

# FEMA PUBLIC ASSISTANCE BASICS & PROCUREMENT TOOLKIT

PREPARED BY  
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The information in this guide is intended to be a helpful and educational resource. The information is not an exhaustive and complete examination of all the issues that must be considered when procuring goods and services that will be the subject of a request for reimbursement from FEMA. NRECA is not attempting to render specific legal or other professional advice in this guide. We, therefore, encourage cooperatives to consult with qualified attorneys, consultants, accounting and tax advisers when undergoing any analysis or implementing any business changes discussed in this guide.

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## *Foreword*

Dear NRECA members:

We are pleased to present the NRECA FEMA Public Assistance Basics and Procurement Tool Kit. This Tool Kit was developed with the expert help of the team at Witt O'Brien's. The Tool Kit reflects Witt O'Brien's experience in advising on FEMA procurement issues.

There are two "pieces" to the Toolkit – a Quick Guide that is intended for use when time is of the essence and you need FEMA advice, and this more in-depth document.

We hope that the Tool Kit is helpful to you during disaster recovery and that it provides guidance for you to consider and implement during blue sky periods.

I encourage you to provide feedback on the Tool Kit – it is considered a work in progress that will be updated on a regular basis to provide the most recent FEMA policy and procedures.

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## Summary

*The goal of the NRECA FEMA Procurement Toolkit is to provide the members of the National Rural Electric Cooperative Association (NRECA) with a comprehensive compendium of procurement law, regulations, and policies presented in a single source, designed to improve regulatory compliance by NRECA members when designing and executing procurement and contracting processes that may be involved in FEMA disaster grant funding.*

## Objectives

The NRECA FEMA Procurement Toolkit seeks to provide a series of modules containing policies, regulations, guides, templates, helpful tips, and case studies, organized by topic, including:

- Quick guide to fulfilling procurement requirements in blue-sky and black-sky times.
- Comprehensive, easy-to-read document explaining both FEMA and federal procurement requirements.
- Discussion of topics specific to each step in developing a successful procurement.
- Detailed step-by-step how-to guide to fulfilling the procurement requirements.
- Information on use of cooperative purchasing and purchasing alliances.
- List of 'dos and don'ts' for FEMA procurements.
- Case studies on successful and unsuccessful procurement practices.
- Document library including reference policies, documents, tools and templates.
- Discussion topics on documenting disaster costs after procurement is complete.
- Easily searchable index.

## Note to Users

Due to inconsistent language between FEMA publications, applicable statutes, and the Code of Federal Regulations, the words Grantee and Recipient are used interchangeably. Likewise, the words Subgrantee, Subrecipient, and Applicant are used interchangeably. We have retained the language from source documents whenever possible and/or practicable, changing it only when it results in better clarity.

# 1.0

## Federal Assistance and Procurement

### FEMA Public Assistance Process

#### I. Public Assistance Overview

The FEMA Public Assistance Program provides grants to state, local, and federally recognized tribal governments and certain private non-profit entities such as electric cooperatives to assist them with the response to and recovery from disasters. Specifically, the program provides assistance for debris removal, emergency protective measures, and permanent restoration of infrastructure.

**Eligible Applicants:** Eligible applicants include state, local, and federally recognized tribal governments and any other political subdivision of the state. Certain private non-profit (PNP) organizations may also receive assistance. Eligible PNPs include educational, utility, emergency, medical, temporary or permanent custodial care facilities (including those for the aged and disabled), irrigation, museums, zoos, community centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops and health and safety services and other PNP facilities that provide essential services of a governmental nature to the public. PNPs that provide ‘critical services’ (power, water - including water provided by an irrigation organization or facility, sewer, wastewater treatment, communications and emergency medical care) may apply directly to FEMA for a disaster grant.

**Public Assistance Process:** As soon as practicable after the declaration, the grantee (state, territory, or tribe), assisted by FEMA, conducts the Applicant Briefings for state, territorial, local, tribal and PNP officials to inform them of the assistance available and how to apply for it. A Request for Public Assistance must be filed by the grantee within 30 days after the area is designated eligible for assistance. Following the Applicant's Briefing, a Kickoff Meeting is conducted where damages will be discussed, needs assessed, and a plan of action put in place. A combined federal/state/territorial/tribal/local team proceeds with Project Formulation, which is the process of documenting the eligible facility, the eligible work, and the eligible cost for fixing the damages to every public or PNP facility identified by State, territorial, tribal, or local representatives. The team prepares a Project Worksheet (PW) based on actual costs or based on an estimate for each project.

**Public Assistance Project Categories:**

- Category A: Debris removal
- Category B: Emergency protective measures
- Category C: Roads and bridges
- Category D: Water control facilities
- Category E: Public buildings and contents
- Category F: Public utilities
- Category G: Parks, recreational, and other facilities

**II. Project Funding**

FEMA identifies two types of projects based on dollar value. Additionally, FEMA identifies several different funding options a subrecipient (cooperative) can choose in the development of its project.

**Small Projects:** Projects falling below a certain threshold are considered “small.” The threshold is adjusted annually for inflation. For small projects, payment of the federal share of the estimate is made upon approval of the project and notification is required upon completion of the project. Small projects are not required to be audited by the federal government. Applicants must document that the scope of work has been completed. The current fiscal year 2017 threshold for a small project is \$123,100.

**Large Projects:** For large projects, payment is made based on actual costs determined after the project is completed, although interim payments may be made as necessary, or based on an agreed upon estimate. The eligible applicant has the choice of how it wishes to receive the federal grant. Once FEMA obligates funds to the grantee, further management of the assistance, including disbursement to sub-grantees, is the responsibility of the grantee. FEMA will continue to monitor the recovery progress to ensure the timely delivery of eligible assistance and compliance with the law and regulations. The federal share of assistance is not less than 75 percent of the eligible cost for emergency measures and permanent restoration. The grantee determines how the non-federal share (up to 25 percent) is split with the sub-grantees (eligible applicants).

**Improved Projects:** When restoring a damaged facility, the Applicant may decide to make improvements to the facility. A project that incorporates such improvements is an Improved Project. The improved facility must have the same function and at least the same pre-disaster capacity as the damaged facility. The following are examples of Improved Projects:

- Concrete poles replacing wooden poles
- Larger capacity lines to serve future needs
- Incorporating requirements dictated by a code or standard that does not meet PA eligibility criteria
- Relocating a facility when the relocation is not required by FEMA

**Alternate Projects:** An Applicant may determine that the public welfare is not best served by restoring the function of the damaged facility. When this occurs, the Applicant may request approval from FEMA to apply PA funding toward a different project(s). FEMA refers to this as an Alternate Project. The Alternate Project must be a permanent project that benefits the public, serving the same general area that was being served by the original facility. The Applicant may use Alternate Project funds to:

- Repair, expand, mitigate, or construct a facility that would otherwise be an eligible facility under the PA Program.
- Demolish facilities
- Purchase capital equipment that has a useful life of at least 1 year and is equal to, or greater than, \$5,000 per unit
- Fund project shortfalls due to mandatory flood insurance reductions taken from PA Program funding for repairs to buildings in Special Flood Hazard Areas (“SFHA’s”)
- Supplement funds for an Improved Project
- Conduct cost-effective hazard mitigation measures, regardless of whether the facility was damaged by the incident and whether the measures reduce the risk of future damage from the same type of incident or of the same type of damage caused by the incident. Alternate Project funds may be use used for hazard mitigation provided that:
  - Funding does not duplicate other FEMA mitigation funding; and
  - Measures reduce the risk of future damage to a facility that is otherwise eligible either under the PA or Hazard Mitigation Assistance (HMA) programs. If the measures are the same type as those eligible for HMA funding, they must meet a need for governmental services and functions or eligible PNP services and functions in the area affected by the incident.

**Alternative Procedures Project:** Alternative Procedures Pilot Program for Permanent Work Project (Large Projects only): The use of Large Project funds toward a project(s) that restores the facility to its pre-disaster design and function or toward a project that would otherwise be an Improved or Alternate Project, or other projects, including a combination of projects. This type of capped project offers the maximum amount of funding options to include flexibility with how the Applicant may use the funds and retention of funds not authorized under the standard Improved and Alternate Project options, including the following four alternative procedures:

- Consolidation of multiple capped projects
- Elimination of reduced funding for an Alternate Project
- Retention of excess funds for approved purposes
- Third-party expert panel review for estimates with a Federal share of \$5 million or greater (FEMA requires this review for estimates that exceed \$25 million).

### III. Project Worksheet Development

FEMA and the Recipient work with the Subrecipient and Applicant to formulate incident-related damage and work into projects (i.e., subawards) based on logical groupings of the damage and work. This process is a collaborative effort beginning at the Kickoff Meeting and concluding with an Exit Briefing.

FEMA uses the Project Worksheet (PW) (FEMA Form 90-91) as the Subaward Application. FEMA uses the PW to document details of the Applicant's project, including a detailed description of the disaster-related damage and dimensions and the associated scope of work (SOW) and costs. If the project involves multiple locations, FEMA may use site sheets to differentiate damage, work, and costs by site within the PW. The disaster damage and dimensions, SOW, and costs for each site are documented on separate site sheets.

#### A. Identify and Report Damage

The Applicant is required to identify and report all disaster-related damage, Emergency Work activities, and debris quantities to FEMA within 60 days of the Kickoff Meeting. FEMA may extend the deadline for identifying and reporting damage if the Recipient submits a request in writing with justification based on extenuating circumstances beyond the Recipient's or Applicant's control. For example, if a site is inaccessible, FEMA may extend the deadline for that site.

FEMA and the Recipient conduct site inspections with the Applicant to validate, quantify, and document the cause, location, and details of the reported damage and debris impacts and identify Environmental and Historic Preservation ("EHP") issues and hazard mitigation opportunities within this 60-day period. Table 7 lists information that FEMA may request to determine the eligibility of damage claimed.

FEMA, the Recipient, and the Applicant should reach agreement on the disaster-related damage description and dimensions, emergency protective measures, and debris impacts before proceeding with SOW development.

#### B. Develop Scope of Work

Once FEMA, the Recipient, and the Applicant agree on the damage description and dimensions, the Applicant provides its proposed SOW, including its hazard mitigation proposal (HMP) or, if the work is finished, the completed SOW for each of its projects.

For Emergency Work, the SOW includes work required to address immediate threats and to remove debris. For Permanent Work, the SOW includes a description of how the Applicant plans to repair, or has repaired, the damage, including repair dimensions and HMP description and dimensions.

If the SOW has a potential of impacting environmental or historic resources, FEMA EHP staff review the SOW to determine if modifications would reduce potential impacts.

Some projects may require an engineering analysis to determine the method of repair. In these cases, FEMA may provide PA funding for engineering and design services. Once the Applicant determines its preferred method of repair, it must submit a detailed SOW and cost estimate for FEMA's review. The table below lists information necessary to develop the SOW.

### Information to Develop Scope of Work

**The Applicant should provide the following for each site (not an all-inclusive list):**

- Site map showing the location of all proposed project components and the extent of ground disturbance (including any staging areas, access roads, parking, landscaping, grading, or utilities)

For emergency protective measures:

- Description of emergency response activities

For debris removal:

- Quantities of debris removed, reduced, disposed, and recycled (by type) with a representative sampling of load tickets to support quantities
- Debris monitor reports
- Pick-up locations
- Address and/or U.S. National Grid (USNG) location of temporary reduction sites and permanent disposal sites, including recycling locations
  - Copies of permits for reduction and disposal sites
  - Lease agreement if applicable
- For abandoned vehicles and vessels, documentation supporting that the Applicant followed applicable ordinances or laws for private vehicle and vessel removal

For Permanent Work:

- Drawings, sketches, and plans (to scale) of proposed or completed repair
- Applicable design requirements
- Applicable repair/reconstruction codes or standards and documentation to support they have been formally adopted, implemented, and uniformly applied
- Replacement projects: estimate for 50% Rule calculations
- Relocation projects: justification for relocation request
- HMPs, including Benefit-Cost Analyses (BCAs) when necessary
- Hydrologic and hydraulic studies that address potential upstream and downstream impacts (if applicable)
- Technical studies, reports, and assessments (including environmental assessments)
- Historic property designations or surveys, including archaeological surveys
- Copies of permits and correspondence with regulatory agencies
  - State, Territorial, or Tribal Historic Preservation Officer (historic properties)
  - U.S. Army Corps of Engineers (work involving dredging or discharging dredged materials or fill in waterways or wetlands)
  - U.S. Fish and Wildlife Service (federally listed threatened and endangered species, migratory birds, work in Coastal Barrier Resource System areas, work in or near waterways or wetlands)
  - National Marine Fisheries Service (federally listed threatened and endangered species, work in or near waterways or wetlands)
  - State, Territorial, or Tribal environmental agencies

### C. Develop Project Cost

FEMA or the Recipient prepares the PW based on actual or estimated costs as follows:

- If the Applicant has completed the SOW, the PW is prepared based on actual costs.
- If the Applicant has not completed the SOW, FEMA or the Applicant estimates the costs.

FEMA uses the Applicant's cost estimate if the estimate:

- Is prepared by a licensed Professional Engineer or other estimating professional, such as a licensed architect or certified professional cost estimator who certifies that the estimate was prepared in accordance with industry standards;
- Includes certification that the estimated cost directly corresponds to the repair of the agreed upon damage;
- Is based on unit costs for each component of the SOW and not a lump sum amount;
- Contains a level of detail sufficient for FEMA to validate that all components correspond with the agreed-upon SOW; and
- Is reasonable.

### D. Additional Eligible Costs

- a. **Codes and Standards:** FEMA provides PA funding to restore facilities based on pre-disaster design and function in conformity with current applicable codes, specifications, and standards. The eligibility criteria includes these five points:
  - i. applies to the type of restoration required
  - ii. it is appropriate to the pre-disaster use of the facility
  - iii. is reasonable, in writing, and formally adopted by the state territory tribal or local government, and implemented by the applicant on or before the disaster declaration date
  - iv. applies uniformly
  - v. was enforced during the time it was in effect
- b. **Section 406 Mitigation:** FEMA evaluates proposed mitigation measures for cost-effectiveness, technical feasibility, and compliance with Environmental and Historic Preservation ("EHP") laws, regulations, and Executive Orders ("EO"). In addition, FEMA ensures that the mitigation does not negatively impact the facility's operation or surrounding areas, or create susceptibility to damage from another hazard. Mitigation measures must be cost-effective. FEMA considers mitigation measures to be cost-effective if any of the following criteria are met:
  - i. The cost for the mitigation measure does not exceed 15 percent of the total eligible repair cost (prior to any insurance reductions) of the facility or facilities for which the mitigation measure applies.
  - ii. The mitigation measure is specifically listed in Appendix J: Cost-Effective Hazard Mitigation Measures, AND the cost of the mitigation measure does not exceed 100 percent of the eligible repair cost (prior to any insurance reductions) of the facility or facilities for which the mitigation measure applies.
  - iii. The Recipient or Applicant demonstrates through an acceptable benefit-cost analysis ("BCA") methodology that the measure is cost-effective. FEMA's BCA software provides appropriate BCA methodologies.

## A. Procurement Overview

Effective December 26, 2014, the Department of Homeland Security (DHS) adopted the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, generally referred to as the 'Uniform Rules' or the 'Super Circular'.

### Changes in Federal Regulations

1. Prior to December 26, 2014:
  - Procurement rules for *State, Local and Tribal Governments* located in 44 CFR, Part 13
  - Procurement rules for *Private Nonprofit Organizations*, such as Rural Electric Cooperatives, located in 2 CFR, Part 215
2. After December 26, 2014:
  - Procurement rules for *all* in 2 CFR§ 200.317 through §200.326
3. Most of the rules in the new policy were already part of the old policy, with the same or similar language.
4. Updates to the policy for *Private Nonprofit Organizations*, such as electric cooperatives, include:
  - Greater detail specific to methods of procurement
  - Geographic preferences are expressly prohibited
  - Change in affirmative steps that one must take related to small and minority businesses, women's business enterprises, and labor area surplus firms
  - Code of conduct must include provisions for organizational conflict of interest in the case of parents, subsidiaries, and affiliates
  - More documentation requirements related to how the method of procurement and contract type is chosen
  - More conditions on time and materials contracts
5. Major updates to the policy for *Local and Tribal Governments* include:
  - Procurement methods have changed:
    - Added a micro-purchase method of procurement
    - Current Simplified Acquisition Threshold of \$150,000 applies to small purchases
    - The 'infeasibility' condition precedent for a procurement through noncompetitive proposals is gone
    - Sealed bids must be advertised and opened publicly
  - Contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or proposals are NO LONGER able to compete for the work
  - Cost or price analysis is only required for procurements exceeding the Simplified Acquisition Threshold (previously required for all procurements)
  - Cost analysis no longer required when adequate price competition is lacking or for sole source procurements, including contract modifications or change orders
  - Requirement to perform independent cost estimate for work being procured
  - Code of conduct for organizational conflicts of interest arising due to related organizations has added requirements
  - Non-federal entities, such as electric cooperatives, no longer must include protest procedures regarding disputes related to procurements

### How these New Rules Impact Electric Cooperatives

1. Changes in terminology regarding FEMA programs
2. Numerous requirements must be addressed both during the procurement process and during the contracting process.
3. No contract is relieved from complying with the new requirements
4. Non-compliance could result in disallowance or deobligation of FEMA funding
5. Added remedies for non-compliance are available but are not guaranteed
6. When possible, electric cooperatives should secure stand-by contracts so that the procurement and contracting processes can be properly documented.

## B. FEMA Procurement Requirements

The Department of Homeland Security guidelines regarding procurement are now in line with all other federal program procurement guidelines. As such, all grants awarded under the Stafford Act, including the FEMA Public Assistance program, must adhere to the guidelines to be compliant and eligible to receive and retain grant funding. FEMA has published multiple guidance documents to assist both recipients and subrecipients - including entities such as electric cooperatives - to become and remain in compliance.

The following is a partial list of FEMA guidance documents with links to each. Included are guidance documents that are relevant to electric cooperatives.

### **Procurements for Disasters AFTER December 26, 2014**

#### *[Procurement Under Grants PA Policy \(PowerPoint Presentation\)](#)*

This is a PowerPoint presentation prepared by FEMA for state, local, and tribal emergency management personnel and private nonprofit entities. It is a condensed version of the 4-hour training course that the FEMA Procurement Disaster Assistance Team offers that highlights important provisions of the policy including summaries, audit case studies, etc.

#### *[Procurement Guidance for Recipients and Subrecipients Under 2 CFR, Part 200](#)*

This document provides guidance for non-federal entity recipients and subrecipients of federal financial assistance awarded by FEMA when using that assistance to finance procurements of property and services. The guidance provided by this document only applies to federal financial assistance (e.g., grants and cooperative agreements) subject to the procurement standards of the government-wide *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, at 2 CFR, §200.317 to 200.326, which were adopted by the Department of Homeland Security.

#### *[Key Points Regarding Contracting Practices for Electric Cooperatives](#)*

In the aftermath of a disaster resulting in a federal disaster declaration, FEMA provides grant funding to local and tribal governments and eligible nonprofit entities to assist them with recovering from the event. Local governments and nonprofit entities are generally referred to as subrecipients because they receive grant funds through the state; tribal governments also are subrecipients when not receiving grant funds directly from FEMA. Subrecipients must comply with the federal procurement standards to ensure their procurements are eligible for federal grant funding. These standards are found in 2 CFR, §200.318 through §200.326, and became effective for declarations issued on or after December 26, 2014.

### *Public Assistance Grantee & Subgrantee Procurement Field Manual*

The *Public Assistance Grantee and Subgrantee Procurement Field Manual* provides a description and explanation of the mandatory requirements for PA grantees and subgrantees (now known as recipients and subrecipients) when using PA funding to finance their procurements. FEMA developed this document to support FEMA employees in assisting recipients and subrecipients to comply with the procurement requirements and to increase consistency in FEMA's application of these standards across the agency.

### *Checklist for Procurements Associated with Disasters AFTER December 26, 2014 - New Uniform Rules (11-14-16)*

This checklist was created to assist FEMA recipients and subrecipients in complying with the federal requirements that procurements must meet for FEMA to reimburse eligible expenses. To understand the requirements fully, the user should review the provisions of 2 CFR, §200.317 – 326, which is the source of these requirements. FEMA's in depth guidance on these provisions can be found in its *Supplement to the Public Assistance Field Manual*. In addition, the user may review FEMA's *Public Assistance Grantee and Subgrantee Procurement Field Manual*. While the *Field Manual* was drafted to specifically address the federal procurement standards that were in effect prior to 26 December 2014 (44 CFR, §13.36(a)-(i) – *States, Local and Tribal Governments*, and 2 CFR, §215.40-48 – *Institutions of Higher Education, Hospitals, and other Non-Profit Organizations*), many of the concepts are similar or identical in substance, and thus it remains an excellent tool for navigating the current federal procurement standards.

### *Procurements Under Grants Checklist for Non-Federal Entity procurements associated with declarations issued after 26 December 2014*

This checklist was created to assist FEMA recipients and subrecipients in complying with the federal requirements that procurements must meet for FEMA to reimburse eligible expenses. Importantly, this checklist is intended to provide general guidance only and does not provide a detailed explanation of the federal procurement requirements – it is *not* intended to serve as legal advice and FEMA makes no guarantee that adherence to this checklist will result in full reimbursement of eligible expenses.

### *FEMA Pricing Guide for Recipients and Subrecipients*

This Guide was written with the specific intent of assisting FEMA's recipients and subrecipients (formerly referred to as grantees and subgrantees, and now collectively referred to as non-federal entities or NFEs) with identifying and executing basic contract cost and price analysis requirements associated with procurements under federal disaster assistance grants. Accordingly, this Guide identifies and discusses commonly used general standards and techniques that various entities at all levels of government and industry use to meet the pricing requirements found within the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Rules).

## **Procurements for Disasters PRIOR to December 26, 2014**

### *Checklist for Procurements Associated with Disasters BEFORE December 26 2014 - IHE, Hospitals, and PNPs*

This checklist was created to assist FEMA recipients and subrecipients (formerly called grantees and subgrantees) in complying with federal requirements that procurements must meet for FEMA to reimburse eligible expenses. To understand the requirements fully, the user should review the provisions of 2 CFR, § 215.40-48, which is the source of these requirements as they apply to institutions of higher education (IHE), hospitals, and other nonprofit entities. FEMA's *Public Assistance Grantee and Subgrantee Procurement Field Manual* is available on the internet by searching for 'FEMA Procurement Field Manual.'

### *OCC Toolbox Series PNP Requirements*

This document is intended to help attorneys and procurement officials for private nonprofit entities understand the requirements for procurements under federal grants set forth at 2 CFR, §215.40-48.

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## Reference Guides and Documents

### *OCC Toolbox Series Non-State Requirements*

This document is intended to help attorneys and procurement officials for local and tribal governments understand the requirements for procurements under federal grants set forth at 44 CFR, §13.36.

## **C. Federal Procurement Requirements**

The following documents contain policy provisions and guidance on how to address required and related contractual clauses, each with a specific purpose. These documents are provided for reference:

### *2 CFR, §200.318-200.326*

Federal policy regarding procurement requirements.

### *2 CFR, §200.326 and 2 CFR, Part 200, Appendix II, Required Contract Clauses (01-09-17)*

A non-federal entity's contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (*Contract Provisions for Non-Federal Entity Contracts Under Federal Awards*). For some of the required clauses, FEMA has included sample language or a reference a non-federal entity can use to find sample language. Be aware that this is sample language only; the non-federal entity alone is responsible ensuring that all language included in their contracts meets the requirements of 2 CFR, §200.326 and 2 CFR, Part 200, Appendix II.

### *Contract Clauses Appendix*

A non-federal entity's (such as an electric cooperative) contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (*Contract Provisions for Non-Federal Entity Contracts Under Federal Awards*). For some of the required clauses, FEMA has included sample language or a reference a non-federal entity can use to find sample language. Be aware that this is sample language only; the cooperative alone is responsible ensuring that all language included in its contracts meets the requirements of 2 CFR, §200.326 and 2 CFR, Part 200, Appendix II. Sample language for certain required clauses (i.e., remedies, termination for cause and convenience, changes) is not provided, as these must necessarily be written based on the cooperative's own procedures in that area.

## A. Cooperative Purchasing and Purchasing Alliances

Section 2 CFR, §200.318(e) encourages non-federal entities to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services to foster greater economy and efficiency. *Further, 2 CFR, Part 200 requires that a subrecipient (such as an electric cooperative) follow the most restrictive rule applicable to it, whether it be its own procurement procedures, applicable state procurement laws or the procurement requirements set out in the federal rules.*

When utilizing a cooperative purchasing agreement or purchasing alliance, the cooperative must verify that the purchasing cooperative/alliance has completed proper procurement of the vendors providing services. All base procurement efforts secured by a purchasing cooperative/alliance must be determined to also follow the more restrictive of its own established purchasing procedures, state procurement laws or federal procurement regulations or the actions could be determined to be not in compliance and associated expenditures not eligible for federal grant funding.

When reviewing an agreement secured by a purchasing cooperative/alliance, the electric cooperative should evaluate the following points based on the cost of purchase/service provided:

- For purchases below the micro-purchase level (currently \$3,500), the federal rules do not require the solicitation of competitive quotations but the purchasing cooperative/alliance must have determined the price to be reasonable.
- The federal rules state that purchases between the micro-purchase level (currently \$3,500) and the simplified acquisition threshold (currently \$150,000) require 'price or rate quotations to be obtained from an adequate number of qualified sources' which must be demonstrated by the purchasing cooperative/alliance.
- For purchases above the simplified acquisition threshold, the purchasing cooperative/alliance should have utilized sealed bids, competitive proposals, or non-competitive proposals depending on the circumstances.

Further that review should include the cost analysis and selection criteria for why a vendor was selected from the purchasing cooperative/alliance. Additional points to consider include whether the purchasing cooperative/alliance:

- performed a cost or price analysis for all purchases above the simplified acquisition threshold and made an independent estimate before receiving bids or proposals.
- to the extent possible, distributed micro-purchases equitably among suppliers.
- reviewed the entirety of 2 CFR, §200.318-326 to determine other requirements that may apply.
- reviewed its individual state procurement laws and regulations to determine if they were more restrictive than the federal regulations.
- Considered the procurement requirements of FEMA to ensure all rules are fulfilled, (those listed here, as well as others).

## B.FEMA Procurement Do's and Don't's

### DO's – Related to FEMA Procurement

|   | <b>Procurement Do</b>  | <b>Citation</b> |
|---|--|-----------------|
|    | Include in the file a record of respondents that were rejected as not responsible or not responsive and rejection reasoning.   | 2CFR, §200.318  |
|    | Ensure that an adequate number of responses are documented in the file (2 or more for large purchases and 3 for small purchases).  | 2CFR, §200.320  |
|    | Keep copies of all proposals/ methodology of evaluation and selection process (bid summary, tabulation sheet, scoring sheet) in the file.  | 2CFR, §200.320  |
|    | Document if price was included for selection criteria on all solicitations other than 'Architectural and Engineering (A/E) professional service.' Note: this is required for A/E solicitations only. | 2CFR, §200.320  |
|    | Include a cost analysis in the file if solicitation is for A/E services. (see Cost Analysis Required section)  | 2CFR, §200.320  |
|  | Ensure the solicitation clearly outlines the scoring criteria and associated weights used for selection.   | 2CFR, §200.320  |
|  | Include intergovernmental agreements and federal surplus property (if applicable) in the file.   | 2CFR, §200.318  |
|  | Include the solicitation (Request for Proposals [RFP] or Request for Qualifications [RFQ]) in the file.  | 2 CFR, §200.319 |
|  | Allow prospective respondents sufficient time to respond.  | 2 CFR, §200.320 |
|  | Ensure the solicitation contains clear and accurate descriptions of the technical requirements for the material, product, or services and scope of work (SOW).                                       | 2 CFR, §200.319 |
|  | Ensure positive efforts are made in hiring small-business, minority-owned business or women-owned business enterprises to the extent practical.  | 2 CFR, §200.321 |
|  | Ensure positive efforts are made towards the utilization of labor surplus firms.   | 2 CFR, §200.321 |
|  | Ensure that, if the prime contractor uses a subcontractor, they take the above affirmative steps.  | 2 CFR, §200.321 |
|  | Include the publication (advertisement, invitation to bid, etc.) in the file.  | 2 CFR, §200.320 |

**DON'T'S – Related to FEMA Procurement**

|   | <b>Procurement Don't</b>   | <b>Citation</b>          |
|---|--|--------------------------|
|  | Place unreasonable requirements on firms for them to qualify to do business.   | 2 CFR,<br>§200.319(c)(1) |
|  | Require unnecessary experience and excessive bonding.  | 2 CFR,<br>§200.319(a)    |
|  | Encourage noncompetitive pricing practices between firms or between affiliated companies.  | 2 CFR,<br>§200.319(a)    |
|  | Give noncompetitive contracts to consultants that are on retainer contracts.   | 2 CFR,<br>§200.319(a)    |
|  | Specify only a 'brand name' product instead of allowing 'an equal' product to be offered and describing the performance or other relevant requirements of the procurement. | 2 CFR,<br>§200.319(c)(1) |

## C. Topics Specific to Developing an RFP, RFQ, ITB

There are numerous steps and processes involved in the federal procurement process. The following topics will help the user with a better understanding of specific elements of this process, including an understanding of the basic elements of a project scope, purpose, definitions, principles, and procedures.

### 1. Developing appropriate scope of work and specifications

The scope of work and specifications in the solicitation must describe the product or services needed clearly and accurately, and must facilitate 'full and open' competition. The evaluation factors must be tied to the significant requirements of the specification.

The cooperative's written procedures must ensure that all solicitations meet the requirements described in 2 CFR, §200.319(c), including:

- The solicitation must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured;
- The description of the technical requirements must not contain features that unduly restrict competition;
- The description of the technical requirements may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, may describe those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if possible, however;
  - When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the property or services to be acquired, a cooperative may use a 'brand name or equal' description to define the performance or other relevant requirements of procurement. The specific features of the named brand which must be met by offerors must be clearly stated.
  - In setting the requirements for solicitations, FEMA interprets the Uniform Rules as expressing a preference for performance or functional specifications, although they do not prohibit the use of detailed technical specifications when appropriate. A performance specification describes a result, an objective, or standard to be achieved, and leaves the determination of how to reach the result to the contractor. Using performance specifications, a cooperative should describe what the product should be able to do or the services to accomplish without imposing unnecessarily detailed requirements on how to accomplish the tasks. Examples include:
    - A spindle of 14 gage wire containing 1,000 feet wrapped in grade A insulation
    - Contractor should be capable of replacement of utility poles to a height of 45 feet.
- The solicitation must identify all requirements which the offeror must fulfill and all other factors to be used in evaluating bids or proposals. If the procurement is through the competitive proposals method, the cooperative should state if it is reserving its right to award the contract to other than the lowest priced offeror.
- The solicitation must acknowledge the cooperative's use of FEMA funding for the contract, in compliance with the terms of its financial assistance award from FEMA. Specifically, the document should indicate that FEMA is providing the funds, the Catalog of Federal Domestic Assistance (CFDA) number (as applicable), and the amount provided.
- The solicitation should state the type of contract that will be awarded.
- The solicitation must not contain features that unduly restrict competition, such as:
  - Excessive qualifications;
  - Unnecessary experience;

- Unnecessary bonding;
- Improper Qualifications;
- Retainer contracts;
- In-state, local, or tribal geographic preferences; and
- Organizational conflicts of interest.
- The solicitation should inform prospective contractors that they will need to comply with all applicable federal laws, regulations, executive orders, and FEMA requirements.

## 2. Sole Source Justification

Procurement through solicitation of a proposal from only one source may be used only when one or more of the following circumstances apply:

- *One Source.* The item is available only from a single source.
- *Exigency/Emergency.* An exigency or emergency will not permit a delay resulting from competitive solicitation.
- *Awarding agency approval.* The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the cooperative.
- *Inadequate competition.* After the solicitation of several sources, competition is determined inadequate.

A cooperative is required to perform a cost analysis for all sole source procurement when adequate price competition is lacking, including contract modification or change orders.

## 3. Developing an Independent Cost Estimate

An independent cost estimate is an estimate of the anticipated cost or price to be paid for an item, service, or project that is developed by an entity or entities not associated with the item, service, or project to be procured. To be considered independent, the estimate cannot be developed by any potential source, supplier, or provider of the item, service, or project. However, it is acceptable to have an independent third party develop the estimate for the purchasing activity if that party has no interest in bidding or offering on the procurement. For more complex procurements, the independent cost estimate represents the documented result of a practical and unbiased analysis, assessment, and quantification of all costs and risks associated with a particular procurement. The independent cost estimate must be based upon the procurement's technical specifications. Irrespective of the procurement's complexity, the independent cost estimate serves as an essential tool for conducting the subsequent required cost or price analysis.

2 CFR §200.323 states that a subrecipient of FEMA funding must perform a cost or price analysis in connection with every federally-assisted procurement action in excess of the Simplified Acquisition Threshold (currently \$150,000), including contract modifications. The method and degree of analysis is dependent on the facts of the procurement situation, but – as a starting point – recipients must make and subrecipients should make independent cost estimates before receiving bids or proposals.

Note: FEMA recommends that non-federal entities conduct an independent cost estimate. There are numerous benefits to such an estimate, to include ensuring a clear basis for the determination that the benefits of the procurement warrant the cost, provides a basis for cost and price analysis, ensuring that the appropriate method of procurement is selected (*e.g.*, does not choose small purchase procedures when the estimate exceeds \$150,000), and ensures proper bonding requirements (which are different when exceeding the \$150,000 threshold).

#### 4. Documenting the Procurement Plan and Timelines

Cooperatives must develop a timeline of events for critical stages of the procurement process, including:

- Solicitation development;
- The solicitation period;
- The evaluation period; and
- Award.

More complex procurements often require a procurement plan, which outlines the essential elements of the procurement process, including:

- Title of the procurement;
- Method of procurement;
- Contract term (may need to include rationale for period);
- Estimated annual costs (based on the independent cost estimate);
- Any relevant historical contract data for similar previous procurements;
- Method(s) for advertising to maximize and ensure 'full and open' competition;
- Any special contract provisions of the solicitation;
- Evaluation criteria (factors) and weights;
- Source selection plan; and
- Proposed evaluation team members.

#### 5. Establishing Source Selection Plan, including evaluation factors and weights

The source selection plan details the specifics of the procurement, including the cost estimate, and identifies the evaluation team members. It discusses how source selection information will be safeguarded, and states that all evaluators will evaluate individual proposals in accordance with the evaluation criteria stated in the solicitation.

The source selection plan includes the following elements:

- The evaluation criteria, in rank order and with associated weights;
- Policies and procedures applicable to the evaluation team's actions;
- A copy of the individual rating sheets for each factor;
- The summary sheet to be used for each offeror; and
- Any required evaluation team member certifications.

The language in the solicitation that describes how proposals will be evaluated must mirror the source selection plan. Note that the weights assigned to each evaluation criteria are not required to be disclosed in the solicitation, but may be if the cooperative elects to include them.

#### 6. Preparing the solicitation and contract administration plan

The solicitation must include all documents (either attached or incorporated by reference) and information provided to prospective offerors to submit a response to the solicitation. The solicitation should include language that clearly specifies the following topics:

- The time and place for proposal submission;
- That offers will be evaluated, and that award may be made without discussion with any offeror (if applicable);

- That award will be made to the responsible offeror whose offer has been determined to provide the “best value” to the cooperative;
- The contact information for the office or individual assigned to oversee the solicitation; and
- Any special contract requirements applicable to the contract because of whole or partial federal funding (i.e., contract clauses, reporting requirements, etc.).

### **7. Identifying an adequate number of sources to facilitate competition**

FEMA considers competition to be inadequate when a cooperative has complied with all applicable procurement standards and receipt of a single bid or offer, single responsive offer or bid, or no responsive bids or proposals is caused by conditions outside of the cooperative’s control.

FEMA will consider the following actions where a cooperative did not sufficiently publicize the requirement, solicited only a few sources that chose not to submit a proposal, set unduly restrictive specifications, and/or took arbitrary actions or failed to take other actions that resulted in inadequate competition. In those cases, adequate competition may be attainable; however, the cooperative failed to take the proper steps and actions to ensure such competition.

It is important for a cooperative to document its justification for why there is inadequate competition and why it moved forward with a noncompetitive award without revising or cancelling the solicitation and re-soliciting offers or bids.

### **8. Advertising/Publicizing**

Unless a solicitation is advertised and publicized, it cannot be found to be competitive. Lack of advertising or publicizing automatically precludes potential offerors from bidding. Therefore, the cooperative must advertise/publicize the solicitation. Documentation of the advertisement must be collected for the procurement file.

### **9. Following In-house Procurement Policies**

Cooperatives must use their own documented procurements procedures that reflect applicable state, territorial, tribal and local laws and regulations, provided that the procedures conform to applicable federal law and standards.

### **10. Conducting and documenting pre-proposal conference**

A pre-proposal conference is not required. However, for more complex procurements, a pre-proposal conference can provide an opportunity to discuss the solicitation requirements, including complicated specifications, and to address any questions from offerors.

A pre-proposal conference must never be used as a substitute for amending a solicitation.

The use of FEMA funding does not require the cooperative to conduct a pre-proposal conference; however, the cooperative’s own procurement rules, policies, or practices may. If so, then the cooperative must conduct and document a pre-proposal conference with all interested prospective contractors. *Documentation of the conference should include a sign in sheet, minutes or notes of what was discussed, and any exhibits, handouts, or documents discussed or referenced during the conference.*

### **11. Issuing appropriate solicitation amendments**

Any changes in the requirements of the solicitation that will impact all potential offerors must be made by formal, written amendment to the solicitation. All questions raised and answers provided, either during a pre-proposal conference or during a question period, must be addressed in a subsequent solicitation amendment issued to the complete list of potential offerors prior to the close of the solicitation.

Before issuing an amendment, consider the time remaining until the close of the solicitation, and the possible need to extend the period to permit potential offerors to consider the additional information in submitting or modifying their proposals.

### **12. Receiving, evaluating, scoring, and safeguard offeror proposals**

- Offers must be received at a set place, date, and time.
- Offers must be recorded as they are received.
- Offers must be evaluated and scored in accordance with the criteria established.
- All offers must be safeguarded from inadvertent or unintentional/intentional release to unauthorized personnel. This means they must be secured with controlled access always until the award decision is announced.

### **13. Conducting oral presentations/negotiations**

Oral presentations/negotiations are not always necessary, but may be a useful tool to obtain essential information from offerors regarding their proposal. Oral presentations differ from negotiations in that offerors are not allowed to modify their proposal as a result of the presentation. Negotiations allow the offeror and cooperative to address pricing and other issues that may require modification to the proposal or contract term or condition.

Both oral presentations and negotiations are formal and structured events, and must be documented. Each offeror must be provided with a date and time for their scheduled presentation or negotiation session. Oral presentations are time-limited for each offeror, and are typically followed by a question-and-answer session. Negotiations are not time-limited.

### **14. Calling for Best and Final Offers and re-evaluating offers**

Following negotiations, offerors may be asked to submit a Best and Final Offer (BAFO), which reflects any modifications made to their proposal as a result of the negotiations. In considering the BAFO, the evaluation committee must conduct a final technical evaluation using the same evaluation criteria, structure, and format as used for the initial technical evaluation.

### **15. Conducting and documenting preliminary and final cost or price analysis**

Cost or price analysis must be conducted as part of the initial evaluation of offers and (if applicable) after BAFOs have been received. The cooperative must determine and document the 'cost-reasonableness' of the final offered price. The result of the cost-reasonableness determination process should be a determination that the price is 'fair and reasonable.' When conducting cost or price analysis, it is important to:

- Develop and examine data from multiple sources which will help provide or suggest that the proposed price is fair;
- Determine when multiple data consistently indicate that a given price represents a good value; and
- Document the data sufficiently to convince a third-party reviewer that the conclusions are valid.

The Federal Acquisition Regulation (FAR) describes techniques by which a proposed price for a particular procurement may be determined 'fair and reasonable.' These techniques can be used singly or, if quoted prices vary significantly between offerors, used in combination with each other to help explain any significant price variances. These techniques are:

- *Comparison of proposed prices received.* This is the most commonly used technique, as most procurement actions attract two or more offers that are competing independently for the award. Normally, adequate price competition establishes price reasonableness.

- *Comparison with previously proposed or awarded prices.* This technique must compare recent awards (within the previous year or two) for the same or similar items. In addition, both the validity of the comparison and the reasonableness of the previous price(s) must be established and documented in the determination.
- *Using parametric estimating methods of application of rough yardsticks.* For example, comparing the proposed price per square foot for a certain type of building construction against an established commercial cost per square foot.
- *Comparison with competitive published catalogs or price lists.* These may be hard-copy or internet-based, and include published market prices of commodities, similar indices, and discount or rebate arrangements.
- *Comparison with independent cost estimates.* The independent cost estimate must be based on the procurement's technical specifications.
- *Comparison with prices obtained through market research for the same or similar items.* This includes prices for standard commercial items sold in substantial quantities on the open market to the public.
- *Analysis of pricing information provided by the offeror.* This category includes information that does not fall into other categories and may include verifiable sales information for like or similar items sold to the supplier's other customers.

#### **16. Determining offeror 'responsibility' of apparent successful offeror**

The cooperative must determine that the successful offeror is responsible. Typical characteristics of responsibility include:

- Having a satisfactory record of integrity and business ethics;
- No debarment or suspension from doing business with the government (state or federal);
- Being in compliance with applicable rules and requirements regarding disadvantaged business enterprises;
- Having or having the ability to obtain the necessary organization, experience, accounting, and operational controls, and technical skills to perform the work described;
- Being in compliance with applicable licensing and tax laws and regulations;
- Having or having the ability to obtain sufficient financial resources to perform the work described;
- Having or having the ability to obtain the necessary production, construction, and technical equipment and facilities to perform the work described;
- Being able to meet the required delivery or performance schedule; and
- Having a satisfactory record of past or current performance.

To make this determination, the cooperative may rely on in-house experts familiar with the offeror, external agencies or customers of the offeror, the federal System for Award Management (SAM), and the applicable state listing of suspended or debarred vendors.

#### **17. Award Notification**

The cooperative should notify the successful offeror, in accordance with the timetable set forth in the procurement documents, of the intent to provide an award to begin appropriate communications regarding contractual matters, expectations, timelines, etc.

The notice sent to the successful offeror(s) must be included in the procurement file.

#### **18. Notifying unsuccessful offerors**

The cooperative should notify unsuccessful offerors in a timely manner, but may wait until after notifying the successful offeror. This notification should be made in writing, and should be sent to all offerors who submitted accepted proposals or bids. The cooperative may offer unsuccessful offerors the opportunity to participate in a debriefing, which should be structured and recorded in the event of any subsequent protest.

The notice(s) sent to unsuccessful offerors must be included in the procurement file, as well as records of any debriefings.

### **19. Protests before or after award**

A cooperative must have protest procedures to resolve disputes relating to procurements and disclosure of information regarding protests. The cooperative alone is responsible for the settlement of all contractual and administrative issues arising out of procurement, including without limitation source evaluation, protests, disputes, and claims.

Records of protests, disputes, and claims must be included in the procurement file.

### **20. Documenting the file**

The cooperative must maintain records to detail the history of procurement, as defined in 2 CFR, §200.318 (i). These records include, but are not limited to:

- Rationale for the method of procurement;
- Selection of the contract type;
- Contractor selection or rejection;
- Basis for contract price;
- Other relevant documents, such as:
  - Pre-solicitation documents;
  - List of sources solicited;
  - Published notices of proposed contract action;
  - Independent cost estimate;
  - Solicitation, all addenda, and all amendments;
  - Determination of contractor's responsiveness;
  - Notice of award;
  - Notice to unsuccessful bidders or offerors and record of debriefing;
  - Record of protests, disputes, and claims;
  - Bid, performance, payment, and other bond documents; and
  - Notice to proceed.

FEMA expects the cooperative to maintain reasonable documentation, such that documents included in the procurement file should be commensurate with the size and complexity of the procurement.

### **21. Affidavit of Non-Collusion**

The non-collusion affidavit should be part of the solicitation, and should include the following points:

- That the bidder has not, nor has any other member, representative, or agent of the firm, company, corporation, or partnership represented by them, entered into any combination, collusion, or agreement with any person related to the price to be bid;
- That the bidder has prevented any person from bidding nor caused anyone to refrain from bidding;
- That the bid is made without reference to any other bid; and
- That the bid is made without any agreement, understanding, or combination with any other person in reference to the bidding.

## 22. Source Selection Guide

The source selection guide or plan explains how the cooperative will evaluate the offerors. It is a strategy that reflects the specific requirements, the results of market research (if applicable), and the risks associated with the solicitation (if applicable). The guide also describes the evaluation factors (and any sub-factors, if applicable), their weighting, their relative importance, and the methodology used to evaluate proposals. [Sample source selection guide](#)

## 23. Single Bid Analysis

If, after a competitive procurement process, only a single bid is received, the cooperative must review the solicitation and its specifications to determine if either were overly restrictive. For example, could only one bidder reasonably meet the requirements, as stated? If this is determined to be the case, then the cooperative has completed a sole source procurement and must have a sole source justification approved prior to award of the contract. If it is determined that the solicitation and specification was not restrictive, and that other bidders could have met the specifications in the solicitation but chose not to bid for other reasons, then the cooperative must document the determination that the competition was adequate.

In addition, and in either case, the cooperative must perform a cost or price analysis to determine and document that the price in the bid received is reasonable.

## 24. Bidder's List

Bids must be publicly solicited from an adequate number of known suppliers, providing them with sufficient response time prior to the date set for opening the bids. For bidding to be feasible there must be a complete, adequate, and realistic purchase specification and at least two or more responsible bidders willing and able to compete.

## 25. Required Federal Clauses

Cooperative contracts must contain the applicable provisions described in Appendix II to the Uniform Rules (2 CFR, §200.326). FEMA has provided model language for these required contract clauses, which may be found in its entirety in the toolkit. Required clause topics include:

- Remedies;
- Termination for cause and convenience;
- Equal employment opportunity;
- Davis Bacon Act and Copeland Anti-Kickback Act;
- Contract Work Hours and Safety Standards Act;
- Rights to Inventions made Under a Contract or Agreement;
- Clean Air Act and the Federal Water Pollution Control Act;
- Debarment and suspension;
- Byrd Anti-Lobbying Amendment; and
- Procurement of recovered materials.

Additionally, FEMA requires additional contract provisions be included:

- Changes;
- Access to records;
- Use of DHS Seal, logo, and flags;
- Compliance with federal law, regulations, and executive orders;
- No obligation by the federal government; and
- Program fraud and false or fraudulent statements or related acts.

## 26. Sample Procurement Documents

The following sample documents are related to the procurement discussion topics above:

- [Sample Solicitation/Contract Timeline](#)
- [Sample Solicitation Cover Sheet](#)
- [Non-Collusion Affidavit](#)
- [Change Order Review Checklist](#)
- [Procurement History Checklist](#)

## D. Case Studies

The following case studies represent examples of both unsuccessful and successful procurements as determined by the Department of Homeland Security Office of Inspector General (OIG) audit findings. As reported by the OIG for FY 2014, the most common audit findings are:

- Noncompetitive contracting practices;
- Failure to include required contract provisions;
- Failure to employ required procedures to ensure small/minority/women-owned firms are solicited and used (where appropriate); and
- Cost-plus-percentages-of-cost contract usage.

### Case #1

In 2015, the OIG conducted an audit of FEMA disaster-related grant assistance provided to an electric cooperative. The outcome of the audit was the OIG recommendation that approximately \$4 million of costs incurred by the cooperative were ineligible for FEMA grant assistance and should be deobligated for non-compliance with federal procurement requirement.

Specifically, the OIG noted that emergency restoration of power was completed within 4 weeks following the disaster event. Permanent work was not completed for a year following the disaster event. The cooperative awarded a \$1.1 million sole source contract for permanent work to a contractor performing capital improvements to utility lines prior to the disaster event. Then the cooperative engaged in free and open competition for a \$2.9 million contract to trim and remove hazardous trees.

The OIG determined that relative to the sole source contract for permanent work, the cooperative did not engage in free and open competition, did not undertake steps to utilize small businesses, minority firms and women's enterprises, and did not have written procurement policies and procedures. Accordingly, the OIG recommended that the entirety of \$1.1 million contract be denied eligibility for FEMA grant assistance.

Relative to the procurement of the tree-trimming and tree removal contract, while the OIG determined that free and open competition was utilized, the cooperative did not make positive efforts to use small businesses, minority-owned firms and women's business enterprises and did not have written procurement policies and procedures. Therefore, the OIG recommended that the entirety of the \$2.9 million contract be denied eligibility for FEMA grant assistance.

Further consideration:

Following OIG recommendations, FEMA has the option to determine whether all or a portion of the costs at issue are reasonable. However, that is not guaranteed. Accordingly, following completion of emergency work, cooperatives should ensure they have written procurement policies and procedures in place, engage in formal procurement to provide open and free competition, and take positive efforts to utilize small businesses, minority-owned and women-owned business enterprises.

## Case #2

In 2016, shortly after a disaster event in which an electric cooperative was expected to be reimbursed for approximately \$1 million for storm damages, the OIG conducted an audit of the cooperative's policies, procedures and business practices relating to accounting for and expending FEMA grant assistance funds.

Upon completion of the audit, the OIG determined that the cooperative had in place policies, procedures, and a history of business practices which gave confidence to the OIG (and FEMA) that the cooperative would properly manage the grant funds at issue. Accordingly, the OIG made no recommendation.

Further consideration:

This OIG audit confirmed that having proper procurement policies, procedures and business practices in place will avoid the potential for disapproval or deobligation of FEMA disaster-related grant assistance.

## Case #3

In 2016 an electric cooperative received approximately \$52.2 million in FEMA grant funding for repair and replacement of its electrical distribution system. Approximately \$1 million was spent for restoration of electrical power under exigent circumstances. That expenditure was not questioned by the OIG.

However, the OIG found the cooperative utilized seven non-competitive contracts for approximately \$51.2 million of non-exigent, permanent work. Additionally, the OIG found that the cooperative did not take required affirmative steps to ensure use of small and minority firms, women's business enterprises and labor surplus area firms. Separately, the OIG determined that there was \$43,000 in duplicate costs and \$10,210 of unsupported costs.

Neither the cooperative nor FEMA disagreed with the OIG findings concerning the duplicate and unsupported costs. Those funds were de-obligated by FEMA.

Relative to the OIG's finding that \$51.1 million of work was not properly procured; the cooperative asserted that it followed the Rural Utilities Service Standards, and did not know that it was to follow federal procurement standards under a FEMA Public Assistance Grant. In response, the OIG advised that its research showed that both FEMA and the grantee provided timely counsel to the cooperative regarding proper procurement.

Relative to the OIG recommendation that the \$51.1 million of non-competitive contracts be deobligated; FEMA advised that it would work with the cooperative to establish reasonable costs for the contracts at issue and thereafter adjust the grant assistance.

Effectively, the OIG audit established the importance of understanding and following the federal procurement requirements, including engaging in free and open competition in non-exigent circumstances and taking affirmative steps to ensure use of small and minority firms, women's business enterprises and labor surplus area firms.

Upon completion of the audit the OIG determined that the cooperative had in place policies, procedures and a history of business practices which gave confidence to the OIG (and FEMA) that the cooperative would properly manage the grant funds at issue. Accordingly, the OIG made no recommendation.

Further consideration:

This OIG audit confirmed that having proper procurement policies, procedures and business practices in place will avoid the potential for disapproval or deobligation of FEMA disaster-related grant assistance.

## Case #4

In 2012, the OIG conducted an audit of \$3.8 million of FEMA disaster-related grant assistance provided to an electric cooperative. The outcome of the audit was the OIG recommendation that approximately \$2 million of costs incurred by the cooperative was ineligible for FEMA grant assistance and that the funds should be deobligated due to the cooperative's non-compliance with federal procurement requirements under 2 CFR, Part 215.

Specifically, the OIG noted that following the restoration of all emergency electric service the cooperative awarded 2 non-competitive time and materials contracts to undertake permanent repairs to its electric distribution system. Accordingly, the OIG advised that during the emergency/exigency period it would not dispute the use of time and materials contracts or failure to comply with all federal procurement requirements. However, with the restoration of power, the emergency/exigency period expired and there was no basis to avoid open competition for permanent work.

The OIG specifically determined that the cooperative failed to: (1) Perform all procurement transactions in a manner to provide to the maximum extent possible open and free competition, as required under 2 CFR, §215.43; (2) Make positive efforts to use small businesses, minority-owned firms and women's business enterprises, as required under 2 CFR, §215.44(b); and (3) Perform and document a cost or price analysis for every procurement action, as required under 2 CFR, §215.45.

Further consideration:

Relative to such an OIG recommendation, FEMA might undertake action to determine whether all or a portion of the costs at issue are reasonable. However, that is not guaranteed. Accordingly, following completion of emergency work, cooperatives should avoid the use of time and materials contracts, engage in formal procurement to provide open and free competition, take positive efforts to utilize small businesses, minority-owned and women-owned business enterprises, and perform and document a cost or price analysis for every procurement action.

## E.Document Library

This section of the Toolkit provides a comprehensive, easily searchable document library and listing of terms and topics related to FEMA Public Assistance and procurement.

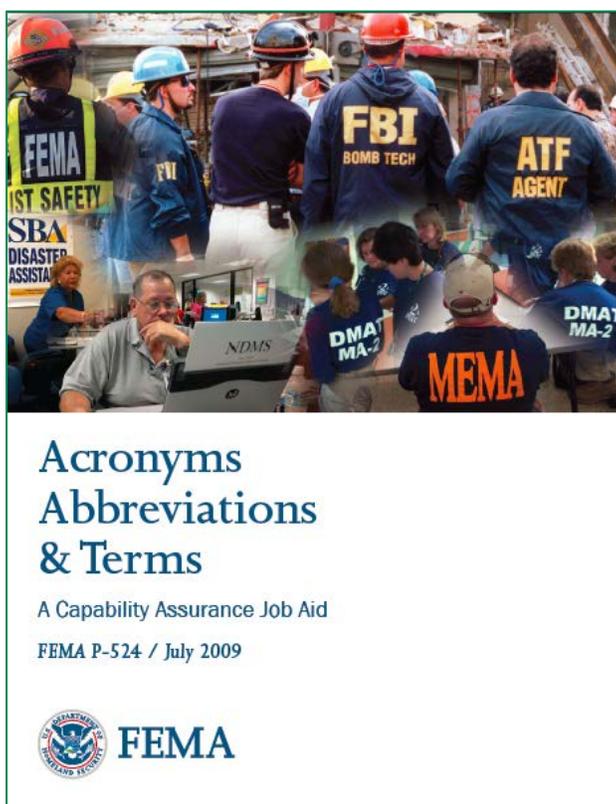
### 1. Acronyms

The following documents contain acronyms specific to 2 CFR procurement and other federal regulations, as well as to the FEMA Public Assistance program as appropriate.

The list of 2 CFR, §200.0 Acronyms include:

#### [2 CFR, §200.0 Acronyms](#)

#### [FEMA P-524 Acronyms, Abbreviations, & Terms](#)



### 2. Terms and Definitions

The following pages contain definitions specific to 2 CFR procurement and other federal regulations, as well as general terms and definitions specific to the FEMA Public Assistance program as appropriate. All definitions provided in the 2 CFR are included for easy reference. In addition, those terms specific to FEMA public assistance and found in the Public Assistance policy guide are included as well.

## **CFR §200.1-99 Definitions**

## **FEMA FP 104-009-2 Terms and Definitions**

### **3. Reference Documents and Materials**

This section of the Toolkit includes:

#### **A. FEMA Policies**

The NRECA toolkit contains the following FEMA policies, legislative and executive orders, and archived policies related to the development and management of the FEMA Public assistance grant program.

#### **Active Policy Books and Regulation**

- 2017 Public Assistance Program and Policy Guide (PAPPG)
- FEMA Acronyms, Abbreviations Terms (FAAT)
- FEMA Public Assistance Pocket Guide

#### **Legislation and Executive Orders**

- Stafford Act
- National Historic Preservation Act
- National Environmental Policy Act
- Endangered Species Act
- EO 11988 Floodplain Management
- EO 11990 Wetlands Protection
- EO 12898 Minority Justice

#### **Active Policy Documents**

- FEMA 329 Debris Estimating Field Guide
- FP 205-081 Staff Act Section 705 Policy
- Public Assistance Minimum Standards Policy
- Preliminary Damage Assessment (PDA) Manual
- Public Assistance Project Worksheet Development Guide
- Permanently Mounted Generator Policy
- 9570.1 Host State Sheltering
- 9570.6 Validation of Small Projects
- 9570.8 Cost Estimating Format
- 9570.14 Grant Closeout
- 9570.24 Strategic Funds Management
- 9570.16 Improper Payment Recoupment

#### **Archived Policy**

- Listing of Archived Policies

#### B. FEMA Appeals Database

FEMA maintains a webpage of second appeal decisions. This database will allow users to search by applicant name or appeal topic and return the results of the appeal including the analysis on which the decision is based.

The link to the database is below:

<https://www.fema.gov/appeals>

#### C. DHS OIG Reports

The Office of Inspector General for the Department of Homeland Security maintains a webpage of all reports and audits issued. This webpage is searchable by applicant name, year of report, and agency responsible. The link to these reports is below:

<https://www.oig.dhs.gov/reports/audits-inspections-and-evaluations>

### 4. Forms, Tools, and Templates

This section of the Toolkit contains tools and forms which NRECA's members can download and modify for their use.

Where appropriate, these forms will be the actual FEMA developed forms that members can modify to their specific need.

This section includes:

- [Sample Scope of Work](#)
- [2 CFR procurement checklist](#)
- [Cost analysis form](#)
- [Sample Scoring Form/Evaluation Form](#)
- [FEMA force account labor form](#)
- [FEMA force account equipment form](#)
- [FEMA force account material form](#)
- [FEMA contract work summary form](#)
- [FEMA damage photo sheet form](#)
- [FEMA fringe benefit calculation form](#)
- [FEMA request for public assistance form](#)
- [FEMA project worksheet form](#)
- [FEMA equipment rate sheet](#)
- [Damage assessment form](#)
- [Project worksheet documentation checklist](#)
- [Project worksheet tracking tool](#)
- [Audit checklist](#)

## F. Properly Documenting Disaster Costs

This section of the Toolkit includes guides which will assist cooperatives in the proper collection of information and documentation to support disaster costs in their entirety. This includes the proper documentation of in-house costs, the development and implementation of mutual aid and cooperative agreements, and successful grant management approaches.

### **Documenting force account labor, equipment and materials**

The FEMA Public Assistance program requires specific documentation to support force account or in-house expenditures. FEMA may reimburse force account labor based on actual hourly rates plus the cost of the employee's actual fringe benefits based on the labor policies in place at the time of the disaster. FEMA may also allow for reimbursement of use of cooperative-owned or rented equipment in the performance of eligible work. Additionally, goods and materials purchased and used in response to an eligible disaster-related activity may be reimbursable.

There are FEMA checklists that summarize the information that should be collected and placed in the project files, standard forms for population of the information, and rate schedules to assist in calculating equipment costs.

### **[FEMA PA Checklist, FEMA standard forms and equipment rate schedule \(ZIP\)](#)**

### **Calculating fringe benefits for employees**

FEMA calculates the fringe benefit cost based on a percentage of the hourly pay rate. Because certain items in a benefit package are not dependent on hours worked (e.g., health insurance), the percentage for overtime is usually different than the percentage for straight-time. Fringe benefits may include:

- Holiday leave
- Accrued vacation leave
- Sick leave
- Social security matching
- Medicare matching
- Unemployment insurance
- Workers compensation
- Retirement
- Health insurance
- Life and disability insurance
- Administrative leave

FEMA has a fringe benefit calculation sheet to assist with the components that are eligible for fringe benefit reimbursement.

### **[FEMA Fringe Benefit form](#)**

### **The use of mutual aid agreements and the completion of disaster work**

When a cooperative does not have sufficient resources to respond to an incident, it may request resources from another cooperative through a "mutual aid" agreement. FEMA refers to the entity requesting resources as the requesting entity. FEMA refers to the entity providing the requested resource as the providing entity.

FEMA provides PA funding to the requesting entity as it is legally responsible for the work. FEMA does not provide PA funding directly to the providing entity. For the work to be eligible, the requesting entity must have requested the resources provided.

The cooperative must have a valid copy of the mutual aid agreement in place at the time of the disaster, or verbally agreed to and legally put into place after the disaster. The file should include a copy of the request for the aid with a specific scope of work including the location, duration and resources requested, including quantity and type.

To seek reimbursement from FEMA, the requesting entity must require the providing entity to track and document all expenditures of labor, equipment, and materials, etc. in the same manner as discussed in documenting force account expenditures above. The summary of expenditures along with all supporting documents should be provided by the providing entity to the requesting entity.

### **Successful grants management approaches**

FEMA has made recommendations for achieving success in implementing and managing federal grants. There are many steps that cooperatives can take in advance of, during, and after an impending disaster to successfully maximize the potential to receive and retain disaster grant funding.

Successful approaches involve a combination of areas such as procurement, finance, administration as well as management and coordination of grant processes. The DHS OIG has published a useful audit report based on their audit findings titled *Audit Tips for Managing Disaster Related Project Costs*. The recommendations and tips are based on the areas found to be the most deficient with respect to rule and regulation compliance that have resulted in negative audit findings, or in other words, tips on how to not repeat the mistakes of others.

### **[DHS OIG Audit Report OIG-16-109-D](#)**