



PUBLIC ASSISTANCE PROCUREMENT

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AGENDA

- What is Procurement?
- Procurement Methodology
- Methods of Procurement
- Common Pitfalls
- Questions and Closing

DEFINITION

- “Procurement” is the term used in federal grants management for acquiring supplies or services (including construction) through purchase or lease.
- Procurement begins at the point when an entity’s needs are established.
- This process includes the description of requirements to satisfy the entity’s needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling needs by contract.

PROCUREMENT REGULATIONS

- Authority for the procurement regulations resides in the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards which is codified within 2 CFR 200
- Code of Federal Regulations (CFR)
 - 2 C.F.R. §200.317 through 2 C.F.R. §200.327
- FEMA outlines regulations and includes policy within their Procurement Field Manual which is linked at the end of this presentation

STATE VS NON-STATE RULES

States 2 C.F.R. §200.317

- Includes state agencies and instrumentalities of the state
- When procuring supplies and services a state must use the same policies and procedures that it uses for procurements from its non-Federal funds.
- States must comply with 2 C.F.R. §200.321, §200.322 and §200.323.
- States must ensure that every purchase order or other contract included any clauses required by 2 C.F.R. §200.327 (Contract Provisions), and must follow all applicable Federal laws, executive orders, implementing regulations, and policies.

Non-states 2 C.F.R. §200.318

- Includes local governments, institutions of higher education, hospitals, and other non-profit organizations, as well as Tribal Governments
- When procuring supplies and services must follow the regulations at 2 C.F.R. §200.318 (General Procurement Standards) through 2 C.F.R. §200.327

WRITTEN PROCEDURES

- Federal procurement rules require all non-state entities to have written procedures for procurement transactions (Purchasing Policy / Procurement Policy).
- You must follow the more restrictive of either your own policy or the federal regulation if you are a non-state entity.
 - Purchasing thresholds



FULL AND OPEN COMPETITION

- The federal procurement under grants standards have identified seven situations that are considered restrictive of competition
 1. Unreasonable requirements
 2. Requiring unnecessary experience or bonding
 3. Noncompetitive pricing practices
 4. Noncompetitive contracts to contractors on retainer
 5. Organizational conflicts of interest
 6. Specifying a brand name product
 7. Any arbitrary actions in the procurement process

CONTRACT PROVISIONS



	Required Provision	Contract Criteria	Sample Language?
1.	Legal/contractual/administrative remedies for breach of contract	> Simplified Acquisition Threshold (\$250k)	No. It is based on applicant's procedures.
2.	Termination for cause or convenience	> \$10k	No. It is based on applicant's procedures.
3.	Equal Employment Opportunity	Construction work	Yes. 41 CFR Part 60-1.4(b)
4.	Davis Bacon Act	Construction work	Not applicable to PA grants
5.	Copeland Anti-Kickback Act	Construction work > \$2k	Not applicable to PA grants
6.	Contract Work Hours and Safety Standards Act	> \$100k + mechanics or laborers	Yes. 29 CFR 5.5(b)
7.	Rights to inventions made under a contract or agreement	Funding agreement	Not applicable to PA grants
8.	Clean Air Act and Federal Water Pollution Control Act	>\$150k	Yes
9.	Debarment and Suspension	All	Yes
10.	Byrd Anti-Lobbying Amendment	All (>\$100k: Certification)	Yes. Clause and certification
11.	Procurement of Recovered Materials	Applicant is a state or political subdivision of a state. Work involves the use of materials.	Yes

RECORD KEEPING

Subrecipients are required to maintain records sufficient to detail the history of a procurement. 2 C.F.R. §200.318(i)

These records include:

- rationale for method of procurement;
- selection of contract type;
- contractor selection or rejection; &
- and the basis for contract price.



RECORD KEEPING CONT.

Dependent on the *type* of procurement a procurement file should include:

- Pre-solicitation documents;
- List of sources solicited;
- Copies of published notices of proposed contract action;
- Independent cost estimate;
- Copy of the solicitation, all addenda, and all amendments;
- Determination of contractor's responsiveness;
- Notice of award;
- Notice to unsuccessful bidders or offerors and record of any debriefing;
- Record of protests, disputes, and claims;
- Bid, performance, payment, and other bond documents; &
- Notice to proceed.

HUB PROCUREMENT GUIDANCE

2 CFR 200.321 requires that subrecipients follow the following six affirmative steps:

1. **Solicitation Lists** - Must place small and minority businesses and women's business enterprises on solicitation lists. 2 C.F.R. §200.321(b)(1).
2. **Solicitations** - Must assure that it solicits small and minority businesses and women's business enterprises whenever they are potential sources. 2 C.F.R. §200.321(b)(2).
3. **Dividing Requirements** - Must divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises. 2 C.F.R. §200.321(b)(3).
4. **Delivery Schedules** - Must establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises. 2 C.F.R. §200.321(b)(4).
5. **Obtaining Assistance** - Must use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce. 2 C.F.R. §200.321(b)(5).
6. **Prime Contractor Requirements** - Must require the prime contractor, if subcontracts are anticipated or let, to take the five affirmative steps described in steps 1

METHODS OF PROCUREMENT

- Micro-Purchase Procedures
 - <\$10,000.00 of informal purchases
- Small Purchase Procedures
 - <\$250,000.00 of relatively simple and informal purchases
- Sealed Bidding
 - Procurement type based on a fixed price, often performed for Construction Projects
- Competitive Proposals
 - Procurement type often used for Professional Services, often uses a cost-reimbursement style contract
- Non-Competitive Proposals
 - Procurements that do not fall within one of the categories above, usually are for emergency or unorthodox situations
- **Keep in mind you must still follow your own documented procurement thresholds!**

MICRO-PURCHASE

- The micro-purchase threshold is an informal purchase method for goods or services that do not exceed the micro-purchase threshold.
 - Current Threshold: \$10,000.00
- Micro-purchases are usually used for supplies/materials that are on-hand at stores.
- Example: Organization ABC purchases face masks for emergency workers.



MICRO-PURCHASE PROCEDURES

- Competition
 - To extent practicable, must distribute micro-purchases equitably among qualified suppliers.
- Prohibited Divisions
 - Must not split a larger procurement merely to lower the cost of a procurement to less than the micro-purchase threshold.
- Documentation
 - Must document determination that the price is fair and reasonable.
- Responsibility
 - Must give consideration to such matters as contractor integrity, past performance.

SMALL PURCHASES

- Small purchase is the appropriate procurement method for acquiring services or materials where the *aggregate* dollar amount of the acquisition does not exceed the simplified acquisition threshold. **The threshold is set at \$250,000 for purchases made after 6/20/2018.**
- **Procedures**
 - Obtain quotes from at least 3 sources
 - Fixed price or not to exceed cost-reimbursement
 - Do not split a larger procurement merely to lower the cost to below the small purchase threshold
 - Confirm the vendor is responsible

SMALL PURCHASE DOCUMENTATION

- Price estimate
- Rationale for the method of procurement
- Selection of contract type
- Contractor selection or rejection
- Basis for the contract price
- Document determination that lowest bidder is not responsible (if applicable)

SMALL PURCHASE EXAMPLE

- Organization ABC purchases sandbags ahead of a big storm to help prevent flooding. The purchase of a single item even at larger quantities is a relatively simple and informal purchase process and could be appropriate for small purchase procedures.



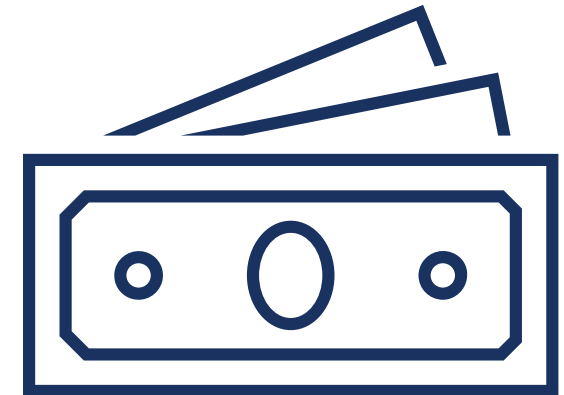
SEALED BIDDING

- Sealed bidding is a method of contracting that employs competitive bids, public opening of bids, and firm fixed price contract awards. Bid Documents must describe the requirements of the Subrecipient clearly, accurately, and completely.
- Sealed bidding is the preferred method for procuring construction services.
- Awarded must be made to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the **lowest in price**.

SEALED BIDDING

Sealed bidding is the appropriate method for procuring construction, if:

- Complete & adequate specifications are available;
- Two or more responsible bidders are willing and able to compete;
- The procurement lends itself to a **firm fixed price contract**; &
- Winning bidder can be chosen principally on the basis of price.



SEALED BIDDING PROCEDURES

- Must **publicly advertise** invitation for bids
- Must solicit bids from “an adequate number of vendors”
- Must perform affirmative steps to solicit Historically Underutilized Businesses
- Must define the items or services in order for the bidder to properly respond
- Must open the bids at the time and place prescribed in the invitation for bids
- Must make award to lowest responsive and responsible bidder

BONDING REQUIREMENTS

- There are bonding requirements for ***construction or facility improvement contracts*** exceeding the simplified acquisition threshold (\$250,000.00).

Bid Guarantee

- An assurance that the bidder will, upon acceptance of the bid by the NFE, execute such contractual documents as may be required within the time specified.

Performance Bond

- An assurance that the bidder will fulfill all the contractor's obligations under contract.

Payment Bond

- Assure payment for all persons supplying labor and material in the execution of work provided for in the contract.

SEALED BIDDING EXAMPLE

- Organization ABC wants to rebuild a school gymnasium that was destroyed during a storm. They already have blueprints and specifications created by an Architectural Firm and have performed an independent estimate which estimates the new gymnasium will cost around \$3 million dollars. Organization ABC publicly advertises for bids from construction companies to build the gymnasium according to the specifications from the Architectural Firm.
 - Organization ABC receives 4 bids:
 - Construction Company W - \$4,250,000.00
 - Construction Company X - \$6,000,000.00
 - Construction Company Y - \$3,500,000.00
 - Construction Company Z - \$3,250,000.00
- Construction Company Z would be selected if they are determined to be a responsible contractor

SEALED BID RECORD KEEPING

- **Bid Tabulation (Record of vendor bids/ranking)**
- Pre-solicitation documents;
- List of sources solicited;
- Copies of published notices of proposed contract action;
- Independent cost estimate;
- Copy of the solicitation, all addenda, and all amendments;
- Determination of contractor's responsiveness;
- Notice of award;
- Notice to unsuccessful bidders or offerors and record of any debriefing;
- Record of protests, disputes, and claims;
- Bid, performance, payment, and other bond documents; &
- Notice to proceed.

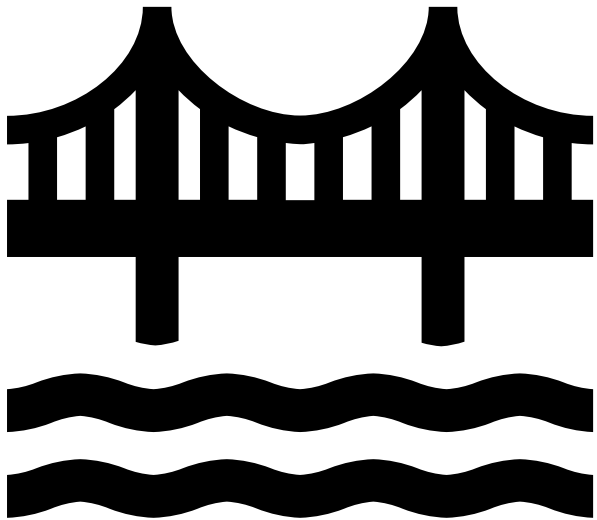
COMPETITIVE PROPOSALS

A method of contracting in which an entity cannot base the contract award exclusively on price due to the nature of the service or property to be acquired.

Competitive proposals are appropriate when:

- The nature of the procurement does not lend itself to sealed bidding
- The pricing structure will likely lead to a **cost reimbursement** contract
- The requirements are more ambiguous and development work is required
- Technical capability and prior experience play a dominant role in selection
- Separate discussions with individual offerors are expected to be necessary after they have submitted proposals

COMPETITIVE PROPOSAL TYPES



- Request for Proposals (RFP)
 - Award based on **qualifications and price** selection
- Request for Qualifications (RFQ)
 - Award based on **qualifications only**
 - Can only be used for Architectural and Engineering Services

COMPETITIVE PROPOSAL PROCEDURE

- Publicly Advertise the Request for Proposals or Qualifications
- Must solicit an adequate number of sources
- The solicitation **must** identify all vendor evaluation factors and their relative importance
- The evaluation of proposals must be written and documented
- The award must be given to the responsible vendor whose proposal is most advantageous based upon the identified evaluation factors
- **RFQ Only:** Price negotiations are held after the most advantageous vendor is determined. If price is unable to be agreed upon, then the next vendor may be considered.

COMPETITIVE PROPOSAL EXAMPLE I

- Organization ABC is looking for a team to help them manage their projects. They create a Request for Proposals and publicly advertise it based upon the criteria seen below.
- Firm L would be selected as the winning vendor.

Firms	Experience (20)	Program Knowledge (30)	Price (50)	Total
Firm J	15	15	45	75
Firm K	20	25	30	75
Firm L	20	20	40	80

COMPETITIVE PROPOSAL EXAMPLE 2

- Organization ABC is looking for an Architectural or Engineering Firm to create a set of plans to rebuild their school gymnasium that was destroyed by a major storm. Organization ABC publicly advertises a Request for Qualifications to find a qualified firm. Their RFQ outlines they are grading proposals based upon experience, personnel qualifications and technical and regulatory understandings.

Firms	Experience (25)	Personnel Qualifications (25)	Technical and Regulatory Understandings (50)	Total Score
Firm A	15	20	35	70
Firm B	25	25	15	65
Firm C	20	20	40	80

COMPETITIVE PROPOSAL EXAMPLE 2

- Firm C is selected as the most qualified vendor. Organization ABC then negotiates with Firm C to produce a price for their services. After a couple of weeks, the terms of the agreement are unable to be agreed upon.
- Organization ABC then negotiates with the next highest qualified vendor, Firm A. Price is negotiated successfully, and a contract is executed.

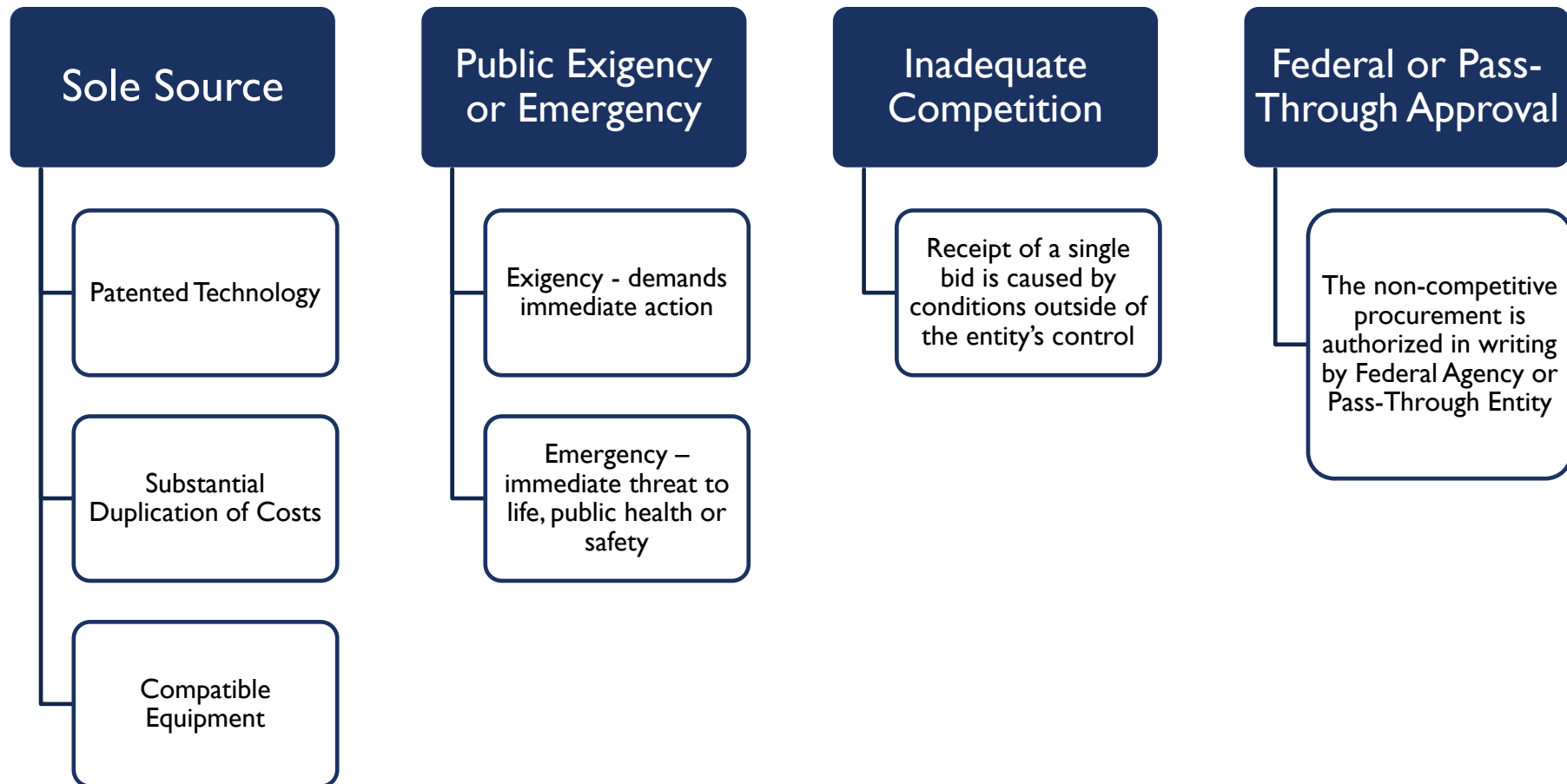
COMPETITIVE PROPOSAL RECORD KEEPING

- Rationale for the method of procurement
- Selection of contract type
- Scoring Matrix (record of scoring based upon identified evaluation criteria)
- Pre-solicitation documents;
- List of sources solicited;
- Copies of published notices of proposed contract action;
- Independent cost estimate;
- Copy of the solicitation, all addenda, and all amendments;
- Determination of contractor's responsiveness;
- Notice of award;
- Notice to unsuccessful bidders or offerors and record of any debriefing;
- Record of protests, disputes, and claims;
- Bid, performance, payment, and other bond documents (if construction or facility improvements over \$250,000.00; &
- Notice to proceed.

NONCOMPETITIVE PROPOSALS

- A method of contracting which under certain circumstances, solicitation of a proposal occurs from only one source or a limited number of sources. Noncompetitive proposals will be one of the following:
 - Single Source
 - Public Exigency or Emergency
 - Inadequate Competition
 - Federal Awarding Agency or Pass-Through Entity Approval

NONCOMPETITIVE PROPOSALS



NONCOMPETITIVE PROCUREMENT DOCUMENTATION

- Justification for using a noncompetitive procurement
- Profit must be negotiated as a separate element of price
- A cost or price analysis (if over the simplified acquisition threshold)
- Contract should include the required contract provisions
- Document the contract is not a cost-plus-percentage-of-cost contract
- Document the contractor is responsible

METHODS OF PROCUREMENT RECAP

Informal Purchases

- Micro-purchase
 - Simple AND below \$10,000
- Small Purchase
 - Simple AND below \$250,000

Formal Purchases

- Sealed Bid
 - Recommended for Construction Services
- Competitive Proposals
 - Recommended for Professional Services

PROCUREMENT PITFALLS



[www.fema.gov/
procurement-disaster-assistance-team](http://www.fema.gov/procurement-disaster-assistance-team)

Top 10 Procurement under Grants Mistakes

- 1**
Restricting full & open competition
- 2**
Not performing detailed price or cost analysis for procurements above \$250,000
- 3**
Engaging in a sole-sourcing procurement without documenting emergency or exigent situation
- 4**
Continuing work under a sole-source contract after the urgent need has ended
- 5**
Not making and documenting efforts to take all "affirmative steps"
- 6**
Awarding a "time-and-materials" contract without a ceiling price and documenting why no other contract type is suitable
- 7**
Not including the required contract clauses
- 8**
Awarding a "cost-plus-percentage-of-cost" or "percentage-of-construction-cost" contract
- 9**
Awarding a contract to contractors that are suspended or debarred
- 10**
Not documenting all steps of a procurement to answer questions that could arise months or years later

Avoiding these
obstacles can speed up
your road to recovery

COST-PRICE ANALYSIS

For every procurement action there must be some form of cost or price analysis. As a starting point, the NFE must develop independent price or cost estimates before receiving bids or proposals.

Ways to document this effort:

- Verification of the cost or pricing data (a breakdown of costs)
- compare price quotes in response to solicitation;
- comparing prior (historical) prices with current proposed prices; &
- reviewing examples of market prices (published market prices).

This analysis could range from minimal analysis for a micro-purchase or greater analysis for a procurement that falls under the Simplified Acquisition Threshold and uses small purchase methods.

COST AND PRICE ANALYSIS

- A **price analysis** is the examination and evaluation of the total amount of a proposed price without evaluating its separate cost elements and proposed profit.
 - Usually suitable for
 - Sealed Bidding
 - Small Purchases
- A **cost analysis** is the review and evaluation of the separate cost elements or line items and proposed profit in a proposal to determine a fair and reasonable price for a contract.
 - Usually suitable for
 - Competitive Proposals

TIME AND MATERIALS CONTRACTING

- A time and materials contract is a contract whose cost is:
 - The sum of the actual costs of materials; and
 - Direct labor hours charged at fixed hourly rates that reflect wages, general administrative expenses and profit
- Time and Materials contracts should only be used when no other contract is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk

COST PLUS A PERCENTAGE OF COST CONTRACTING

- A cost plus a percentage of cost contract is a cost reimbursement contract containing some element that commits the non-state entity to pay the contract an amount undetermined at the time of the contract award, based upon a percentage of future costs.
- A cost plus a percentage of cost contract incentivizes contractors to increase profits by increasing performance costs.



COST PLUS A PERCENTAGE OF COST CONTRACTING

- The following criteria is used to determine if a contract is a cost-plus contract
 - Payment is made at a pre-determined percentage rate
 - The pre-determined percentage rate is applied to actual performance costs
 - The contractor's entitlement is uncertain at the time of contracting
 - The contractor's entitlement increased commensurately with increased performance costs

EMERGENCY AND EXIGENCY CONTRACTS

- Continuing with a noncompetitive contract procured on an emergency/exigency exemption after the emergency or exigent situations have ended put your costs at risk.
- When you enact an emergency or exigent contract, make sure you perform future planning to competitively procure any necessary services after the initial emergency period.

PROCUREMENT RESOURCES

- [FEMA Procurement Disaster Assistance Team Website](#)
- [FEMA Procurement Manual](#)
- [FEMA Contract Provisions Guide](#)

QUESTIONS AND CLOSING