



DISASTER
RECOVERY
SERVICES

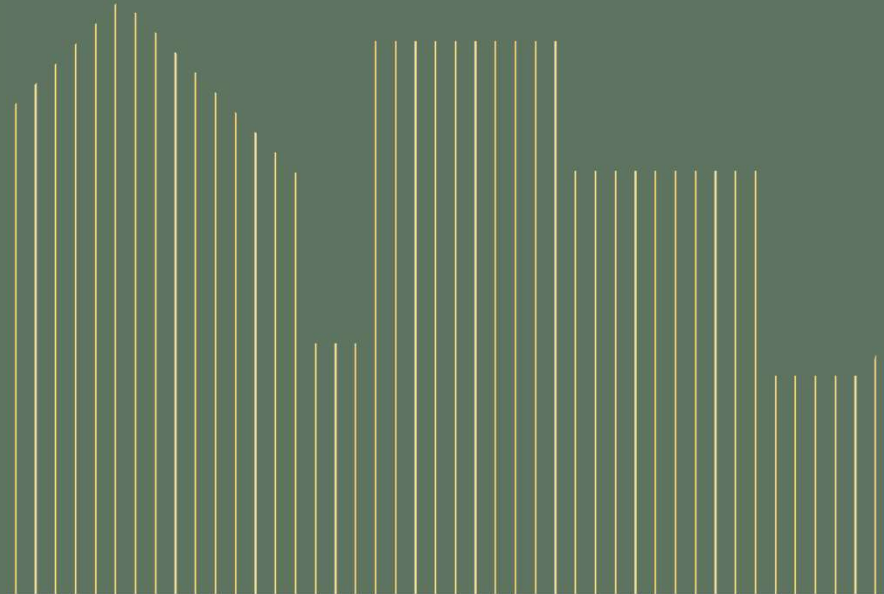


The Top Five to Survive:

Procurement Actions Your Organization Must
Take to Optimize Federal Disaster Grant Funding

May 21, 2023

Session Learning Outcomes

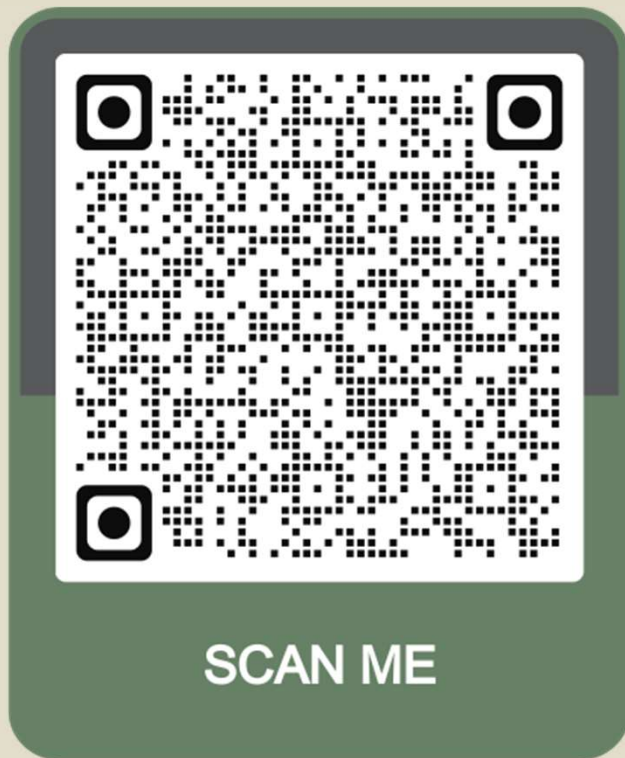


At the conclusion of this session, participants will be able to:



- Identify and avoid the top five most costly procurement under federal grants missteps
- Apply a process to properly document federal grant procurement actions
- Develop a federal grant procurement strategy
- Communicate the federal grant procurement strategy to your stakeholders


Poll Question: What is your greatest concern when working with federal grant funding?








Or text "DRSTeam1" to 37607

Poll Question: Results




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🌐 When poll is active, respond at **Pollev.com/drsteam1**
📱 Text **DRSTEAM1** to **37607** once to join

What is your greatest concern when using federal grant funds?

 No responses received yet. They will appear here...

Are federal grant compliance reviewers really that strict?



YES!

Are federal grant compliance reviewers really that strict?



Procurement: Request Details: 7. Please provide the following information for each of the 41 Contracts claimed. a. Name of Contractor b. Contractor EIN c. Contract Award Date d. Contract Start Date e. Contractor End Date f. Was the contract awarded through a competitive bidding process? g. If not competitively bid, please provide justification: h. What is the impact of the Scope of Work if the noncompetitive contract is not available for that amount of time? i. What specific steps did the Applicant take to determine that it could not have competitively procured the contract for this Scope of Work? j. What steps did the Applicant take to identify any conflicts of interest before the noncompetitive procurement occurred? Include all conflicts of interest the Applicant identified; and, if the Applicant took no steps, explain why. k. Type of Contract l. Scope of Contract m. Total Contract Award n. Amount requested for funding on this project application

Are federal grant compliance reviewers really that strict?



Procurement

Request Details: 8. Contracts, please provide procurement and bid documents and contractor selection process for CONTRACTOR/VENDOR. If the contract(s) was procured through noncompetitive proposals, provide written justification explaining why a noncompetitive procurement proposal(s) was necessary.

Are federal grant compliance reviewers really that strict?



Procurement

Request Details: Because contracts were described as Time and Materials Contracts, the following is needed: a. please provide a written justification explaining why no other contract was suitable. b. If the contract for CONTRACTOR/VENDOR is a time and materials contract, please provide justification that the Applicant provides a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

Recent Costly Procurement Missteps



FEMA: Public School District

- Lack of federal contract provisions
- No affirmative steps taken for socioeconomic contracting

\$187M

HUD: City CDBG Program

- Inadequate procurement supporting documentation
- Restricting competition

\$10M

DOT: FIVE State Grantees

- Inadequate procurement supporting documentation
- Lack of internal controls
- No Suspension and Debarment Checks

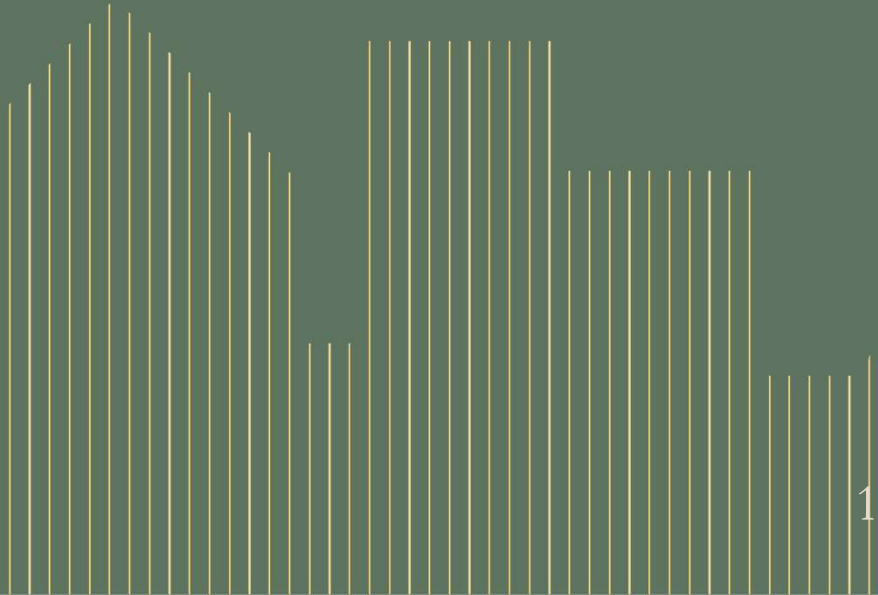
\$9.2M

DOE: Public School System

- Incorrect procurement of professional services
- Absence of procurement supporting documentation.

\$12.2M

The Top Five Procurement Under Grants Mistakes



Top Five Procurement Under Grants Mistakes



1

Lack of written justification
for using noncompetitive
(sole source) procurement

Elements to properly defend a noncompetitive (sole source) purchase when utilizing federal grants



Identify which of the four circumstances listed in 2 C.F.R. § 200.320(f) justify the noncompetitive procurement:

1. The item is only available from a single source
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation
3. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; **or**
4. After soliciting a number of sources, competition is determined to be inadequate

Elements to properly defend a noncompetitive (sole source) when utilizing federal grants



What is being procured?

Why is the noncompetitive procurement necessary?

How long with the noncompetitive procurement be used?

Elements to properly defend a noncompetitive (sole source) when utilizing federal grants



What specific steps were taken to determine that competition could not be used?

What efforts were made to identify any known conflicts of interest?

What other information justifies the use of noncompetitive procurement?

Test Your Skill

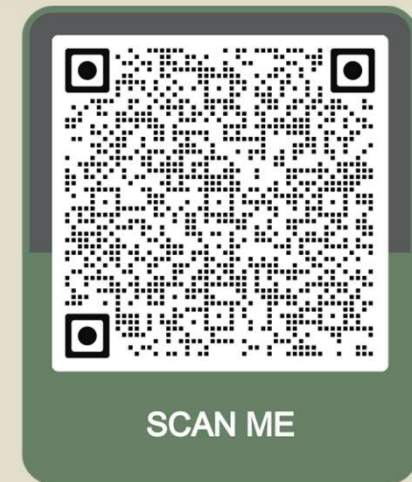


Scenario: City 'X' issues a solicitation for Security Cameras, Installation, and Maintenance Services.

Details surrounding the solicitation:

- **Publicly advertised**
- **850 potential suppliers were notified**
- **S/M/WBE outreach occurred and was documented**
- **Only one response was received**




True or False: Awarding a contract to the single respondent will result in a non-competitive (sole source) contract under 2 CFR 200 (Uniform Guidance).







Or text "DRSTeam1" to 37607


Results



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 Respond at PollEv.com/drsteam1 

 Text **DRSTEAM1** to **37607** once to join, then **A or B**

Based on the scenario provided, awarding a contract to the single respondent will result in a noncompetitive (sole source) contract under 2 CFR 200 (Uniform Guidance)?

True | A
False | B



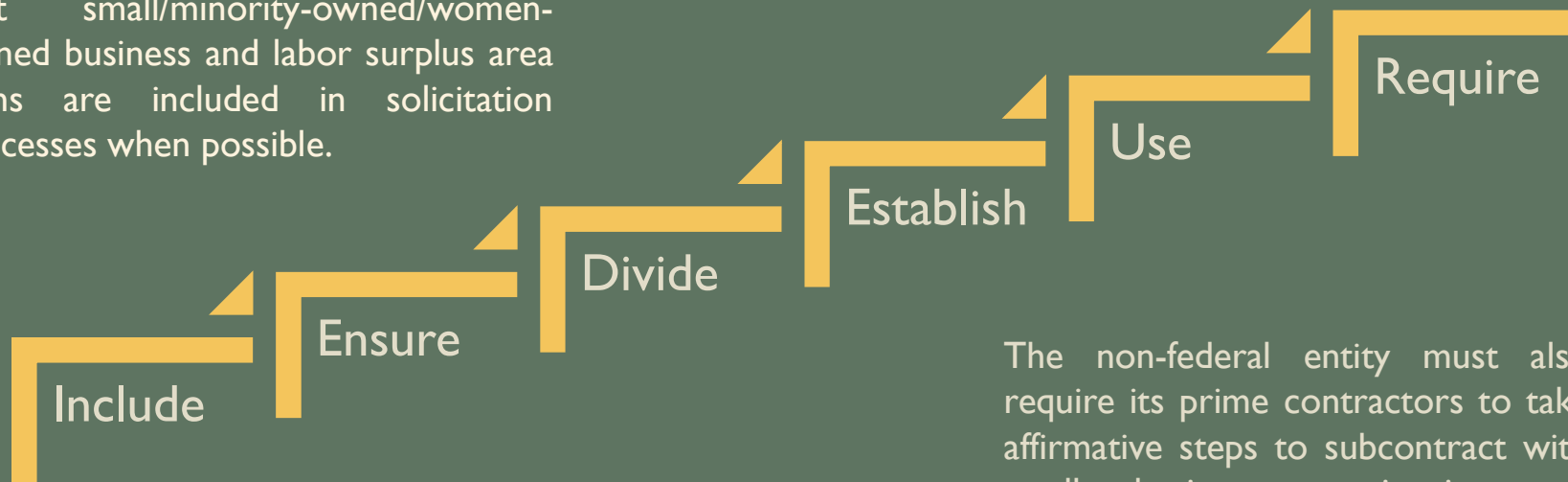
2

Failure to take and document all six affirmative steps toward socioeconomic contracting.

Take Affirmative Steps – Socioeconomic Contracting



The non-federal entity must take all necessary affirmative steps to assure that small/minority-owned/women-owned business and labor surplus area firms are included in solicitation processes when possible.



The non-federal entity must also require its prime contractors to take affirmative steps to subcontract with small businesses, minority and women-owned firms, and labor surplus area firms.

Documenting the Six Affirmative Steps



1. Provide a list of the known small/minority/women's businesses (S/M/WBE) that the solicitation was provided to or requested from
2. Provide copies of posting of the solicitation opportunity via websites or publications that support S/M/WBE firms, if any. If not, provide an explanation as to how the agency feels it met the requirement to ensure these types of firms were encouraged to participate in the solicitation process.
3. Document steps to determine if it was economically feasible to divide the scope of work into smaller tasks or quantities to permit maximum participation by S/M/WBE firms. Document the rationale as to whether it was/was not economically feasible.
4. Delivery schedules
“The following delivery schedule has been established to encourage participation by S/M/WBE firms:”
or
“It is not anticipated that the current delivery schedules put socioeconomic firms at a disadvantage because:”

Documenting the Six Affirmative Steps



5. Provide PDF of SBA Dynamic Small Business Search Tool results via NAICS codes related to the goods or services solicited; Provide a list from the search of suppliers that were notified via email or other means; Provide copies of notifications sent (email or other means).
6. Highlight the notification within the solicitation requiring prime contractors to take affirmative steps when utilizing subcontractors for the agency's federal grant-funded project. Require the prime contractor to provide the agency documentation supporting the first five affirmative steps.





3

Not including all applicable federal terms and conditions found at 2 C.F.R. §200, Appendix II and other terms required by the federal awarding agency

What Federal Contract Provisions Apply When?



Note: It is important to check the specific federal agency funding agreement to determine the application of required federal contract provisions. The following is an example of FEMA Public Assistance Requirements:

All POs and Contracts	Specific to \$ Value of Purchase/Contract	Specific to Type of Purchase
Access to Records (2 CFR 200.334-335)	Legal/contractual/administrative remedies for breach of contract (GT simplified acquisition threshold (SAT)) (2 CFR 200,Appendix II)	
Contract Changes (2 CFR 200.403)	Termination for Cause and Convenience – Over \$10K (2 CFR 200,Appendix II)	
DHS Seal, Logo, and Flags (DHS Standard Ts and Cs)		Equal Employment Opportunity – Federally assisted construction contracts (2 CFR 200,Appendix II)
Compliance with Federal Law, Regulations, and Executive Orders (DHS Standard Ts and Cs)	Davis-Bacon Act – Prime Construction Contracts over \$2,000 (2 CFR 200,Appendix II)	Davis-Bacon Act – Prime Construction Contracts over \$2,000 (2 CFR 200,Appendix II)
No Obligation by Federal Government (2 CFR 318(k))	Copeland “Anti-Kickback” Act – Construction Contracts over \$2,000 (2 CFR 200,Appendix II)	Copeland “Anti-Kickback” Act – Construction Contracts over \$2,000 (2 CFR 200,Appendix II)

What Federal Contract Provisions Apply When? (continued)



Note: It is important to check the specific federal agency funding agreement to determine application of required federal contract provisions. The following is an example of FEMA Public Assistance Requirements:

All POs and Contracts	Specific to \$ Value of Contract	Specific to Type of Purchase
Affirmative Socioeconomic Steps (2 CFR 200.321)	Contract Work Hours and Safety Standards Act – GT \$100K for mechanics and laborers (2 CFR 200, Appendix II)	Contract Work Hours and Safety Standards Act – GT \$100K for mechanics and laborers (2 CFR 200, Appendix II)
Copyright (2 CFR 200.315(d))	Debarment and Suspension – GT \$25,000 (for inclusion of contract provision) (2 CFR 200, Appendix II)	
Domestic Preferences for Procurements (2 CFR 200.322)	Byrd Anti-Lobbying Amendment – GT \$100K (provision); Certification required contracts GT \$100K (2 CFR 200, Appendix II)	
Prohibition for Contracting on Covered Telecommunications Equipment or Services (2 CFR 200.216)	Procurement of Recovered Materials – GT \$10K (2 CFR 200, Appendix II, 2 CFR 200.323)	
Rights to Inventions (All - depending on funding agreement.) (2 CFR 200, Appendix II)		



4

Not conducting a cost/price analysis for all purchases over the simplified acquisition threshold (SAT), currently set at \$250,000.

Independent Estimate/ Cost or Price Analysis



**Independent
Estimate**



**Cost/Price
Analysis**



Documentation



Price Analysis



A price analysis is the examination and evaluation of the total amount of a proposed price without evaluating its separate cost elements and proposed profit. This type of analysis is typically used when acquiring commercial items or when using the sealed bidding method.

Elements to support this type of analysis (multiple elements of support may apply):

1. Compare proposed prices received in response to a solicitation; requires at least two responsible offerors/bidders and assumes no unusual actions that negatively impact competition.
2. Compare historical proposed prices and contract prices with current proposed prices for the same or similar goods or services; can consider changes in quantity, delivery schedules, and economy.
3. Compare offer with competitively published catalog prices, published market prices, or similar indices.
4. Compare proposed prices with independently developed price estimates and/or market research.
5. Compare to prices set by law or regulation;
Examples: FEMA's Equipment Rate Schedules, Federal Supply Schedules

Cost Analysis



A cost analysis is more complex than a price analysis. This type of analysis includes evaluation of the separate cost elements (i.e., labor hours, overhead, materials, etc.).

Elements to support this type of analysis:

1. Verify the individual cost elements add up to the total proposed price.
2. Verify each cost item is necessary and reasonable for the required scope of work.
3. Compare the costs proposed for individual cost elements with previously incurred actual costs and independently developed estimates.
4. Seek input from experienced personnel to assist in the analysis of hours, materials, and equipment proposed, quantities, tooling, testing, head counts, productivity, and similar factors.
5. Consult the resources referenced for price analysis (previous slide) to the extent available to confirm proposed pricing.

Cost Analysis (continued)



In any case where a cost analysis is required and performed, you must also negotiate profit as a separate element in the contract price. (2 CFR 200.324(b)).

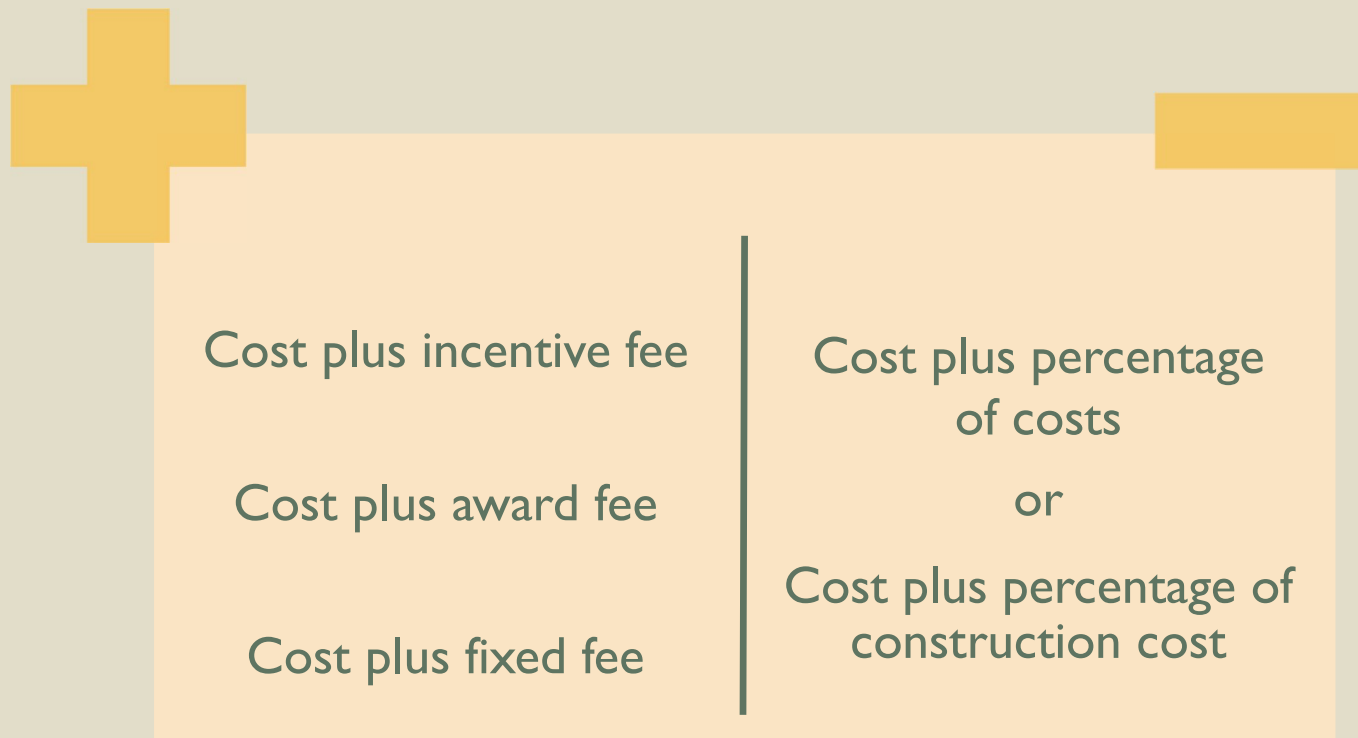
- Include documentation of any discussions you have with the contractor and confirm the anticipated profit allocation is reasonable.
- Considerations:
 - the complexity of the work to be performed
 - the risk borne by the contractor
 - the contractor's investment
 - the cost of any subcontracting
 - industry profit rates for similar work
- Cost-plus-percentage-of-cost contracts are prohibited under the Uniform Guidance (UG)(2 CFR 200.324(d))



5

Awarding a prohibited Cost-Plus-Percentage-of-Cost or Cost-Plus-Percentage-of-Construction-Cost contract.

Cost Plus Contracts



Test Your Skill – Cost Plus Contracts – Allowed or Disallowed?



Design-it-Right Architect's fee will be 6% of the overall construction cost of the project.

Contractor will be compensated for a fee of \$10,000 for the outlined scope of work plus an early project completion fee of \$2,000 if project is completed and accepted by the County prior to June 1, 2023.

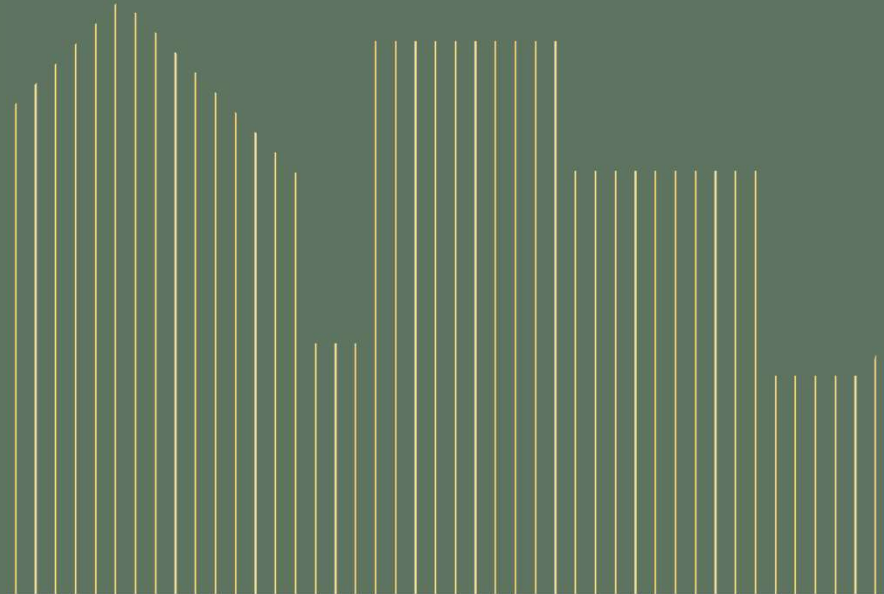
Contractor will be compensated based on the labor and materials rates listed in Exhibit A. Small tools used in the project will be charged at 15% of the completed project cost.

Top Five Procurement Under Grants Mistakes In Summary



1. Lack of written justification for using a non-competitive (sole source) procurement.
2. Failure to take and document all six affirmative steps toward socioeconomic contracting.
3. Not including all applicable federal terms and conditions found at 2 CFR §200, Appendix II and other terms required by the federal awarding agency.
4. Not conducting a cost/price analysis for all purchases over the simplified acquisition threshold (SAT), currently set at \$250,000.
5. Awarding a prohibited cost-plus-percentage-of-cost or cost-plus-percentage-of-construction-cost contract.

Documenting Your Procurement Under Federal Grants Activities



Preparing Your Federal Grant Procurement “Story”



Narrate

Create a procurement summary for your documentation.



Navigate

Add a Table of Contents or bookmark your documentation package.



Necessitate

Compel the reviewer to obligate funding by detailing 2 CFR 200 compliance.

Federal Grant Record-keeping Requirements



Check the record retention requirements of the awarding federal agency. For instance, ARPA requires records to be maintained for five years after all funds have been spent. FEMA requires records to be maintained for three years after the final project for your agency has been closed for the declared disaster. These records include but are not limited to:

Solicitation documents, addenda, amendments	Notice to unsuccessful bidders/proposers
Public advertisement or posting of solicitations	Suspension and Debarments checks
List of suppliers notified of opportunity	Board or governing body contract approval
Documentation of affirmative steps for S/M/WBE inclusion	All contract documents including signed agreement to required federal contract clauses, amendments, change orders
Copies of communications with prospective suppliers	Records of protests, disputes, claims
Bid tabulation	Bid, performance, payment bonds (if required)
Proposal Evaluation	Purchase Orders and Purchase Order Change Orders
Cost/price Analysis (if required)	Receiving records
Notice of Award	Copies of A/P checks or wire payment/EFT confirmation

Creating a Disaster Procurement Strategy When Using Federal Funds



1. Identify the type(s) of disaster(s) your entity is most likely to face.
2. Make an inventory list of likely purchase categories (including services) that would be needed for disaster response.
3. From the inventory list, identify:
 - a) Your agency's awarded contracts in place for disaster response
 - i) Was the original solicitation issued according to Uniform Guidance requirements
 - ii) Are there steps to be taken to better align the existing contracts with Uniform Guidance requirements
 - b) If no local bids/contracts in place, identify your agency's go-to cooperative contracts that best align with Uniform Guidance requirements
4. Create and implement federal grant procurement checklists by purchase type and by dollar threshold
5. Communicate the strategy to all stakeholders
6. Conduct procurement tabletop exercises
7. Conduct disaster procurement after-action reviews
 - a) Note what went well
 - b) Identify gaps
 - c) Make a plan to close the gaps including assigning responsibility



Communicating Your Federal Grant Procurement Strategy for Success



1.



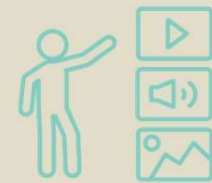
Know Your Audience

2.



Align Internal Communications

3.



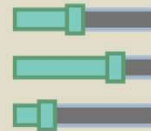
Curate Your Content

4.



Welcome Feedback

5.



Adjust as Needed

6.



Become a Trusted Resource

Questions?



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Federal Grant Socioeconomic Affirmative Steps Worksheet

Pursuant to 2 C.F.R. § 200.321, applicants for federal grant assistance are required to take certain affirmative steps to ensure small and minority businesses, women's business enterprises, and labor surplus area firms are used, when possible, in federally-funded projects. This worksheet is designed to assist the non-federal entity in demonstrating it has met the requirements of 2 C.F.R. § 200.321 (socioeconomic contracting). Please complete the steps described below and keep records of your efforts in the procurement file for each solicitation. Note that items highlighted in yellow should be verified for accuracy and updated, if necessary.

Title / ID# of Solicitation: _____

Description of Procured Goods/Services:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists.

Provide a copy of the solicitation to known small, minority, and women's firms and to agencies which will make it available to state-wide to certified minority owned businesses.

The solicitation was provided to the following known small, minority, and women's business enterprises:

2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.

These firms have been solicited through the means described in paragraph 1. Other relevant information demonstrating compliance with this step:

3. Dividing requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.

It is / is not economically feasible to divide the scope of this requirement, because:

Federal Grant Socioeconomic Affirmative Steps Worksheet

4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.

The following delivery schedule has been established to encourage participation by small and minority businesses, and women's business enterprises:

OR

It is not anticipated that the current delivery schedules put socioeconomic firms at a disadvantage, because:

5. Using the services and assistance, as appropriate, of such organizations as the Small Business and Minority Business Development Agency of the Department of Commerce.

An SBA Dynamic Small Business Search (https://web.sba.gov/pro-net/search/dsp_dsbs.cfm) was performed under the following NAICS codes:

- Use appropriate code. Codes available at: <https://www.naics.com/business-lists/counts-by-naics-code/?#countsByNAICS>

[Print and attach results of search. It may necessary to limit search results by keyword or geography to obtain a useful list. In doing so, beware of imposing a geographic preference, which is prohibited by Federal procurement standards.]

From this list, potential contractors were e-mailed the solicitation. (List them below or attach a list.)

6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

- This requirement is included in the solicitation and will be made a part of the resulting contract.

Federal Grant Non-competitive or Emergency Procurement Justification Form

Current Federal procurement standards (found at 2 C.F.R. § 200.320(f)(2)) allow non-state entities, to non-competitively procure contracts (i.e., sole-sourcing) under certain emergency or exigent circumstances. For instances where sole source is the circumstance, it is recommended to submit a narrative with your submission to the federal awarding agency and place in your procurement file for other future audits. The non-state entity must comply with Federal procurement standards as a condition of receiving federal funding for contract costs for eligible work. Federal agencies will closely review procurement, with particular emphasis on noncompetitive procurement actions to evaluate compliance with Federal requirements. The non-state entity is encouraged to follow competitive procurement requirements when purchases for contract services are not needed immediately. When materials or services are immediately needed, an emergency/exigency exemption may apply. Fill out this form if goods/services above the non-state entity's micro-purchase threshold are procured in a non-competitive method for a single contract. A written justification is required for every instance of the use of noncompetitive procurement. This form should be signed by the appropriate official.

Provide the expected dollar amount:

Provide a brief description of the product or service being procured:

Supplier:

Provide a date range for the scope of work. Failure to plan for transition to competitive procurement cannot be the basis for the continued use of noncompetitive procurement based on public exigency or emergency. Questions to consider in your reply include: How long do you anticipate the exigency or emergency circumstances will continue? How long will it take to identify your requirements and award a contract that complies with all procurement requirements? How long would it take another contractor to reach the same level of competence?

Identify which of the 4 circumstances listed in 2 C.F.R. 200 justify a noncompetitive procurement:

- Item only available from a single source
- Public Emergency/Exigency will not permit a delay resulting from competitive solicitation
- The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-state entity
- After solicitation of an adequate number of sources, competition is determined inadequate.

Based on the circumstance selected above, explain why a noncompetitive procurement is necessary. If the noncompetitive procurement is based on exigent or emergency circumstances, then the justification should explain the nature of the public exigency or emergency. This would include specific conditions and circumstances that clearly illustrate why procurement other than through noncompetitive proposals would cause an unacceptable delay in addressing the public exigency or emergency.

Describe any known conflicts of interest and any efforts that were made to identify possible conflicts of interest before the noncompetitive procurement occurred. If no efforts were made, explain why.

Include any other information justifying the use of noncompetitive procurement in the specific instance.

Attesting Individual (Name, Title)

I certify that the above information is accurate and true.

Date



Federal Procurement After-Action-Review

See How We Can Help

Shelley Vineyard, MBA, NIGP-CPP, RTSBA

Director of Procurement Specialty

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Assessment Factor	Strongly Disagree		Strongly Agree		
	1	2	3	4	5
a. Our end-users knew that federal procurement rules applied to our disaster-related purchases.	1	2	3	4	5
b. We knew what type of applicant we would be for Federal public assistance funding (i.e., state entity, local government, private non-profit)	1	2	3	4	5
c. We had an easy way to segregate and track disaster-related purchases.	1	2	3	4	5
d. We knew how to apply the most restrictive of federal, state, and local procurement rules to our disaster-related purchases.	1	2	3	4	5
e. Our process for checking for federal suspension and debarment ensured we were not awarding to suppliers who were prohibited from participating in federal contracts.	1	2	3	4	5
f. We had a way to easily incorporate required federal terms and conditions with our POs and contracts including emergency purchases.	1	2	3	4	5
g. We knew what Federal awarding agencies would require for the use of pre-awarded contracts that had not been procured according to federal standards.	1	2	3	4	5
h. We had a process in place to conduct a cost/price analysis for all disaster-related purchases that exceeded the simplified acquisition threshold of \$250K.	1	2	3	4	5
i. We knew that Federal awarding agencies require a written justification for each use of the emergency/exigent non-competitive procurement exception. (local government and PNPs)	1	2	3	4	5
j. Our organization was well-prepared to follow federal procurement and contracting requirements in order to protect our disaster reimbursement dollars.	1	2	3	4	5

FEDERAL PROCUREMENT COMPLIANCE IMPROVEMENT MATRIX

Federal Procurement Improvement Plan					
#	Area of Improvement	Corrective Action	Responsible Party	Status	Estimated Completion Date
1					
2					
3					
4					



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