When Disaster Strikes, Are You Ready? Disaster Procurement Preplanning

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Welcome!





Norma Houston Lecturer in Public Law and Government UNC School of Government Mary Glasscock Public Assistance Supervisor NC Division of Emergency Management



No One Is Immune From Disasters!





This Year Is Probably No Different



Numbers of Atlantic Basin named storms (those that attain at least tropical storm strength), hurricanes and hurricanes of Cat. 3 or greater intensity forecast by The Weather Company and Colorado State University, compared to the 30-year average (1981-2010).

https://tropical.colostate.edu/media/sites/111/2018/04/2018-04.pdf



Maximize Recovery By Planning Ahead!





What We'll Discuss

- FEMA Public Assistance Overview
- Federal/FEMA Procurement Requirements
- Planning for Disasters Prepositioning Contracts
- Debris Contracts
- Wrap-up





FEMA PUBLIC ASSISTANCE OVERVIEW



The "Never-Ending" Cycle





Sources of Disaster Funding



Local Funding





Federal Funding

Two main types of FEMA funding assistance:

State Funding

- Individual Assistance (paid to individuals)
- Public Assistance (paid to public entities)



FEMA Public Assistance

Costs must be:

- Direct result of federally declared disaster
- 2. Within designated disaster area
- Legal responsibility of applicant



Source: <u>https://emilms.fema.gov/IS634/PAsummary.htm</u>



Reimbursement

PA funding paid on a reimbursement basis

YOU incur the cost and apply to FEMA (through NC DEM) for reimbursement

You MUST be able to document your expenses





Categories of Reimbursable Costs

Emergency Work (Response)

- **Debris Removal** (Category A)
- Emergency Protective Measures (Category B):
 - EOC operations
 - Search & Rescue / Security in disaster area
 - Provisions for population (food, water, etc.)
 - Temporary medical facilities / medical evacuation
 - Shelters / Mass care
 - Generators

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 Emergency repairs / reestablishing access Permanent Work (Recovery)

- Roads & Bridges (Category C)
- Water Control Systems (Category D)
- Public Buildings (Category E)
- **Public Utilities** (Category F)
- Other public facilities (Category G)

Common PA Reimbursement Problems

- 1. Contracting not complying with procurement requirements
- 2. Personnel overtime compensation without having a pre-existing non-discretionary policy
- 3. Private property exclusion reimbursement generally not provided for work on private property
- 4. Lack of legal responsibility applicant's must have the legal responsibility to perform the work
- 5. Inadequate/no documentation
- 6. No local state of emergency declaration





FEDERAL/FEMA PROCUREMENT REQUIREMENTS



Procurement Requirements





Federal Rules - Uniform Guidance

- Uniform standards for the award and expenditure of federal financial assistance (grants and loans)
- UG codified at 2 C.F.R. Part 200; procurement standards codified at 2 C.F.R. Subpart D (§§ 200.317-326)
- UG requirements apply to recipients *and subrecipients*
- UG applies to FEMA PA funds and CDBG-DR



Which Rules Do You Follow?

"The non-Federal entity must use its own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part."

- 2 CFR § 200.318(a)



Follow the "Most Restrictive Rule"

- If rules are different but neither is more restrictive, follow federal rules
- Even when following federal rules, some specific more restrictive state requirements may still apply and vice versa
- If your local policies are more restrictive, follow them





Why Is This Important?



– Funding

- Obligated Funds
- 🖲 Deobligate Funds
- O No Change to Funding

Noncompliance with state and federal requirements has serious consequences



Noncompliance Consequences





Most Common Reimbursement Pitfall

Noncompliance with federal procurement requirements most common reason for FEMA PA reimbursement denial

OIG found over \$500 million in ineligible PA costs due to procurement violations (2015-17)





FEMA Top 10 Procurement Mistakes

- Bidding requirements (noncompetitive contracting)
- 2. Sole source beyond exigent circumstances
- 3. Piggybacking
- Time and materials contract

- 5. Cost-plus contract
- 6. Contract clauses
- 7. Geographic preference
- 8. M/WBE solicitation
- 9. No cost/price analysis
- **10.** Inadequate/lack of documentation



1. Bidding Requirements

- Procurement process must be "full and open competition" consistent with state and federal bidding requirements
- Award to lowest responsive, responsible bidder
- Include full description of requirements in specifications
- Avoid unnecessary or duplicative supplies and services (no stockpiling)

- Maintain oversight over contractors
- Adhere to conflicts of interest standards
 - Designers/contractors who help develop specs cannot bid on the contract
- Cannot award to debarred bidder

Follow the "Most Restrictive Rule"



Procurement Methods – State Law



* Optional: May use **request for proposals** for service contracts or information technology purchases or services.

Procurement Methods – UG

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competitive proposals when sealed bidding not appropriate

Purchase AND Service Contracts



THRESHOLDS! Even when generally following federal rules, some specific state requirements may still apply and vice versa.

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Construction and Repair Contracts





2. Sole Source

- Sole source (contract awarded without bidding) allowed only in "exigent circumstances"
- "Exigent circumstances" urgency of need will not permit delay resulting from bidding because an immediate response is required - more restrictive than emergency exception under state law
- Cannot continue to operate under sole source contract after urgent need has ended





3. Piggybacking (and other exceptions)

X Piggybacking

X Group purchasing programs

(may be allowed if the coop contracts are procured in compliance with UG – check with your federal grantor agency!)

\times State contract

(state contract must have been bid in compliance with federal requirements applicable to local governments to be allowed) Can use state contract and group purchasing for micro-purchases (below \$10,000)





4 & 5. Time & Materials / Cost-Plus Contracts



- Contracts <u>must</u> be for a fixed-price (examples: lump sum, not-to-exceed)
- Cost-plus contracts are not allowed
- Time & Materials may be allowed in exigent circumstances:
 - within limited time frame (usually within first 70 hours)
 - contract includes not-to-exceed limit
 - document why no other contract type is suitable

6. Contract Provisions – UG and FEMA

- 1. Remedies for breach
- 2. Termination for cause and convenience
- **3.** EEO
- 4. Bacon-Davis wage requirements
- Work Hours and Safety Standards
- Clean Air Act and Federal Water Pollution Control Act
- 7. Debarment and Suspension

- 8. Byrd Anti-Lobbying
- 9. Recovered Materials
- Changes and modifications to contract
- 11. Access to records
- 12. Use of DHS logo, seal, and flag
- 13. Compliance with federal law, regulations, and executive orders
- 14. Federal government holdharmless
- 15. Fraud and False Statements

Give Your Attorney Something To Do!

- Required provisions must be included in <u>all</u> contracts
- Sample language available from FEMA PDAT at https://www.fema.gov/medialibrary-data/1483976790556 96bfcf3bf2c64e94d6f63dd4169a7d
 2c/RequiredContractClauses2C.F.R.
 200.326and2C.F.R.Part200Appendi xll10917.pdf





7. Geographic Preferences

Contract cannot be <u>solicited</u> or <u>awarded</u> based on geographic preference





HOMETOWN CHOOSE MY^ACONTRACTING COMPANY!



8. Minority Participation

UG (M/WBE)

- Applies to <u>All</u> Contracts regardless of type above micro-purchase threshold (\$3,500)
- Requires 6 specific solicitation steps (UG steps similar to state HUB good faith efforts)

State (HUB)

- Local government engages in outreach efforts for all building construction contracts costing \$30,000 and above
- Require bidders to engage in good faith efforts for all building construction contracts costing \$300,000 and above



UG M/WBE Requirements

- Put M/WBEs on bidders list
- 2. Include M/WBEs in bid solicitations
- Where feasible, divide project into smaller contracts to encourage M/WBEs participation
- 4. Where feasible, establish delivery schedules to accommodate M/WBEs

5. Use services of SBA, US Dept. of Commerce Minority Development Agency, and other similar agencies - NC HUB Office <u>https://ncadmin.nc.gov/bu</u> <u>sinesses/hub</u>

 Require prime contractors to comply with steps 1-5 above



9. Cost or Price Analysis

Cost or price analysis required prior to bidding

All contracts costing \$150,000 or more

Price Analysis

Independent comparison of contract costs with other similar contracts

- Used for lump-sum contracts
- Most common method
- Might be satisfied when at least 2 bids are received and prices are reasonable

Cost Analysis

Evaluation of separate elements of contract (materials, labor, profit, overhead, etc.)

 Used for non-lump sum contracts and A/E or other professional services contracts

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9. Cost or Price Analysis

Price

Examples of price analysis:

- Prior costs under similar contracts
- Market prices
- "Yardsticks" standard market prices for set quantities (ex: cubic yard, hourly rate, square footage)
- Published price lists
- In-house estimates (ex: architect's estimate for construction project)
- FEMA equipment pricing guide and equipment schedule



10. Documentation

Maintain all records for 3 years detailing the procurement process, including:

- Rationale for method of procurement used
- Contract type
- Contractor selection process
- Basis for contract price

Have written procurement policies, procedures, and conflicts of interest/gifts policies

Put all contracts in writing!!!



If you <u>didn't</u> **document** you didn't **do it**.

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Nonprofits - UG Applies!

- Same rules that apply to local governments *also* apply to nonprofits
- Not all nonprofit activities/facilities will be eligible even if performed in "partnership" with local government
- Best to have written MOA or contract between local government and nonprofit to verify that nonprofit is acting on behalf of local government





DISASTER PREPARATION – PREPOSITION CONTRACTS



YOUR LACK OF PLANNING IS NOT MY EMERGENCY

Preposition Contracts











What Do You Need to Be Ready?

- Identify needs in advance debris removal, pumping operations, equipment rental, etc.
- Competitively bid contracts using most restrictive rule
- Save all procurement documents
- Multi-year contracts are acceptable, but not unlimited term (recommend 2-3 years max)
- Activate contracts when needed



Preposition Contracts Requirements

- Follow all applicable procurement requirements
- Scope of work should not exceed the anticipated need in future declared disaster
- Work performed must be within scope of original contract – modifications to price and scope of work must be approved by FEMA

NC Division of Emergency Management is happy to help you!



DEBRIS CONTRACTING









DEBRIS REMOVAL



Prioritizing Debris Activities

 Debris <u>Clearance</u> or "Cut and Toss" or "Phase I"

Clearance of debris that hinders immediate actions to protect health and safety.

 Debris <u>Removal</u> or "Phase II" Removing and disposing of debris that hinders the recovery of a community.





Phase I - Emergency Road Clearance

- 1. AKA "cut & toss" or "cut & push" operations
- 2. Time & Materials time needed <u>specific to clearing roads</u>
- Specify that hourly rates only apply to emergency road clearance
- 4. Don't use hourly rates for Phase II removal, hauling, reduction, or disposal
- 5. No guarantee of minimum hours or payment
- 6. The Contractor should exceed your noted ceiling price at it's own risk.



Phase II – Debris Removal, Reduction & Disposal

- 1. Unit Price: per Cubic Yard (CY), per Ton, or other unit
 - Depending on availability of scales
 - Separate rates for C&D vs. vegetative
- 2. From right-of-way (ROW) to DMS
 - Usually per cubic yard (monitor in tower)
- **3**. From ROW to final disposal (i.e., landfill; non-DMS option)
 - Usually per ton (scale weight at landfill)
- 4. Reduction of debris at DMS (chipping, grinding, etc.)
 - Usually per cubic yard (per documented CYs hauled to DMS)
- 5. Haul out from DMS to final disposal
 - Usually per Ton (if a scale is at the landfill)

Phase II – Other Debris Types

- 1. White goods: refrigerators, washers/dryers, etc. (per each)
- 2. E-waste (per pound)
- 3. Household Hazardous Waste (per pound or ton)
- 4. Hazardous Stump Extraction (per stump)
- 5. Hazardous Leaning Trees on ROW (per tree)
- 6. Hazardous Hanging Limbs on ROW (per limb or per tree)
- 7. Sand debris (per CY or ton)
- 8. Animal carcasses (per pound or ton)



Debris Management Sites (DMS)

Pre-Disaster Planning

- Pre-identify DSM locations with DEQ Solid Waste
- Get Conditional Approval for <u>potential</u> use

Post-Disaster Permitting & Activities

- Request formal activation of site before using the site
- Provide <u>copy of the permit</u> to FEMA for the backup documentation that moves the PW toward payment
- DSM's are temporary, and must be cleared and closed within six month of receipt of first disaster debris



Debris Sites – Agencies To Know

Federal:

- Army Corps of Engineers
- Coast Guard
- Fish and Wildlife
- USDA Natural Resources
 Conservation Service
- Office of the Inspector General
- EPA
- FEMA—Environmental / Historical Preservation

State:

- DEQ Solid Waste
- Historic Preservation Office (SHPO)
- DOT
- Dept. of Agriculture
- Dept. of Administration



Eligible Debris

- Downed trees, hanging limbs, stumps, upturned root balls
- Sand, mud, rocks, soil
- Building components glass, metal, roofing material, tile, gypsum board
- Dead animals, medical instruments
- Household appliances and electronic equipment





Ineligible Debris

- Debris on vacant lots, forests, heavily wooded areas, unimproved property, unused areas and farmland
- Debris on commercial properties and industrial parks
- Reconstruction or new construction debris
- Normal household garbage

- Removal of underground structures, wells, tanks, septic systems, basements, pipe, storm shelters, swimming pools
- Removal of driveways, concrete pads, slabs, foundations
- Demolition of commercial structures

Private property and business-district debris is generally not eligible unless deemed eligible by the FEMA FCO due to a life, health and safety hazard. Very rare!





DEBRIS ALTERNATIVE PROCEDURES



Debris Alternative Procedures (PAAP)

The Four Incentives

- Federal Share Sliding Scale
- Recycling Revenues
- Regular Time Reimbursement
- Debris Management Plans

Debris Alternative Procedures - Voluntary

Applies to large **and** small projects Does not change PW review or final inspections Debris PAAP is still ongoing at the present time



Debris Pilot–Regular Time Reimbursable

✓ Track both labor and equipment hours for force account labor (FAL) and/or temporary labor

 Keep hourly records for FAL and temporary staff assigned to debris activities

 RT reimbursable and can stand on it's own with no other debris pilot participation – *check the box*

For both Large and Small projects!



Debris Pilot – FEMA-Approved DMP

- FEMA-approved DMP's provide incentives to a State, Tribal or local government
- A FEMA-approved DMP nets you an extra 2% fed share
- State PA Staff will assist in this process – call on us!





Debris Pilot - Removal Sliding Scale

- 85/15 percent reimbursement for eligible debris removed during the first 30 days of the incident (from the day the incident began to 30 days later)
- 80/20 percent reimbursement for the next 60 day period (days 31-90) following the start of the incident
- 75/25 percent reimbursement (standard reimbursement) for any additional debris removed from day 91 to day 180
- Beyond 180 days is not eligible unless a time extension is granted by FEMA









DEBRIS MONITORING



Monitoring

- Applicant must monitor for eligible debris locations & quantities removed
- Use Force Account, temporary hires, or contract
- Load ticket system to quantify each load & track from point of pickup to DMS or landfill, quantities reduced at DMS, and loads hauled from DMS to final disposal
- Monitor in tower at DMS to quantify loads coming in & verify trucks are empty upon departure from DMS



Monitor's Responsibilities

- Maintaining responsibility for load tickets from start to finish of debris operations
- Verifying all debris picked up is a direct result of the disaster event
- Measuring and inspecting trucks to ensure how full they are actually loaded, coming and going
- On-site inspection of pick-up areas, debris routes, DMS and disposal sites
- Verifying the contractor is working in its assigned contract areas
- Verifying all debris reduction and disposal sites have secure access



Monitoring - Best Practices

- Use load tickets with every possible hauling, reduction and disposal method your site would use
- Use certified scales if by weight, but back this up with a noted CY/tonnage amount for each truck by placard
- Use 5-part tickets. Site monitor keeps 1 copy, and truck driver gets the remaining copies. eTickets that track loads are fine too, but FEMA may require printoffs. Be prepared!



Hurricane Matthew Issues

- Improper procurement
- Improper contracts and unit costs for debris ops
- Insufficient monitoring
- Poorly organized debris response
- No documented debris estimates
- Mixing in non-disaster debris with eligible debris

 Failure to comply with environmental or historical requirements

CHALLENGES Complexity Coordination Community Expectation Reimbursement

Community Recovery

- Failure to ensure proper permitting is in place for debris sites
- Incorrect contacts for necessary staff at other agencies



WRAP-UP



Be Prepared . . .

- Become familiar with 2 CFR
 Part 200
- Adopt/update local purchasing policies
- Adopt/update conflict of interest/gift ban policies
- Ensure procedures are in place to fully document procurement processes
- Work with your attorney to develop federal contract provision templates

- Review relationships with nonprofit partners (is an MOU or contract in place? Are you monitoring compliance?)
- Bid prepositioned contracts (debris, equipment, etc.)
- Develop template bid and contract documents
- Coordinate with your local emergency manager and purchasing officers



RESOURCES



NC Division of Emergency Management

www.ncdps.gov/Our-Organization/Emergency-Management/



Emergency Management



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NC DEM Training Site (TERMS)

https://terms.ncem.org/TRS/home.do





Training & Exercise Registration Management System



NC DPS Website

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Central Branch Training Week is scheduled for June 25-29 at Guilford Technical Community College in Jamestown! Check out the schedule <u>here</u>. Registration for all classes is now open! **Hotel information has been added to all class postings!

TERMS Tutorial Series is now online! <u>Click here to learn How to Create a New Profile</u> (hold down the "Ctrl" key while clicking to open a new browser tab). Other TERMS tutorials are located in the Document Library!



Training Registration Login Trainings Exercises



List of Offerings



Federal Training Partners

<u>State Training</u> <u>Partners</u>



SOG Emergency Management Website

www.sog.unc.edu/ncem





SOG Purchasing Website

www.ncpurchasing.unc.edu



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FEMA PDAT

FEMA Procurement Disaster Assistance Team

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

Procurement Under Grants 2.0 Webinar Module 3B: NFEs Other than States – Competition and Procurement Methods



The Federal Emergency Management Agency (FEMA) Procurement Disaster Assistance Team (PDAT) has put together a series of webinar modules on the rules for procurement under grants. There are eight (8) modules in this series. This webinar series



CFR Website



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Electronic Code of Federal Regulations

e-CFR data is current as of April 11, 2018

Title 2 \rightarrow Subtitle A \rightarrow Chapter II \rightarrow Part 200

TITLE 2—Grants and Agreements

Subtitle A—OFFICE OF MANAGEMENT AND BUDGET GUIDANCE FOR GRANTS AND AGREEMENTS

CHAPTER II—OFFICE OF MANAGEMENT AND BUDGET GUIDANCE

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

<u>https://www.ecfr.gov/cgi-bin/text-</u> idx?SID=6214841a79953f26c5c230d72d6b70a1&tpl=/ecfrbrowse/Title02/2 <u>cfr200_main_02.tpl</u>

NC Treasurer's Office Website



www.nctreasurer.com/slg/lfm



Thank You and Good Luck!

Norma Houston nhouston@sog.unc.edu (919) 843-8930

Mary Glasscock Mary.Glasscock@ncdps.gov (919) 825-2563

Evaluation: https://unc.az1.qualtrics.com/jfe/form/SV_ethZjgLx4l4EfyJ

