

# Guidance for Proper Disaster Services and Debris Removal Contracting

## The Effect of Low Price Procurement

1. Guidance for proper procurement of Pre-event Emergency Response Contracts
  - The need for pre-events & 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 for FEMA

## THE ISSUE

State and Local Government Entities are feeling increased pressure from the Federal Government to procure for Disaster Debris Services using price as the determining factor or the heaviest weighted factor.

**This trend toward “low-price selection” is leading to an increase in non-performance** by less than qualified service providers. This places an undue burden and delay on the local government as they must then move on to a secondary provider or issue a new procurement. A delay of this type could impact the local government in a variety of ways, from being forced to manage public outcry and political fallout due to the perception of a slow response, to missing out on increased cost share.

## THE HISTORY OF PRE-EVENT CONTRACTS

The practice of standby contracting began during Hurricane Bertha in 1990, and was initially met with apprehension by FEMA. The prevailing line of thinking within the agency was that State and local jurisdictions would best be served by selecting a contractor for the provision of basic post disaster services immediately following the event. The mechanism most often used was a bid where price was the only factor. Over time, local jurisdictions within frequently impacted States such as Florida eventually recognized the overwhelming benefits of standby contracting. They recognized that the results of the process almost always yielded an expedited recovery and an economic cost benefit through competition. Now the majority of the counties in Florida have a standby contract.

## 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 spend time within the jurisdiction **during “peacetime”** thus becoming familiar with the municipality, Debris Management Sites, Disposal sites, local contractors, suppliers, and personnel to ensure that no time is wasted during “wartime”, or post-event.
- The pre-selected contractor can hold training exercises, table top events, planning/training events with the contracted jurisdiction, and assist in writing the City/County Debris Management Plan.

### Post-Event: FUNDING & FINANCIAL ABILITY **“Wartime Activity”**

- Immediately following an activation, the Debris Recovery Contractor becomes a critical funding source, financing the recovery effort well in advance of any financial expenditure by federal, state, or local entities. This cost can be considerable, and without this mechanism in place many local governments could not withstand the financial burden. Payment to contractors can take well over 90 days to begin distributing, and the amount of funding required following a sizeable event can require contractors to utilize banking institutions and cash on hand.

## Problems with low bid selections:

- Municipalities suffer when they select a low-bid provider because the work is complex, minimum acceptable technical and performance requirements are difficult to describe, and the consequences from failure can be destructive.
- Low bid contractors may cut corners to get the job done within budget. Other concerns are 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 is an area some lesser qualified contractors will shortchange to get a job done more quickly.**
- Setting the standards too low will let marginally acceptable bidders become candidates for contract award. These are the same bidders who would normally have been disqualified in qualifications & experience based procurements.
- Low-Bid procurements often restrict evaluators to only scoring proposal factors and sub-factors as either acceptable or unacceptable. The result is there is no value in the bidder exceeding any requirement in the RFP.
- Inadequate contract staffing is an early indicator of contractor performance problems, followed by marginal technical accomplishment. Quite often the contractor lacks the financial resources to effectively launch the project, much less fund operations for a time necessary for the Government to provide progress payments.

## Recommendations:

- Local Governments should always evaluate **a contractor’s qualifications** and reputation, not just the dollar amount on the proposal. Weight should be placed on overall experience, and the qualifications and experience of the Project Team. Consideration should also be given to certifications, and training of project staff.
- There should be a heavy emphasis on financial stability, bonding capacity, and insurability. This would be especially true in a large-scale or catastrophic event when the community is 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 potentially 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 should be established and proven during procurement and certainly required upon activation.

## Next Steps:

### How can FEMA support this effort?

- 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 with price being weighted, but not so heavily that it encourages the selection of a less than qualified provider based solely on price.**
- Encourage local governments to issue RFP's not IFB's.
- Provide a scorecard for evaluation that reflects the following criteria:
  - o Qualifications and Experience = 25%
  - o Financial Stability, Readiness, and Bonding Capacity = 30%
  - o Past Performance = 15%
  - o References = 10%
  - o Price = 20%
- Federal and State officials should adhere to existing guidance (cited below) found in previously issued and newly written guidelines, and encourage a mission of sending a unified message to local government entities that adheres to this guidance.

#### **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.*