



FEDERAL PROCUREMENTS

PROTECTING YOUR OBLIGATED FEDERAL DOLLARS AFTER A DISASTER
STRIKES

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THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT

FEDERAL PROCUREMENTS AND YOU

THE NEW PROCUREMENT GUIDE: GETTING & KEEPING YOUR FEMA GRANT DOLLARS!

PURPOSE OF THIS PRESENTATION

To assist Subrecipients (applicants) in **identifying** and **applying** the required Federal regulations for the **procurement** of **materials, supplies, services** and **construction projects** when using Federal Emergency Management Agency (FEMA) funds to respond to and/or recover from Declared Major Disaster Events.

INTENDED AUDIENCE

Florida **local governing authorities, eligible private nonprofit (PNP) organizations** and Federally recognized **Tribal governing authorities** who receive funds from the **FEMA Public Assistance (PA)** and or **FEMA Hazard Mitigation (HM)** grant programs to respond to and/or recover from Declared Major Disaster Events.

DISCLAIMER

This slideshow and the accompanying training, provides guidance on Federal Procurement Regulations as stated in **44 C.F.R. Part 13.36, 2 C.F.R. Part 215.40 - .48** and **2 C.F.R. Part 200.317 - .326** and **Appendix II**, there are differences as well as similarities within the three law groups. This presentation, the slideshow and all the oral information conveyed, does not and is not **designed to address all procurement issues** which a subrecipient may face.

IT IS THE SUBRECIPIENT'S RESPONSIBILITY TO ASSURE THAT ALL FEDERAL REGULATIONS ARE FOLLOWED IN ALL CIRCUMSTANCES INVOLVING FEDERAL FUNDING.



FEDERAL PROCUREMENTS AND YOU

TIMELINES FOR NEW vs OLD RULES: DIFFERENCES BETWEEN NEW vs. OLD STANDARDS

ENTITY	GRANT AWARDS OR PRESIDENTIAL DECLARATION BEFORE 12/26/2014		GRANT AWARDS OR PRESIDENTIAL DECLARATION ON OR AFTER 12/26/2014	
	REGULATION	COST PRINCIPLE	REGULATION	COST PRINCIPLE
State/Local Governments	44 C.F.R. Part 13.36	2 C.F.R. Part 225	2 C.F.R. Part 200.317- .326 & Appendix II	2 C.F.R. Part 200.400 - .475
Tribal Governments	44 C.F.R. Part 13.36	2 C.F.R. Part 225		
Private Nonprofits (PNP)	2 C.F.R. Part 215.40-.48	2 C.F.R. Part 230		
Hospitals	2 C.F.R. Part 215.40-.48	2 C.F.R. Part 230		
Education Institutions	2 C.F.R. Part 215.40-.48	2 C.F.R. Part 230		

Governing regulations for procurement are dependent upon the **type** of grant you receive.

For *disaster-related grants*, the effective date is dependent on the **issuance** of the **Presidential Declaration (PD)**.

For *non-disaster grants*, the effective date is dependent on the date the **grant award is issued**.



FEDERAL PROCUREMENTS AND YOU

METHODS OF PROCUREMENT

METHOD OF PROCUREMENT	WHEN TO USE
Micro-purchases	<ul style="list-style-type: none"> * Does not apply to grant awards OR Presidential Declarations (PDs) prior to 12/26/2014. * Applies to purchases less than OR equal to \$3,000.00 (FEDERALLY) * No solicitation is required * Sub-recipient (Applicant) determines reasonableness.
Small purchases	<ul style="list-style-type: none"> * Applies to purchases less than or equal to \$100,000.00/\$150,000.00.1 (DATE) * State Law, if more restrictive than the Simplified Acquisition Threshold (SAT). * Only quotes required (a minimum of three (3) written or telephone quotes from qualified sources). * Purchase of commercial products sold in substantial quantities to the general public. <ul style="list-style-type: none"> - Limited by State Law to contracts for supplies and materials less than \$10,000.00. - Item must meet the definition of a commercial product.
Sealed bids	<ul style="list-style-type: none"> * Preferred for construction * Fixed price * Publically advertised AND publically opened. * Two (2) or more responsible bidders. (Rejected bidders are not considered responsible). * Awarded to lowest, responsible bidder. * Any OR all bids may be rejected for a sound, documented reason.

There are **several** different methods for procuring goods and services. The **chart** below identifies methods of procurement and describes when to use each



FEDERAL PROCUREMENTS AND YOU

METHODS OF PROCUREMENT

METHOD OF PROCUREMENT	WHEN TO USE
Competitive Proposals	GENERAL
	* Must have more than one (1) responsible bidder documented.
	* Must be publicized to maximum extent practical documented.
	* Must have written procedure for conducting evaluations and award. (See REQUIRED Written Procedures).
	REQUEST FOR PROPOSAL (RFP)
	* Price is a criteria but not the only criteria being considered for the selection.
	* Contract awarded to firm offering best value.
Non-Competitive Proposals	REQUEST FOR QUALIFICATIONS (RFQ).
	* Limited to Architectural and Engineering (A&E) services.
	* Qualifications only criteria for selection.
	* Price negotiated after selection based on cost analysis.
	* If the product or service is only available from a single source.
* Used when insufficient number of responses received.	
* Used in emergency or exigent circumstances.	
* Always requires a cost analysis.	

1 = For grants awarded *before 12/26/2014*, the threshold is \$100,000. For grants awarded *after 12/26/2014*, the threshold is \$150,000.



FEDERAL PROCUREMENTS AND YOU

PROCUREMENT REQUIREMENTS: By category of purchase & size of contract

CATEGORY OF PURCHASE	FEDERAL REGULATIONS (44 C.F.R. 13.36)	SIZE OF CONTRACT	REQUIREMENTS FOR STATE + LOCAL + FEDERALLY REGOGNIZED TRIBAL GOVENMENTAL ENTITIES
Materials + supplies	Quotes required	Less than \$1,000.00.	No competitive procedure or cost analysis for commercial items.
		\$1,000.00 - \$9,999.00.	(3) telephone or FAX quotes (documented).
		\$10,000.00 - \$30,000.00.	Florida Statute recommends three (3) written quotes.
		Greater than \$30,000.00 Greater than \$100,000.00 ² /\$150,000.00 ⁴	Bid required.
Public Works	Quotes required	Less than OR Equal to \$100,000.00 ² /\$150,000.00 ⁴	No bid requirement, Florida Statute recommends request for proposal (RFP) process and/or three (3) solicited bids.
	Bid required	Greater than \$100,000.00 ² /\$150,000.00 ⁴	Bid required - No minimum number of responses.

² Increases annually with Consumer Price Index (CPI) for procurements before 12/26/2014

⁴ Increases annually with Consumer Price Index (CPI) for procurements on or after 12/26/2014

Category of purchase and **size** of the contract determines the **requirements** for procurement.

The most restrictive rules apply;

Responses ONLY count if they are from responsible contractors

FEMA requires a minimum of **three (3) responses** for **contracts** in excess of **\$150,000.00** and a minimum of **two (2) responses** for contracts equal to or less than **\$150,000.00**

PNPs must, at a minimum, follow **Federal regulations**



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PROCUREMENT REQUIREMENTS: By category of purchase & size of contract

CATEGORY OF PURCHASE	FEDERAL REGULATIONS	SIZE OF CONTRACT	REQUIREMENTS FOR STATE + LOCAL + FEDERALLY REGOGNIZED TRIBAL GOVENMENTAL ENTITIES
Services (Except for A/E)	Quotes required	Less than OR Equal to \$150,000.00	No bid requirement, Florida Statute recommends request for proposal (RFP) process and/or three (3) solicited bids.
	Bid required	Greater than \$150,000.00	
A/E Services	Request for Qualification (RFQ)	ANY size	No requirement.
STATE Cooperative Purchase (SCP)	Authorized under 44 C.F.R. Part 13.36 (b) (5) and 2 C.F.R Part 200.318 (f)	ANY size	* Authorized under Florida Statute
			* Limited to public entities as defined by
			* Only Office of State Procurement (OSP) SCP contracts.
			Can be used for materials + supplies + equipment.

² Increases annually with Consumer Price Index (CPI) for procurements before 12/26/2014

⁴ Increases annually with Consumer Price Index (CPI) for procurements after 12/26/2014

Category of purchase and **size** of the contract determines the **requirements** for procurement.



FEDERAL PROCUREMENTS AND YOU

PROCUREMENT REQUIREMENTS: Other Contract Requirements

Contracting with small and minority owned firms, women's business enterprises and local area labor surplus firms.
{44 C.F.R. Part 13.36 (i); 2 C.F.R. Part 200.321}

- ❑ Must take affirmative steps to use these firms
 - Placing qualified small and minority businesses, women's business enterprises on solicitation lists
 - Assuring that small and minority owned businesses and women's business enterprises are solicited whenever they are potential sources
 - Divide total requirements, when economically feasible, into smaller tasks or quantities to permit participation by such firms
 - Establishing delivery schedules, where the requirements permit, to encourage participation by small, minority businesses, and women's business enterprises
 - Subrecipients **MUST** use (and document the use of) the Small Business Administration and the Minority Business Development Agency (MBDA) of the U.S. Department of Commerce (DOC) for assistance in complying with this regulation
 - Requiring Prime Contractor's, if subcontracts are to be let, to follow the same procedures as shown above

- ❑ Subrecipients **can also use** (and document the use of) the services of **Florida's Department of Economic Opportunity (DEO)**, as well as other groups found throughout the State



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PRICE OR COST ANALYSIS

How to perform an effective Cost Analysis (Step by Step)

The purpose of a Cost Analysis is to establish the reasonableness of cost through comparison of recognized standards. These standards are laid out at 2 C.F.R. Part 200.323.

- Identify the who, what, when, where and why
 - Person preparing analysis and date prepared
 - Recipient/Sub-recipient and Federal Processing Standards (FIPS)/Recipient identification number
 - Project title
 - Address and facility being analyzed (if applicable)
 - Project Worksheet (PW) number and version, if applicable
 - Cost analyzed (using contract, estimates, invoices, etc.)
- Describe the project's history
 - Brief introduction of the damaged elements that require a cost analysis
- Describe the party requesting the cost analysis and the intended purpose of the cost analysis. Include all relevant background information
 - Brief introduction of cost (s) analyzed, the purpose and the party requesting the cost analysis



FEDERAL PROCUREMENTS AND YOU

COST ANALYSIS

How to perform an effective Cost Analysis (Step by Step)

- ❑ Describe the key points of the cost analysis
 - Describe the Scope of Work (SOW) and correlate that to the cost (s) to be analyzed
 - Segregate the project's eligible and ineligible costs. It is important to identify and include both eligible and ineligible costs in this description
 - Define the cost (s) expended by the sub-recipient that require the cost analysis
 - Define the quantity and quality of items used for the cost analysis to justify cost reasonableness
 - Break down how much individual parts of the project will cost
 - Explain how these costs correspond with your project costs
- ❑ Define the type of Procurement
 - Describe how you intend to buy (lump sum, unit price, etc.)
- ❑ Identify the specific method of cost comparison
 - There are many different methods of comparison, including, but not limited to;
 - Pre-disaster price for similar work
 - Average cost for similar work in the same, or like, markets
 - Nationally, or industry recognized costs, from sources such as R.S. Means or Marshall & Swift



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COST ANALYSIS

How to perform an effective Cost Analysis (Step by Step)

- ❑ Explain the ways in which your selected comparables are alike (why is this like that)
 - Adjust those comparables to account for any relevant differences, such as;
 - Inflation (the time value of money)
 - Price volatility of raw materials
- ❑ Conclusions
 - Is/Are the costs truly reasonable or not, give your professional opinion
- ❑ Recommendations
 - Is/Are the costs truly reasonable or not, how would you recommend the purchaser proceed
- ❑ Include all references, citations and back up documentation relevant to your costs analysis

All non-Federal Entities shall negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where a cost analysis was performed.



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COST ANALYSIS

Potential “Speed Bumps” that can impact your cost analysis

- Your location/market
- Historic preservation issues
- Market conditions and variables
 - Scarcity of finished product or raw materials
 - Supply and demand
- Land acquisition costs (price of land)
- Professional services needs
 - Architects/Engineers
 - Project Management
- Freight/mobilization costs
- Quality of materials needed
 - Finishes required or materials dictated by technical specifications
 - There are other factors, unique for each expenditure, too numerous to list here
 - Understand what you are procuring and the process



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TYPES OF CONTRACTS

CONTRACTS TO USE	
Lump sum	Contract for work within a prescribed boundary with a clearly defined scope of work + a total price for that work.
Unit price	Work done on an item by item basis, with cost determined per unit (e.g., box, cubic yard, etc.).
Cost + fixed fee	Total cost with a defined fixed fee added to the price.
Time + materials	Must make a determination that no other type of contract is suitable; must contain a "Not to - exceed" (ceiling) clause.
	Payment based on hourly rate schedule and cost of materials.
	* Maintain a high degree of oversight. * Contracts used in "Emergency Protective Measures" and "Debris Operations". These contracts CANNOT exceed 70 hoursd continuous of actual work immediately following the emergency or disaster incident.
Piggyback contracts	Work done using another subrecipient's pre-existing properly procured contract must meet strict criteria to be eligible according to Procurement Guidance for Recipients and subrecipients under 2 C.F.R. Part 200 (Uniform Rules) Supplement to the Public Assistance Procurement Disaster Assistance Team (PDAT) Field Manual dated June 21, 2016 The existing contract must be viable, the same item must be purchased, the same unit price must be paid, and the same vendor must be utilized; The same Scope of Work must be adhered to, etc. Contracts of this nature MUST include written mutual consent of the original contracting parties.
CONTRACTS TO AVOID	
Cost + percentage of costs	STRICTLY PROHIBITED.
Cost + Percentage of constructon cost	STRICTLY PROHIBITED.



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REQUIRED WRITTEN PROCEDURES for PROCUREMENT

The regulations require the Sub-recipient (Applicant) have certain written procedures which are:

WHAT GOVERNS THE NEED FOR WRITTEN STANDARDS

WRITTEN PROCEDURE	44 C.F.R. Part 13.36	2 C.F.R. Part 215	2 C.F.R. Part 200
Contract administration system to ensure contractor performance.	13.36 (b) (2)	215.47	200.318 (b) "oversight" vs. written procedure
Employee "Code of Standards" and "Conflict of Interest".	13.36 (b) (3)	215.42	200.318 (c) (1)
Protest procedures	13.36 (b) (12)	215.41	200.318 (k)
Written selection procedures for procurement transactions.	13.36 (c) (3)	215.44	200.320 (d) (3)
Recovered materials.	-	-	200.322
Acquisition of unnecessary or duplicative items.	13.36 (b) (4)	215.44 (a) (1)	200.318 (d)



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BEST PRACTICES for PROCUREMENT

Per Department of Homeland Security-Office of Inspector General (DHS-OIG)

According to the Federal regulations (2 C.F.R. Part 200.318 - .326), all **non-Federal entities** (other than States) must comply with the following procurement standards ³

- ❑ Conduct all procurement transactions in a manner providing **full** and **open competition** with the standards of this section {2 C.F.R. Part 200.319 (a)}

Noncompetitive procurement may be used under certain circumstances, one of which is when the public exigency or emergency will not permit a delay resulting from competitive solicitation {2 C.F.R. Part 200.320 (f)}

- ❑ Take all necessary affirmative steps to assure the use of minority businesses, women's business enterprises and labor surplus area firms are given the opportunity to compete, when possible {2 C.F.R. Part 200.321}
- ❑ Maintain oversight to ensure contractors perform according to the terms, conditions and specifications of their contracts or purchase orders {2 C.F.R. Part 200.318 (b)}
- ❑ Maintain written standards of conduct covering conflicts of interest and governing the performance of its employees who engage in the selection, award and administration of contracts {2 C.F.R. Part 200.318 (c) (1)}

³ States must follow the same policies and procedures they use for procurement using non-Federal funds {2 C.F.R. Part 200.317}



FEDERAL PROCUREMENTS AND YOU

BEST PRACTICES for PROCUREMENT

Per Department of Homeland Security-Office of Inspector General (DHS-OIG)

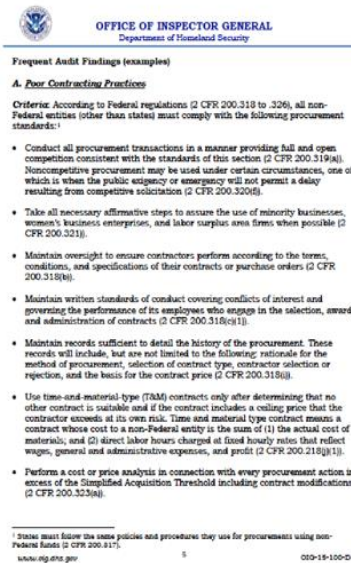
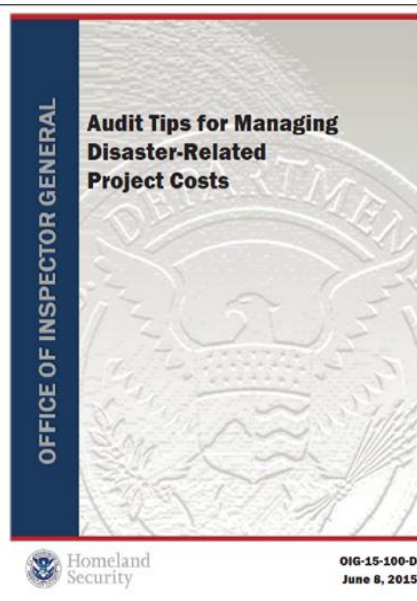
- ❑ Maintain records sufficient to detail the history of the procurement. These records will include, but are not limited to the following: rationale for method of procurement, selection of contract type, contractor selection or rejection and the basis for the contract price {2 C.F.R. Part 200.318 (i)}
- ❑ Use time and materials type (T+M) contracts only after determining that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at his own risk. Time and materials type contract mean a contract whose cost to a non-Federal entity is the sum of (1) the actual cost of the materials; and (2) direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses and profit {2 C.F.R. Part 200.318 (j) (1)}
- ❑ Perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (SAT) including contract modifications {2 C.F.R. Part 200.323 (a)}
- ❑ Negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed {2 C.F.R. Part 200.323 (b)}
- ❑ Do not use cost plus a percentage of cost and percentage of construction cost methods of contracting {2 C.F.R. Part 200.323 (d)}
- ❑ Include required provisions in all contracts awarded (2 C.F.R. Part 200.326)



FEDERAL PROCUREMENTS AND YOU

WHY ALL THE CHANGES?

REFERENCE MATERIAL



RECOMPENCES AND POTENTIAL PENALTIES

To the extent possible, FDEM will work with the Sub-recipient (Applicant) to resolve any non-compliant procurement issues.

Possible penalties for improper procurement:

- Withholding of payment
- Deobligation of funds
- Suspended grant(s)
- Withhold future grants
- Federally applied penalties
- And MORE!

DHS-OIG AUDIT TIPS FOR MANAGING DISASTER-RELATED PROJECT COSTS – OIG-15-100-D – JUNE 8, 2015 CAN BE DOWNLOADED AT

oig.dhs.gov/assets/GrantReports/2015/OIG_15-100-D_Jun15.pdf



THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT

FEDERAL PROCUREMENTS AND YOU

REFERENCE MATERIAL

2 CFR 200.317 - .326 & Appendix II

<http://www.ecfr.gov/cgi-bin/text-idx?node=2:1.1.2.2.1.4.31&rgn=div7>

Disaster Operations Legal Reference (DOLR) version 2.0

<https://www.hSDL.org/?view&did=748034>

Florida Department of Economic Opportunity

<http://www.floridajobs.org/>

DHS/OIG Audit Tips dated June 8, 2015

oig.dhs.gov/assets/GrantReports/2015/OIG_15-100-D_Jun15.pdf

Women's Business Council Gulf Coast

wbcsouth.org/

Department of Commerce's Minority Business Development Agency

<http://www.mbda.gov/>

Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288) as amended

<https://www.fema.gov/robert-t-stafford-disaster-relief-and-emergency-assistance-act-public-law-93-288-amended>

FEMA Public Assistance Program & Policy Guide

www.fema.gov/media-library/assets/documents/111781

Small Business Administration Assistance Resources (SBA)

<https://www.sba.gov/content/what-sba-offers-help-small-businesses-grow>

Women's Business Centers

<https://www.sba.gov/tools/local-assistance/wbc>



FEDERAL PROCUREMENTS AND YOU

WHAT ELSE DO YOU NEED TO KNOW & DO?

It is **YOUR** responsibility to have a sound working knowledge of AND to comply with your own local, State, Federal procurement guidelines in order to get and keep **all OBLIGATED funds you were approved to receive**. You must also ensure that **your contractors follow ALL applicable procurement guidelines**.

For more information or help with your procurement needs, visit

<http://www.fema.gov>

(search for procurement guidelines 44 CFR 13.36 and 2 CFR 215.44-.48 vs. 2 CFR Part 200.318-.326 & Appendix II)

OR

contact your local organization's Purchasing Officer and Authorized Legal Staff

If your legal staff have questions regarding 'New uniform Rules' they can contact the Florida Division of Emergency Management's Chief Legal Counsel, Mr. Michael Kennett, his contact information is shown here:

Mr. Michael Kennett, Chief Legal Counsel, FDEM

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FEDERAL PROCUREMENTS AND YOU

REQUIRED CONTRACT PROVISIONS

Governing regulations for procurement are dependent upon the *type* of grant you receive. For *disaster-related grants*, the effective date is dependent on the **issuance** of the Presidential Declaration (PD). For *non-disaster grants*, the effective date is dependent on the date the grant award was **issued**.

When applicable, contracts are **required** to include certain provisions as stated **below**:

CONTRACT PROVISION	CODE OF FEDERAL REGULATIONS (CFR)			APPLICATION
	GRANT AWARDS OR PD BEFORE 12/26/2014		GRANT AWARDS OR PD ON OR AFTER 12/26/2014	
	44 C.F.R.	2 C.F.R. 215	2 C.F.R. 200 (NEW)	
Copeland Anti-kickback Act	13.36 (i) (4)	-	Appendix II (E)	All construction or repair contracts.
	-	-	Appendix II (D)	All construction or repair contracts in excess of \$20,000.00.
Davis - Bacon Act	13.36 (i)(5)	215 Appendix A(3)	Appendix II (D)	Although listed as required contract provision in all C.F.R.s, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) DOES NOT require compliance with this Act and therefore no clause is required (Office of Chief Council [OCC]; Public Assistance Guide, FEMA 322/July 2007, page 44).



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REQUIRED CONTRACT PROVISIONS

CONTRACT PROVISION	CODE OF FEDERAL REGULATIONS (CFR)			APPLICATION
	GRANT AWARDS OR PD BEFORE 12/26/2014		GRANT AWARDS OR PD ON OR AFTER 12/26/2014	
	44 C.F.R.	2 C.F.R.	2 C.F.R. 200 (NEW)	
Compliance with regulations pertaining to patent rights (inventions), copyrights and rights in data	13.36(i)(8)(9)	215.36 Appendix A(5)	Appendix II(F)	The PA Program does not authorize any experimental, developmental or research work that would give rise to patents, inventions, copyrights or data. Therefore, there is NO REQUIREMENT for such clauses (OCC PA Field Manual, page 94).
Clean Air Act and Federal Water Pollution Act	13.36(i)(12)	215 Appendix A(6)	-	Applies to all contracts greater than or equal to \$100,000.00.
	-	-	Appendix II(G)	Applies to all contracts greater than or equal to \$150,000.00.
Byrd Anti Lobbying Amendment	-	215 Appendix A(7)	Appendix II(J)	Contractors that apply or bid for a contract must certify that it will not and has not used any Federal funds to influence an employee or member of Congress in obtaining any federal award.



FEDERAL PROCUREMENTS AND YOU

CONTACT INFORMATION

Florida Division of Emergency Management, Recovery Bureau,
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