



April 1<sup>st</sup>, 2011

Deborah Ingram  
Assistant Administrator Recovery  
Federal Emergency Management Agency  
U.S. Department of Homeland Security  
500 C Street SW  
Washington, DC 20472

Dear Mrs. Ingram:

Members of the Disaster Recovery Contractors Association (DRCA) were pleased to hear the announcement on your role as the Assistant Administrator for FEMA's Recovery Division.

DRCA's leadership team, consisting of many former FEMA executives, respects and admires the hard work and dedicated service you provided to the Mitigation Program. We look forward to working with you and your team on important issues as we know you will bring the same focus, dedication and drive to improve FEMA's Recovery Division.

We look forward to meeting with you to bring you up to speed on some of the issues we were working on with James Walke before his departure. We developed a relationship working with Mr. Walke, which allowed DRCA to provide the Public Assistance Division with private sector comments before new policies and programs were finalized. We hope to develop the same relationship with you and your team in the Recovery Division.

That said, I wanted to relay some comments on behalf of our membership regarding the FEMA Recovery Debris Contracting Guidance (RP9580.201) which was released on September 27<sup>th</sup>, 2010 and request clarification on the status of FEMA's position regarding Direct Administrative Costs (DACs) retroactive to the Disaster Mitigation Act of 2000 (DMA2K).

Thanks in advance for your consideration on these issues, which have a big impact on the private sector. We look forward to working closely with you and your team going forward.

Sincerely,

Casey A. Long  
Managing Director  
Disaster Recovery Contractors Association (DRCA)  
300 North Washington Street, Suite 500  
Alexandria, VA 22314

cc: Tod Wells



## **DRCA Comments on FEMA's Debris Contracting Guidance Fact Sheet RP9580.201**

### **Clarification on FEMA Guidance on 9580.201**

Our membership would like to point out what appears to be an inconsistency between FEMA 325, FEMA 9850.102, and FEMA's long-held stance regarding making the applicant's payment to its contractor contingent on receipt of reimbursement from FEMA. We are hopeful FEMA will clarify this issue in new guidance related to 9580.201.

FEMA's Public Assistance Debris Management Guide, FEMA 325, says that applicants can't make payment under their contracts contingent on reimbursement by FEMA. On page 94 of FEMA's Debris Guide Management Guide, FEMA states that "the applicant is responsible for payment of its contracted services *regardless of whether such services are eligible for Public Assistance grant funding* (emphasis added)." On page 19, FEMA 325 affirms in a similar fashion that "[c]ontract payment provisions should address the obligations between parties to the contract only and not include *any language that makes payment to the contractor contingent upon the applicant's receipt of funding from FEMA* (emphasis added)."

FEMA's online database of appeals includes appeal decisions in which FEMA confirms the principle that applicants may not make their own payment obligations depend on whether or not FEMA ultimately reimburses the applicant for the contracted goods or services.

This is all consistent with FEMA's well-established position that applicants should not make payment under their contracts contingent on their own receipt of federal reimbursement. However, 9580.201 now appears to contradict this. The section of 9580.201 entitled "Applicant's Contracting Checklist" states that "[a]ll contracts must contain/reflect the following provisions....payment will be made only for debris that FEMA determines eligible (this is an optional provision to protect the applicant, and is used only following a major disaster declaration)."

Our membership believes FEMA should make it clear whether this provision is mandatory or optional as the guidance states that all contracts "must" contain the provision, but then states that the provision is optional. Further, we would like FEMA to clarify the purpose of the provision, which has already resulted in Request for Proposals (RFP's) being issued that make the Applicant's payment obligation kick in only when FEMA reimburses the work.

### **Comment on the Sample Bid Sheets**

We believe FEMA needs to do more to communicate that the bid sheet contained in this Fact Sheet is only intended to provide examples to communities in need of guidance because many state and local governments and communities believe that this sample bid sheet is an all inclusive list for proposals and soliciting contract bids for debris removal work. We are concerned that bid sheets are being viewed as a list of all eligible line items, whereas other line

items may be necessary to execute eligible Category A tasks. Our membership believes that communities should have the ability to develop line items in their procurements that address the types of hazards and debris recovery efforts that they are most likely to encounter, which could vary significantly based on a community's size, characteristics, and geographic location. We hope FEMA will make an effort to clarify the purpose and intent of the bid sheet.

DRCA also believes FEMA should mirror the language used in procurement procedures for debris "monitoring" contracts to debris contracts, which states, "contracts must be competitively procured," rather than using the language "use competitive bidding procedures."

In the sample bid sheet, we noted the following issues:

- Trees
  - The guidance does not specify whether trees and limbs are to be put on right of way (ROW) for haul out or disposal (this must be part of the unit price)
  - Typically, the circumference of a tree should be measured at breast height or 3-4 feet above ground level
- Sand Collection
  - It would be helpful to specify how debris removed from the sand should be treated
  - Guidance states that payment is done by cubic yard. Are the cubic yards measured before or after debris is removed
- Vessel Removal
  - Guidance does not deal with owner notification
  - Does not distinguish between a 12' skiff to a 80' ocean going yacht restoration
- Canal Shoreline restoration
  - Measured by the linear feet (LF) but what about the width?
- Animal Waste
  - Animal waste is used as an example under 3 different classifications (Carcass Removal, Putrescent Waste and Biowaste)



## Clarification on FEMA's Position Regarding Direct Administrative Costs (DACs) Retroactive to the Disaster Mitigation Act of 2000 (DMA2K)

By intent of the Disaster Mitigation Act of 2000 (DMA2K)<sup>1</sup>, and as recently affirmed by FEMA<sup>2</sup>: costs and expenses directly chargeable to a specific project under a major disaster are direct costs; not to be confused with management or indirect costs. In 2008, FEMA formalized policy<sup>3</sup> regarding management and DACs; however, the policy purportedly only affected disasters declared on or after November 13, 2007. At a DRCA meeting at the National Hurricane Conference in Orlando, FL, on March 20<sup>th</sup> 2010, James Walke informed our membership that *Direct Administrative Costs*<sup>4</sup> (DACs) were available to the applicant retroactive to DMA2K. Since that date, we have learned that DACs have been deemed eligible as far back as 2005; even though guidance for capturing and being reimbursed for them was not published until 7 \_ years later. We also understand that a handful of applicants have been paid [based on an undisclosed estimating method] for DACs incurred as a result of Hurricane Katrina; answering the first question: were/are Direct Administrative Costs [according to statute] eligible prior to November 13, 2007?

Our membership would like FEMA to clarify their position on the plan going forward, to uniformly implement this policy; and communicate the administrative standard will be for calculating eligible costs; since current standards were published 7 \_ years after the fact. We look forward to working with the FEMA by providing suggestions and various approaches to consider addressing this issue.

---

<sup>1</sup> "Section 202 (2) (i), Interim Authority, of the Disaster Mitigation Act of 2000 states, "Until the date on which the President establishes the management cost rates per section 324 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act...section 406(f) of the Robert T. Stafford Act (as in effect on the day before the date of the enactment of this Act) shall be used to establish management cost rates." Section 324 of the Stafford Act defines "management cost" as "any indirect cost, any administrative expense, and any other expense not directly chargeable to a specific project under a major disaster, emergency, or disaster preparedness or mitigation activity or measure." Based on a review section 202 of the Disaster Mitigation Act of 2000, I have determined that the costs the Applicant incurred to prepare for the Office of Inspector General audit and to scan project documents are not management costs as defined by section 324 of the Stafford Act. Instead, they are project costs directly chargeable to the Interim Housing Project and are eligible for reimbursement. In addition, the costs the Applicant incurred to verify tenant occupancy and to conduct post-payment reviews are direct projects costs and are eligible for reimbursement. Accordingly, I approve the appeal for \$605,191. By copy of this letter, I request that the Acting Regional Administrator take appropriate action to implement this determination" - Second Appeal Letter, FEMA-3216-EM-TX, PA ID # 201-35000-00; City of Houston PW # 744; Interim Housing Management Costs 06/29/2009

<sup>1</sup> "This letter is intended to provide clarity on categories of Direct Costs as we work toward implementation of the Disaster Mitigation Act of 2000 (DMA2K). Direct Costs are retroactive and apply to all Katrina/Rita projects." - Memorandum from Tony Russell to Mark DeBosier dated October 20, 2009, Re: Direct Management Costs (Attached)

<sup>1</sup> DAP 9525.9 Section 324 Management Costs and Direct Administrative Costs

<sup>1</sup> *Direct Administrative Costs are costs incurred by the grantee or sub grantee that can be identified separately and assigned to a specific project. (See 44 CFR §207.6(c)) In accordance with OMB Circular No. A-87, treatment of direct costs must be consistent across all Federal awards and other activities of the grantee or sub grantee. Such costs can include staff's time to conduct an initial inspection, prepare and submit a Project Worksheet (PW), and make interim and final inspections of the project. - DAP 9525.9 (VII. A. 2.)*