

PROCUREMENT

The Purchase of Goods and Services

The Importance of Following Procurement Procedures

Care must be taken when purchasing goods and materials and contracting for services for projects approved under the Public Assistance program. All projects are subject to audit. Contracts must be of reasonable cost, generally competitively bid, and otherwise comply with Federal, State and local procurement standards. By Federal regulation, Applicants are to follow their own procurement procedures as long as those procedures meet or exceed the procurement standards in the Federal Regulations [44 CFR 13.36].

The following tables summarize the typical types of contracts entered into between Applicants and service providers when performing work under the Public Assistance program and procurement methods. Each can be used as a checklist and a copy of each, appropriately marked, should be filed with each contract in a separate file for each Project Worksheet. Also included in this guidance document is a summary of the Federal procurement procedures.

These tables or checklists should be kept with the Project Worksheet file and used by the Applicant to determine the type of contract that is appropriate for a project. Refer to the Federal Procurement Regulations contained in 44 CFR13.36 if further clarification is needed. A copy of the regulations can be obtained by contacting the State's Public Assistance Officer.

DIFFERENT TYPES OF CONTRACTS **When and When Not to Use**

Types of Contracts

<i>Lump sum:</i>	Contract for work within a prescribed boundary with a clearly defined scope and total price
<i>Unit price</i>	Contract for work done on an item-by-item basis with cost determined on a unit basis
<i>Cost + fixed fee</i>	Either a lump sum or unit price contract with a fixed contractor fee added into price
<i>Time & materials</i>	Should be avoided, but may be allowed for work necessary immediately after disaster and after a determination that no other contract is suitable; include a cost ceiling or "not to exceed" provision [44CFR13. 36(b)(10)]
<i>Cost plus %of cost</i>	Not allowed by FEMA Regulations
<i>Contingency</i>	Not allowed by FEMA Regulations

PROCUREMENT METHODS

Small purchases 44 CFR 13.36(d)(1)

- **To purchase services and supplies under \$100,000**
 - Do not exceed simplified acquisition threshold of \$100,000
 - Obtain price or rate quotation from adequate number of qualified sources
 - Relatively simple and informal method
- **Awarded based on lowest documented price quote**

Sealed bids (formal advertising) 44 CFR 13.36(d)(2)

- **To purchase construction, debris services, etc.**
 - Bids publicly solicited and advertised and a firm-fixed-price contract (lump sum or unit price) awarded
 - Adequate and realistic description of project is available.
 - Two or more responsible bidders are able to compete effectively
 - Allow sufficient time for bidders to respond
 - Invitation for bids defines project adequately
 - Bids publicly opened at time and place prescribed in invitation
 - Approved and awarded in writing
 - All bids may be rejected for sound documented reason
- **Awarded to the responsible bidder whose bid conforms with invitation for bid and whose bid is lowest in price**

Competitive proposals 44 CFR 13.36(d)(3)

- **To purchase Architectural, engineering or professional services**
 - Bids publicly advertised; identify all evaluation factors that will be used
 - Any response shall be honored to the maximum extent practical
 - Proposals solicited from an adequate number of qualified sources
 - Method for conducting technical evaluations of proposals in place
- **Contracts are awarded to responsible firm based on contractor qualifications, subject to fair and reasonable compensation**

Noncompetitive proposals 44 CFR 13.36(d)(4)

- **When it can be documented that competition is inadequate or public urgency for work will not permit delay. Preauthorization required in most instances and it must be documented that:**
 - Not feasible under small purchase procedures, sealed bids or competitive
 - Item is only available from one source
 - Public exigency or emergency will not permit delay
 - Awarding agency authorizes noncompetitive proposal
 - Competition is determined inadequate
 - Cost or price analysis is required
 - Noncompetitive award to professionals under retainer not allowed
- **Proposal is received from only one source or after competition is documented inadequate**

SUMMARY OF FEDERAL PROCUREMENT REGULATIONS [44 CFR 13.36]

Procurement Standards: 44 CFR 13.36(b)

- Applicants are to follow their own procurement procedures as long as those procedures meet or exceed the procurement standards in the federal regulations.
- Contracts must be monitored to assure compliance with terms, conditions and specifications of contracts or purchase orders
- Applicant must maintain written code of standards *governing* award and administration of contracts (conflicts of interest, selection and award, etc.)
- Applicant will review proposed procurements to avoid unnecessary or duplicate purchases
- Intergovernmental agreements for procurement are encouraged
- Use of excess and surplus property is suggested when feasible
- Use of value engineering clauses in construction contracts of sufficient size is encouraged
- Contracts will be awarded only to responsible contractors possessing ability to perform
- Supporting documents must be maintained to be included - rationale for method of procurement, selection of contract type, contractor selection or rejection and basis for contract price
- Use of time and material contracts is limited to situations where 1) no other contract is feasible, and 2) includes a ceiling price.
- Applicants will have responsibility for settlement of all contractual and administrative issues arising out of procurements
- Applicants to have protest procedures to handle and resolve disputes relating to procurements

Competition: 44 CFR 13.36(c)

- All procurement transactions will provide full and open competition. Examples of restrictive competition include:
 - a. Unreasonable requirements on firms in order for them to qualify
 - b. Requiring unnecessary experience or excessive bonding
 - c. Noncompetitive awards to consultants on retainer
 - d. Organizational conflicts of interest
 - e. Specifying only brand name products
 - f. Any arbitrary action in the procurement process
- Geographical preferences in evaluation of bids is restricted
- Written selection procedures must be in place for all procurements identifying all requirements firms must fulfill
- Ensure all pre-qualified lists of persons, firms or products are current and include enough qualified sources to ensure maximum open and free competition

Methods of Procurement: 44 CFR 13.36(d) – See checklist

Affirmative Action: 44 CFR 13.36(e)

- Grantee will take all necessary affirmative action steps to ensure that minority firms, women's business enterprises, and labor surplus area firms are used when possible

Contract Cost and Price: 44 CFR 13.36(f)

- Applicants must perform cost or price analysis in connection with every procurement action
- Applicants must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed.
- Costs and prices based on estimated costs will be allowable only to the extent that they are consistent with Federal cost principles.
- Cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

Awarding Agency Review: 44 CFR 13.36(g)

- Applicants must make available to awarding agency technical specifications on proposed procurements and, on request, make pre award documents available i.e. requests for proposals or invitations for bids, independent cost estimates.
- Review is required in all cases when Applicant's procurement procedure fails to comply with standards, procurement exceeds simple acquisition threshold and is awarded without competition or only one bid or offer is received, or is awarded to other than low bidder or brand name is specified.
- Applicant may request that its procurement system be reviewed to determine whether its system meets these standards, or Applicant may self-certify its procurement system

Bonding Requirements: 44 CFR 13.36(h)

- For construction or facility improvement contracts exceeding simplified acquisition threshold, the awarding agency may accept the Applicant's bonding policy end requirements. If such a determination has not been made, the following are minimum bonding requirements
 - A bid guarantee from each bidder equivalent to *five* (5) percent of bid price
 - A performance bond from contractor for 100% of contract price
 - Payment bond of the part of the contractor for 100% of the contract price.

Contract Provisions: 44 CFR 13.36(i)

Contracts must contain these provisions:

- Administrative, contractual or legal remedies in instances where contractors violate or breach contract terms
- Termination clause for cause and for convenience
- Compliance with Equal Employment Opportunity regulations
- Compliance with Anti-Kickback regulations
- Compliance with Davis-Bacon Act
- Compliance with Contract Work I-Tours and Safety Standards Act
- Notice of reporting requirements and regulations pertaining to reporting
- Notice of requirements pertaining to patent rights
- Notice of requirements pertaining to copyrights and rights in data
- Access of any records by grantee, sub grantee, Federal grantor, Comptroller or any duly authorized representatives
- Records must be retained for at least three years after final payments are made
- Compliance with CAA, CWA, EPA
- Mandatory standards relating to energy efficiency