

Purchasing Under a FEMA Award: Exigency or Emergency Circumstances

When purchasing under a Federal Emergency Management Agency (FEMA) award, recipients and subrecipients must follow the Federal Procurement Standards outlined in [2 C.F.R. §§ 200.317 – 200.327](#). After a disaster strikes, conducting a competitive procurement may be impractical and could delay critical response and recovery activities. This Fact Sheet provides key information for contracting during exigency or emergency (E&E) circumstances under FEMA grant awards or declarations issued on or after Oct. 1, 2024.

Federal Procurement Standards

Recipients and subrecipients must follow the Federal Procurement Standards at [2 C.F.R. §§ 200.317 – 200.327](#) when purchasing under a FEMA award. To determine which federal procurement rules to follow, recipients and subrecipients must first determine whether they are a state, Indian Tribe, local government or nonprofit. Below are the federal procurement rules applicable to each entity:

Federal Procurement Standards Applicable to States, Indian Tribes, Local Governments, and Nonprofits

- **States, Indian Tribes, the District of Columbia, U.S. territories and their agencies and instrumentalities:** These entities must follow their own documented procurement policies and procedures when purchasing under a FEMA award pursuant to [2 C.F.R. § 200.317](#). These entities must also comply with requirements for domestic preferences ([2 C.F.R. § 200.322](#)), the procurement of recovered materials ([2 C.F.R. § 200.323](#)), and ensure that all necessary contract provisions are included in their contracts ([2 C.F.R. § 200.327](#)). **NOTE:** Indian Tribes are not subject to the procurement of recovered materials requirements at 2 C.F.R. § 200.323.
- **Local governments and nonprofits:** These entities must have written documented procurement policies and procedures, which reflect applicable local, state or tribal law, and ensure compliance with the Federal Procurement Standards at [2 C.F.R. §§ 200.318 – 200.327](#).

NOTE: FEMA may apply remedies if entities do not comply with the Federal Procurement Standards, as appropriate, in accordance with its authorities found at [2 C.F.R. § 200.339](#). Additionally, all recipients and subrecipients must ensure compliance with the Cost Principles at [2 C.F.R. Part 200 Subpart E](#), including the requirement to ensure that costs are reasonable, as defined in [2 C.F.R. § 200.404](#).



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Procurement Under a FEMA Award During Periods of Public Exigency or Emergency for States and Indian Tribes

States and Indian Tribes must follow their own state or tribal procurement policies and procedures as they would from their own source of funding, which include emergency procurement procedures, as well as the additional requirements listed in the section above.

Even if a state entity complies with its own policies and procedures used for non-federal procurement when it procures under a FEMA award, FEMA will still evaluate the procurement to determine whether the costs conform to the Cost Principles at [2 C.F.R. Part 200 Subpart E](#). Additionally, while more prescriptive conflict of interest rules apply to local governments and nonprofits, FEMA, pursuant to its authorities, requires that all recipients and subrecipients, including states and Indian Tribes, maintain written conflict of interest rules, including organizational conflicts of interest rules, governing the action of their procurement professionals and disclose any potential conflict of interest to FEMA in writing. See [Chapter 2 of the Procurement Under Grants Policy Guide \(PUGPG\)](#).

Public Exigency or Emergency Exception for Local Governments and Nonprofits

Exigency or Emergency Circumstances

Local governments and nonprofits must conduct all procurement transactions in a manner providing full and open competition unless certain allowable sole source circumstances apply. One such situation is the exigency or emergency exception when the local government or nonprofit determines that a public exigency or emergency will not permit a delay resulting from competitive solicitation (see [2 C.F.R. § 200.320\(c\)\(3\)](#)).

Local governments and nonprofits may use their own judgment in determining whether this condition has been met; FEMA approval is not required. However, the local governments and nonprofits must document their justification for using noncompetitive procurements, comply with other procurement requirements, ensure that work performed under the noncompetitively procured contracts is specifically related to the exigency or emergency circumstance in effect at the time of procurement, and ensure that costs are reasonable.

Defining Exigency and Emergency

FEMA defines both exigency and emergency as situations that demand immediate aid or action. While emergency conditions generally are short term, exigencies can exist for a period of weeks or months. See [Chapter 5 of the PUGPG](#).

- **Exigency:** Situations demanding immediate action to prevent or alleviate serious harm or injury, financial or otherwise, to the recipient or subrecipient, and use of competitive procurement proposals would prevent the urgent action required to address the situation. Exigencies can last days, weeks, months or longer.
- **Emergency:** Situations posing threats to life, public health or safety, improved property, or some other form of dangerous situation that requires immediate action to alleviate the threat. Emergency conditions are generally more short-lived than exigency circumstances.

- **Exigency Example:** A tornado impacts a city in June and causes widespread and catastrophic damage, including damage to a city school. The city wants to repair the school and have it ready for use by the beginning of the school year in September. The city estimates, based on experience, that awarding a contract using a sealed bidding process would require at least 90 days, and the city's engineer estimates that the repair work would last another 60 days. This would extend the project beyond the beginning of the school year. Rather than conducting a sealed bidding process, the city, in compliance with state and local law, wants to sole source with a contractor it has contracted with previously. The city can demonstrate that this constitutes an exigent circumstance because use of a sealed bidding process would cause an unacceptable delay and thus procurement by noncompetitive methods is necessary based on the specific situation. In this scenario, the delay in repairing the school caused by a competitive procurement process would result in the school remaining closed past the beginning of the school year. This could potentially lead to severe economic hardship on the community because if the school does not open on time, students may have to stay home, leading to parents staying home to look after their children, which could cause income loss.
- **Emergency Example:** Severe weather impacts a county and causes widespread and catastrophic damage, including loss of life. Debris is impeding a major highway, limiting first responders from accessing residents. The county needs to begin debris removal activities immediately to restore access across the county and address health and safety concerns. Under these circumstances, the county may find it necessary to award noncompetitive contracts to address threats to life, property and public health.

FEMA reserves the right to review all procurements conducted under the exigency or emergency exception. If the agency determines that exigency or emergency circumstances did not exist or that a competitive procurement was feasible, FEMA may disallow all or part of the local government's or nonprofit's cost related to the contract or take other actions permitted by statute and regulation. See [2 C.F.R. § 200.339](#).

Allowability

The use of the public exigency or emergency exception is only permissible during the actual exigency or emergency circumstances, which may exist for days, weeks, months or longer. Exigency or emergency circumstances will vary for each incident, making it difficult to determine in advance or assign a particular time frame when noncompetitive procurements may be warranted. Because the exception to competitive procurement is available only while the exigency or emergency circumstances exist, entities must immediately transition to a competitive procurement process when the exigency or emergency ceases to exist.

Documentation Requirements and Suggested Elements of Justification

Local governments and nonprofits must document and provide justification for the use of the exigent or emergency exception as well as complying with all applicable Federal Procurement Standards to ensure that costs are reasonable. The justification must be included in local governments' and nonprofits' records for each FEMA award, subaward or project. The following is a list of elements that local governments and nonprofits may wish to include as part of their written justifications:

- Identify which of the four circumstances listed in [2 C.F.R. § 200.320\(c\)](#) justify a noncompetitive procurement:

- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the local government or nonprofit; or
- After solicitation of an adequate number of sources, competition is determined inadequate.
- Provide a brief description of the product or service being procured, including the expected dollar amount.
- Explain why a noncompetitive procurement is necessary. This would include specific conditions and circumstances that clearly illustrate why procurement other than through noncompetitive proposals would cause unacceptable delay in addressing the public exigency or emergency. Failure to plan for a transition to competitive procurement cannot be the basis for continued use of noncompetitive procurement based on public exigency or emergency.
- State how long the noncompetitively procured contract will be used for the defined scope of work, and the impact on that scope of work should the noncompetitively procured contract not be available for that amount of time. Examples of questions to ask include:
 - How long do you anticipate the exigency or emergency circumstances will continue?
 - How long will it take to identify your requirements and award a contract that complies with all procurement requirements?
 - How long would it take another contractor to reach the same level of competence?
- Describe the specific steps taken to determine that full and open competition could not have been met, or was not used, for the scope of work (e.g., research conducted to determine that the good or service required is only available from one source).
- Describe any known conflicts of interest and any efforts that were made to identify possible conflicts of interest before the noncompetitive procurement occurred. If no efforts were made, explain why.
- Include any other information justifying the use of noncompetitive procurement in the specific instance.

NOTE: A separate justification is required for each instance of noncompetitive procurement. See [Chapter 5 of the PUGPG](#).

Additional Federal Procurement Rules

Even during exigency or emergency circumstances, local governments and nonprofits must comply with the following rules:

- Contracts must be awarded to a responsible contractor (see [2 C.F.R. § 200.318\(h\)](#)).
- Local governments and nonprofits must follow documentation, oversight and conflict of interest requirements among other general procurement requirements in [2 C.F.R. § 200.318](#). If a conflict of interest is unavoidable due to the exigent/emergency circumstances, the local government or nonprofit must explain that in the procurement documentation.
- To the greatest extent practicable, provide a preference for the purchase, acquisition or use of goods products or materials produced in the United States (see [2 C.F.R. § 200.322](#)).
- Local governments and nonprofits must perform a cost or price analysis for every procurement transaction, including contract modifications more than the federal Simplified Acquisition Threshold (SAT), which as of Oct. 1, 2025 is \$350,000 (see [2 C.F.R. § 200.324\(a\) and \(b\)](#)).
- Contracts exceeding the federal SAT, must include the federal bonding requirements if the contract is for construction or facility improvement (see [2 C.F.R. § 200.326](#)).
- Contracts must include the required contract clauses (see [2 C.F.R. § 200.327](#) & [Appendix II to Part – 200 Contract Provisions for Non-Federal Entity Contracts Under Federal Awards](#)).
- All recipients and subrecipients are prohibited from expending FEMA award funds for certain telecommunications equipment or services as required by [2 C.F.R. § 200.216](#) (see [FEMA Policy 405- 143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services](#)).

TIME-AND-MATERIALS (T&M) CONTRACTING

In some cases, a T&M contract may be appropriate in an exigency or emergency situation, as it may be impossible to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. FEMA may reimburse costs incurred under a T&M contract for local governments and nonprofits only if:

- No other contract was suitable;
- The contract has a ceiling price that the contractor exceeds at its own risk; and
- Local governments and nonprofits demonstrate it provided a high degree of oversight to obtain reasonable assurance that the contractor used efficient methods and effective cost controls (see [2 C.F.R. § 200.318\(j\)](#)).

COST PLUS A PERCENTAGE OF COST CONTRACTING

A cost plus a percentage of cost (CPPC) contract is a cost-reimbursement contract containing some element that commits a local government or nonprofit to pay the contractor an amount in the form of either profit or cost, undetermined at the time of the contract award, based on a percentage of future costs. Local governments and nonprofits are prohibited from awarding CPPC and cost-plus-percentage-of-construction-cost contracts, regardless of the circumstances (see [2 C.F.R. § 200.324\(c\)](#)). FEMA discourages states and Indian Tribes from using CPPC contracts in any of their procurements due to the high risk of fraud, waste and abuse of the federal funds.

PRE-AWARDED OR PRE-EXISTING CONTRACTS

Local governments and nonprofits may still use a pre-awarded or pre-existing contract that is not in compliance with the Federal Procurement Standards (e.g., the contract was not fully and openly competed (see [2 C.F.R. § 200.319](#)), during an exigency or emergency situation. In such cases, local governments and nonprofits must prepare the appropriate documentation to justify the use of the pre-awarded or pre-existing, noncompetitively procured contract. FEMA recommends that local governments and nonprofits review the procurement requirements outlined in this fact sheet and take actions to modify pre-awarded or pre-existing contracts where applicable. For information on contract actions you can take before a disaster strikes, please see [Chapter 12 in the PUGPG](#).

PIGGYBACKING

There are times when a recipient or subrecipient sets up a contract with a vendor, then a second recipient or subrecipient wants to utilize the first entity's contract. FEMA refers to the assignment of contracts from one jurisdiction to another in circumstances like this as "piggybacking." Piggyback contracting occurs when one entity with an existing contract assigns some or all its contractual rights to another entity that was not previously party to the contract.

NOTE: When a State or Indian Tribe is entering into a procurement with a local government or nonprofit, it is important to remember that the contract must be procured in compliance with both state, tribal and local procurement regulations, as well as the Federal Procurement Standards at 2 C.F.R. §§ 200.318 – 200.327. This is a very important caveat because a State or Indian Tribe would only be required to comply with 2 C.F.R. § 200.317 if it was procuring the goods or services solely for its own use. Since a State or Indian Tribe is procuring with a local government or nonprofit, the purchase must comply with the Federal Procurement Standards that are applicable to all entity types participating in the joint procurement.

There maybe be circumstances when piggybacking is permissible, but in almost all instances the scope of work needs to be changed to include the needs of a recipient or subrecipient. Generally, local governments and nonprofits cannot change the scope of work because there is not likely to be full and open competition for the expanded scope of work. In some cases, such as an emergency or exigency, there may be a permissible need to piggyback. If used during an exigency or emergency situation, local governments and nonprofits must ensure the scope aligns directly with the need, expanding the scope of a contract for the period of the exigency or emergency circumstance, and follow all other applicable rules as stated above. See [Chapter 12 in the PUGPG](#).

Alternatively, local governments and nonprofits may choose to enter a separate contract with the same contractor as another entity, using the same terms and conditions as found in that entity's contract, with only a change in the scope of work and the associated costs. However, this is sole source contracting rather than piggyback contracting, and it must meet the requirements for noncompetitive procurement under exigency or emergency circumstances or another exception to competitive procurements set forth at [2 C.F.R. § 200.320\(c\)](#).

Further Assistance

Additional assistance regarding purchasing under a FEMA award can be accessed by visiting the [Procurement Disaster Assistance Team \(PDAT\) website](#) or by contacting one of the points of contact listed below:

- **State Emergency Management Agency (Disaster Grants):** www.fema.gov/emergency-management-agencies
- **State Administrative Agency (Non-Disaster Grants):** www.fema.gov/grants/preparedness/about/state-administrative-agency-contacts
- **Contact PDAT:** FEMA-GPD-PDAT@fema.dhs.gov; make sure to copy your FEMA grant program point of contact when emailing PDAT.