

# THE NEW PROCUREMENT GUIDE: Getting and KEEPING your FEMA grant dollars!

## PURPOSE OF THIS PUBLICATION

To assist Subrecipients (Applicants) in **identifying** and **applying** the required Federal regulations for the **procurement** of **materials, supplies, services** and **construction projects** when using Federal Emergency Management Agency (FEMA) funds.

## INTENDED AUDIENCE

Louisiana **local governing authorities, eligible private nonprofit (PNP) organizations** and Federally recognized Tribal governing authorities who receive funding from the **FEMA Public Assistance (PA), FEMA Hazard Mitigation (HM) and Preparedness Grant Programs**.



Governing regulations for procurement are dependent upon the **type** of grant you receive. For *disaster-related grants*, the effective date is dependent on the **issuance** of the **Presidential Declaration (PD)**. For *nondisaster grants*, the effective date is dependent on the date the **grant award** is **issued**.

ENTITY	GRANT AWARDS OR PD BEFORE 12/26/2014		GRANT AWARDS OR PD ON OR AFTER 12/26/2014	
	REGULATION	COST PRINCIPLE	REGULATION	COST PRINCIPLE
State/local governments	44 CFR 13.36	2 CFR 225	2 CFR 200.317 – .342	2 CFR 200.400 – .475
Tribal	44 CFR 13.36	2 CFR 225		
Private nonprofits (PNPs)	2 CFR 215.40 – .48	2 CFR 230		
Hospitals	2 CFR 215.40 – .48	2 CFR 230		
Educational institutions	2 CFR 215.40 – .48	2 CFR 220		

## METHODS of procurement

There are **several** methods for procuring goods and services. The **chart** below identifies methods of procurement and describes when to use **each**.

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

<sup>1</sup> The threshold is dependent upon the **date of issuance** of the **grant** or the **Presidential Declaration (PD)**. 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).

# Procurement REQUIREMENTS by category of purchase + size of contract

Category of purchase and size of the contract both determine the requirements for procurement.

- The most restrictive rules apply; those are circled below.
- Responses ONLY count if they are responsive and responsible.
- FEMA requires a minimum of two (2) responses for contracts in excess of the SAT and a minimum of three (3) responses for contracts equal to or less than the SAT.
- PNPs must, at a minimum, follow Federal regulations.

CATEGORY OF PURCHASE	FEDERAL REGULATIONS: [44 CFR 13.36]	SIZE OF CONTRACT	REQUIREMENTS FOR STATE + LOCAL + FEDERALLY RECOGNIZED TRIBAL GOVERNMENT ENTITIES (LA RS 38:2211-2296)	LOCAL
Materials + supplies	Quotes required	Less than \$1,000 and \$1,000 - \$9,999	No competitive procedure or cost analysis for commercial items. Louisiana Legislative Auditor (LLA) recommends three (3) written quotes.	Check with local authorities for local procurement rules.
		\$10,000 - \$30,000	Three (3) telephone or FAX quotes.	
		Greater than \$30,000		
		Greater than \$100,000/\$150,000	Bid required.	
Public works	Quotes required	Less than OR equal to \$150,000	No competitive requirement. LLA recommends RFP process and/or three (3) solicited bids.	
	Bid required	Greater than \$150,000	Bid required – no minimum number of responses.	
Services (Except for A/E)	Quotes required	Less than OR equal to \$150,000	No competitive requirement. LLA recommends RFP process and/or three (3) solicited bids.	
	Bid required	Greater than \$150,000		
A/E services	Bid required	ANY size	No competitive requirement.	
State Cooperative Purchase (SCP)	Authorized under 44 CFR 13.36(b)(5) and 2 CFR 200.318(e)	ANY size	<ul style="list-style-type: none"> <li>• Authorized under Louisiana Revised Statute (LA RS) Title 38:2212.1(F) (Louisiana bid law).</li> <li>• Limited to public entities as defined by LA RS 38:2211.</li> <li>• ONLY Office of State Procurement (OSP) SCP contracts.</li> <li>• Can be used for materials, supplies and equipment.</li> </ul>	

## Equal OPPORTUNITY requirements

Contracting with small and minority firms, women-owned business enterprises and labor-surplus area firms [44 CFR 13.36(i); 2 CFR 215.44(b); 2 CFR 200.32]

- Must take affirmative steps to assure these firms are used when possible.
- Affirmative steps emphasize assurance that firms receive solicitation if they are potential sources.
- Appears to require that potential Subrecipients (Applicants) maintain a list of such firms.
  - Subrecipients (Applicants) allowed to divide total requirements to permit participation by such firms.
- Use the Louisiana Economic Development (LED) Agency, Small Business Administration (SBA) and Minority Business Development Agency (MBDA) of the U.S. Department of Commerce (DOC) for assistance in complying.

# Required WRITTEN PROCEDURES for PROCUREMENT

Federal regulations **require** the Subrecipient (Applicant) to follow general procurement standards and have "documented procurement procedures" which are:

WRITTEN PROCEDURES	GRANT AWARDS OR PD BEFORE 12/26/2014		GRANT AWARDS OR PD ON OR AFTER 12/26/2014
	44 CFR 13.36	2 CFR	2 CFR 200
Contract Administration/Oversight	(b)(2)	215.47	200.318
• Employee + organizational conflicts of interest standards	(b)(3)	215.42	200.318(c)
• Avoiding acquisition of unnecessary or duplicative items	(b)(4)	215.44(a)(1)	200.318(d)
• Granting awards to responsible contractors	(b)(8)	215.45(d)	200.318(h)
• Maintaining records to detail history of the procurement	(b)(9)	215.46	200.318(i)
• Use of time and material (T + M) contracts	(b)(10)	–	200.318(j)
• Protest procedures	(b)(11)-(12)	215.41	200.318(k)
• Selection procedures for procurement transactions	(c)(3)	215.44(a)	200.319(c)
• Methods for conducting technical evaluations	(d)(3)(ii)	215.44(a)(3)(iii)	200.320(d)(3)
Utilizing small businesses, minority owned firms and women business enterprises	(e)	215.44(b)	200.321
Procurement of recovered materials	(i)(12)	215.16	200.322

# Types of CONTRACTS

## CONTRACTS TO USE

Lump sum	Contract for work within a prescribed boundary with a <i>clearly</i> defined <b>scope</b> and a <b>total price</b> .
Unit price	Work done on an <b>item-by-item</b> basis, with cost determined <b>per unit</b> (e.g., box, cubic yard, etc.).
Cost plus fixed fee	Total known cost with a defined <b>fixed</b> fee <i>added</i> to the price.
T + M	Must make determination that <b>no other type of contract is suitable</b> ; must contain a <i>not-to-exceed</i> (ceiling) clause. Payment based on <b>hourly rate</b> schedule and <b>cost of materials</b> . <ul style="list-style-type: none"> <li>Maintain <i>high</i> degree of <b>oversight</b>.</li> <li>Contracts used for emergency protective measures and debris operations <b>can not</b> exceed <b>70 hours continuous</b> of actual work <b>immediately</b> following the <b>emergency</b> or <b>disaster incident</b>.</li> </ul>
Intergovernmental agreements	Subrecipients (Applicants) are <i>encouraged</i> to enter into State and local <b>intergovernmental agreements</b> for procurement or use of common goods and services.

## CONTRACTS TO AVOID

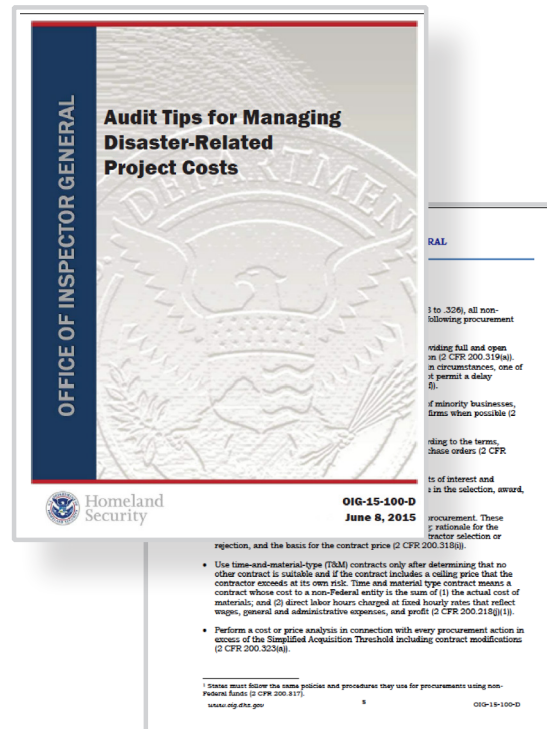
Piggyback	Piggybacks are <b>generally ineligible</b> . However, work done using another Subrecipient's (Applicant's) <i>pre-existing</i> properly procured contract must meet <b>strict criteria</b> to be eligible. The existing contract must be viable, <b>same item</b> must be purchased, <b>price</b> and <b>vendor</b> must also be the same; include <b>written mutual consent</b> of the <b>original</b> contracting parties.
Cost-plus-percentage-of-costs	<b>Strictly prohibited.</b>
Percentage-of-construction-cost	<b>Strictly prohibited.</b>
Cost plus	<b>Not allowed under State bid law</b> (LA RS Title 38).

# BEST PRACTICES for procurement: U.S. Department of Homeland Security - Office of Inspector General (DHS-OIG)

According to Federal regulations (2 CFR 200.318 - 326), **all non-Federal entities** (other than States) must comply with the following procurement standards:<sup>2</sup>

- Conduct all procurement transactions in a manner providing **full and open competition** with the standards of this section (2 CFR 200.319(a)). **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 (2 CFR 200.320(f)).
- Take all necessary **affirmative steps** to assure the use of **minority businesses, women-owned business enterprises** and **labor-surplus area firms** when possible (2 CFR 200.321).
- Maintain **oversight** to ensure contractors perform according to the **terms, conditions** and **specifications** of their contracts or purchase orders (2 CFR 200.318(b)).
- Maintain **written standards of conduct** covering conflicts of interest and governing the performance of its employees who engage in the selection, award and administration of contracts (2 CFR 200.318(c)(1)).
- Maintain **records** sufficient to detail the history of the procurement. These records will include, but are not limited to the following: rationale for the **method of procurement**, selection of **contract type**, **contractor selection or rejection** and the basis for the **contract price** (2 CFR 200.318(i)).
- Use **time and material (T + M) type** contracts *only* after determining that no other contract is **suitable** and if the contract includes a **ceiling price** that the contractor *exceeds* at its own risk. T + M type contract means a contract whose cost to a non-Federal entity is the **sum** of (1) the actual cost of materials; and (2) direct labor hours charged at **fixed** hourly rates that reflect wages, general and administrative expenses and profit (2 CFR 200.318(j)(1)).
- Perform a **cost or price analysis** in connection with **every procurement** action in excess of the Simplified Acquisition Threshold (SAT) *including* contract modifications (2 CFR 200.323(a)).
- 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 (2 CFR 200.323(b)).
- Do **not** use **cost plus a percentage of cost** and **percentage-of-construction-cost methods** of contracting (2 CFR 200.323(d)).
- Include **required provisions** in all contracts awarded (2 CFR 200.326).

<sup>2</sup> States must follow the same policies and procedures they use for procurements using non-Federal funds (2 CFR 200.317).



DHS-OIG AUDIT TIPS FOR MANAGING DISASTER-RELATED PROJECT COSTS – OIG-15-100-D – JUNE 8, 2015 CAN BE DOWNLOADED AT [oig.dhs.gov/assets/GrantReports/2015/OIG\\_15-100-D\\_Jun15.pdf](http://oig.dhs.gov/assets/GrantReports/2015/OIG_15-100-D_Jun15.pdf)

To the extent possible, GOHSEP will work with Subrecipients (Applicants) to resolve any procurement issues. Possible penalties for improper procurement may include:

- Withholding payment
- Suspending grant
- Applying penalties
- Deobligation of funds
- Withholding future grants
- And MORE!

## REFERENCES

2 CFR 200.318

[gpo.gov/fdsys/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-sec200-318.pdf](http://gpo.gov/fdsys/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-sec200-318.pdf)

2 CFR 215.48

[gpo.gov/fdsys/granule/CFR-2005-title2-vol1/CFR-2005-title2-vol1-sec215-48](http://gpo.gov/fdsys/granule/CFR-2005-title2-vol1/CFR-2005-title2-vol1-sec215-48)

44 CFR 13.36

[gpo.gov/fdsys/pkg/CFR-2014-title44-vol1/content-detail.html](http://gpo.gov/fdsys/pkg/CFR-2014-title44-vol1/content-detail.html)

Disaster Operations Legal Reference (DOLR) version 2.0

[fas.org/irp/agency/dhs/fema/dolr.pdf](http://fas.org/irp/agency/dhs/fema/dolr.pdf)

FEMA 322 – *Public Assistance Guide*  
– June 2007

[fema.gov/media-library/assets/documents/25651](http://fema.gov/media-library/assets/documents/25651)

Department of Commerce's Minority Business Development Agency  
[mbda.gov](http://mbda.gov)

LA Department of Transportation and Development (DOTD) –  
Disadvantaged Business Enterprise (DBE) Certified Contractors  
[wwwsp.dotd.la.gov/Inside\\_LaDOTD/Divisions/  
Administration/Compliance/Pages/DBE\\_Certification.aspx](http://wwwsp.dotd.la.gov/Inside_LaDOTD/Divisions/Administration/Compliance/Pages/DBE_Certification.aspx)

Louisiana Department of Economic Development (LED)  
[opportunitylouisiana.com](http://opportunitylouisiana.com)

Louisiana Economic Development: Small Businesses  
[opportunitylouisiana.com/index/small-business](http://opportunitylouisiana.com/index/small-business)

Louisiana Legislative Auditor (LLA)  
[lla.la.gov/legalFAQs](http://lla.la.gov/legalFAQs)

Louisiana Procurement Technical Assistance Center (PTAC)  
[la-ptac.org/homePage.do](http://la-ptac.org/homePage.do)

Louisiana Revised Statutes  
[legis.la.gov/Legis/Laws\\_Toc.aspx?folder=75&level=Parent](http://legis.la.gov/Legis/Laws_Toc.aspx?folder=75&level=Parent)

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

Small Business Administration Assistance Resources (SBA)  
[sba.gov/tools/local-assistance/LA/local-resources](http://sba.gov/tools/local-assistance/LA/local-resources)

Women's Business Centers  
[sba.gov/tools/local-assistance/wbc](http://sba.gov/tools/local-assistance/wbc)

Women's Business Council Gulf Coast  
[wbcsouth.org/](http://wbcsouth.org/)

What else do I  
need to know?

It is **YOUR** responsibility to have a working knowledge of **AND** to comply with local, State, Federal – and your own – procurement guidelines in order to get and keep all funds you were approved to receive. You must ensure that your contractors also follow all applicable procurement guidelines.

For more information or help with your procurement needs, visit <http://www.fema.gov> (search for procurement guidelines 44 CFR 13.36 and 2 CFR 215.44-.48 for grants awarded or PDs before 12/26/2014 and 2 CFR 200 for grants awarded or PDs after 12/26/2014) **OR** contact your organization's purchasing officer **OR** GOHSEP, 225.925.7500.

## Required contract PROVISIONS

Governing regulations for procurement are dependent upon the **type** of grant you receive. For *disaster-related grants*, the effective date is dependent on the **issuance** of the **Presidential Declaration** (PD). For *nondisaster grants*, the effective date is dependent on the date the **grant award** is **issued**.

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

CONTRACT PROVISION	CFR			APPLICATION
	GRANT AWARDS OR PD BEFORE 12/26/2014		GRANT AWARDS OR PD ON OR AFTER 12/26/2014	
	44 CFR	2 CFR	2 CFR 200	
Bonding requirements	13.36(h)	215.48(c)	200.325	Contracts for construction or facilities improvement in excess of the <b>simplified acquisition</b> threshold (SAT). The bonding requirements include: <b>bid guarantee, performance bond</b> and <b>payment bond</b> .
Administrative and legal remedies for violation or breach of contract	13.36(i)(1)	215.48(a)	Appendix II(A)	All contracts <i>greater than</i> the SAT.
Termination for cause and convenience	13.36(i)(2)	215.48(b)	Appendix II(B)	Applies to all contracts in excess of <b>\$10,000</b> .
<i>Executive Orders (EOs) 11246 and 11375 "Equal Employment Opportunity (EEO)"</i>	13.36(i)(3)	-	-	All construction contracts awarded in excess <b>\$10,000</b> .
	-	215 Appendix A(1)	-	<b>All contracts</b> .
	-	-	Appendix II(I)	All <b>construction</b> contracts.
<i>Copeland Anti-Kickback Act</i>	13.36(i)(4)	-	Appendix II(E)	All <b>construction</b> or <b>repair</b> contracts.
	-	215 Appendix A(2)	Appendix II(D)	All <b>construction</b> or <b>repair</b> contracts in excess of <b>\$2,000</b> .
<i>Davis-Bacon Act</i>	13.36(i)(5)	215 Appendix A(3)	Appendix II(D)	Although listed as a required contract provision in all of the CFRs, the <i>Robert T. Stafford Disaster Relief and Emergency Assistance Act</i> (Stafford Act) <b>DOES NOT</b> require compliance with this Act and therefore <b>no clause is required</b> (Office of Chief Council [OCC] <i>Public Assistance (PA) Field Manual</i> , page 90; <i>Public Assistance Guide</i> , FEMA 322/July 2007, page 44). May be required by Other FEMA grants.
<i>Contract Work Hours and Safety Standards Act</i>	13.36(i)(6)	215 Appendix A(4)	-	Construction contracts <i>greater than</i> <b>\$2,000</b> and for other contracts <i>greater than</i> <b>\$2,500</b> where mechanics and laborers are employed.
	-	-	Appendix II(E)	All <b>construction</b> contracts <i>greater than</i> <b>\$100,000</b> where <b>mechanics</b> and <b>laborers</b> are employed.
Compliance with reporting requirements	13.36(i)(7)	215.50	200.327 – .329	Contracts/grants <b>must</b> include the Subrecipient (Applicant) responsibility to provide the <b>required reports</b> , i.e. program performance, financial and progress reports.



CONTRACT PROVISION	CFR			APPLICATION
	GRANT AWARDS OR PD BEFORE 12/26/2014		GRANT AWARDS OR PD ON OR AFTER 12/26/2014	
	44 CFR	2 CFR	2 CFR 200	
Compliance with regulations pertaining to patent rights (inventions), copyrights and rights in data	13.36(i)(8)(9)	215.36 Appendix A(5)	Appendix II(F)	The FEMA Public Assistance (PA) Program <b>does not authorize</b> 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).
Clean Air Act and Federal Water Pollution Act	13.36(i)(12)	215 Appendix A(6)	-	Applies to <b>all contracts greater than or equal to \$100,000.</b>
	-	-	Appendix II(G)	Applies to <b>all contracts greater than or equal to \$150,000.</b>
Byrd Anti-Lobbying Amendment	-	215 Appendix A(7)	Appendix II(J)	Contractors that apply or bid for a contract must <b>certify</b> that it will not and has not used <b>any</b> Federal funds to <b>influence</b> 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 XXXIII(2)	Allows the Federal government, the Recipient (Grantee) or Subrecipient (Applicant) access to a contractor's <b>records</b> . 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 <b>requiring</b> the Subrecipient (Applicant) to <b>retain all</b> records for <b>three (3) years</b> from the date of <b>final expenditure report</b> and a contractor to retain records for <b>three (3) years after</b> the <b>termination</b> date of the contract (OCC PA Field Manual page 95 referring to responsibility of contractor).
Energy efficiency	13.36(i)(13)	215.44(1)(3)(vi)	Appendix II(H)	Contractor agrees to comply with <b>mandatory standards</b> and <b>policies</b> relating to energy efficiency which are contained in the state energy conservation plan (LA RS 40:1730.49).
Awards to debarred and suspended parties	13.35	215 Appendix A(8)	Appendix II(I)	Subrecipient (Applicant) must require and contractor must make a <b>declaration</b> that the contractor, its principles or affiliates (subcontractors), are currently <b>not disqualified</b> as a result of debarment or suspension.
Procurement of recovered materials	13.36(i)(12)	215.16	Appendix II(J) See 200.322	Applies to State and local government entities and their <b>contractors</b> .

**DISCLAIMER:** This document provides guidance on Federal procurement regulations as stated in **44 CFR 13.36** and **2 CFR 215.44-48**. It does not and is not designed to address all procurement issues which a Subrecipient (Applicant) may face. **It is the Subrecipient's (Applicant's) responsibility to assure that Federal regulations are followed in all circumstances involving Federal funding.**