooperative purchasing allows multiple entities to procure materials and supplies in a joint effort. The entities may be a combination of public units or a mixture of public and private

procurement units. For example, to achieve the best price, a state agency, a local parish government and a university may purchase some equipment via a cooperative purchase contract.

Does Cooperative Purchasing subject an otherwise exempt entity to the LPC?

Yes. Cooperative purchasing is another way by which an otherwise exempt public entity is made subject to the LPC. Although local political subdivisions and quasi-public entities are excluded from the LPC, if an entity that is a “local public procurement unit”¹ enters into a contract governed by the cooperative purchasing laws and regulations, the contract is subject to the LPC. (See LAC .34:V. 2705).

How does an entity that is subject to the LPC make a purchase that is not available on state contract?

If a public entity wants to purchase a specific commodity that it is not on the state contract list, it may solicit bids according to the LPC.

If it appears that an equivalent item is available for purchase on the list, the entity must obtain permission from OSP prior to making the purchase.

R.S. 38:321.1 authorizes State agencies, municipalities, parishes, and other political subdivisions to purchase items through existing (Louisiana) public contracts of other political subdivisions within one year of the opening of bids. State agencies may rely on certificates from the Office of State Procurement that the contract is in compliance with the Procurement Code and has been adopted as a statewide cooperative contract pursuant to R.S. 39:1702, et seq, or from a local political subdivision that the contract was bid in compliance with State law. State agencies should consult with OSP prior to utilizing this new provision.

How does an exempt agency that has opted into the LPC make a purchase that is not available on state contract?

The answer is the same as above. Local political subdivisions and quasi-public entities that opt into the LPC, and therefore make themselves subject to the OSP, must provide a valid business case in writing in order to issue bids instead of purchasing the commodity off the state contract list in the same manner as state agencies. If OSP approves bidding out the item, open specifications must be used.

Can entities otherwise subject to LPC be exempt from its provisions relative to group and cooperative purchasing? [R.S. 39:196\(C\)](#) and [39:1554\(J\)](#)

Yes. Provided that certain conditions are met and that certain oversight limitations of the Legislature are honored, the Procurement Code provisions relative to group purchasing and cooperative purchasing shall not apply to any public postsecondary education institution if:

¹ R.S. 39:1556 (31) defines "local public procurement unit" to mean any parish, city, town, governmental body, and any other subdivision of the state or public agency thereof, public authority, public educational, health, or other institution, and to the extent provided by law, any other entity that expends public funds for the acquisition or leasing of supplies, services, major repairs, and construction, and any nonprofit corporation operating a charitable hospital.

(1) The public postsecondary education institution has requested its own group purchasing and cooperative purchasing procurement provisions and has obtained the approval of its management board and the Board of Regents.

(2) The requesting public postsecondary education institution has adopted its own group purchasing and cooperative purchasing procurement provisions according to rules and regulations adopted in accordance with the APA.

Once these conditions are met, public postsecondary educational institutions may then be exempt from the provisions of Information Technology Procurement, R.S. 39:196 through 39:200.

What are open specifications?

A public entity must use open specifications in its solicitation for bids. If clearly in the public interest, public entities may specify a particular brand, make, or manufacturer in the specifications let out for public bid. The model and catalog number may be specified in the bid. However, the bid documents must clearly state that equivalent products are acceptable.

In addition, even if a local political subdivision or quasi-public entity did not opt into the LPC and instead chose to bid through the Public Bid Law (R.S. 38:2211-2296), open specifications are still required. As the LPC mandates, the bid specifications must clearly state that equivalent products are acceptable even if specifications include a brand or model number.

How does an exempt entity that has not opted into the LPC make a purchase that is not available on state contract?

A public entity that is exempt from the LPC must comply with the provisions of the Public Bid Law.

Right to Prohibit Procurement with Individuals Convicted of Certain Felonies

According to R.S. 38:2212.9, R.S. 39:2191 and 2192, any public entity is authorized to reject the lowest bid from, or not award the contract to, a business in which any individual with an ownership interest of five percent or more has been convicted of, or has entered a plea of guilty or nolo contendere to any state felony crime or equivalent federal felony crime committed in the solicitation or execution of a contract or bid awarded under the laws governing:

- 1) public contracts under the provisions of Chapter 10 of this Title; or
- 2) the Louisiana Procurement Code under the provisions of Chapter 17 of Title 39 of the Louisiana Revised Statutes of 1950 (including contracts for professional, personal, consulting, and social services).

The public entity has no duty to perform criminal background checks on contractors, vendors, or subcontractors.

Any person, company, or entity making an allegation of prior convictions on the part of any individual with an ownership interest of five percent or more in any bidder is responsible for presenting prima facie evidence to the public entity supporting his or her claim.

If evidence is submitted substantiating that an individual with an ownership interest of five percent or more in the lowest bidder has been convicted of, or has entered a plea of guilty or nolo contendere to any state felony crime or equivalent federal felony crime committed in the solicitation or execution of a contract or bid awarded and the public entity rejects the lowest bid, the company whose bid is rejected shall be responsible to the public entity for the costs of rebidding, the increased costs of awarding to the second low bidder, or forfeiture of the bid bond, whichever is higher.

“Public entity” in the case of the procurement code means any agency, board, commission, department, or public corporation of the state, created by the constitution or statute or pursuant thereto, or any political subdivision of the state, including but not limited to any political subdivision as defined by Article VI, Section 44 of the Constitution of Louisiana, and any public housing authority, public school board, or any public officer whether or not an officer of a public corporation or political subdivision.

Reverse Auction

A reverse auction is a competitive online solicitation process on the internet for equipment, supplies, and other materials in which vendors compete against each other online in real time in an open and interactive environment.

More about reverse auctions may be found in the [Public Bid Law FAQ](#) regarding R.S. [38:2271](#) for political subdivisions. For procurement code purposes, R.S. [39:1554\(E\)\(2\)](#), allows any political subdivision not subject to the procurement code to use the reverse auction provisions enacted in [R.S. 39:1600\(D\)](#).

R.S. 39:1600(D) provides for use of a reverse auction method for entities subject to the procurement code. Agencies should review the rules promulgated by the state chief procurement officer relative to reverse auctions, which can be found in Chapter 5 of Part V of Title 34 of the Louisiana Administrative Code.



Act 226 of 2017 amended [R.S. 39:1600\(D\)](#), which provides that a reverse auction may be used for the acquisition of materials, supplies, services, products, or equipment **in any monetary amount, including small purchases, which are currently purchases not exceeding \$25,000**. The definition of “reverse auction” means a competitive online solicitation process on the Internet for materials, supplies, services, products, or equipment in which vendors compete against each other online in real time in an open and interactive environment.

Adequate public notice for the purchase of materials, supplies, services, or equipment using a reverse auction is required **to confirm to the requirements for public notice of sealed bidding or small purchases, as applicable, pursuant to R.S. 39:1594 or 1596, respectively. OPS is required**

to report annually to the legislature, by September 1st, on the use of reverse auctions and any savings achieved.

Change Orders

[R.S. 39:1557.1](#) provides that the governmental body that entered into the contract must record in the office of the recorder of mortgages in the parish where the work is to be done or where the entity is domiciled not later than thirty days after the date of a change order that requires that the recordation take place:

- (1) Each change order to a contract that adds an amount of ten percent or more of the original contract amount if the additional amount is at least ten thousand dollars; or
- (2) All change orders to a contract aggregating to an amount of twenty percent or more of the original contract amount if the additional amount is at least ten thousand dollars.

In addition, the original contract shall be recorded together with the amendments or other revisions if not previously recorded. This provision does not apply to the office of facility planning and control, and the office of state procurement.

Unemployment Compensation

Unemployment Compensation law provides that the collection of contributions, assessments or penalties that are owed by employers but not properly remitted to the La. Workforce Commission are tantamount to a judgment executed by a court.

[R.S. 23:1726\(B\)](#) prohibits any employer against whom an assessment has been levied related to unemployment compensation from submitting a bid or proposal for any public contracts until full payment of the amount due under the assessment is made.

Independent Contractor or Employee Status

[R.S. 23:1711\(G\)\(3\)](#) provides that upon a final determination that an employer knowingly or willfully failed to properly classify an individual as an employee and failed to pay unemployment, then the employer will be prohibited from contracting with any state agency or political subdivision of the state for a period of three years from the date upon which the determination becomes final.

The division of administration will place the employer on a list of such employers, maintain the list, and make the list available to state agencies and political subdivisions of the state.

Exceptions for Procurement of Insurance

[R.S. 39:1540](#)

La. R.S. 39:1540 provides that consulting services for the procurement of insurance may be obtained without the necessity of complying with the La. Procurement Code if the services are ancillary to the contract. The statute authorizes the office of risk management, under the

direction of the commissioner of administration, to contract for consulting services with one or more licensed insurance producers if the commissioner finds that the contract is in the best interest of the state.

Cooperative Purchasing

- ❖ R.S. 38:321.1 authorizes State agencies, municipalities, parishes, and other political subdivisions to purchase items through existing (Louisiana) public contracts of other political subdivisions within one year of the opening of bids. State agencies may rely on certificates from the Office of State Procurement that the contract is in compliance with the Procurement Code and has been adopted as a statewide cooperative contract pursuant to R.S. 39:1702, et seq, or from a local political subdivision that the contract was bid in compliance with State law.

Legislative Review/Approval of Contracts

R. S. 39:1590 requires that professional, personal, and social services contracts that are \$50,000 or more be reported to JLCB and the Contract Services Joint Legislative Task Force for review.

- ❖ Electronic Bids
- ❖ R.S. 39:1594 refers to competitive sealed bids and R.S. 39: 1595 refers to competitive sealed proposals relative to the submission of electronic bids and exceptions.



Recent Attorney General Opinions

Local governing authorities are not required to purchase goods or services from Prison Enterprises; however, they are eligible to purchase if they so desire. [AG Op. No. 17-0027](#).

**Note, for state agencies see R.S. 15:1157, as amended by [Act 248 of 2017](#).

See [Competitive Sealed Bidding](#)

Discussion of a true sole source situation. [R.S. 39:1597](#) is the “sole source” provision of the Louisiana Procurement Code. The Louisiana Cattleman’s Association can be considered the sole source provider to administer the Program, since it is the only industry organization in Louisiana recognized by the National Cattlemen’s Beef Association [AG Op. No. 13-0078](#).

The exclusion of small business set-asides for construction projects found in R.S. 39:1733(A) is not applicable to political subdivisions of the state [AG Op. No. 12-0059](#).

Based on the jurisprudence and past opinions of his office, the AG continues to be of the opinion that absent statutory authority (such as the exception found in La. R.S. 38:2212.5), the Louisiana Public Bid Law prohibits the prequalification of bidders [AG Op. No. 12-0059](#).

The Procurement Code is intended for the use by state agencies for the buying, purchasing, renting, leasing, or the obtaining of supplies, services, or major repairs. In other words, the Procurement Code is used when state entities expend funds [AG Op. No. 10-0297](#).

Select Definitions

What are some important definitions or terms?

[R.S. 39:1556](#)

Agencies will encounter the terms defined below as they work under the procurement code. These terms are just a few of the words defined in the law. Other definitions appear in other sections of the law.

- **"Contract"** means all types of state agreements, regardless of what they may be called, including orders and documents purporting to represent grants, which are for the purchase or disposal of supplies, services, major repairs, or any other item. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; and purchase orders. It also includes supplemental agreements with respect to any of the foregoing.
- **"Governmental body"** means any department, office, division, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch of state government. For purposes of procurement of personal, professional, consulting, or social services contracts, governmental shall not include the judicial branch of state government.
- **"Installment-purchase contract"** means a contract which is utilized to procure supplies or equipment from a contractor where payment for the supplies or equipment is made in a set of installment payments over a fixed period of time in accordance with the provisions of the contract, and in which the contractor agrees to deliver title of the property to the governmental body in accordance with the terms and conditions of the contract.
- **"Major repairs"** means those repairs payable with funds appropriated in the general appropriations act, except those funds transferred from the operating budget of one governmental body to supplement and complete a project under contract by the division of administration facility planning and control section.
- **"Procurement"** means the buying, purchasing, renting, leasing, or otherwise obtaining any supplies, services, or major repairs. It also includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- **"Services"** means the furnishing of labor, time, or effort by a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply.

Services include but are not limited to the following:

- Maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment.
- Routine recurring maintenance of immovable property.
- Housekeeping services.
- Operation of government owned equipment, immovable property, and systems.
- Information technology services..

The term “**services**” shall not include:

- Employment agreements or collective bargaining agreements.
- Personal, professional, consultant, or social services as defined under the Procurement Code.
- Services performed by lawyers as provided by R.S. 42:261 through R.S. 42:264.
- Services performed by an architect, engineer, or landscape architect as provided by R.S. 38:2310 through R.S. 38:2314.

Executive Orders

Executive orders are issued by the governor to provide guidance to executive agencies in the operation of government. Executive orders have the force and effect of law unless they are contrary to the Constitution or law. (See AG Op. No. 80-281). Two executive orders deal with procurement. Orders JBE 16-55 deals with emergency procedures for conducting state business and [JBE 17-18](#) deals with small purchase procedures.

Executive orders issued by a governor terminate on the date provided in the order or in a later order. If the order does not contain a termination date, the order terminates 60 days after “...adjournment *sine die* of the regular session of the legislature after the issuing governor leaves office.” See R.S. 49:215 (C).

Two relevant executive orders governing purchases under the LPC are listed below:

Click on the links to see the full text.

1. [Executive Order JBE 17-18](#) Small Purchase Procedures
2. [Executive Order JBE 16-55](#) Emergency Procedures for Conducting State Business



Public Bid Law

[R.S. 38:2211, et seq.](#)

Overview

This document discusses the general principles and guidelines concerning [Louisiana's Public Bid Law](#) using a frequently asked questions (FAQ) format. The FAQ also contains Attorney General Opinions and case law to aid understanding of this area of the law. While the document is fairly detailed, remember that every situation is unique and that each situation deserves careful individual review.

Note when working with federal contracts and FEMA reimbursements, the federal government requires a competitive process for procurement of materials and supplies and public works, particularly for FEMA disaster reimbursements. When considering procurement after a disaster, always follow the stricter law to ensure a competitive process and successful reimbursement.

To facilitate your use of this document, numerous links within the summary will direct your attention to related areas within the document and to documents posted on the Louisiana Legislative Auditor's website and on external websites. For example, under the Table of Contents section, you may go directly to any area of the FAQ by clicking the title of the section that you wish to view.

INDEX

Public Bid Law

- Q.1.** What is the Public Bid Law?
- Q.2.** Does the Public Bid Law apply to procurement by my public entity?
- Q.3.** What types of contracts are covered by Louisiana's Public Bid Law?

Louisiana Procurement Code (LPC)

- Q.4.** What is the LPC?
- Q.5.** May a public entity that is subject to the Public Bid Law choose to be subject to the LPC?
- Q.6.** May a local governmental entity purchase an item on the state contract?
- Q.7.** May a local governmental entity purchase an item from a local vendor at the state bid price?

Public Works

- Q.8.** What are public works?
- Q.9.** Are contracts for demolition considered public works?
- Q.10** What is the dollar threshold, or contract limit (minimum), for contracts for public works?
- Q.11.** What are recent definitions added to the public bid requirements for public works?
- Q.12.** Who is a responsive bidder?
- Q.13.** Does the apparent low bidder who is disqualified as non-responsive have any recourse?
- Q.14.** What preparations must the public entity make before advertising for a public work?
- Q.15.** How are bids delivered?

Q.16. May the public entity reject any, or all, bids?

Contract Limits for Public Works

Q.17. Were there any changes in the 2014 Legislative Session to the threshold, or contract limit, for Public Works?

Procedures for Public Works

Q.18. What are the procedures for executing contracts for public works?

Q.19. What are the requirements regarding the advertisement of bids for public works?

Q.20. May changes be made to the contract after the contract has been executed?

Q.21. May a public entity construct a public work using its own employees without bidding?

Q.22. May construction managers or other third party consultants employed by a public entity manage a construction project as a general contractor or act in the role of a general contractor?

Q.23. What is the time period for awarding public works contracts?

Responsible and Responsive Bidder

Q.24. What is a responsible and responsive bidder?

Q.25. May the requirements of R.S. 38:2212 be waived?

Q.26. What happens if a bidder is not a “responsible bidder”?

Q.27. May the advertisement for bids pre-qualify certain individuals and thereby disqualify others?

Electronic Bidding Requirements

Q.28. What is electronic bidding?

Q.29. Who is exempt from the electronic bidding requirement under the Public Bid Law?

Change Orders

- Q.30.** What is a change order?
- Q.31.** What is a change order that is within the scope of the contract?
- Q.32.** What is a change order that is outside the scope of the contract?
- Q.33.** What are the requirements for a change order?

Addenda

- Q.34.** What are addenda?
- Q.35.** What are the requirements for addenda?

Materials and Supplies

- Q.36.** What are materials and supplies?
- Q.37.** Are all contracts for the purchase of materials and supplies subject to the Public Bid Law?

Contract Limits for Materials and Supplies

- Q.38.** What is the threshold, or contract limit (minimum) for purchases of materials and supplies by local political subdivisions?
- Q.39.** Does an exception to this threshold exist for purchase by a local governmental unit of a used or new motor vehicle for conversion into a law enforcement vehicle?

Procedures for Procurement of Materials and Supplies

- Q.40.** What procedures exist for procurement of Materials and Supplies?
 - Q.41.** What requirements exist for purchases made by a public safety agency spending federal grant dollars?
 - Q.42.** What requirements exist for the advertisement of bids?
 - Q.43.** May a public entity specify alternates?
-

Q.44. May a public entity specify a particular brand?

Q.45. What are the rules on the opening of bids?

Q.46. May the public entity reject any, or all, bids?

Electronic Bidding

Q.47. What is electronic bidding?

Q.48. Who is exempt from the electronic bidding requirement under the Public Bid Law?

Q.49. May electronic bidding be used for “reverse auctions”?

Q.50. What are the notice requirements for a “reverse auction”?

Exceptions

Q.51. What are the rules for purchases from the federal government related to homeland security?

Q.52. Does the Public Bid Law apply to a procurement transaction between two public entities?

Q.53. What are the exceptions to bidding requirements for contracts for materials and supplies?

Q.54. What is the effect of the R.S. 38:321.1 “piggy backing” provision?

Emergency Exception

Q.55. Are there exceptions to the Public Bid Law for emergencies?

Q.56. What is an emergency?

Q.57. When is the emergency exception applied?

Q.58. What special documentation is required for purchases under the emergency exception?

Extreme Emergency Exception

Q.59. What is an extreme emergency?

Q.60. How is the extreme emergency exception applied?

Q.61. What documentation is required for purchases under the extreme emergency exception?

Other Exceptions or Limitations

Q.62. What exceptions or limitations apply to contracts for public works and materials and supplies?

Q.63. What limitations apply to a consultant competing for contracts?

Prohibitions

Q.64. What provisions in the Public Bid Law address rejecting bids from convicted felons?

Q.65. May a commission, fee or other consideration be split or shared?

Telecommunications and Data Processing Procurement Law

Q.66. How do political subdivisions procure computers and software?

Cooperative Purchasing

Q.67. May hospitals engage in cooperative purchasing?

Q.68. May school districts and schools engage in cooperative purchasing?

Professional Services

Q.69. How are professional services for executive branch entities defined?

Q.70. Are the professional services sought by local political subdivisions and other local entities subject to the Public Bid Law?

Q.71. Are other types of contracts for services subject to the Public Bid Law?

Q.72. What laws apply to contracts by State Agencies for professional services?

Additional Legal Sources

Relevant Attorney General Opinions

Case Law

Frequently Asked Questions

Public Bid Law

R.S. 38:2211, et seq.

Q.1. What is the Public Bid Law?

- A.1.** The Public Bid Law is the set of laws that governs contracts for public works and the purchase of materials and supplies by public entities that meet certain threshold requirements called the “**contract limit**” (minimum). This limit is \$30,000 for materials and supplies, and **\$152,550** for public works. The purpose of the public bid law is to ensure that public entities receive the best possible price when using public funds for the procurement of materials and supplies or public works.

Procurement rules for state executive branch entities are contained in the Louisiana Procurement Code (LPC). State executive branch entities (the legislative and judicial branches are exempt) are required to use the LPC for the purchase of materials and supplies. They are, however, required to use the Public Bid Law for public works projects.

Local governmental and political subdivisions are required to follow the Public Bid Law for the procurement of materials and supplies and public works projects. They may however, use the LPC for the procurement of materials and supplies when best interest dictates. They may choose by ordinance or resolution to adopt the LPC in part or in its entirety. They may also purchase from vendors that have been pre-approved by the Office of State Procurement (OSP). Purchasing off the state contract allows agencies to purchase items that have been pre-bid by OSP.

Q.2. Does the Public Bid Law apply to procurement by “my” public entity?

- A.2.** “**Public entity**” is defined in R.S. 38:2211(A)(11) as the state of Louisiana, or any agency, board, commission, department, or public corporation of the state, created by the constitution or statute or pursuant thereto, or any political subdivision of the state, including but not limited to any political subdivision as defined in Article VI Section 44 of the Constitution of Louisiana, and any public housing authority, public school board, or any public officer whether or not an officer of a public corporation or political subdivision.

All public entities are required to follow either the Public Bid Law or the Louisiana Procurement Code. Absent a specific exception, all public entities must follow the Public Bid Law for contracts related to public works. Political subdivisions and local governmental entities must use the Public Bid Law for the purchase of materials and supplies, unless they choose to follow the LPC or purchase goods off the state contract. State executive branch entities must use the LPC for the purchase of materials and supplies.

Q.3. What types of contracts are covered by Louisiana’s Public Bid Law?

- A.3.** All contracts for public works (defined in [\[Q.8\]](#) are governed by the Public Bid Law, regardless of whether the contracting entity is a local political subdivision or a state entity.
- Contracts for the purchase of materials and supplies are governed by the Public Bid Law if the entity is a local political subdivision or local governmental entity.
 - State entities must use the LPC for the purchase of materials and supplies.
 - Contracts for professional services procured by political subdivisions and local government entities are not subject to the Public Bid Law.

Louisiana Procurement Code (LPC)

[R.S. 39:1551,et seq.](#)

Q.4. What is the LPC?

- A.4.** The LPC is the set of procurement laws that executive branch agencies of the State are required to follow instead of the Public Bid Law when they are purchasing materials and supplies. The LPC, through the Office of State Procurement, provides a list of vendors and products that have been pre-bid for easy purchase by executive branch agencies. Click [here](#) to go to the Legislative Auditor’s Summary of the LPC.

Q.5. May a public entity that is subject to the Public Bid Law choose to be subject to the LPC?

[R.S. 38:2212.1\(F\)](#)

- A.5.** Yes. Political subdivisions are authorized to adopt by ordinance or resolution all or any part of the LPC and its accompanying regulations for the procurement of material and supplies. If the political subdivision adopts the LPC for the procurement of materials and supplies, then the LPC and not the Public Bid Law applies to those purchases. Any public entity may, however, purchase materials, supplies, and equipment from the state contract under the LPC without actually adopting the LPC.

Q.6. May a local governmental entity purchase an item on the state contract?

[R.S. 39:1702](#)

- A.6.** Yes, a local entity may purchase an item on the state contract employing the cooperative purchasing provisions of R.S. 39:1701 et seq. The entity is not required to adopt the LPC "all or in part" for this transaction because the purchase is permitted through the Public Bid Law pursuant to R.S. 38:2212.1(F). As a matter of prudent administration, the governing body should, at a minimum, document the details for the purchase through resolution, ordinance, or minutes.
- ❖ AG Op. No. 05-0109 - *R.S. 33:1701-1705 provides political subdivisions the authority to purchase equipment through existing state contracts and precludes the necessity of following the bid requirements set forth in the Public Bid Law (LSA-R.S. 38:2211-2296).*

Q.7. May a local governmental entity purchase an item from a local vendor at the state bid price? [R.S. 39:1710](#)

A.7. Yes, R.S. 39:1710 allows these purchases with certain limitations. The statute provides that:

When a local governing authority purchases an item at the state bid price through a local vendor, the local governing authority may pay to the local vendor the costs for shipping, preparation, and delivery of the item, provided that these costs shall not exceed the state bid price by seven percent on purchases up to ten thousand dollars, five percent on purchases over ten thousand dollars and up to twenty thousand dollars, and three percent on purchases over twenty thousand dollars.

The Attorney General in AG Op. No. 96-44 opined that the following steps would be required to comply with the statute:

In order to facilitate use of these provisions, we would advise that the following steps be taken by a local governing authority:

1. Determine from State Central Purchasing if there is a competitively bid state contract for the needed material or supply and obtain the State Contract Number and the specification for the item on state contract.
2. Contact a local vendor for the item to determine if he/she can provide the item meeting the exact same specification as the state contract item and obtain a written price quote for delivery of the item to the local governing authority. While the statute provides no definition for the word "local", it is interpreted in this context to mean a vendor situated within the boundaries of the governing authority seeking to make the purchase.
3. If the delivered price offered by the local vendor is within the percentages set forth in the statute for contracts of various values, a purchase order may be issued by the local governing authority to the local vendor, reflecting the state contract number, state contract specification, state contract price and the markup allowed to the local vendor for shipping, preparation and delivery of the item(s).
4. A copy of the local governing authority's purchase order shall be furnished to the State Central Purchasing Office for monitoring compliance with the provisions of [R.S. 39:1710](#).

The statute in question is an exception to the otherwise sweeping requirement of [R.S. 38:2212A\(1\)](#) that all purchases above the contract amount (presently \$30,000) made by a public entity with public funds be made by sealed bid pursuant to advertising. The procedures set forth above are intended to assure compliance with the letter and spirit of both the Public Bid Law ([R.S. 38:2211-2237](#)) and [R.S. 39:1710](#).

Public Works

[R.S. 38:2211](#)

Q.8. What are public works?

A.8. Public work, as defined in R.S. 38:2211(A)(12), includes any contract for the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity. These contracts also include labor and materials.

Q.9. Are contracts for demolition considered public works?

A.9. There is not unanimous agreement as to the answer to this question.

The Attorney General (AG) in Opinion 10-0026 opined that a contract for demolition was not a public work as demolition was not included in the definition of a public work (i.e. erection, construction, alteration, improvement or repair), and therefore not subject to the provisions of the Public Bid Law. The AG stated that a contract for demolition should be treated as a contract for services. The AG has not formally withdrawn this opinion.

In 2011, the Fourth Circuit Court of Appeal in *Concrete Busters of Louisiana, Inc. v. The Board of Commissioners of the Port of New Orleans* held that a contract for demolition was a public work, as demolition would result in an alteration of the immovable property of the public entity. Alteration is included within the definition of a public work. The Supreme Court and the other Appellate Courts have not issued a published opinion regarding the status of a contract for demolition being considered a public work. The Fourth Circuit's decision, while persuasive, is not binding on public entities in other Louisiana Appellate Circuits.

The Fourth Circuit's decision in *Concrete Busters* was mentioned by the AG in Opinion 12-0066, but was not fully addressed by the AG. In this opinion, the AG opined that, when a public entity elects to utilize the bid process to execute a contract for demolition, it must comply with the requirements set forth in its bid documents. The AG did not address whether a contract for demolition is a public work in AG Op. No. 12-0066, as the contract for demolition at question was valued below the contract threshold for a public works.

Given these differing determinations, it is possible that another appellate court may ultimately hold that a public entity's contract for demolition is not a public work, or may instead choose to adopt the reasoning of the Fourth Circuit and hold that it is a public work. Public entities should consult with their legal counsel to review these AG opinions and court decision to determine how it should proceed with any contract for demolition.



NEW
2017

Q.10. What is the dollar threshold, or contract limit (minimum), for contracts for public works?

A.10. The threshold, or contract limit, is currently set at **\$152,550**. Changes in the 2014 Legislative Session, added an annual Consumer Price Index (CPI) calculation to the threshold. Therefore, beginning February 1, 2015, and annually on February first of each subsequent year, the office of facility planning and control (OFPC) within the division of administration shall adjust the statutory contract limit (\$150,000) by an amount not to exceed the annual percentage increase in the CPI in the preceding year. The OFPC shall publish the new contract limit for public works contracts in the Louisiana Register in January of each year. OFPC has published in the **January 2017** Louisiana Register that the contract limit for public works contracts is now **\$152,550**.

Q.11. What are recent definitions added to the public bid requirements for public works?

A.11. Recent additions to the definitions section in R.S. 38:2211, include:

- **“Alternate”** means an item on the bid form that may either increase or decrease the quantity of work or change the type of work within the scope of the project, material, or equipment specified in the bidding documents, or both.
- **“Change order”** means any contract modification that includes an alteration, deviation, addition, or omission as to a preexisting public work contract, which authorizes an adjustment in the contract price, contract time, or an addition, deletion, or revision of work.
- **“Probable construction costs”** means the estimate for the cost of the project as designed that is determined by the public entity or the designer.

Q.12. Who is a responsive bidder?

R.S. 38:2212(A)(3)

A.12. R.S. 38:2212 adds the word **“responsive”** to the phrase **“responsible bidder”** to provide as follows:

*All public work exceeding the contract limit as defined in this Section, including labor and materials, to be done by a public entity shall be advertised and let by contract to the lowest **responsible and responsive bidder** who had bid according to the bidding documents as advertised, and no such public work shall be done except as provided in this Part.*

The new law provides that the bidding documents shall not require any bidder, other than the apparent low bidder, to furnish any other information or documentation, including the Attestation Affidavit and the E-Verification Form, any sooner than ten days after the date bids are opened; however, the apparent low bidder may submit such information or documentation at any time prior to the expiration of the ten-day period.

If the apparent low bidder does not submit the proper information or documentation as required by the bidding documents within the ten-day period, such bidder shall be

declared **non-responsive**, and the public entity may award the bid to the next lowest bidder, and afford the next lowest bidder not less than ten days from the date the apparent low bidder is declared non-responsive, to submit the proper information and documentation as required by the bidding documents, and may continue such process until the public entity either determines the low bidder or rejects all bids.

A responsive bidder, therefore, is the apparent low bidder who submits the proper documentation within ten days of the opening of the bids.

Q.13. Does the apparent low bidder who is disqualified as non-responsive have any recourse? [R.S. 38:2212\(X\)](#)

A.13. If the public entity letting the contract proposes to disqualify any bidder, either as a potential bidder or as the low bidder, on grounds that such bidder is not a "**responsible bidder**" such public entity shall do all of the following:

- (a) Give written notice of the proposed action to such bidder and include in the written notice all reasons for the proposed action.
 - (b) Give the bidder who is proposed to be disqualified the opportunity to be heard at an informal hearing at which such bidder is afforded the opportunity to refute the reasons for the proposed action.
- The informal hearing shall be conducted prior to award of the public work.
 - The informal hearing shall be a condition precedent to any action by the bidder adverse to the public entity, its representatives, employees, and designers.
 - The informal hearing shall be conducted by the public entity not later than five business days after the date of the notice of disqualification of such bidder. The public entity shall issue a ruling in writing and deliver it to the affected bidder not later than five business days after the date of the informal hearing.
 - No award of the contract for the public work shall be made by the public entity prior to the expiration of at least five working days following the date of issuance of the decision by the hearing official.
 - The provisions of this Subsection shall not apply to such actions of the Department of Transportation and Development.
 - Although not mentioned in the statute, once a disqualified vendor has exhausted all administrative remedies, a lawsuit remains an option.

Q.14. What preparations must the public entity make before advertising for a public work? [R.S. 38:2212\(H\)](#)

A.14. Every public entity intending to advertise a public work for bids [\[See Q.19\]](#) is required to estimate the probable construction costs of such public work or obtain an estimate from the project designer prior to advertising the public work for bids.

No public entity shall advertise a public work for bids unless the public entity has budgeted funds that meet or exceed the estimate of the probable construction costs for the project.

The estimate of probable construction costs for the project shall be made available at the time of bid opening, either by posting the estimate electronically or announcing aloud the estimate at the bid opening.

Any and all bidders' information shall be available upon request, either no sooner than fourteen days following the bid opening or after the recommendation of award by the public entity or the design professional, whichever occurs first. The requester shall pay reasonable reproduction costs.

These requirements shall not apply to the Department of Transportation and Development.

Q.15. How are bids delivered?

R.S. 38:2212(B)(6)

A.15. Bids may be delivered one of three ways.

- (1) For bids hand delivered by the bidder or his agent, a written receipt shall be handed to the deliverer;
- (2) Alternatively, bids shall be sent by registered or certified mail with a return receipt requested; or
- (3) Shall be submitted electronically.

The new law removes the stipulation that the requirement that all bids be sent by registered or certified mail shall not apply to bids received by municipal and parochial governing authorities. The current presumption is that these alternative requirements do apply to municipal and parochial governing authorities.

No public entity shall accept or take any bids, including receiving any hand delivered bids, on days that are recognized as holidays by the United States Postal Service.

Q.16. May the public entity reject any, or all, bids?

R.S. 38:2214

A.16. R.S. 38:2214(B) provides that the public entity may reject for just cause any and all bids. The statute does not define “**just cause**” for materials and supplies, but does define “**just cause**” for public works, including but not limited to:

- The public entity's unavailability of funds sufficient for the construction of the proposed public work;
- The failure of any bidder to submit a bid within an established threshold of the preconstruction estimates for that public work, as part of the bid specifications;
- A substantial change by the public entity prior to the award in the scope or design of the proposed public work;

- A determination by the public entity not to build the proposed public work within twelve months of the date for the public opening and reading of bids; and
- The disqualification by the public entity of all bidders.

Contract Limits for Public Works

Q.17. Are there changes to the threshold, or contract limit, for Public Works?

R.S. 38:2212(C)

A.17. The Office of Facility Planning and Control (OFPC) adjusts the contract limit for public works by an amount not to exceed the previous year's increase in the Consumer Price Index (CPI). The CPI is commonly used when it is necessary to adjust prices or costs to account for the effect of inflation on the real value of various costs. This adjustment is performed annually on February 1st. The new contract limit for public works contracts is published by OFPC using the rulemaking process in the Louisiana Register in January of each year. Currently, the contract limit for public works contract is **\$152,550**.

R.S. 38:2212 provides that despite provisions in the post-1974 home rule charter to the contrary, the City of Alexandria was not required to bid any public work that is less than the contract limit established in R.S. 38:2212 without an affirmative act of its governing authority to adopt a more restrictive contract limit.

Procedures for Public Works

Q.18. What are the procedures for executing contracts for public works?

R.S. 38:2212(A)

A.18. All contracts for public works exceeding the current contract threshold of **\$152,550** must be advertised for bid and let for contract with the lowest responsible and responsive bidder.

The Legislative Auditor recommends that contracts for public works valued at **\$152,550** or less, be administered through a Request for Proposal (RFP) process and/or solicitation of at least three bids, even though the statute does not require them to be bid.

Public entities through their employees may undertake contracts for public works projects costing less than the contractual limit. All materials and supplies used in the construction must, however, be purchased in accordance with the Public Bid Law pursuant to R.S. 38:2212.1. **R.S. 38:2212(N)**

All contracts for public works by public entities must use the Louisiana Uniform Public Work Bid Form established by the Office of Facility Planning and Control.

R.S. 38:2212(B)(2).



Act 399 of 2017 enacted R.S. 38:2211.1 to restrict public entities that fail to comply with audit requirement from letting public contracts. R.S. 38:2211.1 prohibits public entities who have failed to comply with the audit provisions of R.S. 24:513 from letting any public contracts under the Public Bid Law that utilizes any state funds, whether received through direct appropriations or through transfer from another public entity or whose funding relies upon the full faith and credit of the state. For the purposes of this provision, the term “state funds” includes any federal funds, including grants, that pass through the state. Any public entity that has been subject to this restriction, upon coming into compliance with the provisions of R.S. 24:513, shall immediately inform the Legislative Audit Advisory Council (LAAC) in writing of their compliance and, upon confirmation by LAAC, shall be immediately released from the restrictions that were imposed.

The Louisiana Uniform Public Work Bid Form is published in the Louisiana Administrative Code under Title 34, Government Contracts, Procurement and Property Control, Part III. Facility Planning and Control, Chapter 3. [Louisiana Uniform Public Work Bid Form](#).

Under no circumstances shall there be a division or separation of any public work project into smaller projects (splitting) if the division or separation would have the effect of avoiding the requirement that public work be advertised and let by contract to the lowest responsible and responsive bidder. **R.S. 38:2212(V)**

Q.19. What are the requirements regarding the advertisement of bids for public works? [R.S. 38:2212](#)

A.19. All advertisements for contracts for public works exceeding **the contract limit for public works contracts (currently greater than \$152,550)**, unless an exception applies, shall be published once a week for 3 different weeks in a newspaper in the locality; the first advertisement shall appear at least 25 days before the opening of bids and not occur on a Saturday, Sunday, or other legal holiday **R.S. 38:2212(G)**.

- Although the word ‘locality’ is not defined, the AG has interpreted it to mean the area where the political subdivision is located **AG Op. No. 83-720**.
- Contracts by a public entity for any project to restore or rehabilitate a levee that is not maintained with federal funds nor undertaken by the public entity with its own resources and employees must be advertised for bid if they exceed \$1 million dollars. This exception for a heightened contract limit is slated to expire on December 31, 2018 **R.S. 38:2212(C)(3)**.
- Bidding documents shall be available to bidders on the day of the first advertisement and until 24 hours before the bid opening date **R.S. 38:2212(G)(2)**.



**NEW
2017**

- **Contractor certification Act 49 of 2017** amended R.S. 37:2163 to provide that all architects, engineers, and awarding authorities shall place in their bid specifications the requirement that a contractor shall certify that he holds an active license by displaying his license number on the bid envelope. If the bid does not display the contractor's license number the bid shall be automatically rejected.
- Public entities must include all bid documents as defined in R.S. 38:2211(A)(1), on the electronic website accepting the electronic bids **R.S. 38:2212(E)(7)**.
- When attendance by bidders is mandated at a pre-bid conference, the date, place, and time of the pre-bid conference shall be stated in the first advertisement **R.S. 38:2212(I)**.
- If at the end of the contract document phase, it is determined that the designer's estimate is more than the funds budgeted by the public entity for the project, the project shall not be advertised for bid. The designer's estimate shall be read aloud upon opening bids **R.S. 38:2212(H)**.
- The Construction or Contract Document Phase is the coordination of all technical drawings and designs related to the project, the development of the specifications documents, finalization of details, and an updated statement of probable cost.
- If political subdivisions are required to, allowed to, or elect to allow for electronic submission of bids, the advertisement shall contain the electronic address of the public entity and shall establish the specific times for public access to the electronic interactive environment for purposes of submission of bids **R.S. 38:2212(E)**.

Q.20. May changes be made to the contract after the contract has been executed?

R.S. 38:2212(M)

A.20. Yes, the contract may be amended through change orders, if they are within the scope of the contract.

- All public work contracts shall contain provisions authorizing the issuance of change orders within the scope of the contract.
- All change orders shall be in writing or in electronic format if the public entity is capable of receiving change orders electronically. All change orders shall be signed by the contractor and the public entity or its design representative.
- The public entity shall pay the contractor for work performed by change order not later than sixty days after the date the public entity approves the application for payment for completion of the work performed in the change order.
- Any change order outside the scope of the contract shall be let out for public bid if it exceeds the contract threshold defined herein.

- Any change order pertaining to public work, not required to be let out for public bid, shall either be negotiated in the best interest of the public entity or let out for public bid. Where the change order is negotiated, the public entity shall require that such change order be fully documented and itemized as to costs, including material quantities, material costs, taxes, insurance, employee benefits, other related costs, profit, and overhead. If certain unit prices are contained in the initial contract, no deviations shall be allowed in computing negotiated change order costs.

Q.21. May a public entity construct a public work using its own employees without bidding? [R.S. 38:2212\(N\)](#)

A.21. Public works that are estimated to cost less than the contract limit may be undertaken by the public entity with its own employees. Those contracts let by any public entity for public works estimated to cost more than the contract limit shall be advertised and let by contract to the lowest responsible and responsive bidder.

Q.22. May construction managers or other third party consultants employed by a public entity manage a construction project as the general contractor or act in the role of a general contractor? [R.S. 38:2212\(L\)](#)

A.22. No, the practice of using construction managers to oversee, direct, or otherwise perform the role of a general contractor on a public works project is prohibited [AG Op. No. 12-0232](#). This restriction shall not apply to the initial construction of a hospital, medical facility, or a combination of both, constructed by the Orleans Hospital Service District, but shall apply to the construction of any additions or modifications of a hospital, medical facility, or a combination of both, constructed by the Orleans Hospital Service District following the completion of the initial construction.

Q.23. What is the time period for awarding public works contracts? [R.S. 38:2215](#)

A.23. R.S. 38:2215 provides that a public entity shall act not later than forty-five calendar days after the date of opening bids to award the public works contract to the lowest responsible and responsive bidder or to reject all bids. If, however, the public entity and the lowest responsible and responsive bidder agree by mutually written consent, the deadline for award may be extended in increments of thirty calendar days.

If the lowest responsible and responsive bidder has timely provided all documents required by R.S. 38:2212, and no injunction or temporary restraining order is in effect, the lowest responsible and responsive bidder and the public entity shall execute the contract not later than sixty calendar days after the date of the public entity's award of the contract to the lowest responsible and responsive bidder.

The public entity shall issue to the contractor a notice to proceed with the project or work order not later than thirty calendar days following the date of the second party's execution of the contract. However, the public entity and the contractor, upon mutual written consent of both parties, may agree to extend the deadline to issue the notice to proceed.

The provisions of this law do not apply to contracts to be financed by bonds that are required to be sold after opening of bids on the contract, or when the contract is to be financed in whole or in part by federal or other funds that will not be readily available at the time bids are opened, or on contracts that require a poll of the Legislature of Louisiana before funds are available to fund the contract. This exception shall be mentioned in the bidding documents for the project and in the official advertisement for bids required in accordance with R.S. 38:2212.


These provisions are not subject to waiver.

Responsible and Responsive Bidder

R.S. 38:2212

Q.24. What is a responsible and responsive bidder?

A.24. A responsible and responsive bidder, according to R.S. 38:2212(A)(1), is one whose bid meets the requirements set out in the advertised bidding documents and who provides the required documentation within ten days of the bid opening. These documents may be required by statute, the Administrative Code, or the bidding documents.

- 
- **Contractor certification Act 49 of 2017** amended R.S. 37:2163 to provide that all architects, engineers, and awarding authorities shall place in their bid specifications the requirement that a contractor shall certify that he holds an active license by displaying his license number on the bid envelope. If the bid does not display the contractor's license number the bid shall be automatically rejected.

The low bidder is required to furnish any other documentation, including the attestation required under R.S.38:2212.10, within ten days of the bid opening. The governing authority of any publicly owned commercial aviation airport to the Sewerage and Water Board of New Orleans and all agencies of the City of New Orleans including the Regional Transit Authority and the New Orleans Aviation Board are required to have the two lowest bidders furnish any other required documentation and attestations three days after the bid opening.

Q.25. May the requirements of R.S. 38:2212 be waived?

R.S. 38:2212(B)

A.25. Public entities shall not waive the provisions and requirements of R.S. 38:2212, requirements stated in the advertisement for bids, nor those required on the uniform bid form.

- ❖ *"...the public entity should not include any requirements in its advertisement for bids or bid form that it considers insignificant or waivable, because once included, these requirements are non-waivable as a matter of law."* AG Op. No. 09-0304.

Q.26. What happens if a bidder is not a “responsible bidder”?

R.S. 38:2212(X)

A.26. If the public entity letting the contract proposes to disqualify any bidder, either as a potential bidder or as the low bidder, on grounds that such bidder is not a “**responsible bidder**” the public entity shall:

- Give written notice of the proposed action to the bidder and include in the written notice all reasons for the proposed action;
- Give the bidder who is proposed to be disqualified the opportunity to be heard at an informal hearing at which the bidder is afforded the opportunity to refute the reasons for the proposed action.
 - The informal hearing shall be conducted prior to award of the public work.
 - The informal hearing shall be a condition precedent to any action by the bidder adverse to the public entity, its representatives, employees, and designers.
 - The informal hearing shall be conducted by the public entity not later than five business days after the date of the notice of disqualification of the bidder. The public entity shall issue a ruling in writing and deliver it to the affected bidder not later than five business days after the date of the informal hearing.
 - No award of the contract for the public work shall be made by the public entity prior to the expiration of at least five working days following the date of issuance of the decision by the hearing official.

The disqualified vendor has the right to seek redress in a court of law after exhausting administrative remedies.

These provisions do not apply to the Department of Transportation and Development.

Q.27. May the advertisement for bids pre-qualify certain individuals and thereby disqualify others?

R.S. 38:2215

A.27. No, the general rule is that no pre-qualification may occur. For instance, geographic restrictions limiting the distance between the vendor and the public entity are not allowed. However, the entity may specify a time limit for needed repairs if included in the contract.

There are a very few exceptions to the general rule. An example of an exception under R.S. 38:2215 is that contracts for historic restoration for projects other than bridges and roads may be pre-qualified, due to the specific skills needed for the job.

Electronic Bidding Requirements

Q.28. What is electronic bidding? R.S. 38:2212(E) and R.S. 38:2212.1(B)(4)

A.28. Public entities shall provide, as an additional bidding option, a uniform and secure electronic interactive system for the submittal of bids for public contracts, both public works and materials and supplies, requiring competitive bidding. Any public entity, (including local entities) providing an electronic system shall follow the standards for the receipt of electronic bids adopted by the office of the governor, division of administration, and the office of information technology (See LAC 4:XV.701, providing that any special condition or requirement for the submission shall be specified in the advertisement for bids.)

Q.29. Who is exempt from the electronic bidding requirement under the Public Bid Law?

A.29. The exemptions for **public works** provided by R.S. 38:2212(E) include:

- Public entities that are currently without available high-speed Internet access until high-speed Internet access becomes available;
- Any parish with a police jury form of government and a population of less than twenty thousand; Any city or municipality with a population of less than ten thousand;
- Any other public entity that is unable to comply with the law without securing and expending additional funding;
- Public entities have the option to require that all bids be submitted electronically for any competitive bid let out for public bid.
 - Public entities shall include all bidding documents as defined in R.S. 38:2211(A)(2), on the electronic website accepting the electronic bids.

The exemptions for **materials and supplies** provided by R.S. 38:2212.1(B)(4) include:

- Public entities that are currently without available high-speed Internet access until high-speed Internet access becomes available;
- Any parish with a police jury form of government and a population of less than twenty thousand;
- Any city or municipality with a population of less than ten thousand; and
- Any special service district created by a police jury form of government that is unable to comply without securing and expending additional funding.
 - Public entities shall have the option to require that all bids be submitted electronically for any competitive bid let out for public bid.

Change Orders

[R.S. 38:2211\(A\)\(3\)](#)

Q.30. What is a change order?

[R.S. 38:2211\(A\)\(3\)](#)

A.30. A change order is any contract modification that includes an alteration, deviation, addition, or omission as to a preexisting public work contract that authorizes an adjustment in the contract price, contract time, or an addition, deletion, or revision of work. Change orders may be either “within the scope of the contract” or “outside the scope of the contract.”

Q.31. What is a change order that is within the scope of the contract?

[R.S. 38:2211\(A\)\(3\)\(c\)](#)

A.31. A change order is within the scope of the contract when it does not alter the nature of the thing to be constructed and that is an integral part of the project objective.

Q.32. What is a change order that is outside the scope of the contract?

[R.S. 38:2211\(A\)\(3\)\(b\)](#)

A.32. A change order is outside the scope of the contract when it alters the nature of the thing to be constructed or that is not an integral part of the project objective (See the AG Op. discussed in [Q.33].)

Q.33. What are the requirements for a change order?

[R.S.38:2212\(M\)](#)

[R.S. 38:2222](#)

A.33. All change orders shall be in writing or in electronic format if the public entity is able to receive change orders electronically. All change orders shall be signed by the contractor and the public entity or its design representative.

The public entity shall pay the contractor for work performed by change order not later than sixty days after the date the public entity approves the application for payment for completion of the work performed in the change order.

- Change orders within the scope of the contract may be negotiated in the public's best interest or let out for bid. Public entities may wish to consider letting out for bid change orders within the scope which are more than the contract limit as a best use of public funds.
- Change orders outside of the scope of the contract that exceed the contract limit must be let for bid.
- R.S. 38:2222 requires that each change order shall be recorded by the public entity which entered into the contract in the office of the recorder of mortgages in the parish where the work is to be done or if not a public work, where the entity is domiciled, not later than 30 days after the date of the change order which requires that the recordation take place. The requirement applies to:

- Change order to a public works contract or to a contract for materials and supplies that adds an amount of 10% or more of the original contract amount, if the additional amount is at least \$10,000 or
 - All change orders to a contract aggregating to an amount of 20% or more of the original contract amount if the additional amount is at least \$10,000.
 - The original contract, if not previously recorded, shall be recorded with the change order.
- This requirement does not apply to the office of facility planning and control and the office of state purchasing.
- ❖ **AG Op. No. 03-0263** *The statute does not place any limit on the size or value of a change order, but does require that any change order be “within the scope of the contract”. A change order “outside the scope of the contract” and in excess of the \$100,000 (now \$152,550) contract limit must be let out for public bid. Change order means an alteration, deviation, addition or omission to a preexisting public work contract and a change order “within the scope of the contract” means a change order which does not alter the nature of the thing to be constructed and which is an integral part of the project objective.*

It is therefore the opinion of this office that the proposed addition to the existing public works contract is outside the scope of the contract and cannot be the subject of a change order. However, because the amount of the additional public work is less than the contract limit the Police Jury may either negotiate the contract with the existing contractor alone, include other contractors in the negotiations, or it may let the contract out for public bids.

Addenda

R.S. 38:2212(O)

Q.34. What are addenda?

A.34. Addenda are used to make changes to the bid documents -- often to extend the bid period. As with change orders, addenda must be within the scope of the project.

Q.35. What are the requirements for addenda?

A.35. The bid period may be extended up to 30 days through the issuance of an addendum without the requirement of re-advertising.

If, however, the addendum is issued within 72 hours of the advertised time of opening bids, the opening of bids is extended for at least 7 but not more than 21 working days without the requirement of re-advertising. The addendum shall state the revised time and date of opening of bids.

If an addendum modifying plans and specifications is issued within 7 days prior to the advertised time for opening bids, the public entity shall transmit -- within 24 hours of the issuance of the addendum -- a copy of the addendum to all prime bidders who have requested bid documents by one of the following methods:

- (1) Facsimile transmission;
- (2) E-mail; or
- (3) Hand-delivery.

Materials and Supplies

[R.S. 38:2212.1](#)

Q.36. What are materials and supplies?

A.36. Materials and supplies are not defined in the statutes; in this context, however, they are commonly understood to be the movable property necessary to conduct public business, from paper and pens to computers and printers.

Q.37. Are all contracts for the purchase of materials and supplies subject to the Public Bid Law?

A.37. Local political subdivisions and local governmental entities are required to use the Public Bid Law for the procurement of materials and supplies if the cost is over the contract limit of \$30,000, unless an exception exists. Examples of exceptions include: group purchasing options for hospitals (R.S. 38:2212.1(G)) and schools (R.S. 38:2212.1(N)); emergency procurements; or buying items off the state contract using the LPC. Transactions between public entities are not subject to the Public Bid Law, as long as a fair price is received for the goods.

State entities are required to use the LPC for the purchase of materials and supplies, and may purchase off the state contract or bid for items over \$25,000 pursuant to R.S. 39:1594. [Executive Order BJ 10-16](#) provides executive branch entities with certain procurement procedures for items under \$25,000.

Contract Limits for Materials and Supplies

Q.38. What is the threshold, or contract limit (minimum), for purchases of materials and supplies by local political subdivisions?

A.38. Contracts by local political subdivisions and local governmental entities for purchases of materials and supplies with a value of more than **\$30,000** must be advertised and let for contract with the lowest responsible bidder. Purchases of \$10,000 or more, but less than \$30,000 dollars, shall be made by obtaining no fewer than three telephone or facsimile quotations. For purchases less than \$10,000, but greater than \$1,000, prudent practice suggests obtaining at least 3 written quotes, though the law does not so require.

Q.39. Does an exception to this threshold exist for purchase by a local governmental unit of a used or new motor vehicle for conversion into a law enforcement vehicle? Please explain the meaning of [R.S. 38:2212.1\(A\)\(2\)\(a\)](#).

A.39. The original purpose of R.S. 38:2212.1(A)(2)(a) was to provide an alternative procedure for use by local governments to purchase law enforcement vehicles valued under the contract limit for the purchase of materials and supplies as provided by R.S. 38:2212.1(A)(1)(a). At the time R.S. 38:2212.1(A)(2)(a) was last amended, the contract limit for the purchase of materials and supplies was \$20,000. The use of sealed competitive bidding was still required if the law enforcement vehicle purchased under R.S. 38:2212.1(A)(2)(a) was valued over the \$20,000 contract limit.

When the general contract limit was raised to \$30,000 by Act 392 of the 2009 Regular Session, the Legislature did not amend the language in R.S. 38:2212.1(A)(2)(a) to match the new higher bid threshold, effectively repealing it. It appears that local governments purchasing used or new motor vehicles for law enforcement that cost more than \$20,000 but that do not otherwise exceed the \$30,000 general contract limit, should obtain three quotes in accordance with R.S. 38:2212.1(A)(1)(b).

Purchases of \$20,000 or less for this purpose appear to remain subject to the exception contained in R. S. 38:2212.1(A)(2)(a) and the purchase, while not requiring a specific amount or type of quotes, should be fully documented in the public entity's contract files. Although the language of R.S. 38:2212.1(A)(2)(a) does not provide for a specific number of quotes to be obtained, it does appear to require that more than one form of documentation be obtained to support the reasonableness of the purchase and be retained in the contract files of the public entity.

Procedures for Procurement of Materials and Supplies

Q.40. What procedures exist for procurement of Materials and Supplies?

A.40. Absent an exception, contracts by local political subdivisions and local governmental entities for the purchase of materials and supplies that exceed the threshold of \$30,000 must be advertised for bid and let for contract to the lowest responsible bidder.

Public entities that have contracts for purchases of materials and supplies for less than **\$30,000** but greater than or equal to **\$10,000** must, pursuant to R.S. 38:2212.1(A)(1)(b):

**Obtain at least 3 telephone or facsimile quotes; and
Obtain written confirmation of the accepted offer.**

If a lower bid than the accepted bid is rejected, the reason for the rejection must be noted.

The attorney general suggests that although not mandatory, public entities seeking contracts for purchases of materials and supplies for less than \$1,000 should, as part of

a good public policy requiring governmental accountability, obtain and document at least 3 verbal quotes, if possible.

The AG further suggests that public entities seeking contracts for purchases of materials and supplies for less than \$10,000, but greater than \$1,000, should, as part of good public policy requiring governmental accountability, obtain at least 3 written quotes.

Q.41. What requirements exist for purchases made by a public safety agency spending federal grant dollars?

A.41. Louisiana law provides that purchases made by a public safety agency following the guidelines and restrictions established pursuant to the expenditure of federal grant dollars shall be made by obtaining not less than three telephone or facsimile quotations. The agency must, however, also comply with the federal grant requirements, which may include competitive bidding. If stricter, federal law must be followed.

Q.42. What requirements exist for the advertisement of bids? [R.S. 38:2212.1\(B\)\(1\)](#) and [R.S. 38:2214](#)

A.42. The advertisement for bids shall be published 2 times in a newspaper in the locality. The word 'locality' is not defined; the AG has interpreted it to mean the area where the political subdivision is located **AG Op. No. 83-720**.

The first publication must appear at least 15 days before the opening of the bids and shall not occur on a Saturday, Sunday or legal holiday.

Plans and specifications shall be available to bidders the day of the first advertisement and until 24 hours before bid opening date.

R.S. 38:2214(A), states that the advertisement for bids shall include the time and place that the bids will be received and shall at that time and place publicly open the bids and read them aloud. No public entity shall accept or take any bids including hand-delivered bids on days that are recognized as holidays by the United States Postal Service.

Q.43. May a public entity specify alternates? [R.S. 38:2212.1\(B\)\(3\)](#)

A.43. The public entity may specify no more than three (3) alternates and must accept them in the order they appear on the bid form. Determination of the low bidder shall be on the basis of the sum of the base bid and any alternates accepted. However, the public entity may accept alternates in any order that does not affect determination of the low bidder.

Q.44. May a public entity specify a particular brand? R.S. 38:2212.1(C)(1) and (2)

A.44. Yes, if in the public interest, a public entity may specify a particular brand, make, or manufacturer in the specifications using the model or catalog number. These specific brand names denote the quality standard of the product desired and does not restrict prospective bidders; equivalent products must be acceptable.

Q.45. What are the rules on the opening of bids?

R.S. 38:2214

A.45. R.S. 38:2212.1(J) provides that the opening of bids is governed by the provisions of R.S. 38:2214. This statute requires the public entity to designate the time and place that the bids will be received in the advertisement for bids. It further requires the public entity at that time and place to publicly open the bids and read them aloud. No public entity shall accept or take any bids, including hand-delivered bids, on days that are recognized as holidays by the United States Postal Service.

Q.46. May the public entity reject any, or all, bids?

R.S. 38:2214

A.46. R.S. 38:2214(B) provides that the public entity may reject any and all bids for just cause. The statute does not define “just cause” for materials and supplies, but does define “just cause” for public works (See [\[Q.16.\]](#))

- **Contractor certification [Act 49 of 2017](#)** amended R.S. 37:2163 to provide that all architects, engineers, and awarding authorities shall place in their bid specifications the requirement that a contractor shall certify that he holds an active license by displaying his license number on the bid envelope. If the bid does not display the contractor’s license number the bid shall be automatically rejected.



**NEW
2017**

Electronic Bidding

Q.47. What is electronic bidding?

R.S. 38:2212.1(B)(4)(a)

A.47. Contractors shall be provided the option to submit bids for public contracts through a uniform and secure electronic interactive system. Political subdivisions shall follow the standards for the receipt of electronic bids adopted by the office of the governor, division of administration, and the office of information technology as provided for in LAC 4:XV.701, and shall make the appropriate provisions necessary for the acceptance of electronic bids for all purchases requiring competitive bidding. Any special condition or requirement for the submission shall be specified in the advertisement for bids.

Q.48. Who is exempt from the electronic bidding requirement under the Public Bid Law?

A.48. The exemptions for **public works** provided by R.S. 38:2212(E) include:

- Public entities that are currently without available high-speed Internet access until high-speed Internet access becomes available;
- Any parish with a police jury form of government and a population of fewer than twenty thousand;
- Any city or municipality with a population of fewer than ten thousand;
- Any other public entity that is unable to comply with the law without securing and expending additional funding

- Public entities have the option to require that all bids be submitted electronically for any competitive bid let out for public bid.
- Public entities shall include all bidding documents as defined in R.S. 38:2211(A)(2), on the electronic website accepting the electronic bids.

The exemptions for **materials and supplies** provided by R.S. 38:2212.1(B)(4) include:

- Public entities that are currently without available high-speed Internet access until high-speed Internet access becomes available;
 - Any parish with a police jury form of government and a population of fewer than twenty thousand;
 - Any city or municipality with a population of fewer than ten thousand; and
 - Any special service district created by a police jury form of government that is unable to comply without securing and expending additional funding.
- Public entities shall have the option to require that all bids be submitted electronically for any competitive bid let out for public bid.

Q.49. May electronic bidding be used for “reverse auctions”?

R.S. 38:2271

A.49. Yes, if the procurement officer for the political subdivision determines that electronic bidding is in the best interest of the political subdivision and that electronic online bidding is more advantageous than other methods, reverse bidding may be used.

R.S. 38:2271 provides the detailed procedure. The statute defines "reverse auction" as a competitive online solicitation process on the internet for materials, supplies, services, products, or equipment in which vendors compete against each other online in real time in an open and interactive environment. The Act further provides that in a reverse auction, the political subdivision shall develop policies and may require, among other things, that:

- (1) Vendors register before the opening date and time.
- (2) Vendors be prequalified prior to placing bids.
- (3) The solicitation shall designate an opening date and time and the closing date and time.
- (4) At the opening date and time, the using agency shall begin accepting online bids and continue accepting bids until the bidding is officially closed. Registered bidders shall be allowed to lower the price of their bids below the lowest bid posted on the Internet until the closing date and time.
- (5) Bidders' identities shall not be revealed during the bidding process.
- (6) All bids shall be posted electronically and updated on a real-time basis.

- (7) The using political subdivision shall retain the right to cancel the solicitation if it determines that it is in the political subdivision's best interest.
- (8) The using political subdivision shall retain its existing authority to determine the criteria that will be used as a basis for making awards.

Q.50. What are the notice requirements for a “reverse auction”? [R.S. 38:2271\(C\)](#)

A.50. R.S. 38:2271 requires adequate public notice for purchases of materials, supplies, or equipment by a political subdivision using a reverse auction be given as follows:

- The advertisement or notice shall be published twice in a newspaper in the locality, the first advertisement to appear at least 15 days before the opening date of the reverse auction. The word 'locality' is not defined; the AG has interpreted it to mean the area where the political subdivision is located **AG Op. No. 83-720**.
- In addition to the newspaper advertisement, a political subdivision may also publish an advertisement by electronic media available to the general public.
- The first publication of the advertisement shall not occur on a Saturday, Sunday, or legal holiday.

Exceptions

Q.51. What are the rules for purchases from the federal government related to homeland security? [R.S. 38:2212.6](#)

A.51. R.S. 38:2212.6 provides that any public procurement unit may procure materials, supplies, equipment, and services related to homeland security from federal General Services Administration supply schedules. Such purchases shall:

- Use a Louisiana distributor.
- Use the competitive ordering procedures of the federal General Services Administration.
- Receive prior approval from the director of the Governor's Office of Homeland Security and Emergency Preparedness, or his designee.

Q.52. Does the Public Bid Law apply to a procurement transaction between two public entities? [R.S. 38:2212.1\(D\)](#)

A.52. Generally no, R.S. 38:2212.1(D) provides that the Public Bid Law does not apply to:

- a public entity purchasing surplus materials and supplies from another public entity;
or
- the government of the United States; or

- a transaction governed by the procurement code.

Q.53. What are the exceptions to bidding requirements for contracts for materials and supplies?

A.53. Yes, there are exceptions for certain purchases of materials and supplies. These exceptions include:

- purchases off the State Contract under cooperative purchasing agreements; **R.S. 38:2212.1(F)**
- purchases of surplus materials and supplies from another public entity or the government of the United States or if the particular transaction is governed by the procurement code; **R.S. 38:2212.1(D)**
- purchases off of the Federal General Services Administration Lists, provided that the items are not otherwise available cheaper on State Contract and the public entity utilizes a Louisiana licensed dealer or distributor; R.S. 38:2212.1(E)
- purchases by hospitals service districts under qualified group purchasing organizations; **R.S.38:2212.1(G)**
- purchases of used fire and emergency response vehicles, including associated equipment, with a per unit purchase cost of less than one hundred thousand dollars; **R.S. 38:2238, et seq.**
- lease, rental, or purchases of telecommunications data processing systems, including equipment, and related services, by political subdivisions through a request for proposals; **R.S. 38:2237**
- purchases of materials, equipment and supplies by school districts and schools through a school district purchasing co-op; Act 823 of the 2014 Legislative Session; **R.S. 38:2212.1(N)** and
- purchase of materials, supplies, vehicles or equipment by the State, any levee district, levee drainage district, municipality, parish or other political subdivision of the state through an existing public contract of another political subdivision within one year of the opening of bids; R.S. 38:321.1

Q.54. What is the effect of the R.S. 38:321.1 “piggy backing” provision? R.S. 38:321.1

A.54. R.S. 38:321.1 provides an alternative procurement method as a cost-savings alternative for certain purchases. This method, commonly referred to as “piggy backing,” provides that, in addition to the procurement methods available to all political subdivisions, the State, levee districts, levee drainage districts, municipalities, parishes or other political subdivisions of the state may purchase materials, supplies, vehicles or equipment through an existing public contract of

another political subdivision within one (1) year of the opening of bids, provided that the following conditions are met:

- (1) The contract was bid in compliance with R.S. 38:2211 et seq.*
- (2) The total purchases on the contract do not exceed two times what was purchased by the political subdivision bidding the contract.
- (3) The written consent of the political subdivision which bid the contract is obtained, as well as the contract number, and if applicable, the resolution accepting the contract.
- (4) The vendor agrees to the additional purchase.
- (5) The vendor, product, materials, supplies, vehicles, or equipment are identical to those specified in the existing public contract of the other political subdivision, and the price is the same as the original contract price.

**The State, municipality, parish or other political subdivision of the state may rely on the certificate of the political subdivision that the contract was bid in compliance with state law.*

A state agency or any local government agency may rely on certificates of the office of state procurement that the contract was bid in compliance with Title 39 and was adopted as a statewide cooperative contract pursuant to the cooperative purchase provisions of R.S. 39:1702, et seq.

Emergency Exception

Q.55. Are there exceptions to the Public Bid Law for emergencies? [R.S. 38:2212\(P\)](#)

A.55. Yes, exceptions exist for 2 types of emergency situations: emergency and extreme emergency. The purchase of materials or supplies in the case of an extreme public emergency shall be governed by the provisions of **R.S. 38:2212(D)**, which is now **R.S. 38:2212(P)**. **R.S. 38:2212.1(K)**

Q.56. What is an emergency? [R.S. 38:2211\(A\)\(5\)\(a\)](#)

A.56. An emergency is an unforeseen mischance bringing with it destruction or injury of life or property or the imminent threat of such destruction or injury. An emergency may also result from an order by any judicial body to take any immediate action that requires construction or repairs absent compliance with the formalities of the Public Bid Law, because of insufficient time to follow the advertising requirements as provided in R.S. 38:2212.

For a municipally owned public utility, an emergency shall be deemed to exist and the public entity may negotiate as provided by R.S. 38:2212(P) for the purchase of fuel for

the generation of its electric power if the public entity has first advertised for bids as provided by this Part but has failed to receive more than one bid.

Q.57. **When is the emergency exception applied?** [R.S. 38:2212\(P\)](#)

A.57. After the emergency has been certified by the public entity at a public meeting, the Public Bid Law may be waived provided that notice was given to the public by publishing in the official journal within 10 days of declaring the public emergency.

Q.58. **What special documentation is required for purchases under the emergency exception?** [R.S. 38:2212\(P\)](#)

A.58. Every contract that is negotiated shall be supported by written determination and findings by the public entity justifying the emergency.

If contract action is taken pursuant to telephone or other oral offers, written confirmation of the accepted offer must be included in the file.

The file of the public entity must contain:

- ❖ A minimum of the description of the work to be performed;
- ❖ The name and address of each offeror quoting; and
- ❖ The performance time and terms of each offer.

If quotes lower than the accepted quote are not accepted, reasons for rejection must be in the file. Records must be kept a minimum of 6 years.

Extreme Emergency Exception

Q.59. **What is an extreme emergency?** [R.S. 38:2211\(A\)\(5\)\(b\)](#)

A.59. An extreme emergency is a catastrophic event that causes the loss of ability to obtain a quorum of the members necessary to certify the emergency prior to making the expenditure to acquire materials or supplies or to make repairs necessary for the protection of life, property, or continued function of the public entity.

Q.60. **How is the extreme emergency exception applied?** [R.S. 38:2212\(P\)](#)

A.60. In the event of an emergency or an extreme emergency, the political subdivision may make such purchases to deal with the emergency as may be required immediately. After the events requiring immediate emergency procurement, the president of the police jury, the president of the parish council, the mayor of the municipality, or a person designated to act on behalf of the governing authority of the political subdivision, shall declare that an extreme emergency exists and shall cause such declaration to be published in the official journal within ten days or as soon as practicable thereafter.

Q.61. What documentation is required for purchases under the extreme emergency exception? [R.S. 38:2212\(P\)](#)

A.61. The requirements are the same as for emergencies listed above.

Other Exceptions or Limitations

Q.62. What exceptions or limitations apply to contracts for public works and materials and supplies? [R.S. 38:2212.6](#)

A.62. Exceptions exist for purchases for homeland security from federal General Services Administration supply schedules. These purchases must:

- Use a Louisiana distributor.
- Use the competitive ordering procedures of the federal General Services Administration.
- Receive prior approval from the director of the Governor's Office of Homeland Security and Emergency Preparedness, or designee.

Q.63. What limitations apply to a consultant competing for contracts?

[R.S. 38:2212.7](#)

A.63. R.S. 38:2212.7 provides limitations on consultants competing for contracts. Any person contracting with an agency for the purposes of developing bidding documents, requests for proposals, or any other type of solicitation related to a specific procurement shall be prohibited from bidding, proposing, or otherwise competing for award of that procurement. Such persons shall further be prohibited from participating as subcontractors related to the award of that procurement.

The statute further notes, however, that certain activities are not considered to be **“developing bidding documents, requests for proposals, or any other type of solicitation”** and would therefore not prevent a consultant from competing.

These activities are:

- (1) Architectural and engineering programming.
- (2) Master planning.
- (3) Budgeting.
- (4) Feasibility analysis.
- (5) Constructability review.
- (6) Furnishing specification data or other product information.
- (7) Any other services that do not establish selection qualifications or evaluation criteria for the procurement of an architect or engineer.

Prohibitions

Q.64. What provisions in the Public Bid Law address rejecting bids from convicted felons? [R.S. 38:2212.9](#)

A.64. R.S. 38:2212.9 provides that in awarding contracts, any public entity is authorized to reject the lowest bid from or avoid awarding the contract to, a business in which any individual with an ownership interest of five percent or more has been convicted of, or has entered a plea of guilty or *nolo contendere* to any state felony crime or equivalent federal felony crime committed in the solicitation or execution of a contract or bid awarded under the laws governing public contracts.

The law does not impose a duty, responsibility, or requirement on a public entity to perform criminal background checks on contractors, vendors, or subcontractors. It shall be the responsibility of any person, company, or entity making an allegation of prior convictions on the part of any individual with an ownership interest of five percent or more in any bidder to present prima facie evidence supporting their claim to the public entity. If proved, the company whose bid is rejected shall be responsible to the public entity for the costs of rebidding, the increased costs of awarding to the second low bidder, or forfeiture of the bid bond, whichever is higher.

Q.65. May a commission, fee or other consideration be split or shared?

[R.S. 14:141](#)

A.65. Criminal code article R.S. 14:141 makes it a crime to split fees or commissions derived from the sale of goods and services with a public officer or employee in his official capacity. The penalty upon conviction is a mandatory fine of not more than \$10,000 or imprisonment for not more than 10 years, or both.

Telecommunications and Data Processing Procurement Law

Q.66. How do political subdivisions procure computers and software?

[R.S. 38:2234](#)

A.66. Pursuant to R.S. 38:2234, known as the Political Subdivisions Telecommunications and Data Processing Procurement Law, political subdivisions may lease, rent, or purchase telecommunications or data processing systems, including equipment, and related services, through a Request for Proposal (RFP).

This law is a permissive alternative to the Public Bid Law. Political subdivisions may still use public bid or purchase such items off the state contract.

Procedures for such procurement are contained in [R.S. 38:2237](#).

- Public notice of the RFP shall be given at least thirty days prior to the date scheduled for opening the RFP.

- Written notice of the RFP shall be mailed to persons and corporations who are known to be in a position to furnish the equipment, systems, and related services.
- This public notice may also be given by electronic media available to the general public.
- The RFP will indicate the relative importance of price and other evaluation factors, shall clearly define the tasks to be performed under the contract, the functional specifications, the criteria to be used in evaluating the proposals, and the time frames within which the work must be completed.
- An award shall be made to the responsible offeror whose proposal is determined in writing by the governing authority of the political subdivision to be the most advantageous, considering price and other evaluation factors set forth in the RFP.
- The governing authority of the political subdivision may reject all proposals when the action is deemed in the best interest of the political subdivision.
- If vendors submit written proposals, the proposals of the successful vendor shall be incorporated into the final contract consummated with that vendor.

Political subdivisions may, at their option, procure telecommunications and data processing equipment, systems, or related services in accordance with the Public Bid Law. However, in the event an invitation for bids is used in lieu of a RFP, written notice of that fact shall be given to all bidders, and that notice shall also state that the RFP procedure will not apply.

Cooperative Purchasing

Q.67. May hospitals engage in cooperative purchasing?

R.S. 38:2212.1

A.67. Yes. R.S. 38:2212.1(G) authorizes any hospital owned or operated by a hospital service district, a municipality, the state, or any other public entity to enter into an agreement with one or more qualified group purchasing organizations for the purpose of obtaining bids for the purchase of materials and supplies, with certain requirements.

The term “**qualified group purchasing organization**” means an organization, whether for profit or not for profit, that has contracts for the sale of materials or supplies with at least fifteen hospitals within the United States.

1. The qualified group purchasing organization shall submit a price list for those materials and supplies it offers.
2. Price list must remain in effect for a stated period of time that may not be less than three months.

3. The price list shall thereafter be considered for all purposes to be a valid and binding bid by the qualified group purchasing organization during the effective period of the agreement, and no additional bid by the qualified group purchasing organization shall be necessary.

A hospital owned by the state may purchase equipment from a qualified group purchasing organization if the price is less than that for the same or comparable equipment on the state contract.

R.S. 38:2212.1(H) provides that the commissioners, governing board, or governing authority **of any hospital owned or operated by a hospital service district, a public trust, any municipality, or any other public entity, may authorize by resolution**, the participation in, or the purchasing from, a qualified group purchasing organization for the purchase of supplies and materials, without complying with the Public Bid Law or any other applicable provision of law when it appears to the authority or secretary that participation would positively affect the economic situation or efficiency of operations of the hospital. A positive effect on the economic situation or efficiency of operations shall be presumed when the total price of items to be purchased from the qualified group purchasing organization is less than the total price of those items if purchased from the state bid list.

The secretary of the Department of Health and Hospitals **for any hospital owned or operated by the state**, may also authorize the participation in, or the purchasing from, a qualified group purchasing organization for the purchase of supplies and materials, without complying with the Public Bid Law or any other applicable provision of law when it appears to the authority or the secretary that participation would positively affect the economic situation or efficiency of operations of the hospital.

Q.68. **May school districts and schools engage in cooperative purchasing?**

R.S. 38:2212.1(N)

A.68. R.S. 38:2212.1(N), allows any public school district or public school to enter into an agreement with one or more qualified group purchasing organizations for the purchase of materials, equipment, and supplies, including any installation thereof.

- ❖ Any such agreement requires the qualified group purchasing organization submit a price list for those materials and supplies offered by it and that the prices quoted on the list remain in effect for a stated period of not less than three months.
- ❖ Any such price list shall be considered, for all purposes, to be a valid and binding bid by the qualified group purchasing organizations during the effective period of the agreement, and no additional bid by the qualified group purchasing organization is necessary.
- ❖ Price lists submitted by a qualified group purchasing organization are not public records and shall not be available for inspection; however, the agreement setting forth the existence of the price list and the effective date thereof is a public record.

That portion of the price list setting forth the price of the materials or supplies being purchased shall become a public record at the time of opening bids for those materials and supplies.

A “**qualified purchasing organization**” means an organization, whether for profit or not for profit, of which two or more public school districts are members and that solicits proposals or bids from vendors of services, materials, equipment, or supplies of the type and nature as may be purchased by a public school district or public school.

A school board may purchase equipment from a qualified group purchasing organization if the price for such equipment is less than that for the same or substantially similar equipment on the state bid list.

Professional Services

Q.69. How are professional services for executive branch entities defined?

R.S. 38:2310

A.69. The phrase “**professional services**” has two meanings; one meaning specific to executive branch entities engaging in certain contracts for the procurement of professional services, and one meaning every other type of professional service.

For executive branch entities, the phrase “**professional services**” has a very specific meaning that does not apply to local governmental entities or political subdivisions. In this context, professional services are a specific type of service sought by an executive branch entity that requires a specific kind a professional. These particular professional services are defined in R.S. 38:2310(7) to include contracts by executive branch agencies only for services performed by architects, engineers, or landscape architects. Further, the estimated project costs for these contracts must exceed five hundred thousand dollars (**R.S. 38:2316**). These contracts for services performed by an architect, engineer, or landscape architect must be bid according to R.S. 38:2312. Competence and qualifications of the contractor must be the deciding factors (AG Op. Nos. 07-0061 and 87-31).

Q.70. Are the professional services sought by local political subdivisions and other local entities subject to the Public Bid Law?

A.70. No. Local governments and political subdivisions are not required to advertise, receive bids or engage in competitive negotiations for contracts for professional services. Nevertheless, sound practice dictates seeking the best price available for the service sought to be performed. Sound practices include seeking quotes, using an RFP process, or simply following the Public Bid Law. If an entity does follow the Public Bid Law when it is not required to, it must follow all the rules of Public Bid Law for that purchase.

Q.71. Are other types of contracts for services subject to the Public Bid Law?

A.71. No. The Public Bid Law is relevant to the procurement of materials and supplies and public works, not services.

Q.72. What laws apply to other contracts by executive branch agencies?

R.S. 39:1481-1526

A.72. Other contracts by executive branch agencies for services are addressed in the Professional, Personal, Consulting and Social Services Procurement Code found in R.S. 39:1481-1526 and in the State Procurement Code found at [R.S. 39:1551, et seq.](#) As noted in our Summary on the Procurement Code, these codes were merged in January of 2015.

Additional Legal Sources

Relevant Attorney General Opinions



AG Op. No. 16-0082 – A contract for routine and preventative maintenance dredging of port's finger pier and docks is not a contract for public works, but a maintenance contract. Such maintenance contracts are specifically exempted from the definition of "public works" and are not required to be publicly bid, provided it has a term of less than two years.

AG Op. No. 16-0153 – A contract whereby an agency negotiates and purchases insurance policies on behalf of a public entity is a contract for professional services and is not subject to the requirements of the Public Bid Law.

AG Op. No. 16-0020 – Absent any legal authority to establish a local hiring preference or otherwise require contractors to hire local workers, the inclusion of such a requirement would be impermissible and against Louisiana Public Bid Law. Similarly, the inclusion and evaluation of a contractor's efforts to hire local workers as part of the Public Bid Law solicitation process would be impermissible and against Louisiana Public Bid Law.

AG Op. No. 15-0139 – Pursuant to La. R.S. 38:2212(B)(2) the City may not require potential bidders to complete either Document A305, or Statement C-451 as part of the pre-bid materials. The City may, however, include such forms as part of their bidding documents and include a requirement and instruction to potential bidders that such forms would be required to be completed and submitted by the apparent low bidder within ten days after the date bids are opened.

****Note:** La. R.S. 38:2212(B)(3)(b) provides that all bidders bidding on public works for East Baton Rouge or Jefferson Parish shall submit all bid forms required by statute or by the Louisiana Administrative Code to the governing authority of parish prior to the opening of all bids relative to a contract for public works.

AG Op. No. 15-0080 - The AG discussed the issues whether a Volunteer Fire Department is a public entity and whether it must comply with state laws including, but not limited to, the Open Meetings Law, Public Records Law, Public Bid Law, Local Government Budget Act, Audit Law, etc.

AG Op. No. 15-0052 - The apparent low bidder's failure to comply with the bid documents and instructions to bidders, which required all potential bidders to complete all spaces on the bid form including the space to provide a price for alternate no.1, renders their bid nonresponsive and the Town must reject their bid.

AG Op. No. 15-0018 - Louisiana municipalities may not make a direct purchase from a NJPA contract. A NJPA contract is not a purchasing contract that was competitively bid by another Louisiana local political subdivision. As such, the piggy back direct purchasing alternative is not available to a Louisiana municipality.

AG Op. No. 14-0217 – A contract between a sheriff's office and a private business for the design and preparation of an informational report is a contract for service and is not subject to the provisions of the Public Bid Law. A contract for the printing of the informational report is a printing contract under R.S. 38:2255, which is subject to the provisions of the Public Bid Law in R.S. 38:2212.1.

AG Op. No. 14-0142 - Louisiana's Public Bid Law applies to the proposed dietary management services agreement, as the predominant component of the agreement calls for the purchase of materials and supplies.

AG Op. No. 14-0005 - An exchange of public property between two public entities is authorized under the provisions of the Local Services Law, La. R.S. 33:1324. When property is exchanged between two public entities, those entities are not bound by the advertising and bidding requirements set forth in La. R.S. 33:4712 but the terms of the transfer or exchange must comply with the mandates of La. Const. art. VII, Sec. 14.

AG Op. No. 12-0165 – A public entity may not “piggy-back” off a contract (including those established by a national cooperative purchasing organization) that has not been competitively bid by another Louisiana public entity.

AG Op. No. 12-0066 - The Public Bid Law does not apply to a public works project under \$150,000 (now \$152,550). However, by choosing to bid out the project, the municipality became bound by the requirements set forth in the bid document and should award the contract to the bidder whose bid is responsive and most advantageous to the municipality. Mentions the Fourth Circuit Court of Appeal's holding in Concrete Busters of Louisiana Inc., which determined that a contract for demolition is a public work subject to the Public Bid Law. See [\[Q.9.\]](#) for additional information concerning demolition contracts.

AG Op. No. 11-0181 - A prospective bidder should not be penalized for failing to comply with a bidding requirement or condition that is not allowed or authorized by Louisiana's Public Bid Law.

AG Op. No. 11-0059 – Citing [R.S. 33:4169.1](#) relative to municipal and parish collection and disposal of garbage and trash, the AG opines that contracts for the collection and disposal of solid waste, unless structured as an exclusive franchise, may be negotiated rather than awarded by public bid.

AG Op. No. 10-0134 – If an entity requires attendance at a re-bid conference, a bidder who does not attend the entire conference is disqualified.

AG Op. No. 10-0058 - Debris removal is a contract for services that is not subject to the advertising and bidding requirements of Louisiana's Public Bid Law as long as the municipality does not violate other applicable local statutes or charter provisions.

AG Op. No. 10-0026 – A demolition contract is a contract for services which is not subject to the advertising and bidding requirements of Louisiana's Public Bid Law as long as the municipality does not violate other applicable local statutes or charter provisions. See Q. 9. For additional information concerning demolition contracts.

AG Op. No. 09-0296 - A contract for the purchase of materials and supplies is no longer “viable” once the materials and supplies have been transferred to the public entity and payment has been received by the contract vendor. Further, a contract would no longer be “**viable**” if it has a specific term of duration and that term has passed.

The AG opines that the following steps are necessary for a local political subdivision to piggy-back off an existing public contract of another local political subdivision pursuant to R.S. 33:1321-1327:

1. Verify that the contract was bid in compliance with state law.
2. Verify that the contract is still active, fresh, or “viable.”
3. Obtain written consent or approval from the other public entity that bid the contract and obtain confirmation as to the contract number and, if necessary, the Council Resolution accepting the contract/bid.
4. Confirm that the vendor and the product, services, materials, supplies or equipment are the same and that the price is same or lower.

AG Op. No. 09-0304 - Under Louisiana's Public Bid Law and beginning August 20, 2009, public entities are required to use the Louisiana Uniform Public Works Bid Form when soliciting bids for public works projects required by R.S. 38:2212.

AG Op. No. 06-0051 - If a public entity uses the bid method for contract, then the entity is bound to follow the rules for Public Bid Law regardless of whether or not the Public Bid Law applied to the contract initially.

Public Works

AG Op. No. 14-0033 - Pursuant R.S. 38:2212 and R.S. 38:2225.2, the AG opines that unless specifically authorized by law, a public entity has no authority to enter into a design-build contract. Instead, the public entity must employ the design-bid-build method, which would require the public entity to first obtain the services of a design professional and then publicly bid the construction of the project pursuant to the Public Bid Law.

AG Op. No. 05-0445 - Absent an escalation clause in a public works contract, a municipality may not amend a public works contract to pay a contractor for increases in material cost required to perform under the contract.

AG Op. No. 04-0197 - Public Bid Law is applicable to public works contracts let by public entities even when only a portion of the funds are public.

AG Op. No. 04-0079 - Public works contracts that do not exceed the contract limit are not subject to the advertising and bidding requirements of the Louisiana Public Bid Law and may be: undertaken by the public entity using its own employees; negotiated with one or more contractors; or let out for public bid.

AG Op. No. 03-0263 – When proposed addition to existing public work contract is outside scope of contract, it must be either negotiated or let by public bid rather than handled by change order to existing contract.

Materials and Supplies

AG Op. No. 14-0142 - If a contract involves the merger of services with the purchase of materials and supplies, the entity must make a factual determination as to whether the predominant or substantial component of the contract is either services, or materials and supplies.

If a contract has a substantial materials and supplies component compared to its services component, the AG has opined that the contract must be bid in accordance with Louisiana's Public Bid Law. On the other hand, if the materials and supplies component of the contract is negligible, then the AG's opinion is that the contract may be characterized as one for services, and, thus, not subject to the advertising and bidding requirements of Louisiana's Public Bid Law.

AG Op. No. 07-0278 - Public Bid Law applies to the proposed food services contract if the predominant component of the proposed food services contract is the purchase of food materials needed to prepare the meals.

AG Op. No. 05-0314 - Louisiana Public Bid Law authorizes a school board purchasing a school bus to specify the type, quality or performance standards of the bus to be purchased, but the specifications must permit a functionally equivalent equal; the board must interpret its bid specifications in a fair and legal manner.

AG Op. No. 01-0126 - When no bids are received in response to a solicitation, public entity should re-advertise and actively solicit bids from potential vendors in the area. Consideration should also be given to state contracts or contracts of other Louisiana public entities that may be accessed without bids. As a last resort, public body should consider whether the emergency provisions of the Public Bid Law may be used.

AG Op. No. 00-0055 - Bidding is not required for sale of equipment and materials between public entities.

Lowest Responsible Bidder

[AG Op. No. 13-0050](#) - It is generally well-settled that the provisions and requirements of Louisiana's Public Bid Law, as well as those provisions and requirements stated in the bid documents, shall not be waived by any public entity. See La. Rev. Stat. 38:2212 (B)(1); Hamp's Construction, LLC. v. City of New Orleans, 2005-0489 (La. 2/22/06), 924 So.2d 104; Beverly Construction Company, L.L.C. v. Parish of Jefferson, 2007-847 (La. App. 5 Cir. 2/6/08), 979 So.2d 551.

Once a requirement is established, that requirement must be uniformly followed by all bidders. A failure to comply with any statutorily imposed requirement would render a bid non-responsive and would warrant a mandatory rejection by the public entity. The same consequences result from failure to comply with any validly imposed requirement stated in the public entity's bid documents. Numerous Louisiana courts have recognized that the statutory requirements, advertisement requirements, and bid form requirements, including those incorporated by reference to other documents, must be completely and accurately observed, and that a bidder's failure to comply with every detail can invalidate the bid. See Hamp's, supra, Beverly, supra.

[AG Op. No. 05-0140](#) - General rule prohibiting prequalification of bidders also prohibits using bidding documents to pre-qualify only Louisiana resident contractors for contract.

Professional Services

[AG Op. No. 13-0135](#) - Louisiana courts have held that contracts for services, professional or otherwise, are not subject to the requirements of the Louisiana Public Bid Law. Numerous Attorney General Opinions have expressed the same conclusion in response to inquiries on a wide variety of service contracts. See generally Attorney General Opinion No. 00-246, 07-0278, 09-0252.

Thus, under applicable Louisiana law, political subdivisions are generally free to contract for professional services without engaging in any sort of competitive bid process. Nevertheless, a political subdivision is not prohibited from implementing or establishing a policy or competitive bid process for procuring professional services. For example, a political subdivision may establish a policy that requires an RFP or Request for Qualifications (RFQ) process when procuring professional services.

[AG Op. No. 06-0183](#) - Legal services constitute a contract for professional services, which are not subject to the Louisiana Public Bid Law. Public Bid Law is not applicable when contracting for services, whether of a professional or other nature.

[AG Op. No. 05-0260](#) - Contract entered into by the Town of Amite for cemetery maintenance is a contract for services, not subject to the Public Bid Law.

Emergencies

[AG Op. No.-06-0067](#) - Due to health and safety concerns at its post-Hurricane Katrina temporary courthouse facility, Plaquemines Parish may invoke the emergency provisions of the Public Bid Law in the construction of new temporary courthouse facilities.

AG Op. No. 02-0413 - Terrebonne Parish Consolidated Waterworks District No. 1 may not declare an emergency under the Louisiana Public Bid Law for the completion of its water plant expansion project. To the extent completion of project equals or exceeds the statutory contract limit, it will be necessary to comply with advertising and bidding requirements of the Louisiana Public Bid Law. "The mere possibility of a problem does not give rise to the emergency exception."

AG Op. No. 01-0289 - "Emergency" provisions of Public Bid Law may be used to repair hail storm damage long after it occurred only where water intrusion has caused health and safety concerns. Other repairs should be bid in compliance with public bid requirements.

Computers and Computer Software

AG Op. No. 13-0224 - In addition to the customary invitation to bid method for purchases of more than \$30,000, Louisiana's Public Bid Law allows political subdivisions to use the request for proposals process when procuring telecommunications or data processing systems, equipment, and related services pursuant to R.S. 38:2234, et seq. Therefore the AG opines that in addition to using the procurement methods set forth in R.S. 38:2212.1 and 38:2234, et seq., a public entity subject to the Public Bid Law is also authorized to purchase computers and other computer related items directly from the state contract vendor pursuant to R.S. 39:1702.

AG Op. No. 04-0264 - A contract to install, provide connectivity to or for, support or maintain software would be a contract for services, not subject to the public bid requirements. A contract for purchase of an existing, commercially available software package (with an accompanying license for its use), the development of a computer software program or the modification, enhancement, or customization of existing computer software would be a purchase of materials and supplies and therefore subject to the Public Bid Law.

Case law

F.H. Myers Construction Co. v. State of Louisiana, Division of Administration, Office of Facility Planning and Control, 2013-2153 (La. App. 1 Cir. 06/18/14); 2014 WL 3702302, Writ Denied, 2014-C-1793 (La. 11/07/14); 2014 WL 6464484.

Summary: The court held that R.S. 38:2216(H) prohibits the inclusion of contractual language which limits a contractor from recovery of delay damages only in circumstances where the delay is wholly attributable to the public entity.

Concrete Busters of Louisiana, Inc. v. The Board of Commissioners of the Port of New Orleans, LA, 69 So.3d 484 (La. App. 4 Cir. 2/2/11)

Summary: The court held that a contract for demolition is a public work and subject to Public Bid Law.

See [\[Q.9.\]](#) For additional information concerning demolition contracts.

Beverly Const. Co., L.L.C. v. Parish of Jefferson, 979 So.2d 551, 2008 WL 331185 (La. App. 5 Cir., 2008).

Summary: The court held that the advertised bid requirement that corporate resolution form be returned with the bid package could not be waived by the parish.

Hamp's Const., L.L.C. v. City of New Orleans, 924 So.2d 104 (La., 2006).

Summary: The Supreme Court held that any requirements of the Public Bid Law, any requirements stated in the advertisement for bid, and any requirements required on the bid form cannot be waived by the public entity.

Regency Construction, Inc. v. Lafayette City-Parish Consolidated Government, 2003 WL 2127719, 847 So.2d 796 (La. App. 3 Cir. 6/4/2003)

Summary: Contract for removal of Hurricane Lili debris from property including private property was not a public work and thus was not subject to Louisiana's Public Bid Law.

Broadmoor, L.L.C. v. Ernest N. Morial New Orleans Exhibition Hall Authority, (App. 4 Cir. 2003), 865 So.2d 136, 2003-1996 (La. App. 4 Cir. 12/22/03), writ granted 868 So.2d 702, 2004-0211, 2004-0212 (La. 2/11/04), affirmed 867 So.2d 651, 2004-0211, 2004-0212 (La. 3/18/04), rehearing denied, on subsequent appeal 896 So.2d 251, 2004-1274, 2004-1275, 2004-1276 (La.App., writ denied 896 So.2d 985, 2005-0483 (La. 3/16/05), writ denied 896 So.2d 985, 2005- 0542 (La. 3/16/05).

Summary: Public entity waived certain requirements mandated under Public Bid Law. For example, the bid form required the attachment of an insurance certificate thus making attachment a mandatory and not waivable requirement for bidder. Public board acted impermissibly in waiving the requirement and selecting bidder that did not include the certificate.

State Mach. & Equip. Sales, Inc. v. Livingston Parish Gravity Drainage No. 5, 98-1207 742 So.2d 26 (La. App. 1 Cir. 6/25/99)

Summary: The court found that the evidence established that the bid specifications tracked one manufacturer's product description to such an extent that, although no brand name was specified, the criteria were so limited that the effect was that of a closed specification bid.

Board of Directors of the Industrial Development Board of the City of Gonzalez, LA v. All Taxpayers, Property Owners, Citizens of the City of Gonzalez, LA, et al. (Cabela), 938 So.2d 11 2005-2298 (La. 2006)

Summary: In reviewing application of the TIF Act, the Louisiana Supreme Court overturned its prior decision in *City of Port Allen*, 439 So.2d 399 (La. 1983) regarding Constitutional [Article VII, §14 \(A\)](#) and its prohibition of donations of public funds and public property. The Court held that the TIF Act was constitutional and that Louisiana Constitution [Article VII, §14 \(A\)](#)'s prohibition applied only to gratuitous donations in which there were no reciprocal obligations incurred by the parties. See the LLA's [Cabela Memo](#).



Public Assistance (PA) Grant Program FAQs

Overview

This document is a summary of general principles and guidelines concerning the Public Assistance (PA) Grant Program. This information is presented in a “frequently asked questions” (FAQ) format. While it is fairly detailed, remember that every situation is unique and deserves careful individual review.

To facilitate use of this document, links will direct your attention to text within the document and to related documents posted on the Louisiana Legislative Auditor’s website and on external websites. For example, in the Index, clicking the question you wish to view will take you directly to that question in the text of the FAQ. Within the FAQ, links will direct you to other textual areas of the FAQ and to relevant external documents. Clicking on an individual question number in the text it will return you to the index to allow selection of another question to view.

Index

- 1. What is the Public Assistance (PA) Grant Program?**
- 2. What entities are eligible to apply for Federal Assistance from the Public Assistance (PA) Grant Program?**
- 3. What State Agencies are available to assist public entities in Louisiana with the Public Assistance (PA) Grant Program?**
- 4. What is the time period for applying for Federal assistance under the Public Assistance (PA) Grant Program?**
- 5. What categories of work are established under the Public Assistance (PA) Grant Program?**
- 6. Where can I find a summary of information on the Public Assistance (PA) Grant Program?**
- 7. What is Force Account Labor?**
- 8. What constitutes Direct Administrative Costs (DAC)?**
- 9. What are ineligible costs?**
- 10. What is a FEMA–reviewed Pre-Disaster Debris Management Plan? Why is this important?**
- 11. What constitutes debris which may be eligible as Category A - Emergency Work?**
- 12. What procurement rules apply to disaster-related procurement?**
- 13. What documentation should State and local governments maintain?**

PUBLIC ASSISTANCE GRANT PROGRAMS

Q.1. What is the Public Assistance (PA) Grant Program?

- A.1.** The Public Assistance (PA) Grant Program is a Federal assistance program under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, 42 USC §5121, et seq. The PA Grant Program is designed to provide supplemental Federal assistance to State, Territorial, Indian Tribal, and local governments, and certain types of private nonprofit (PNP) organizations within disaster areas designated under Presidential Declarations. The PA Grant Program is intended to assist governments in returning disaster areas to pre-disaster conditions. Federal assistance under the PA Grant Program is generally provided on a cost-share basis with the Federal Government undertaking 75% of eligible costs and the non-federal entities (State, Territorial, Indian Tribal, and Local Governments, etc) assuming 25% of eligible costs. These amounts may differ in certain circumstances.

The PA Grant Program is managed by the Federal Emergency Management Agency (FEMA) and administered within the State of Louisiana by the Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP).

Q.2. What entities are eligible to apply for Federal Assistance from the Public Assistance (PA) Grant Program?

- A.2.** State, Territorial, Indian Tribal, and local governments, and certain types of private nonprofit (PNP) organizations which are located within disaster areas designated by Presidential Declarations.

Q.3. What State Agencies are available to assist public entities in Louisiana with the Public Assistance (PA) Grant Program?

- A.3.** The Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP) and the Louisiana Legislative Auditor (LLA).

Q.4. What is the time period for applying for Federal assistance under the Public Assistance (PA) Grant Program?

- A.4.** Requests for Public Assistance must be submitted **within 30 days** of the Presidential Declaration. Applications by eligible entities in Louisiana should be submitted through www.LouisianaPA.com.

President Obama issued a disaster declaration for the August 2016 Flooding (DR- 4277) on **August 14, 2016** for the following parishes.

- Acadia
- Ascension
- Avoyelles
- East Baton Rouge
- East Feliciana
- Evangeline
- Iberia
- Iberville
- Jefferson Davis
- Lafayette
- Livingston
- Pointe Coupee
- St Helena
- St Landry
- St Tammany
- Tangipahoa
- Vermillion
- Washington, and
- West Feliciana

Q.5. What categories of work are established under the Public Assistance (PA) Grant Program?

A.5. The Federal Emergency Management Agency (FEMA) provides for two main types of work, Emergency Work (to address immediate threats) and Permanent Work (restoration efforts), under the Public Assistance (PA) Grant Program.

Emergency Work is further separated into the following two categories:

- Debris Removal – Category A
- Emergency Protective Measures – Category B

Emergency work generally must be completed within six months of the from the disaster declaration date.

Permanent Work is separated into the following five categories:

- Roads/Bridges – Category C
- Water Control Facilities – Category D
- Buildings/ Equipment – Category E
- Utilities – Category F
- Parks, Recreational, and other facilities – Category G

Permanent work generally must be completed within eighteen months from the disaster declaration date, but extensions may be granted by FEMA.

Q.6. Where can I find a summary of information on the Public Assistance (PA) Grant Program?

A.6. The Federal Emergency Management Agency (FEMA) has issued a comprehensive guide on the Public Assistance (PA) Grant Program which can be found at the following [link](#) from the LouisianaPA.com website.

Additional information on the PA Grant Program and the August 2016 Floods (DR-4277) can be found at the following:

LouisianaPa.com	http://louisianapa.com/site/paInfo.cfm
FEMA (DR-4277)	https://www.fema.gov/disaster/4277
GOHSEP	http://gohsep.la.gov/GRANTS-INDEX/DISASTER-RELATED-GRANTS/FEMA-PA
Louisiana Legislative Auditor	https://www.la.gov/legalFAQs/

Q.7. What is Force Account Labor?

A.7. Labor performed by the nonfederal entity’s permanent or temporary work force, i.e. employees of the State or local government. Generally only emergency-related overtime work is reimbursable (on a cost-share basis) for permanent, re-assigned, or seasonal employees. Regular time and overtime for emergency-related work by temporary employees may be eligible for reimbursement on a cost-share basis.

Regular time and overtime will generally be eligible for reimbursement on a cost-share basis for eligible permanent work for both permanent and temporary employees.

Under the FEMA Pilot Program, a non-federal entity using their own labor forces for all or part of debris removal operations may be eligible for both straight time and overtime work performed by its employees for this purpose.

Q.8. What constitutes Direct Administrative Costs (DAC)?

A.8. Costs incurred that can be identified separately and assigned to a specific project. Examples of DAC include but are not limited to the following:

- Staff’s time spent to conduct initial inspections, surveying and assessment of damage site(s);
- Time spent preparing, reviewing, and submitting Project Worksheets;

- Time spent preparing correspondence;
- Travel time; and
- Time spent on collection, copying, filing, or submitting documents to support the entity's claims.

Generally, costs may not be charged to a project if similar costs incurred for the same purpose in like circumstances to indirect costs.

FEMA normally considers the salaries of administrative and clerical staff as indirect costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:

- Administrative or clerical services are integral to a project or activity;
- Individuals involved are specifically identified with the project or activity;
- Such costs are explicitly included in the budget for the project or have FEMA's prior written approval; and
- The costs are not also recovered as indirect costs.

Q.9. What are ineligible costs?

- A.9.** The Stafford Act authorizes FEMA to provide Public Assistance (PA) Grant Program funding for specific work performed as a result of a declared disaster-related incident. The PA Grant Program does not; however, provide funding for all losses or costs resulting from the incident.

Examples of ineligible costs, include but are not limited to the following:

- Loss of Revenue;
 - including waiver of tolls and ferry charges to aid in evacuation, utility shutdowns, and cancellation of events.
- Loss of Useful Service Life;
 - i.e. PA funding cannot be provide for the value of the projected loss of useful life of a road due to long-term effects from inundation.
- Tax Assessments; and
 - Costs for post-disaster re-assessment are not covered as FEMA has determined that assessments are not essential to addressing an immediate threat to life or improved property, nor connected with the permanent restoration of eligible facilities.

- Increased Operating Costs
 - Increased costs of operating a facility or providing services are generally not eligible, even when directly related to the declared disaster incident. Short-term increased costs that are directly related to specific emergency health and safety tasks as part of emergency protective measures may however be eligible.

Q.10. What is a FEMA–reviewed Pre-Disaster Debris Management Plan? Why is this important?

A.10. A Debris Management Plan with pre-qualified debris removal contractors accepted by FEMA before the start of the incident period.

FEMA generally encourages State, Territorial, Tribal and local governments to establish written procedures and guidance for managing debris in an expedient, efficient, and environmentally sound manner prior to the occurrence of disaster-related incidents.

State, Territorial, Tribal and local governments which have Pre-disaster FEMA-accepted Debris Management Plans with pre-qualified debris removal contractors may be eligible for a one-time incentive of an additional 2% cost-share adjustment for debris removal work completed within the first 90 days.

Q.11. What constitutes debris which may be eligible as Category A - Emergency Work?

A.11. Debris removal activities, such as clearance, removal, and disposal, are generally eligible as Category A if the removal is in the public interest based on whether the removal activity:

- Eliminates immediate threats to lives, public health, and safety;
- Eliminates immediate threats of significant damage to improved public or private property;
- Ensures economic recovery of the affected community to the benefit of the community at large; or
- Mitigates risk to life and property by removing substantially damaged structures, associated structures, etc.

Debris includes, but is not limited to, vegetative debris, construction and demolition debris, sand, mud, silt, gravel, rocks, boulders, and vehicle and vessel wreckage.

Removal from improved public property and the **public right-of-way** (neutral ground), including Federal-aid roads, is eligible. If State, Territorial, Tribal, or local governments authorize residents to place incident-related debris on public right-of-ways, FEMA provides PA funding to remove the debris from the right-of-ways for a limited period of time.

The following types of debris removal are generally not eligible under the PA Grant Program:

- Removal of debris placed on a right-of-way from commercial properties;
- Removal of materials related to the construction, repair, or renovation of residential or commercial structures;
- Debris removal from Federally maintained navigable channels and waterways (Coast Guard handles this);
- Debris removal from agricultural land; and
- Debris removal from natural, unimproved lands, such as heavily wooded areas and unused areas.

Q.12. What procurement rules apply to disaster-related procurement?

- A.12.** In addition to applicable Federal Law (see [2 C.F.R. Part 200](#)), State and local governments shall comply with the applicable provisions of State Law, i.e. the Public Bid Law and State Procurement Code, when procuring materials and supplies, or contracting for public works and services.

Exceptions from the general procurement rules for emergency procurement are provided for under the Public Bid Law in cases of “Public Emergency” and “Extreme Public Emergency.” For additional information on the emergency procurement requirements of the Public Bid Law, please see the [LLA’s Public Bid Fact Sheet for Disasters](#) on the LLA’s Legal Assistance Page. For additional information on the Public Bid Law, please see the [LLA’s Public Bid FAQ](#).

State Agencies should comply with the provisions of the [State Procurement Code](#) when procuring materials and supplies and contracting for services and review Executive Orders [JBE 2016-55](#) (Emergency Procedures for Conducting State Business) and [JBE 2016-39](#) (Small Purchase Procedures). State Agencies shall comply with the applicable provisions of the Public Bid Law when contracting for public works.

All documentation related to disaster-related procurement contracts (i.e. materials and supplies, public works, and services) should be maintained in the State or local government entity’s files and are considered public records.

Q.13. What documentation should State and local governments maintain?

- A.13.** State and local governments should ensure that they maintain adequate documentation of all expenditures and procurement activities.

Examples of documentation that should be maintained in the public entity's files include, but are not limited to, the following:

- Documentation showing that State and Federal procurement rules were followed:
 - Copies of quotes/bids obtained from vendors (including any documentation why lowest wasn't chosen);
 - Copies of advertisements/solicitations for bids, quotes, proposals, qualifications, etc;
 - Bid Tabs.
- Cost-Analysis information;
- Detailed Time Sheets (including specific project assignments when seeking Direct Administration Cost reimbursement);
- Inspection logs for debris removal;
- Receipts, cancelled checks, or other proofs of payment; and
- Written copies of contracts or other agreements.

THIS PAGE INTENTIONALLY LEFT BLANK.



THE LOUISIANA HOMELAND SECURITY AND EMERGENCY ASSISTANCE AND DISASTER ACT: GUIDANCE ON EMERGENCY DECLARATIONS UNDER R.S. 29:727

This document provides specific guidance for emergency declarations under the Louisiana Homeland Security and Emergency Assistance and Disaster Act (“Act”, Title 29, Chapter 6). The question has arisen as to the level of detail required for the declaration to be considered valid. This guidance will focus on the pertinent statute, certain Attorney General (AG) opinions, and best practices for emergency situations that may arise.

The Louisiana Homeland Security and Emergency Assistance and Disaster Act

The Louisiana Homeland Security and Emergency Assistance and Disaster Act under R.S.29:727 sets forth the applicable law governing emergency situations in the State of Louisiana. In order to deal with a major disaster, the Act confers powers on Parish Presidents that may exceed the powers conferred by the constitution, laws, or a home rule charter or plan of government. Because the powers granted are so broad, it is crucial that the details of the Act be carefully followed.

Requirements

The basic requirements of the Act are as follows:

- The parish president, and only the parish president, may declare a local disaster or emergency;
- The declaration is effective for thirty days only, but may be extended every thirty days until the parish president finds that the threat of danger has been dealt with and the emergency conditions no longer exist; and
- The declaration may be terminated by the parish president, the governor, a petition signed by a majority of the legislature, or a majority of the parish governing authority. In practice, the checks and balances are provided by the parish governing authority. Under the statute, the parish governing authority may terminate the emergency declaration at any time.

These are updated annually by the LLA. Make sure to check out the latest edition at: lla.la.gov/legal-faqs/all-faqs/

The Act provides that the declaration must:

- Indicate the nature of the emergency;
- Indicate the area or areas that are or may be affected;
- Indicate the conditions that brought the emergency about; and
- Be given prompt publicity and filed with the office of emergency preparedness and the office of the clerk of court, whether the declaration be proclaiming the emergency, continuing the proclamation, or terminating the emergency..

Powers

The powers given under the Act at [R.S. 29:727\(F\)](#), are specifically additive to any other powers conferred upon the parish president by the constitution, laws, or by a home rule charter or plan of government.

Specifically, the parish president may:

- (1) Suspend the provisions of any regulatory ordinance prescribing the procedures for conduct of local business, or the orders, rules, or regulations of any local agency, if strict compliance with the provisions of any ordinance, order, rule, or regulation would in any way prevent, hinder, or delay necessary action for coping with the emergency.
- (2) Use all available resources of the local government as reasonably necessary to cope with the local disaster or emergency.
- (3) Transfer the direction, personnel, or functions of local departments and agencies or units thereof for the purpose of performing or facilitating emergency services.
- (4) Subject to any applicable requirements for compensation, commandeer or use any private property that the parish president finds necessary to cope with the local disaster.
- (5) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the boundaries of the parish if the parish president deems this action necessary for mitigation, response, or recovery measures.
- (6) Prescribe routes, modes of transportation, and destinations within the local government's jurisdiction to facilitate evacuation.
- (7) Control ingress and egress to and from the affected area, the movement of persons within the area, and the occupancy of premises therein.
- (8) Suspend or limit the sale, dispensing, or transporting of alcoholic beverages, firearms, explosives, and combustibles.

Because these powers granted by the Act are so broad, it is crucial that the powers be used only in emergency situations. The statute itself and the AG provide limits on powers and safeguards against abuse.

Limitations in the Statute

The statute itself limits the emergency powers granted by [R.S. 29:727](#). Specific requirements for the declaration of emergency must be followed.

R.S. 29:727(D) specifically states that:

All executive orders or proclamations issued under this Subsection shall indicate the nature of the emergency, the area or areas which are or may be affected, and the conditions which brought it about.

The AG opined in [AG Op. No. 08-0057](#) that the emergency declaration required by R.S. 29:727 is not valid if it fails to contain the three factors listed in R.S. 29:727(D). The AG further determined that the declaration is not valid if it is not an order of the parish president, as required by the Act. It logically follows from the AG's opinion that if any of the Act's requirements related to the declaration are not followed, the declaration may be invalid.

In summary, we see that the AG believes the declaration is not valid if it is not an order of the parish president, and if the three factors specified by R.S. 29:727(D) are not present in the declaration.

Further, [R.S. 29:727\(D\)](#) provides that:

The state of emergency may be terminated by executive order or proclamation, but no state of emergency may continue for longer than thirty days unless extended by the parish president.

Presumably, if the declarations are not extended timely, before the expiration of the thirty day time limit, then any extension of the declaration of emergency is also not valid.

The other clear limitation on the emergency declaration is the power granted to the parish governing authority to terminate it at any time. The parish governing authority concerned about this broad grant of powers to the parish president is empowered to end the emergency declaration at will by majority vote.

Another pertinent question is, how much detail is enough detail?

The Devil is in the Details

The declaration must indicate:

- The nature of the emergency;
- The area or areas that are or may be affected; and
- The conditions that brought the emergency about.

The nature of the emergency apparently requires specific information about the details of the emergency. “**A hurricane made landfall**” does not seem to be sufficient. In fact, comparing this language to the second requirement “**conditions which brought the emergency about**” seems to indicate that the nature of the emergency is the more specific of the two. If not, the nature of the emergency and the conditions that brought it about would both be covered by “**a hurricane made landfall.**”

Conditions of the emergency seems to call for what caused the specific emergency. That is, “**a hurricane made landfall**” or “**a tornado touched down**” would seem to answer the question of what conditions brought the emergency about. The nature of the emergency seems to be asking for the extent of damage inflicted by the hurricane, tornado, ice storm, etc. The other requirement, area or areas that are or may be affected, is self-explanatory. Therefore, “a hurricane made landfall, and there is flooding and debris filling the streets of the parish” would appear to be a correct way to fulfill the requirements of the Act.

Best Practices

Some auditing issues simply are not legal matters, or well reasoned opinions of the Attorney General. They are common sense practices that should be followed to avoid certain unforeseen complications that may arise. One complication is the length of time from the emergency declaration to the formation of a contract to deal with conditions caused by the emergency. The length of time that will be acceptable in making of contracts using the emergency powers granted by the Act will depend upon the specific nature of the emergency. Thus it is important that any emergency declaration provide sufficient information as to the nature and extent of the emergency.

Assuming the declaration has been timely extended every thirty days, it can be valid indefinitely. Should public entities enter contracts using emergency powers after three years, four years or five years? The LLA has encountered public entities entering into such contracts five years after Hurricanes Katrina and Rita. Currently, the Act places no time limit on the emergency declaration, as it may be renewed every thirty days. If the contract entered into under the Act is not specifically related to the declaration, no safeguards remain, except for the ability of the parish governing authority to terminate the contract by majority vote. If, however, the declaration and the subject of the contract have some relation to one another, the object of the contract may be presumed to have a valid purpose related to the emergency. A declaration extended for seventy-two weeks would have a relation back to a contract and the emergency if it states,

“A hurricane made landfall in August 2005. As a result, the streets in the Ninth Ward were flooded, and the streets were damaged.” Assuming the contract entered into five years later was for street repairs in the Ninth Ward, made under the aegis of the Act, the contract would undeniably relate back to the declaration and the emergency.

An excellent example of an emergency declaration is Governor John Bel Edwards' declaration of emergency in the wake of the 2016 Floods, [Proclamation No. 111 JBE 2016](#), on August 12, 2016. It contains the law on emergency declarations, the Governor's authority under it, the reasons for the emergency and the potential damage it may cause to the State.

Case Law

Under the Act, a parish president may extend a state of emergency for the parish when the threat of danger continues to exist, even if the governor has not extended the state of emergency statewide, so long as the governor has not issued an order or proclamation terminating the state of emergency and established a period during which no other declaration of emergency or disaster may be issued. *Clement v. Reeves*, App. 3 Cir.2008, 975 So.2d 170, 2007-1154, 2007-1155 (La.App. 3 Cir. 1/3, writ denied 978 So.2d 355, 2008-0482 (La. 4/18/08).

A declaration of emergency is not required for the governmental immunity provisions of the Homeland Security and Emergency Assistance and Disaster Act (R.S. 29:735) to take effect with respect to emergency preparedness activities. *Cooley v. Acadian Ambulance*, 65 So.3d 192, 2010-1229 (La.App. 4 Cir. 5/4/11).

Parish was not immune from suit under the Louisiana Emergency Assistance and Disaster Act for damage to owners' homes related to construction of a canal; canal was constructed for general purposes rather than as part of emergency preparedness activity. *Banks v. Parish of Jefferson*, 990 So.2d 26, 08-27 (La.App. 5 Cir. 6/19/08).

Attorney General Opinions

- ❖ The Act, La. R.S. 29:727 *et seq.*, is constitutional. The Parish President is immune from liability for acts under the Louisiana Homeland Security and Emergency Assistance and Disaster Act, unless the acts constitute willful misconduct. The Parish Council, as the governing authority, may terminate the Declaration of Emergency provided proper procedure is followed. [AG Op. No. 06-0279](#). See also [AG Op. 10-0124](#), which states: While R.S. 29:771(B)(1) might appear to only cover the state with immunity from liability, the express language of R.S. 29:735, imputes this “state immunity” upon all state agencies *and local political subdivisions thereof*. In other words, R.S. 29:771(B)(1) affords the immunity contained in R.S. 29:735 to anyone (state or any political subdivision thereof) engaged in any homeland security and emergency preparedness activity after a public health emergency is made under LHEPA, except in cases of willful misconduct.

- ❖ During a declared disaster or emergency, parish presidents have broad authority to use available local government resources, including unencumbered parish funds, as reasonably necessary to cope with the local disaster or emergency without approval of the parish council, even if those funds are budgeted for other purposes; such authority ends with the termination of the disaster or emergency [AG Op. No. 05-0397](#).

- ❖ FEMA funds are not treated differently from other revenue for budgeting purposes and should be included in a political subdivision's annual budget even if only shown as an estimated amount. If the receipt of FEMA funds after the budget has been adopted results in a political subdivision having a change in operations, the budget must be amended to reflect receipt of the funds [AG Op. No. 10-0232](#).



**FOR MORE INFORMATION OR HELP WITH YOUR PROCUREMENT NEEDS, VISIT
[HTTPS://WWW.FEMA.GOV/PROCUREMENT-DISASTER-ASSISTANCE-TEAM](https://www.fema.gov/procurement-disaster-assistance-team)
OR CONTACT YOUR ORGANIZATION'S PURCHASING OFFICER
OR GOHSEP AT GOHSEPLEGAL@LA.GOV**