

Public Assistance: Debris Removal Contracts and Price Amendments

Emergencies and major disasters can place a strain on debris removal resources, which is exacerbated when these disasters overlap and occur within the same geographical location. This may increase costs, even where local governments have existing debris removal contracts in place prior to the event. This fact sheet provides guidance for evaluating if such increased costs may be eligible for reimbursement under FEMA's Public Assistance (PA) Program.

Techniques for Making a Price Modification to an Existing Contract

Consult With Your Attorney First

Local governments who wish to make modifications to existing debris removal contracts should first consult with their attorneys. At a minimum, they should consult their attorneys to:

- Determine whether there are existing provisions in the contract which would prevent or deter a contractor from failing to perform the contract under the existing terms and conditions, such that a price modification might be unnecessary.
- Determine whether and to what extent they can make modifications to the contract under the terms and conditions of the contract.
- Ensure actions taken are in compliance with their own documented procurement procedures, applicable Federal, state, local, and tribal law, and the Federal procurement standards at [2 C.F.R. §§ 200.317-200.327](#).

Evaluate Whether the Price Change Would Constitute a Cardinal Change

If a local government is contemplating a change to the scope of work to go with the price increase or to a significant price increase, this may be considered a cardinal change which would require the contract to be re-competed through full and open compliance with the Federal procurement standards at 2 C.F.R. §§ 200.317-200.327. If the cardinal change is being made under exigency or emergency circumstances, the modification may be treated as a noncompetitive procurement ("sole source procurement") in which case the local government must ensure the sole source procurement complies with the requirements noted in 2 CFR § 200.320(c). For additional information on exigency or emergency circumstances, including suggested elements for justifying a noncompetitive procurement, refer to [Purchasing Under a FEMA Award: Exigency or Emergency Circumstances](#).



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Include Written Documentation to Support the Need for the Price Increase

It is critical to include written documentation that supports the current circumstances and need for the requested price increases to reflect current market rates and what may be considered reasonable at the time. Speculation and unsupported price quotes are not sufficient and could jeopardize funding.

Perform a Cost or Price Analysis

The Federal procurement standards at 2 C.F.R. § 200.324(a) require local governments to perform a cost or price analysis in connection with every procurement action in excess of the simplified acquisition threshold (currently \$250,000), including contract modifications. The requirement is in effect even under the exigency or emergency circumstances exception and must be performed in support of cost/price reasonableness assertion. The regulations do not explicitly lay out a particular method for conducting the analysis, with the method and degree of analysis being dependent on the facts surrounding the particular procurement situation. As a starting point, the local government must make independent estimates before receiving bids or proposals. 2 C.F.R. § 200.324(a). It is critical for the local government to maintain documentation to support the cost and price analysis and to maintain records sufficient to support the basis for the revised contract price.

Background

- Local governments may have existing debris removal contracts. When circumstances such as overlapping emergencies or disasters occurring within the same geographical location, debris removal contractors may indicate that they will not perform the work under the contract unless the contract can be amended to reflect higher price rates for debris removal work under current market conditions. Contractors may seek other opportunities offering payment more reflective of market conditions.
- FEMA cannot provide approval of such pricing rates because FEMA is not a party to these contracts. The purpose of this fact sheet is to provide information for local governments to use when they seek to make price modifications to an existing contract.

Resources

Additional information on the Federal procurement standards, including options for performing a cost or price analysis, can be found here: [Contracting with Federal Funds for Goods and Services Before, During and After Disasters | FEMA.gov](#).

Additionally, **Attachment A** provides guidance and techniques to help determine whether contract costs are fair and reasonable. These can also be found in [FEMA Public Assistance Program and Policy Guide: Chapter 6, Section I, Reasonable Costs](#).

Attachment A

Techniques for Making a Fair and Reasonable Determination

- **Comparison of proposed prices received in response to the solicitation.** Normally, adequate price competition establishes price reasonableness. This is the most commonly used technique, as the majority of procurement actions attract two or more offers that are competing independently for award.
- **Comparison of previously proposed prices and previous contract prices with current proposed prices for like items.** Both the validity of the comparison and the reasonableness of the previous price(s) must be established.
- **Use of parametric estimating methods/application of rough yardsticks to highlight significant inconsistencies that warrant additional pricing inquiry.** Comparing the proposed price per square foot for a certain type of building construction against an established commercial standard is an example of this technique.
- **Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.** The applicant may be able to seek discounts from published price lists based on volume buying.
- **Comparison of proposed prices with independent estimates.** A contractor-developed cost estimate may not be used in lieu of an independent estimate.
- **Comparison of proposed prices with prices obtained through market research for the same or similar items.** Trade journals, newspapers, and economic indexes can provide useful comparative information.
- **Analysis of pricing information provided by the offeror.** This "catch-all" category includes information that does not fall into the other categories.