



## **Guidance for Proper Disaster Services and Debris Removal Contracting**

### **The Effect of Low-Price Procurement**

1. Government to assist State and local municipalities with better guidance for proper procurement of pre-event Emergency Response Contracts
  - Why do we need pre-events?
  - What are the advantages of contracting before the event?
  - Recommendations for change/ failures of nonqualified contractors
2. History of Pre-event contracts
3. Pre-event contract maintenance
  - Peacetime- planning and training
  - Wartime- funding and financial capacity
4. Problems with low-bid selections
  - Low bid contractor selected
  - Contractor unable to perform
5. Recommendations
  - Evaluate contractor's qualification, past performance, financial capability
6. Next Steps



### **The Issue:**

State and local government are feeling increased pressure from the Federal Government to use price as the determining factor or the heaviest weighted factor when procuring Disaster Debris Services.

“Low-price selection” results in poor performance from inexperienced and unprepared service providers. Governments and its citizens counting on reliable debris removal outcomes are faced with the unexpected burden of having to procure a secondary provider or, in some cases, issue a new procurement that can take weeks to finalize. Delays caused by selecting the low-cost provider in some cases can force local governments to manage public outcry and political fallout from slow response times, to losing the ability to take advantage of increased cost share opportunities.

### **The History of Pre-Event or Standby Contracts:**

The practice of standby or “pre-event” contracting originated in 1990 during Hurricane Bertha. Initially the concept was met with skepticism, with many stakeholders asserting that state and local jurisdictions would be best served by selecting a disaster services contractor immediately *following* the event, using price as the leading factor for vendor selection.

Over time, local jurisdictions within frequently impacted states such as Florida eventually recognized the overwhelming benefits of standby contracting *before* the event which yielded an expedited recovery and an economic cost benefit through competition. Now most Florida counties have a standby or pre-event contract in place.

### **The Cost of Maintaining a Pre-Event Contract:**

Pre-event contracts do not pay the contractor until there is an activation, but there is cost associated with maintaining them.

### **Pre-Event Planning and Training “Peacetime Activity:”**

- Standby contracting allows the selected contractor to become familiar with the jurisdiction’s surroundings during “peacetime,” understanding the municipality, debris management sites, disposal sites, local contractors, suppliers, and personnel to be fully prepared during blue skies or post-event.
- The pre-selected contractor can hold training exercises, tabletop and planning events with the contracted jurisdiction and assist in writing the city/county debris management plan or other documentation that will be vital when the time comes.

### **Post-Event: Funding & Financial Ability “Wartime Activity:”**

Immediately following an activation, the debris recovery contractor becomes a critical funding source, fronting the finances needed for the recovery effort well in advance of any reimbursement by federal, state, or local entities. This cost can be considerable, and without the contractor’s financial stability to carry the expenses, many local governments could not withstand the financial burden. Reimbursement payment to contractors can take well over 90 days to begin, and the amount of funding required following a sizeable event requires contractors with strong financial standing to utilize banking finance mechanisms and the contractor’s available cash on hand.

### **Common Problems with low bid selections:**

- When the use of low bid is the leading criteria for vendor selection, the risk is great that the vendor may not master the work complexity which raises the possibility that technical and performance requirements will not be completed, leading to dire consequences and failure.
- It stands to reason that low bid contractors may cut corners to get the job done within budget, with sudden hidden fees or a final bill that is higher than anticipated because of “unexpected” issues with the job. The quality of the work could suffer if the operational team is made up of inexperienced and unskilled labor. Safety suffers as well when contractors are constrained by tight margins, despite the fact that the job must be completed quickly.



- Setting the standards too low will let unqualified bidders become candidates for contract awards. These are the same bidders who would normally have been disqualified because of inferior qualifications with experience-based procurements.
- Low-bid procurements often restrict bid evaluation teams to only score proposal factors and sub-factors as either acceptable or unacceptable as there was no incentive for bidders to exceed any requirement in the RFP.
- Inadequate contract staffing is an early indicator of contractor performance problems, followed by marginal technical accomplishment. Quite often the low-bid contractor lacks the financial resources to effectively launch the project, much less fund operations for a time necessary for the Government to provide progress reimbursement payments.

### **Recommendations:**

- Local governments should require that a contractor's qualifications, technical abilities, bonding capacity as long as it does not impede competition, insurability, financial stability, project team strength and strong references based on past experience as the leading criteria for possible contract award versus the decision being based on the price offered in the proposal. Consideration should also be given to certifications, and training of project staff.
- By ensuring the selected vendor has superior qualifications, the community will be better served in a large-scale or catastrophic event when citizens are most in need of expert support in recovery and funding. A failure at a critical time such as this could lead to significant delays and will impact lives and safety.
- Procurements should require the contractor to show availability of ample lines of credit or on-hand cash reserves. A demonstration of financial readiness should be considered when qualifying a capable firm. Cash reserves and lines of credit of \$30mm to \$100mm should be established and proven during procurement and upon activation.

### **Next Steps:**

- Task local governments with the mission to conduct proper due diligence for all contractors during the evaluation phase. Debris Removal Services should be procured by way of a "Qualifications & Experience"-based selection process with price being considered, but not so heavily that it encourages the selection of a vendor based solely on price.
- Encourage local governments to issue Request for Proposals (RFP's) which require bidders to provide comprehensive information in proposals versus an Information for Bid (IFB) which does not require the level of detail needed for thorough due diligence.
- Provide a scorecard for evaluation that reflects the following criteria (in order of priority & importance):
  - Qualifications and Experience
  - Financial Stability, Readiness, and Bonding Capacity as long as it does not impede competition
  - Past Successful Performance
  - References
  - Price
- FEMA should strongly encourage local governments to observe existing guidance (cited below) found in previously issued and newly written guidelines and send a unified message to local government entities that adheres to this guidance. Local governments would be well-served with a FEMA procurement training program to ensure this message is being accurately delivered in all FEMA Regions.



**CFR 200.318 General Procurement Standards:**

*(h) The Non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. **Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.***

**Procurement Methods Competitive Proposals (2 C.F.R. §200.320(d))**

*Competitive proposals are generally used when conditions are not appropriate for the use of sealed bids. The appropriate method when more than one source is expected to submit an offer and either a fixed-price or cost-reimbursement type contract is awarded. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified sources, must have written method for conducting technical evaluations of the proposals received and for selection of the contractor. **Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.***

**44 CFR Part 13.36(8)**

*Grantees and Subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. **Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.***

*(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.*