



FEMA

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MEMORANDUM FOR: All States, Territories, Tribal Governments, Local Governments, and All Other Non-Federal Entities Receiving FEMA Financial Assistance

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SUBJECT: Procurement Under Grants Conducted Under Emergency or Exigent Circumstances for COVID-19

Subsequent to the President's March 13, 2020 Nationwide Emergency Declaration for Coronavirus Disease 2019 (COVID-19), the Department of Homeland Security's Federal Emergency Management Agency (FEMA) is issuing the attached Fact Sheet addressing procurements made during periods of exigent or emergency circumstances. FEMA recognizes that noncompetitive procurements may be necessary to save lives, to protect property and public health, and to ensure public safety, as well as to lessen or avert the threat of a catastrophe. The attached Fact Sheet provides answers and guidance surrounding the need for such measures.

Current Federal procurement standards (found at 2 C.F.R. § 200.320(f)(2)) allow non-state entities to noncompetitively procure contracts (i.e., sole-sourcing) under certain emergency or exigent circumstances. FEMA defines an emergency or exigent circumstances as unexpected and unusually dangerous situations requiring immediate action or an urgent need for assistance or relief. Emergencies typically involve a threat to life, public health or safety, improved property, or some other form of dangerous situation. Exigencies, on the other hand, typically involve an urgent need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise. Under both an emergency and exigency, using a competitive procurement process would prevent a non-state entity from taking immediate action required to address the situation. However, use of the emergency/exigency exception is only permissible during the actual emergency or exigent circumstances.

The President's unprecedented Nationwide Emergency Declaration, and the Secretary of Health and Human Services' (HHS) declaration of a Public Health Emergency for COVID-19 establish that exigent and emergency circumstances currently exist.

[For the duration of the Public Health Emergency](#), which began January 27, 2020 as determined by HHS, local governments, tribal governments, nonprofits, and other non-state entities may proceed with new and existing noncompetitively procured contracts in order to protect property and public health and safety, or to lessen or avert the threats created by emergency situations for 1) Emergency protective measures under FEMA's Public Assistance Program and 2) Use of FEMA non-disaster grant funds by non-state recipients and sub-recipients to respond to or address COVID-19.

Attachment:

(1) Fact Sheet: *Procurement Under Grants Conducted Under Exigent or Emergency Circumstances*



Procurement Under Grants Conducted Under Exigent or Emergency Circumstances

The Federal Emergency Management Agency (FEMA) provides financial assistance to states, territories, tribes, local governments, nonprofits, institutions of higher education, and other non-Federal entities. All FEMA grant programs are subject to the Federal procurement standards found at 2 C.F.R. §§ 200.317 – 200.326. Recognizing that FEMA’s recipients and subrecipients may face exigencies or emergencies when carrying out a FEMA award, this Fact Sheet provides key information to consider when utilizing contracted resources under exigent or emergency circumstances.

What Rules Apply to State Entities?

States are required to follow their own procurement procedures as well as the Federal requirements for procurement of recovered materials and inclusion of required contract provisions per 2 C.F.R. §§ 200.317, 200.322, and 200.326.

For purposes of the Federal procurement requirements, states are defined as the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Northern Mariana Islands, and any agency or instrumentality thereof except for local governments. Tribal governments are not considered to be states when applying Federal procurement standards required by 2 C.F.R. Part 200.

What Rules Apply to Non-State Entities?

For all other types of entities, referred to as “non-state entities” in this Fact Sheet, Federal regulations (2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) establish requirements for the exigency or emergency exception that permits the use of noncompetitive procurements, frequently referred to as “sole-source contracting.” This exception and associated procurement requirements are discussed further below. In general, it will be fact-specific and entity-specific as to when exigent or emergency circumstances necessitate the use of noncompetitive procurements. The answers to the frequently asked questions below provide additional guidance on the acceptable use of noncompetitive proposals under exigent or emergency circumstances, which is described in regulation at 2 C.F.R. § 200.320(f)(2).

It is essential that all non-state entities understand that both FEMA and the U.S. Department of Homeland Security’s Office of Inspector General (OIG) closely review procurement actions and contract selections, with a particular emphasis on noncompetitive procurement actions, to evaluate compliance with Federal requirements. ***Failure to follow Federal contracting and procurement requirements puts non-state entities at risk of not receiving reimbursement or not being able to use FEMA grant funds for otherwise eligible costs.***

What is the exigency or emergency exception?

Non-state entities must follow the procurement requirements found at 2 C.F.R. §§ 200.317 – 200.326. However, Federal regulations allow for noncompetitive procurements under certain circumstances, including when a non-state entity determines that immediate actions required to address the public exigency or emergency cannot be delayed by a competitive solicitation. This represents an exception to requirements for full and open competition. FEMA approval is not required for use of noncompetitive

procurements under the emergency or exigency exception; however, the non-state entity must document its justification for using noncompetitive procurements and must still comply with other procurement requirements and ensure that costs are reasonable.

When referring to procurement activity, FEMA defines both exigency and emergency as situations that demand immediate aid or action. The difference between the two is that:

- In the case of an **exigency**, there is a need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise, to the non-state entity, and use of competitive procurement proposals would prevent the urgent action required to address the situation. Thus, a noncompetitive procurement may be appropriate.
- In the case of an **emergency**, a threat to life, public health or safety, or improved property requires immediate action to alleviate the threat.

While emergency conditions generally are short-lived, exigent circumstances can exist for a period of weeks or months.

Exigency Example: A tornado impacts a city in June and causes widespread and catastrophic damage, including damage to a city school. The city wants to repair the school and have it ready for use by the beginning of the school year in September. The city estimates, based on past experience, that awarding a contract using a sealed bidding process would require at least 90 days, and the city's engineer estimates that the repair work would last another 60 days. This would extend the project beyond the beginning of the school year. Rather than conducting a sealed bidding process, the city—in compliance with state and local law—wants to sole source with a contractor it has contracted with previously. The city can demonstrate that this constitutes an “exigent circumstance” because use of a sealed bidding process would cause an unacceptable delay and thus procurement by noncompetitive methods was necessary based on the particular situation.

Emergency Example #1 (Disaster Grants): Severe weather impacts a city and causes widespread and catastrophic damage, including loss of life, widespread flooding, loss of power, damage to public and private structures, and millions of cubic yards of debris across the city, leaving almost the entire jurisdiction inaccessible. The city needs to begin debris removal activities immediately to restore access to the community, support search and rescue operations, power restoration, and address health and safety concerns. Under these circumstances, the city may find it necessary to award noncompetitive contracts to address threats to life, property, and public health.

Emergency Example #2 (Non-Disaster Grants): The weather in a city has been below freezing for the past 2 weeks, causing a pipe in the city's emergency operations center to burst and flood the first floor. This flood destroyed half of the city's radios that its emergency workers use to communicate with police and fire personnel. The city documented and demonstrated that it needed to replace these radios right away to avert an immediate threat to life, safety, or property as the city needed a full supply of radios in order to respond to emergencies. Under these circumstances, the city may find it necessary to award noncompetitive contracts to address threats to life, property, and public health.

When does the exigency or emergency exception apply and for how long?

Use of the public exigency or emergency exception *is only permissible during the actual exigent or emergency circumstances*. Exigency or emergency circumstances will vary for each incident, making it difficult to determine in advance or assign a particular time frame when noncompetitive procurements may be warranted. Exigent or emergency circumstances may exist for two days, two weeks, two months, or even longer in some cases. Non-state entities must ensure that work performed under the noncompetitively procured contracts is specifically related to the exigent or emergency circumstance in

effect at the time of procurement. Importantly, because the exception to competitive procurement is available only while the exigent or emergency circumstances exist, non-state entities should, upon awarding a noncompetitive contract, immediately begin the process of competitively procuring similar goods and services in order to transition to the competitively procured contracts as soon as the exigent or emergency circumstances cease to exist.

FEMA may review a non-state entity's justification that exigent or emergency circumstances warrant an exception to competitive procurement. If the agency determines that exigent or emergency circumstances did not exist or did not preclude a non-state entity from adhering to competitive procurement requirements, FEMA may disallow all or part of the non-state entity's cost related to the contract or take other actions permitted by statute and regulation. (*See* 2 C.F.R. § 200.338).

What documentation is required to support the use of the exigency or emergency exception?

While FEMA approval is not required for a non-state entity to use noncompetitive procurement proposals under the emergency or exigency exception, non-state entities must document and provide justification for the use of the exigent or emergency exception. A list of elements that non-state entities may wish to include as part of their written justifications can be found at the end of this Fact Sheet. The justification must be included in the non-state entity's records for each FEMA award, subaward, or project.

Do any Federal procurement requirements apply if a non-state entity is sole-sourcing a contract under exigent or emergency circumstances?

Yes, non-state entities must comply with the following requirements even when exigent or emergency circumstances exist:

- Contracts must include the required contract clauses (2 C.F.R. § 200.326 & Appendix II) (also applicable to states).
- Contracts exceeding the Federal simplified acquisition threshold must include the Federal bonding requirements if the contract is for construction or facility improvement (2 C.F.R. § 200.325).
- Contracts must be awarded to a responsible contractor (2 C.F.R. § 200.318(h)).
- The non-state entity must complete a cost or price analysis to determine that the cost or price of the contract is fair and reasonable if the contract exceeds or is expected to exceed the Federal simplified acquisition threshold (2 C.F.R. § 200.323(a) and (b)).
- The use of cost-plus-percentage-of-cost contracting is prohibited (2 C.F.R. § 200.323(c)).
- Use of time and materials contracts must comply with 2 C.F.R. § 200.318(j).
- The non-state entity must follow documentation, oversight, and conflict of interest requirements among other general procurement requirements in 2 C.F.R. § 200.318. If a conflict of interest is unavoidable due to the exigent/emergency circumstances, the non-state entity must explain that in the procurement documentation.

What if the non-state entity wants to use a pre-awarded or pre-existing contract in an exigency or emergency and that contract does not comply with the Federal procurement requirements?

If a pre-awarded or pre-existing contract is not in compliance with the Federal procurement requirements (e.g., the contract was not fully and openly competed (*see* 2 C.F.R. §§ 200.319, 200.320), the six affirmative socioeconomic contracting steps were not completed (2 C.F.R. § 200.321), there is a conflict of interest involved (2 C.F.R. § 200.318)), it may still be possible to use the contract for the duration of the exigency or emergency. FEMA recommends that non-state entities review the list of procurement requirements above and take actions to modify pre-awarded or pre-existing contracts where applicable. In addition, non-state entities must prepare the appropriate documentation to justify the use

of a noncompetitively procured contract.

Can non-state entities use time and materials (T&M) contracts in an exigency or emergency?

Yes, but only under certain circumstances. FEMA advises against the use of T&M contracts and generally limits the use of these contracts to a short time period where the scope or duration of the work is unclear. T&M contracts do not incentivize contractors to control costs or maximize labor efficiency. FEMA may reimburse costs incurred under a T&M contract only if all of the following apply:

- No other contract was suitable;
- The contract has a ceiling price that the contractor exceeds at its own risk; and
- The non-state entity can demonstrate it provided a high degree of oversight to obtain reasonable assurance that the contractor used efficient methods and effective cost controls.

Can a non-state entity award cost-plus-a-percentage-of-cost contracts or contracts with a percentage-of construction-cost method in an exigency or emergency?

No. This prohibition applies to all work, regardless of the circumstances (2 C.F.R. § 200.323(d)).

Can non-state entities use *piggyback* contracts in an exigency or emergency?

Piggyback contracting occurs when one entity with an existing contract assigns some or all of its contractual rights to another entity that was not previously party to the contract. Generally, FEMA discourages piggyback contracts because the original contract pertains to the needs of the original entity with a specific scope of work for that entity. While there may be circumstances when piggybacking is permissible, in almost all instances, the scope of work would need to be changed to include the needs of a non-state entity, and changes to the scope of work are generally not permitted as there is not likely to be full and open competition for the expanded scope of work. However, during emergency and exigency circumstances, non-state entities may be able to piggyback another entity's contract and expand the scope of a contract for the period of the emergency or exigency circumstance.

Note that a non-state entity may choose to enter into a separate contract with the same contractor as another entity, using the same terms and conditions as in that other entity's contract, with only a change in the scope of work and the associated costs. However, this is sole-source contracting rather than piggyback contracting, and it must meet the requirements for noncompetitive procurement under exigency or emergency circumstances as described elsewhere in this Fact Sheet.

If a non-state entity is contemplating the use of piggyback contracting, it should contact its state or territory liaison, or the applicable FEMA Program Office to request FEMA assistance with contract review. For assistance with FEMA contact information, the entity should contact the Centralized Scheduling and Information Desk (CSID) help line at (800) 368-6498 or askcsid@fema.dhs.gov. CSID hours of operation are from 9 a.m. to 5 p.m. ET, Monday through Friday.

Can states use time and materials (T&M) or cost-plus-percentage-of-cost (CPPC) contracts in an exigency or emergency?

While the Federal procurement rules do not prohibit the use of T&M contracts and CPPC contracts by states, FEMA discourages states from using these contracts because they generally lack provisions that control costs and maximize efficiency in performing work. FEMA and the OIG closely scrutinize these types of contracts for cost reasonableness.

Although T&M contracts are discouraged, there may be instances where T&M contracts are appropriate in the short term for activities such as debris removal, emergency power restoration, or other immediate actions required to address emergency health and safety threats under a Public Assistance award. States

entering into T&M contracts are encouraged to include language in the contract that specifies a ceiling price and limits the duration of the contract to a short time period, thus providing the state time to develop a scope of work and transition to the more competitive procurement procedures.

As a reminder, 2 C.F.R. § 200.317 requires states to follow: (1) the same policies and procedures they use for procurements using non-Federal funds; (2) 2 C.F.R. § 200.322 (procurement of recovered materials); and (3) 2 C.F.R. § 200.326 (required contract provisions). These requirements apply regardless of whether exigency or emergency circumstances exist. States must ensure that they are also in compliance with the cost principles in 2 C.F.R. §§ 200.400 – 200.474, including ensuring that costs are reasonable, as defined in 2 C.F.R. § 200.404.

Additional Information and Resources

Non-state entities should consult as soon as possible with all appropriate parties, including their own legal counsel, to review their procurement policies, actions, and contracts and compare them to the Federal procurement requirements. Non-state entities also should contact their state or territory liaisons, or applicable FEMA Program Office to request assistance with any procurement activity concerns. For assistance with FEMA contact information, the entity should contact the Centralized Scheduling and Information Desk (CSID) help line at (800) 368-6498 or askcsid@fema.dhs.gov. CSID hours of operation are from 9 a.m. to 5 p.m. ET, Monday through Friday.

Detailed procurement and contracting information is available on the FEMA website at www.fema.gov/procurement-disaster-assistance-team. While the guidance available at that website is specifically applicable to FEMA's Public Assistance Program, it is a useful resource for FEMA's other grant programs as the procurement requirements in 2 C.F.R. Part 200 apply to all of FEMA's grant programs. The current Code of Federal Regulations referenced in this guidance can be accessed at www.eCFR.gov. The annual Code of Federal Regulations is available at <https://www.govinfo.gov/app/collection/cfr>, and the applicable regulations will be the ones in place at the time FEMA issued the declaration or made the award.

Suggested Elements for Noncompetitive Procurement Justification

1. Identify which of the four circumstances listed in 2 C.F.R. § 200.320(f) justify a noncompetitive procurement:
 - (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.
2. Provide a brief description of the product or service being procured, including the expected amount of the procurement.
3. Explain why a noncompetitive procurement is necessary. If utilizing the exigency/emergency exception, the justification should explain the nature of the public exigency or emergency, including specific conditions and circumstances that clearly illustrate why procurement other than through noncompetitive proposals would cause unacceptable delay in addressing the public exigency or emergency. (Failure to plan for transition to competitive procurement cannot be the basis for continued use of noncompetitive procurement based on public exigency or emergency).
4. State how long the noncompetitively procured contract will be used for the defined scope of work and the impact on that scope of work should the noncompetitively procured contract not be available for that amount of time (e.g., 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; or how long would it take another contractor to reach the same level of competence).
5. Describe the specific steps taken to determine that full and open competition could not have been used, or was not used, for the scope of work (e.g., research conducted to determine that there were limited qualified resources available that could meet the contract provisions).
6. 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. If a conflict of interest is unavoidable, such as due to exigent/emergency circumstances, explain how it was unavoidable and any steps taken to address the impact of that conflict of interest.
7. Include any other information justifying the use of noncompetitive procurement in the specific instance.

NOTE: A separate justification is required for each instance of noncompetitive procurement.



PUBLIC ASSISTANCE: REASONABLE COST EVALUATION

The Federal Emergency Management Agency (FEMA) Public Assistance (PA) Program provides supplemental assistance to States, Territories, Tribes, and local governmental entities, as well as certain private nonprofit (PNP) organizations (hereinafter referred to as Applicants). FEMA's *Public Assistance Program and Policy Guide* (<http://www.fema.gov/public-assistance-policy-and-guidance>) provides comprehensive information regarding assistance that FEMA can provide and the requirements that Applicants must follow in order to receive the assistance. This Job Aid supersedes FEMA's *Public Assistance Alternative Procedures Pilot Program Validation of Subgrantee-Provided Cost Estimates Job Aid*, dated May 20, 2013. It provides uniform guidance to FEMA personnel on evaluating cost reasonableness for Federal funds expended by non-Federal entities, also referred to as Applicants in this guidance, under the PA Program in accordance with Title 2 Code of Federal Regulations (CFR) § 200.404, and for disasters declared prior to December 26, 2014, in accordance with 44 CFR part 13 and the Office of Management and Budget (OMB) Circular A-87. This Job Aid includes a checklist in Appendix A: *Validation of Applicant-Provided Cost Estimates*, which FEMA staff must use to review and validate cost estimates submitted to FEMA for Permanent Work.

Applicability

This guidance applies to any assessment of cost reasonableness undertaken by FEMA for relevant work completed under a PA grant award or subaward. It provides general information to guide FEMA personnel in evaluating whether costs are reasonable including when necessary as the result of a financial review such as closeout or administrative appeals, Department of Homeland Security Office of the Inspector General (DHS OIG) audits, single audits under 2 CFR part 200, and Improper Payments Elimination and Recovery Act audits.

Cost eligibility is a basic component of PA Program eligibility, and in order for a cost to be considered allowable, it must be necessary and reasonable to accomplish the work properly and efficiently.¹ FEMA evaluates cost reasonableness for all projects. In addition, the determination of cost reasonableness is also instructive with regard to grant non-compliance enforcement remedies. Generally, FEMA considers an Applicant's force account labor, equipment, and materials costs as reasonable provided the costs are consistent with the entity's policies including, but not limited to, pay rates, labor policies, and cost schedules utilized during its normal operations. Contract costs are generally considered reasonable when the Applicant adheres to full and open competition under applicable Federal procurement under grant requirements, and the scope of services or work in the contract and level of effort is consistent with respect to the eligible scope of work. For these situations, FEMA staff are not required to perform a detailed cost reasonableness analysis.

¹ 2 CFR § 200.403

Reasonable Costs – General Information

Definition²

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.

Factors to Consider in Determining Reasonable Costs³

FEMA considers many factors in evaluating whether costs are reasonable, including:

Factor	Example
Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the Applicant or the proper and efficient performance of the Federal award	The appropriate skill level and/or level of effort to complete the required activity
The restraints or requirements imposed by such factors as: sound business practices; arm’s length bargaining; Federal, Tribal, State, local, and other laws and regulations; and terms and conditions of the Federal award	Whether the Applicant participated in ethical business practices, ensuring parties to a transaction are independent of each other, without familiar ties or shared interests and on equal footing without one party having control of the other
Market prices for comparable goods or services for the geographic area, particularly in the context of post-disaster conditions, which may cause shortages of skilled labor, building materials, and energy sources	When escalated costs are due to shortages, FEMA considers whether the Applicant’s work continued beyond the period of shortages and whether there was an opportunity for the Recipient/Subrecipient to obtain more reasonable pricing
Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the Applicant, its employees, its students or membership, the public at large, and the Federal Government	Were there emergency or exigent circumstances?
Whether the Applicant significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award’s cost	Did the Applicant comply with procurement requirements?

FEMA also considers project-specific complexities that may affect costs, such as: environmental or historic issues; remote access or location; provision of a unique service with few providers; and elements requiring an extraordinary level of effort.

² 2 CFR § 200.404; OMB Circular A-87

³ Id.

Process to Determine Reasonable Costs

In conducting a reasonable cost analysis, FEMA will perform a preliminary review of the documentation to assess the complexity of the project and expertise required to complete the analysis. If specialized expertise is required, FEMA will utilize a subject matter expert with the appropriate specialized skills, knowledge, experience, or capability in the appropriate field such as engineering, architecture, or cost estimating.

FEMA, in consultation with the subject matter experts as necessary, will then determine the appropriate methodology or methodologies to assess reasonable costs. This assessment will be based on several factors, such as the circumstances surrounding the event, availability of materials, project type, complexity, sole sourcing, best construction practices, codes and standards, and other relevant information available at the time of evaluation. This may require requesting additional information from the Applicant. If the Applicant does not provide supporting documentation, FEMA will inform the Applicant of the determination to deobligate funding or to deny obligation of funding, as applicable, and the Applicant may appeal the determination and provide necessary information at that time.

If the costs determined reasonable are lower than actual costs for the subaward, FEMA's Office of Chief Counsel (OCC) may also review the findings, where warranted. An example of where engagement with OCC may be necessary is determining if an Applicant's contract evaluation (resulting in award to higher bidder) was performed correctly. While PA costing specialists have the qualifications to determine reasonable costs, OCC has contracting and procurement qualifications and PA should engage OCC in such an evaluation whenever uncertain contract award selection questions arise.

FEMA will record the results of the reasonable cost analysis in the appropriate award file or Grants Management System.

Methodology to Determine Reasonable Costs

The method(s) used to evaluate costs will depend on the type of project and the resources and information available. The first step in any evaluation of reasonable costs is to verify that all items of work included in the cost are eligible. If an item is not eligible based on the approved scope of work, FEMA will remove the associated cost from the estimate. FEMA will then notify the Recipient and Subrecipient accordingly if ineligible items have been removed. FEMA then evaluates whether costs for the approved scope of work are comparable to relevant current market prices for similar goods or services using the best information available for the project, which may include any of the following resources.

1. Validation of Recipient or Subrecipient's Cost or Price Analysis

Per 2 CFR § 200.323(a), non-State Applicants must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold, including contract modifications. The method and degree of analysis depends on the facts surrounding the particular procurement situation, but as a starting point, the non-State Applicant must make independent estimates before receiving bids or proposals. While State entities are not required by 2 CFR § 200.323(a) to conduct a cost or price analysis, it is advisable that they do so in completing their procurements.

When an Applicant provides a cost or price analysis, FEMA will review the analysis as part of its evaluation of reasonable costs. For example, this may be useful in evaluating reasonableness when price competition is lacking or when the selection was non-compliant with the applicable procurement under grant requirements even though there may have been price competition.

If the Applicant does not submit a cost or price analysis (because not required to do one in the case of State entities, or because it did not do one as required in the case of non-State entities) and price competition was lacking or its selection was non-compliant with the applicable procurement under grant requirements, then FEMA should identify the elements that would otherwise have been a part of a cost or price analysis (for more information, see the detailed resources available from FEMA's Procurement Disaster Assistance Team here: <https://www.fema.gov/procurement-disaster-assistance-team>). FEMA may request that the Applicant provide this information in order to evaluate reasonable costs.

The cost or price analysis is one component of documentation that an Applicant may use to support that its costs are reasonable. FEMA may use the methodologies described below to evaluate costs both in conjunction with, and in the absence of, this information, as appropriate.

2. Historical Costs and Average Weighted Unit Prices

FEMA may compare the Applicant's costs to the Applicant's historical costs for a similar scope of work or items. Where an Applicant procures the same or similar supplies or services over a period of time, an Applicant may be able to provide documentation of historical costs to demonstrate comparable costs, adjusted for inflation or other factors as necessary. Other factors may include, but are not limited to, changes in codes and standards, availability of in-kind construction material, quantity, delivery schedules, and the economy. This may not be a flat inflation rate, because some types of work may have a different inflation rate than others. There are tools available to account for differences in inflation rates. FEMA's Cost Estimating Format (CEF) employs a nationally recognized economic inflation factor. An Applicant may provide previous contracts, invoices, or other documentation to demonstrate that its current costs are comparable to historical costs for similar supplies or services.

FEMA may also use weighted average unit pricing and related specifications from the Applicant or the Applicant's respective State or regional agency, such as the Department of Transportation. Average weighted unit prices are comprised of historical bid tabulation average costs and related specifications from competitive bid pricing solicitations respective to the area. These prices are generally inclusive of all factors required to bid public works projects, such as performance bonds, bid bonds, overhead and profit, and general conditions.

3. Published Unit Costs: Industry Standard Information Resources

There are many circumstances where it is appropriate and necessary to use published unit costs to evaluate the reasonableness of a project's costs. For example, where appropriate local data cannot be developed or obtained, industry standard construction cost estimating resources are the recommended sources of information for preparing an estimate against which to evaluate an Applicant's actual costs. This is due to their wide acceptance in the industry and the availability of data for nationwide use. Examples of such sources are RSMeans, BNi Costbooks, Marshall and Swift, and Sweet's Unit Cost Guide. Depending on the complexity of the project, FEMA will utilize an experienced cost estimator or

other subject matter expert with appropriate technical experience and validate costs using RSMMeans (or other cost estimating resources as appropriate) and FEMA's CEF.

A reviewer using this method must ensure that the current cost data publications for the project at issue are used, and if necessary, confirm that the appropriate locality adjustment factor from the cost estimating publication is used.

While industry standard construction cost estimating resources are recommended for use, these publications may not always provide work items that are appropriate or applicable to the construction activities required to complete the project. When industry standard cost data is not appropriate, other sources should be considered, such as local cost data from Other Federal Agencies or other State agencies responsible for construction of similar facilities in or near the locality.

4. Comparable Costs of Other Applicants

FEMA may also compare the Applicant's costs with a different Applicant with a properly procured contract for a project with a similar scope of work in the same geographic area under similar circumstances. Factors to consider here are: events and a scope of work of comparable magnitude; contracts of a similar nature; and any applicable market factors and/or any other unique circumstances that may impact either of the costs respectively.

5. FEMA Cost Codes

FEMA maintains a national unit price listing called cost codes and periodically adjusts this listing to conform with geographical and disaster-specific needs. FEMA cost codes may be used when a cost is not found in other published unit costs or if the cost codes are otherwise more applicable than other published costs. FEMA cost codes may be useful for determining reasonableness of force account costs. If using this methodology, a reviewer must check the date of the cost codes to ensure they are applicable to the project at issue. This needs to be considered for both regional and national cost codes, as appropriate.

6. Use of Least-Cost Alternative, or Low Bid

There may be situations where use of the least-cost alternative, or the low bid, is the appropriate remedy when establishing a reasonable cost for procurements that do not comply with federal grant requirements. However, this determination requires an analysis to understand the context surrounding the project and if there are any extenuating circumstances or mitigating factors demonstrating why the least cost alternative may not be appropriate.

For example, when it is necessary to conduct a reasonable cost analysis for Applicant A's debris removal operation, and Applicant B located in the same or nearby geographic area has a properly procured contract for a similar scope of work, FEMA may compare the projects and associated costs. Applicant B has lower costs for a similar scope of work. Using the least cost alternative option in this situation would be to determine that Applicant B's lower costs are the only reasonable costs and to apply those to Applicant A's project. While this may ultimately be the correct remedy, this determination is premature without evaluating whether Applicant A is able to justify its higher costs. For example, Applicant A may be able to demonstrate mitigating factors affecting costs such as the economy of scale of the project (i.e.,

Applicant B's project was similar but larger and therefore costs were negotiated at a lower rate), or longer haul routes in Applicant A's geographic area due to different damage impacts or landfill locations.

When a necessary reasonable cost analysis has been conducted and costs appear high for a project, there are several possible scenarios to determine reasonableness. For example, if an Applicant is able to provide a justification for the increased costs, FEMA employs experts and/or seeks out expert assistance from professionals familiar with evaluating applicable factors to determine whether the higher costs are reasonable based on the Applicant's justification.

Another example is when an Applicant cannot substantiate why a higher bidder was selected based on its selection criteria set forth in its Request for Proposal. In this circumstance if an Applicant's lowest responsible bidder has an appropriate scope of work, the low bid will establish the reasonable costs. However, the determination to use the low bid should be based on an Applicant's ability to demonstrate the reasonableness of its costs based on the circumstances.

References

FEMA has developed comprehensive instructional aids and guidance in this area. See the following resources for additional information about reasonable costs.

- [CEF for Large Projects Instructional Guide V2.1 \(September 2009\)](#)
- [Pricing Guide for Recipients and Subrecipients Under the Uniform Rules \(2 CFR Pt. 200\), dated May 1, 2016](#)

Appendix A

Validation of Applicant-Provided Cost Estimates

This Appendix provides a checklist that FEMA staff must use to review and validate cost estimates submitted to FEMA for Permanent Work. FEMA staff may also use relevant portions of this checklist for Emergency Work, if necessary. FEMA will include this checklist in the associated subaward file in Grants Manager and EMMIE.

The steps for validating Applicant-provided cost estimates are as follows:

1. Verify that the estimate:

- Is prepared by a licensed Professional Engineer or other estimating professional, such as a licensed architect or certified professional cost estimator⁴ who certifies that the estimate was prepared in accordance with industry standards.
- Includes certification that the estimated cost directly corresponds to the repair of the agreed upon damage.
- Is based on unit costs for each component of the SOW and not a lump sum amount.
- Contains a level of detail sufficient for FEMA to validate that all components correspond with the agreed-upon SOW.

2. Review the scope of work and cost estimate to verify that only eligible items are included.

- The scope of work items in the cost estimate are required based on the agreed-upon damage description and dimensions.
- The scope of work included ineligible items, and FEMA has removed the ineligible components from the estimate (documentation detailing the components removed and reason for removal is attached).
- The scope of work included ineligible items, and FEMA is returning the estimate to the Applicant to revise.

3. Determine whether unit costs are from an approved source of industry standard information and whether current cost data publications were used.

There are numerous sources that may be used in the preparation of cost estimates.

- The Applicant used the following appropriate cost estimating resource(s):
 - Industry standard construction cost estimating resource
 - RSMeans
 - XActimate
 - BNi Costbooks

⁴ In lieu of a license or certification, an individual with professional experience and proficiency in the field of cost estimating may prepare and sign the cost estimate.

- Marshall & Swift
- Sweet's Unit Cost Guide
- Other _____
- Local cost data from _____
- Contract unit costs from recently completed projects
- Other: _____
- FEMA returned the estimate to the Applicant to revise as the Applicant did not use an appropriate cost estimate resource.

4. Determine the components of unit costs.

Ensure that the components that make up the unit costs are fully understood. The purpose of this review is to ensure that components of the unit costs are not duplicated elsewhere in the cost estimate.

- The estimate contained sufficient information related to the components of the unit costs:
 - Each unit cost represented a complete and in-place cost that included all labor, equipment, materials, small tools, incidentals, and hauling costs necessary to complete that element of work.
 - Unit costs were analyzed to determine if general contractor overhead and profit were included in the unit costs:
 - Both general contractor and subcontractor overhead and profit are included in the unit costs and these costs are not duplicated elsewhere in the estimate or in the CEF.
 - Overhead and profit are not included in the unit costs.
 - Overhead and profit are duplicated in the estimate.
 - Costs for surveying, construction inspection, and permit compliance fees are not duplicated (i.e., not included within a unit cost and separately in the estimate).
- The estimate did not contain sufficient information related to the components of the unit costs. FEMA requested additional information from the Applicant.

5. Validate the cost estimate for completeness and reasonableness.

- The cost of work items are reasonable based on a representative sample.
- FEMA has determined costs for items of work in the estimate to be unreasonable (see attached). Therefore, the estimate was returned to Applicant to revise.
- All items of work included in the cost estimate are eligible.
- FEMA has removed ineligible items of work from the cost estimate (see attached).
- All work activities required to complete the work are quantified with unit costs.
- The cost estimate included lump sum amounts for work activities that need to be adjusted to unit prices. FEMA has returned the estimate to the Applicant for revision.
- The appropriate locality adjustment factor from the cost estimating publication is used for each

line item, as applicable. Where historical costs were used, a locality adjustment was not applied, but cost escalation factors were added.

- The appropriate locality adjustment factor from the cost estimating publication was not used (see attached) or, as historical costs were used, a locality adjustment was inappropriately applied.
- Cost items checked are within 10 percent of the local average weighted unit prices or industry standard construction cost data (based on a review of at least six of the ten largest cost items against local average weighted unit prices or industry standard construction cost data (or there were less than ten cost items and all were reviewed) and based on reviewing at least 25 percent of the remaining cost items against local average weighted unit prices or industry standard construction cost data.
- Cost items checked are not within 10 percent of the local average weighted unit prices or industry standard construction cost data; therefore, the estimate was returned to Applicant to revise.

Date Review Completed _____

Date of Information Requests to Applicant _____

Name of Reviewer _____

Reviewer Signature _____