



# T600

# Procurement 101



Texas Department of Public Safety

**DIVISION OF EMERGENCY MANAGEMENT**

# Procurement 101

## Topics for Discussion

Methods of Procurement

Contracts: Types

Contracts: Required Provisions

Procurement Rules

Audit Findings



# Getting and KEEPING your FEMA Grant Dollars!

ENTITY	GRANT AWARDS PRE 12/26/14		GRANT AWARDS POST 12/26/14	
	Regulation	Cost Principle	Regulation	Cost Principle
<b>State/local governments</b>	44 CFR 13.36	2 CFR 225	2 CFR 200.317-.342	2 CFR 200.400-.475
<b>Tribal</b>	44 CFR 13.36	2 CFR 225		
<b>Private Nonprofits (PNP)</b>	2 CFR 215.40-.48	2 CFR 230		
<b>Hospitals</b>	2 CFR 215.40-.48	2 CFR 230		
<b>Educational Institutions</b>	2 CFR 215.40-.48	2 CFR 220		



# Methods of Procurement

<p><b>MICRO-PURCHASES</b> 2CFR 200.67</p>	<p><b>Does not apply to Presidential Declarations (PDs) prior to 12/26/2014</b> Applies to purchases less than OR equal to \$3,000 No solicitation required Sub-recipient (Applicant) determines reasonableness To extent practical, must be distributed equitably among qualified suppliers</p>
<p><b>SMALL PURCHASES</b> 2CFR 200.320B</p>	<p><b>Applies to purchases less than or equal to \$100,000/\$150,000.</b> State Law if more restrictive than the Simplified Acquisition Threshold (SAT) Quotes required - minimum 3 written/telephone/fax from qualified sources Purchases of commercial products sold in substantial quantities to the general public</p> <ul style="list-style-type: none"> <li>• Limited by State law to contracts for supplies &amp; materials less than \$100,000</li> <li>• Item must meet the definition of commercial product</li> </ul>
<p><b>SEALED BIDS</b> 2CFR 200.320C</p>	<p>Preferred for construction Fixed price Publicly advertised and publicly opened Includes a complete, adequate and realistic specification/purchase description Two or more responsive bidders (Rejected bidders not considered responsive) Awarded to lowest, responsive, responsible bidder Any OR all bids may be rejected for a sound, documented reason</p>



# Methods of Procurement

<p><b>COMPETITIVE PROPOSALS</b> 2CFR 200.320D</p>	<p>Solicit proposals from an adequate number of qualified sources Must be publicized to maximum extent practical Must have written procedure for conducting evaluations and award</p>
<p><b>REQUEST FOR PROPOSAL (RFP)</b></p>	<p><b>Price a criteria for selection</b> Contract awarded to firm offering best value</p>
<p><b>REQUEST FOR QUALIFICATION (RFQ)</b></p>	<p>Limited to Architectural and Engineering (A/E) services Qualifications <b>only</b> criteria selection Price negotiated after selection based on cost analysis.</p>
<p><b>NON-COMPETITIVE PROPOSALS</b> 2CFR 200.320F</p>	<p>Available only from a single source Used when, after a solicitation of a number of sources, competition is determined inadequate Used only for emergency or exigent circumstances Always requires a cost analysis</p>



# Methods of Procurement

Category of Purchase	Federal Regulations	Size of Contract	State, Local, & Federally Recognized Tribal Entities
<b>Materials &amp; Supplies</b>	Quotes Required	Less than a \$1000 and \$1000-\$9,999	No competitive procedure or cost analysis for commercial items.
		\$10,000 - \$30,000	3 telephone or FAX quotes.
	Bids Required	Greater than \$30,000	Bids required.
<b>Public Works</b>	Quotes Required	Less than or equal to \$150,000	No bid requirement
	Bid required	Greater than \$150,000	Bid required. No minimum of responses
<b>Services (Not for A/E)</b>	Quotes Required	Less than or equal to \$150,000	No bid requirement
	Bid Required (RFP)	Greater than 150,000	
<b>A/E Services</b>	Request for Qualification (RFQ)	Any Size	No bid Requirement
<b>State Cooperative Purchase (SCP)</b>	Authorized under 44 CFR 13.36(b) & 2 CFR 200.318 (f)	Any Size	ONLY Office of State Procurement (OSP) SCP contracts. Can be used for materials plus supplies plus equipment.



# Contracts to Use

<b>LUMP SUM</b>	Contract for work within a prescribed boundary with a clearly defined scope plus a total price
<b>UNIT PRICE</b>	Work done on an item-by-item basis, with cost determined per unit (e.g., box, cubic yard, etc.)
<b>COST + FIXED FEE</b>	Total cost with a defined fixed fee added to the price
<b>TIME &amp; MATERIALS</b>	Must make determination that no other type of contract is suitable Must be for a reasonable period of time based on the circumstances Must contain a not-to-exceed (ceiling) clause Payments based on hourly rate schedule and cost of materials Must maintain a high degree of oversight
<b>INTER-GOVERNMENTAL AGREEMENTS</b>	Sub-recipients (Applicants) are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services



# Contracts to Avoid

<p><b>PIGGY BACK CONTRACTS</b></p>	<p>Piggyback contracts are generally ineligible. To be eligible, strict criteria must be met. The existing properly procured contract must:</p> <ul style="list-style-type: none"> <li>• Be viable</li> <li>• Purchase the same item on original contract</li> <li>• Ensure price and vendor are the same</li> <li>• Include written mutual consent of the original contracting parties</li> </ul>
<p><b>COST PLUS PERCENTAGE OF COSTS</b></p>	<p>Strictly prohibited.</p>
<p><b>PERCENTAGE OF CONSTRUCTION COST</b></p>	<p>Strictly prohibited.</p>
<p><b>COST PLUS CONTRACT</b></p>	<p>Not allowed under State bid law (Title 38).</p>





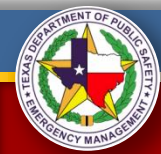
# Contracts

REQUIRED PROVISIONS	REGULATION/ COST PRINCIPLE
Contract (greater than small purchase threshold) contains a provision for administrative and legal remedies for violation or breach of contract.	2CFR 200 A II (a)
Contract (greater than \$10,000) contains a provision for termination of contract for cause and for convenience.	2CFR 200 A II (b)
Contract contains a provision to comply with Executive Order (EO) 11246, Equal Employment Opportunity (EEO).	2CFR 200 A II (c)
Contract (for all construction/repair contracts greater than \$10,000) contains a provision to comply with the Copeland Anti-Kickback Act.	2CFR 200 A II (d)
Contract is in compliance with the Davis-Bacon Act: There is <b>NO REQUIREMENT</b> for such compliance with the FEMA Public Assistance (PA) or Hazard Mitigation (HM) programs.	2CFR 200 A II (d)
Contract complies with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act.	2CFR 200 A II (e)



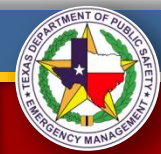
# Contracts

<b>REQUIRED PROVISIONS</b>	<b>REGULATION/ COST PRINCIPLE</b>
Contract includes a provision stating the Sub-recipient (Applicant) has a responsibility to include required reports such as program performance, financial and progress reports.	2CFR 200.327-329
Contract (for all contracts, subcontracts and grants greater than small purchase threshold) contains a provision to comply with Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738 and Environmental Protection Act (EPA) regulations, 40 CFR 15.	2CFR 200 A II (g)
Contract certifies that the contractor has complied with the Byrd Anti Lobbying Amendment and for any contract exceeding \$100,000, bidders have submitted an Anti-Lobbying Certification.	2CFR 200 A II (j)
Contract contains a provision stating record retention and access requirements to all records.	2CFR 200.333
Contract contains a provision that the contractor agrees to comply with mandatory energy efficiency standards and policies contained within the State Energy Conservation Plan.	2CFR 200 A II (h)



# Contracts

<b>GENERAL REQUIREMENTS</b>	<b>REGULATION/ COST PRINCIPLE</b>
Procurement complies with the Sub-recipients own procurement laws, rules, and procedures.	2CFR 200.318 (a)
Contract oversight ensuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.	2CFR 200.318 (b)
Written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.	2CFR 200.318 (c)
Assurance that any actual or apparent conflict of interest does not exist with an employee, officer, or agent participating in the selection, award, or administration of a contract supported by a Federal award.	2CFR 200.318 II
Assurance that any employee, officer, or agent has not solicited and/or accepted gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.	2CFR 200.318
Written standards of conduct that provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.	2CFR 200.318



# Contracts

GENERAL REQUIREMENTS	REGULATION/ COST PRINCIPLE
Consideration of consolidating or breaking out procurements to obtain a more economical purchase, to include lease versus purchase alternatives.	2CFR 200.318
Consideration of contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.	2CFR 200.318
Sufficient detailed records of the history of the procurement, to include records documenting the rationale for the method of procurement, selection of contract type, contract selection or rejection, and the basis for the contract price.	2CFR 200.318
For a time-and-materials contract: <ul style="list-style-type: none"> <li>• Document why no other contract is suitable</li> <li>• Include a ceiling price to the contract</li> </ul>	2CFR 200.318
Ensure contractors who develop/draft specifications, requirements, statements of work, or invitations for bids or requests for proposals are <b>excluded</b> from competing for such procurements.	2CFR 200.319 (a)



# Other Requirements

<b>BONDING REQUIREMENTS</b>	<b>REGULATION/ COST PRINCIPLE</b>
<p>If a construction or facilities improvement contract exceeds the small purchase threshold ensure that:</p> <ul style="list-style-type: none"> <li>• The bid response includes a 5% bid bond</li> <li>• The winning contractor executes a <b>performance</b> bond for 100% of the contract</li> <li>• The winning contractor executes a <b>payment</b> bond for 100% of the contract</li> </ul>	2CFR 200.325
<b>COST ANALYSIS REQUIRED</b>	
<i>For A/E or other professional services</i>	2CFR 200.323
Contract is a noncompetitive proposal	2CFR 200.323
Contract statement of work changes or there are change orders	2CFR 200.323



# Procurement Rules to Follow

REQUIREMENTS	REGULATION/ COST PRINCIPLE
Include in your 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 your file.	2CFR 200.320
Document if price was included for selection criteria on all solicitations other than "Architectural and Engineering (A/E) professional services".	2CFR 200.320 Req. only for A/E
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 your file.	2CFR 200.318



# Procurement Rules to Follow

REQUIREMENTS	REGULATION/ COST PRINCIPLE
Include the solicitation (Request for Proposals [RFP] or Request for Qualifications [RFQ]) in your 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 your prime contractor decides to use a subcontractor, they take the above affirmative steps.	2 CFR 200.321
Include the publication (advertisement, invitation to bid, etc.) in your file.	2 CFR 200.320



# Procurement Don'ts

<b>DO NOT:</b>	<b>REGULATION/ COST PRINCIPLE</b>
Place unreasonable requirements on firms in order for them to qualify to do business	2 CFR 200.319(c)(1)
Require unnecessary experience and excessive bonding	2 CFR 200.319(a)
Encourage noncompetitive pricing practices between firms or between affiliated companies	2 CFR 200.319(a)
Give noncompetitive contracts to consultants that are on retainer contracts	2 CFR 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 200.319(c)(1)

