



## Frequently Asked Questions: Procurement Standards for States under FEMA Public Assistance Awards

**Intended Audience:** This document is primarily intended for state entities who receive funding through FEMA’s Public Assistance Program.

**Purpose:** The purpose of this document is to assist eligible **state** Public Assistance applicants in identifying and applying the federal procurement under grant standards.

- **Federal procurement under grant standards:** These are the rules that Public Assistance applicants must follow when contracting for property, supplies and services with Public Assistance funding. The federal procurement under grant standards are found at 2 C.F.R. §§ 200.317-200.326. The standards applicable to states are different than those applicable to non-state entities. States should always consult their own attorneys to determine how the different parts of 2 C.F.R. Part 200 apply to them. States must follow procurement standards found at 2 C.F.R. § 200.317, which includes a requirement that states also follow 2 C.F.R. § 200.322 (Procurement of recovered materials) and 2 C.F.R. § 200.326 (Contract provisions).
- Non-states, which include local governments, Indian Tribal governments, institutions of higher education, hospitals, and private non- profits, must follow procurement standards found at 2 C.F.R. §§ 200.317 through 200.326. This document will focus on the federal procurement under grant rules that states must follow.

### 1. How does a public assistance applicant know which federal procurement rules to apply?

In order for an applicant to determine which rules apply, it must first determine if it is a state entity or if it is a non-state entity as defined under the federal procurement rules. Refer to question number two below for additional information on how the federal procurement standards define a state entity.

### 2. How does a public assistance applicant know if it is a state entity?

The Uniform Rules define the term “state” at 2 C.F.R. § 200.90 as:

1. any state of the United States,
2. the District of Columbia



3. the Commonwealth of Puerto Rico,
4. U.S. Virgin Islands,
5. Guam,
6. American Samoa,
7. the Commonwealth of the Northern Mariana Islands, or
8. any agency or instrumentality of the above in (1)-(7) *except for local governments*.

Based on this last item (8), some entities may be a “state” for purposes of 2 C.F.R. §200.90 if they are designated as an instrumentality by the state. For example, a state’s emergency management office would be treated as a “state” by virtue of being an instrumentality of the state.

### **3. Who is not a “state” entity?**

A local government has been determined to not be a state, since a local government is a unit of government within a state. A local government is defined at 2 C.F.R. § 200.64 as:

Any unit of government within a state, including a: (a) county; (b) Borough; (c) Municipality; (d) City; (e) Town; (f) Township; (g) Parish; (h) Local public authority, including any public housing agency under United States Housing Act of 1937; (i) Special district; (j) School district; (k) Intrastate district; (l) Council of governments, whether or not incorporated as a nonprofit corporation under state law; and (m) Any other agency or instrumentality of a multi-, regional, or intra-state or local government.

### **4. What rules are “states” required to follow under the federal procurement standards?**

The federal procurement standards for states are found at 2 C.F.R. § 200.317. Under 2 C.F.R. § 200.317, states are required to do 3 things:

1. Follow the same policies and procedures they use for procurements from their non- Federal funds;
2. Follow 2 C.F.R. § 200.322, *Procurement of recovered materials*, which requires state entities and local governments to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act; and
3. Ensure that every purchase order or other contract includes any contract clauses required by 2 C.F.R. § 200.326, as well as include any additional FEMA recommended provisions. Refer to question number six below for additional



information on the required contract provisions.

States should document in their procurement files the steps that they took to comply with their own procurement policies and procedures as well as the procurement of recovered materials standard. FEMA will review this information to determine whether states are eligible for reimbursement for property, services, or supplies purchased under a contract using federal assistance.

## **5. Are there any other rules besides those outlined in Question 4 that apply to state procurements under federal awards?**

Besides the federal procurement standards found at 2 C.F.R. § 200.317, there are other important sections of 2 C.F.R. Part 200 (also known as the Uniform Rules) that apply to states when they consider spending FEMA funds. Here are a few (though not all):

- States may not award contracts to contractors or vendors that are suspended or debarred (2 C.F.R. § 200.213).
- States must follow 2 C.F.R. Part 200 Subpart E (§§ 200.400 through 200.475) on the topic of cost principles, including ensuring that costs are allowable and reasonable.
- States must comply with the FEMA-State/Commonwealth/Territory/Indian Tribe Agreement and any other federal statutes, regulations and policies.

## **6. What happens if a state fails to follow the applicable federal procurement rules?**

If a state does not follow the procurement rules applicable to a federal grant award, FEMA has authority to take any of the remedies outlined in 2 C.F.R. § 200.338, including:

- Temporarily withhold cash payments until the deficiency is corrected;
- Disallow, or deny the use of, the grant funds or any matching credit for all or part of the activity that is deficient;
- Suspend or terminate the federal grant award;
- Initiating suspension or debarment proceedings;
- Withhold any further federal awards for the project or program; or
- Take other remedies that may be legally available.



**7. What contract clauses are states required to include in their purchase orders or other contracts when procuring property or services under a federal award?**

States must include the contract clauses that are listed in Appendix II of 2 C.F.R. Part 200 in their purchase orders and other contracts. States should also consider including a number of additional clauses recommended by FEMA.

The clauses that must be included in any particular purchase order or contract will depend on the dollar amount of the purchase order or contract and the type of goods or services that the state is procuring. States can find a list of the required clauses and sample language for some clauses in PDAT’s Contract Provisions Template found at [www.fema.gov/procurement-disaster-assistance-team](http://www.fema.gov/procurement-disaster-assistance-team).

**8. Where can states find more information about the rule regarding the procurement of recovered materials (2 C.F.R. § 200.322)?**

The Environmental Protection Agency has regulations implementing the requirement that states comply with section 6002 of the Solid Waste Disposal Act related to recovered materials. States can find additional information at the PDAT website under “Other Resources” (Procurement of Recovered Materials). The PDAT website is found at [www.fema.gov/procurement-disaster-assistance-team](http://www.fema.gov/procurement-disaster-assistance-team).

