

DOCUMENT EVERYTHING

The Key to Maximizing Reimbursement From FEMA

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February 22, 2008

I. The General Rule: FEMA Reimburses Reasonable Expenses.

- A. FEMA's concern: no gouging.
 - 1. Therefore no reimbursement for expenses only incurred if federally declared disaster.
 - 2. FEMA greatly favors competitive bidding as a way of preventing gouging.
- B. Many rules to insure that expenses are reasonable in absence of competitive bidding.
- C. And overall FEMA has authority to grant exceptions to the technical rules on a case-by-case basis in order to reimburse reasonable expenses. FEMA also may disallow only the unreasonable part of a payment.
- D. Documentation is critical in order to show reasonableness.**
 - 1. Formal legal documents, such as contracts.
 - 2. Official correspondence, including emails.
 - 3. Price lists, standard terms lists.
 - 4. Even contemporaneous handwritten notes and after-the-fact narrative descriptions. Tell your story. Any documentation better than none.**

II. The FEMA Reimbursement Process: Two Bites at the Apple.

- A. Governor requests assistance from the President.
- B. FEMA views damage and makes recommendation to President. FEMA's recommendation is not public.
- C. President declares disaster. Declaration is totally discretionary. No appeal.
- D. Co-op responds to disaster, incurs expenses, requests reimbursement from FEMA.
- E. Bite 1: FEMA reviews request. FEMA reimburses reasonable expenses.

- F. Bite 2: later -- often years later – the Office of Inspector General audits the reimbursement. OIG may recommend that FEMA take back some funds it inappropriately reimbursed.
 - 1. OIG is independent from FEMA.
 - 2. FEMA often does not follow OIG recommendations.

III. FEMA Greatly Prefers Competitively-Bid Contracts.

- A. Competitively bid contracts give co-ops a presumption of reasonableness.
- B. Document the competitively-bid contract and your procedures for competitively bidding it.**
- C. If there is doubt as to whether the bidding was sufficiently competitive, assume it was not and document the requirements applying to allowable noncompetitive contracts.
- B. FEMA recognizes 3 types of competitively-bid contracts.
 - 1. Competitive proposals.**
 - a. Fixed price or cost-reimbursement.**
 - b. Need public solicitation and adequate responses.**
 - c. Award does not have to go to lowest bidder, but to bidder whose proposal is most advantageous, all things considered.**
 - 2. Procurement by sealed bids. Not likely to be used in disaster recovery situation, even if done in advance, because no firm fixed price can be given.
 - 3. Procurement by purchase under \$100,000. Essentially the same as procurement by competitive proposal.

IV. FEMA Allows Some Sorts of Noncompetitively-Bid Contracts, But Requires a Lot More Back-up.

- A. FEMA prohibits these sorts of noncompetitive contracts under all circumstances:
 - 1. Has unreasonable requirements on bidders.
 - 2. Requires unnecessary experience or excessive bonding.
 - 3. Shows price fixing between firms.
 - 4. Award to party with special relationship, such as subsidiary.
 - 5. Specifies a brand name and not allow an equal product.
- B. FEMA allows procurement by other noncompetitive contracts if purchase by competitive contract is infeasible and **one** of following applies:
 - 1. Only available from one source – a “sole source” contract.

2. The emergency does not permit delay. **BE CAREFUL!**
 3. FEMA itself authorizes noncompetition. **EXAMPLE: NRECA MUTUAL AID AGREEMENT**
 4. After solicitation, competition termed inadequate.
- C. Noncompetitive contracts require cost analysis “to determine the reasonableness of the proposed contract price.”
1. Regulations and published guidance are vague and unhelpful.
 2. **Bottom line: demonstrate compliance with cost analysis requirement by documenting that contract prices are reasonable through**
 - a. **Historic documentation for similar work.**
 - b. **Average costs for similar work in area.**
 - c. **Published unit costs from national databases.**
 - d. **FEMA cost codes.**
 - e. **FEMA equipment rates.**
 3. **Can document cost analysis at any stage of the reimbursement process, including on appeal – but earlier is better.**
 4. Note that FEMA in effect has waived the cost analysis requirement for payments through the NRECA-drafted Mutual Aid Agreement, a type of noncompetitive procurement.
- D. **Negotiating profit as a separate element of price.**
1. **Technically a requirement, but FEMA has not enforced it.**
 2. An example of FEMA using its overarching authority to grant exceptions to the technical rules on a case-by-case basis in order to reimburse reasonable expenses.

V. Special Types of Contracts.

- A. Time and materials contracts.
1. Allowable in period “immediately after disaster.” FEMA working to define. Letter re “until power restoration is complete.”
 2. Allowable if no other contract suitable.
 3. Allowable if there is a spending cap.
 4. Allowable if work lasts no longer than 70 hours.
 5. Serial 70-hour contracts OK.
 6. Contact state authorities to insure proper procedure.
- B. Cost-plus-a-percentage-of-cost contracts never allowed.
- C. Cost-plus-fixed-fee contracts allowed but considered inappropriate when work must begin before total quantity of work known.
- D. Unit price contracts favored when work difficult to define and based on estimates.

- E. Lump sum contracts recommended for debris removal after immediate response phase.

VI. Special Rules for Debris Removal

- A. FEMA especially wary of debris removal contracts because of abuse.
- B. General rule is that FEMA will not reimburse for debris removal from private property -- even to gain access to electric lines.
- C. Contracts for third parties to remove debris require monitoring. Expense of hiring monitors is reimbursable.
- D. But very much case-by-case, so best to check with FEMA before proceeding.