

## Comparison of Federal and State Procurement Requirements For FEMA Public Assistance Grants to North Carolina Local Governments

This document compares procurement and contracting requirements for local governments under federal law applicable to FEMA Public Assistance Grants and that under North Carolina state law. Because this document provides only a summary of federal and state law, local governments should consult with their attorneys when entering into specific contracts to ensure compliance with all applicable laws and regulations.

FEDERAL	STATE
<b>Scope</b>	
<p>All federal grants and sub-grants are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Rules), codified at 2 C.F.R. part 200. This includes the standards for procurement under grants, which applies to contracts for services, procurement of goods (such as supplies and equipment), and construction or repair. FEMA’s Procurement Disaster Assistance Team (PDAT) has developed guidance for interpreting and applying the Uniform Rules. Additional materials referenced in this document include:</p> <ul style="list-style-type: none"> <li>• 2 C.F.R. § 200.326 and Appendix II to 2 C.F.R. pt. 200; FEMA Procurement Disaster Assistance Team, 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses (2017) [hereinafter PDAT Contract Provisions Template]</li> <li>• Procurement Disaster Assistance Team, 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 (2016) [hereinafter PDAT Supplement]</li> </ul> <p>Local governments must follow local policies and applicable state law except to the extent that federal requirements are more restrictive than local policies and state law. If there is an overlap with local, state, and federal rules, and none of the rules are more restrictive than another, the federal rules will apply. <a href="#">2 C.F.R. § 200.318(a)</a></p>	<p>State law procurement requirements apply when state or local funds are used, and still apply even when federal funds are used except to the extent that state law is inconsistent with federal law. Most procurement requirements applicable to local governments are provided for under Article 8 of Chapter 143 of the North Carolina General Statutes.</p> <p>Many local governments have adopted local procurement policies. In addition to complying with state law, a local government must comply with its own procurement policies. Local procurement policies cannot be inconsistent with state or federal law.</p> <p>For more information on local government procurement requirements, see the School of Government’s local government purchasing and contracting website at <a href="http://www.ncpurchasing.unc.edu">www.ncpurchasing.unc.edu</a>.</p>

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<b>Follow the “Most Restrictive Rule” for contracts involving federal grant funds: When comparing state and federal procurement requirements, apply the requirement that is most restrictive.</b>	
<b>Pre-Solicitation Requirements</b>	
Maintain a contract administrative system for oversight of contract compliance. <a href="#">2 C.F.R. § 200.318(b)</a>	Not required under state law.
Avoid unnecessary/duplicative purchases <a href="#">2 C.F.R. § 200.318(d)</a>	Not required under state law.
Consider consolidating or breaking out procurements to achieve a more economical purchase. <a href="#">2 C.F.R. § 200.318(d)</a>	Not required under state law; cannot divide a contract for the purpose of avoiding competitive bidding requirements.
Analyze benefits of purchase versus lease where appropriate. <a href="#">2 C.F.R. § 200.318(d)</a>	Not required under state law.
Procurement of Recovered Materials <ul style="list-style-type: none"> <li>• Applies to:               <ul style="list-style-type: none"> <li>○ Items where the purchase price exceeds \$10,000 or the value of the quantity procured during the prior fiscal year exceeded \$10,000</li> <li>○ Items designated by the Environmental Protection Agency (EPA) at 40 C.F.R. part 247</li> </ul> </li> <li>• Requirement:               <ul style="list-style-type: none"> <li>○ Procure such items that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition</li> </ul> </li> </ul> Solid Waste Management Services <ul style="list-style-type: none"> <li>• Requirement: Procure solid waste management services in a manner that maximizes energy and resource recovery</li> </ul> Affirmative Procurement Program <ul style="list-style-type: none"> <li>• Requirement: Establish an affirmative procurement program for procurement of recovered materials as designated by the EPA <a href="#">2 C.F.R. § 200.322</a></li> </ul>	Not required under state law.

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<p>Encouraged to use inter-local and cooperative agreements where appropriate.</p> <ul style="list-style-type: none"> <li>Joint procurements are allowed</li> </ul> <p><i>2 C.F.R. § 200.318(e); PDAT Supplement at VI-8 to VI-9</i></p>	<p>Not required under state law; interlocal agreements authorized under Article 20 of G.S. Chapter 160A.</p>
<p>Encouraged to use federal surplus property where feasible instead of purchasing new property. <a href="https://ncadmin.nc.gov/government-agencies/federal-surplus-property">https://ncadmin.nc.gov/government-agencies/federal-surplus-property</a></p> <p><i>2 C.F.R. § 200.318(f)</i></p>	<p>Not required under state law; related exceptions to competitive purchasing requirements include:</p> <ul style="list-style-type: none"> <li>Purchases from other units of government <i>G.S. 143-129(e)(1)</i></li> <li>Used items <i>G.S. 143-129(e)(10)</i></li> </ul>
<p>Encouraged to use value engineering for construction contracts where applicable.</p> <p><i>2 C.F.R. § 200.318(g)</i></p>	<p>Not required under state law.</p>
<p>Local government is responsible for resolution of all disputes related to the procurement and contract in accordance with good administrative practice and sound business judgment; bid protest procedure no longer required.</p> <p><i>2 C.F.R. § 200.318(k)</i></p>	<p>Bid protect procedure not required under state law; dispute resolution procedure required for all construction/repair contracts regardless of cost. <i>G.S. 143-128(f1)</i></p>
<p><b>Cost and Price Requirements</b></p>	
<p>Must perform a cost or price analysis for every procurement action above the simplified acquisition (\$250,000 as of 6/20/2018) or local/state equivalent threshold if more restrictive; requirement also applies to contract modifications. The method and degree of the cost or price analysis is dependent on the facts of the procurement.</p> <p><i>2 C.F.R. § 200.323(a); PDAT Supplement at II-6</i></p>	<p>Not required under state law.</p>
<p>Must conduct an independent estimates of costs for every procurement action prior to receiving bids or proposals.</p> <p><i>2 C.F.R. § 200.323(a)</i></p>	<p>Not required under state law.</p>

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<p>Must negotiate profit as a separate element of price for each contract when price competition is lacking and in all cases where a cost analysis is performed. <a href="#">2 C.F.R. § 200.323(b)</a></p>	<p>Not required under state law.</p>
<p>Cost or prices based on estimated costs for contracts are only allowable if they are allowable under the cost principles part of the Uniform Rules, located at 2 C.F.R. §§ 200.400-475. <a href="#">2 C.F.R. § 200.323(c)</a></p>	<p>Not required under state law.</p>
<b>Procurement Procedures – General</b>	
<p>Must ensure full and open competition and avoid measures that restrict competition, including:</p> <ul style="list-style-type: none"> <li>• Unreasonable requirements</li> <li>• Unnecessary experience and bonding requirements</li> <li>• Noncompetitive pricing between companies</li> <li>• Noncompetitive awards to consultants on retainer</li> <li>• Organizational conflicts of interest</li> <li>• Specifying only brand name without permitting equal products</li> <li>• Arbitrary actions</li> </ul> <p><a href="#">2 C.F.R. § 200.319(a)</a></p>	<p>Must comply with all applicable procurement requirements:</p> <ul style="list-style-type: none"> <li>• Purchase and construction/repair contracts in informal bidding range are subject to informal bidding requirements. <a href="#">G.S. 143-131</a></li> <li>• Purchase and construction/repair contracts in the formal bidding range are subject to formal bidding requirements. <a href="#">G.S. 143-129</a></li> <li>• Construction/repair contracts involving buildings costing \$300,000 or more subject to additional bidding requirements. <a href="#">G.S. 143-128</a></li> <li>• Engineer, architect, survey, and alternative construction delivery methods are subject to the qualifications-based selection process under the Mini-Brooks Act. <a href="#">G.S. 143-64.31</a></li> <li>• Others as applicable under state law.</li> <li>• Limitations on brand name specifications for construction/repair contracts. <a href="#">G.S. 133-3</a></li> </ul>
<p>Must have written selection procedures that:</p> <ul style="list-style-type: none"> <li>• incorporate a clear and accurate description of good/service; and</li> <li>• identify all bidder/proposer requirements and all evaluation criteria</li> </ul> <p><a href="#">2 C.F.R. § 200.319(c)</a></p>	<p>No similar requirement in state law; purchase and construction/repair contracts in the formal bidding range subject to certain public notice requirements under <a href="#">G.S. 143-129(b)</a>; optional RFP procedure for procuring information technology goods and services must include evaluation criteria in the RFP. <a href="#">G.S. 143-129.8</a></p>

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<p>If prequalified bidder lists are used, enough qualified firms must be included to ensure maximum competition; cannot preclude potential bidders from qualifying during the solicitation period. Must still comply with socioeconomic (M/WBE) solicitation requirements. <a href="#">2 C.F.R. § 200.319(d)</a></p>	<p>Prequalification not statutorily authorized for purchase contracts or contracts subject to Mini-Brooks Act; bidders may be prequalified for construction projects. <a href="#">G.S. 143-135.8</a></p>
<p>Solicitation must acknowledge use of FEMA funding for the contract. The Uniform Rules allow for the Federal agency (i.e., FEMA) to require additional provisions. FEMA requires this as one of the provisions. <a href="#">PDAT Contract Provisions Template ¶ 13(a)</a></p>	<p>Not required under state law.</p>
<b>Procurement Methods</b>	
<p><u>“Micro-Purchase”</u></p> <ul style="list-style-type: none"> <li>• Applies to: <ul style="list-style-type: none"> <li>○ All purchase of goods and services and construction</li> <li>○ Up to the micro-purchase threshold (\$10,000 as of 6/20/2018) or the equivalent local/state threshold if more restrictive (<i>PDAT Supplement</i> at II-6)</li> </ul> </li> <li>• Process: Can award contract without competition if price is considered fair and reasonable</li> <li>• Must distribute micro-purchases equitably among qualified suppliers to the extent practicable</li> <li>• Cannot divide contract to lower cost below micro-purchase threshold to avoid competitive bidding requirements</li> </ul> <p><a href="#">2 C.F.R. §§ 200.67, 200.320(a)</a></p>	<ul style="list-style-type: none"> <li>• No comparable provision in state law.</li> <li>• Purchase and construction contracts costing less than \$30,000 are not subject to state competitive bidding requirements.</li> <li>• Regardless of cost, service contracts are not subject to state competitive bidding requirements.</li> </ul>
<p><u>“Small Purchase” Procedure</u></p> <ul style="list-style-type: none"> <li>• Applies to: <ul style="list-style-type: none"> <li>○ All purchases of goods and services and construction (NOTE: FEMA recommends, but does not require, sealed bid method for construction contracts in the small purchase range - \$10,000-\$250,000)</li> </ul> </li> </ul>	<p><u>Informal Bidding Procedure</u></p> <ul style="list-style-type: none"> <li>• Applies to: <ul style="list-style-type: none"> <li>○ Purchase of goods costing between \$30,000 and \$90,000</li> <li>○ Construction/repair contract costing between \$30,000 and \$500,000</li> </ul> </li> <li>• Process: Secure informal bids and keep record of bid; no minimum number of bids required to award contract</li> <li>• Standard of Award: Lowest responsive, responsible bidder</li> </ul>

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<ul style="list-style-type: none"> <li>○ Up to the simplified acquisition threshold (\$250,000 as of 6/20/2018) or the equivalent local/state threshold if more restrictive (<i>PDAT Supplement</i> at II-6); and</li> <li>○ Fixed price or not-to-exceed contract type (<i>PDAT Supplement</i> at V-8).</li> <li>● Process: Obtain price or rate quotes from an adequate number of qualified sources. FEMA interprets “adequate number” as at least three quotes for purposes of small purchase procedures. <i>PDAT Supplement</i> at V-8</li> <li>● Standard of Award: Lowest cost responsible bidder</li> <li>● Cannot divide contract to bring contract cost under the threshold; changes to contract must fall within scope of original contract.</li> </ul> <p><i>2 C.F.R. §§ 200.88, 200.320(b); PDAT Supplement</i> at II-6, V-8.</p>	<ul style="list-style-type: none"> <li>● Cannot divide contract for purposes of evading competitive bidding requirements.</li> </ul> <p><i>G.S. 143-131</i></p>
<p><u>“Sealed Bid” Procedure</u></p> <ul style="list-style-type: none"> <li>● Applies to: <ul style="list-style-type: none"> <li>○ Purchase and service contracts costing more than the simplified acquisition threshold (\$250,000 as of 6/20/2018) or the equivalent local/state threshold if more restrictive (<i>PDAT Supplement</i> at II-6)</li> <li>○ Preferred method for construction contracts above the simplified acquisition threshold.</li> </ul> </li> <li>● Conditions for sealed bidding to be feasible <ul style="list-style-type: none"> <li>○ A complete, adequate, and realistic specification or purchase description is available;</li> <li>○ At least 2 responsible bidders are willing and able to effectively compete;</li> <li>○ Procurement lends itself to a firm fixed price contract and selection can be made principally on the basis of price</li> </ul> </li> <li>● Process: <ul style="list-style-type: none"> <li>○ Public advertisement providing sufficient time for bidders to respond before bid opening</li> </ul> </li> </ul>	<p><u>Formal Bidding Procedure</u></p> <ul style="list-style-type: none"> <li>● Applies to: <ul style="list-style-type: none"> <li>○ Purchase of goods costing \$90,000 or more</li> <li>○ Construction/repair contract costing \$500,000 or more</li> </ul> </li> <li>● Process: <ul style="list-style-type: none"> <li>○ Public advertisement for at least 7 full days prior to bid opening</li> <li>○ Availability of specifications/plans included in public advertisement</li> <li>○ No minimum number of bids required for purchase contracts; construction/repair contracts require a minimum of 3 bids for opening</li> <li>○ Public bid opening at date and time advertised</li> <li>○ Unit of government reserves the right to reject all bids</li> <li>○ Additional requirements apply if the project involves a building and costs \$300,000 or more</li> </ul> </li> <li>● Standard of Award: Lowest responsive, responsible bidder</li> </ul> <p><i>G.S. 143-129</i></p>

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<ul style="list-style-type: none"> <li>○ Complete specifications/plans made available to bidders</li> <li>○ At least 2 responsible bidders required for bid opening</li> <li>○ Solicit bids from “adequate number of known suppliers”</li> <li>○ Public bid opening at date and time advertised</li> <li>○ Contract awarded on a firm-fixed-price basis in writing</li> <li>○ Determination of the lowest price must include consideration of factors such as discounts, transportation costs, and lifecycle costs</li> <li>○ Can reject any and all bids for “sound documented reasons”</li> <li>● Standard of Award: Lowest responsive, responsible bidder</li> </ul> <p><a href="#">2 C.F.R. § 200.320(c)</a></p>	
<p><u>“Competitive Proposal” Procedure</u></p> <ul style="list-style-type: none"> <li>● Applies to: <ul style="list-style-type: none"> <li>○ Any contract costing more than the simplified acquisition threshold (\$250,000 as of 6/20/2018) or the equivalent local/state threshold if more restrictive (<a href="#">PDAT Supplement at II-6</a>) when conditions are not appropriate for the use of sealed bids</li> </ul> </li> <li>● Procedure: <ul style="list-style-type: none"> <li>○ Request for Proposals (RFP) must be publically advertised</li> <li>○ Evaluation criteria and relative importance identified in RFP</li> <li>○ Any responses to the publicized RFP must be considered to the maximum extent practical</li> <li>○ Proposals solicited from an “adequate number of qualified sources”</li> <li>○ Must have written method for conducting technical evaluations of proposals and selecting a contractor</li> </ul> </li> <li>● Standard of Award: Responsible firm with most advantageous proposal, taking into account price and other factors identified in the RFP</li> </ul>	<ul style="list-style-type: none"> <li>● No similar procedure in state law that generally applies to procurement; purchase and construction/repair contracts subject to informal and formal competitive bidding requirements.</li> <li>● Qualifications-based selection process required for procuring architectural, engineering, surveying, and construction management-at risk contracts. <a href="#">G.S. 143-64.31</a></li> <li>● Optional RFP process authorized for procuring combination of information technology goods and services. <a href="#">G.S. 143-129.8</a></li> <li>● RFP process may be used to procure service contracts (service contracts entered into by local governments are not subject to state competitive bidding requirements).</li> </ul>

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<p><u>2 C.F.R. § 200.320(d)</u></p> <p><u>Competitive Proposals Procedure for Soliciting Architectural and Engineering (A/E) Services</u></p> <p>Applies to:</p> <ul style="list-style-type: none"> <li>• Architectural and Engineering professional services</li> <li>• Required above the simplified acquisition threshold (\$250,000 as of 6/20/2018) or the equivalent local/state threshold if more restrictive (<i>PDAT Supplement at II-6</i>) but can be used for contracts below that amount</li> </ul> <p>Procedures:</p> <ul style="list-style-type: none"> <li>• Request for Qualifications (RFQ) is issued to solicit competitive proposals from qualified firms</li> <li>• RFQs must be publicly advertised</li> <li>• Any responses to the publicized RFQ must be considered to the maximum extent practical</li> <li>• Proposals solicited from an “adequate number of qualified sources”</li> <li>• Must have written method for conducting technical evaluations of proposals and selecting a contractor</li> <li>• Qualifications of respondents’ are evaluated to select the most qualified firm</li> <li>• Evaluation criteria and relative importance must be identified in the RFQ; however; price is not a factor in the initial selection of the most qualified firm</li> <li>• Once the most qualified firm is selected, fair and reasonable compensation can then be negotiated</li> <li>• State licensure requirements apply</li> <li>• May use local geographic preferences for the procurement of these specific services, provided that this leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract</li> </ul>	<p><u>Qualifications-Based Selection (QBS) Procedure for Soliciting Architectural, Engineering, Surveying, and Construction Management At-Risk Services</u></p> <p>Applies to:</p> <ul style="list-style-type: none"> <li>• Architectural, Engineering, Surveying, and Construction Management At-Risk professional services</li> <li>• Regardless of cost</li> </ul> <p>Procedures:</p> <ul style="list-style-type: none"> <li>• Request for Qualifications (RFQ) is announced to solicit competitive proposals from qualified firms</li> <li>• Qualifications of respondents’ are evaluated to select the most qualified firm</li> <li>• Price cannot be considered a factor in the initial selection of the most qualified firm</li> <li>• Once the most qualified firm is selected, fair and reasonable compensation can then be negotiated</li> <li>• State licensure requirements apply</li> <li>• Preference given for in-state (not local) firms over out-of-state firms</li> </ul> <p>Exception:</p> <ul style="list-style-type: none"> <li>• Units of local government may exempt themselves in writing from the QBS requirements if the estimated cost of the contract is less than \$50,000. <i>NOTE: State exemption not recognized under federal law.</i></li> </ul> <p><i>G.S. 143-64.31, -64.32</i></p>
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<p>Limitations:</p> <ul style="list-style-type: none"> <li>• Competitive proposal method for selecting A/E services can only be used for architectural and engineering professional services</li> <li>• Cannot be used for other services even if those services can be performed by architectural and engineering firms (such as general consulting services)</li> <li>• Meaning of architectural/engineering services is explained per <i>PDAT Supplement at V-15</i> <i>2 C.F.R. §§ 200.319(b); 200.320(d)(5)</i></li> </ul>	
<b>Exceptions to Procurement Requirements</b>	
<p>Some programs are exempt from the Uniform Rules requirements such as entitlement programs and certain block grants. FEMA Public Assistance Funds are not exempt. <i>2 C.F.R. § 200.101(d)</i></p>	<p>See <i>G.S. 143-129(e)</i> for exceptions to competitive bidding requirements for certain purchases and construction/repair contracts. Chart of exceptions available at <a href="http://www.ncpurchasing.unc.edu">www.ncpurchasing.unc.edu</a> under “Tools.”</p>
<p><u>“Non-Competitive Proposal” Procedure</u> Applies to:</p> <ul style="list-style-type: none"> <li>• Solicitation from just one source that fits within one of the following four exceptions: <ul style="list-style-type: none"> <li>○ Item available from only one source;</li> <li>○ Public exigency or emergency will not permit a delay that would result from competitive process;</li> <li>○ Award agency expressly authorizes noncompetitive procurement in response to a written request; or</li> <li>○ Competition deemed inadequate after soliciting from a number of sources using one of the other procurement methods identified in 2 C.F.R. § 200.320(a)-(d) (micro-purchase procedures; small purchase procedures; sealed bidding; or competitive proposals).</li> </ul> </li> </ul>	<p>Related exceptions to competitive bidding requirements under state law:</p> <ul style="list-style-type: none"> <li>• “Sole-source” exception for purchases when (i) performance or price competition for a product are not available; (ii) a needed product is available from only one source of supply; or (iii) standardization or compatibility is the overriding consideration. <i>G.S. 143-129(e)(6)</i></li> <li>• Emergency purchases and construction/repair contracts in cases of special emergency involving the health and safety of the people or their property. <i>G.S. 143-129(e)(2)</i></li> </ul>

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<p>Procedures:</p> <ul style="list-style-type: none"> <li>• Perform independent cost estimate</li> <li>• Perform cost or price analysis if procurement is above the simplified acquisition threshold (\$250,000 as of 6/20/2018) or the equivalent local/state threshold if more restrictive (<a href="#">PDAT Supplement at II-6</a>)</li> <li>• Submit procurement documentation to awarding agency</li> <li>• Negotiate profit as a separate element of the contract price</li> </ul> <p><a href="#">2 C.F.R. § 200.320(f)</a></p>	
<p><u>Using another entities' contracting process:</u> Federal rules do not allow exceptions for the requirements of full and open competition applicable to local governments, even for state purchasing programs and piggybacking.</p> <ul style="list-style-type: none"> <li>• Use of state purchasing program is only allowed if state contracts were procured in compliance with the rules applicable to local governments under 2 C.F.R. §§ 200.318-.326 (<a href="#">see PDAT Supplement at VI-10 to VI-11</a>)</li> <li>• Assignment of contract rights (also known as “piggybacking”) is discouraged and subject to several restrictions (<a href="#">see PDAT Supplement at VI-12 to VI-13</a>)</li> <li>• Purchases from group purchasing programs generally not allowed</li> </ul>	<p><u>Using another entities' contracting process:</u> Exceptions to competitive bidding requirements when using other entities' contracting process are:</p> <ul style="list-style-type: none"> <li>• Group purchasing programs <a href="#">G.S. 143-129(e)(3)</a></li> <li>• State and federal contracts <a href="#">G.S. 143-129(e)(9), (9a)</a></li> <li>• Piggy-backing exception <a href="#">G.S. 143-129(g)</a></li> </ul>
<b>Contract Award Requirements</b>	
<p>Must award contracts to responsible contractors possessing the ability to perform successfully under the contract, including such factors as integrity, compliance with public policy, record of past performance, and financial and technical resources.</p> <p><a href="#">2 C.F.R. § 200.318(h)</a></p>	<p>Award to lowest responsive, responsible bidder “taking into consideration quality, performance and the time specified in the proposals for the performance of the contract”; standard of award applied to contracts for purchases and construction/repair in the informal and formal bidding ranges.</p> <p><a href="#">G.S. 143-129(b); G.S. 143-131</a></p>
<p>Maintain records of procurement, including rationale for method of procurement, selection of contract type, contractor selection or rejection, and basis for contract price.</p>	<p>No similar requirement in state statutes; record of bids is required for purchase and construction/repair contracts in the informal bidding range (<a href="#">G.S. 143-131</a>), and similar documentation</p>

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<p><a href="#">2 C.F.R. § 200.318(i)</a></p>	<p>recommended for formal purchase and construction/repair contracts. All bid documents are public records under state Public Records laws and are subject to the records retention schedule developed by the NC Department of Cultural Resources <a href="http://www.records.ncdcr.gov/local/default.htm">http://www.records.ncdcr.gov/local/default.htm</a></p>
<p>Cannot award contracts or sub-contracts to debarred / suspended companies ( <a href="https://www.sam.gov">https://www.sam.gov</a> (federal), <a href="https://ncadmin.nc.gov/government-agencies/procurement/contracts/debarred-vendors">https://ncadmin.nc.gov/government-agencies/procurement/contracts/debarred-vendors</a> (state)). <a href="#">2 C.F.R. § 200.318(h)</a></p>	<p>No similar requirement in state law; no authority for local governments to debar or suspend bidders.</p>
<p>Limit use of time and materials contracts to when no other contract is suitable <u>and</u> contract includes a ceiling price that the contractor exceeds at its own risk. <a href="#">2 C.F.R. § 200.318(j)</a></p>	<p>While not specifically prohibited under state law, “time-and-materials” contracts are not consistent with the lowest responsive, responsible bidder standard of award for contracts subject to state competitive bidding requirements.</p>
<p>Cannot award “cost plus percentage of cost or percentage of construction cost contracts.” <a href="#">2 C.F.R. § 200.323(d)</a></p>	<p>While not specifically prohibited under state law, “cost-plus” contracts are not consistent with the lowest responsive, responsible bidder standard of award for contracts subject to state competitive bidding requirements.</p>
<b>Local Preferences</b>	
<p>Cannot use in-state or local geographic preferences (except for architectural/engineering services). <a href="#">2 C.F.R. § 200.319(b)</a></p>	<p>Local preferences not authorized by state statute for any contracts; purchase and construction/repair contracts in the informal and formal bidding ranges must be awarded to the lowest responsive, responsible bidder regardless of geographic location.</p>
<b>Socioeconomic (M/WBE) Business Requirements</b>	
<p>Applies to:</p> <ul style="list-style-type: none"> <li>• Generally applies to all contracts regardless of type and cost. There may be exceptions depending on facts and circumstances if the procurement fits within the sole source,</li> </ul>	<p>Applies to:</p> <ul style="list-style-type: none"> <li>• Building construction and repair projects subject to informal and formal competitive bidding requirements</li> </ul> <p>Procedures:</p>

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<p>exigent/emergency circumstances, or federal agency approval exception under 2 C.F.R. §§ 200.320(f)(1)-(3)</p> <p>Procedures: Take affirmative steps to encourage small and minority firms and women-owned business participation (but no preferences), including <u>all</u> of the following:</p> <ul style="list-style-type: none"> <li>• Include on solicitation lists</li> <li>• Solicit when such firms are potential bidders</li> <li>• Divide total contract requirements where economically feasible to enable more minority participation</li> <li>• Establish delivery schedules to encourage participation</li> <li>• Use SBA and Minority Business Development Agency of US Dept. of Commerce</li> <li>• Require prime contractors to take the same affirmative steps.</li> </ul> <p><a href="#">2 C.F.R. § 200.321</a></p>	<ul style="list-style-type: none"> <li>• Informal good faith solicitation and HUB reporting requirements by local governments for building construction/repair contracts costing between \$30,000 and \$300,000</li> <li>• Formal good faith solicitation and reporting requirements by local governments and prime contractors for building construction/repair contracts costing \$300,000 and more.</li> </ul> <p><a href="#">G.S. 143-128.2, -131</a></p>
<b>Bonding Requirements</b>	
<p>Applies to:</p> <ul style="list-style-type: none"> <li>• Construction or facility improvement contracts costing more than the simplified acquisition threshold (\$250,000 as of 6/20/2018) or the equivalent local/state threshold if more restrictive</li> <li>• Unless FEMA or North Carolina has determined the federal interest is adequately protected</li> </ul> <p>Bonds Required:</p> <ul style="list-style-type: none"> <li>• Bid bond of 5% of bid price; and</li> <li>• Performance and payment bonds for 100% of contract price</li> </ul> <p>For all other projects:</p> <ul style="list-style-type: none"> <li>• Follow local/state bonding requirements</li> </ul> <p><a href="#">2 C.F.R. § 200.325; PDAT Supplement at II-6</a></p>	<p>Applies to:</p> <ul style="list-style-type: none"> <li>• Construction and repair contracts</li> </ul> <p>Bonds Required:</p> <ul style="list-style-type: none"> <li>• Bid Bond – 5% of bid price required for construction/repair bids costing \$500,000 or more</li> <li>• Performance and Payment Bonds – 100% of contract price for each contract costing \$50,000 or more that is part of a construction project costing \$300,000 or more</li> </ul> <p><a href="#">G.S. 143-129(b),(c)</a></p>

## Comparison of Federal and State Procurement Requirements For FEMA Public Assistance Grants to North Carolina Local Governments

<b>Contract Provisions</b>	
<p>Include all applicable contract provisions</p> <p><b>Required:</b></p> <ul style="list-style-type: none"> <li>• Remedies: Applies to contracts above the simplified acquisition threshold (\$250,000 as of 6/20/2018) or the equivalent local/state threshold if more restrictive</li> <li>• Termination for Cause and Convenience: Applies to contracts above \$10,000</li> <li>• Equal Employment Opportunity: Applies to “federally assisted construction contracts” as defined by 41 C.F.R. § 60-1.3, except as otherwise provided under 41 C.F.R. pt. 60</li> <li>• Contract Work Hours and Safety Standards Act: Applies to contracts above \$100,000 involving the employment of mechanics or laborers</li> <li>• Clean Air Act and Federal Water Pollution Control Act: Applies to contracts above \$150,000</li> <li>• Debarment and Suspension: Applies to all contracts and subcontracts</li> <li>• Byrd Anti-Lobbying Amendment: Applies to contracts above \$100,000</li> <li>• Procurement of Recovered Materials: Applies to procurement of prime contracts and subcontracts</li> </ul> <p><b>Recommended:</b></p> <ul style="list-style-type: none"> <li>• Changes: Applies to all contracts</li> <li>• Access to Records: Applies to all contracts</li> <li>• DHS Seal, Logo, and Flags: Applies to all contracts</li> <li>• Compliance with Federal Law, Regulations, and Executive Orders: Applies to all contracts</li> <li>• No Obligation by Federal Government: Applies to all contracts</li> </ul>	<p>No comparable requirement under state law.</p>

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<ul style="list-style-type: none"> <li>• Program Fraud and False or Fraudulent Statements or Related Acts: Applies to all contracts</li> <li>• Socioeconomic Contracting: May want to include as a provision in prime contracts since prime contractors must take the same affirmative steps regarding socioeconomic contracting per 2 C.F.R. § 200.321(b)(6)</li> </ul> <p><i>2 C.F.R. § 200.326; 2 C.F.R. pt. 200, App. II; PDAT Contract Provisions Template</i></p>	
<b>Access to Records</b>	
<p><b>Solicitation Documents:</b></p> <ul style="list-style-type: none"> <li>• Requirement: Must make technical specifications on proposed procurements available to FEMA or North Carolina upon request when FEMA or North Carolina believes such a review is needed to ensure the item or service specified is the one being proposed for acquisition</li> <li>• Timing: Generally prior to the time the specification is incorporated into a solicitation document</li> </ul> <p><b>Procurement Documents:</b></p> <ul style="list-style-type: none"> <li>• Requirement: Must make procurement documents, such as requests for proposals or invitations for bids or independent cost estimates, available to FEMA or North Carolina upon request for pre-procurement review</li> <li>• May be exempted from this review if FEMA or North Carolina determines its procurement system complies with the procurement standards of the Uniform Rules</li> </ul> <p><i>2 C.F.R. §200.324</i></p>	<p>No comparable requirement under state law. All bid documents are public records under state Public Records laws and are subject to the records retention schedule developed by the NC Department of Cultural Resources <a href="http://www.records.ncdcr.gov/local/default.htm">http://www.records.ncdcr.gov/local/default.htm</a>.</p>
<b>Disposal of Property</b>	
Get instructions from granting agency.	Governed by Article 12, Chapter 160A.
<b>Conflicts of Interest (See detailed charts on pages 16-17)</b>	
Develop and follow a written code of standards of conduct addressing conflicts of interest and gifts from contractors. Written	<ul style="list-style-type: none"> <li>• Governing boards must have a local code of ethics</li> <li>• <i>G.S. 14-234</i> prohibits conflicts of interest in public contracting</li> </ul>

## Comparison of Federal and State Procurement Requirements For FEMA Public Assistance Grants to North Carolina Local Governments

standards of conduct must provide for disciplinary actions for violations of such standards. <i>2 C.F.R. § 200.318(c)(1)</i>	<ul style="list-style-type: none"> <li>• <i>G.S. 133-32</i> prohibits certain gifts from contractors</li> <li>• <i>G.S. 14-234.1</i> prohibits use of confidential information for personal pecuniary gain</li> </ul>
Written standards of conduct must also cover organizational conflicts of interest if the local government has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe. <i>2 C.F.R. § 200.318(c)(2)</i>	No comparable requirement under state law; local governments may impose conflicts of interest requirements on grant recipients as a condition of award of grant funds.
Violations of standards of conduct may result in loss of federal funds and disciplinary action under local policy. <i>See 2 C.F.R. § 200.318(c)</i>	Violations of statutory prohibitions punishable as a Class 1 misdemeanor; in addition, a contract entered into in violation of <i>G.S. 14-234</i> is void and unenforceable.

*Citation Notes:*

1. Federal Procurement Requirements: Citations are from 2 C.F.R. part 200, subpart D, sections 200.318-.326. This document focuses primarily on **procurement** requirements; recipients and subrecipients should consult the NC Division of Emergency Management or FEMA to ensure compliance with other regulations applicable to FEMA Public Assistance grants.
  
2. North Carolina State Law: Most state procurement requirements applicable to local governments are found in Article 8 of G.S. Chapter 143. Specific statutory citations are listed within this document.

For more information, see [www.fema.gov/procurement-disaster-assistance-team](http://www.fema.gov/procurement-disaster-assistance-team) (federal law)  
and [www.ncpurchasing.unc.edu](http://www.ncpurchasing.unc.edu) (state law)

## Comparison of Federal and State Procurement Requirements For FEMA Public Assistance Grants to North Carolina Local Governments

### Conflicts of Interest (federal law vs. state law)

	Federal <i>(2 C.F.R. § 200.318(c)(1))</i>	State <i>(G.S. 14-234(a)(1))</i>
Who is covered	Officers, employees, and agents of recipient and subrecipient	Officers, employees
Who else is covered	Spouse, immediate family, partners, current or soon-to-be employer	Spouse
What kind of interest	Real or apparent financial or other interest or personal tangible benefit	Direct benefit
Exceptions	Financial interest that is not substantial	<ol style="list-style-type: none"> <li>1. Banks &amp; utilities</li> <li>2. Friendly condemnation</li> <li>3. Spouse employment</li> <li>4. Public assistance</li> <li>5. Small jurisdictions</li> </ol>
Penalties	<ol style="list-style-type: none"> <li>1. Loss of federal funds</li> <li>2. Disciplinary action</li> <li>3. Other remedies for noncompliance listed at 2 C.F.R. § 200.338</li> </ol>	<ol style="list-style-type: none"> <li>1. Class 1 misdemeanor</li> <li>2. Void Contract</li> </ol>



## Comparison of Federal and State Procurement Requirements For FEMA Public Assistance Grants to North Carolina Local Governments

### Gift Ban (federal law vs. state law)

	Federal (2 C.F.R. § 200.318(c)(1))	State (G.S. 133-32)
Prohibited giver	Current or future contractor or vendor	Past (w/in 1 year), present, or future contractor or vendor
Prohibited receiver	All officers, employees, agents of recipients and subrecipients	Officers and employees involved in: <ol style="list-style-type: none"> <li>1. Preparing plans</li> <li>2. Awarding or administering contracts</li> <li>3. Inspecting or supervising construction</li> </ol>
Exceptions	Unsolicited gift of nominal value	<ol style="list-style-type: none"> <li>1. Honoraria</li> <li>2. Nominal advertising items</li> <li>3. Meals at banquets</li> <li>4. Professional groups</li> <li>5. Family and friends</li> </ol>
Penalties	<ol style="list-style-type: none"> <li>1. Loss of federal funds</li> <li>2. Disciplinary action</li> <li>3. Other remedies for noncompliance listed at 2 C.F.R. § 200.338</li> </ol>	Class 1 misdemeanor