

U.S. DEPARTMENT OF THE TREASURY

OFFICE OF CAPITAL ACCESS

Procurement Overview for Participating Tribes



Objectives

1. Understand federal financial assistance procurement requirements
2. Be able to identify and apply competition requirements for procurement using federal financial assistance
3. Learn about exceptions to competitive procurement requirements

Importance of Procurement Requirements

Recipients and Subrecipients

- Helps ensure federal award dollars are used to advance the intended award purpose
- Promotes securing competitive prices for services to implement the award
- Prioritizes equity when purchasing goods and services
- Mitigates conflicts of interest
- Ensures stakeholders have a shared understanding or requirements

Goods and Services Providers

- Ensures all stakeholders have a shared understanding or requirements
- Benefits providers because the requirements promote equity
- Mitigates conflicts of interest

Federal Government

- Helps ensure federal award dollars are used to advance the intended award purpose
- Provides procurement standards for acquiring goods and services for implementation of federal awards
- Advances equity
- Promotes transparency
- Minimizes likelihood of fraud, waste, and abuse of federal awards

Key Definitions (2 CFR 200.1)

Recipient

An entity (e.g., state, local government, tribal government, non-profit) that receives Federal financial assistance directly from a Federal awarding agency to carry out an activity under a Federal program. The term does not include subrecipients, or individuals that are participants or beneficiaries of the award. Recipients may also be pass-through entities.

Subrecipient

An entity that receives a subaward from a recipient or pass-through entity to carry out part of a federal award. The term subrecipient does not include a beneficiary or participant. **A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.**

Key Definitions (2 CFR 200.1) cont.

Pass-Through Entity

Pass-through entity means a recipient or subrecipient that provides a subaward to a subrecipient (including lower tier subrecipients) to carry out part of a Federal program. The authority of the pass-through entity flows through the subaward agreement between the pass-through entity and subrecipient.

Contractor

An entity that receives a contract from a recipient or subrecipient for the purpose of obtaining goods and services to implement a Federal award.

Beneficiary

Entities that benefit from a recipient or subrecipient's actions to carry out an activity under an award.*

* Extrapolated from the definition of grant which states that grants are not used to “acquire property or services for the Federal agency or pass-through entity's direct benefit or use.”

Subrecipient and Contractor Determinations

[2 CFR 200.331](#) states that “a pass-through entity is responsible for making case-by-case determinations to determine whether the entity receiving federal funds is a subrecipient or a contractor.”

Subrecipients (§200.331(a))

A subaward is for the purpose of carrying out a portion of the Federal award and creates a Federal financial assistance relationship with a subrecipient.

Contractors (§200.331(b))

A contract is for the purpose of obtaining goods and services for the recipient’s use and creates a procurement relationship with a contractor.

Subrecipient and Contractor Determinations cont.

Subrecipients (§200.331(a))

Characteristics which support the classification of the entity as a subrecipient include, but are not limited to, when the entity:

- (1) Determines who is eligible to receive what Federal assistance;
- (2) Has its performance measured in relation to whether the objectives of a Federal program were met;
- (3) Has responsibility for programmatic decision-making;
- (4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
- (5) Implements a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

Contractors (§200.331(b))

Characteristics that support a procurement relationship between the recipient or subrecipient and a contractor include, but are not limited to, when the contractor:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Normally operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the implementation of a Federal program; and
- (5) Is not subject to compliance requirements of a Federal program as a result of the agreement. However, similar requirements may apply for other reasons.

Overview of Uniform Guidance Procurement Requirements



2 CFR §§200.317 – .327

Section	Title
§200.317	Procurements by states
§200.318	General procurement standards
§200.319	Competition
§200.320	Methods of procurement to be followed
§200.321	Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms
§200.322	Domestic preferences for procurements
§200.323	Procurement of recovered materials
§200.324	Contract cost and price
§200.325	Federal awarding agency or pass-through entity review
§200.326	Bonding requirements
§200.327	Contract provisions

Procurement Requirements for State Entities

Are You a State Entity?

- Any State of the United States
- District of Columbia
- US Territories:
 - Commonwealth of Puerto Rico
 - U.S. Virgin Islands
 - Guam
 - American Samoa
 - Commonwealth of the Northern Mariana Islands
- State Agency
- State Instrumentality

Applicable Requirements

Section	Title
§200.317	Procurements by states
§200.318	
§200.319	
§200.320	
§200.321	Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms
§200.322	Domestic preferences for procurements
§200.323	Procurement of recovered materials
§200.324	
§200.325	
§200.326	
§200.327	Contract provisions

Non-State Entities and Procurement Requirements

Are You a Non-State Entity?

- Local Governments
- Tribal Governments
- Hospitals (some)
- Institutions of Higher Education (some)
- Other Private Non-Profit Organizations

Applicable Requirements

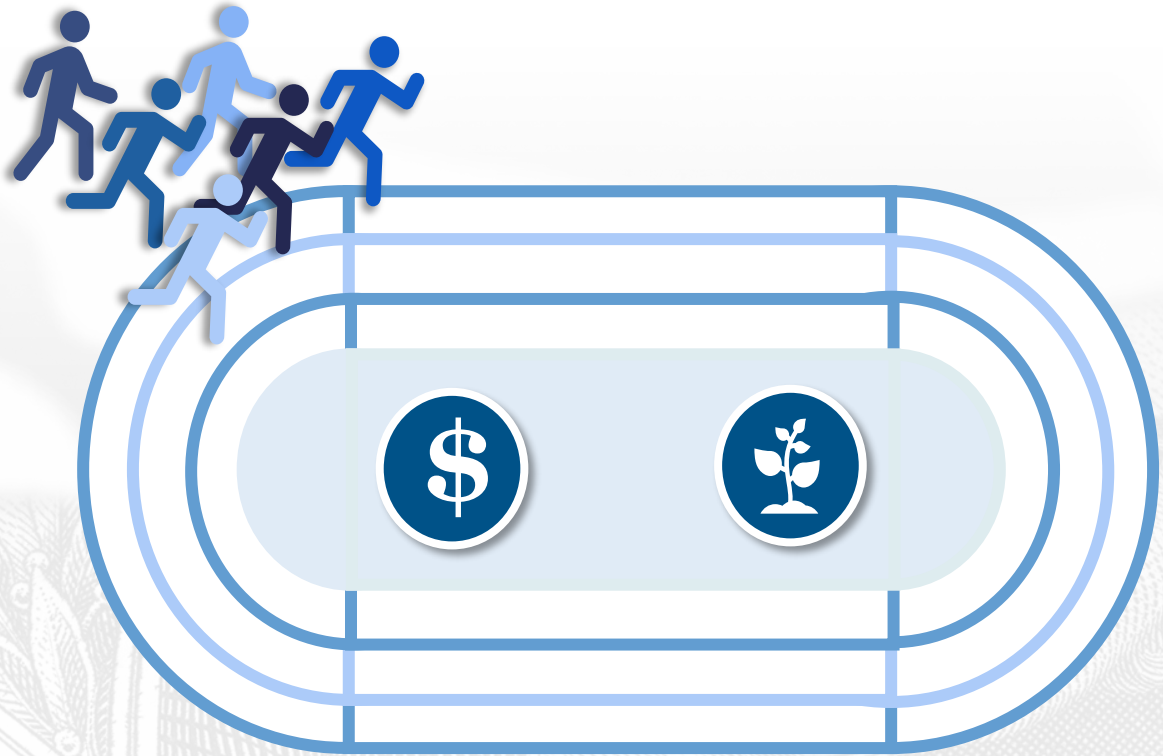
- Entity's own procurement policies and procedures
- +
- State and Tribal laws
- +

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Full and Open Competition: A Fair Playing Field

Full and Open competition:

- Is a key principle of the procurement standards
- Permits all qualified and responsible vendors who are eligible to compete without restrictions
- Casts the net broadly to reach fair and reasonable pricing from the most qualified contractor
- Prevents favoritism, fraud, waste, and abuse



Practices that Restrict Competitive Procurement 2 CFR §200.319(b)

Examples of situations that may restrict competition include, but are not limited to:

1. Requiring unnecessary experience and excessive bonding requirements
2. Specifying a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement
3. Placing unreasonable requirements on firms in order for them to qualify to do business
4. Noncompetitive pricing practices
5. Organizational conflicts of interest
6. Noncompetitive contracts to contractors on retainer contracts
7. Any arbitrary action in the procurement process

Procurement Methods 2 CFR §200.320



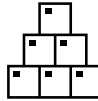
Micro-Purchase

Up to
\$10,000



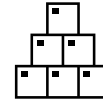
Small Purchase

Up to
\$250,000



Sealed Bidding

Usually Over
\$250,000



Proposals

Usually Over
\$250,000

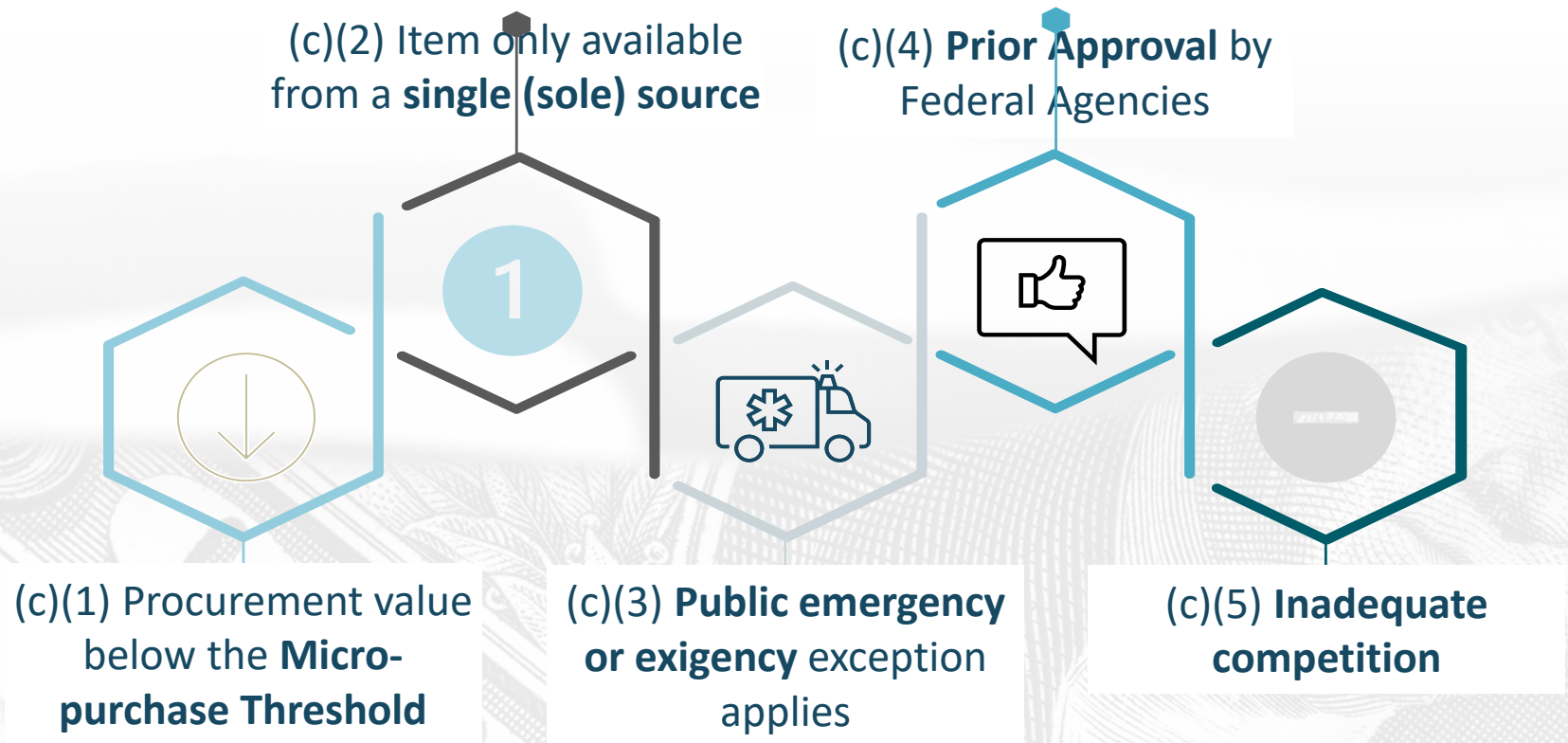
Sole Sourcing

Dependent on
Circumstances

- **Independent Estimates** are required before receiving bids or proposals
- **Price or Cost Analysis** is required for procurements over \$250,000

Noncompetitive Procurement (Sole Source) 2 CFR §200.320(c)

Noncompetitive procurement is only permitted in one of the following five (5) circumstances:



Contract Provision Requirements (2 CFR §200.327 and Appendix II)

Contract provisions are required for both State and non-State entities to protect the interests of recipients, subrecipients, goods and services providers, and the Federal Government

Contract provisions in [2 CFR Part 200, Appendix II](#) include, but are not limited to:

- Addressing termination of the contract for cause and for convenience
- Equal Employment Opportunity (EEO)
- Davis-Bacon Act (i.e., labor requirements for construction contracts)
- Byrd Anti-Lobbying Amendment
- Debarment and Suspension
- Prohibition on certain telecommunications (See [2 CFR §200.216](#))
- Domestic preference for procurements (See [2 CFR §200.322](#))
- Recovered Materials (See [2 CFR §200.323](#))

Best Practice: Document, Document, Document

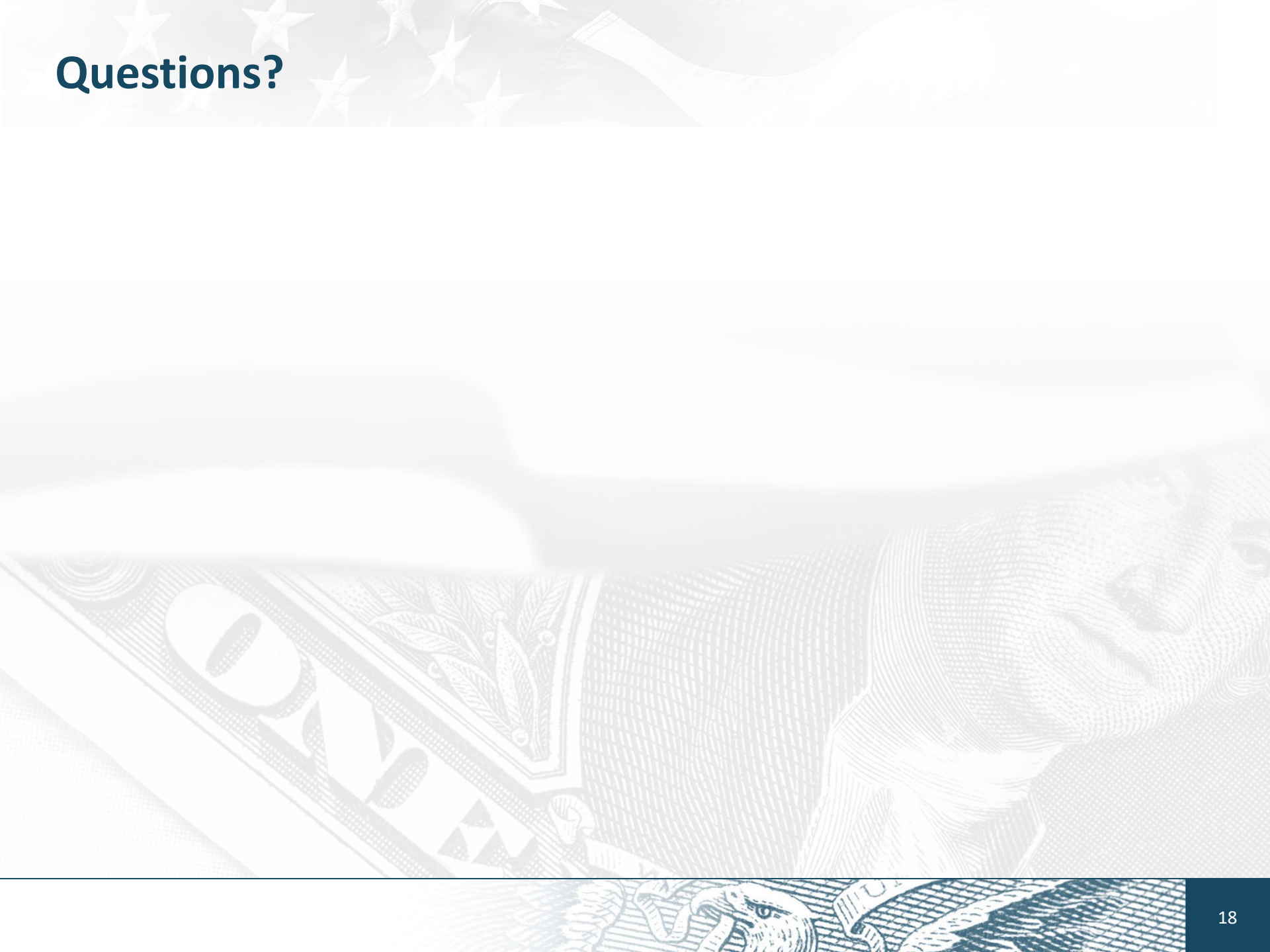
When using the Emergency and Exigency procurement exception document and maintain the records on the following in sufficient to detail to provide the history of the procurement:

- Rationale for the Method of Procurement – Justification for sole sourcing
- Selection of Contract Type – Justification for contract type
- Selection of Contractor – Contractor search performed at www.SAM.gov
- Basis for Contract Price – Independent estimate; cost or price analysis; quotations

Procurement Take-Aways

- State and Non-State Entities follow different procurement requirements
- There are different requirements depending on the cost to procure goods or services (e.g., \$10,000 micro-purchase threshold, \$250,000 simplified acquisition threshold)
- Certain circumstances permit exceptions to competitive procurement
- Pursuant to 2 CFR 200.320(c), many procurement rules continue to apply under emergency and exigent circumstances

Questions?



Appendix: Procurement and Emergency and Exigency

Noncompetitive Procurement in Emergency and Exigent Situations 2 CFR §200.320(c)(3)

Situations that demand
immediate aid or action

Emergency

Need to alleviate a threat to life,
public health or safety, or
improved property



Exigency

Need to avoid, prevent or
alleviate serious harm or injury,
financial or otherwise



State Entity Emergency and Exigency Requirements

When using noncompetitive procurement due to an emergency or exigency, **state entities must:**

- Follow **state procurement policies and procedures**
- Follow procurement of **recovered materials requirements** ([See 2 CFR §200.323](#))
- Include required **contract provisions**

State entities and their contractors must comply with section 6002 of the Solid Waste Disposal Act. Requirements include:

- Only procuring items designated in EPA guidelines that contain the highest percentage of recovered materials practicable
- Procuring solid waste management services in a manner that maximizes energy and resource recovery
- Establishing program for procuring recovered materials identified in the EPA guidelines

Non-State Entity Emergency and Exigency Requirements

When using noncompetitive procurement due to an emergency or exigency, **non-state entities must:**

- Use only during the **period of actual exigent or emergency** circumstances
- Document and **provide justification** for the use of the exception
- Award contract to a **responsible contractor**
- Include required **contract clauses**
- Follow **documentation, oversight, and conflict of interest** requirements
- Not enter into Cost Plus Percentage of Cost (CPPC) contracts. They are prohibited!

If applicable, **Non-State Entities must:**

- Conduct a **cost or price analysis**
- Follow **bonding requirements**
- Follow time and materials (T&M) **contract requirements**