

HOUSTON-GALVESTON AREA COUNCIL DISASTER DEBRIS CONTRACT GUIDE

November 2013

The Disaster Debris Contract Guide was designed to provide considerations and best practices when developing a debris removal services contract. Based on recent events and guidance from federal regulatory agencies, this guide lists provisions to include in a debris services contract. This guide was developed using guidance set forth by the Federal Emergency Management Agency (FEMA) and the provisions of Title 44, Code of Federal Regulations (CFR) Section 13.36 Procurement. This guide should not supersede the jurisdiction's current procurement policies.

The table below lists the contract provisions that should be reviewed because of recent changes in policy or lessons learned as a result of recent disasters. This is not a comprehensive list of all provisions that should be included in a debris removal services contract. For additional guidance for debris services contracts, visit the Houston-Galveston Area Council (H-GAC) storm debris services website at:

<http://www.h-gac.com/community/waste/storm/disaster-debris-removal.aspx>

Table 1: Disaster Removal Services Contract Provisions

Contract Provision	Description and Sample Contract Language
Payment provisions must be based on unit prices (volume or weight).	When pre-qualifying contractors, bidders should demonstrate that their payment provisions will be based on unit pricing. Actual rates should be provided at the time of the disaster to ensure competitive bidding and to obtain reasonable market prices at the time work is performed.
Payments based on time and materials are limited to work performed during the first 70 hours of actual work following a disaster.	FEMA will typically only reimburse for a time and materials contract for eligible debris clearance during the first 70 hours following a declared disaster. After 70 hours of work, the jurisdiction should have sufficient information on the scope of work necessary to complete debris collection and disposal and a basis for estimating a reasonable cost for the contract work to effectively solicit a lump sum or unit price contract. For some types of debris work, time and materials contracts may be the most cost-effective and best suited to the type of work. Jurisdictions should work closely with the state and FEMA when awarding such contracts to ensure eligibility requirements are met.
Include a provision that payment will be made only for debris that FEMA determines eligible.	Sample contract language In the event any portion of this scope of work is to be funded by State or Federal funds, the Contractor will comply with all requirements of the state or federal government applicable to the use of the funds. The End User will only pay

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	<p>for those items deemed Eligible by the federal funding agency, unless the End User otherwise agrees in writing.</p>
<p>Contractors must submit invoices regularly and for no more than 30-day periods.</p>	<p>Confirm state and local procurement policies for additional payment terms and conditions.</p> <p>Sample contract language:</p> <p style="padding-left: 40px;">Invoices shall be submitted to the End User or authorized representative on a bi-weekly basis. All invoices must be submitted with a hard copy and electronic copy (Microsoft Excel format) of the invoice detail. The invoice detail must consist of a tabular report listing all ticket information required by the End User. Invoice detail submittals will be checked against End User records. End User records are the basis of all payment approvals. Only one hundred percent (100%) accurate and complete invoices shall be approved for payment.</p> <p style="padding-left: 40px;">Contractor must submit a final invoice within thirty (30) days of completion of scope of work. Completion of scope of work will be acknowledged, in writing, by the End User. The final invoice must be marked "FINAL INVOICE" and no additional payments will be made after the Contractor's final invoice..</p>
<p>Include provisions for accurate backup documentation for costs in a preferable format. This includes separation of debris documentation by debris type or project type.</p>	<p>Sample contract language:</p> <p style="padding-left: 40px;">The End User, or an authorized representative, will monitor, verify, and document with load tickets or unit rate tickets the completion of all work, as defined in the scope of work. The Contractor will be provided copies of this documentation. These documents will be used by the Contractor as backup data for invoice submittals. Work not ticketed or not authorized by the End User will not be approved for payment. Additionally, any ticket submitted for payment must be properly completed. Tickets missing loading address, truck number, certified capacity, collection monitor signature, disposal site, load call or disposal monitor signature will not be paid, nor will the End User be responsible for unpaid incomplete tickets.</p> <p style="padding-left: 40px;">The End User reserves the right to request that private property debris removal operations will be invoiced separately from right-of-way collection removal operations. The End User reserves the right to request additional invoice</p>

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	<p>separation by debris type (construction and demolition, vegetative debris, household hazardous waste, etc.), program (right-of-way collection, private property debris removal, etc.) and/or applicant(s) (entities located within the jurisdiction).</p>
<p>Include provisions for retainage. Terms should specify that unpaid costs of damage caused by the Contractor will be deducted from the retainage. Final payment of retainage will be provided when the Contractor provides written documentation that the project is complete.</p>	<p>Sample contract language:</p> <p>A ten percent (10%) retainage will be withheld from each reconciled invoice until the end of the project. In order to recover the retainage, the Contractor must successfully complete and receive a letter of completion from the End User for all work zones. Retainage will be held until final reconciliation is complete. Portions of the retainage may be held by the End User to repair damage caused by the Contractor to public or private property.</p>
<p>Include a provision that specifies the Contractor is responsible for payment to the Subcontractor(s).</p>	<p>Sample contract language:</p> <p>The Contractor is responsible for payment to all subcontractors utilized for the services rendered within this scope of work. The Contractor shall execute release waivers with all subcontractors to release the End User from payment to subcontractors directly. The release waivers for all subcontractors shall be provided to the End User prior to final retainage release.</p>
<p>Include a provision that no separate payment will be made for mobilization and demobilization.</p>	<p>Sample contract language:</p> <p>No separate payment will be made for mobilization and demobilization operations. These costs are to be included in the respective unit prices bid for debris removal and will not be adjusted based on the total amount of debris actually removed in the contract.</p>
<p>Include provisions that the Contractor will use a final disposal site location that is approved by the jurisdiction. This is to prevent unnecessary use of disposal sites that are farther away from the jurisdiction. Provisions should also include that the Contractor will be reimbursed for fees from the approved disposal site and the jurisdiction will retain any recycling revenues from recycled debris.</p>	<p>Sample contract language:</p> <p>Payment for disposal cost incurred by the Contractor at End User's designated final disposal facility will be made at the cost incurred by the Contractor. The Contractor must submit a copy of all applicable disposal site permits, a copy of the invoice(s) received by the End User's designated final disposal facility, an electronic copy tabulating all scale or load tickets issued by the End User's designated final disposal facility, and proof of Contractor payment to the End User's designated final disposal facility.</p>

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<p>Include provisions for records retention. The jurisdiction is required to retain records regarding grant funds for seventy-five months (six years and three months) from the date of the final reimbursement. These records may come into question during the audit and final closeout process.</p> <p>The jurisdiction should keep its own records for seven years and require contractors to keep their records for the same length of time to ensure contingencies are in place if records are lost or damaged.</p>	<p>Sample contract language:</p> <p style="padding-left: 40px;">The Contractor will retain all records pertaining to the services and the contract for these services and make them available to the End User for a period of seven (7) years following receipt of final payment for the services referenced herein.</p>
<p>Include a termination for convenience clause allowing contract termination at any time for any reason.</p>	<p>Sample contract language:</p> <p style="padding-left: 40px;">Failure on the part of the Contractor to comply with any portion of the duties and obligations under the Contract Agreement shall be cause for termination. If the Contractor fails to perform any aspect of the responsibilities described herein, the End User shall provide written notification stating any and all items of non-compliance. The Contractor shall then have fourteen (14) consecutive calendar days to correct any and all items of non-compliance. If the items of non-compliance are not corrected or acceptable corrective action as approved by the End User has not been taken within the fourteen (14) consecutive calendar days, the Contract Agreement may be terminated by the End User for cause, upon giving fourteen (14) consecutive calendar days written notice to the Contractor.</p> <p style="padding-left: 40px;">In addition to the above, the End User may terminate the Contract Agreement at any time, without cause, upon thirty (30) days written notice to the Contractor of intention to do so.</p>
<p>Include a provision that the use of contractors and subcontractors on the federal debarment list is prohibited.</p> <p>Also include a provision to require a Subcontractor plan including:</p> <ul style="list-style-type: none"> ■ A clear description of the percentage of the work the Contractor may subcontract out ■ A list of subcontractors the contract plans to use 	<p>Sample contract language:</p> <p style="padding-left: 40px;">The use of any Contractor that has been declared debarred by the Office of Federal Contract Compliance Programs (OFCCP) is prohibited. Further, the use of Subcontractor(s) that has been declared debarred by OFCCP is prohibited. A complete list of federally disbarred contractors can be found at www.sam.gov. It is the sole responsibility of the Contractor to ensure that Subcontractor(s) are in good standing with the OFCCP and not on the disbarment list.</p> <p>The jurisdiction is responsible for conducting due diligence by ensuring that contractors and subcontractors are not federally debarred.</p>

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	<ul style="list-style-type: none"> ■ Go to the SAM Database at https://www.sam.gov/portal/public/SAM/. ■ Under the Search Records tab, enter a DUNS number, CAGE code or Business Name to search for the Contractor. ■ Note any exclusions listed for the Contractor that may prohibit federal assistance for debris services. ■ Print the screen with the results and file in records.
Include a provision that the Contractor use mechanical equipment to load and reasonably compact debris into trucks and trailers.	<p>Sample contract language:</p> <p style="padding-left: 40px;">All debris will be mechanically loaded. Hauling vehicles that are hand loaded or that require mechanical assistance for dumping, except self-loading vehicles, will not be permitted to dump at debris management site(s) unless approved in advance by the End User.</p>
Include a provision that the Contractor provide a safe working environment compliant with all applicable local, state, and federal requirements.	Contractors should provide a description of their health and safety plan, including a detailed safety plan for debris management sites. This should be included in their bid proposal.
Include a provision that all contract amendments and modifications will be provided in writing.	<p>Sample contract language:</p> <p style="padding-left: 40px;">No verbal interpretation or responses will be considered as official.</p>
Include a provision that all contractors must obtain adequate payment and performance bonds and insurance.	The jurisdiction's procurement office should have standard language for performance bonds and insurance requirements.
<p>Include a provision to provide a mobilization plan that includes the following:</p> <ul style="list-style-type: none"> ■ Preparation activities at 72, 48, and 24 hours prior to a known impact ■ Timeframe of when management staff and assets will mobilize to the impacted area ■ Tasks to identify primary areas of concern within the impacted area ■ Detail of project initiation activities including truck certification and measurement procedures ■ Mobilization plan for an event without warning 	<p>Mobilization requirements in the contract language should be flexible so that the Contractor's mobilization plan can be scalable depending on the requirements of the event.</p> <p>The Contractor should coordinate with the jurisdiction to identify priority areas for clearance and develop a plan to clear those areas first.</p>
<p>Review existing recovery contracts to ensure the jurisdiction can maximize the benefits of the alternative procedures in the Sandy Recovery Improvement Act of 2013.</p> <p>Ensure contracts include provisions for the following:</p> <ul style="list-style-type: none"> ■ Time limit on the period of performance for the work to be completed especially if the jurisdiction might use the sliding scale alternative procedure. 	As a result of the Hurricane Sandy Recovery Improvement Act of 2013, Alternative procedures to the current FEMA Public Assistance Program have been established to streamline reimbursement and allow for more flexibility within the program. Jurisdictions may opt to manage their debris projects using traditional program guidance or opt to use the alternative procedures. The alternative procedures for debris removal work include

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<ul style="list-style-type: none">■ Provisions for recycling and final disposal so that the jurisdiction will retain any revenue from recycled debris.	<p>the following:</p> <ul style="list-style-type: none">■ Permits debris removal grants to be based on fixed estimates, with applicants accepting responsibility for any actual costs above the estimate. This will significantly accelerate the distribution of grant funds and significantly reduce administrative costs associated with grants based on actual costs.■ Permits applicants to retain income from debris recycling without an offset from their grant.■ Allows the use of a sliding scale for applicants' debris removal cost share to incentivize faster and more cost-efficient debris removal.■ Permits the establishment of financial incentives for a FEMA-approved pre-disaster debris management plan and at least one pre-qualified debris Contractor.■ Allows applicants to use excess funds for activities to improve future debris removal operations.■ Permits the reimbursement of straight time force account labor costs for applicants' employees performing debris removal work.