

Standby Disaster Contracting

Why Should Government Pre-Contract?

Background and History

One of the primary emergency management best practice standards is Standby Disaster contracting where communities competitively procure and subsequently award a contract(s) for a variety of post disaster services in advance of a potential disastrous event. The practice of standby contracting which was first recognized during Hurricane Bertha in 1990, was initially met with apprehension by the Federal Emergency Management Agency. 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 whereby price was the only consideration with limited service offerings.

The theory of immediate post-disaster contracting has changed drastically over the years as the practice's disadvantages and consequences have proven to be costly and inefficient. For example, because of state and local contracting law, most jurisdictions, after securing bids, are forced to enter into contracts with substandard contractors with scant resources and without project experience. Quite often the contractor selected post-disaster lacks the financial resources to adequately launch the project, much less to fund operations for many months it takes for government to provide progress payments. Administrative processes necessary for FEMA reimbursement are many times inadequate resulting in disallowed or de-obligated Federal funding.

To solve the pitfalls of post-disaster contracting and all the detrimental consequences of it, history has proven the many advantages of standby contracting. Local jurisdictions within frequently impacted States such as Florida eventually recognized the overwhelming benefits of standby contracting through careful and premeditated contractor selection. They recognize that the results of the process almost always yield an expedited recovery and consequently an economic cost benefit. Of Florida's 67 counties and over 400 cities, it would be rare today to find a single jurisdiction without a standby contract.

As significant as the Florida practice is the fact that the Federal Emergency Management Agency (FEMA) encourages state and local jurisdictions to establish standby contracts as a preferred practice. Congress emphasized this preference in 2006 by enacting the DHS Appropriations Act which established a pilot program that rewarded those jurisdictions possessing one or more pre-qualified contractors by awarding an additional five percent reimbursement. Although the Pilot Program was temporary and designed to heighten contracting activity, the clear implications are that standby contracting produces tangible benefits to government. The current funding enhancement for a jurisdiction having a stand-by contract, conditional upon additional criteria, is two percent.

Standby Contracting: Tangible Benefits

CONTRACTOR SELECTION

The formulation of specifications and the subsequent contractor selection process requires a well-conceived and orchestrated process that should only be undertaken with sufficient time. Conversely a vendor selection process, under the duress of post-disaster events, does not allow for a well researched and thoughtful conclusion often resulting in the selection of a substandard, inexperienced contractor because the pace of selection is expedited without time for proper due

diligence. The contractor selection criteria should consider factors that would directly affect the anticipated project. At a minimum, the selection criteria would place weight upon factors such as:

- **Contractor's Previous Experience:** Selection of a contractor that can demonstrate significant successful project size and scope experience is ample justification for standby contracting because there will be time needed to research a contractor's track record. Basing contraction selection solely on price will often result in poor performance outcomes.
- **Company History and Background:** Consideration and weighting of a company's longevity and project history is a key element of standby contracting. Determining whether a company has ever been debarred or has defaulted on a project(s) is essential to predicting future performance.
- **Financial Capacity:** Frequently post disaster projects result in expenditures of tens of millions of dollars with federal reimbursement most often lagging behind months after the inception of the project. Selecting a contractor with demonstrated financial strength to withstand the inevitable payment delays and still carry potentially massive operating costs should be a major consideration that can only be accomplished with due diligence and background research. Additionally, a company's bonding capacity and history are key indicators of financial stability. The standby selection process affords the jurisdiction the ability to perform a thorough and comprehensive review.
- **Environmental History:** The standby contracting process affords the contracting jurisdiction the ability to research a company's environmental history and determine if any violations have been committed and how the violation was resolved. Determining if the company under consideration maintains Environmental Insurance is essential to the protection of the jurisdiction.
- **Management and Personnel Review:** Standby contracting allows for thorough review of a company's management strength and experienced personnel with special consideration of the team that will be directly dedicated to the potential project.
- **Local Resources and DBE/WBE considerations:** Within the standby contracting process, consideration can be given to the contractor's specific plan to use local resources in accordance with the Robert T. Stafford act. Determining the contractor's advance plan to utilize and support local resources can be integral to the success of a project. Additionally, many jurisdictions maintain DBE/WBE mandates or goals. Ensuring that a plan exists to achieve such goals can become an element of the standby process.

PLANNING and TRAINING

Planning and training provide government buyers expedited operational activity, prioritization of work and push zones, familiarization of geographical areas and traffic patterns, the planning for equipment and personnel staging, and estimation of potential logistical requirements. Standby contracting allows the selected contractor and government buyer to jointly spend considerable time working together to familiarize each other with their respective teams and most importantly, to understand the government buyer's priorities to ensure that no time is wasted in the event of a disaster. Additionally, the contractor can address environmental and contracting elements of DMS (Debris Management Sites) and final disposal sites.

Selection of DMS sites in concurrence with the contracting jurisdiction is a process that is best performed by the pre-selected contractor well in advance of an event. The selection criteria is typically extensive and time consuming and failure to identify and ready these sites in advance is likely to cause a delay in the debris recovery process.

The pre-selected contractor will have undergone, and possibly created and held training exercises, tabletop events, and planning/training events with the contracted jurisdiction. Additionally, a well-rounded contractor provides assistance in writing and developing the jurisdiction's disaster debris management plan as part of the awarded contract deliverables.

EXPANSION OF SERVICES OFFERING

A major benefit of standby contracting is the jurisdiction's ability to include a wide variety of services within their procurement solicitation. The reward is realized as the jurisdiction desires to move the project into different recovery phases and timing becomes critical. For instance, as the jurisdiction's contractor completes basic services such as debris collection, the contracted inclusion of alternate services (i.e. demolition, marine debris collection, beach restoration, right of entry work) provides a seamless transition into these multiple recovery areas. The value is that the funding timetable is limited, and standby contracting reduces the time necessary to formulate and compete specifications for additional services. Additionally, quite often the level of federal funding is graduated downward with time making expedited work flow essential. In the absence of a standby contract process, it is highly unlikely a jurisdiction under duress will consider, anticipate and thoroughly formulate a set of expanded specifications.

CONCLUSION

The standby contract is little more than the equivalent of an insurance policy which virtually guarantees post disaster project success. In other words, the standby contract is one of the best risk management tools for communities. The risk mitigation is a direct result of a comprehensive solicitation which carefully and thoroughly considers best practice criteria for contractor selection. The standby contract dictates advanced planning and preparation and can deliver the successful outcomes needed to help communities recover. The standby contract is an instrument that is invariably used by the most experienced and knowledgeable jurisdictions in the United States. More importantly, the instrument is recognized and its use even encouraged by FEMA. The placement and maintenance of a standby contract cost nothing and in fact saves long-term expenses. Emergency management experts will continue to encourage government officials, tasked with the safety and welfare of a community, to use standby contracting as an invaluable tool.