

MAXIMIZING FEDERAL ASSISTANCE

FOCUS: Hospital Procurement

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The President's March 13, 2020 nationwide emergency declaration provides access to funds to support eligible Emergency Protective Measures (EPM) implemented to respond to the COVID-19 emergency. Many hospitals and healthcare providers can seek reimbursement for protective measures they have taken under Category B of the Federal Emergency Management Agency's (FEMA) Public Assistance (PA) program.

This unprecedented acute public health emergency has not just strained operational capabilities of healthcare providers and systems, it also has depleted otherwise abundant supplies of personal protective equipment and critical life-saving equipment like ventilators. In the midst of a crisis such as this, it's imperative that hospitals have ability to procure equipment, labor and services quickly and traditional procurement procedures may prove to be too rigid or time consuming. While FEMA and other Federal agencies understand that alternative emergency procurement procedures may be utilized in emergency circumstances, there are still some general guidelines that hospitals and healthcare providers should attempt to follow when reasonable.

When Are Emergency Procurements are Allowable?

FEMA allows for emergency procurements only in instances when using a competitive procurement process would prevent a non-state entity from taking the immediate actions required to address an emergency or exigent circumstance. Emergencies involve a threat to life, public health or safety, improved property or some other form of dangerous situation. Exigencies, on the other hand, involve an urgent need to avoid, prevent or alleviate serious harm or injury, financial or otherwise.

If you've determined that emergency procurement is prudent, there are general guidelines to keep in mind:

- Always comply with existing pre-event documented procurement and contract management procedures for emergency procurements.
- Full and open competition should be pursued when reasonable.
- Sole-source procurement should be well-documented as reasonably justified and only utilized if the product or service is specialized, in extremely limited quantities or required in such a limited timeframe that sourcing from other vendors would risk life and safety.

Further, FEMA only allows for emergency procurements limited to supplies, services or construction items in such quantities as are necessary to meet the emergency. In addition, hospitals must maintain a record of each emergency procurement and document the need. Record the name of the vendor, the amount and type of contract and a list of supplies or services purchased under each contract that addresses the COVID-19 emergency.

Approved Contract Types, Duration and Scope

FEMA's allowable contract types include Fixed Price and Cost Reimbursement and the agency may reimburse costs to hospitals incurred under a Time & Materials contract in limited circumstances if all the following apply:

- No other contract was suitable,
- The contract has a ceiling price that the contractor or vendor exceeds at its own risk, and
- The awarding entity provides a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

FEMA also allows for amending existing contracts to satisfy the required need. When amending existing contracts, pricing should be in line with the current contract terms or reasonably consistent with market rate for those services or supplies. It's advisable that a certain level of analysis is documented to substantiate any pricing adjustment from that previously provided by the contractor or vendor.

COVID-19 Specific Considerations

Many hospitals and healthcare providers may have enacted advanced protective measures and incurred significant costs in preparation for an expected influx of COVID-19 patients. Should the hospital encounter only limited numbers or even no COVID-19 patients, the costs incurred to pre-position resources and equipment may still be eligible for reimbursement. It will be important to document that the measures that were taken were reasonable and consistent with local, state or national public health directives.

Consideration should also be given to the availability of items, and when you anticipate taking delivery of them. If supplies or equipment has a 90-120-day delivery estimate, carefully evaluate if their need would still be considered prudent. Some of this may be subjective, as the public health emergency remains extremely dynamic and week to week. But make sure you document the factors that influenced your decision making at the time, including models and projections available at that time.

It's understood that the widespread demand for items such as ventilators, personal protection equipment or testing supplies may have temporarily inflated the market rate. When purchasing supplies or equipment that are significantly above pre-event market rate, it will be important to document that the price is consistent with the regional pricing for the items at the time they were purchased. FEMA may ask you to demonstrate cost reasonableness for the items, and this documentation will prove critical.

FEMA will work with hospitals to review comments and requests in order to help them through the funding process, as time affords. However, FEMA will be inundated with requests from the unprecedented number of potentially eligible applicants seeking reimbursement. We strongly suggest that if you are a hospital or healthcare provider that will incur significant costs associated with preventing the spread of, preparing for or treating COVID-19 patients, that you work with a qualified expert to help you develop a cost recovery strategy by pairing FEMA reimbursements with Medicare, HHS and other related available funding sources.

We look forward to the opportunity to guide our healthcare clients. Please [contact us](#) for information or to schedule a step-by-step webinar which will provide details on costs that are potentially eligible for reimbursement under the emergency declaration.