

CHAPTER 5

CONTRACTS

Background:

Contracts and franchise agreements are pivotal to ensuring a successful debris management program. Unless diversion is specified, it is likely the collected debris will be disposed of.

Regardless of the diversion program selected, the best way to divert disaster debris from landfills is to ensure that the contracts for debris removal include provisions requiring that the disaster debris be diverted from landfills through reuse, recycling, or other waste diversion techniques.

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STEP 1: PERFORM CONTRACT SERVICES ASSESSMENT

Develop in advance: The best approach to disaster response is pre-disaster planning. Taking the following actions in advance allows time for the development of contract terms and conditions, cost estimating, legal review, and identification of potential contractors.

Identify and review existing contracts, franchise agreements, and mutual aid agreements in effect to help determine your contract needs based on the type of work to be performed.

In assessing your contracts and other agreements, make note of the following:

- ◆ any services that are provided relating to disaster debris;
- ◆ whether the contracts contain any relevant provisions dealing with disaster debris;
- ◆ whether the existing contract can be used as the vehicle to provide emergency cleanup work, either as written or modified; and
- ◆ what you can require in terms of diversion programs if they are not specifically included in a franchise agreement.

#	ACTIONS TO TAKE PRIOR TO A DISASTER
1	Coordinate development of collection, diversion, and disposal programs with your hauler(s).
2	Develop model contracts in advance.
3	Identify the kinds of work needing emergency/immediate contract services.
4	Develop a list of the equipment needed to support the disaster response.
5	Identify contractors in the area who have the abilities and equipment to handle the work.
6	Of those contractors identified above, identify those who can respond in an emergency.
7	Pre-qualify contractors to expedite the contracting process and disaster response.

Contractors:

When developing a list of pre-approved contractors, update the list every six to 12 months. At the same time, check to see that the contractors are holding the appropriate licenses and that those licenses are valid.

Note: Contractors will have to show proof of worker's compensation and liability insurance before entering into a contract. The local jurisdiction's risk manager will have to determine the minimum levels of coverage. **Verify with OES/FEMA that insurance premiums are reimbursable.**

Non-disaster waste:

The best approach is to keep disaster-related debris separate from non-disaster debris. Commingling the two wastestreams can compromise the city/county's reimbursement for the diversion program. As an alternative, set up separate contracts for disaster debris and non-disaster debris and keep separate records for each.

Note: This was not possible in the City of Los Angeles. Many victims were still removing earthquake debris while neighbors were rebuilding. There was no clear end to one activity before beginning the other.

STEP 2: COORDINATE WITH HAULERS

Do in advance: The franchise and independent hauler can be instrumental in establishing a diversion program and in expediting debris cleanup.

It is important to coordinate with your franchise hauler in advance to:

- ◆ determine the services and equipment they can provide in an emergency, and
- ◆ develop a contingency plan should they not have the staff or equipment available.

This could include writing contracts for services the franchise hauler normally would provide but is unable to do so because of a shortage of staffing or equipment.

Disaster clause: Determine if your franchise agreement contains a "disaster clause" requiring the franchisee to provide emergency cleanup services in the event of a disaster (provide equipment, labor, and diversion or disposal of collected materials). If not, it would be wise to include such a clause at the time the franchise agreement is renegotiated.

Ensure that your disaster clause includes the use of the franchisee's facility, equipment, and labor.

Example: At the time of the Northridge earthquake, the City of Santa Clarita did have a franchise agreement with a disaster clause. It allowed them use of the franchise equipment and facility; however, it did not include the city's right to use franchise employees. As a result, the City did not have the staff needed to operate the equipment.

Waivers from

Be sure to get waivers from subcontractors releasing **subcontractors** the jurisdiction from liability. If the contractors do not pay their subcontractors, the subcontractors can then place a lien on the property where they removed debris and sue the jurisdiction to recover payment. Or, as an alternative, include such a provision in the contract for services.

STEP 3: ASSESS NEED FOR SHORT- AND LONG-TERM OPERATIONS¹

Short- and long-term operations:

A jurisdiction will probably need both short- and long-term contracts in its recovery program. Define the scope of the project and then select the type of contract needed depending upon the type of operation undertaken.

Short-term operations²

First 100 hours:

Short-term operations are defined as those undertaken during the first 100 hours after a disaster. One method of contracting early in a disaster is the "**time and material**" type of contract.

This contract type is used immediately after a disaster for emergency life saving activities and debris clearance. Under this type of contract, the contractor is paid on the basis of time spent in accomplishing a particular task. This contract is acceptable if a **cost ceiling** is placed on the contract to build in cost controls.

Since short-term debris operations primarily involve equipment usage, the contract should be set up on an hourly basis. The "time and material" contract then becomes a "time" contract only.

Bid requests:

Bid requests should specify that the hourly rate will include all fuel, maintenance, repair, etc., and the operator. This can greatly simplify the bookkeeping, auditing, and monitoring of the work.

Advantages:

Short-term agreements allow for more flexibility in program operations. After the Northridge earthquake, the City of Los Angeles used only short-term (1-2 week) contracts with haulers. Longer contracts, which corresponded to the terms of the City's Damage Survey Reports, were written for the use of the various disposal and recycling facilities.

Long-Term Operations³

Services after first 100 hours:

If your jurisdiction determines that the situation is beyond the capabilities of existing resources (mutual aid, State and volunteer labor and equipment), then you should consider developing an organization to administer and manage a long-term contract operation.

Since the after effects of a disaster can be felt for months or even several years, the local jurisdiction cannot necessarily rely on short-term agreements for assistance. In addition, the prolonged recovery by local forces and contractors likely will require a long-term operation.

Primary factors:

The primary factors influencing the size and complexity of the long-term debris operations are:

- ◆ the composition and volume of debris;
- ◆ the area of debris concentration;
- ◆ the location of temporary storage sites, recycling sites, and disposal sites; and
- ◆ the need for private property debris removal.

Options:

There are two contracts typically used for long-term debris removal operations. They are the **Lump Sum** contract and the **Unit Price** contract.

As an alternative, a jurisdiction can establish a **special engineering organization**, either with force account personnel or with a local engineering firm, to undertake all project management operations related to debris collection, diversion, and/or disposal. Each of these options is discussed below.

STEP 4: SELECT CONTRACT TYPE⁴

Three types: There are three contracts typically used in obtaining disaster debris services . They are:

- A. Time and material contract;
- B. Unit price contract;
- C. Lump sum contract.

A sample contract for each contract type above is found in Attachments A, B, and C respectively.

CONTRACT		CONTRACT TYPE	USE WHEN
A	Time and Material	Short-term Services for first 100 hours.	Used immediately after a disaster for emergency life saving activities and debris clearance.
B	Unit Price	Long-term Beyond initial 100 hours of recovery.	Use when scope of work is defined and can be quantified by actual field measure (recycle 10 tons concrete, 7 trees, etc.)
C	Lump Sum	Long-term Beyond initial 100 hours of recovery.	Use when scope of work is clearly defined are areas of work specifically quantified. Establishes total contract price by a one-bid item. (Demolish and recycle 1 structure for \$10,000).

Examples

Following are three methods to obtain disaster response services:

- ◆ Master Contract,
- ◆ Individual contracts, and
- ◆ Special Engineering Organization.

Master contract

Jurisdictions may choose to write a master contract covering all phases of debris collection, diversion, and/or disposal. In this situation, a prime contractor is hired with subcontractors, reporting to the prime contractor, hired to carry out specific tasks.

Example: City of Oakland

After the 1991 firestorm the City of Oakland wrote a master contract covering debris removal, recycling, and disposal. The prime contractor then subcontracted with a number of subcontractors for different aspects of the cleanup activities.

Individual contracts

Enter into individual contracts of short duration with a number of different contractors. This method can provide flexibility in changing contract provisions as the program is refined.

Example: City of L.A.

The City of Los Angeles selected contractors on a weekly basis for the 45 areas the City had designated for disaster cleanup.

A. TIME AND MATERIAL CONTRACT⁵

When to use:

Time and material contracts should only be used:

- ◆ during the first 100 hours of the recovery operation to perform emergency life saving debris clearance, and
- ◆ only after all available local and State government equipment has been committed.

Contract provisions:

The contract should clearly state that:

- ◆ the price for the equipment applies only when the equipment is operating;

- ◆ the jurisdiction reserves the right to terminate the contract at its convenience;
- ◆ the jurisdiction does not guarantee a minimum number of hours; and
- ◆ there is a cost ceiling for total work performed.

TIME AND MATERIAL CONTRACTS⁶ hourly rates		
Advantages	Disadvantages	Recommendations
Extremely flexible, not scope dependent	Contractor must be directed as to what work to perform	Seek competitive bids or negotiate reasonable hourly rates for equipment with operations.
Wide range of uses	Required full-time inspectors	Specify equipment as generically as possible to encourage competition.
Great for emergency "Hot Spots" and early debris right-of-way clearance	Requires documentation of actual hours worked by equipment and operators	Train inspectors on documentation requirements for time-and-material contracts.

B. UNIT PRICE CONTRACT⁷

Description:

The Unit Price and Lump Sum contracts are recommended after the immediate response phase.

The Unit Price Contract utilizes construction units and prices for these units to develop line item costs and total contract cost.

Scope of work:

The Unit Price Contract is used when:

- ◆ the scope of work may be defined, and
- ◆ generally quantified by actual field measure, (e.g., 200 cubic yards of sand, 10 tons of rubble, 7 trees, etc.).

Contracts

Bottom line: The total "bottom line" of the contract may increase or decrease depending upon the accuracy of the unit quantity.

For this reason, it is as important to properly estimate units as it is to estimate unit cost.

Use accurate units: The unit used in the Unit Price Contracts must be as accurately estimated as units possible; otherwise, the final bottom line amount of the contract will be significantly different from the contract bid received at the bid opening.

Attachments: Attachment B contains a model Unit Price Contract. Attachment D contains the City of Los Angeles' Unit Price Contract.

UNIT PRICE CONTRACTS cubic yard		
Advantages	Disadvantages	Recommendations
Flexible, intervention will not change contract conditions.	Full-time (specially trained) field inspectors required.	For quantities less than 50,000 CY, monitor loading of trucks and log in data such as CY and truck. Check site to verify placement.
Accurate account of actual quantities removed.	Contractor fraud, if loading and dumping are not closely monitored.	For quantities over 50,000 CY, recommend a documentation format (ticket).
Wide range of competition because of simplicity of contract.	Segregation of debris will complicate contract.	
Low contractor risk.	Trucks must be measured and numbered.	

Payment under unit price contract

Load ticket: Payment under a unit price contract is normally made on the basis of a load ticket.

- ◆ Load tickets should be treated as accountable forms. The operations office should know what forms have been issued, how many have been issued and to whom.

C. LUMP SUM CONTRACT⁸

Description: The Lump Sum Contract establishes a total contract price by a one item bid from the contractor. For this type of contract, the price for the work is fixed unless there is a change in the scope of work to be performed. The bottom line of the contract is not in question as it is with the Unit Price Contract.

Scope of work: If the scope of work is not well defined, this method of contracting puts the responsibility of the quantity estimate and the definition of the scope of work on the shoulders of the contractor bidding the project.

Consequently, experience has shown that the contractor will pass this burden back to the owner in the form of contingencies which will be incorporated into the bid price.

When to use: As mentioned before, the Lump Sum Contract should be used only when the scope of work is clearly defined and the areas of work can be specifically quantified. A model Lump Sum Contract can be found Attachment C.

LUMP SUM CONTRACTS⁹ Area Method (debris removal based on a defined area)		
Advantages	Disadvantages	Recommendations
Minimum labor required for management.	Must have a clear definable scope of work that can be quantitatively measured by the contractor.	Use any time scope of work is clearly definable.
Contractor shoulders most of the risk.	Often difficult to quantify what debris will be brought to the right-of-way for removal.	
Quantities do not have to be documented as in a unit price contract.	High probability of claims if debris estimates are difficult to estimate and require speculation.	

LUMP SUM CONTRACTS¹⁰ Pass Method (based on a specified number of passes through the disaster area)		
Advantages	Disadvantages	Recommendations
Minimum labor required for management.	Must have accurate, up-to-date plans and information on all roads that will be included in the "pass" scope of work.	Provide three to four passes depending on the magnitude of the disaster.
Defines scope better than area method and decreases the risk of claims caused by quantity speculation.	Public must cooperate in the removal process.	Solicit a price for each pass and a total job price.
Quantities do not have to be documented as in a unit price contract.	Contracting agency must be successful in communicating with the public in the removal area.	Clearly define any debris segregation requirements, road locations by detailed scaled maps, time lapse between passes, and required time frame to complete each pass.

□ **STEP 5: DETERMINE NEED TO ESTABLISH SPECIAL ENGINEERING ORGANIZATION¹¹**

Purpose: To undertake long-term operations, a special engineering organization can be formed immediately for the purpose of identifying the full scope of the project. This organization can handle all project management operations related to debris collection, diversion, and/or disposal.

Local firm vs own staff: The jurisdiction may wish to hire a local engineering firm for this purpose, if the community's internal engineering staff is heavily involved with the repair and replacement of publicly owned facilities damaged by the disaster.

Funding limitation: FEMA will only pay overtime for force account personnel performing emergency work (e.g., debris removal). However, FEMA will pay **ALL** eligible costs for contracted labor.

This is an important point to keep in mind when deciding whether to undertake the debris removal operations with force account personnel or to enter into a contract for the work.

Example: **After the 1994 Northridge Earthquake:** The Mayor and City Council decided that City forces could handle the recovery operations at a cost savings as compared to contracting out for the recovery work. In response, the City of Los Angeles' Department of Public Works implemented an earthquake debris removal program. The program was led by the Bureau of Engineering, with support from the Bureau of Contract Administration, which provided field monitoring of contractors, and the Bureau of Sanitation, Integrated Solid Waste Management Office, which directed the recycling efforts.

Engineering organization: Within the Bureau of Engineering, the Northridge Earthquake Recovery Division was created. Staff from various Divisions within the Bureau were assigned to the new ad hoc division and assumed responsibilities for different aspects of the earthquake recovery. After the work was completed, the Division was subsequently disbanded.

Advantages: Establishing this Division aided in coordinating all earthquake-related activities and simplified FEMA billing for disaster-related costs. In this way, the City could document that all activities performed by this Division were earthquake related and therefore reimbursable by FEMA.

Staffing requirements

At a minimum, the engineering organization will need:

Staff	Responsibilities
Inspectors	to compile the type and amount of debris within the project area
Engineers	to plan the work for maximum efficiency in the operation and to develop the jurisdiction quantity/cost estimates
Contract specialists and draftsmen	to prepare the contract documents
Data managers	to set up computerized use of data, geographic information system

STEP 6: DEVELOP PROJECT QUANTITY/COST ESTIMATES¹²

Cost estimating: Develop the project estimate as follows:

STEP	ACTION
1	prepare an estimate of the types and quantities of debris for contracting purposes;
2	determine the location of the debris;
3	develop unit cost data.

Units for payment:

Quantity estimates should be expressed in the units which are going to be used in the establishment of contract line item prices.

Select units based on the method that will be used to verify pay quantities for work under the contract. Typically, there are three different units used:

- ◆ cubic yards;
- ◆ tons; and
- ◆ each.

If pay by	Then Use	When
Volume	Cubic yards	a contractor is to be paid for the volume of material removed from a work site by approximate measurement of that volume
Weight	Tons	contractor is paid by weighing the trucks used to haul the material to a processing or disposal site
No. of items	Each	contractor is to be paid by the number of items removed from the project site (i.e., trees, damaged vehicles, etc.)

Measurement: For debris removal, units are normally cubic yards (cy), tons, or both.

Since it is difficult in most debris operations to estimate the weight of material to be removed, it is suggested that volume and number measurements be used as a normal rule.

Estimating volume: The volume of debris can be approximated by an estimate of length, width, and depth of the material in question.

The amount of the material to be removed and the accuracy desired in the estimate will determine the procedures used for this volume measurement.

On a large-scale disaster, an approximate quantity estimate may be derived by marking the area on a scaled map and approximating an average depth.

Debris location: When developing quantity estimates, instruct inspectors to note the type and location of the debris.

Other methods used include instituting a Geographic Information System to map debris locations, scouting neighborhoods in advance, and setting up a debris hotline to take calls from the public.

Develop unit price data¹³

Unit price variables: The development of a unit price includes many variables, such as:

- ◆ types and amounts of debris;
- ◆ method of removal;
- ◆ distance to the diversion or disposal site;
- ◆ routes to the diversion or disposal site;
- ◆ permitting requirements; and
- ◆ work site limitations.

Cost estimate: The cost estimate should address all items to be included in the scope of work. These items will include the actual work which may be required to accomplish the specific tasks.

Consider the large variety of factors which will affect the contractor's pricing, and be sure to take into account the abnormal conditions encountered by contractors in debris operations.

General contracting issues

Unit price contract: When writing contracts for removal of debris or wreckage, unit price (cubic yard) or fixed price contracts are preferred over equipment rentals or hourly rate contracts (time and material) because they are usually less expensive.

The Unit Price contract is the one recommended by the City of Los Angeles for its disaster cleanup.

Do not use cost-plus-percentage: Most State procurement regulations allow for abbreviated contract procedures when the Governor declares a state of emergency. However, under no circumstances should "cost-plus-percentage-of-cost" contracts be used.

There is no incentive for the contractor to hold costs down. The higher the costs, the bigger the profit the contractor receives.

Contingency contracts: The State of California and FEMA prohibit use of the contingency contract. Under no circumstances should a jurisdiction issue a contract with a condition that payment will be made only if the jurisdiction receives funds from the State and/or the Federal governments.

□ STEP 7: DEVELOP DIVERSION LANGUAGE FOR CONTRACTS

Diversion strategies:

Following are some strategies to ensure that the disaster debris collected is actually diverted from landfills:

- ◆ review existing contracts to determine if there are any relevant provisions dealing with disaster debris or if the contract can be used as the vehicle to provide emergency cleanup work, either as written or modified;
- ◆ identify the kinds of work needing emergency or immediate contract services;
- ◆ develop a list of the equipment needed to support the disaster response;
- ◆ include diversion language in the contract to ensure that the collected materials are indeed diverted and not disposed of in the landfill. (See sample language on pages 22-26);
- ◆ divide the disaster area into zones or sectors; assign contractors to a zone/sector so that you can keep track of the staff and plan for a consistent approach to the cleanup;
- ◆ require the contractor to report recycling activity through source separation and the destination of remaining debris for tracking purposes;
- ◆ require a minimum source separation recycling rate in the demolition contract language; and
- ◆ consider establishing a non-compliance fee or penalty for not diverting disaster debris to the extent feasible.

Suggestion: Define what is meant by "diversion, reuse, and recycle" in the contract. Companies may guarantee a recycling rate and then burn the materials as that may fit under the definition of recycling.

**Example:
non-compliance fee**

The City of Los Angeles, in its July, 1995, demolition contract, added a provision whereby the contractor is assessed a non-compliance fee of \$400 per load for any documented mixed debris that was not delivered to a recycling center. The non-compliance fee is deducted from final payment. (See Attachment E).

**Sample diversion
language:**

A number of contracts developed by local jurisdictions have included provisions for recycling of disaster debris. Following are descriptions of their approach or sample contract language.

Keep in mind that these contracts were developed to respond to a specific disaster and to local conditions. The contract language may not be appropriate or applicable to your situation, but is presented here to show how jurisdictions have approached the issue.

Example 1:

City of Santa Clarita cleanup contract.

Notice Inviting Bids

"In response to the Northridge Earthquake of January 17, 1994, the City of Santa Clarita has stockpiled disaster related debris at a designated site. The California Integrated Waste Management Act, Assembly Bill 939, requires that the City of Santa Clarita reduce the amount of waste going to landfills 25% by 1995 and 50% by the year 2000. Consequently, the stockpiled materials shall be diverted from landfills to the greatest extent possible.

"Contractor Service Requirements

Contractor shall transport recovered material to a permitted resource recovery facility within a 40-mile radius from site.

"Contractor shall provide all necessary equipment, materials and labor necessary to remove and recover, to the extent possible, all stockpiled disaster related debris at the site.

"Contractor shall haul all material that is non-recoverable to a state-permitted sanitary landfill for disposal.

"Contractor shall provide the City of Santa Clarita with documentation of the amount and type of material removed from the site.

"'Recover' means to utilize materials which can be used as raw materials in the manufacture of new products, or as values which can be converted into some sort of fuel or energy source. Recover may include reuse, recycling, waste-to-energy, composting, and/or other components."

Example 2:

City of Oakland, master contract, 1991 firestorm.

The City let a master contract for the removal, disposal, and recycling of debris. Bid specifications for the contractors to remove the debris stated that the contractor is responsible for removal and transportation of cut trees to proper recycling or recovery facilities and that the contractor must segregate metals, concrete, and other recyclables from nonrecyclable debris at the site of generation.

In addition the City provided contractors with the names of Bay Area construction and demolition waste recyclers, and required contractors to provide weekly load verification reports to prove that the materials were entering a recycling facility.

Example 3:

City of Los Angeles, building demolition, 1994 Northridge earthquake

"Project Requirements

Recycle demolition materials to the greatest extent possible without delaying the project.

Summarize and document the amounts and types of materials directly recycled and material removed from the site on the enclosed recycling log found within this Contract.

Documentation includes receipts of materials sold, etc.

"Demolition debris not directly recycled from the site must be hauled to the recycling facility (not landfill) located at (site). The recycling facility located at (address) charges \$20/ton for inert material and \$24.75/ton for mixed loads.

"Identify loads to (site) as "City Demolition Debris," state the demolition site address, and pay all allocated fees. Copies of weight tickets from the previous day's work will be collected at the demolition site on a regular basis by a representative from the Integrated Solid Waste Management Office. Copies of weight tickets must also be turned in to the Engineer at the completion of the project.

"Note: Contractor will be assessed a non-compliance fee of \$400 per load for any documented mixed debris that is not delivered to the recycling center at (address). The non-compliance fee will be deducted from final payment."

Example 4:

City of Los Angeles, unit price contract, 1994 Northridge earthquake.

Although the City did not use the unit price contract it had developed after the Northridge earthquake recovery, it is presented here as an example.

Following is a summary of pertinent contract provisions related to recycling disaster debris.

Incentive payment:

The City will pay tipping fees using the existing authorization letter; however, only source separated recycling facilities and (name of recycling facility) (mixed debris recycling) will be authorized. Contractors will receive an incentive (10% of unit price) to use source separated facilities, since the City saves over \$200 per load when using these types of facilities.

Collection plan:

The Contractor will submit a "Collection Plan" that details how the debris will be collected as well as specifics on equipment and personnel that will be utilized.

City Inspectors will ensure that the Contractor implements the Collection Plan. This will include ensuring that all debris is collected, that Contractor mobilized equipment greater than or

equal to equipment bid in Collection Plan, as well as ensuring that the Contractor conducts work in a safe manner.

Example 5:

USEPA Contract for Household Hazardous Waste Collection, 1995 floods

Following are excerpts of contract provisions relating to the waste management hierarchy and recycling.

Waste management hierarchy:

"Contractor shall follow the waste management hierarchy during this contract period unless directed by Agency to do otherwise:

1. Source reduction (reduction, reuse);
2. Recycle;
3. Neutralize, stabilize, or deactivate; and finally
4. Environmentally sound incineration or land disposal.

Recycling:

"In accordance with the waste management hierarchy described above, Contractor shall place an emphasis on reuse and recycling materials rather than disposing of them.

"Contractor shall separate all latex paint for recycling. Contractor shall stabilize and landfill all contaminated or dried paint.

"Contractor shall, at a minimum, recycle the following materials: motor oil, oil filters, antifreeze, nickel cadmium batteries, mercury batteries, aerosol cans, florescent bulbs, latex paint, and paint cans.

Contractor will arrange for the recycling of lead acid batteries with a local recycler. Contractor is responsible for the collection of these batteries and determining if they are non-recyclable."

STEP 8: REVIEW GENERAL CONSIDERATIONS¹⁴

Documents on record:

For work performed by contract, the following must be on record:

- ◆ copy of C-21 license;
- ◆ copy of contract;
- ◆ copies of requests for bids;
- ◆ copy of bid documents;
- ◆ invoices submitted by contractor, complete with a detailed breakdown of all costs;
- ◆ warrants authorizing check issuances;
- ◆ checks issued in payment;
- ◆ certified payroll; and
- ◆ verification of insurance coverage and any bonds required.

Debarred contractors:

The jurisdiction may not enter into any contract with parties whose names appear on the FEMA Consolidated List of Debarred, Suspended and Ineligible Contractors.

Bonding:

Federal and state program regulations require that contractors be bonded. Contractors must have a payment bond and a faithful performance bond. Bonding protects the jurisdiction from failures by the contractor to perform.

Licenses:

Contractors must be licensed. This requirement also extends to subcontractors and to the prime contractor. Contractors should have a C-21 license.

Contractors State License Board:

Require the contractor to prove he/she is licensed. If you have questions, contact the Contractors State License Board. This board maintains the current status of licenses of all contractors licensed in the State of California.

STEP 9: REVIEW ACCOUNTING CONSIDERATIONS¹⁵

Document contract price:

Document how you arrived at the contract price. This is easy if you use the Request for Proposal or competitive bid processes. This is not so easy if you are procuring emergency contract services without formal bidding.

Damage Survey Reports

Disaster-related activities must be accounted for separately from normal activities.

Each damaged site has the potential to generate one or more Damage Survey Reports (DSR), the FEMA document used to obligate reimbursement funds. Your jurisdiction must account for the costs by DSR then by site (DSRs are by segment [subsite] of a "site.").

Segregate costs

Require the contractor to segregate costs on the invoices by site or damage survey report (DSR) for work performed.

- ◆ A problem could arise if one contract covers several sites. In this case, FEMA and the jurisdiction may have to prorate the contractor's costs to each DSR site. This could cost your jurisdiction funds if there are allocations to ineligible sites.
- ◆ To avoid this problem, include the requirement to cost out the services by site in the contract under the section instructing the contractor as to how and when to invoice its services.

Develop contract documentation

Take the following actions to ensure that adequate documentation is established for state and federal reimbursement:

- ◆ Use load tickets as accountable forms;
- ◆ Require contractor to submit reports and payment estimates;

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- ◆ Set up accounting system to track contract payments;
- ◆ Document how contractor was selected; and
- ◆ Keep a file of all documents related to the contract, such as requests for bids, invoices, checks issued in payment, etc.

More information:

For more information, refer to the *Guidelines for Documenting Disaster Costs for Federal and State Public Assistance Programs*, contained in the *Public Assistance Resource Manual*. Contact OES for a copy).

STEP 10: REVIEW CONTRACT ADMINISTRATION PROCEDURES¹⁶

Contract modification: During the administration of the contract, different types of modifications may be necessary to incorporate new requirements in order to provide contractual coverage for situations which develop after award.

Put it in writing: All modifications shall be in writing in order to protect the interests of both parties. The contract should contain a clause which permits the contracting officer to make changes unilaterally within the scope of the contract, subject to an equitable adjustment of the contract price.

Acceptance and payment: Final inspection and the method of interim and final payments are a part of the general conditions of the contract and should be set forth in the original specification or other contract documents.

Suggestion: Consider including a retention clause; 20 percent is typical. This can avoid problems by ensuring that the work is completed to the satisfaction of the contract manager before the final funds are released to the contractor.

Verification: Local governments should accept parts of all of the work only after it is verified through the inspection process that the completed work was performed in accordance with the standards stipulated in the contract.

Progress payments: In the event the authorized work tenure exceeds a period of one month, provisions can be made to make progress payments at least monthly to the contractor.

If the contract period is less than one calendar month, normal payment should be made in one total sum.

Contract closure: A contract is complete when all of the services or items called for have been delivered or performed and accepted.

The contract is not administratively complete, however, until all actions taken in compliance with the contract have been properly documented and final payment is made.

ATTACHMENTS

- A. Model Time and Material Contract
- B. Model Unit Price Contract
- C. Model Lump Sum Contract
- D. City of Los Angeles Unit Price Contract
- E. City of Los Angeles Demolition Contract

REFERENCES

- ◆ Debris Management Course, Reference Manual, FEMA, Emergency Management Institute.
- ◆ Debris Removal Guidelines for State and Local Officials, FEMA, DAP-15 (Draft), Dec. 1991 Modified.
- ◆ San Joaquin County Disaster Recovery Manual, 8/95.
- ◆ Disaster Planning Financial Considerations, State Controller's Office.

ENDNOTES

1. Debris Removal Guidelines for State and Local Officials, FEMA, DAP-15 (Draft), December 1991, Modified.
2. Ibid.
3. Ibid.
4. Ibid.
5. Ibid.
6. Debris Management Course, Reference Manual, Emergency Management Institute, FEMA, page 22.
7. Ibid.
8. Ibid.
9. Ibid.

10. Ibid.
11. Ibid.
12. Ibid.
13. Ibid.
14. *San Joaquin County Disaster Recovery Manual, 8/95;*
15. Ibid.
16. *Debris Removal Guidelines for State and Local Officials, FEMA, DAP-15 (Draft), Dec. 1991 Modified;*

CHECKLIST

CHAPTER 5 CONTRACTS

STEP 1: Perform contract services assessment

- ◆ Identify existing contracts, ordinances, or mutual aid agreements that might deal with disaster debris, debris removal, recycling, etc.
- ◆ Develop a "disaster clause" if one is not already in place in franchise agreement or contract.
- ◆ Identify the kinds of work that will require immediate contract services.
- ◆ Identify contractors available to respond in an emergency
- ◆ Identify contractors in the area who have the abilities and equipment to perform the work.
- ◆ Pre-qualify a list of contractors who can perform the required work.

STEP 2: Coordinate with haulers

- ◆ Determine the services and equipment haulers can provide in an emergency.
- ◆ Develop a contingency plan if no services or equipment is available.
- ◆ Obtain waivers from subcontractors releasing jurisdiction from liability.

STEP 3: Assess need for short- and long-term operations

Short-Term Operations

- ◆ Determine if need short-term contracts (during the first 100 hours) for emergency life saving measures and debris clearance.
- ◆ Set up contract on an hourly basis.
- ◆ Solicit hourly rates from several different contractors.
- ◆ Specify that hourly rate will include all fuel, maintenance, repair, etc. and the operator.

Long-Term Operations

- ◆ Prepare long-term contract if situation is beyond capabilities of existing resources and need assistance beyond the first 100 hours.
 - ◆ Consider establishing special engineering organization.
 - ◆ Determine if will hire a local engineering firm or set up an internal organization composed of city/county engineering staff.

STEP 4: Select and execute contract

- ◆ Determine appropriate contract type--
 - ◆ for short-term operations: Time and material.
 - ◆ for long-term operations: Unit Price, Lump Sum.
- ◆ Review methods to obtain disaster response services:
 - ◆ master contract;
 - ◆ individual contracts; and
 - ◆ establish special engineering organization.

STEP 5: Establish special engineering organization

- ◆ Establish for long-term operations.
- ◆ Determine whether to hire local engineering firm or using city/county engineering staff.
 - ◆ City of Los Angeles established the Earthquake Recovery Division using staff from Bureau of Engineering
- ◆ Staff needed:
 - ◆ inspectors;
 - ◆ engineers;
 - ◆ contract specialists; and
 - ◆ data managers.

STEP 6: Develop project quantity/cost estimates

- ◆ Estimate the types and quantities of debris for contracting purposes.
- ◆ Prepare map with debris locations.
- ◆ Prepare government cost estimates for management purposes.
- ◆ Select units (cubic yards, tons, each) to be used in establishment of contract line item prices.
- ◆ Develop unit cost data.

STEP 7: Develop diversion language for contracts

- ◆ Develop strategies to ensure disaster debris is diverted from landfills.
- ◆ Include diversion language in contracts for debris removal and debris management programs.
- ◆ Train site inspectors to monitor and enforce diversion provisions.
- ◆ Examples:
 - ◆ City of Santa Clarita;
 - ◆ City of Oakland;
 - ◆ City of Los Angeles, building demolition;
 - ◆ City of Los Angeles, unit price contract; and
 - ◆ U.S. EPA contract for household hazardous waste collection, 1995 floods.

STEP 8: Review General Considerations

- ◆ Ensure that contractors are bonded--payment bond and faithful performance bond.
- ◆ Ensure that contractors have C-21 license.
- ◆ Debarred contractors.

STEP 9: Review Accounting Considerations

- ◆ Document how contract price was arrived at.
- ◆ Segregate costs on invoices by site or damage survey report for work performed.
- ◆ Account for disaster-related activities separately from normal activities.
- ◆ Develop contract documentation:
 - ◆ use load tickets as accountable forms;
 - ◆ require submission of reports and payment estimates;
 - ◆ set up accounting system to track contract payments;
 - ◆ document how contractor was selected; and
 - ◆ keep a file of all documents related to the contract, such as requests for bids, invoices, checks issued in payment, etc.

STEP 10: Review Contract Administration Procedures

- ◆ Monitor contractor performance.
- ◆ Require submission of reports and payment estimates.
- ◆ Make frequent visits to job sites in lieu of progress reports
- ◆ Put all modifications in writing.
- ◆ Set forth final inspection and method of interim and final payments .
- ◆ Close contract when all services or items called for have been delivered or performed and accepted.