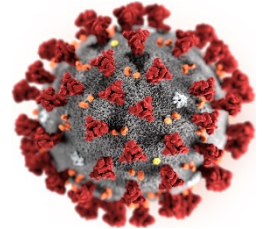


Date: 3/30/2020

**Disclaimer:** As new guidance is provided by FEMA, this Fact Sheet will be updated to reflect the most current procedures and eligibility parameters.

## CORONAVIRUS (COVID-19) PANDEMIC: EMERGENCY PROCUREMENT / CONTRACTING

On March 13, 2020, and in response to the COVID-19 pandemic, President Trump declared a nationwide emergency, increasing federal support to the Department of Health and Human Services (HHS). Under this declaration, FEMA will assist eligible entities with the actions taken to eliminate or lessen immediate threats to lives, public health, or safety. In addition, as a condition of receiving FEMA PA funding for contract costs, all Applicants must comply with federal procurement standards found at [2 C.F.R. §§ 200.317 – 200.326](#).



## EMERGENCY PROCUREMENT/CONTRACTING

States, U.S. territories, and non-state entities including local governments, private and public hospitals, institutions of higher learning, airports, and certain private nonprofit organizations may issue noncompetitive emergency contracts for exigent circumstances.

**States** are required to follow their own procurement procedures as well as the Federal requirements for procurement of recovered materials and inclusion of required contract provisions per 2 C.F.R. §§ 200.317, 200.322, and 200.326.

For **non-state entities**, federal regulations<sup>1</sup> establish requirements for the exigency or emergency exception that permits the use of noncompetitive procurements, frequently referred to as “sole-source contracting.” In general, it will be fact-specific and entity-specific as to when exigent or emergency circumstances necessitate the use of noncompetitive procurements. FEMA approval is not required for use of non-competitive procurements under the emergency or exigency exceptions; however, the non-state entity must document its justification for using noncompetitive procurements and still comply with other procurement requirements and ensure that costs are reimbursable. Both FEMA and the US Department of Homeland Security’s Office of Inspector General (OIG) closely review procurement actions and contract selections, particularly noncompetitive procurement actions.

Additional details on exigent or emergency circumstances are described below and can be found in 2 C.F.R. § 200.320(f)(2).

## EMERGENCY OR EXIGENT CIRCUMSTANCES

According to current federal procurement standards<sup>2</sup>, non-state entities can noncompetitively procure contracts (i.e., sole sourcing) under certain emergency or exigent circumstances. FEMA defines an emergency or exigent circumstance as situations which demand immediate aid or action.

**Integrated Solutions Consulting** provides emergency management, mitigation and comprehensive planning, training, and recovery support services to a variety of governmental and industrial clients. Specifically, ISC is focused on developing and implementing comprehensive crisis and consequence management solutions for local and state governments. For more information, contact us at [covid19@i-s-consulting.com](mailto:covid19@i-s-consulting.com)

<sup>1</sup> 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

<sup>2</sup> 2 C.F.R. § 200.320(f)(2)

Emergency Circumstances	Exigent Circumstances
<ul style="list-style-type: none"> <li>• Generally short lived</li> <li>• Create a threat to life, public health or safety, or improved property</li> <li>• Requires an immediate action to alleviate the threat</li> </ul>	<ul style="list-style-type: none"> <li>• Can last for a period of weeks or months</li> <li>• Need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise, to the non-state entity</li> <li>• Use of competitive procurement proposals would prevent the urgent action required to address the situation, therefore a noncompetitive procurement may be appropriate.</li> </ul>

Non-state entities must ensure that work performed under the noncompetitively procured contracts is specifically related to the exigent or emergency circumstance in effect at the time of procurement. FEMA may review a non-state entity's justification that exigent or emergency circumstances warrant an exception to competitive procurement. FEMA may disallow all or part of the non-state entity's cost related to the contract or take other actions permitted by statute and regulation<sup>3</sup>, if the agency determines that exigent or emergency circumstances did not exist or did not preclude a non-state entity from adhering to competitive procurement requirements.

## DOCUMENTATION REQUIRED

Non-state entities must document and provide justification for the use of noncompetitive procurement proposals under the exigent or emergency exception. These justifications must be included in the non-state entity's records for each FEMA award, subaward or project. Sample justifications are below:

1. Identify which of the four circumstances listed in 2 CFR 200.320(f) justify a noncompetitive procurement
  - a. Item is only available for a single source.
  - b. Public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
  - c. Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or after solicitation of a number of sources, competitions determined inadequate.
2. Provide brief description of the product or service being procured, including the expected amount of procurement
3. Explain why a noncompetitive procurement is necessary.
4. State how long the noncompetitively procured contract will be used for the defined scope of work.
5. Describe the specific steps taken to determine that full and open competition could not have been used or was not used.
6. Describe any known conflicts of interest and efforts that were made to identify possible conflicts of interest.
7. Include any other information for justifying the use of noncompetitive procurement in the specific instance.

## SOLE-SOURCING

If a non-state entity is sole-sourcing a contract under exigent or emergency circumstances, the following requirements must be adhered to:

- Contracts must include the required contract clauses
- If the contract is for construction or facility improvement, and exceeds the Federal simplified acquisition threshold, it must include the federal bonding requirements (2 CFR § 200.325)

<sup>3</sup> 2 C.F.R. § 200.338

- Must be rewarded to a responsible contractor (2 CFR § 200.318(h)).
- A cost or price analysis should be completed to determine that the contract is fair and reasonable (2 CFR § 200.323 (a) and (b)).
- The use of cost-plus-percentage-of-cost contracting is prohibited (2 CFR § 200.323 (c)).
- Use of time and materials contracts must comply with 2 CFR § 200.31(j)
- Must follow documentation, oversight and conflict of interest as well as other general procurement requirements found in 2 CFR § 200.318.

## USE OF PRE-AWARDED OR PRE-EXISTING CONTRACTS

If a pre-awarded or pre-existing contract is not in compliance with the federal procurement requirements, it may still be possible to use the contract for the duration of the exigency or emergency. FEMA recommends that non-state entities review the list of procurement requirements and take actions to modify pre-awarded or pre-existing contracts where applicable. In addition, non-state entities must prepare the appropriate documentation to justify the use of a noncompetitively procured contract.

## TIME AND MATERIALS

FEMA advises against the use of Time and Material (T&M) contracts. When the scope or duration of the work is unclear, entities should limit the use of these contracts to a short time period as T&M contracts generally lack conditions that control costs and maximize efficiency in performing work. FEMA may reimburse costs incurred under a T&M contract only if all of the following apply:

- No other contract was suitable;
- The contract has a ceiling price that the contractor exceeds at its own risk; and
- The non-state entity can demonstrate it provided a high degree of oversight to obtain reasonable assurance that the contractor used efficient methods and effective cost controls.

Regardless of the situation, non-state entities cannot award a cost-plus-a-percentage-of-cost contract or contracts with a percentage-of-construction-cost method.

## PIGGYBACK CONTRACTS

During emergency and exigency circumstances, non-state entities may be able to piggyback another entity's contract and expand the scope of a contract for the period of the emergency or exigency circumstance. If contemplating the use of piggyback contracting, the non-state entity should contact its state or territory liaison, or the applicable FEMA Program Office to request FEMA assistance with contract review. Contact information is below:

Centralized Scheduling and Information Desk (CSID)  
800-368-6498  
[askcsid@fema.dhs.gov](mailto:askcsid@fema.dhs.gov)  
Hours: 9am – 5 pm ET, Monday – Friday