



EMERGENCY PROCUREMENT



Requirements

Public housing agencies (PHAs) are considered “local governments” receiving public housing assistance funds. They are governed by Part 85 of Title 24 of the Code of Federal Regulations ([24 CFR Part 85](#)). However, the controlling regulation governing procurement can be found at [2 CFR 200.317-200.326](#) and provides for full and open competition. PHAs must also adhere to state and local procurement laws based on location. PHAs must follow the most stringent law, whether that is federal, state, or local.

PHAs should develop and follow a written procurement policy that, at a minimum, complies with the requirements of [2 CFR Part 200](#) to be eligible for federal funding. There are resources available to help PHAs ensure proper compliance with federal requirements, such as the HUD [Procurement Handbook](#) and [PHA Procurement Training](#).

HUD recommends that PHAs plan for potential disasters, including assessing and addressing potential vulnerabilities and resource gaps. This assessment may determine that contractor goods or services are necessary to supplement the PHA’s capacity if a disaster occurs. PHAs can facilitate post-disaster recovery by maintaining a current list of properly procured disaster recovery contractors in addition to their normal maintenance staff and contractors.

It is recommended to pre-position contracts for these services to ease the operational burden during and following an actual disaster.

Following a disaster, certain flexibilities may be available when exigent or emergency circumstances exist. An emergency is a threat to health, life, or safety. An exigency is *not* an emergency but requires immediate action. Understanding these definitions is important.

Best practices for pre-positioning contracts include:

Assessing vulnerabilities and gaps specific to location, facilities, and developments. Experience with past disasters informs the identification of possible disaster response contracts.

Developing a request for proposals that meets both HUD and Federal Emergency Management Agency (FEMA) requirements. This ensures eligible work can be funded and/or reimbursed by either HUD or FEMA.

Awarding multi-vendor contracts to provide flexibility and availability to multiple vendors for goods or services to meet PHA needs when resources may be in demand. Consider soliciting potential vendors who are outside of your local potential disaster area to diversify options.

Reviewing and updating your emergency plan and emergency procurements regularly by designating a cycle for regular review and update of your emergency plan. Include a review and re-procurement of services from vendors needed to respond to emergencies and disasters.



Post-Disaster Procurement

Emergency Procurement

Even with the best planning, there may be circumstances following a disaster when goods or services must be procured immediately and contracts are not already in place. In an emergency or exigency situation, the costs for the goods or services must still be reasonable and all efforts must be documented. Once the emergency or exigency period has ended, a PHA must complete a procurement process that includes full and open competition. For example, a PHA may enter into an emergency contract with a consulting firm during the exigency period to assist with recovery efforts. However, once the period has ended, it is expected the PHA will re-procure those services through a proper procurement process, allowing for the participation and competition of multiple vendors.

If awarding a sole source or noncompetitive contract in accordance with [\(2 CFR 200.320\(c\)\(3\)\)](#), PHAs must document their rationale in the procurement record. In all types of procurement, and even more critical in noncompetitive procurement, it is recommended the PHA maintain records sufficient to detail the history of a procurement. If the total contract value is greater than \$250,000, PHAs must submit noncompetitive contracts to HUD prior to award for review and approval of compliance with [2 CFR 200.324](#). Of note, the PHA may be exempt when HUD has accepted the PHA's self-certification option that its procurement policies comply with standards in [2 CFR 200](#). Recommended steps to take during noncompetitive or emergency procurement include:

- writing a justification to describe the emergent or exigent circumstance
- providing a description of the goods or services necessary
- evaluating the vendor's responsiveness and responsibility
- analyzing the costs and price of the goods or services for fairness and reasonability
- describing any known conflicts of interest
- documenting the period of the emergency or exigency
- transitioning to a competitive bid contract no later than the end of the emergency or exigency period

Competitive Procurement

Familiarity with the federal regulations when purchasing goods and services will increase the likelihood of securing and retaining resources and funding following the end of a disaster's emergency or exigency period. To ensure continuity of services, it is good practice for PHAs to conduct a procurement debrief and update policies, procedures, and plans as appropriate prior to, during, and post-disaster. Doing so will help to ensure compliance and smooth receipt of federal funding. Acceptable types of competitive procurement include:

- fixed price contracts - price remains fixed regardless of contractor's actual costs of performing the scope of work
- cost reimbursement contracts - reimbursement of the contractor for its reasonable, allocable, actual, and allowable costs, with an agreed-upon fee
- time and materials contracts - actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit

Note: In accordance with [24 CFR 200.324\(d\)](#) the cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used with federal funds.