



PROCUREMENT DISASTER ASSISTANCE TEAM (PDAT): PURCHASING GOODS OR SERVICES THROUGH THE GSA DISASTER PURCHASING PROGRAM

This Fact Sheet is intended to provide information on additional steps necessary to ensure compliance with the federal rules when the General Services Administration's (GSA's) Disaster Purchasing Program is used by non-state applicants for procurements above the simplified acquisition threshold. Failure to follow federal contracting requirements may jeopardize FEMA funding for costs associated with that contract.

The GSA **Disaster Purchasing Program** allows state and local governments (Applicants) to use the GSA's Multiple Award Schedule (MAS) contracts to purchase products and services to prepare for, respond to, and facilitate recovery from a Presidentially declared disaster under FEMA's Public Assistance (PA) program.

Applicability

- State or local governments are eligible for this program and are defined by GSA as any State, local, regional, or tribal government, or any instrumentality thereof (including any local educational agency or institution of higher education).
- Private non-profit organizations are **not** eligible to use this program.

General Requirements

As a condition of receiving federal financial assistance under the PA program, Applicants purchasing supplies or services must follow the federal procurement under grants rules found at 2 C.F.R. §§ 200.317-200.326. Although Applicants may use the MAS contracts available under the Disaster Purchasing Program, this act alone does not satisfy the federal procurement under grants requirements. Applicants should also take additional steps to ensure full compliance with the applicable federal grant requirements.

Frequent procurement compliance issues when using the GSA Disaster Purchasing Program to procure goods or services over the simplified acquisition threshold (currently \$250,000) are detailed below.

Attention!

FEMA encourages use of the GSA Disaster Purchasing Program where appropriate, but Applicants must take the additional steps necessary to ensure compliance with the federal procurement standards found at 2 C.F.R. §§ 200.317-200.326.

FREQUENT COMPLIANCE ISSUES WITH THE GSA DISASTER PURCHASING PROGRAM

- **Contract Provisions, 2 C.F.R. § 200.326 (applicable to state and non-state applicants)**
All state and non-state applicant contracts must contain the required contract clauses described in Appendix II to the Uniform Rules. GSA contracts do not include the federally required contract provisions in their contracts with vendors. To include the contract provisions required under 2 C.F.R. § 200.326, Applicants should use the GSA eBuy system. In the eBuy system, Applicants can upload and submit additional terms and conditions, such as the required contract provisions, into its Request for Quotation. These terms will formally become part of the solicitation. Applicants are responsible for ensuring the new terms and conditions do not conflict with the primary MAS contract. If there are no such conflicts, a new task order is generated incorporating these new terms and conditions and a contract is formed. (*GSA Advantage does not allow for the addition of the terms and conditions needed.*)

DISCLAIMER: This Fact Sheet is intended to provide general information on procurement compliance and is not inclusive of every rule that an applicant may need to comply with. Additional information regarding the federal procurement standards can be found at the following webpage: www.fema.gov/procurement-disaster-assistance-team.

FREQUENT COMPLIANCE ISSUES WITH THE GSA DISASTER PURCHASING PROGRAM

- **Full and Open Competition, 2 C.F.R. § 200.319 (applicable to non-state applicants)**
 When using a GSA contract, Applicants comply with the federal procurement requirements regarding full and open competition if they follow the ordering procedures established in 48 C.F.R §§ 8.405-1 and 8.405-2. Sections 8.405-1 and 8.405-2 establish the regulation requirements for competition (at least 3 schedule contractors), conducting a reasonable price analysis, and documenting all procedures. The entity should provide the Request for Quotation to as many schedule contractors as possible to ensure quotes are received from at least three schedule contractors. If less than three quotes are received, the entity should document the efforts made in obtaining quotes. An applicant may elect to deviate from the GSA ordering procedures to satisfy a more stringent state or local requirement. If they do so, however, they should ensure that they still meet the minimum requirements established within 48 C.F.R. §§ 8.405-1 and 8.405-2.
- **Socioeconomic Contracting, 2 C.F.R. § 200.321 (applicable to non-state applicants)**
 Non-state applicants must ensure that they take the applicable affirmative steps to encourage participation of small businesses, minority businesses, women owned enterprises, and labor surplus area firms (target firms). GSA satisfies some of the requirements, but the following four steps can only be satisfied by the applicant. Applicants should be certain to document the actions they take to comply with the below requirements:

 - ✓ Use the tools available on the GSA website to assure that target firms are directly solicited whenever they are potential sources;
 - ✓ Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by target firms;
 - ✓ Establish delivery schedules, where the requirement permits, which encourage participation by target firms; and
 - ✓ Require the prime contractor, if subcontracts are to be let, to take the applicable affirmative steps. This can be accomplished through the addition of contract terms to the contract between the applicant and the selected contractor.
- **Cost or Price Analysis, 2 C.F.R. § 200.323 (applicable to non-state applicants)**
 Non-state applicants must conduct an independent cost or price analysis when using the GSA Disaster Purchasing Program, in part, to determine whether the GSA MAS contract price is reasonable. As a starting point, non-state applicants should conduct an independent estimate before searching for MAS contracts. The GSA MAS contract price is only a ceiling price and Applicants are free to negotiate a lower price than what is listed on the GSA Schedules.
- **Bonding Requirements, 2 C.F.R. § 200.325 (applicable to non-state applicants)**
 For construction or facility improvement projects above the simplified acquisition threshold, FEMA or the pass-through entity may accept the Applicant’s bonding policies if they determine that these policies adequately protect federal funds. Without such a determination, the federal procurement rules require a minimum 5 percent bid guarantee, 100 percent performance bond, and 100 percent payment bond amounts. Applicants should ensure they require the contractors to comply with the applicable bonding requirements by including these requirements in the Request for Quotation.
- **Contractor Oversight, 2 C.F.R. § 200.318(b) (applicable to non-state applicants)**
 After executing a contract, Applicants have a responsibility to maintain oversight and ensure that the contractor performs in accordance with the terms, conditions, and specifications of the contract or purchase order.
- **Maintain Records, 2 C.F.R. § 200.318(i) (applicable to non-state applicants)**
 Even if utilizing a GSA MAS contract, Applicants should still maintain records sufficient to detail the history of the procurement, including the rationale for the method of procurement; selection of contract type; contractor selection; and the basis for the contract price.