

Costs for Disasters

How to Comply with Federal Rules and Keep Your Money

Iowa Homeland Security and Emergency
Management (HSEMD)

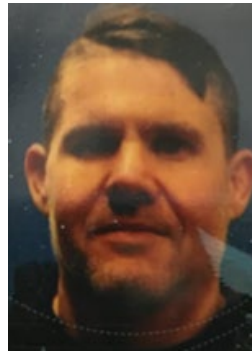
John Benson, Director



Introduction



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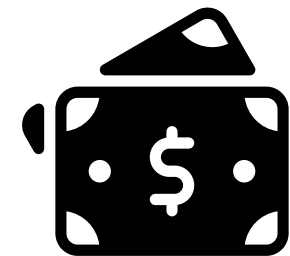
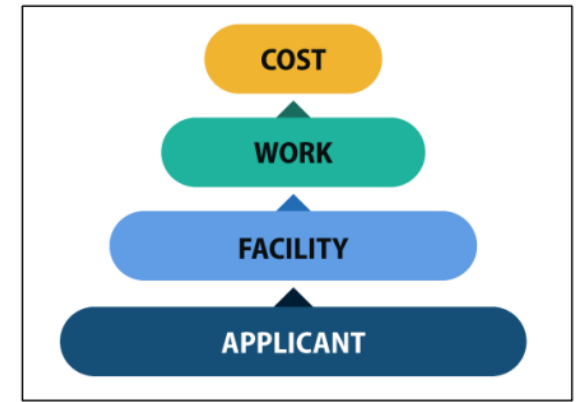


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Cost

The final component of the FEMA Eligibility Pyramid evaluated is the costs claimed by the Applicant. **Not all costs incurred as a result of the incident are eligible.** To be eligible, costs must be:

- Directly tied to the performance of eligible work;
- Adequately documented;
- Reduced by all applicable credits, such as insurance proceeds and salvage values;
- Authorized and not prohibited under Federal, State, Territorial, Tribal, or local government laws or regulations;
- Consistent with the Applicant's internal policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the Applicant; and
- Necessary and reasonable to accomplish the work properly and efficiently



Cost Eligibility

Eligible costs include:

- Labor;
- Equipment;
- Materials;
- Contract work; and
- Administrative costs.



Procurement with Federal Funds

What we'll cover

- Where to find Federal procurement requirements
 - <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d>
- Key points when making purchases procured with federal funds

Failure to follow federal procurement and contracting requirements jeopardizes FEMA funds, which may also be recouped by FEMA.

This presentation does not cover all Federal procurement and contracting requirements.

Federal Procurement Regulations

- Federal Procurement Regulations are found in the **Uniform Grant Guidance Title 2 Code of Federal Regulation (C.F.R.) Grants and Agreements, Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards** (also known as the Supercircular, or 2 CFR)
 - Procurement regulations are found in Subpart D. [2 C.F.R. § 200.317-200.327](#)
 - This is the guiding document for compliance for all federal awards.
- Can I say that I use the State's Procurement Policies & Process?
 - No!!!!!!
 - 2 C.F.R. Part 200 requires local governments, PNPs and tribes to have their own procurement policies that comply with 2 C.F.R. Part 200.

Federal Procurement Regulations

- The 2 CFR states: Applicants “Must have and use **documented** procurement procedures, consistent with State, local, and tribal laws and regulations”.
 - **State government Applicants** must follow the same policies and procedures they would use for procurements with non-Federal funds; comply with 2 CFR § 200.322, Procurement of recovered materials; and ensure that every purchase order or other contract includes any clauses required by 2 CFR § 200.326, Contract provisions.
 - **Non-State Applicants (Tribal and local governments and PNPs)** must use their own written procurement procedures that reflect applicable State, Tribal, and local government laws and regulations, provided that the procurements conform to applicable Federal law and standards. This requirement applies to Tribal Governments even when the Tribe is a Recipient. 2 CFR Part 200

Common Issues Leading to Disallowed Costs

- Noncompetitive practices;
- Failure to show reasonability;
- Failure to include required contract provisions (The federally required contract provisions are found in 2 CFR Appendix II);
- Failure to perform required procedures to ensure small and minority businesses, women-owned enterprises, and labor surplus area firms are used when possible;
- Cost plus percentage of cost contracting;
- Failure to conduct a cost or price analysis;
- Failure to have a written conflict of interest policy related to procurement;
- Failure to verify that a vendor/contractor, etc. is not debarred from being paid with federal funds.

Federal Procurement Key Points

- 2 CFR § 200.318 states that non-federal entities (NFEs) “must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts...The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity”.
- Iowa Code has provisions applicable to conflict of interest in public contracts (Federal and Iowa standards are different).

Federal Procurement Key Points

- Applicants must ensure that all solicitations have clear and accurate descriptions of the technical requirements for the material, product, or service to be procured, and not unduly restrict competition.
 - Brand names cannot be specified unless “or equivalent” is added.
- Method of procurement and rationale must be part of the applicant’s written policy **and** documented in grant records.
- An applicant’s procurement records may be examined by FEMA, HSEMD, Independent and State Auditors, and OIG (Office of Inspector General).

Methods of Procurement-Informal

- Micro-purchase (Current federal threshold is \$10,000): price must be reasonable, may demonstrate through an internet price search, phone, email quotes, etc. [2 CFR § 200.320](#)
- Small purchase (Current federal threshold is \$250,000 – updated periodically): must obtain price or rate quotations from an **adequate** number of qualified sources.
 - The CFR does not define adequate--let's discuss. Again, the price must be competitive/reasonable. [2 CFR § 200.320](#)
- What if you get only one response? If at first you don't succeed, try again, and document your effort(s).

Methods of Procurement-Sealed Bids (Formal)

- Sealed Bids are the preferred method of contracting when requirements solicited are known and specific in detail so that the procurement lends itself to a fixed-price contract type. Selection of the successful offeror will be made principally based on price as outlined in 2 C.F.R. § 200.320(b)(2)(i)-(iv)
- Solicitation, known as invitation/request for bids (IFB) (RFB), must describe specifications for the requirement and include instructions for interested offerors. All proposals will be opened at time and place prescribed in the IFB/RFB. Proposals must be advertised and opened publicly.

Methods of Procurement-Sealed Bids (Formal)

- Proposals must be solicited from an **adequate** number of qualified suppliers and provide them sufficient response time. An adequate number of known suppliers depends on the facts and circumstances of the procurement.
 - If only one proposal is received, it is recommended to try again.
 - Document why only one response was received. Examples: contactor(s) stated they had other work scheduled, didn't have the required equipment, etc.
- How to advertise?
 - Use multiple methods to cast the widest net possible to receive an adequate number of bids. This ensures full and open competition, increasing the opportunity to find the best qualified, best price
 - Use applicant's website, bid rooms, newspaper, City and County Associations, State of Iowa Targeted Small Business Website, etc.

Methods of Procurement-Competitive Proposal (Formal)

- Solicitation referred to as a Request for Proposal (RFP)
- May be used when price is not the only evaluation factor.
 - Technical capability
 - Past performance
 - Prior experience
- Commonly used for professional services
 - Architecture, Engineering, Design

Noncompetitive procurement/Sole Sourcing

- When is non-competitive procurement allowed?
 - The item is available only from a single source;
 - The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
 - The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity (This almost NEVER happens);
 - After solicitation of a number of sources, competition is determined inadequate. (If you send out a solicitation, and get only one response: try again and document!);

The applicant's adopted procurement policy must allow sole sourcing.

Emergency and Exigency Procurement

- *Emergency*: threat to life, public health or safety, or improved property requires immediate action to alleviate the threat. Emergency conditions generally are short-lived.
- *Exigency*: need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise, and use of competitive procurement proposals would prevent the urgent action required to address the situation.

Emergency and Exigency Procurement

Emergency



Severe weather impacts a city and causes widespread and catastrophic damage, including loss of life, widespread flooding, loss of power, damage to public and private structures, and millions of cubic yards of debris across the city, leaving almost the entire jurisdiction inaccessible. The city needs to begin debris removal activities immediately to restore access to the community, support search and rescue operations, power restoration, and address health and safety concerns.

Exigency



A tornado impacts a city in June and causes widespread and catastrophic damage, including to a city school. The city wants to repair the school by the beginning of the school year in September. Awarding a contract using a sealed bidding process would require at least 90 days, and the repair work would be another 60 days, extending the project beyond the beginning of the school year. Rather than conducting a sealed bidding process, the city—in compliance with state and local law—wants to sole-source with a contractor it has contracted with previously.

Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms

- Uniform Rules also aim to promote participation among diverse businesses to use federal funds more equitably. These steps are crucial and cannot be done after the fact.
- Failure to take these steps has resulted in recommendation for disallowance and recoupment in OIG Audits of other states.
- The FEMA PDAT Website has a fact sheet to assist with compliance.
- There are six (6) steps listed on the next slide.

The six steps contracting with small and minority businesses, women's business enterprises, and labor surplus area firms

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration [SBA Search Tool](#) and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in steps 1 through 5 above.

Current Update to Federal Procurement Regulations – 2 C.F.R. Part 200

- Procurement: In addition to implementing a new statutory prohibition regarding covered telecommunications equipment and services, OMB also revised the Federal procurement under grants standards to provide greater flexibility regarding the micro-purchase threshold, incorporate the increased micro-purchase and simplified acquisition thresholds, and add a domestic preferences provision
- 200.322 Domestic Preference
- Appendix II Contract Provisions
- CFR Updates Fact Sheet
 - <https://www.fema.gov/fact-sheet/2-cfr-updates>
- Applicable for disaster declarations issued **on or after November 12, 2020.**

Procurement & Contracting Summary

Tribal and local governments and PNPs must comply with the following Federal standards:

- Provide full and open competition (**Contracts to consultants on retainer is considered restrictive!**);
- Conduct all necessary affirmative steps to ensure the use of minority businesses, women's business enterprises, and labor surplus area firms when possible; (www.iowaeda.com) "Targeted Small Business"
- Contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals may not compete for such procurements to ensure objective contractor performance and eliminate unfair competitive advantage;
- Maintain written standards of conduct covering conflicts of interest and governing the performance of employees who engage in the selection, award, and administration of contracts; and
- Maintain records sufficient to detail the history of the procurement.

Procurement & Contracting Summary

Continued

- Micro-purchases (<\$10,000) - May be awarded without soliciting competitive quotations if price is considered reasonable
- Small Purchase (<\$250,000) - Informal, several price quotes (min. 3)
- Sealed Bids (formal advertising)
- Competitive Proposals - Qualifications-based
- **Non-Competitive Procurement (Caution) - Limited primarily to emergency work. One or more of the following must apply:**
 1. Item is only available from a single source;
 2. The public exigency or emergency for the requirement will not permit delay resulting from competitive solicitation;
 3. FEMA or Recipient expressly authorizes in response to written request from Applicant;
 4. After solicitation of a number of sources, competition is determined inadequate.

Procurement & Contracting Summary Continued

Acceptable Contract Types:

- Lump Sum
- Unit Price
- Cost Plus Fixed Fee
- Time & Materials (If no other contract is suitable, limited time, must have ceiling price, Applicant to provide high degree of contractor oversight !)

WARNING: FEMA does NOT reimburse costs incurred under a cost-plus-percentage contract!

Federal Contract Provisions are required within the body of the contract or as an attachment to the contract.

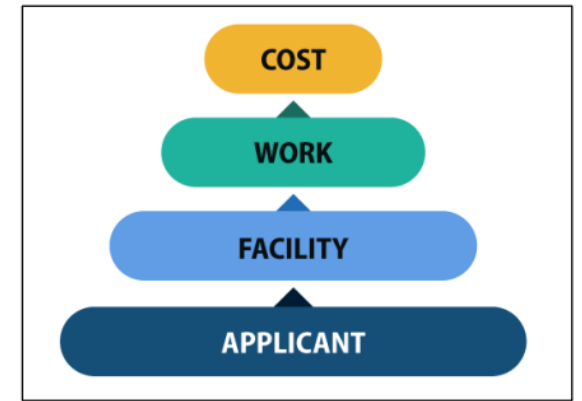
Must not use suspended or debarred contractors:

<https://www.sam.gov>

FA Labor Costs

FA Labor Cost Eligibility

- Emergency Work Categories A-B:
 - Only overtime labor costs are eligible for emergency work categories (If OT is normally paid per established policy)
 - Alternative Procedures – Cat A Regular and OT
 - Fringe Benefits are eligible but typically limited while on OT (per applicant policy)
- Permanent Work Categories C-G:
 - Regular time and OT labor costs are eligible for permanent work categories
 - Overtime costs are only eligible if it is an established policy to pay overtime
 - Fringe Benefits are eligible



FA Labor Costs (Cont.)

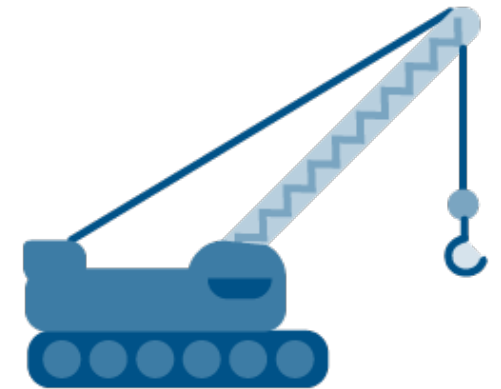
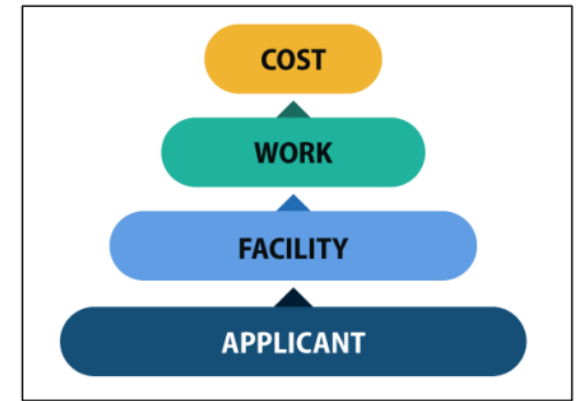
FA Labor Costs MUST be supported by:

Time and effort reporting

- Completed for each employee
- Must account for 100% of all hours worked during the period of time being claimed
- Must delineate each federal activity (project) and all non-federal activity (normal job)
- Must coincide with the employee payroll period
- Pre-disaster payroll and accounting policies

-AND-

Payroll Documentation



Equipment Costs

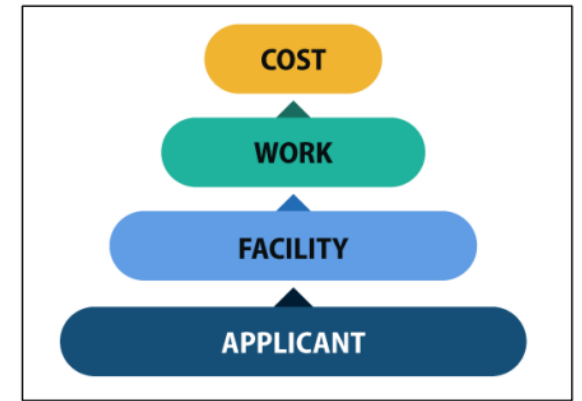
Force Account Equipment

- Eligible during operator's regular and overtime
- Standby time is ineligible
- Must use FEMA cost codes or your own cost codes
 - FEMA cost codes include fuel, insurance, depreciation, and normal maintenance. Does not include labor to operate

Purchasing equipment and supplies in order to respond to the disaster is eligible if necessary and reasonable

- Equipment and unused supplies with a FM value > \$5,000, when no longer needed for the event, will be subject to a fair market value deduction

Rental equipment is also eligible (Cost of fuel eligible)



Operating time

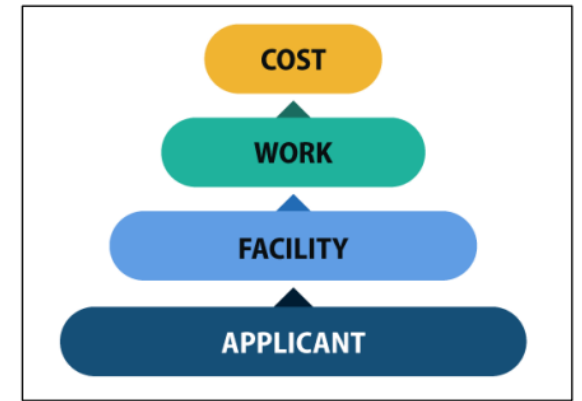


Standby time



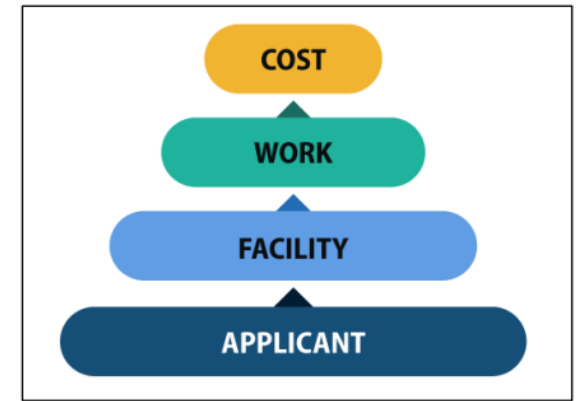
Materials

- Cost of materials purchased or from stock and used during the performance of eligible work is eligible
 - Invoices, purchase orders, proof of payment (cancelled checks, accounting records), and inventory records of material taken from stock must be kept for these cost to be claimed



Mutual Aid

- Must follow the requirements of agreement
- Requesting entity must have made request
- PA funding provided to requesting entity (has legal responsibility for the work)

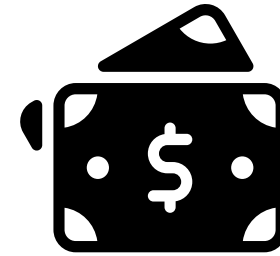


Duplication of Benefits

If funding is received from another source for the same work, FEMA reduces the eligible cost or de-obligates funding to prevent a duplication of funding.

Examples:

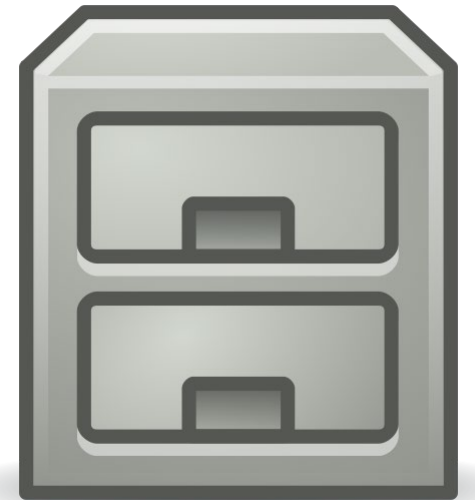
- Insurance Proceeds
- Non-Federal Grants and Cash Donations
- Third-Party Liability
- Other Federal Awards
- Other FEMA funding (e.g. Individual Assistance or HMGP)



Recordkeeping is Crucial!

- Record when, how, what, why, etc. you chose a particular vendor for a purchase/service/contract etc.
- DOCUMENT, DOCUMENT, DOCUMENT! You may be asked for these records by HSEMD, FEMA, an Independent Auditor, a FEMA OIG Auditor. You must be able to justify procurement actions
- When staff changes occur ensure that someone knows where records related to the grant/project are and that they are complete
- Non-compliance can be costly. From 2010-2017 OIG identified more than \$800 million in potentially ineligible costs due to procurement non-compliance!

Tip: Organize your documentation as if it were going to be audited



Pre-Award Risk Assessment

- Required per 2 CFR.
 - Measures the ability of the applicant (you) to manage federal funds;
 - Based on the Pre-Award Risk Assessment, HSEMD will help determine the level of monitoring.
- Applicants receive a notification from HSEMD Disaster Grants Admin (DGA) Bureau staff when a risk assessment is required.
 - The notification specifies which of the applicant's policies are needed and how to submit. Policies are reviewed by HSEMD DGA to ensure they are compliant with federal regulations
 - Note: The applicant will only need to provide the policies and information to complete the Pre-Award Risk Assessment
 - HSEMD will complete the Pre-Award Risk Assessment based on the policies and information provided by the applicant
- If a policy is not compliant, HSEMD DGA staff work with applicant to address updates needed to come into compliance. Applicants are asked to take action on required policy updates within 30 days.

Pre-Award Risk Assessment

- It is important to note that the Pre-Award Risk Assessment is part of the Funding Agreement Approval Process
 - The Pre-Award Risk Assessment is Step 3 in the five step Funding Agreement Approval Process
 - The Funding Agreement can not be approved until the Pre-Award Risk Assessment is completed.
- Until the Funding Agreement is complete the applicant (you) cannot receive FEMA funds for the disaster regardless of whether projects for the applicant have been obligated or even closed.

1. Submission

2. Check Contacts

3. Pre-Award Risk Asses...

4. Approval

5. Complete

Resources

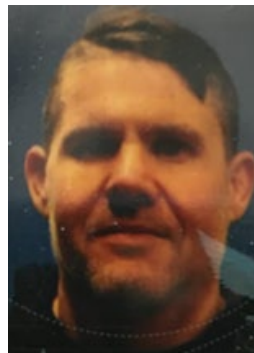
- Federal Procurement Requirements Checklist for Non-State Entities
 - <https://www.fema.gov/assistance/public/nonstate-nonprofit/procurement-checklist>
- Public Assistance Fact Sheets, Job Aids, and FAQs
 - <https://www.fema.gov/assistance/public/policy-guidance-fact-sheets/job-aids-faqs>
- Contracting with Federal Funds for Goods and Services Before, During and After Disasters
 - <https://www.fema.gov/grants/procurement>
- PDAT website
 - <https://www.fema.gov/grants/procurement/training>

Questions?

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