FEMA Reimbursement - Will They or Won't They?

Presentation For:
• Florida Educational Facilities Planners Association
• Summer 2017 Conference, Boca Raton, Florida

Presented By:
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• Hillsborough Community College
• Council of Purchasing Professionals

Presentation Date:
• July 11, 2017
REIMBURSEMENT

FEMA

DISASTER RELIEF
Procurement Requirements

Under The “New” Uniform Guidance
Learning Objectives

- Explain FEMA’s Authority
- Procurement Requirements for Construction & Renovation Contracts
- Insulate Against Conflict of Interest
- Applicable Federal Regulations
U.S. Department of Homeland Security

- Secretary
  - Deputy Secretary
  - Chief of Staff
    - Executive Secretary
    - Military Advisor
- Management Directorate
  - Chief Financial Officer
  - Office of Health Affairs
  - Office of Partnership & Engagement
  - Office of Intelligence & Analysis
- Science & Technology Directorate
  - National Protection & Programs Directorate
- Office of Policy
  - Office of the General Counsel
  - Office of Legislative Affairs
  - Office of Public Affairs
  - Office of the Inspector General
- Office of the Domestic Nuclear Detection Office
- Federal Law Enforcement Training Center
- Federal Emergency Management Agency
  - U.S. Customs & Border Protection
  - U.S. Citizenship & Immigration Services
  - U.S. Coast Guard
  - U.S. Immigration & Customs Enforcement
  - U.S. Secret Service
  - Transportation Security Administration
- Citizenship & Immigration Services Ombudsman
- Privacy Office
- Office for Civil Rights & Civil Liberties
FEMA’s Authority

Robert T. Stafford Disaster Relief & Emergency Assistance Act

Presidential disaster declaration triggers financial assistance

Gives FEMA the responsibility for coordinating relief efforts

Orderly and systemic means of federal grant assistance

Encourages disaster preparedness/provides federal aid

Statutory authority for most federal disaster response activities
Background – FEMA Procurement

- February 2014: OIG Audit of FEMA
- December 2014: National Grant Reform
OIG Audit of FEMA

Training

Materials Corrected
National Grant Reform

Uniform Guidance

“Super Circular”

2 CFR Part 200
Case Study #1

FEMA should disallow $2.0 million of $3.59 million in grant funds awarded to Stratford, Connecticut, in January 2017

- Town did not follow federal procurement standards in awarding $2.0 million for 13 contracts
- Full and open competition
- Use of W/MBEs
- Required Contract Clauses
- See Tables 1-3
Case Study #1 (continued)

Figure 1: Downed Tree Limbs Blocking Road Access

Source: Town of Stratford, Connecticut
<table>
<thead>
<tr>
<th>Notes</th>
<th>Contract Number</th>
<th>Contract Award Amount</th>
<th>Exigent Work</th>
<th>Non-Exigent Work</th>
<th>Violations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2011-017</td>
<td>$225,367</td>
<td>$0</td>
<td>$225,367</td>
<td>X X X</td>
</tr>
<tr>
<td></td>
<td>2012-044</td>
<td>11,600</td>
<td>0</td>
<td>11,600</td>
<td>X X</td>
</tr>
<tr>
<td>1</td>
<td>2012-077</td>
<td>529,501</td>
<td>514,201</td>
<td>15,300</td>
<td>n/a X</td>
</tr>
<tr>
<td>1</td>
<td>2012-082</td>
<td>141,400</td>
<td>0</td>
<td>141,400</td>
<td>X X</td>
</tr>
<tr>
<td></td>
<td>2013-036</td>
<td>322,891</td>
<td>0</td>
<td>322,891</td>
<td>X X</td>
</tr>
<tr>
<td></td>
<td>2013-081</td>
<td>89,090</td>
<td>0</td>
<td>89,090</td>
<td>X X</td>
</tr>
<tr>
<td>3</td>
<td>98701</td>
<td>50,000</td>
<td>0</td>
<td>50,000</td>
<td>X X X</td>
</tr>
<tr>
<td>3</td>
<td>98702</td>
<td>233,640</td>
<td>233,640</td>
<td>0</td>
<td>n/a n/a X</td>
</tr>
<tr>
<td>3</td>
<td>98703</td>
<td>139,473</td>
<td>139,473</td>
<td>0</td>
<td>n/a n/a X</td>
</tr>
<tr>
<td>3</td>
<td>98705</td>
<td>100,000</td>
<td>100,000</td>
<td>0</td>
<td>n/a n/a X</td>
</tr>
<tr>
<td>3</td>
<td>172073</td>
<td>31,608</td>
<td>0</td>
<td>31,608</td>
<td>X X X</td>
</tr>
<tr>
<td>3</td>
<td>172075</td>
<td>19,343</td>
<td>0</td>
<td>19,343</td>
<td>X X X</td>
</tr>
<tr>
<td>1, 2, 3</td>
<td>Multiple</td>
<td>61,364</td>
<td>0</td>
<td>61,364</td>
<td>X X X</td>
</tr>
<tr>
<td></td>
<td><strong>Totals</strong></td>
<td><strong>$1,955,277</strong></td>
<td><strong>$987,314</strong></td>
<td><strong>$967,963</strong></td>
<td>4 9 13</td>
</tr>
</tbody>
</table>

*Source: Office of Inspector General (OIG) analyses of Town data*
# Case Study #1 (continued)

## Table 2: Four Non-competitive Contracts

<table>
<thead>
<tr>
<th>Contract Number</th>
<th>Amount</th>
<th>Exigent Work</th>
<th>Non-Exigent Work</th>
<th>Description of Work</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$98701</td>
<td>$50,000</td>
<td>$0</td>
<td>Repair concrete sidewalks and masonry fire pits, and install concrete deck at a beach</td>
</tr>
<tr>
<td>2</td>
<td>172073</td>
<td>31,608</td>
<td>0</td>
<td>Install washed away sand berm at a beach</td>
</tr>
<tr>
<td>3</td>
<td>172075</td>
<td>19,343</td>
<td>0</td>
<td>Strip sand and vegetation at a beach bath house</td>
</tr>
<tr>
<td>4</td>
<td>Multiple</td>
<td>61,364</td>
<td>$0</td>
<td>Architectural, engineering, and project management for dock repair and pier reconstruction</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>$162,315</strong></td>
<td><strong>$0</strong></td>
<td><strong>$162,315</strong></td>
<td><strong>Source:</strong> OIG analyses of Town data</td>
</tr>
</tbody>
</table>
### Table 3: Contract Costs

<table>
<thead>
<tr>
<th>Contract Number</th>
<th>Costs Reviewed</th>
<th>Costs Supported</th>
<th>Costs Unsupported</th>
<th>Costs Both Unsupported and Ineligible</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011-017</td>
<td>$ 225,367</td>
<td>$225,367</td>
<td>$</td>
<td>0</td>
</tr>
<tr>
<td>2012-044</td>
<td>11,600</td>
<td>11,600</td>
<td>$</td>
<td>0</td>
</tr>
<tr>
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<td>529,501</td>
<td>0</td>
<td>529,501</td>
<td>15,300</td>
</tr>
<tr>
<td>2012-082</td>
<td>141,400</td>
<td>0</td>
<td>141,400</td>
<td>141,400</td>
</tr>
<tr>
<td>98701</td>
<td>50,000</td>
<td>0</td>
<td>50,000</td>
<td>50,000</td>
</tr>
<tr>
<td>98702</td>
<td>233,640</td>
<td>0</td>
<td>233,640</td>
<td>0</td>
</tr>
<tr>
<td>98703</td>
<td>139,473</td>
<td>0</td>
<td>139,473</td>
<td>0</td>
</tr>
<tr>
<td>98705</td>
<td>100,000</td>
<td>0</td>
<td>100,000</td>
<td>0</td>
</tr>
<tr>
<td>172073</td>
<td>31,608</td>
<td>0</td>
<td>31,608</td>
<td>31,608</td>
</tr>
<tr>
<td>172075</td>
<td>19,343</td>
<td>0</td>
<td>19,343</td>
<td>19,343</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,481,932</strong></td>
<td><strong>$236,967</strong></td>
<td><strong>$1,244,965</strong></td>
<td><strong>$257,651</strong></td>
</tr>
</tbody>
</table>

*Source: OIG analyses of FEMA and Town documentation*
Case Study #2

FEMA Should Recover $1.8 Million of $5.5 Million in Public Assistance Grant Funds Awarded to Columbia County, Florida, for Tropical Storm Debby Damages in November 2016

- Full and open competition
- Contract administration
- Use of W/MBEs
- Required Contract Clauses
- Time and Materials contracts
- Unreasonable Equipment Costs (cost principles)
- Small Projects Not Completed
- See Tables 1-2
Case Study #2 (continued)

Table 1: Violations of Procurement Standards for Five Contracts

<table>
<thead>
<tr>
<th>Project(s)</th>
<th>Contract Scope of Work</th>
<th>Number of Contracts</th>
<th>Contract Award Amount in Scope</th>
<th>Exigent Work Not Questioned</th>
<th>Non-Exigent Work Questioned</th>
<th>Violation of Procurement Standards Listed Above</th>
</tr>
</thead>
<tbody>
<tr>
<td>935, 1044 &amp; 1057</td>
<td>Road Repairs</td>
<td>3</td>
<td>$1,151,088</td>
<td>$0</td>
<td>$1,151,088</td>
<td>X X X X</td>
</tr>
<tr>
<td>935, 1044 &amp; 1057</td>
<td>Road Repairs</td>
<td>1</td>
<td>343,919</td>
<td>0</td>
<td>343,919</td>
<td>X X X</td>
</tr>
<tr>
<td>999</td>
<td>Debris Removal</td>
<td>1</td>
<td>121,028</td>
<td>52,255</td>
<td>68,773</td>
<td>X X X X</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td></td>
<td><strong>5</strong></td>
<td><strong>$1,616,035</strong></td>
<td><strong>$52,255</strong></td>
<td><strong>$1,563,780</strong></td>
<td></td>
</tr>
</tbody>
</table>

*Source: County procurement records and Office of Inspector General (OIG) analysis*
Case Study #2 (continued)

Table 2: Small Projects Not Completed

<table>
<thead>
<tr>
<th>Project Number</th>
<th>Activities Not Implemented</th>
<th>Amount Awarded/Received</th>
<th>Amount Questioned</th>
</tr>
</thead>
<tbody>
<tr>
<td>997</td>
<td>Drew Road (reinforced concrete at headwall locations)</td>
<td>$53,791</td>
<td>$5,328</td>
</tr>
<tr>
<td>1050</td>
<td>Needmore Road (reinforced concrete at headwall locations)</td>
<td>43,737</td>
<td>7,824</td>
</tr>
<tr>
<td>1064</td>
<td>Tommy Lites Road (reinforced concrete at headwall locations)</td>
<td>44,141</td>
<td>3,197</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$141,669</td>
<td>$16,349</td>
</tr>
</tbody>
</table>

Source: FEMA project worksheets, County records, and OIG analyses
Case Study #3

FEMA Should Recover $25.4 Million in Grant Funds Awarded to Louisville, Mississippi, for an April 2014 Disaster

- Federal procurement standards prohibit using qualifications-based procurements, where price is not an evaluation factor, for non-A/E professional services
- Use of small and minority firms, women’s business enterprises, and labor surplus area firms
- Full and open competition
- Perform a cost or price analysis in connection with every procurement action, including contract modifications, to determine the reasonableness of the proposed contract price
- See Figure 1 and Table 2
Case Study #3 (continued)

Figure 1: City of Louisville, Mississippi, Plywood Facility

Source: City of Louisville, Mississippi
### Table 2. Contracts Noncompliant with Procurement Standards

<table>
<thead>
<tr>
<th>Scope of Work</th>
<th>Award Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Architect &amp; Engineering Services</td>
<td>$3,192,973</td>
</tr>
<tr>
<td>2 Construction Manager</td>
<td>2,514,863</td>
</tr>
<tr>
<td>3 Construction - Foundation</td>
<td>2,048,000</td>
</tr>
<tr>
<td>4 Construction – Demolition</td>
<td>866,117</td>
</tr>
<tr>
<td>5 Construction - Hog &amp; Glue Room, Lathe</td>
<td>1,489,000</td>
</tr>
<tr>
<td>6 Construction - Metal Building</td>
<td>7,474,000</td>
</tr>
<tr>
<td>7 Construction - Site and Utilities</td>
<td>2,742,594</td>
</tr>
<tr>
<td>8 Construction - Regenerative Thermal Oxidizer Relocation</td>
<td>332,895</td>
</tr>
<tr>
<td>9 Construction - Electrical Ducts &amp; Equipment Pad</td>
<td>752,000</td>
</tr>
<tr>
<td>10 Construction - Augured Pressured Grouted Piles</td>
<td>655,994</td>
</tr>
<tr>
<td>11 Construction - Fire Suppression</td>
<td>1,275,000</td>
</tr>
<tr>
<td>12 Professional Project Management Services</td>
<td>600,000</td>
</tr>
</tbody>
</table>

**Total Amounts Awarded and Questioned**  
$23,943,436

*Source: Office of Inspector General (OIG) analysis of City data*
Case Study #4

FEMA Should Disallow $1.5 Million in Grant Funds Awarded to Hays County, Texas in May and June 2015

- Unreasonably restricted competition by not allowing smaller contractors to compete for the work
- Procurement practices did not take the specific steps to provide opportunities for small and minority businesses, women’s business enterprises, and labor surplus area firms
- Awarded contracts without taking the federally required affirmative steps or including all required contract provisions
- Inform grant sub-recipients that using a shared services agreement does not relieve them of the responsibility to comply with Federal procurement requirements
- See Figure 1 and Table 1
Figure 1: Fisher Bridge Washed Out, Hays County, Texas

Source: Hays County, Texas
### Table 1: Projects Audited

<table>
<thead>
<tr>
<th>Project Number</th>
<th>Category of Work*</th>
<th>Award Amount</th>
<th>Cost Overrun/Underrun</th>
<th>Total Expended</th>
<th>Questioned Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>427</td>
<td>A</td>
<td>$1,330,658</td>
<td>$142,387</td>
<td>$1,473,045</td>
<td>$1,473,045</td>
</tr>
<tr>
<td>992</td>
<td>A</td>
<td>655,155</td>
<td>58,717</td>
<td>713,872</td>
<td>0</td>
</tr>
<tr>
<td>736</td>
<td>B</td>
<td>312,007</td>
<td>(35,673)</td>
<td>276,334</td>
<td>0</td>
</tr>
<tr>
<td>402</td>
<td>C</td>
<td>78,317</td>
<td>9,974</td>
<td>88,291</td>
<td>0</td>
</tr>
<tr>
<td>83</td>
<td>C</td>
<td>21,848</td>
<td>3,074</td>
<td>24,922</td>
<td>0</td>
</tr>
<tr>
<td>277</td>
<td>B</td>
<td>11,306</td>
<td>(5,983)</td>
<td>5,323</td>
<td>0</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td></td>
<td><strong>$2,409,291</strong></td>
<td><strong>$172,496</strong></td>
<td><strong>$2,581,787</strong></td>
<td><strong>$1,473,045</strong></td>
</tr>
<tr>
<td>Unobligated</td>
<td></td>
<td>412,785</td>
<td>0</td>
<td>412,785</td>
<td>0</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td></td>
<td><strong>$2,822,076</strong></td>
<td><strong>$172,496</strong></td>
<td><strong>$2,994,572</strong></td>
<td><strong>$1,473,045</strong></td>
</tr>
</tbody>
</table>

*FEMA classifies disaster-related work by type: debris removal (Category A), emergency protective measures (Category B), and permanent work (Categories C through G).*

Source: Project worksheets and Office of Inspector General (OIG) analysis
Example Project Timeline

- **Step 1** Project scoping: 6 months
- **Step 2** Project development: 5 months
- **Step 3** Project submission: 1 month
- **Step 4** Project review: Average of 90 days
- **Step 5** Project award and obligation: 1 to 3 months
- **Step 6** Project implementation and monitoring: Up to 36 months
- **Step 7** Award closeout: 90 days
Eligible Applicants & Subapplicants

- State Agencies
- Federally-Recognized Tribes
- Tribal Agencies
- Local Government/Communities

Applicants

- Territories
- Federally-Recognized Tribes
- States

FEMA
YOUR IN-HOUSE TEAM

- Facilities
- Procurement
- Accounting
Applicable Federal Regulations

2 C.F.R. § 200.317-326
NEW

2 C.F.R. § 215.40-48
OLD
Acceptable Methods of Procurement

- Micro Purchases
- Small Purchases
- Sealed Bids
- Competitive Proposals
- Noncompetitive Proposals
Acceptable Methods of Procurement

Micro Purchases
Acceptable Methods of Procurement

Small Purchases
Acceptable Methods of Procurement

Sealed Bids
Acceptable Methods of Procurement

Competitive Proposals
Acceptable Methods of Procurement

Noncompetitive Proposals
Selection Criteria

- Written procedures for solicitations
- Clear and accurate description of the technical requirements
- Identification of all requirements and factors to be used in evaluation
- Prequalified list of firms are current and include enough qualified sources to ensure competition
- Cannot preclude potential bidders from qualifying during solicitation period
Selection Processes

- Architectural/Engineering Services (A/E)
- Design-Bid-Build
- Construction Management At-Risk (CMAR)
- Design Build Contracts
FEMA considers the following to fall within the scope of architectural/engineering professional services:

- Professional services of an architectural or engineering nature, as defined by applicable state law, and which the state law requires to be performed or approved by a registered architect or engineer.

- Professional services of an architectural or engineering nature associated with design or construction of real property.

- Other professional services of an architectural or engineering nature or services incidental thereto that logically or justifiably require performance by registered architects or engineers or their employees.

- Professional surveying and mapping services of an architectural or engineering nature.
Pre-Awarded Contracts Procedures

Pre-Positioned or Standby Contracts

May still be used if certain conditions are met
Time-and-Materials (T&M) Contracts Procedures

Used for a reasonable period when:
- Includes a ceiling price that the Contractor exceeds at its own risk
- Requires considerable oversight to ensure costs are reasonable

No other contract is suitable
- Used where the scope of work or duration is unclear
- Once the scope of work becomes clear, switch
Cost-Plus-Percentage-of-Cost Contracts Procedures

- Contractor’s profit is based on a percentage of the project’s costs
- Explicitly prohibited by the federal procurement standards
- Ineligible for FEMA grant funding
- Ensure these provisions are not included in a contract
Piggybacking Contracts Procedures

Pre-existing contract solicited and awarded by another entity

FEMA closely reviews piggyback contracts
Restrictive Competition

- Unnecessary experience
  - Excessive bonding
    - Non-competitive pricing between firms or between affiliated companies
      - Specifying only a brand name product instead of an equal product
        - Any arbitrary action
          - State or local geographic preferences
            - Nothing preempts state licensing laws
Written Employee Code of Conduct

- Must be ethical and non-preferential
- Officials with potential conflict must disqualify
- Gifts, entertainment, conduct of official rules
- Non-Disclosure agreement
Conflict of Interest

Partner

The employee, officer, or agent, any member of the immediate family

An organization which employs, or is about to employ,

Has a financial interest or other interest in the firm selected for award
DO NOT ACCEPT

Gratuities

Anything of monetary value

Favors
Small & Woman/Minority-Owned Business Enterprises

- Take all necessary affirmative steps to ensure minority firms, women’s business enterprises, and labor surplus are firms are used
- Place qualified firms on solicitation lists
- Assure firms are solicited whenever they are potential sources
- Divide total requirements, when economically feasible, into smaller tasks
- Establish delivery schedules, where the requirement permits, to encourage participation
- Use SBA and MSDA
- Require the prime contractor, if subcontracts are to be let, to take same affirmative steps
Procurement of Recovered Materials

- Comply with section 6002 of the Solid Waste Disposal Act as amended by the Resource Conservation & Recovery Act
- Items only designated in guidelines of EPA at 40 CFR Part 247
- Where purchase price exceeds $10K or value of the quantity acquired the preceding fiscal year exceeded $10K
- Procuring solid waste management services in a manner that maximizes energy and resource recovery
- Establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines
Contract Cost & Price

Cost or price analysis for every procurement more than $150K

Make independent estimates before receiving bids or proposals

Must negotiate profit when there is no price competition

In all cases where cost analysis is performed

Considerations must be given to:

- Complexity of work
- Risk borne by contractor
- Contractor's investment
- Amount of subcontracting
- Quality of its record of past performance
- Industry profit rates
Contract Clauses

- Changes
- Changed Conditions
- Suspension of Work
- Site Investigation & Conditions Affecting the Work
- Disputes
Contract Clauses

Payments
Inspection of Construction
Commencement, Prosecution, & Completion of Work
Liquidated Damages-Construction
Default
Termination for Convenience
Equal Opportunity & Executive Order 11246
Contract Clauses

- Affirmative Action Compliance Requirement for Construction
- Anti-Kickback Procedures
- Davis Bacon Act
- Contract Work Hours & Safety Standards Act
- Patent Rights
- Rights in Data
Common Pitfalls

Full and Open Competition (at more restrictive $ amounts)

All Six Steps for W/MBE

Documentation/Maintaining Records

Contract Administration

Pre-Awarded/Standby Contracts

Time and Materials Contracts

Cost Plus a Percentage Of Cost

Piggyback Contracts