

FEMA Reimbursements -New Regulations...

Sarah Allen – Administrator May 2018



What is 2CFR200?

PDF

- 🚺 🔊 🖃 🔳 Title 2 Grants and Agreements
 - Parts 1 5800. January 1, 2014.
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 - Part 1 ABOUT TITLE 2 OF THE CODE OF FEDERAL REGULATIONS AND SUBTITLE A
 - Subtitle B Federal Agency Regulations for Grants and Agreements (Parts 376 -5800)

- https://www.gpo.gov/fds ys/pkg/CFR-2014-title2vol1/pdf/CFR-2014-title2vol1-part200.pdf
 - Effective on December 26, 2014.

Visit our SPO page with all the resource links you need at:

http://spo.hawaii.gov/forstate-countypersonnel/disasterpreparednessprocurement/femareimbursement/ It's got to do with FEMA! Why? It can take years to be reimbursed if you get it wrong, or worse, you'll have to pay it back! Millions or even Billions!

Impact of new Regs:

- Cannot use current contracts for disasters if you want FEMA money, including NASPOVP contracts.
- State may be able to rectify most of their current contracts,
- Counties will probably have to re-procure everything!







FEMA Regs and Resources

PDAT: https://www.fema.gov/ procurement-disasterassistance-team

Handouts:

- 2CFR200 w
 Appendices
- FEMA Checklist

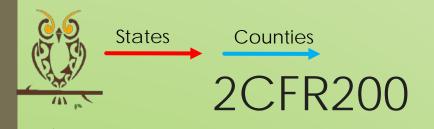
PDAT Manual

Procurement Disaster Assistance Team

FEMA's Office of the Chief Counsel established the Procurement Disaster Assistance Team (PDAT) in 2014 to assist disaster assistance applicants with adhering to the Federal procurement standards, which can be found at Title 2 of the Code of Federal Regulations (C.F.R.) sections (§§) 200.317 through 200.326, as well as FEMA policies and guidance associated with FEMA's Public Assistance grants. PDAT's mission is to ensure that FEMA personnel and nonprofit, local, state, tribal, regional, and national emergency management personnel are familiar with the Federal procurement standards applicable to FEMA's Public Assistance disaster grants, in order to facilitate compliance with these standards, and reduce the likelihood of disallowance for failure to adhere to these requirements.

PDAT is currently comprised of nine attorneys tasked with deploying to active disasters and with proactively developing and providing training and guidance materials. *While PDAT provides guidance on the rules for procurement under grants, neither this site, nor the materials found on this site, should be considered legal advice.*

>	Expand All Sections
>	Background
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>	Course Description And Audience
>	Procurement Under Grants 2.0 Webinar Series
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PROCUREMENT STANDARDS

§200.317 Procurements by states.

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Feder<u>al funds</u>. The state will comply with §200.322 Procurement of recovered *materials* and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§ 200.318 General produrement standards through 200.326 Contract provisions.

§ 200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200— Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

> §200.318 General procurement standards.

§200.319 Competition.

§200.320 Methods of procurement to be followed.

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

§200.322 Procurement of recovered materials.

§200.323 Contract cost and price.

§200.324 Federal awarding agency or pass-through entity review.

§200.325 Bonding requirements.

§200.326 Contract provisions.

Redundant! Already in App II (K)!



Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

STATES & COUNTIES

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, must address administrative, contractual, or legal remedies in **PDAT Field Manual** P86 instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (B) All contracts in excess of \$10,000 must address termination for cause and for PDAT Field Manual convenience by the non-Federal entity including the manner by which it will P87 be effected and the basis for settlement. Construction Only Equal Employment Opportunity. (C)>\$2,000 Davis-Bacon Act and the Copeland "Anti-Kickback" Act N/A for FEMA (D) >\$100K Mechanics Contract Work Hours and Safety Standards Act. -(E) or Laborers Rights to Inventions Made Under a Contract or Agreement. -(F) N/A for FEMA > \$150K PDAT Field Clean Air Act and the Federal Water Pollution Control Act. -(G) Manual P96 (H) Mandatory standards and policies relating to energy efficiency which are PDAT Field Manual P97 contained in the state energy conservation plan issued in compliance with SPO has determined application > \$10,000 the Energy Policy and Conservation Act. SAM.gov Excluded Parties Debarment and Suspension. -(|)List, PDAT Field Manual P96 Byrd Anti-Lobbying Amendment. (J)> \$100K Bidders must submit cert See § 200.322 Procurement of recovered materials. N/A for Services >\$10K



Top 10 Procurement Under Grant Mistakes Leading to Audits and Potential Loss of FEMA Public Assistance Funding

- Engaging in a noncompetitive procurement (i.e., sole-sourcing) without carefully documenting how the situation has created an urgent need to perform the work sooner than a competitive procurement process would allow.
- Continuing work under a sole-source contract after the urgent need (see #1) has ended, instead of transitioning to a competitively procured contract.
- Piggybacking onto another jurisdiction's contract in a situation that doesn't allow noncompetitive procurement (see #1) or where the other contract is materially different in terms of scope or requirements. Piggybacking is rarely allowable.
- Awarding a "time-and-materials" contract without a ceiling price that the contractor exceeds at its own risk and without documenting why no other contract type is suitable.
- Awarding a "cost-plus-percentage-of-cost" or "percentage-of-construction-cost" contract.
- Not including the required contract clauses (available online at the below website under "PDAT Resources" menu).
- Including a geographic preference in a solicitation (i.e., giving an advantage to local firms).
- Not making and documenting efforts to solicit small businesses, minority businesses, and woman's business enterprises.
- Conducting a procurement exceeding \$150,000 without conducting a detailed cost or price analysis.
- Not carefully documenting all steps of a procurement to create a record if questions arise potentially years later.



Good Luck and Do it Now!

- Please contact the State Procurement Office with any questions you may have we stand ready to help!
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- Administrator Telephone: 808-586-4700
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