

# FEMA Fact Sheet RP9580.201

## Debris Contracting Guidance

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Debris removal and monitoring contracts must meet rules for Federal grants, as provided for in Title 44 Code of Federal Regulations (CFR) §13.36, Procurement in order to be eligible for reimbursement under the Public Assistance Program. This fact sheet assists Public Assistance applicants with meeting procurement requirements established in 44 CFR Part 13, as well as other Public Assistance Program eligibility requirements, when procuring debris removal and monitoring contracts. Public Assistance applicants should comply with their own procurement procedures in accordance with applicable State and local laws and regulations, provided that they conform to applicable Federal laws and standards identified in Part 13.

### Contract Procurement

To be eligible for Federal funding, applicants must comply with federal procurement standards as outlined in 44 CFR, §13.36, Procurement. Essential elements of the procurement process for debris removal and monitoring contracts include: competition; a clear and definitive scope of work; qualified bidders (documented by licenses, financial records, proof of insurance, and bonding, as applicable); a cost analysis to demonstrate cost reasonableness; compliance with all relevant local, State, and Federal requirements, laws and policies; and, clear documentation of the process/rationale followed in making procurement decisions. Federal regulations require applicants for Public Assistance grants to take the necessary steps to ensure there are opportunities to award contracts to minority, women-owned, and Labor Surplus Area businesses and firms whenever possible. This includes contracts with local organizations, firms, and individuals that support response and recovery activities in a declared major disaster or emergency area. Applicants' legal representatives should review their procurement process and any contract to be awarded to ensure they are in compliance with all Federal, State, and local requirements. Procurement policies must include procedures to handle protests and disputes related to contracts awarded. FEMA will, when requested by applicants, assist in the review of debris removal contracts. However, such a review does not constitute approval.

In order to ensure that debris removal and monitoring contracting costs are eligible, applicants should:

Use competitive bidding procedures to meet procurement requirements for Federal grants, as established in 44 CFR § 13.36, Procurement.

Only use abbreviated emergency procurement procedures that include an expedited competitive bid process if time does not allow for more stringent procedures and if they are allowed under State or local laws, codes, or ordinances.

Provide a clear and definitive scope of work in the request for proposals/bids.

Require bidders to provide copies of references, licenses, financial records, and proof of insurance and bonding.

Ensure that debris removal or monitoring contract costs are reasonable and necessary as defined and required by OMB Circular A-87 and 44 CFR Part 13. Competitively bid contracts that comply with Federal, State, and local procurement regulations and procedures will establish reasonable costs for the work.

Complete and document a cost analysis to demonstrate price reasonableness on any contract or contract modification where adequate price competition is lacking, as detailed in 44 CFR § 13.36(f). See Attachment 1, Debris Removal Contract Cost Analysis, for guidance on completing a cost analysis.

## Cost Analysis

Pursuant to 44 CFR § 13.36, Procurement, Public Assistance applicants must complete a cost analysis for any contract or contract modification where price competition is lacking. Failure to complete a cost analysis may jeopardize FEMA Public Assistance grant funding. Applicants are encouraged to complete a cost analysis using the attached Debris Removal Contract Cost Analysis. Applicants are also encouraged to file documentation supporting the cost analysis with all associated contract documents.

Upon request, FEMA will provide guidance as necessary in the cost analysis process. Such a review does not constitute approval when determining the eligibility of costs for reimbursement under FEMA's Public Assistance Program.

## Pre-Disaster and Standby Contracts

Applicants are encouraged to pre-qualify debris removal contractors prior to an event and solicit bid prices from this list of contractors once an event has occurred to ensure competitive bidding and obtain reasonable market prices at the time of work performed. The solicitation for pre-qualifying contractors should adequately define in the proposed scope of work all potential debris types, anticipated haul distances, and size of events for which a contract may be activated.

### Debris Removal Contract Provisions

All debris removal contracts must contain the following provisions:

All payment provisions must be based on unit prices (volume or weight).

Payments based on time and material costs are limited to work performed during the first 70 hours of actual work following a disaster event.

Note: FEMA will typically only reimburse applicants for a time and materials contract for eligible debris clearance during the first 70 hours following a declared disaster. After 70 hours of work, the applicant

should have sufficient information on the scope of work necessary to complete debris collection and disposal, and a basis for estimating a reasonable cost for the contract work to effectively solicit a lump sum or unit price contract. For some types of debris work time and materials contracts may be the most cost-effective and best suited to the type of work. Applicants should work closely with the State and FEMA when awarding such contracts to ensure eligibility requirements are met.

Payment will be made only for debris that FEMA determines eligible. (This is an optional provision to protect the applicant.)

Contractors must submit invoices regularly and for no more than 30 day periods.

A "Termination for Convenience" clause allowing contract termination at any time for any reason.

A time limit on the period of performance for the work to be done.

A subcontract plan including a clear description of the percentage of the work the contractor may subcontract out and a list of subcontractors the contractor plans to use.

A requirement that the contractor use mechanical equipment to load and reasonably compact debris into the trucks and trailers.

A requirement that the contractor provide a safe working environment.

A requirement that all contract amendments and modifications will be in writing.

A requirement that contractors must obtain adequate payment and performance bonds and insurance coverage.

## **Debris Monitoring Contracts**

Applicants must monitor all debris removal operations. Applicants must document all eligible debris removal expenses as a condition of receiving Public Assistance funding. Applicants may use contractors to monitor their debris removal operations. In addition to the guidance provided above, applicants should consider the following when procuring debris monitoring contracts:

Debris monitoring contracts must be competitively procured as required by 44 CFR § 13.36, Procurement.

Debris monitors should not be employed by or affiliated with the debris removal contractor.

Debris monitoring contracts are typically time and materials contracts and must contain a not-to-exceed clause, pursuant to 44 CFR § 13.36, Procurement.

The contract should include a requirement that the contractor provide a safe working environment, including properly constructed monitoring towers.

Use of a load ticket system to record with specificity (e.g., street address, GPS coordinates) where debris is collected and the amount picked up, hauled, reduced, and disposed of.

Debris monitors should be trained and possess skills adequate to fulfill the duties of the job. Labor rates should be commensurate with the skill level required by the job function. Professional engineers and qualifications are not required to perform monitoring duties.

The contractor should demonstrate that its staff is familiar with FEMA debris removal eligibility criteria.

## **Avoidance Checklist**

DO NOT: Award a debris removal or debris monitoring contract on a sole source basis.

DO NOT: Sign a contract (including one provided by a contractor) until your legal representative has thoroughly reviewed it.

DO NOT: Allow any contractor to make eligibility determinations; only FEMA has authority to make final eligibility determinations.

DO NOT: Accept any contractor's claim that it is "FEMA certified." FEMA does not certify, credential, or recommend debris contractors.

DO NOT: Award a contract to develop and manage debris management sites, unless the debris sites are part of your approved debris management plan or you contact the State or FEMA for technical assistance concerning the need for such an operation. Temporary Debris Storage and Reduction sites are not always necessary.

DO NOT: Allow separate line item payment for stumps 24 inches and smaller in diameter; you should treat these stumps as normal debris.

DO NOT: "Piggyback" or utilize a contract awarded by another entity. "Piggybacking" may be legal under applicable state law; however, the use of such a contract may jeopardize FEMA funding because these contracts do not meet requirements for competition established in 44 CFR § 13.36. If an applicant requests reimbursement for costs it incurred from a piggyback contract, FEMA will determine the reasonable cost for the performance of eligible work.

DO NOT: Award pre-disaster/stand-by contracts with mobilization costs or unit costs that are significantly higher than what they would be if the contract were awarded post-disaster. Such contracts should have variable mobilization costs depending upon the size of the debris work that may be encountered.

DO NOT: Allow for markups due to errors in volume calculations.

DO NOT: Allow for miscellaneous items, or for contract contingencies of any kind, including "unknowns."

See Attachment 2, Debris Operations Contract Bid Sheet, for additional guidance on debris contracts.