

Federal Procurement Notification for Federal Grant Sub-Recipients

August 2018

I Purpose

This document has been developed by the Massachusetts Emergency Management Agency (MEMA) to provide awareness of the federal procurement standards found at [2 CFR 200.317 through 200.326: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#).

In addition, this document contains a Procurement Certification form and a Procurement Checklist. MEMA requires its grant applicants to submit a completed Certification as part of their applications and its sub-recipients to submit a completed Checklist with their reimbursement requests.

II Overview

All sub-recipient spending under federal homeland security grant programs must comply with the federal procurement standards described in 2 CFR 200.317 through 200.326¹. The federal procurement standards can be broken down into the categories below:

- General procurement standards (2 C.F.R. § 200.318)
- Competition (2 C.F.R. § 200.319)
- Methods of procurement to be followed (2 C.F.R. § 200.320)
- Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms (2 C.F.R. § 200.321)
- Procurement of recovered materials (2 C.F.R. § 200.322)
- Contract cost and price (2 C.F.R. § 200.323)
- Federal awarding agency or pass-through entity review (2 C.F.R. § 200.324)
- Bonding requirements (2 C.F.R. § 200.325)
- Contract provisions (2 C.F.R. § 200.326 and Appendix II)

Sub-recipients must follow their own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided that the procurements conform to applicable federal law and the standards defined in 2 CFR 200.317 through 326.

Following federal requirements does not exempt a sub-recipient from state or local requirements. In some instances, state and/or local procurement requirements may be more stringent than the federal procurement regulations. Sub-recipients must ensure any actions taken satisfy both federal and state/local requirements.

¹ When procuring property and services under a Federal award, a **State** must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with § 200.322 *Procurement of recovered materials* and ensure that every purchase order or other contract includes any clauses required by section § 200.326 Contract provisions.

Non-compliance with the applicable procurement regulations can result in costs being deemed unallowable, reimbursement requests being denied, or an order that previously awarded grant funds be returned.

If an applicant does not have documented procurement procedures, MEMA may not provide a contract until the applicant documents its procurement procedures. If an applicant's procurement procedures are inadequate, MEMA may not provide a contract until appropriate revisions have been made to assure all expenditures will be made in compliance with the applicable federal, state, local, and tribal procurement requirements.

III Procurement Methods

The chart below identifies methods of procurement specifically cited in 2 CFR 200. When determining a procurement method, sub-recipients must use one of these methods or the locally required method, provided it meets or exceeds the procurement standards in one of the methods below.

Method of Procurement	2 CFR 200 Citation
Micro Purchases (less than or equal to \$10,000 ²)	See 2 CFR 200.320 (a)
Small Purchases (less than or equal to the <i>Simplified Acquisition Threshold</i> of \$250,000)	See 2 CFR 200.320 (b)
Sealed Bids	See 2 CFR 200.320 (c)
Competitive Proposals	See 2 CFR 200.320 (d)
Non-competitive Proposals	See 2 CFR 200.320 (f)

² Per the Office of Management and Budget June 20, 2018 memorandum (M-18-18) the Micro-Purchase Threshold has been raised from \$3,500 to \$10,000 and the Simplified Acquisition Threshold has been raised from \$100,000 to \$250,000

IV Contract Types

There are numerous contract methods allowed at the federal and local levels. Below are contract types that may be used³ along with contracts that should be avoided.

Contract Types that may be used include (but are not limited to):

Lump sum	<ul style="list-style-type: none"> Contract for work within a prescribed boundary with a clearly defined scope and total price
Unit price	<ul style="list-style-type: none"> Work done on an item-by-item basis, with cost determined per unit (e.g., box, cubic yard, etc.)
Cost plus fixed fee	<ul style="list-style-type: none"> Total known cost with a defined fixed fee added to the price
Time and Materials (T + M)	<ul style="list-style-type: none"> 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)]. Use 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.
Intergovernmental agreements	<ul style="list-style-type: none"> Subrecipients are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

Contract Types that should be avoided are:

Piggyback ⁴	<ul style="list-style-type: none"> Piggybacks are generally ineligible. However, work done using another sub-recipient’s pre-existing, properly procured contract must meet strict criteria to be eligible. The existing contract must be viable (i.e., the same item must be purchased, price and vendor must be the same, and must include written mutual consent of the original contracting parties)
Cost-plus-percentage-of-costs	<ul style="list-style-type: none"> Strictly prohibited
Percentage-of-construction-cost	<ul style="list-style-type: none"> Strictly prohibited

³ The contract types identified under the ‘Contract Types that may be used’ section are provided for awareness purposes only; neither the Federal government nor MEMA require a specific contract type to be used by sub-recipients

⁴ Adopting a pre-existing contract solicited and awarded by another entity is referred to as ‘piggy-backing’. These contracts should be avoided as they may not contain all required clauses, are improper in scope, or are not procured in compliance with the federal procurement standards

V Required Written Procedures for Procurement

Pursuant to 2 CFR 200.318(a) sub-recipients must use their “documented procurement procedures”. The chart below identifies the various Federal written procedure requirements – with their related citation – that sub-recipient procurement procedures must reflect.

Employee and organizational conflicts of interest standards	See 200.318(c)1
Avoiding acquisition of unnecessary or duplicative items	See 200.318(d)
Granting awards to responsible contractors	See 200.318(h)
Maintaining records to detail history of the procurement	See 200.318(i)
Use of time and material contracts	See 200.318(j)
Settlement of Contractual/Administrative Issues	See 200.318(k)
Selection procedures for procurement transactions	See 200.319(c)
Methods for conducting technical evaluations	See 200.320(d)(3)
Utilizing small businesses, minority owned firms and women business enterprises	See 200.321
Procurement of recovered materials	See 200.322

VI Key Additional Federal Requirements

Below are some additional federal requirements sub-recipients must be aware of. Please note that this is not a complete list and does not substitute for a full reading of 2 CFR 200.317-326.

- Take all necessary affirmative steps to assure the use of minority businesses, women-owned business enterprises and labor-surplus area firms. See 2 CFR 200.321(b) for what “affirmative steps” must include. Sub-recipients should maintain a list of such firms and can use the [Massachusetts Operational Services Division \(OSD\) Supplier Diversity Office](#) for assistance in complying.
- Include required provisions in all contracts awarded [2 CFR 200.326].
- 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)].
- Perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (\$250,000) 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)].

VII MEMA Procurement Certification Form

This Procurement Certification Form is provided by MEMA to its grant applicants and MEMA requires applicants to submit this completed form as part of their grant applications. **The Form must be completed and signed by the person who manages and/or conducts procurements for the applicant as a whole (i.e., for municipal programs, this form must be completed and signed by the person who manages and/or conducts procurement on behalf of the municipality).**

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1. Procurement(s) conducted under the [Name of federal grant program] will comply with my organization's procurement procedures which are documented and reflect current procurement practices (*applicant should state Yes or No*)

 2. My organization's procurement procedures comply with the federal procurement standards found at 2 CFR 200.317 through 200.326 and are available for review upon request from MEMA or the Federal government (*applicant should state Yes or No; if 'No' please provide a brief reason why*)

Name of person completing this form _____

Title _____

Signature _____

Email _____

Telephone _____

Applicant Organization Name _____

VIII MEMA Procurement Checklist

Pursuant to 2 CFR 200.318(i), sub-recipients “must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily 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.”

This Procurement Checklist below is provided by MEMA to its sub-recipients and MEMA requires all sub-recipients to submit this completed checklist– **along with adequate back-up documentation** - with their reimbursement requests.

Following federal requirements does not exempt a sub-recipient from state or local requirements. In some instances, state and/or local procurement requirements may be more stringent than the federal procurement regulations. Sub-recipients must ensure any actions taken satisfy both federal and state/local requirements.

Debarment and Suspension (check 'yes' or 'no' as applicable)	Yes	No
Does the vendor appear on the Federal System for Award Management ⁵ (SAM) Excluded Parties List? (If 'yes' please identify why)		

Procurement Method Used	✓ if applies	Back-up Documentation – for MEMA reimbursement - ⁶ to include:
Procurement by micro-purchase (less than or equal to \$10,000)		No back-up documentation (for MEMA reimbursement) needed
Procurement by small purchase (less than or equal to the Simplified Acquisition Threshold of \$250,000)		Documentation (e.g., quote from a vendor or notes from a verbal quote) that price quotes were obtained from “an adequate number of qualified sources” (a minimum of three is recommended) <u>and</u> a brief explanation as to why the successful vendor was chosen.
Procurement by sealed bid (formal advertising)		<ul style="list-style-type: none"> ▪ The Invitation for Bid; ▪ the IFB advertisement; <u>and</u> ▪ a copy of the notification and contract to the successful vendor
Procurement by competitive proposal		<ul style="list-style-type: none"> ▪ The Request for Proposal; ▪ the RFP advertisement; ▪ the vendor evaluation criteria; ▪ a copy of the notification and contract to the successful vendor; <u>and</u> ▪ identify if this method was used for Architectural and Engineering professional services
Procurement by non-competitive proposals		Submit a narrative that details how the procurement complies with one or more of the circumstances found at 2 CFR 200.321 (f)

⁵ Pursuant to 2 CFR Part 180, contracts may not be awarded to entities that are on the SAM Excluded Parties List which may be found here: <https://sam.gov>

Solicitation: if solicitation used, check all that apply. If no solicitation used (e.g., micro-purchase) you may disregard this section	Yes	No
<ul style="list-style-type: none"> Is the solicitation (and its publication) included in your file? <i>(If 'no', please identify why)</i> 		
<ul style="list-style-type: none"> Were prospective respondents allowed enough time to respond? <i>(If 'no', please identify why)</i> 		
<ul style="list-style-type: none"> Does the solicitation contain a clear and accurate description of the technical requirements for the material, product, or services and scope of work? <i>(If 'no', please identify why)</i> 		
<ul style="list-style-type: none"> Are there unreasonable requirements, unnecessary experience, or excessive bonding requirements? <i>(If 'yes', please identify why)</i> 		
<ul style="list-style-type: none"> Are there any "brand name" products specified without also stating "an equal" product? <i>(If 'yes', please identify why)</i> 		
<ul style="list-style-type: none"> Is a record of respondents that were rejected as not responsible or not responsive - and the rejection reasoning - included in your file? <i>(If 'no', please identify why)</i> 		
<ul style="list-style-type: none"> Are there an adequate number of responses documented in the file? <i>(If 'no', please identify why)</i> 		
<ul style="list-style-type: none"> Are copies of all proposals - including the methodology of evaluation and selection process - included in your file? <i>(If 'no', please identify why)</i> 		
<ul style="list-style-type: none"> Are there any potential conflicts of interest? <i>(If 'yes', please identify why)</i> 		

Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms	Yes	No
<ul style="list-style-type: none"> Were positive efforts made in hiring small-business, minority-owned business or women-owned business enterprises to the extent practical? <i>(If 'no', please identify why)</i> 		
<ul style="list-style-type: none"> Were there positive efforts in the utilization of labor surplus firms? <i>(If 'no', please identify why)</i> 		
<ul style="list-style-type: none"> If your prime contractor has decided to use a subcontractor, did they take the above affirmative steps? <i>(If 'no', please identify why)</i> 		

Required Contract Provisions	Yes	No
<ul style="list-style-type: none"> ▪ Does the contract contain a provision for administrative and legal remedies for violation or breach of contract? <i>(If 'no', please identify why)</i> 		
<ul style="list-style-type: none"> ▪ Does the contract contain a provision for termination of contract for cause and for convenience? <i>(If 'no', please identify why)</i> 		
<ul style="list-style-type: none"> ▪ Does the contract contain all Federal and State special conditions? <i>(If 'no', please identify why)</i> 		

Bonding Requirements: used for construction/renovation contracts above the Simplified Acquisition Threshold (\$250,000). Please disregard this section if not applicable to your procurement.	Yes	No
Does the sub-recipient bonding policy adequately protect the Federal interests? <i>If no:</i>		
<ul style="list-style-type: none"> ▪ Did the bid response include a 5% bid bond? 		
<ul style="list-style-type: none"> ▪ Did the winning contractor execute a performance bond for 100% of the contract? 		
<ul style="list-style-type: none"> ▪ Did the winning contractor execute a payment bond for 100% of the contract? 		

Cost Analysis Required: used for contracts above the Simplified Acquisition Threshold (\$250,000). Please disregard this section if not applicable to your procurement.	Yes	No
<ul style="list-style-type: none"> ▪ Was a cost or price analysis conducted in accordance with 2 CFR 200.323? <i>(If 'no', please identify why)</i> 		

IX Resources

2 CFR 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards: <https://www.gpo.gov/fdsys/granule/CFR-2014-title2-vol1/CFR-2014-title2-vol1-part200/content-detail.html>

Massachusetts Operational Services Division, Procurement Information Center:
<http://www.mass.gov/anf/budget-taxes-and-procurement/oversight-agencies/osd/procurement-information-center.html>

FEMA Procurement Disaster Assistance Team: <https://www.fema.gov/procurement-disaster-assistance-team>