



# PURCHASING AND COVID-19

**Exigent and Emergency “Sole Source” Purchasing**

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# CONCEPT – LAWS INCORPORATED BY CITATION

- Example - EPA Grant Award Administrative Conditions:
- “1. The recipient will comply with the following: (1) all applicable provisions of 40 CFR Parts 29, 31, 34, and 35 (if applicable), **2 CFR 200** and (2) any terms and conditions set forth in this assistance agreement or any assistance agreement.”

# CONCEPT – HIERARCHY OF LAW

- **Excerpt from 2 CFR 200.318 General procurement standards.**
- (a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

# ORDER OF PRECEDENCE- PURCHASING

- 1. Applicable Federal Law – 48 CFR (the FAR)
- 2. 2 CFR 200.317 to 200.326
- 3. Tribal Purchasing Policies and Procedures

# PURCHASING PRINCIPLE

- **Excerpts from – 2 CFR 200.319 Competition.**
  - (a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section.
  - (d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition.

# ZONES OF COMPETITION

- Micro Purchases
  - 0 - \$2000 for Construction (per 48 CFR 2.101)
  - 0 - \$2500 for Services (per 48 CFR 2.101)
  - 0 - \$10,000 for Supplies, Materials and Equipment (per P.L. 115-91, Sec. 806)
- Small Purchases
  - Micro Threshold to \$250,000 (per P.L. 115-91, Sec 805)
- Major Purchases
  - Over \$250,000 (per P.L. 115-91, Sec 805)

# METHODS OF PROCUREMENT

- Competitive
  - Small Purchases: at least three quotes (per 48 CFR Part 13)
    - Quotes
    - Proposals
  - Major Purchases: unlimited competition
    - Sealed Bids
    - Competitive Proposals
- Non-Competitive Proposals



# NON-COMPETITIVE PROPOSALS

- One Source (Sole Source): May be used only when (per 2 CFR 200.320(f)):
  - 1. available only from a single (known) source. “emphasis added”
  - 2. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity.
  - 3. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

# COVID-19

- **Declared National emergency:**
  - On March 13, 2020, President Trump declared a nationwide emergency pursuant to Sec. 501(b) of Stafford Act to avoid governors needing to request individual emergency declarations.

# PUBLIC EXIGENCY DEFINED

- Per FEMA Fact sheet of March 20, 2020
- “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.”

# EMERGENCY DEFINED

- Per FEMA Fact sheet of March 20, 2020.
- a threat to life, public health or safety, or improved property requires immediate action to alleviate the threat.

# EXIGENCY OR EMERGENCY EXCEPTION APPLICABILITY

- Justification required.
- Only permissible during the actual circumstances.
- Work performed must be specifically related.
- Documentation required.

# JUSTIFICATION ELEMENTS

- Identify the public exigency or emergency;
- Define why delay not acceptable;
- Description of the product or service including the expected amount of the procurement;
- How long you anticipate the circumstances will last;
- Why Competitive Procurement could not be used;
- Describe any conflicts of interest;
- Any other justifying information.

# CONTRACT REQUIREMENTS

- Contract clauses required
- Bonding if applicable
- Analyze Contractor Responsibility
- Cost Price Analysis required
- CPPC contract prohibited
- T/M contracts requirements
- Documentation, oversight required
- Conflict of Interest addressed

# OTHER OPTIONS/ISSUES

- Piggybacking State Contracts considered
- Cost Allowability requirements addressed
- Follow-on contracts competitively acquired.



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