

PUBLICATION

FEMA Applicants and American Rescue Plan Fiscal Recovery Fund Recipients Should Know About Updates to Procurement Requirements

Authors: Michelle Faye Zaltsberg

June 02, 2021

Entities that enter into contracts funded by federal grants like FEMA's Public Assistance program or the Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan, must ensure their procurements and contracts meet the requirements of 2 C.F.R. Part 200, also referred to as the "Uniform Rules." Last fall, the Office of Management and Budget revised 2 C.F.R. Part 200, including the procurement standards. These updates apply to awards made or disasters declared after November 12, 2020, although a few provisions are retroactive to August 13, 2020.

A summary of important procurement-related changes is provided below:

- **Official Changes to the Simplified Acquisition and Micro-purchase Thresholds.** Since 2018, agencies have understood that the Simplified Acquisition Threshold had been raised to \$250,000 and the Micro-purchase Threshold had been raised to \$10,000 under the National Defense Authorization Act for Fiscal Year 2018. The OMB's revisions to 2 C.F.R. Part 200 make it part of the regulations. As explained further below, the revisions also add flexibility to micro-purchases.
- **Additional Requirements for States.** Under the old regulations, "States" (as defined at § 200.90) were required to comply only with three sections of 2 C.F.R. Part 200: § 200.317 (Procurements by States), § 200.322 (Procurement of Recovered Materials), and § 200.326 (Contract Provisions). Under the revised procurement standards States must now comply with five provisions: § 200.317 (Procurements by States), § 200.321 (Contracting with Small and Minority Business, Women's Business Enterprises, and Labor Surplus Areas Firms), § 200.322 (Domestic Preferences for Procurements), § 200.323 (Procurement of Recovered Materials), and § 200.327 (Contract Provisions).
- **Added Flexibility to Micro-Purchases.** The revised regulations specifically allow for the use of purchase cards for micro-purchases. They also provide a mechanism for non-federal entities to establish a micro-purchase threshold higher than \$10,000 – up to \$50,000. To do so, the non-federal entity must annually self-certify the higher threshold, documenting the amount, a justification, and any of the following:
 - A qualification as a low-risk auditee, in accordance with the criteria in §200.520 for the most recent audit;
 - An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or
 - For public institutions, a higher threshold consistent with state law.

Thresholds higher than \$50,000 are also possible, but only with federal agency approval.

- **New § 200.322 Domestic Preferences for Procurement.** The procurement standards now require non-federal entities "provide a preference for the purchase, acquisition, or use of goods, products, or

materials produced in the United States." The preference applies to iron and steel products, construction materials composed in whole or in part of non-ferrous metals (e.g., aluminum), plastics and polymer-based products, aggregates (e.g., concrete), glass (including optical fiber), and lumber. This preference must be included in all contracts and subcontracts funded by the award (see below).

- **Additional Required Contract Provisions.** The new regulation at 2 C.F.R. § 200.327 (formerly 2 C.F.R. § 200.326), requires that all non-federal entities that enter into contracts funded by federal awards must include certain provisions in those contracts, as applicable. The required contract clauses are listed in Appendix II to 2 C.F.R. Part 200. The revisions to Appendix II add two new contract provisions:
 - *Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment* as described in the new § 200.216; and
 - *Domestic Preferences for Procurement* as described in the new § 200.322 (see discussion above).

FEMA has issued an Interim Policy on Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (FEMA Policy #405-143-1) which provides a template contract provision that applicants for Public Assistance may use in their new, extended, or renewed contracts and subcontracts. While provided by FEMA, the provision is a useful template for any non-federal entity receiving funding under any federal program subject to 2 C.F.R. Part 200.

Contact [Michelle Zaltsberg](#) or any member of [Baker Donelson's Disaster Recovery and Government Services Team](#) with additional questions.