



FACT SHEET: EMERGENCY WORK CONTRACTING

Date Published: October 23, 2008

Overview

Debris removal and emergency protective measures, Category A and B, respectively, are considered “emergency work” in the Federal Emergency Management Agency’s (FEMA) Public Assistance Program. In general, contracting for emergency work requires competitive bidding. Applicants must comply with applicable Federal, State, and local laws and regulations; provided that the procurement conforms to the Federal law and standards set forth in 44 CFR Part 13 that non-competitive contracting may be acceptable ONLY in rare circumstances where specific criteria are met. See 44 CFR §13.36(c) and (d).

Emergency Work vs. Emergency Contracting

- Performing emergency work (Categories A and B) does not relieve the applicant from the requirements of competitive bidding. Not all emergency work is time sensitive to the point where competitive bidding is infeasible. In some situations, awarding a short-term non-competitive contract for site-specific work may be warranted; however, if the contract is for a long-term operation lasting weeks or months, the contract should be competitively bid as soon as possible. Contracts that are based on cost plus a percentage of the cost shall not be used for either competitive or non-competitive procurement. See 44 CFR §13.36 (f)(4).
- In order to be reimbursed for work performed under a contract that was not competitively bid, the procurement of that work must not have been feasible under small purchase procedures, sealed bids, or competitive proposals, and one of the following circumstances may apply:
 - The item is available only from a single source;
 - There is a public exigency or emergency for the requirement that will not permit delay from competitive solicitation;
 - The awarding agency authorizes noncompetitive proposals; or
 - Solicitation from a number of sources has been attempted, and competition is determined to be inadequate. See 44 CFR §13.36(d)(4)(i))
- When using competitive solicitations, applicants can use an expedited process for obtaining competitive bids. However, applicants must also comply with applicable State and local procurement requirements, which may be more stringent than Federal requirements. See 44 CFR §13.36(b).

- Whether utilizing competitive or non-competitive procurement procedures, all costs must be determined reasonable by FEMA to be eligible for reimbursement. See 44 CFR §13.36(d)(4)(ii). In cases where non-competitive procurement procedures are used, the applicant may be required to submit the proposed procurement to the awarding agency (FEMA) for review. See 44 CFR §13.36(d)(4)(iii).
- Applicants should be advised that no contractor has the authority to make eligibility determinations, determinations of acceptable emergency contracting procedures, or definitions of emergency work. Eligibility determinations are made solely by FEMA.

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10/23/2008

Date

Disaster Assistance Fact Sheet 9580.4 - Emergency Work Contracting (PDF 672KB)