

Public Assistance Applicant Procurement Compliance Checklist



Purpose:

Checklist for Reviewing Procurements under Grants by States, local and tribal governments, Institutions of Higher Education, Hospitals, and private non-profit organizations - 2 C.F.R. pt. 200. Revised on 11/21/18.

Complementary Resources:

- Procurement Rules Online: www.ecfr.gov
2 C.F.R. 200.317-326 can be viewed in its entirety at this website.
Title 2 → Subtitle A → Chapter II → Part 200 → Subpart D → Procurement Standards
- [Field Manual](#) and [Supplement](#) available at www.fema.gov/procurement-disaster-assistance-team

Type of
Entity

Applicant Name:	
Reviewer Name:	Date Reviewed:
Type of Entity Conducting the Procurement	
The term “non-Federal entity” (NFE) below refers to the entity that is conducting the procurement action (i.e., the state, local, territorial or tribal government, or private-non-profit entity).	
1	Is the NFE a State as defined by 2 C.F.R. § 200.90? Yes ☐ → The NFE must comply with 2 C.F.R. 200.317, 200.322, and 200.326 No ☐ → The NFE must comply with 2 C.F.R. 200.318 through 200.326
2	Does the procurement comply with the State’s own procurement laws, rules, and procedures? §200.317 Yes ☐ No ☐ → The procurement does not comply with federal requirements
3	Does the procurement comply with the requirement to make maximum use of recovered/recycled materials? § 200.317, § 200.322 Yes ☐ No ☐ → The procurement does not comply with federal requirements N/A ☐ → Work does not involve the use of materials (e.g., debris removal or otherservices) or the NFE is not a political subdivision of a State



Required Contract Clauses

Contract Clauses		
4	If the contract amount exceeds \$250,000, does it address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for sanctions and penalties?	Yes ☐ No ☒ N/A ☐ The contract does not comply with federal requirements
5	If the contract amount exceeds \$10,000, does it address termination for cause and for convenience , including the manner by which it will be effected and the basis for settlement?	Yes ☐ No ☒ N/A ☐ The contract does not comply with federal requirements
6	If the contract is for construction, does it include the required Equal Employment Opportunity clause?	Yes ☐ No ☒ N/A ☐ The contract does not comply with federal requirements
7	For construction contracts exceeding \$2,000 awarded under a Federal grant, does the contract include a Davis-Bacon Act clause and Copeland "Anti- Kickback" Act clause addressing prevailing wage rates?	Yes ☐ No ☒ N/A ☒ The contract does not comply with federal requirements Public Assistance and Hazard Mitigation Grant Program contracts do NOT require these clauses
8	If the contract amount exceeds \$100,000 and involves the employment of mechanics or laborers , does the contract include the required Contract Work Hours and Safety Standards clause?	Yes ☐ No ☒ N/A ☐ The contract does not comply with federal requirements
9	Rights to Inventions Made Under a Contract or Agreement	Yes ☐ No ☒ N/A ☒ The contract does not comply with federal requirements This requirement does NOT apply to the Public Assistance Grant Program
10	If the contract or subrecipient amount exceeds \$150,000, does the contract include clauses addressing the Clean Air Act and the Federal Water Pollution Control Act ?	Yes ☐ No ☒ N/A ☐ The contract does not comply with federal requirements



Required Contract Clauses	11	Does the contract include a Suspension and Debarment clause?	Yes ☐ No ☐ 	The contract does not comply with federal requirements
	12	Does the contract include a Byrd Anti-Lobbying clause?	Yes ☐ No ☐ 	The contract does not comply with federal requirements
	13	For contracts exceeding \$100,000, have bidders submitted the required Byrd Anti-Lobbying Certification?	Yes ☐ No ☐  N/A ☐	The contract does not comply with federal requirements
	14	Does the contract include a clause requiring the contractor to maximize use of recovered/recycled materials ?	Yes ☐ No ☐  N/A ☐ 	The contract does not comply with federal requirements Work does not involve the use of materials (e.g., debris removal or other services) or NFE is not a political subdivision of a State
	15	Does the contract include a clause allowing for changes or modifications to the contract?	Yes ☐ No ☐  N/A ☐	The contract does not include provisions recommended by FEMA
Recommended Contract Clauses	16	Does the contract include a clause requiring the contractor and any subcontractors to comply with applicable provisions governing Department and FEMA access to records ?	Yes ☐ No ☐  N/A ☐	The contract does not include provisions recommended by FEMA
	17	Does the contract restrict any contractors and subcontractors from using DHS's seal, logo, or flag without express permission?	Yes ☐ No ☐  N/A ☐	The contract does not include provisions recommended by FEMA
	18	Does the contract contain a clause requiring the contractor to comply with all applicable federal law, regulations, executive orders , and FEMA policies, procedures and directives?	Yes ☐ No ☐  N/A ☐	The contract does not include provisions recommended by FEMA



Recommended Contract
Clauses

19	Does the contract contain a provision stating that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to any party under the contract?	Yes ☐ No ☒ N/A ☐	The contract does not include provisions recommended by FEMA
20	Does the contract include a provision in which the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract?	Yes ☐ No ☒ N/A ☐	The contract does not include provisions recommended by FEMA



If a State agency is awarding the contract, STOP here.

The District of Columbia, USVI, the commonwealth of Puerto Rico, Guam, American Samoa, and the commonwealth of the Northern Mariana Islands are included in the definition of a state.

If the contract is being awarded by a local or tribal government or private nonprofit entity, CONTINUE with the checklist.



General Requirements	
Type of Entity	21 Does the procurement comply with the NFE's own procurement laws, rules, and procedures which reflect applicable state, local, and tribal laws and regulations? §200.318(a) Yes ☐ No ☒ → The procurement does not comply with federal requirements
	22 Did the NFE maintain contract oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders? §200.318(b) Yes ☐ No ☒ → The procurement does not comply with federal requirements
Written Standards of Conduct	23 Does the NFE have written standards of conduct covering - §200.318(c)(1):
	24 Conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts? Yes ☐ No ☒ → The standards do not comply with federal requirements
	25 Any employee, officer, or agent participating in the selection, award, or administration of a contract supported by a Federal award that has an actual or apparent conflict of interest? Yes ☐ No ☒ → The standards do not comply with federal requirements
	26 Any employee, officer, or agent that has solicited and/or accepted gratuities, favors, or anything of monetary value from contractors or parties to subcontracts? Yes ☐ No ☒ → The standards do not comply with federal requirements
	27 Do standards of conduct provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity? Yes ☐ No ☒ → The standards do not comply with federal requirements
	28 If the NFE has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, does the non-Federal entity have written standards of conduct covering organizational conflicts of interest? §200.318(c)(2) Yes ☐ No ☒ → The standards do not comply with federal requirements N/A ☐
	29 The NFE must avoid acquisition of unnecessary or duplicative items . Has the NFE considered consolidating or breaking out procurements to obtain a more economical purchase? Where appropriate, has the NFE considered lease versus purchase alternatives? § 200.318(d) Yes ☐ No ☒ → The procurement does not comply with federal requirements



T&M Contracts

30	Is the contract being awarded to a responsible contractor possessing the ability to perform successfully under the terms and conditions of the proposed procurement, giving consideration to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources? § 200.318(h)	Yes ☐ No ☒	The contract does not comply with federal requirements
31	Is the NFE keeping records sufficient to detail the history of the procurement, including, but not limited to, records documenting the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price? § 200.318(i)	Yes ☐ No ☒	The procurement does not comply with federal requirements
32	Is the contract a time-and-materials contract ? § 200.318(j)	Yes ☐ → No ☒ →	Answer questions 33 and 34 Skip to 35
33	Has the NFE documented why no other contract is suitable?	Yes ☐ No ☒	The contract does not comply with federal requirements
34	Does the contract include a ceiling price that the contractor exceeds at its own risk?	Yes ☐ No ☒	The contract does not comply with federal requirements
35	Is the NFE alone responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements? §200.318(k)	Yes ☐ No ☒	The procurement does not comply with federal requirements

Competition

Full & Open Competition

36	All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. Does the procurement involve any of the following - § 200.319(a):		
37	Placing unreasonable requirements on firms in order for them to qualify to do business?	Yes ☒ No ☐	The procurement does not comply with federal requirements
38	Requiring unnecessary experience and excessive bonding ?	Yes ☒ No ☐	The procurement does not comply with federal requirements



Full & Open Competition	39	Noncompetitive pricing practices between firms or between affiliated companies?	Yes ☐  No ☐	The procurement does not comply with federal requirements
	40	Noncompetitive contracts to consultants that are on retainer contracts ?	Yes ☐  No ☐	The procurement does not comply with federal requirements
	41	Organizational conflicts of interest?	Yes ☐  No ☐	The procurement does not comply with federal requirements
	42	Specifying only a “ brand name ” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement?	Yes ☐  No ☐	The procurement does not comply with federal requirements
	43	Any arbitrary action in the procurement process?	Yes ☐  No ☐	The procurement does not comply with federal requirements
Geographic Preference	44	Was the contractor that is bidding on the contract also involved with developing or drafting the specifications, requirements, statement of work, invitation for bids, or request for proposals? § 200.319(a)	Yes ☐  No ☐ N/A ☐	The procurement does not comply with federal requirements (That contractor must be excluded from competing for such procurement)
	45	Does the contract include a state or local geographic preference for local contractors? § 200.319(b)	Yes ☐  No ☐ 	Answer 46 Skip to 47
	46	Did the NFE document one of the allowed exceptions?	Yes ☐ No ☐ 	The contract does not comply with federal requirements
Written Procurement Procedures	47	Do the NFE’s written procurement procedures ensure that all solicitations comply with the following - § 200.319(c):		
	48	Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured? § 200.319(c)(1)	Yes ☐ No ☐ 	The procedures do not comply with federal requirements
	49	Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals ? § 200.319(c)(2)	Yes ☐ No ☐ 	The procedures do not comply with federal requirements



Pre-Qualified Lists

50	Is the NFE using a prequalified list of persons, firms, or products which are used in acquiring goods and services: § 200.319(d)?	Yes ☐ No ☐	Answer questions 51-53 Skip to 54
51	Is the list current ?	Yes ☐ No ☐	The prequalified list does not comply with federal requirements
52	Does the list include enough qualified sources to ensure maximum open and free competition ?	Yes ☐ No ☐	The prequalified list does not comply with federal requirements
53	Were any potential bidders precluded from qualifying during the solicitation period?	Yes ☐ No ☐	The procurement does not comply with federal requirements

Method of Procurement

Micro-Purchase

54	Is the NFE using one of the following acceptable methods of procurement? § 200.320		
55	Micro-purchase (i.e., purchases below \$10,000, see, §200.67 Micro- purchases) § 200.320(a) Note: Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.	Yes ☐ No ☐	Answer 56 Skip to next method
56	To the extent practicable, is the NFE distributing micro-purchases equitably among qualified suppliers?	Yes ☐ No ☐ N/A ☐	The procurement does not comply with federal requirements



Small Purchase	57	Small purchase procedures § 200.320(b) Note: Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the lesser of either (1) the federal small purchase threshold (i.e., \$250,000), or (2) whatever amount State or local procurement rules set as the small purchase threshold— if more restrictive than the federal threshold.	Yes ☐  No ☐ 	Answer 58 Skip to next method
	58	Did the NFE obtain price or rate quotations from an adequate number of qualified sources (at least 3 or more)?	Yes ☐ No ☐ 	The procurement does not comply with federal requirements
Sealed Bids	59	Sealed bids § 200.320(c) Note: Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.	Yes ☐  No ☐ 	Answer 60-71 Skip to next method
	60	Are all of the following conditions to use sealed bidding present? § 200.320(c)(1)	Yes ☐  No ☐ 	Check if all answers between 61 and 63 are “Yes” If you answer “No” to any of the questions between 61 and 63, the procurement does not comply with federal requirements
	61	Is a complete, adequate, and realistic specification or purchase description is available?	Yes ☐ No ☐ 	The procurement does not comply with federal requirements
	62	Are two or more responsible bidders willing and able to compete effectively for the business?	Yes ☐ No ☐ 	The procurement does not comply with federal requirements
	63	Does the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price?	Yes ☐ No ☐ 	The procurement does not comply with federal requirements
	64	If sealed bids are used, the following requirements apply: § 200.320(c)(2)		



Sealed Bids

65	Did the NFE solicit bids from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids?	Yes ☐ No ☒	The procurement does not comply with federal requirements
66	If the NFE is a local or tribal government, was the invitation for bids publicly advertised?	Yes ☐ No ☒ N/A ☐	The procurement does not comply with federal requirements
67	Did the invitation for bids include any specifications and pertinent attachments, and define the items or services in order for the bidder to properly respond?	Yes ☐ No ☒	The procurement does not comply with federal requirements
68	Did the NFE open all bids at the time and place prescribed in the invitation for bids?	Yes ☐ No ☒	The procurement does not comply with federal requirements
69	For local and tribal governments , were the bids opened publicly?	Yes ☐ No ☒ N/A ☐	The procurement does not comply with federal requirements
70	Did the NFE award a firm fixed price contract award in writing to the lowest responsive and responsible bidder?	Yes ☐ No ☒	The procurement does not comply with federal requirements
71	If any bids were rejected, was there a sound documented reason supporting the rejection?	Yes ☐ No ☒ N/A ☐	The procurement does not comply with federal requirements
72	Procurement by competitive proposals § 200.320(d) Note: The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids.	Yes ☒ No ☒	Answer 73-76 Skip to next method

Competitive Proposals



Competitive Proposals	73	Did the NFE publicize the Requests for Proposals (RFPs) and identify all evaluation factors and their relative importance?	Yes ☐ No ☒	The procurement does not comply with federal requirements
	74	Did the NFE solicit proposals from an adequate number of qualified sources?	Yes ☐ No ☒	The procurement does not comply with federal requirements
	75	Did the NFE have a written method for conducting technical evaluations of the proposals received and for selecting recipients?	Yes ☐ No ☒	The procurement does not comply with federal requirements
	76	Did the NFE award the contract to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered?	Yes ☐ No ☒	The procurement does not comply with federal requirements
	77	Note regarding architectural/engineering (A/E) professional services: The NFE may use competitive proposal procedures for qualifications-based procurement of A/E professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.		
Noncompetitive Proposals	78	Noncompetitive proposals § 200.320(f) Note: Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one (or an improperly limited number of) source(s).	Yes ☒ No ☐	Answer 79-83
	79	If using a noncompetitive proposal method, do one or more of the following circumstances apply?	Yes ☒ No ☒	Check if one or more of answers to 80-83 are "Yes" If you answer "No" or "N/A" to 79-82, the procurement does not comply with federal requirements



Non-Competitive Proposals

80	The item is available only from a single source	Yes ☐ No ☐ N/A ☐	
81	The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation	Yes ☐ No ☐ N/A ☐	
82	The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity	Yes ☐ No ☐ N/A ☐	
83	After solicitation of a number of sources, competition is determined inadequate	Yes ☐ No ☐ N/A ☐	

Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms (Not Required for Micro-Purchases)

Affirmative Steps

84	Has the NFE taken the following affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible? § 200.321	Yes ☐ No ☐ N/A ☐	The procurement does not comply with federal requirements Not required for procurements under \$10,000. (Document)
85	Placing qualified small and minority businesses and women's business enterprises on solicitation lists?	Yes ☐ No ☐ N/A ☐	The procurement does not comply with federal requirements (Document)



Affirmative Steps

86	Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources?	Yes ☐ No ☒ N/A ☒	The procurement does not comply with federal requirements No potential sources (Document)
87	Dividing total requirements, when economically feasible , into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises?	Yes ☐ No ☒ N/A ☒	The procurement does not comply with federal requirements Not economically feasible (Document)
88	Establishing delivery schedules, where the requirement permits , which encourage participation by small and minority businesses, and women's business enterprises?	Yes ☐ No ☒ N/A ☒	The procurement does not comply with federal requirements The requirement does not permit (Document)
89	Using the services and assistance, as appropriate , of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce?	Yes ☐ No ☒ N/A ☒	The procurement does not comply with federal requirements Not appropriate (Document)
90	Requiring the prime contractor, if subcontracts are to be let , to take the affirmative steps listed above?	Yes ☐ No ☒ N/A ☒	The procurement does not comply with federal requirements No subcontractors will be let (Document)

Contract Cost and Price

Cost or Price Analysis

91	If the contract amount (including contract modifications) exceeds \$250,000 , did the NFE perform a cost or price analysis? § 200.323(a)	Yes ☐ No ☒ N/A ☐	The procurement does not comply with federal requirements
92	Did the NFE negotiate profit as a separate element of the price for each contract in <i>which there is no price competition and, in all cases, where cost analysis is performed?</i> § 200.323(b)	Yes ☐ No ☒ N/A ☐	The procurement does not comply with federal requirements



CPPC Contract	93 Is the contract a “cost plus a percentage of cost” or “percentage of construction cost” contract?	Yes ☐  No ☐	This form of contract is prohibited under the Federal procurement standards
	Bonding Requirements for Construction or Facility Improvement Contracts Exceeding \$250,000		
Bonding Requirements	94 Note: For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (i.e., \$250,000), the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected.		
	95 If such a determination (see above) has not been made, does the procurement include the following?	Yes ☐ No ☐  N/A ☐	The procurement does not comply with federal requirements
	96 A bid guarantee from each bidder equivalent to five percent of the bid price ? The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.	Yes ☐ No ☐  N/A ☐	The procurement does not comply with federal requirements
	97 A performance bond on the part of the contractor for 100 percent of the contract price ? A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.	Yes ☐ No ☐  N/A ☐	The procurement does not comply with federal requirements
	98- A payment bond on the part of the contractor for 100 percent of the contract price ? A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.	Yes ☐ No ☐  N/A ☐	The procurement does not comply with federal requirements

