

A Summary of Federal Procurement Standards

When Purchasing Goods and
Services under the Public
Assistance Program

FEDERAL PROCUREMENT STANDARDS

When Purchasing Goods and Services under the Public Assistance Program

The Importance of Following Federal Procurement Procedures

Care must be taken when purchasing goods and materials and when contracting for services for projects approved under the Public Assistance program. All projects are subject to audit. Contracts must be of reasonable cost, generally competitively bid, and otherwise comply with Federal, state and local procurement standards. By Federal regulation, Applicants are to follow their own procurement procedures as long as those procedures meet or exceed the procurement standards in the Federal Regulations [44 CFR 13.36(b)]. FEMA will only reimburse fair and reasonable costs of any contract an Applicant enters into.

The following tables list the typical types of contracts entered into by Applicants and their service providers when performing work under the Public Assistance program; and summarize the four procurement methods allowed by Federal regulation and associated Federal procurement requirements.

The table listing typical types of contracts can serve as a checklist by the Applicant to determine the type of contract that is appropriate for a given project. Refer to the Federal Procurement Regulations contained in 44 CFR 13.36 if further clarification is needed. A copy of the regulations can be obtained by contacting the State’s Public Assistance Officer.

Different Types of Contracts – When and When Not to Use

Types of Contracts	Standards	Type Used
Lump Sum	Contract for work within a prescribed boundary with a clearly defined scope and a total price	
Unit Price	Contract for work done on an item-by-item basis with cost determined on a unit basis.	
Cost Plus Fixed Fee	Either a lump sum or unit price contract with a fixed contractor fee added into the price	
Time and Materials or Time and Equipment	Should be avoided, but may be allowed for work necessary immediately after the disaster occurs when a clear scope of work cannot be developed and after a determination that no other contract is suitable; <u>must</u> include a cost ceiling or “not to exceed” provision in the contract [44CFR13.36(b)(10)]. Applicants must engage in comprehensive active monitoring activities to ensure contractor efficiency and must contact the state to ensure proper guidelines are followed. Some consideration is given to restoration of damaged electrical utilities when using time and equipment-type contracts.	
Piggyback Contracts	FEMA does not favor “piggyback contracts.” The variables associated with scopes of work, cost considerations, and competitive procurement requirements make this an option to be avoided. If used, reimbursement for eligible work will be predicated on reasonable costs for the work performed.	
Cost Plus Percentage of Cost	Contracts awarded by an Applicant on the basis of cost plus percentage of cost shall not be used [44 CFR 13.36(f)(4)].	
Contingency	Contract payment provisions should not include any language that makes payment to the contractor contingent upon the Applicant’s receipt of funding from FEMA.	
Any contract awarded to debarred contractors	Contracts awarded by an Applicant to debarred contractors are prohibited [44 CFR 13.35]. No Federal funding will be awarded for otherwise eligible work.	

Procurement Methods – A Guide and Checklist to Help Determine an Appropriate Contract

To Purchase....	Procurement Methods	Standards	Award based on
Services and supplies under \$100,000	Small purchases [44CFR13.36(d)(1)]	<ul style="list-style-type: none"> • Do not exceed simplified acquisition threshold of \$100,000 • Obtain price or rate quotation from adequate number of qualified sources • Relatively simple and informal method 	Awarded based on lowest documented price quote
Construction, debris services, etc.	Sealed bids (formal advertising) [44CFR13.36(d)(2)]	<ul style="list-style-type: none"> • Bids publicly solicited and advertised and a firm-fixed-price contract (lump sum or unit price) awarded • Adequate and realistic description of project is available. • Two or more responsible bidders are able to compete effectively • Allow sufficient time for bidders to respond • Invitation for bids defines project adequately • Bids publicly opened at time and place prescribed in invitation • Approved and awarded in writing • All bids may be rejected for sound documented reason 	Awarded to the responsible bidder whose bid conforms with invitation for bid and whose bid is lowest in price
Architectural, engineering or professional services	Competitive proposals [44CFR13.36(d)(3)]	<ul style="list-style-type: none"> • Bids publicly advertised; identify all evaluation factors that will be used • Any response shall be honored to the maximum extent practical • Proposals solicited from an adequate number of qualified sources • Method for conducting technical evaluations of proposals in place 	Contracts are awarded to responsible firm based on contractor qualifications subject to fair and reasonable
When it can be documented that competition is inadequate or public urgency for work will not permit delay	Noncompetitive proposals 44CFR13.36(d)(4)]	<p>Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible under small purchase procedures, sealed bids or competitive proposals, <u>and</u> one of the following exists:</p> <ul style="list-style-type: none"> • Item is only available from one source; • Public exigency or emergency will not permit delay; • Awarding agency authorizes noncompetitive proposal; or • Competition is determined inadequate after soliciting from a number of sources. <p>Applicants must conduct a cost (price) analysis. <u>Preauthorization is required</u> in most instances.</p>	Proposal is received from only one source, or after solicitation from a number of sources, competition is documented inadequate

Summary of Federal Procurement Regulations and Criteria [44 CFR 13.36]

Federal Regulation	Regulatory Criteria
Procurement Standards [44CFR13.36(b)]	<ol style="list-style-type: none"> 1. Applicants are to follow their own procurement procedures as long as those procedures meet or exceed the procurement standards in the federal regulations. 2. Contracts must be monitored to assure compliance with terms, conditions and specifications of contracts or purchase orders 3. Applicant must maintain written code of standards governing award and administration of contracts (conflicts of interest, selection and award, etc.) 4. Applicant will review proposed procurements to avoid unnecessary or duplicate purchases 5. Intergovernmental agreements for procurement are encouraged 6. Use of excess and surplus property is suggested when feasible 7. Use of value engineering clauses in construction contracts of sufficient size is encouraged 8. Contracts will be awarded only to responsible contractors possessing ability to perform 9. Supporting documents must be maintained to be included - rationale for method of procurement, selection of contract type, contractor selection or rejection and basis for contract price 10. Use of time and material contracts is limited to situations where 1) no other contract is feasible, and 2) includes a ceiling price. 11. Applicants will have responsibility for settlement of all contractual and administrative issues arising out of procurements 12. Applicants to have protest procedures to handle and resolve disputes relating to procurements
Competition [44CFR13.36(c)]	<ol style="list-style-type: none"> 1. All procurement transactions will provide full and open competition. Examples of restrictive competition include: <ol style="list-style-type: none"> a. Unreasonable requirements on firms in order for them to qualify b. Requiring unnecessary experience or excessive bonding c. Noncompetitive awards to consultants on retainer d. Organizational conflicts of interest e. Specifying only brand name products f. Any arbitrary action in the procurement process 2. Geographical preferences in evaluation of bids is restricted 3. Written selection procedures must be in place for all procurements identifying all requirements. 4. Ensure all pre-qualified lists of persons, firms or products are current and include enough qualified sources to ensure maximum open and free competition
Methods of Procurement [44CFR13.36(d)]	<ul style="list-style-type: none"> • See Checklists
Affirmative Action [44CFR13.36(e)]	<p>Grantee will take all necessary affirmative action steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible</p>
Contract Cost and Price [44CFR13.36(f)]	<ol style="list-style-type: none"> 1. Applicants must perform cost or price analysis in connection with every procurement action 2. Applicants must 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. 3. Costs and prices based on estimated costs will be allowable only to the extent that they are consistent with Federal cost principles. 4. Cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

Federal Regulation	Regulatory Criteria
Awarding Agency Review [44CFR13.36(g)]	<ol style="list-style-type: none"> 1. Applicants must make available to awarding agency technical specifications on proposed procurements and, on request, make pre award documents available i.e. requests for proposals or invitations for bids, independent cost estimates, etc. 2. <u>Review is required in all cases when Applicant's procurement procedure fails to comply with standards</u>, procurement exceeds simple acquisition threshold and is awarded without competition or only one bid or offer is received, or is awarded to other than low bidder or brand name is specified. 3. Applicant may request that its procurement system be reviewed to determine whether its system meets these standards, or Applicant may self-certify its procurement system
Bonding Requirements [44CFR13.36(h)]	<p>For construction or facility improvement contracts exceeding simplified acquisition threshold (\$100,000), the awarding agency may accept the Applicant's bonding policy and requirements. If such a determination has not been made, the following are minimum bonding requirements:</p> <ol style="list-style-type: none"> 1. A bid guarantee from each bidder equivalent to 5% of bid price; 2. A performance bond from contractor for 100% of the contract price; and 3. A payment bond on the part of the contractor for 100% of the contract price.
Contract Provisions [44CFR13.36(i)]	<p>Contracts must contain these provisions</p> <ol style="list-style-type: none"> 1. Administrative, contractual or legal remedies in instances where contractors violate or breach contract terms 2. Termination clause for cause and for convenience 3. Compliance with Equal Employment Opportunity regulations 4. Compliance with Anti-Kickback regulations 5. Compliance with Davis-Bacon Act 6. Compliance with Contract Work Hours and Safety Standards Act 7. Notice of reporting requirements and regulations pertaining to reporting 8. Notice of requirements pertaining to patent rights 9. Notice of requirements pertaining to copyrights and rights in data 10. Access of any records by grantee, sub grantee, Federal grantor, Comptroller or any duly authorized representatives 11. Records must be retained for at least three years after final payments are made 12. Compliance with CAA, CWA, EPA 13. Mandatory standards relating to energy efficiency