

# **NC DPI Summary of Federal Requirements for Purchasing Under a FEMA Grant (Includes Construction)**

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## Purpose

The training and resources provided by FEMA covers both State Entity and Non-State Entity procurement requirements. For purposes of this summary, the document will focus on the key points and provide links to resources for Non-State entities which includes public school units and non-profits that are eligible subrecipients of federal funds.

Will update this document as training materials are identified and made available.

## Applicable Federal Regulations

As a requirement of receiving FEMA grant funding, all purchases must comply with the federal procurement under grant standards found at [2 C.F.R. §§ 200.317 – 200.327](#).

Uniform Guidance requirements found in subpart D of 2 CFR 200, specifically [2 C.F.R. §§ 200.317 – 200.327](#), as of November 12, 2020 are applicable to purchasing under a FEMA grant for Hurricane Helene.

The updated Uniform Guidance guidelines that are applicable, as they are applicable only to grants after October 1, 2024 are **not** applicable to the FEMA grant funds for Hurricane Helene per the presentation. Based on the date of the emergency, the updated rules do not apply.

## 10/1/2024 - Summary of Key Points and Resources from FEMA Procurement Disaster Assistance Team Training - Hurricane Helene: Exigency or Emergency Training on Purchasing Under a FEMA Grant

The training slides are not provided by FEMA however a document outlining the topics discussed was included. See:

- Procurement under Grants Training Replays

An outline of the key points from the training is provided here, as well along with additional resources provided in the training.

1. Subrecipients must follow their own procurement policies and procedures, Uniform Guidance requirements, and State laws, if applicable. Local Education Agencies are reminded to comply with State procurement laws, as well.

Uniform Guidance requirements have been outlined in many places by FEMA:

- Roadmap to Procurement Compliance: Procurement Disaster Assistance Team 2023 -
  - Introduces procurement requirements outlined at 2 C.F.R. § 200.320.
  - Provides a checklist for subrecipients to ensure compliance under a FEMA award.
  - It is not an exhaustive list of all applicable requirements.
- The Procurement Disaster Assistance Team (PDAT) Field Manual (Manual): Procurement Information for FEMA Award Recipients and Subrecipients - October 2021

- A basic reference and framework for subrecipients procuring property and services
  - Chapters include Uniform Guidance requirements but it covers more than just the requirements. Each chapter provides a practical presentation of the requirements and additional guidance. For example, the contract chapter cover required terms and adds FEMA recommended provisions.
  - A chapter on procurement considerations that go beyond the requirements, based on guidance sought in the past. Included are topics such as design-build, contract changes, cooperative agreements, propositioned contracts and purchasing agents.
  - Remedies for Procurement Noncompliance
  - FEMA Fact Sheet - Purchasing Under A FEMA Award: Informal Methods of Procurement by Non-State Entities
    - Provides a fact sheet for informal methods of procurement.
2. The standard at 2 C.F.R. § 200.319 requires full and open competition. Seven situations under 2 C.F.R. §200.319(b) that are restrictive of full and open competition:
1. Requiring unnecessary experience;
  2. Excessive bonding requirements;
  3. Specifying only a brand name product;
  4. Noncompetitive pricing practices;
  5. Organizational conflicts of interest;
  6. Noncompetitive contracts to contractors on retainer and
  7. Any arbitrary action in the procurement process.
3. Methods of procurement are divided into three categories: informal, formal and noncompetitive procurements. Noncompetitive Procurements for Emergency & Exigent Circumstances were discussed.

Exigency or Emergency Circumstance was summarized as “The public exigency or emergency will not permit a delay resulting from the full and open competition process.”

Please note:

- The exemption is not permitted forever.
- Only permissible during the period of actual exigency or emergency.
- Once this period ends, the non-state entity must transition to full and open competition.
- Documentation is required to justify the emergency or exigency.
- A county that is declared in a State of Emergency by the Governor is **not** adequate documentation to support this noncompetitive procurement. **Specific** details substantiating why the exigency or emergency circumstance is applicable to the organization must be documented as proof.

**Top Mistake:**  
Continuing work under a sole-source contract after the urgent need has ended

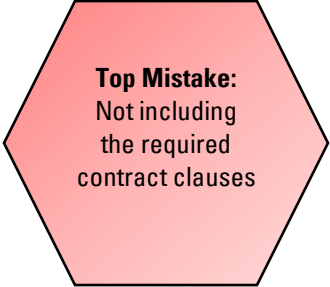
Additional resources provided by FEMA: FACT SHEET - Procurement Under Grants: Under Exigent or Emergency Circumstances

During a noncompetitive exigency or emergency procurement do not forget the following procurement requirements are still required:



**Top Mistake:** Not performing a detailed price or cost analysis for procurement above \$250k

1. Contract clauses from Appendix II in 2 CFR 200.
2. Cost Plus contracts are prohibited, even in an emergency.
3. Still must select a responsible contractor.
4. Do not forget to check the debarment and suspension list.
5. Keep documentation of oversight of the contractors. This may be daily or weekly documentation.
6. Follow conflict of interest rules.
7. Do not forget to do a cost or price analysis after price comes in if over \$250k dollars.
8. Contract Provisions in 2 CFR 200 Appendix II
9. Make sure the right bond amounts are included.
10. Do not include any provision that allows any restrictions to records. All aspects of the contract must be accessible.



**Top Mistake:** Not including the required contract clauses

4. Reminders about contract types.

Time and Materials contracts –

- Can only be used when no other type is available.
- During the emergency or exigency you may find that this is common as the damage or extent of work may not be known.
- Only allow this type of contract until the scope of work is known.
- Must include a ceiling on the price.

5. Responsible Contractors

- Evidence of integrity
- Good record of performance
- Good financial and technical resources to do the job
- Not on the suspension and debarment list (documented that this has been checked.)
- Not on the prohibited telecommunications vendor list

## 6. Mandatory Standards

- Contractor Oversight
- Necessity
- Code of Conduct
- Conflict of Interest
- No Gifts
- Responsible Contractors Only
- Records
- Settlement of Issues

## 7. Prepositioned Contracts

FEMA encourages prepositioned contracts, or advance contracts, before an incident occurs for the potential performance of work under the FEMA award. However, must:

- stay within the scope of the work originally contracted (FEMA looks for material differences),
- procurement must be done under the grant rules.

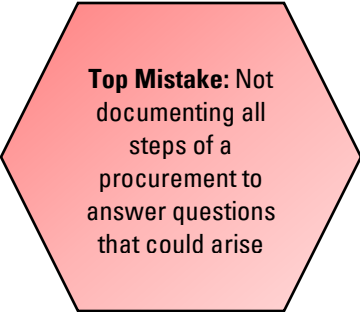
## 8. Preawarded Contracts

May be ok. However, must consider:

- Contract terms may need modification
- document justification for sole source

## 9. MUST DOCUMENT DOCUMENT DOCUMENT!

- Take pictures
- Identify specific issues
- Document every aspect of procurement and justification



**Top Mistake:** Not documenting all steps of a procurement to answer questions that could arise

## 10. Top 10 Procurement under Grants Mistakes