

**EMERGENCY MANAGEMENT:  
DEBRIS, MUTUAL AID, AND LESSONS LEARNED**

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“Each level of government – federal, state, and local – has a role to play in managing emergencies. The federal government, acting through the Federal Emergency Management Agency, plays a significant role in mitigating the effects of natural disasters and helping to develop protective disaster strategies. The state government plays a crucial role in mobilizing resources and coordinating responses to disasters. But local government, especially county government, has perhaps the most important operating role to play in protecting the public. The local government, after all, is the unit of government closest to the affected public and therefore the most accountable. Local decision-makers may be called upon to order evacuations or prevent people from returning to damaged houses. Elected local board members are more likely to be confronted by their constituents about an emergency decision than a decision-maker far removed from the scene.”

- David G. Tucker and Alfred O. Bragg, III,  
*Florida's Law of Storms: Emergency Management, Local Government,  
and Police Power*, 30 Stetson L. Rev. 837 (2001)

**I. LOCAL GOVERNMENT DEBRIS REMOVAL CHALLENGES-- LAND-BASED AND MARINE**

**A. General:** After the “first push” down the highway, and particularly when the citizens are able to return to their homes, one of the first key challenges for a local government during the Recovery phase will be debris removal – land based and marine. In the aftermath of a major storm like Hurricane Irma (where there have been back-to back storms in multiple jurisdictions), the three major challenges to debris removal are likely to be (a) finding debris contractors who will show up to do the work, (b) lining up properly permitted debris sites (staging areas and disaster debris management sites), and (c) making sure that your entity is eligible for reimbursement.

In Monroe County, as of 2/25/2018, we had picked up 1.1 million cubic yards of vegetative and construction and demolition (C&D) cubic yards in the unincorporated County (County roads only) (approximately 1/3 of that has been hauled out of the County); approximately 128,000 pounds of “putrescent waste”; and nearly 8,000 “white goods” (appliances).

Our marine debris program started on February 20, 2018. As of March 8, 2018, we have picked up 562 cubic yards out of canals.

## B. Lining Up Debris Contractors.

1. **Prepositioned contracts** – You need to have them. FEMA will allow the use of contracts procured during the emergency provided the Local Entity can show that it follows its own rules for emergency procurements, but strongly prefers to see previously negotiated contracts.

If you are expecting FEMA reimbursement, these contracts must be validly procured following the Super Circular procurement rules, and they must include the required Super Circular provisions.<sup>1</sup> Stay away from “time and materials” contracts unless there is a cap.

Exception: If the work is being performed under a State contract (i.e., contract between a State agency and its contractor) pursuant to a Mutual Aid Agreement between the State and a local entity, FEMA has indicated that it will not require procurement in compliance with the Super Circular requirements – even if the local government is the eventual Applicant (i.e., the local government pays the State agency back, then seeks reimbursement from FEMA).

If an emergency procurement *is* necessary, 44 C.F.R. § 13.36(d)(4) and 2 C.F.R. 200.320(f) state that noncompetitive procurement may be used only if it is infeasible to award a contract through small purchase procedures, sealed bids, or competitive proposals, and if the “public exigency or emergency will not permit a delay resulting from competitive solicitation.” *See also* FEMA Field Manual, Public Assistance Grantee and Subgrantee Procurement Requirements Under 44 C.F.R. part 13 and 2 C.F.R. part 215 (December 2014), p. 3. *See also* Procurement Guidance for Recipients and Subrecipients under 2 C.F.R. Part 200 (Uniform Rules), Supplement to the Public Assistance Procurement Disaster Assistance Team (PDAT) Field Manual (June 21, 2016), page V-16. However, the Local Entity must be prepared to prove and show that an emergency/exigency did not allow the full-blown procurement.

F.S. 252.38(3)(a)5. provides that each political subdivision has the power and authority to waive the procedures and formalities otherwise required of the political subdivision by law pertaining to, *inter alia*, entering into contracts, incurring obligations, and the acquisition and distribution of supplies, materials and facilities. Still, the Local Entity should follow its own purchasing policy to the extent possible, and should perform and document a cost/analysis. There is no precise definition of when the emergency/exigency no longer exists, but a good rule of thumb is – once the local government is no longer operating under a declaration of emergency. Also, the work should be competitively bid as soon as possible thereafter.

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<sup>1</sup> The procurement standards for local governments, tribes, educational institutions, hospitals and not-for-profits (“Local Entities”) are located at 2 C.F.R. §§ 200.318-.326. The procurement standards for States are located at 2 C.F.R. § 200.318. (The term “State” includes districts, commonwealths and territories, and all state agencies.) Put simply, the key difference between the standards as applied to States, as compared to Local Entities, is with respect to the method of procurement. Local Entities must make sure that their method of procurement complied with new rules for method of procurement (and must also follow their own local procurement procedures). With one exception (procurement of recovered materials), States are only required to follow their own procurement policies – the same ones they use for everything else. *Both groups* are required to include the Super Circular provisions in their resulting contracts, though.

**Key take-aways:**

- Get a prepositioned contract in place.
- If a pre-positioned contract is not available – if an emergency procurement is necessary:
  - Make sure you are still in an emergency/exigency situation.
  - Document the reason why the emergency/exigency reasons why the emergency procurement is necessary.
  - Make sure your own purchasing policy has some language in it regarding emergency purchases.
  - Follow your own purchasing policy.
  - Make sure you follow the rest of the rules in the Super Circular (no local preference! Exception for professional services contracts limited to architects and engineers only!).
  - Do the full blown procurement as soon as possible.

**2. Availability of contractors – get backups!****C. Availability of Debris Sites = Major Limiting Factor to Debris Removal**

1. Line up your debris sites ahead of time. Have three times the quantity you think you will need. Most debris contractors charge a “per day” charge for DDMS site management (in addition to charging for debris by weight or by unit), so it is in your best interests to have large wide open spaces with lots of turnaround area (as compared to smaller sites), which are either close to major highways (for land-based debris), or close to the water (for marine debris).

2. Figure out what types of permits you will require for the debris site. For Hurricane Irma, all debris sites required DEP “authorization.” The authorization is specific to the type of debris that would be taken there (vessels v. vegetative v. white goods v. construction & demolition (C&D)).<sup>2</sup> Anything that would require dredging (e.g., sediment, in a canal) requires an Army Corps permit.

3. Human considerations: Proximity to residential areas becomes an important consideration for determining the types of debris that will be managed at the site (e.g., putrescent waste), also the method of handling the waste (e.g., burning). Burning, however, reduces weight to be hauled out (and therefore cost).

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<sup>2</sup> The rules for the authorizations are laid out in Florida Department of Environmental Protection Guidance for Establishment, Operation, and Closure of Disaster Debris Management Sites (Oct. 4, 2016).

## D. Getting Reimbursement

1. Eligibility: Public Assistance (PA) funds are available to eligible applicants for debris clearance, removal and disposal operations. PA funding for debris removal falls into Category A, Emergency Work. Emergency work is work that must be done immediately in order to save lives, protect public health and safety, protect improved property, or eliminate or less an immediate threat of additional damage.<sup>3</sup> Eligible applicants include state and local governments, Indian tribes, hospitals, higher education institutions, and certain private non-profit organizations. In order to be eligible for FEMA funding, the debris removal work must meet all of the following criteria:

- Be a direct result of a Presidentially declared disaster;
- Occur within the designated disaster area; and
- Be the legal responsibility of the applicant at the time of the disaster.
- In addition, at least one of the following must apply:
  - Removal eliminates immediate threats to human lives, public health and safety;
  - Removal eliminates immediate threats of significant damage to improved public and private property; and/or
  - Removal ensures economic recovery of the affected areas to the benefit of the community-at-large.
  - Debris located on public property and rights-of-way is eligible. Eligible debris can include downed trees, sand, building wreckage, and damaged personal property.

### **Additional Issues:**

2. **Private property debris removal (PPDR) program.** FEMA normally does not reimburse the public entity for work on private property. However, it will reimburse for debris work on private property with prior FEMA approval. Prior to beginning work, the Applicant must submit a written request and receive approval from FEMA. (Public Assistance Program and Policy Guide – FP-104-009-2/ January 2018 (“PAPPG”), 2018 version), p. 55.) The letter must include (a) a public interest determination, (b) documentation of the Applicant’s legal authority and legal responsibility to remove the debris, and (c) proof of indemnification. The letter must also identify the specific properties or areas of property for which approval is requested.

The public interest determination comes from the government’s public health authority (e.g., local Department of Health), and must show that the disaster-generated debris constitutes an immediate threat to life, public health or safety, or economic recovery of the area.

The Applicant must demonstrate legal authority and legal responsibility to enter private property in order to remove the debris. One way to show this is by adoption of an ordinance that specifically allows for the debris removal on private property (land or marine). This section must also confirm that the legally authorized official of the Applicant has ordered the exercise of the entity’s powers

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<sup>3</sup> 44 C.F.R. § 206.201(b).

to go onto the private property for the debris removal.<sup>4</sup>

Indemnification: The Applicant must indemnify the Federal Government.<sup>5</sup>

3. **Establishing the pre-storm baseline** – The Applicant “must distinguish between incident-related debris versus pre-existing debris and debris generated by other incidents.” (PAPPG, p. 199.)

a. What documentation do you submit? (Take pictures – “before” and “after.”)

b. Who pays for surveys? PAPPG (2018 version), p. 40)<sup>6</sup> says that the Applicant is responsible for identifying locations of incident-related debris initially. The initial survey is an indirect cost and eligible for reimbursement as a management cost (not DAC). After the initial “survey,” the Applicant can use other technology (e.g., side scan sonars), and the expense is eligible for reimbursement, but only to confirm the location, not to determine it in the first place.

4. The deadline to complete Emergency Work is 6 months from the declaration date unless FEMA authorizes an extension.<sup>7</sup>

5. **Special issues for canals:**

a. How far down can you go? PAPPG says “depth of deepest draught vessel plus 2 feet at low tide” for navigable waters. In non-navigable waters, removal of debris is eligible “if the debris poses an immediate threat”.

b. FEMA will not remove for anything sitting below that depth or anything tied to the seawall (except trees – FEMA will reimburse to have them cut off at the seawall). (PAPPG (2018 version), p. 53.)

c. FWC removes vessels, using the statutory derelict vessel procedure. (F.S. 823.11.)

d. Debris removal from federal waterways is not eligible for reimbursement. (PAPPG, p. 53.)

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<sup>4</sup> A copy of Monroe County’s private property debris removal (land-based and marine) ordinance is attached.

<sup>5</sup> FEMA also offers an Alternative Procedures Pilot Program for Debris Removal. This program offers an increased federal cost share for accelerated completion of debris removal. The Applicant may elect to participate in this program for debris removal. Upside: Increases federal cost share (+10% first 30 days, +5% days 31-90). Downsides: The timing is difficult to achieve. 0% federal cost share for work performed after 180 days, unless FEMA grants an extension; FEMA will not pay direct administrative cost (DAC) based on estimates, even for Small Projects (currently \$123,100 and less).

<sup>6</sup> The PAPPG (“poppa-g”) replaced FEMA’s Disaster Assistance Policy (DAP) 9523 (last version was 9523.6), which was in effect through 2015. The PAPPG is available at: <https://www.fema.gov/media-library/assets/documents/111781>.

<sup>7</sup> 44 C.F.R. § 206.204(c) and (d). The deadline for completion of Permanent Work is 18 months from date of declaration.

## II. MUTUAL AID AGREEMENTS.

### A. Section 252.40, Florida Statutes:

252.40 Mutual aid arrangements.—

(1) The governing body of each political subdivision of the state is authorized to develop and enter into mutual aid agreements within the state for reciprocal emergency aid and assistance in case of emergencies too extensive to be dealt with unassisted. Copies of such agreements shall be sent to the division. Such agreements shall be consistent with the state comprehensive emergency management plan and program, and in time of emergency it shall be the duty of each local emergency management agency to render assistance in accordance with the provisions of such mutual aid agreements to the fullest possible extent.

(2) The Governor may enter into a compact with any state if she or he finds that joint action with that state is desirable in meeting common intergovernmental problems of emergency management planning or emergency prevention, mitigation, response, and recovery.

### B. FEMA View

When an Applicant does not have sufficient resources to respond to an incident, it may request resources from another jurisdiction through a “mutual aid” agreement. FEMA refers to the entity requesting resources as the Requesting Entity. FEMA refers to the entity providing the requested resource as the Providing Entity. (PAPPG, p. 34.)

FEMA provides PA funding to the Requesting Entity as it is legally responsible for the work. FEMA does not provide PA funding directly to the Providing Entity. For the work to be eligible, the Requesting Entity must have requested the resources provided.

#### Requirements:

- The Mutual Aid Agreement must show that the Requesting Party is legally responsible.
- The Mutual Aid Agreement must show that the Requesting Party is asking for the help (from whatever agency is providing the help); the Requesting Party must also make the entry into EM Constellation.
- The Mutual Aid Agreement must be in writing, and it must be approved by FEMA!

### **C. Types of Mutual Aid Agreements**

- **Statewide Mutual Aid Agreement**

In accordance with section 252.40, Florida Statutes, participating parties are authorized to participate in cooperative relationships (the Statewide Mutual Aid Agreement) to accept services, equipment, supplies, materials, or funds for emergency management efforts. All special districts, educational districts, and other local and regional governments are allowed to participate in the agreement. Any participating party may make a request (oral or written) and receive assistance during an emergency or disaster.

- **Emergency Management Assistance Compact**

In Chapter 252, Part III, Florida Statutes, the state adopted the Emergency Management Assistance Compact (EMAC), which provides for the mutual assistance between states during any emergency or disaster when the state has depleted its resources, supplies or equipment. In the event a request for disaster assistance comes from another state, the Governor may order the mobilization of state resources under EMAC to be deployed to the impacted state. Florida can also request and receive assistance from other states through the EMAC. Management and coordination of resources (human and equipment) are administered through the Operations Section of the SERT under the direction of the Operations Section Chief.

- **Agreement with one State agency, or another local government**

### **D. Florida State Comprehensive Emergency Management Plan (CEMP):**

According to the Florida State Comprehensive Emergency Management Plan, Florida DEM is responsible for, among other things: supporting the emergency management needs of all counties by developing reciprocal intra- and interstate mutual aid agreements, and providing for the rendering of mutual aid among the political subdivisions of the state under the State Mutual Aid Agreement (SMAA), with other states under the Emergency Management Assistant Compact (EMAC), and with the federal government. (The State of Florida 2016 Comprehensive Emergency Management Plan, 2016 Draft Revision (“Basic Plan”), page 24, *available at*: <https://floridadisaster.org/dem/preparedness/natural-hazards/comprehensive-emergency-management-plan/>.) Note: In accordance with Rule 27P-6.0023, Florida Admin. Code, each County must have a County Comprehensive Emergency Management Plan approved by State Division of Emergency Management and its own governing body, which shall be coordinated and consistent with the provisions of the State CEMP.

When the event is beyond the capacity of the local government, the County EM agency will request state assistance through the SERT, to be coordinated by the SERT Chief. (2016 Basic Plan, page 28.)

Prerequisite: declaration of local state of emergency.

Figure 6 - STATE EMERGENCY RESPONSE TEAM ORGANIZATIONAL AND INCIDENT COMMAND STRUCTURE

