

# 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 *non-disaster 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 (PNP)	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</b> (PDs) 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>.</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 <b>\$100,000/\$150,000<sup>1</sup></b>.</li> <li><b>State Law</b> if <i>more restrictive</i> than the Simplified Acquisition Threshold (SAT).</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>Limited by State law to contracts for <b>supplies and materials</b> less than <b>\$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 Proposal (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 Qualification (RFQ)</b></p> <ul style="list-style-type: none"> <li><b>Limited to Architectural 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>
Non-competitive 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 **issuance date** of the **grant** or the **Presidential Declaration (PD)**. For grants awarded *before 12/26/2014*, the threshold is \$100,000. For grants awarded *after 12/26/2014*, the threshold is \$150,000.

# Procurement REQUIREMENTS by category of purchase + size of contract

Category of purchase and size of the contract determines 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 \$150,000 and a minimum of three (3) responses for contracts equal to or less than \$150,000.
- PNP's 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 (LRS 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	Bid required.	
Public works	Quotes required	Less than OR equal to \$150,000 <sup>2</sup>	No bid requirement. LLA recommends Request for Proposal (RFP) process and/or three (3) solicited bids.	
		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 bid requirement. LLA recommends RFP process and/or three (3) solicited bids.	
		Greater than \$150,000		
A/E services	Request for Qualification (RFQ)	ANY size	No requirement.	
State Cooperative Purchase (SCP)	Authorized under 44 CFR 13.36(b)(5) and 2 CFR 200.318(f)	ANY size	<ul style="list-style-type: none"> <li>• Authorized under Louisiana Revised Statute (LRS) Title 38:2212.1(F) (Louisiana bid law).</li> <li>• Limited to public entities as defined by LRS 38:2211.</li> <li>• ONLY Office of State Procurement (OSP) SCP contracts.</li> <li>• Can be used for materials + supplies + equipment.</li> </ul>	

<sup>2</sup> Increases annually with Consumer Price Index (CPI).

## Other contract REQUIREMENT

Contracting with **small** and **minority firms, women's business enterprise** [44 CFR 13.36(i); 2 CFR 215.44(b); 2 CFR 200.32]

- Must take **affirmative steps** to use these firms 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 Association** (SBA), **Minority Business Development Agency** (MBDA) and **U.S. Department of Commerce** (DOC) for assistance in complying.

## Types of CONTRACTS

### CONTRACTS TO USE

<b>Lump sum</b>	Contract for work within a prescribed boundary with a <i>clearly</i> defined <b>scope</b> + a <b>total price</b> .
<b>Unit price</b>	Work done on an <b>item-by-item</b> basis, with cost determined <b>per unit</b> (e.g., box, cubic yard, etc.).
<b>Cost + fixed fee</b>	Total cost with a defined <b>fixed</b> fee <i>added</i> to the price.
<b>Time + materials</b>	<p>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>.</p> <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 can not exceed <b>70 hours continuous</b> of actual work <b>immediately</b> following the <b>emergency</b> or <b>disaster incident</b>.</li> </ul>
<b>Intergovernmental agreements</b>	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

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

## Required WRITTEN PROCEDURES for PROCUREMENT

The regulations require the Subrecipient (Applicant) have certain written procedures which are:

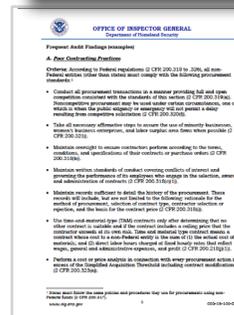
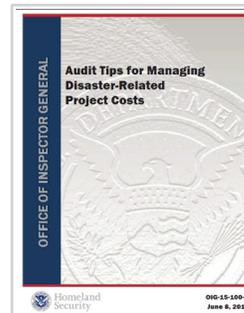
WRITTEN PROCEDURE	44 CFR 13.36	2 CFR 215	2 CFR 200
Contract administration system to ensure contractor performance.	13.36(b)(2)	215.47	200.318(b) "oversight" vs. written procedure
Employee code of standards and conflicts of interest.	13.36(b)(3)	215.42	200.318(c)(1)
Protest procedures.	13.36(b)(12)	215.41	200.318(k)
Written selection procedures for procurement transactions.	13.36(c)(3)	215.44	200.320(d)(3)
Contracting with small and minority firms, women's business enterprise and labor surplus area firms.	13.36(e)	215.44(b)	200.321
Recovered materials.	–	–	200.322
Acquisition of unnecessary or duplicative items.	13.36(b)(4)	215.44(a)(1)	200.318(d)

# BEST PRACTICES for procurement: per 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>3</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's 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-type** (T+M) 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. Time and material 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>3</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 the Subrecipient (Applicant) to resolve any non-compliant procurement issues. Possible penalties for improper procurement:

- Withhold payment
- Deobligate funds
- Suspend grant
- Withhold future grants
- Apply penalty
- And MORE!

## REFERENCES

2 CFR 200.318

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

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)

*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)

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  
[dotd.louisiana.gov/pages/default.aspx](http://dotd.louisiana.gov/pages/default.aspx)

Louisiana Department of Economic Development (LED)  
[lded.state.la.us/](http://lded.state.la.us/)

Louisiana Economic Development  
[opportunitylouisiana.com/smallbusiness](http://opportunitylouisiana.com/smallbusiness)

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

Louisiana Procurement Technical Assistance Center (PTAC)  
[doa.louisiana.gov/osp/osp.htm](http://doa.louisiana.gov/osp/osp.htm)

Louisiana Revised Statutes  
[legis.la.gov](http://legis.la.gov)

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/aboutsba/sbaprograms/onlinewbc/index.html](http://sba.gov/aboutsba/sbaprograms/onlinewbc/index.html)

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

## What else do

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.

6-22-15

**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) **OR**  
**contact your organization's purchasing officer OR GOHSEP, 225.925.7500.**

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## 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 *non-disaster 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 (new)	
<b>Bonding requirements</b>	13.36(h)	215.48(c)	200.235	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 + payment bond</b> .
<b>Administrative + legal remedies for violation or breach of contract</b>	13.36(i)(1)	215.48(a)	Appendix II(A)	All contracts <i>greater</i> than the SAT.
<b>Termination for cause + for convenience</b>	13.36(i)(2)	215.48(b)	Appendix II(B)	Applies to all contracts in excess of <b>\$10,000</b> .
<b>Executive Orders (EOs) 11246 + 11375 "Equal Employment Opportunity (EEO)"</b>	13.36(i)(3)	-	-	All construction contracts awarded in excess of <b>\$10,000</b> .
	-	215 Appendix A(1)	-	<b>All contracts</b> .
	-	-	Appendix II(I)	All <b>construction</b> contracts.
<b>Copeland Anti-Kickback Act</b>	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> .
<b>Davis-Bacon Act</b>	13.36(i)(5)	215 Appendix A(3)	200 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).



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 (new)	
<b>Compliance with regulations pertaining to patent rights (inventions), copyrights and rights in data</b>	13.36(i)(8)(9)	215.36 Appendix A(5)	Appendix II(F)	The 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).
<b>Clean Air Act and Federal Water Pollution Act</b>	13.36(i)(12)	215 Appendix A(6)	-	Applies to <b>all contracts</b> greater than or equal to \$100,000.
	-	-	Appendix II(G)	Applies to <b>all contracts</b> greater than or equal to \$150,000.
<b>Byrd Anti Lobbying Amendment</b>	-	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.
<b>Access to records</b>	13.36(i)(10)	215.53	DHS Grant Alert 15-05 paragraph XXXIII(2)	Allows the Federal government, the Grantee (Recipient) or Subrecipient (Applicant) access to a contractor's <b>records</b> . Subrecipient (Applicant) must include provision in contract stating this requirement by the contractor.
<b>Retention of records</b>	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 the termination</b> date of the contract (OCC PA Field Manual page 95 referring to responsibility of contractor).
<b>Energy efficiency</b>	13.36(i)(13)	-	Appendix II(H)	Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan (LRS 40:1730.49).
<b>Awards to debarred and suspended parties</b>	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.

**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 an Subrecipient (Applicant) may face. **It is the Applicant's (Subrecipient's) responsibility to assure that Federal regulations are followed in all circumstances involving Federal funding.**