

Procurement Under Grants

Federal Requirements for Recipients and Subrecipients of
Public Assistance Funding

FEMA Stand-Down

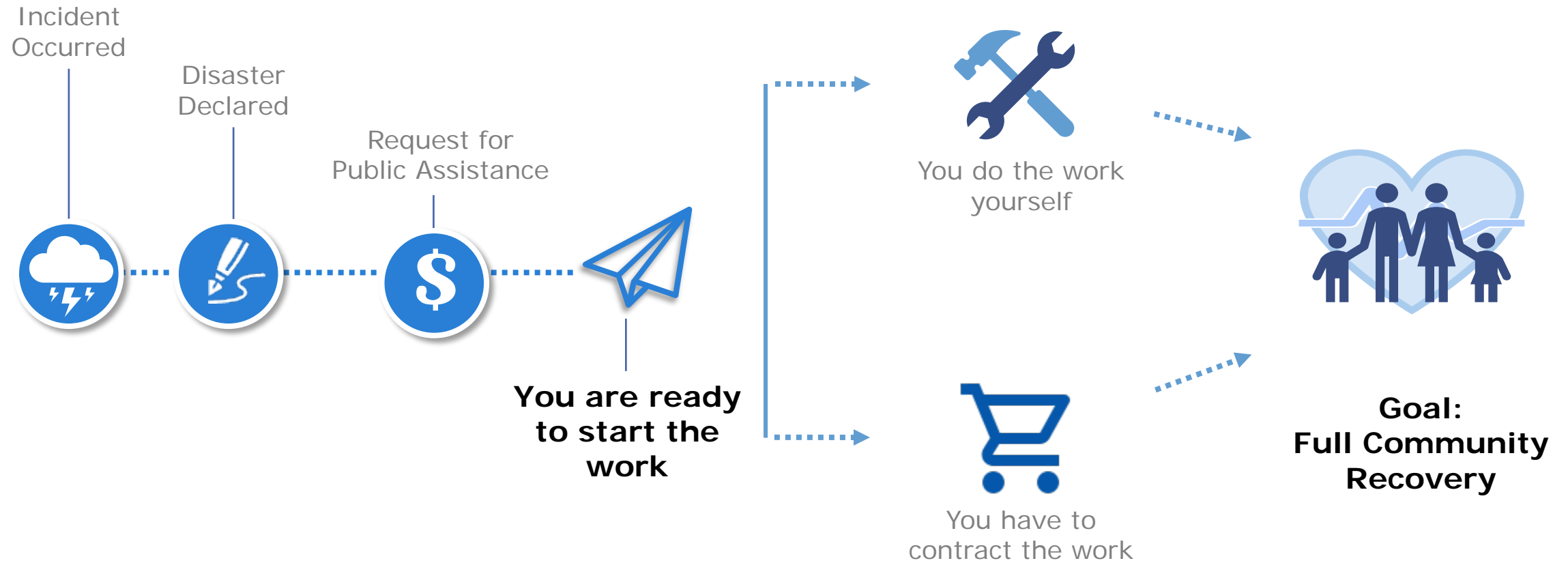
FEMA Procurement Disaster Assistance Team (PDAT)

8/21/2019



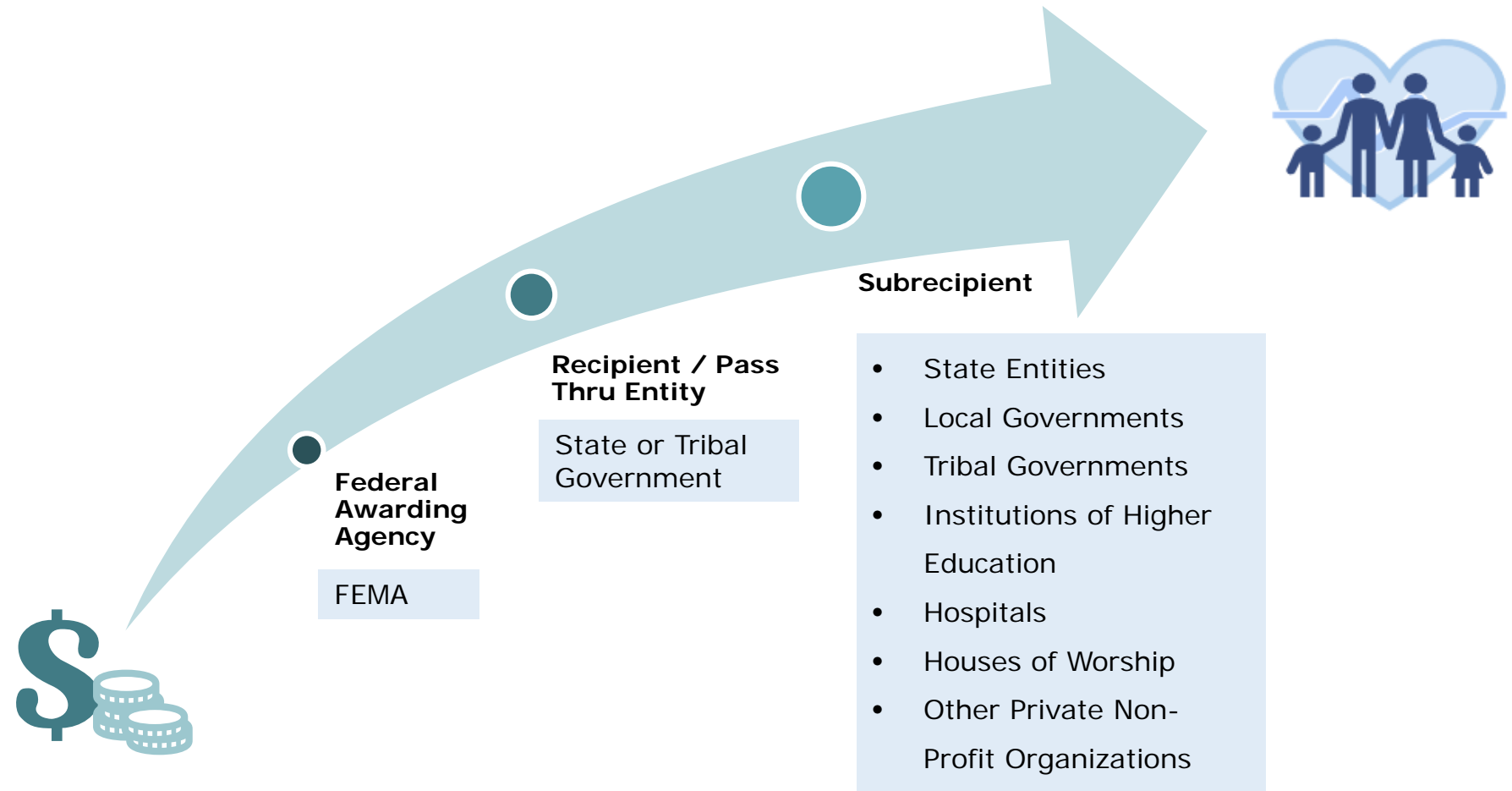
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Why Procurement



Key Players

Within the Federal Award Cycle



Key Players

Within the Federal Award Cycle



OIG



**Federal
Awarding
Agency**

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**Recipient / Pass
Thru Entity**

State or Tribal
Government

Subrecipient

- State Entities
- Local Governments
- Tribal Governments
- Institutions of Higher Education
- Hospitals
- Houses of Worship
- Other Private Non-Profit Organizations

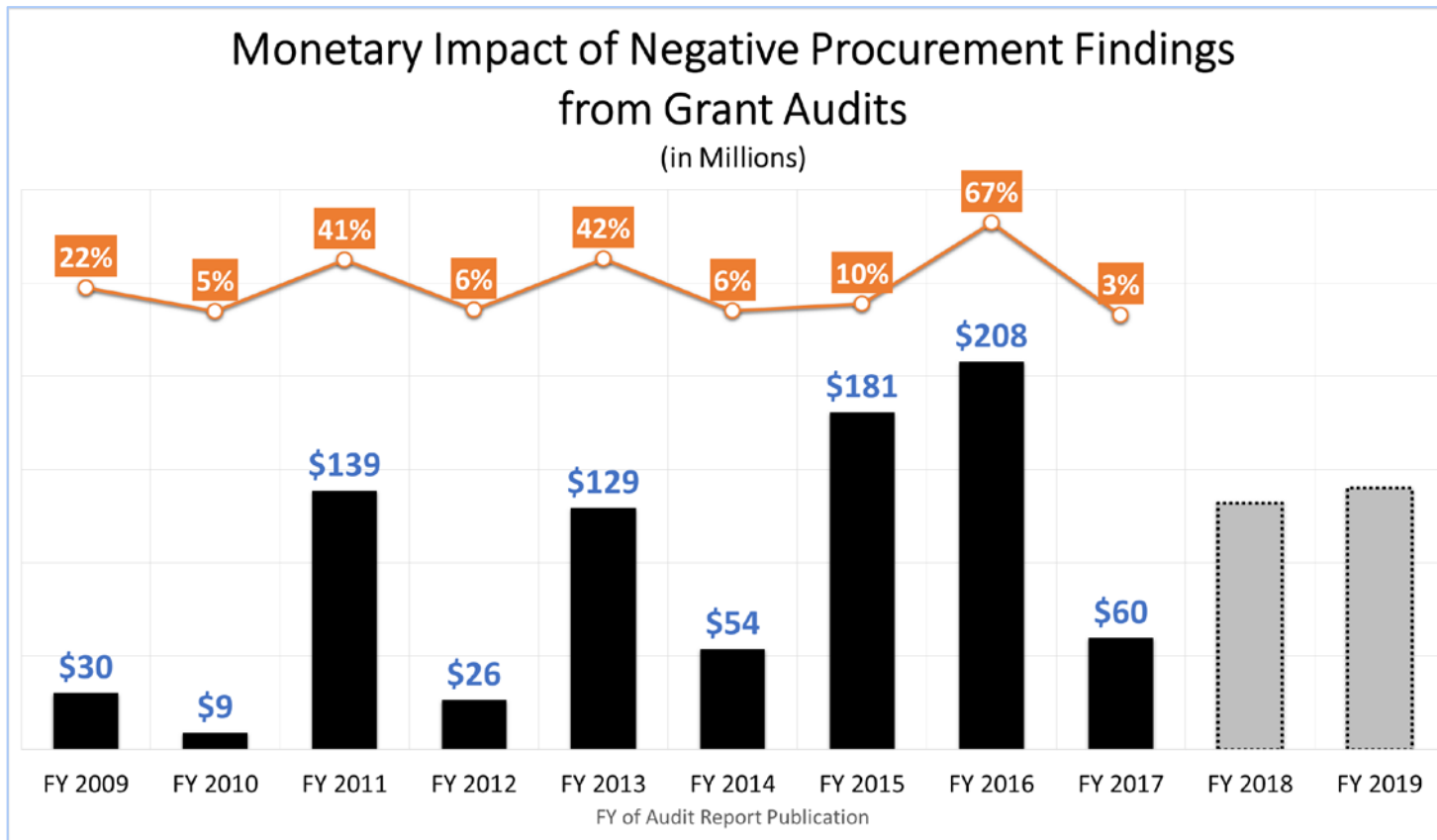


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Procurement Non-Compliance Is Costly

Procurement non-compliance
has shown up in audits
consistently since FY 2009

Negative findings are projected to
reach **over \$140M** by the end of
FY 2019



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Procurement Non-Compliance Is Costly



www.fema.gov/procurement-disaster-assistance-team



Not Very Frequent

Very Frequent



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Kickoff: Uniform Rules



2 C.F.R. §§ 200.317 – 326

317	Procurements by States
318	General Procurement Standards
319	Competition
320	Procurement Methods
321	Socio-Economic Contracting
322	Recovered Materials
323	Contract Cost or Price
324	Review of Procurements
325	Bonding Requirements
326	Contract Provisions

Objectives



Reasonable
Cost



Other Policy
Goals

Rules that Apply to States

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 Rules



317	Procurements by States
322	Recovered Materials
326	Contract Provisions

Replay

State **must**:

Follow **State procurement policies** and procedures



Recovered Materials

Contract Provisions

Rules that Apply to Non-State Entities

Are You a Non-State Entity?

- Local Governments
- **Tribal Governments**
- Institutions of Higher Education
- Hospitals
- Houses of Worship
- Other Private Non-Profit Organizations

Applicable Rules

Must follow **own** procurement policies and procedures



Must follow **tribal or state** procurement policies and procedures



Must follow **federal** procurement standards (318-326)



318

General Procurement Standards

319

Competition

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Procurement Methods

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Socio-Economic Contracting

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Recovered Materials

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Contract Cost or Price

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Review of Procurements

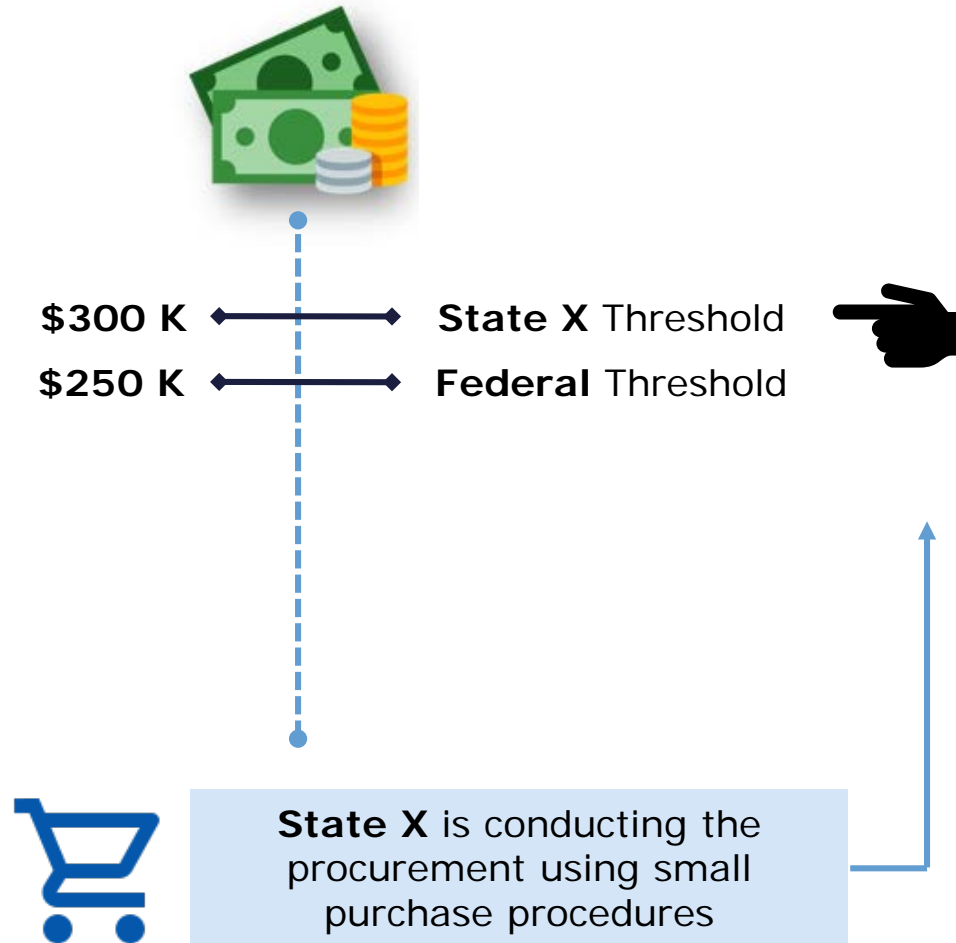
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Bonding Requirements

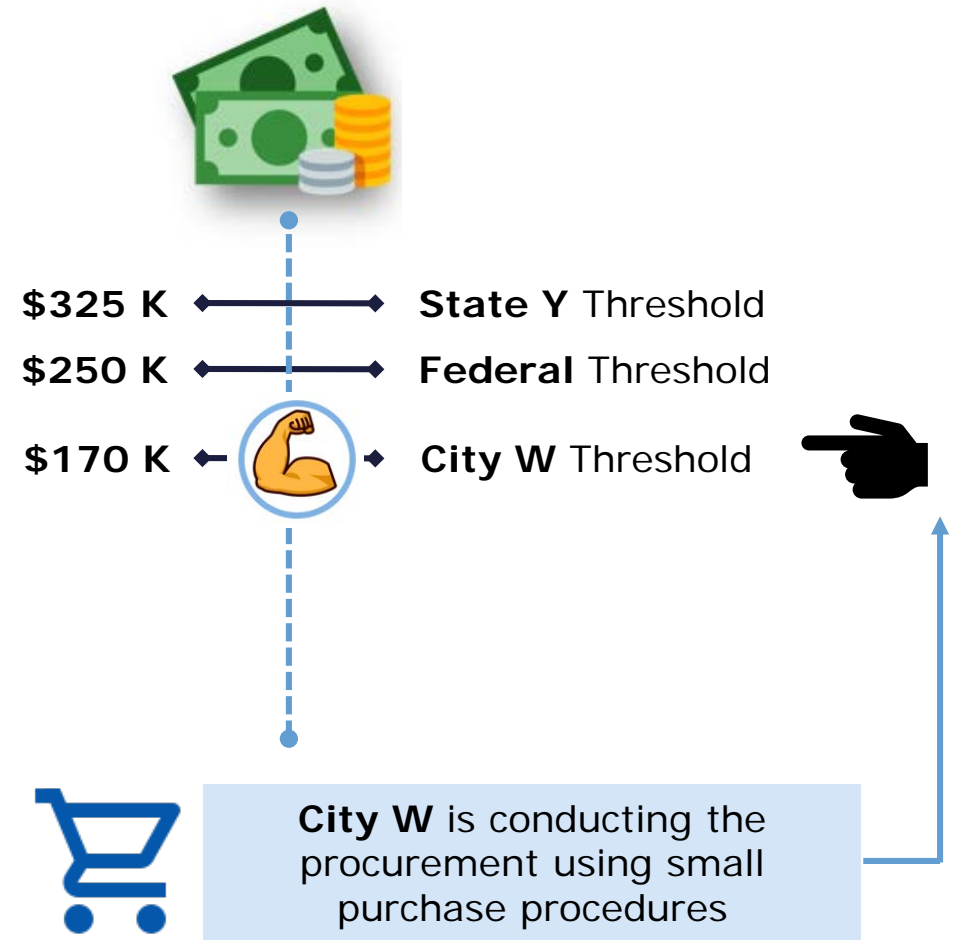
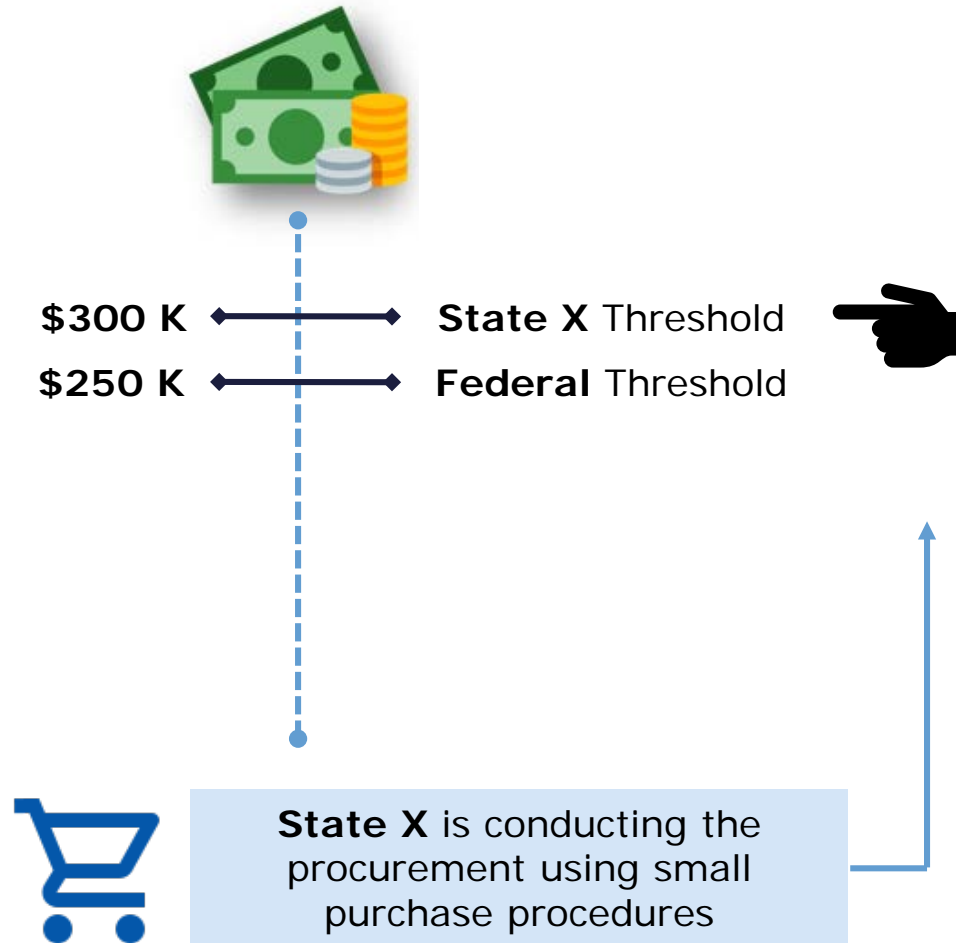
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Contract Provisions

Warm-Ups



Warm-Ups



Full & Open Competition: Fair Playing Field

- **Key principle** of procurement rules
- All qualified and responsible sources are eligible to compete without restrictions
- Cast the net broadly to reach **fair and reasonable pricing from the most qualified contractor**
- Prevents favoritism, fraud, waste, and abuse



Don't Restrict Competition!

What to Avoid:

- Requiring unnecessary experience
- Requiring excessive bonding ([200.325](#))
- Using brand names
- Allowing non-competitive pricing practices
- Using only contractors that are already on retainer
- Allowing organizational conflicts of interest
- Exhibiting arbitrary actions during the procurement process

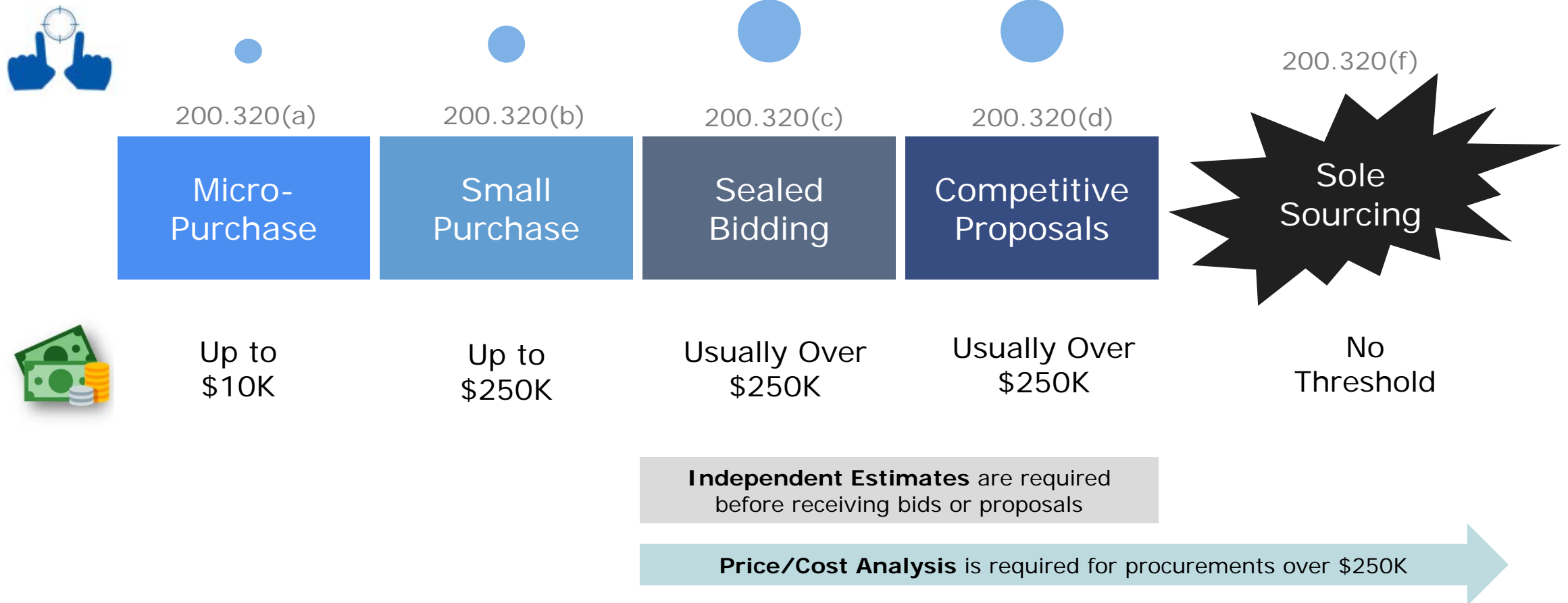
Keep in Mind:

- Contractors that help draft the scope specifications can't compete
- Using state or local **geographic preferences** in evaluating bids or proposals **is prohibited!**



Very
Frequent

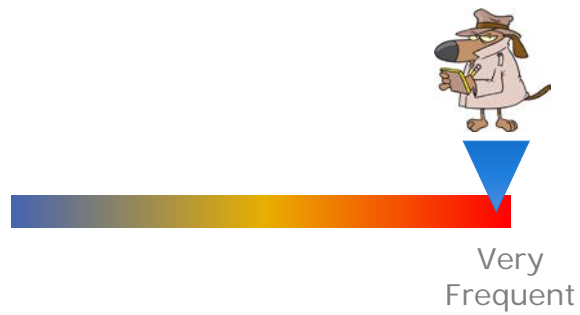
Methods of Procurement



Sole Sourcing Contracting

What Is It?

- Procurement through solicitation of a proposal from **only one source**
- Special case in which **full and open competition is not required**



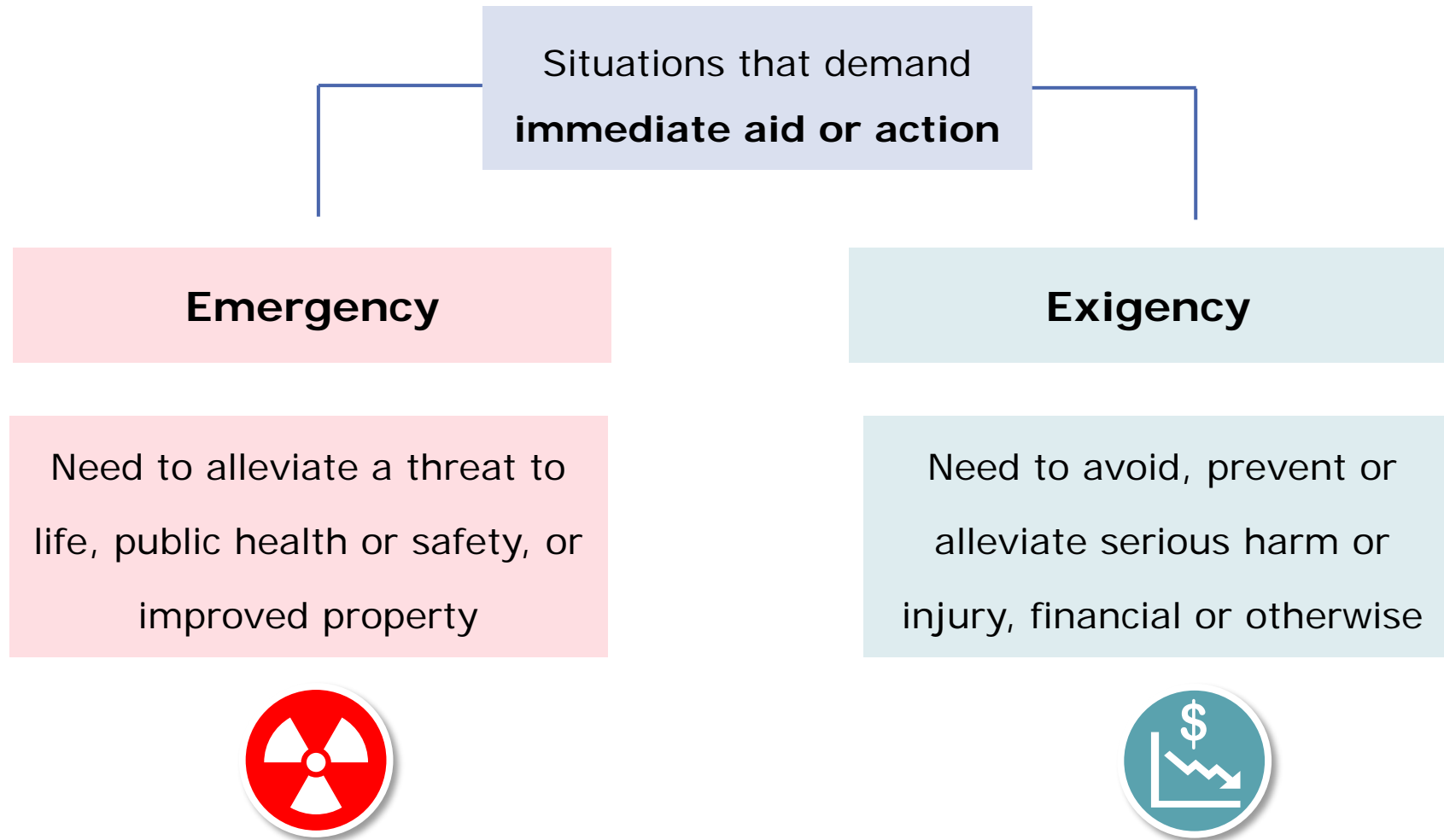
When Can It Be Used?

Only if one, or more, of these circumstances applies:

- Only one source
- Public Emergency or Exigency
- Awarding agency approval
- Inadequate competition



Procurement Under E&E



If using sole sourcing due to emergency or exigency, you **must**:

Justify with **documentation**

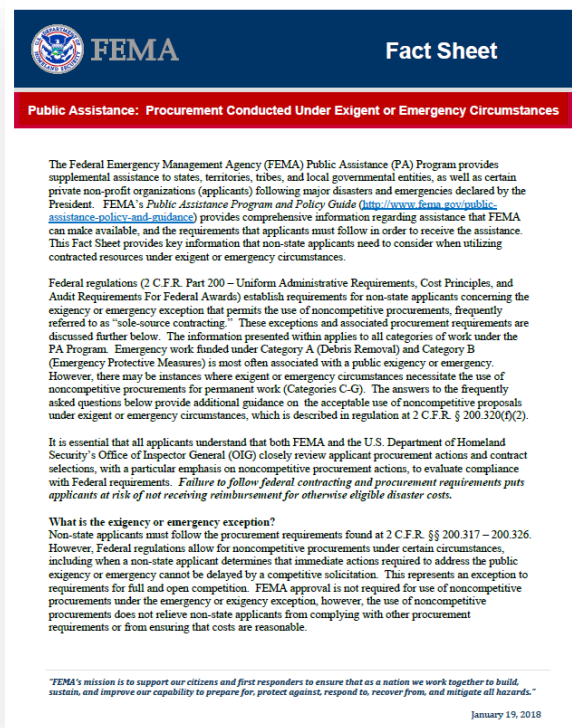
Use only during the **period of actual** exigent or emergency circumstances

Transition to a competitive method **as soon as period ends**



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Procurement Under E&E



PA Fact Sheet: Procurement Conducted Under Exigent or Emergency Circumstances



If using sole sourcing due to emergency or exigent, you **must**:

Justify with **documentation**

Use only during the **period of actual** exigent or emergency circumstances

Transition to a competitive method **as soon as period ends**



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Take All Affirmative Steps



Justify with
documentation

Goal:

Assure that:

- Small businesses
- Minority businesses
- Women's business enterprises &
- Labor surplus area firms



are used when possible



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The 6 Steps:

1. **Place** qualified target firms on **solicitation lists**
2. **Assure** that target **firms are solicited** whenever they are potential sources
3. **Divide total requirements**, when feasible, into smaller tasks or quantities to permit maximum participation by target firms
4. **Establish delivery schedules**, when feasible, which encourage participation by target firms
5. **Use the services** and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce
6. **Require** the prime contractor, if **subcontracts are to be let, to take** the five previous, **affirmative steps**

Cost or Price Analysis

1

Cost or price analysis is required if your procurement is over **\$250K**



Goal:

Determine if the price is fair & reasonable

2

Price Analysis:

- Simpler
- Examination of proposed price as **a whole**



Cost Analysis:

- More complex
- Evaluation of **separate cost elements**



3

Profit must be negotiated

- As a separate element of price for contracts with no price competition
- Always when doing cost analysis

Rules by Contract Type: Time & Materials



T&M Contract Cost:

Actual cost of
materials



Direct labor hours
charged at **fixed
hourly rates**



Applicability:

- When not possible to initially estimate extent or duration of work
- Use only after determining that **no other contract is suitable**



Limitations:

- A **ceiling price**, that the contractor exceeds at own risk, must be established
- Must maintain high degree of **oversight to avoid unneeded cost over-runs**
- Use **only until the scope of work becomes clear**



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318 General Proc. Standards

Cost Plus Percentage of Cost Contracts Are Prohibited!

How to Spot a CPPC Contract:



- Payment is at a predetermined rate
- This rate is applied to actual performance costs
- Contractor's entitlement is uncertain at the time of contracting
- Rate increases with increased performance costs



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Why Using CPPC Contracts Is Prohibited:

- There is no incentive to control costs
- The contractor has a financial interest in increasing the cost of performance



323 Contract Cost or Price

Contract Language: Provisions Applicable to PA

Required:

- Legal/contractual/administrative remedies for breach of contract
- Termination for cause or convenience
- Equal Employment Opportunity
- Contract Work Hours and Safety Standards Act
- Clean Air Act and Federal Water Pollution Control Act
- Debarment and Suspension
- Byrd Anti-Lobbying Amendment
- Procurement of Recovered Materials

Recommended:

- Contract Changes
- Access to Records
- DHS Seal, Logo, and Flags
- Compliance with Federal Law, Regulations and Executive Orders
- No Obligation by Federal Government
- Program Fraud and False or Fraudulent Statements or Related Acts



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**Online Provisions Template Is
Available at**
[www.fema.gov/procurement-
disaster-assistance-team](http://www.fema.gov/procurement-disaster-assistance-team)

Warning: You Cannot Limit Access to Records!



- Applies to contracts entered into after August 1, 2017
- FEMA **cannot reimburse** applicants for contract expenses **where the contract prohibits** the FEMA Administrator or U.S. Comptroller General from auditing or reviewing all aspects related to the contract.
- **DO NOT** include such a provision in contracts



Must Award Only to Responsible Contractors

Able to perform successfully under the procurement's terms and conditions

Evidence of integrity

Has been compliant with public policy

Has a good record of past performance

Has adequate financial and technical resources



Must not have been debarred or suspended

Must not be listed on exclusions at www.sam.gov

Other Basic Rules of Engagement

Mandatory Standards

1. Contractor Oversight
2. Necessity
3. Code of Conduct
4. Conflict of Interest
5. Gifts
6. Responsible Contractors Only
7. Records
8. Settlement of Issues



Encouraged Standards

1. Use of federal excess and surplus property
2. Value engineering contracts
3. Intergovernmental agreements

Other Basic Rules of Engagement

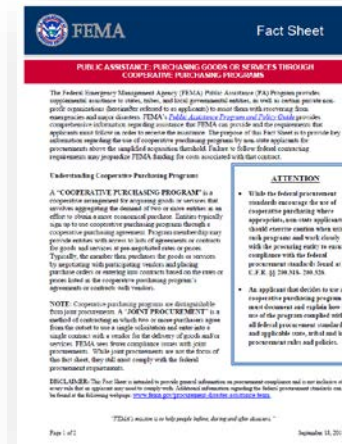
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PA Fact Sheet:
Purchasing Goods or
Services through
Cooperative
Purchasing
Programs

Records Replay

Document, Document, Document!



Must maintain records sufficient to detail the history of the procurement

Rationale for the Method of Procurement

Selection of Contract Type

Selection of Contractor

Basis for Contract Price



Sole Sourcing under E&E

Taking the 6 Affirmative Steps

Time & Materials Contract Justification

Search at www.SAM.gov

Independent Estimate; Cost or Price Analysis; Quotations



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318 General Proc. Standards

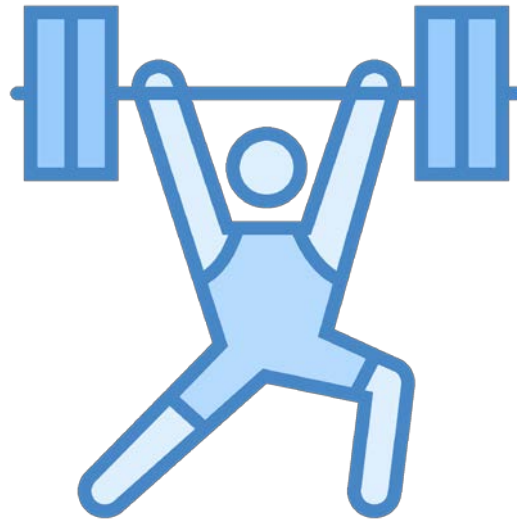


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Tools Made Just for You: Long Practice Strategy

Procurement Rules Online

www.ecfr.gov
2 C.F.R. §§ 200.317-326



PDAT Website

www.fema.gov/procurement-disaster-assistance-team

- Webinar Series
- PDAT Resources
 - Contract Provisions Template
 - Checklists



www.SAM.gov



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We Will Get There!



Full Community Recovery



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