

State Entities

Per the Federal procurement regulations, the applicability of the regulations applies whether the applicant is considered a State Entity or a Non-State Entity. For State Entities, these procurement standards are outlined in 2 C.F.R. §200.317. These rules state that an entity must follow their own procurement policies and comply with 2 C.F.R. §200.321, 322, and 323. In addition, every contract and purchase order must include the clauses required in 2 C.F.R. §200.327.

Non-State Entities

Non-State Entity standards are set forth in 2 C.F.R. §200.318-327. A Non-State Entity must use its own procurement procedures which should reflect these regulations along with any applicable local and state regulations. FEMA requires that applicants follow the most restrictive requirement.

The Federal Regulations outlines the methods of procurement are outlined as: Micro-purchase, Small Purchase, Sealed Bids, Competitive Proposals, and Noncompetitive Proposals.

- Micro-Purchase (Less than \$10,000) – Competition is not needed but price must be fair and reasonable.
- Small Purchase (\$10,000 - \$249,999.99; \$10,000 - \$49,999.99 for counties/municipalities) – Can be used for securing services or properties. Must obtain price/rate quotes from no less than 3 qualified sources.
- Large Purchases (above \$249,999.99; \$50,000 for counties/municipalities) – Procurement done through Sealed Bid or Competitive Proposals.
 - Sealed bid must select the lowest successful bidder and form a Firm Fixed Price or Lump Sum contract.
 - Competitive Proposals are used when the contract cannot be awarded strictly on price.
 - Request For Qualifications procurement should be used strictly for Architectural and Engineering Services.
- Noncompetitive Proposals – Generally only allowed under circumstances such as public exigency or emergency situations that will not permit for the delay resulting from competitive solicitation. If procurement is performed in this manner the applicant needs to document the following:
 - The contracted costs are reasonable;
 - All efforts are fully documented;
 - The applicant transitions to competitive procurement once the exigency/emergency period ends.

Emergency or Exigent Circumstances

In the midst of a disaster, going through competitive procurement may be impractical and non-state entities may sole-source or award a contract without engaging in full and open competition. The non-state entities must use their own judgment to determine if an emergency or exigent circumstance exists and must document the rationale in the procurement record.

Emergency – A threat to life, public health or safety that requires immediate action to alleviate the threat.

Exigency – A need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise, to the applicant.

Steps to Take During Emergency or Exigent Circumstances

- **Write a justification to describe the emergency or exigent circumstances:** Explain why sole-sourcing is necessary based on the specific conditions and circumstances that demonstrate why immediate or urgent action is needed. Include the specific steps taken to determine why full and open competition could not have been used. A separate justification is required for every sole-sourced contract.
- **Provide a brief description of the goods or services:** Justify the need for the specific good or service being contracted to address the emergency or exigency circumstance.
- **Estimate the expected dollar amount of the goods or services:** A cost or price analysis is required for all procurement transactions above \$250,000.
- **Describe any known conflicts of interests and efforts made to identify possible conflicts of interests.** If no efforts were made, explain why.
- **Define and justify the period of emergency or exigency for the specific situation:** The period of emergency or exigent circumstances may vary per incident.
- **Transition to a competitively bid contract as soon as the emergency or exigent period ends:** Failure to plan for transition to a competitively bid contract cannot be the basis for continued use of the emergency or exigency exception.

Additional Rules that Apply When Sole-Sourcing

1. Sole-sourcing may be allowed for non-state entities during emergency or exigent circumstances, but they must still follow federal procurement regulations:
2. Contracts must include the required contract clauses.
3. Contract must include the federal bonding requirements if the contract is for construction or facility improvement.
4. Contract must be awarded to a responsible contractor.
5. Non-state applicant must complete a cost or price analysis to determine that the cost or price of the contract is fair and reasonable.
6. Contract must not be a cost-plus-percentage-of-cost contract type.
7. When using a time-and-materials contract, non-state applicants must comply with the applicable rules.
8. Document any known conflicts of interest and any efforts that were made to identify possible conflicts of interest before the sole-sourced contract was awarded.