



## PUBLIC ASSISTANCE: PURCHASING GOODS OR SERVICES THROUGH COOPERATIVE PURCHASING PROGRAMS

The Federal Emergency Management Agency (FEMA) Public Assistance (PA) Program provides supplemental assistance to states, tribes, and local governmental entities, as well as certain private non-profit organizations (hereinafter referred to as applicants). FEMA's Public Assistance Program and Policy Guide ([2018 PA Program and Policy Guide \(PAPPG\) \[V3.0\]](#)) provides comprehensive information regarding the assistance that FEMA can provide and the requirements applicants must meet in order to receive the assistance. This guidance addresses the use of cooperative purchasing programs by non-state applicants.

**As a general matter, FEMA suggests that non-state applicants exercise caution when using cooperative purchasing programs because the Agency has observed problems with non-state applicants' ability to meet all of the requirements of the federal procurement standards found in 2 C.F.R. §§ 200.317 – 200.326 when a non-state applicant uses these programs. Applicants are not permitted to use out-of-state cooperative purchasing programs.**

### **Background**

To foster economy and efficiency, the federal procurement standards encourage non-state applicants<sup>1</sup> to enter into local-intergovernmental agreements or inter-entity agreements where appropriate for the procurement of goods or use of common or shared goods or services under federal awards.<sup>2</sup> While the federal procurement standards encourage non-state applicants to use these agreements, non-state applicants still must ensure that their procurements meet all requirements of the federal procurement standards found in 2 C.F.R. §§ 200.317 – 200.326. A cooperative purchasing program is one type of local-intergovernmental agreement or inter-entity agreement that a non-state applicant may want to use to foster economy and efficiency when purchasing goods or services under a federal award. Cooperative purchasing programs are a type of cooperative arrangement where businesses, non-profit organizations, and/or governmental entities agree to aggregate their demand for certain goods or services to get lower prices from selected vendors. Entities typically sign up to use a cooperative purchasing program through a cooperative purchasing agreement, and program membership gives the entities access to lists of agreements or contracts for goods and services at pre-negotiated rates or prices. Typically, the member then accomplishes the actual purchase of goods or services by negotiating with participating vendors and placing purchase orders or entering into contracts based on the rates or prices listed in the cooperative purchasing program's agreements or contracts with vendors.

<sup>1</sup> Non-state applicants include local governments, tribal governments, and non-profit organizations who submit applications for assistance under a state or tribal government's Public Assistance award.

<sup>2</sup> 2 C.F.R. § 200.318(e).

Cooperative purchasing programs are distinguishable from joint procurements. A joint procurement is a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a vendor for the delivery of goods and services. This is typically done to obtain advantages unavailable for smaller procurements. Unlike a State or local purchasing schedule or contract, a joint procurement is not drafted for the purposes of accommodating the needs of other parties, who did not participate in the initial solicitation, but may later choose to participate in the benefits of the contract.

Applicants should consult with their attorneys before using a cooperative purchasing program, to determine whether their plan for using the program to obtain goods and services will comply with the federal procurement standards and applicable state, tribal and local procurement rules and policies.

**FEMA will closely scrutinize the use of cooperative purchasing programs. If a non-state applicant decides to use a cooperative purchasing program, it will need to provide FEMA with documentation to show and explain how its use of a cooperative purchasing program complied with all federal procurement standards and applicable state, tribal and local procurement rules and policies.**

## Smaller Procurements

Although FEMA requests that non-state applicants exercise caution when using cooperative purchasing programs, use of these programs is less likely to result in a violation of the federal procurement standards, when they are used with the procurement methods described in Table 1: Smaller Procurements below.

Table 1: Smaller Procurements

Method of Procurement	Notes on Using a Cooperative Purchasing Program	Requirements Specific to the Method of Procurement: An Applicant Must:	Requirements Common to All Procurement Methods: An Applicant Must:
Micro-Purchase Procedures (used when the aggregate dollar amount is less than or equal to \$3,500 or applicable state or local threshold if it is lower) See 2 C.F.R. § 200.320(a)	When following this procurement method, a non-state applicant may use a cooperative purchasing program to procure goods or services without further competition among vendors not participating in the program.	<ul style="list-style-type: none"> <li>Determine that price is reasonable.</li> <li>If practicable, distribute micro-purchases equitably among qualified suppliers.</li> </ul>	<ul style="list-style-type: none"> <li>Consult state law, local policies and regulations to confirm that no further steps are required.</li> <li>Tailor the solicitation's requirements to the non-state applicant's scope of work.</li> <li>Conduct an independent estimate, and if applicable, a cost or price analysis.</li> <li>Include the contract provisions required by DHS, FEMA, and 2 C.F.R. § 200.326.</li> </ul>

<p><b>Small Purchase Procedures (used when the aggregate dollar amount is less than or equal to \$150,000 or applicable state or local threshold if it is lower)</b> See 2 C.F.R. § 200.320(b)</p>	<p>When following this procurement method, a non-state applicant may obtain price or rate quotations solely from vendors participating in the cooperative purchasing program.</p>	<ul style="list-style-type: none"> <li>• Obtain 3 or more price or rate quotations from qualified vendors.</li> <li>• Include the 3 required price or rate quotes in the contract file.</li> <li>• Ensure that it and the cooperative purchasing program have taken the applicable socioeconomic contracting steps at 2 C.F.R. § 200.321.</li> </ul>	<ul style="list-style-type: none"> <li>• Ensure the final contract is not a cost-plus-percentage-of-cost contract prohibited by 2 C.F.R. § 200.323(d).</li> <li>• Ensure the contractor is responsible as required by 2 C.F.R. § 200.318(h) and not suspended, debarred, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities as required by 2 C.F.R. § 200.213.</li> </ul>
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**Larger and Non-Sole Source Procurements**

In addition to the procurement methods described in Table 1: Smaller Procurements (Micro-Purchase Procedures or Small Purchase Procedures), the federal procurement standards authorize non-state applicants to use Sealed Bidding and Competitive Proposals. If a non-state applicant is considering using a cooperative purchasing program as part of one of these procurement methods, complying with the federal procurement standards becomes more difficult for the following reasons:

- **Procurement Method:** Cooperative purchasing programs may not be in compliance with the Sealed Bidding and Competitive Proposals procurement methods under 2 C.F.R. § 200.320(c) and (d). These methods require that applicants publicly advertise or publicize the solicitations, solicit bids from an adequate number of known suppliers, and award contracts to a responsible, responsive firm with the lowest price or to a responsive firm whose proposal is most advantageous to the program with price and other factors considered.
- **Full and Open Competition:** The requirements that cooperative purchasing programs place on vendors in order to qualify may be overly burdensome or too restrictive in certain situations and not in compliance with the full and open competition requirements under 2 C.F.R. § 200.319. For example, if a cooperative purchasing program requires vendors to have experience performing several large debris removal projects but a non-state applicant who wants to use the cooperative purchasing program only needs a small amount of debris removal services, the non-state applicant’s use of the cooperative purchasing program—whose solicitations required a more extensive amount of experience than the non-state applicant requires—may be restrictive of competition in violation of 2 C.F.R. § 200.319. Smaller companies may have been capable of competing for the non-state applicant’s smaller debris removal requirement, but could not compete to be part of the cooperative purchasing program’s list of qualified vendors due to the extensive amount of experience needed to qualify.
- **Geographic Preferences:** Many jurisdictions have laws that favor or give preference to local suppliers. Any geographic preferences that a cooperative purchasing program uses in evaluating bids or proposals would violate 2 C.F.R. § 200.319(b), and any additional terms and conditions in a cooperative purchasing program’s pre-negotiated agreements that favor or give preference to local suppliers would be restrictive of competition.

- **Socio-economic Contracting Affirmative Steps:** Cooperative purchasing programs may have failed to take the applicable socio-economic contracting affirmative steps. Failure to take all of the affirmative steps would violate 2 C.F.R. § 200.321.

## Information an Applicant May Need to provide if it uses a Cooperative Purchasing Program for Larger and Non-Sole Source Procurements

As stated above, FEMA will closely scrutinize the use of cooperative purchasing programs. If a non-state applicant decides to use a cooperative purchasing program, it will need to provide FEMA with documentation to show and explain how its use of a cooperative purchasing program complied with the federal procurement standards and applicable state, tribal and local procurement rules and policies. In support of its application for reimbursement, the non-state applicant must provide documentation in order for FEMA to determine eligibility for reimbursement of project costs:

- The Contract or Agreement between the Vendor and the Cooperative Purchasing Program.
  - FEMA will examine whether the cooperative purchasing program has a contract with the individual vendor for the provision of the goods or services, off of which the non-state applicant can place a task order or purchase order, e.g. an Indefinite Delivery/Indefinite Quantity (IDIQ) contract, or whether the vendor has simply entered into an agreement, e.g. a Master Services Agreement, with the cooperative purchasing program to make goods or services available to a non-state applicant at set prices.
  - An example might be an indefinite delivery/indefinite quantity (IDIQ) contract that a state agency entered into with a vendor to provide computers, and off of which an in-state local government can place a task order for a specific quantity of computers. Where a state has set up multiple contracts of this kind, these cooperative purchasing programs are often known as “schedules.”
- The Contract or Task/Purchase Order between the Vendor and the Non-State Applicant.
- Documentation on How the Cooperative Purchasing Program and Non-State Applicant Publicly Advertised or Publicized the Solicitation outlining the Requirement for Goods and Services.
- Documentation Outlining Actions the Non-State Applicant and Cooperative Purchasing Program Took to Comply with the Federal Procurement Standards.

FEMA may request additional documentation to that described directly above. Based on documentation provided, FEMA will evaluate the actions of both the cooperative purchasing program and the non-state applicant to determine whether all actions taken to procure services and supplies under a Public Assistance grant were in compliance with the federal procurement standards.

**Sole Source Procurements**

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only 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 solicitation of a number of sources, competition is determined inadequate.

Although FEMA requests that non-state applicants exercise caution when using cooperative purchasing programs, use of these cooperative purchasing programs is less likely to result in a violation of the federal procurement standards, when they are used with the sole source method described below in Table 2: Sole Source Procurements below.

Table 2: Sole Source Procurements

Method of Procurement	Notes on Using a Cooperative Purchasing Program	Requirements Specific to the Method of Procurement: An Applicant Must:	Requirements Common to All Procurement Methods: An Applicant Must:
<p><b>Noncompetitive Proposals (“Sole Sourcing”) See 2 C.F.R. § 200.320(f)</b></p>	<p>When following this procurement method, a non-state applicant can choose any vendor, regardless of that vendor’s participation in a cooperative purchasing program, as long as there is proper justification for sole sourcing under one of the exceptions listed in 2 C.F.R. § 200.320(f).</p>	<ul style="list-style-type: none"> <li>• Include a justification for sole sourcing in the contract file.</li> <li>• Negotiate profit as a separate element of price.</li> </ul>	<ul style="list-style-type: none"> <li>• Consult state law, local policies and regulations to confirm that no further steps are required.</li> <li>• Tailor the solicitation’s requirements to the non-state applicant’s scope of work.</li> <li>• Conduct an independent estimate, and if applicable, a cost or price analysis.</li> <li>• Include the contract provisions required by DHS, FEMA, and 2 C.F.R. § 200.326.</li> <li>• Ensure the final contract is not a cost-plus-percentage-of-cost contract prohibited by 2 C.F.R. § 200.323(d).</li> <li>• Ensure the contractor is responsible as required by 2 C.F.R. § 200.318(h) and not suspended, debarred, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities as required by 2 C.F.R. § 200.213.</li> </ul>