

SEP 18 2018



FEMA

MEMORANDUM FOR: FEMA Regional Administrators
Regions I – X

ATTENTION: Recovery Division Directors

FROM: Keith Turi *JK & JS*
Assistant Administrator
Recovery Directorate

SUBJECT: Cooperative Purchasing Agreement Fact Sheet

The purpose of this memorandum is to issue the attached Cooperative Purchasing Fact Sheet. The previous fact sheet contained an inaccurate statement that applicants were not permitted to use out-of-state cooperative purchasing programs. This version of the fact sheet clarifies the requirements non-state applicants must meet when using cooperative purchasing agreements for procurements above the simplified acquisition threshold. The attached fact sheet is retroactive to disasters declared on or after August 23, 2017.

If you have any questions about this guidance, please contact Jonathan Hoyes, Director of the Public Assistance Division, at Jonathan.Hoyes@fema.dhs.gov.

Attachment



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) to assist them with recovering from emergencies and major disasters. FEMA's *Public Assistance Program and Policy Guide* provides comprehensive information regarding assistance that FEMA can provide and the requirements that applicants must follow in order to receive the assistance. The purpose of this Fact Sheet is to provide key information regarding the use of cooperative purchasing programs by non-state applicants for procurements above the simplified acquisition threshold. Failure to follow federal contracting requirements may jeopardize FEMA funding for costs associated with that contract.

Understanding Cooperative Purchasing Programs

A “**COOPERATIVE PURCHASING PROGRAM**” is a cooperative arrangement for acquiring goods or services that involves aggregating the demand of two or more entities in an effort to obtain a more economical purchase. Entities typically sign up to use cooperative purchasing programs through a cooperative purchasing agreement. Program membership may provide entities with access to lists of agreements or contracts for goods and services at pre-negotiated rates or prices. Typically, the member then purchases the 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.

NOTE: 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 and enter into a single contract with a vendor for the delivery of goods and/or services. FEMA sees fewer compliance issues with joint procurements. While joint procurements are not the focus of this fact sheet, they still must comply with the federal procurement requirements.

DISCLAIMER: This Fact Sheet is intended to provide general information on procurement compliance and is not inclusive of every rule that an applicant may need to comply with. Additional information regarding the federal procurement standards can be found at the following webpage: www.fema.gov/procurement-disaster-assistance-team.

ATTENTION

- **While the federal procurement standards encourage the use of cooperative purchasing where appropriate, non-state applicants should exercise caution when using such programs and work closely with the procuring entity to ensure compliance with the federal procurement standards found at 2 C.F.R. §§ 200.318- 200.326.**
- **An applicant that decides to use a cooperative purchasing program must document and explain how its use of the program complied with all federal procurement standards and applicable state, tribal and local procurement rules and policies.**

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**FREQUENT COMPLIANCE ISSUES WITH COOPERATIVE
PURCHASING PROGRAMS FOR PROCUREMENTS ABOVE THE SIMPLIFIED
ACQUISITION THRESHOLD**

Full and Open Competition, 2 C.F.R. § 200.319 (applicable to non-state applicants)

Non-state applicants must ensure that the solicitations used by cooperative purchasing programs include a clear and accurate description of the scope of work or goods actually required by the non-state applicant. Additionally, cooperative purchasing programs that place overly restrictive requirements on solicitations risk noncompliance with the full and open competition requirements.

Procurement Method, 2 C.F.R. § 200.320 (applicable to non-state applicants)

Cooperative purchasing programs must be in compliance with the allowable procurement methods. Some of these methods of procurement require that non-state applicants publicly advertise or publicize the solicitations, solicit bids from an adequate number of known suppliers, and award contracts to the responsible, responsive firm with the lowest price or to the responsive firm whose proposal is most advantageous to the program with price and other factors considered.

Socio-economic Contracting, 2 C.F.R. § 200.321 (applicable to non-state applicants)

Non-state applicants must ensure cooperative purchasing programs take the applicable affirmative steps to encourage participation of small businesses, minority businesses, and women owned enterprises. Failure to take any of the affirmative steps violates 2 C.F.R. § 200.321.

Geographic Preferences, 2 C.F.R. § 200.319(b) (applicable to non-state applicants)

Any geographic preferences that a cooperative purchasing program uses in evaluating bids or proposals and any additional terms and conditions in a cooperative purchasing program's pre-negotiated agreements that favor or give preference to local suppliers would violate 2 C.F.R. § 200.319(b) and be restrictive of competition.

Contract Provisions, 2 C.F.R. § 200.326 (applicable to state and non-state applicants)

Cooperative purchase programs at times do not include the federally required contract provisions in their agreements with vendors. All state and non-state applicant contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards).

Cost or Price Analysis, 2 C.F.R. § 200.323 (applicable to non-state applicants)

Non-state applicants must conduct an independent cost or price analysis when using cooperative purchasing agreements.

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