

Hurricane Harvey Disaster Relief: Government Contracting Compliance Tips

August 31, 2017

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Hurricane Harvey

- First major hurricane to make landfall in U.S. since 2005
- 450,000+ may qualify for flood victim assistance
- Damage estimates: \$10–\$100+ billion
- President made Major Disaster declaration 8/26/17
- Government contracts and funding will play major role in recovery effort
- Recovery resources: www.fema.gov/hurricane-harvey

FEMA Disaster Assistance

- Pursuant to the Stafford Act, FEMA provides funding to state and local governments
 - Known as the Public Assistance Grant Program
 - Federal requirements may apply to these contracts
 - There must be a “major disaster” or “emergency” declaration by the President for FEMA to provide funding



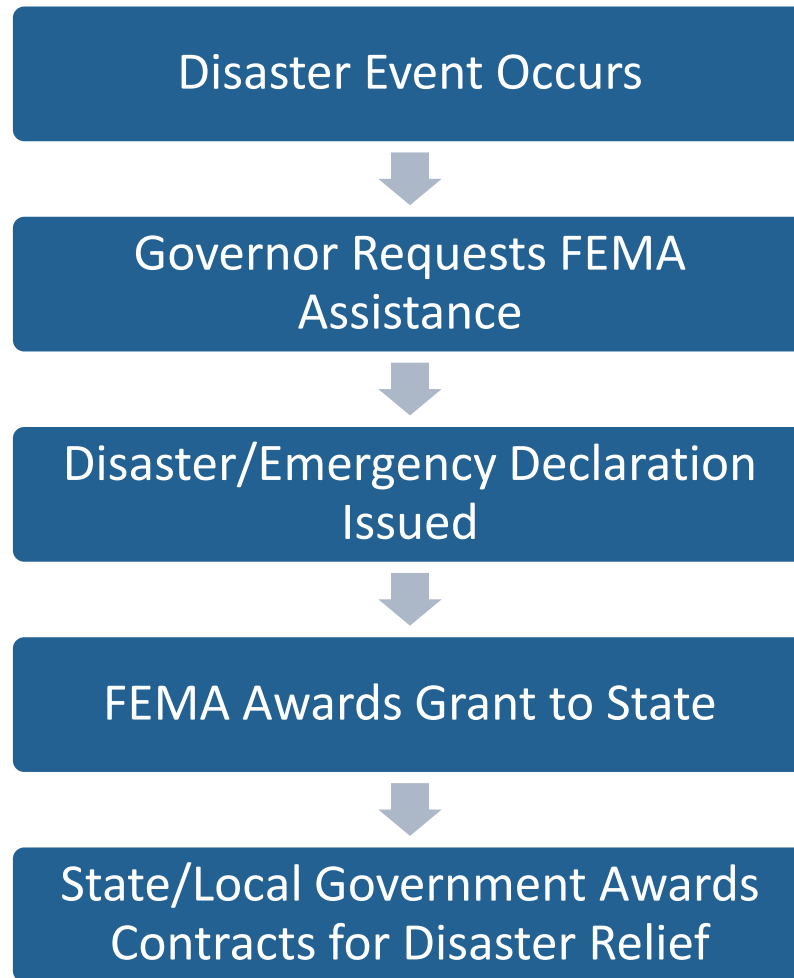
FEMA Disaster Assistance

- Federal assistance may include:
 - Debris removal
 - Housing, transportation, medical, legal assistance to individuals
 - Search and rescue
 - Repair and replacement of damaged facilities
- Federal assistance may be provided:
 - Directly from the federal government
 - Through federal contracts
 - Through state and local governments and/or private organizations using federal funds furnished through cost-sharing arrangements, grants, and loans

FEMA Cost Sharing

- Typical cost sharing under the Stafford Act:
 - 75% Federal / 25% State funding
- Federal share may be increased to 90% when a disaster is particularly severe and may even be increased to 100% for a limited time period
- Contract may be administered by a federal agency or a state/local government agency
- Federal rules and regulations may apply, even when the contract is issued by a state/local agency

FEMA Disaster Assistance



FEMA Disaster Assistance

Major Disaster

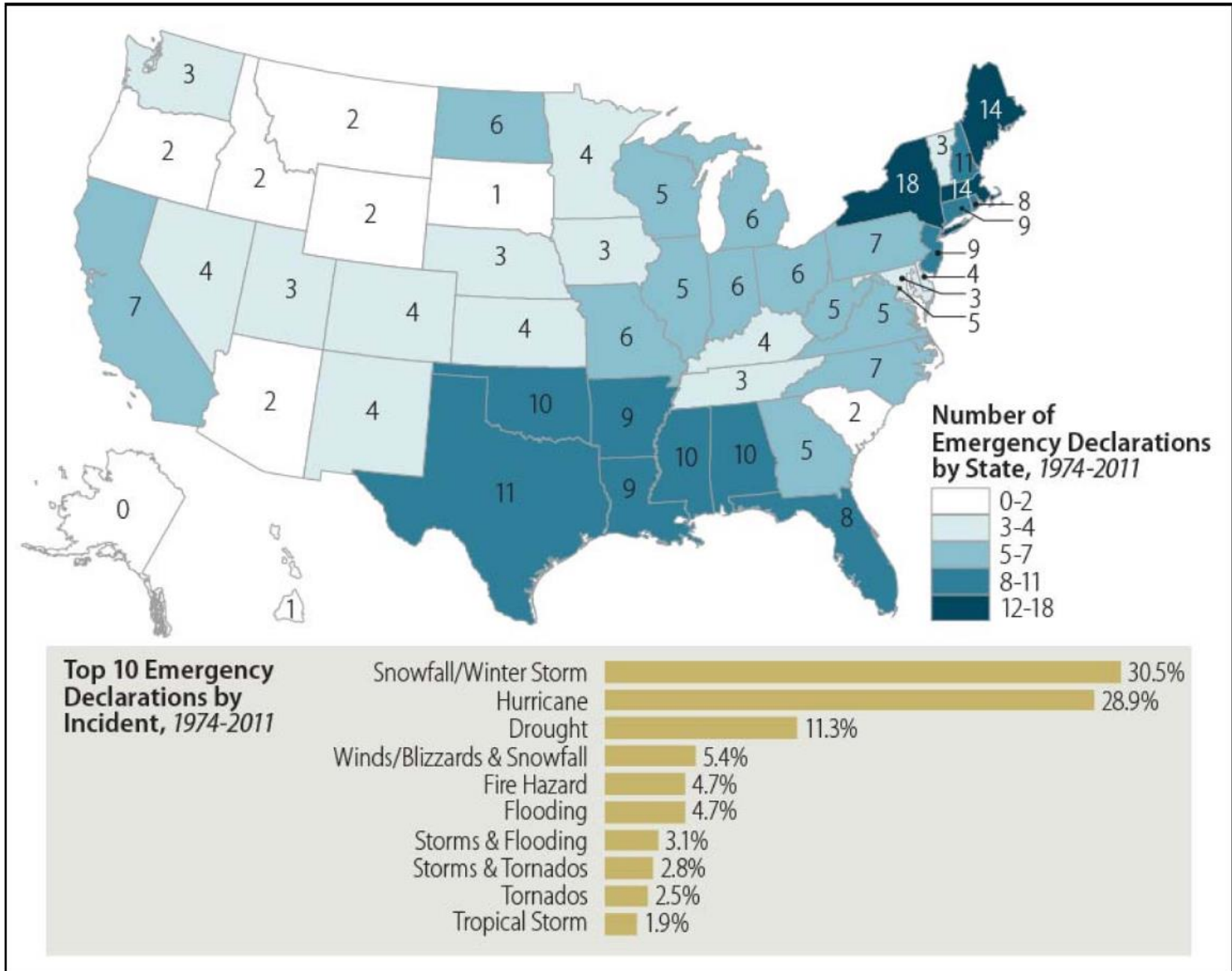
- Any natural catastrophe or fire, flood, or explosion, which in the determination of the president, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act
- Focus is on both immediate and longer-term needs

Emergency

- Any instance in which federal assistance is needed to supplement state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of catastrophe
- Focus is on immediate needs

Figure 4. Emergency Declarations by State and Type

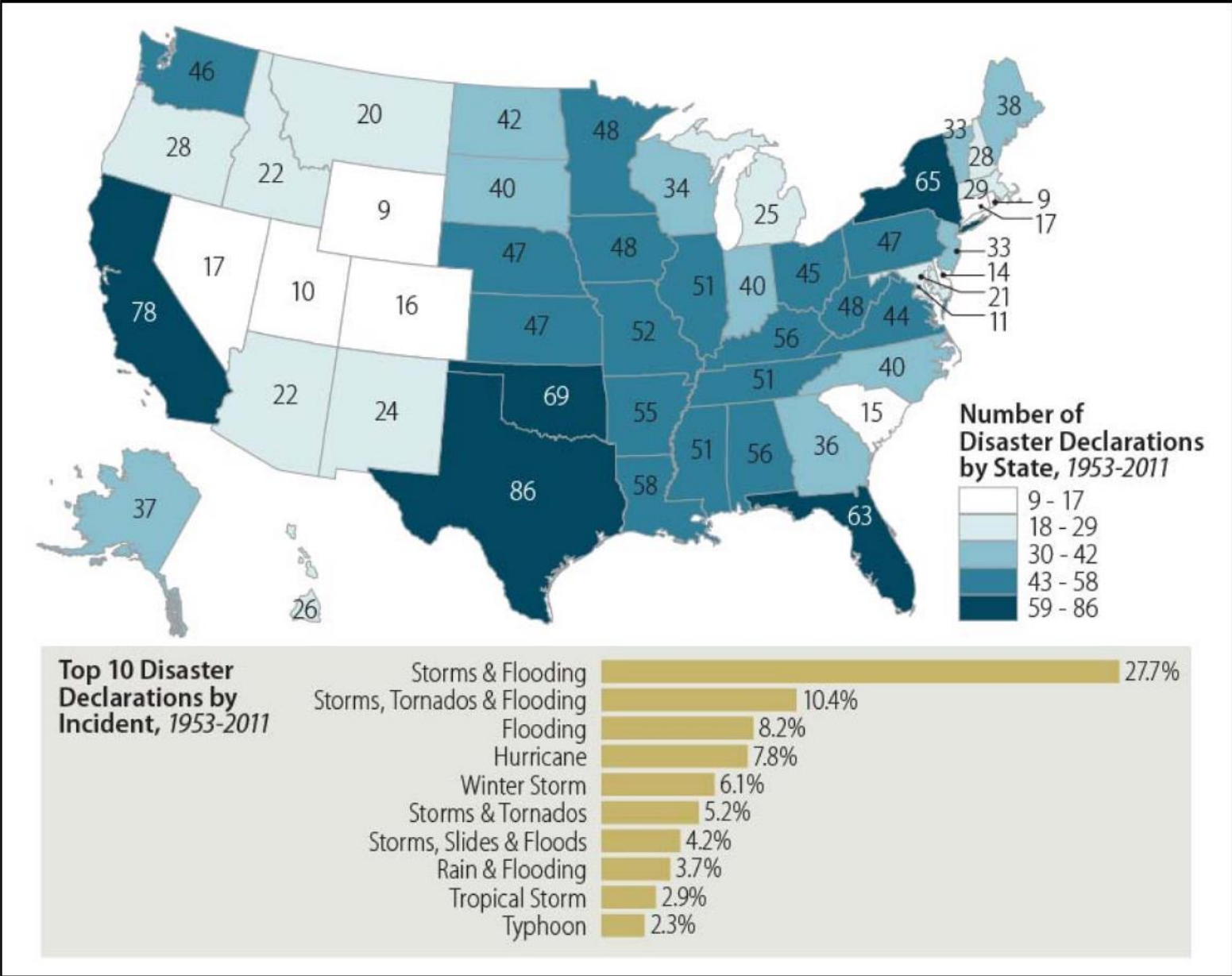
1974-2011



Source: CRS analysis based on data provided by FEMA.

Figure 6. Major Disaster Declarations by State and Type

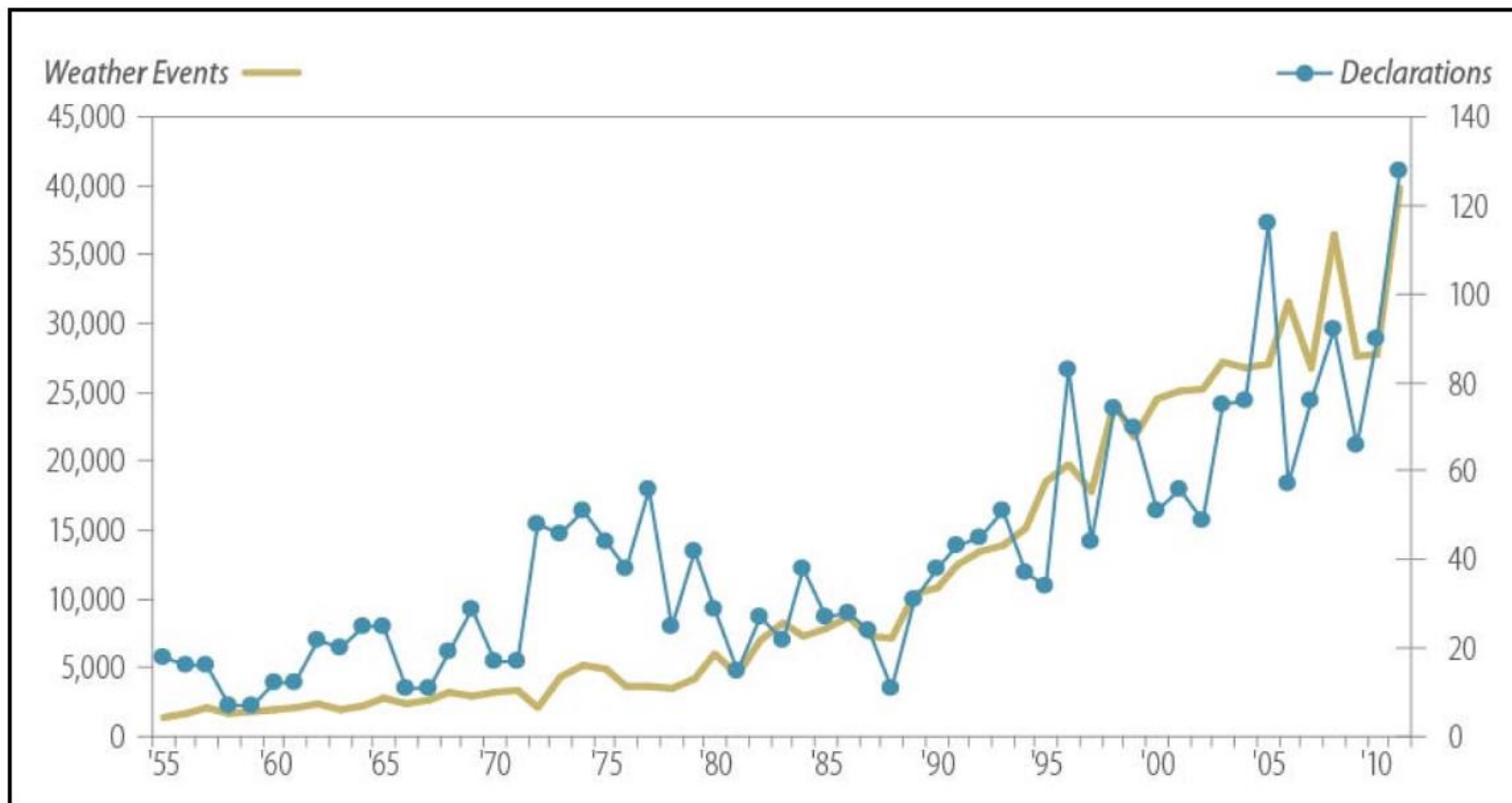
1953-2011



Source: CRS analysis based on data provided by FEMA.

**Figure 7. Weather Incidents and Emergency and Major Disaster Declarations:
A Comparison**

Tornado, Hail, Wind—1955-2011



Source: CRS analysis of declaration data provided by FEMA, and weather data derived from National Oceanic and Atmospheric Administration, Storm Prediction Center, SVRGIS, Norman, OK, April 11, 2012, available at <http://www.spc.noaa.gov/gis/svrgis/>.

Stafford Act Local Preferences

- Stafford Act contracts may either be:
 - Set-aside for local contractors (i.e., non-local contractors cannot compete as a prime, but may serve as a subcontractor)
 - Or local contractors must be given a preference in the evaluation scheme (but non-local contractors typically can still compete)
- The RFP should define who is a “local” contractor
- When contracts are set-aside for local contractors, the contract may limit subcontracting to non-local contractors (see FAR 52.226-5)
- Contracts for services: at least 50% of the cost of personnel must be spent on employees of businesses within the local area

Katrina Task Force = Increased Oversight

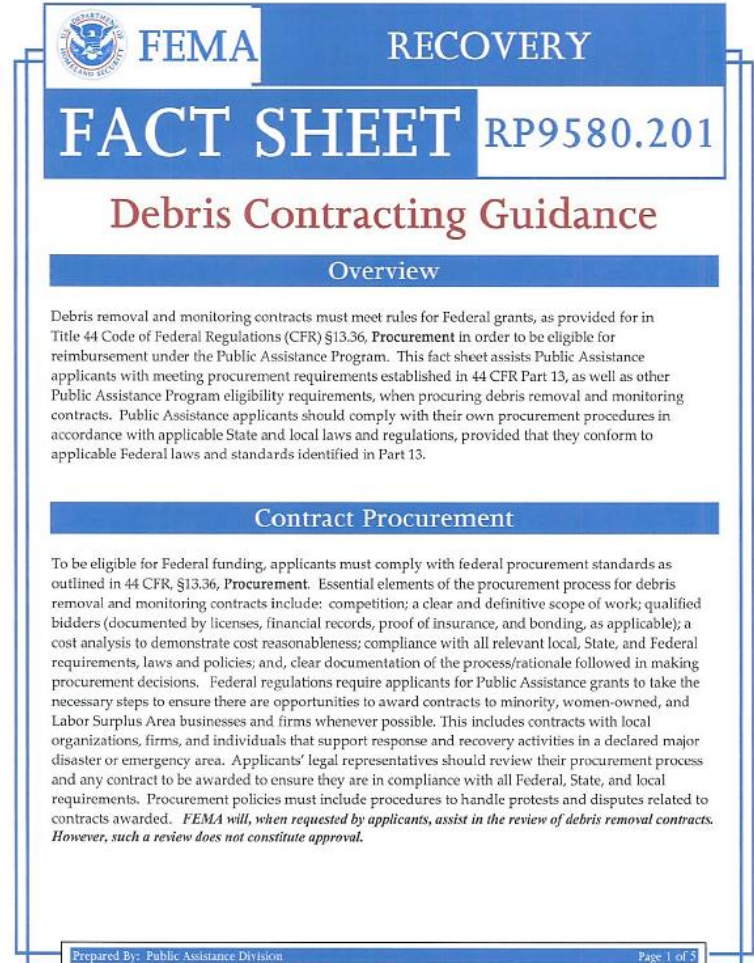
- Congressional Task Force examined Katrina response
 - Contracting urgency in wake of storm led to inadequate oversight
 - Need for more trained procurement professionals
 - Ambiguous guidance regarding local contractor preferences
- Has resulted in increased oversight of FEMA spending
 - High profile disasters/emergencies receiving scrutiny by Congress, the media, GAO, etc.
 - Focus on transparency, advance planning, and preventing fraud and abuse
 - Heightened scrutiny for contractors

High Stakes in Disaster Fraud Cases

- Disaster fraud post-Katrina estimated to reach \$6 billion
- January 2008—Emergency and Disaster Assistance Fraud Penalty Enhancement Act
- \$4 million settlement agreement in FCA suit involving Lighthouse Disaster Relief and its partners
 - Government alleged that Lighthouse accepted payment for work that was not completely performed
 - Also alleged false statements to FEMA for early payment

Compliance Tips

- Carefully review your RFPs and relevant guidance (e.g., local preferences)
- Keep great written records of compliance
- Vet your teaming partners
- Consult legal and/or contracts professionals with questions



The image shows a FEMA Recovery Fact Sheet titled "Debris Contracting Guidance". The document is prepared by the Public Assistance Division and is page 1 of 3. It provides an overview and contract procurement information for debris removal and monitoring contracts under the Public Assistance Program.

FEMA RECOVERY

FACT SHEET RP9580.201

Debris Contracting Guidance

Overview

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.*

Prepared By: Public Assistance Division Page 1 of 3

Questions?

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