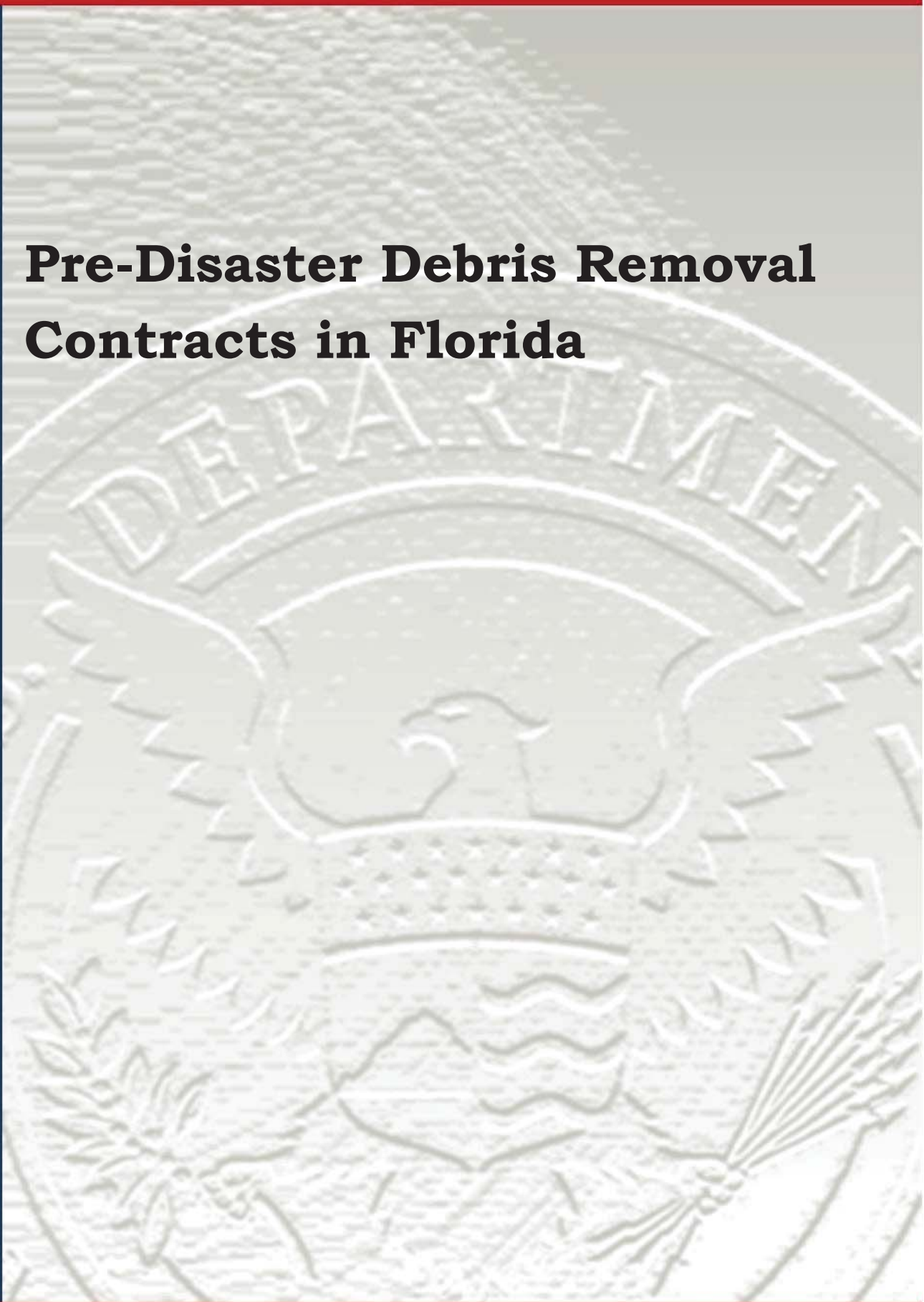


**OFFICE OF INSPECTOR GENERAL**

# **Pre-Disaster Debris Removal Contracts in Florida**



**Homeland  
Security**

**August 11, 2020  
OIG-20-44**



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Department of Homeland Security

Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

August 11, 2020

MEMORANDUM FOR: The Honorable Peter T. Gaynor  
Administrator  
Federal Emergency Management Agency

FROM: Joseph V. Cuffari, Ph.D. **JOSEPH V. CUFFARI** Digitally signed by  
Inspector General **JOSEPH V. CUFFARI** JOSEPH V CUFFARI  
Date: 2020.08.07  
18:20:35 -04'00'

SUBJECT: *Pre-Disaster Debris Removal Contracts in Florida*

For your information is our final report, *Pre-Disaster Debris Removal Contracts in Florida*. We are providing this report to make FEMA aware of our observations and other issues brought to our attention by several Florida counties, cities, and municipalities concerning pre-disaster debris removal contracts. This report contains no recommendations and, as such, we consider this review closed.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Sondra McCauley, Assistant Inspector General for Audits, at (202) 981-6000.

cc: Deputy Associate Administrator, Office of Response and Recovery, FEMA



# DHS OIG HIGHLIGHTS

## *Pre-Disaster Debris Removal Contracts in Florida*

**August 11, 2020**

### **Why We Did This Review**

The Department of Homeland Security Office of Inspector General initiated a review of the response to Hurricane Irma. The objective was to assess the Federal Emergency Management Agency's (FEMA) and the State of Florida's response and recovery activities as a result of the major disaster declaration. During our review, we identified debris removal contract performance issues and concerns. This report discusses observations regarding the use of pre-disaster debris removal contracts in Florida following Hurricane Irma.

### **Recommendations**

This report contains no recommendations.

#### **For Further Information:**

Contact our Office of Public Affairs at (202) 981-6000, or email us at [DHS-OIG.OfficePublicAffairs@oig.dhs.gov](mailto:DHS-OIG.OfficePublicAffairs@oig.dhs.gov)

## **What We Found**

At least 50 Florida municipalities reported one or more contract performance issues with their pre-disaster debris removal contracts after Hurricane Irma made landfall in September 2017. Multiple factors, including a shortage of subcontractors and poor contracting practices, contributed to the costly delays. As a result, some locations in Florida experienced higher debris removal costs.

FEMA was generally unaware of which municipalities were experiencing debris removal contract issues in Florida. When localities reached out for assistance, FEMA did not have a method to track common issues. Without proper visibility, FEMA is unable to identify, assess, respond, and report on risks as they emerge during disaster recovery operations.

Finally, FEMA did not require proper documentation to support debris removal costs. This lapse in process occurred because FEMA provided insufficient training to FEMA officials responsible for reviewing public assistance projects. As a result, FEMA reimbursed \$14.1 million (\$11.8 million in Federal cost share) for debris removal costs for five projects that were not adequately documented, and approved \$20,989 in potentially ineligible costs. FEMA later provided supporting cost documentation, but as of July 2020, FEMA had not included the documentation in its systems of record. DHS OIG also has an ongoing audit of debris removal procurements in Monroe County, and will report on the extent to which FEMA ensured the procurements met Federal procurement requirements and FEMA guidelines, following Hurricane Irma.

## **FEMA Response**

This report contains no recommendations, so we consider the report closed. Although not required, FEMA provided written comments, which we have included in Appendix B.



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**Abbreviations**

CFR	Code of Federal Regulations
CRC	Consolidated Resource Center
EMMIE	Emergency Management Mission Integrated Environment
FEMA	Federal Emergency Management Agency
JFO	Joint Field Office
OCC	Office of Chief Counsel
OIG	Office of Inspector General
PA	Public Assistance
PAAP	Public Assistance Alternative Procedures
PDAT	Procurement Disaster Assistance Team
U.S.C.	United States Code



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**Background**

When a disaster or emergency generates large amounts of debris, eligible recipients and subrecipients may request Public Assistance (PA) grant funding from the Federal Emergency Management Agency (FEMA) to offset expenses incurred for debris removal operations.<sup>1</sup> According to FEMA’s *Public Assistance Program and Policy Guide*, FEMA is authorized to provide funding for debris removal activities eligible for reimbursement, including if the removal is in the public interest, based on whether the work:

- eliminates immediate threats to lives, public health, and safety;
- eliminates immediate threats of significant damage to improved public or private property;
- ensures economic recovery of the affected community to the benefit of the community at large; or
- mitigates risk to life and property by removing substantially damaged structures and associated structures.

Debris removal costs can be significant, averaging about one-third of total damage costs per hurricane.<sup>2</sup> Debris includes, but is not limited to, vegetative debris, construction and demolition debris, sand, mud, silt, gravel, rocks, boulders, and vehicle and vessel wreckage.

**Hurricane Irma’s Impact on Florida**

On September 10, 2017, the President approved a Major Disaster Declaration (DR-4337-FL) when Hurricane Irma struck the State of Florida. FEMA approved the State of Florida for reimbursement of debris removal costs (Category A) for all 67 counties after Hurricane Irma.<sup>3</sup> As of May 2019, 661 municipalities reported \$1.39 billion in estimated debris removal costs related to Hurricane Irma.

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<sup>1</sup> Recipients can be states, territories, or tribal entities, while subrecipients are applicants, such as municipalities, that receive sub-awards from pass-through entities (recipients) to carry out part of a Federal program.

<sup>2</sup> Based on our analysis of FEMA PA Summary (S.5) Reports for DR 1539 FL, DR 1545 FL, DR 1551 FL, DR 1609 FL, DR 1792 LA, DR 4019 NC, and DR 4086 NJ.

<sup>3</sup> To facilitate the processing of PA funding, FEMA separates Emergency Work (immediate threat) into two categories: (A) Debris removal and (B) Emergency protective measures.



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Figure 1 illustrates our observations of roadside debris 3 months after Hurricane Irma made landfall.



**Figure 1: Roadside Debris**

Source: DHS Office of Inspector General (OIG)

### Federal Reimbursement of Debris Removal Costs

FEMA's *Public Assistance Program and Policy Guide* provides guidance to state and local entities for all PA programs, including debris removal. According to PA guidance, FEMA will reimburse state and local entities 75 percent of eligible debris removal costs from Federal funding. The remaining 25 percent is the non-Federal cost share, which is the responsibility of the state or local entity. In October 2017, the President authorized a 90 percent Federal cost share for debris removal for one period of 30 consecutive days, established by the State of Florida, after Hurricane Irma. After that initial period, state and local entities were reimbursed at FEMA's standard 75 percent Federal reimbursement rate.<sup>4</sup>

FEMA requires state and local entities seeking reimbursement to maintain source documentation supporting project costs such as records of debris removal, disposal operations, and eligible associated costs. This documentation serves as the basis for the project FEMA uses to review eligibility, assess reasonableness of costs, and ultimately authorize grant reimbursements to state and local entities.

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<sup>4</sup> On August 23, 2019, the President amended the Hurricane Irma disaster declarations of September 10, 2017, and October 2, 2017, to authorize a 90 percent Federal cost share for all categories of PA, including debris removal, except assistance previously approved at 100 percent.



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### **Federal and FEMA Procurement Guidance**

According to FEMA's PA guidance, state, territorial, tribal, and local governments are encouraged to establish written procedures and guidance for managing debris in an expeditious, efficient, and environmentally sound manner. FEMA refers to these procedures as a debris management plan. Additionally, Federal law authorizes FEMA to provide an incentive to encourage local governments to submit a debris management plan with one or more prequalified debris removal contractors.<sup>5</sup> A pre-qualified contractor is one that the municipality has evaluated and determined to be qualified to perform the work based on capabilities, such as technical and management skills, prior experience, past performance, and availability. Local governments generally do not have the resources to manage the amount of debris generated from a catastrophic disaster on their own and often rely on contractors to perform much of the debris removal activities. Pre-qualified contractors are not guaranteed contracts; the local government must still conduct full and open competition and must allow additional contractors to qualify during the solicitation period for post-disaster contracts.

In addition, some local governments may opt to negotiate one or more pre-disaster contracts before a disaster strikes. Based on the local government's procurement process, the best-qualified bid would be selected as the primary pre-disaster contract. FEMA defines a pre-disaster contract as a contract that the local government procures prior to the incident period, in anticipation of a disaster, with a scope of work that covers goods or services to support recovery efforts. In contrast, a post-disaster contract is a contract procured by the local government after the incident occurs. The local government must comply with Federal procurement standards for both pre-disaster and post-disaster contracts used to recover from a disaster.

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<sup>5</sup> Establishing pre-qualified debris removal contractors is a requirement for entities electing to participate in the Public Assistance Alternative Procedures (PAAP) pilot. 42 United States Code (U.S.C.) § 5189f(e)(2)(E); see also 42 U.S.C. § 5189f(a) and (b) (providing FEMA with the authority to establish public assistance alternative procedures). For more information on the PAAP pilot, see FEMA's *Public Assistance Alternative Procedures Pilot Program Guide for Debris Removal* (Version 5) (June 28, 2017).



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### **FEMA's Procurement Disaster Assistance Team**

The Procurement Disaster Assistance Team's (PDAT) mission is to ensure that FEMA personnel and nonprofit, local, tribal, state, regional, and national emergency management personnel are familiar with the Federal procurement standards applicable to FEMA's PA disaster grants to facilitate compliance with these standards. FEMA created PDAT in response to our February 2014 report recommendations.<sup>6</sup> Specifically, we found instances when FEMA personnel provided incomplete and, at times, inaccurate information to PA applicants regarding Federal procurement standards. We recommended FEMA provide training to Joint Field Office (JFO) PA and Office of Chief Counsel staff on Federal procurement standards.

The PDAT consists of nine attorneys who deploy directly to the field during the disaster recovery phase to provide real-time training, guidance, and reference materials to municipalities affected by a disaster.<sup>7</sup> The PDAT may also provide training to deployed PA staff to help identify and remedy procurement issues that may arise when a municipality solicits and awards contracts. The PDAT does not approve debris removal rates for local governments, nor did it provide sample contracts after Hurricane Irma, as FEMA generally does not review or approve pre-disaster contracts.

### **Results of Review**

At least 50 Florida municipalities reported one or more contract performance issues with their pre-disaster debris removal contracts after Hurricane Irma made landfall in September 2017. Multiple factors, including a shortage of subcontractors and poor contracting practices, contributed to the costly delays. As a result, some locations in Florida experienced higher debris removal costs.

FEMA was generally unaware of which municipalities were experiencing debris removal contract issues in Florida. When localities reached out for assistance, FEMA did not have a method to track common issues. Without proper visibility, FEMA is unable to identify, assess, respond to, and report on risks as they emerge during disaster recovery operations.

Finally, FEMA did not require proper documentation to support debris removal costs. This lapse in process occurred because FEMA provided insufficient

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<sup>6</sup> *FEMA's Dissemination of Procurement Advice Early in Disaster Response Periods*, OIG-14-46-D, February 28, 2014

<sup>7</sup> The phases of emergency management include (1) mitigation, (2) preparedness, (3) response, and (4) recovery. The disaster recovery phase includes actions taken to return to a normal or improved operating condition following a disaster.





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training to FEMA officials responsible for reviewing PA projects. As a result, FEMA reimbursed \$14.1 million (\$11.8 million in Federal cost share) for debris removal costs for five projects that were not adequately documented, and approved \$20,989 in potentially ineligible costs. FEMA later provided supporting cost documentation, but as of July 2020, FEMA had not included the documentation in its systems of record.

### **Debris Removal Contract Performance Issues**

At least 50 Florida municipalities reported one or more contract performance issues with their pre-disaster debris removal contracts after Hurricane Irma made landfall. Multiple factors, including a shortage of subcontractors and poor contracting practices, contributed to the costly delays. As a result, some locations in Florida experienced higher debris removal costs.

### **Types of Contract Issues Reported by Municipalities**

Federal law authorizes FEMA to provide an incentive to encourage local governments to submit a debris management plan with one or more pre-qualified debris removal contractors. Local governments may also opt to negotiate one or more pre-disaster contracts.

In Florida, some local governments went beyond Federal guidelines and negotiated one or more pre-disaster debris removal contracts. However, these contracts did not perform as intended after Hurricane Irma. At least 50 Florida municipalities reported one or more performance issues with their pre-disaster debris removal contracts established prior to the hurricane. Issues included primary pre-disaster contracts not being honored in 22 of 50 municipalities, and additional pre-disaster contracts not being honored in 10 of these 22 municipalities. According to local officials, 43 of 50 municipalities also experienced performance deficiencies, such as time delays and contractors with a lack of, or limited, equipment and equipment operators. Additionally, for 19 of 50 municipalities, the pre-disaster contractor requested modifications to the pre-disaster negotiated rate.

Figure 2 illustrates the types of contract issues reported by municipalities. Appendix C, table 1, provides additional details by municipality about the performance issues.



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**Figure 2. Debris Removal Contract Issues Reported**



Source: DHS OIG analysis of information provided by Florida municipalities.

\*The total number of issues listed is more than the number of municipalities because some municipalities expressed multiple issues.

These 50 municipalities established pre-disaster debris removal contracts in efforts to secure lower rates and have debris removal contractors readily available immediately after a disaster. However, in some instances, municipalities competing new contracts at higher post-disaster market rates drove up the cost for subcontractors. As a result, contractors reported they could not retain the subcontractors based on pre-disaster negotiated rates.

Some municipalities provided detailed accounts of their struggles to obtain and retain debris removal contractors immediately following Hurricane Irma.

- Municipality #34 reported it had two pre-disaster contracts for debris collection. Its primary pre-disaster contractor informed Municipality #34 in September 2017 it was unable to perform because it lacked resources, such as equipment or equipment operators, immediately after the disaster; Municipality #34 later canceled the contract. The other pre-disaster contractor provided services in September 2017, but also lacked sufficient equipment and operators. Consequently, the municipality executed post-disaster contracts to supplement its debris removal operation.
- Municipality #48 reported it executed five pre-disaster contracts, but none of the contractors could obtain the equipment or equipment operators necessary to fulfill the contract terms. In September 2017, two contractors indicated that their subcontractors were leaving in favor of higher paying post-disaster contracts after achieving minor progress in removing debris. As a result, the municipality modified the contracts to increase prices and retain the two subcontractors.
- Municipality #4 executed six pre-disaster debris removal contracts;



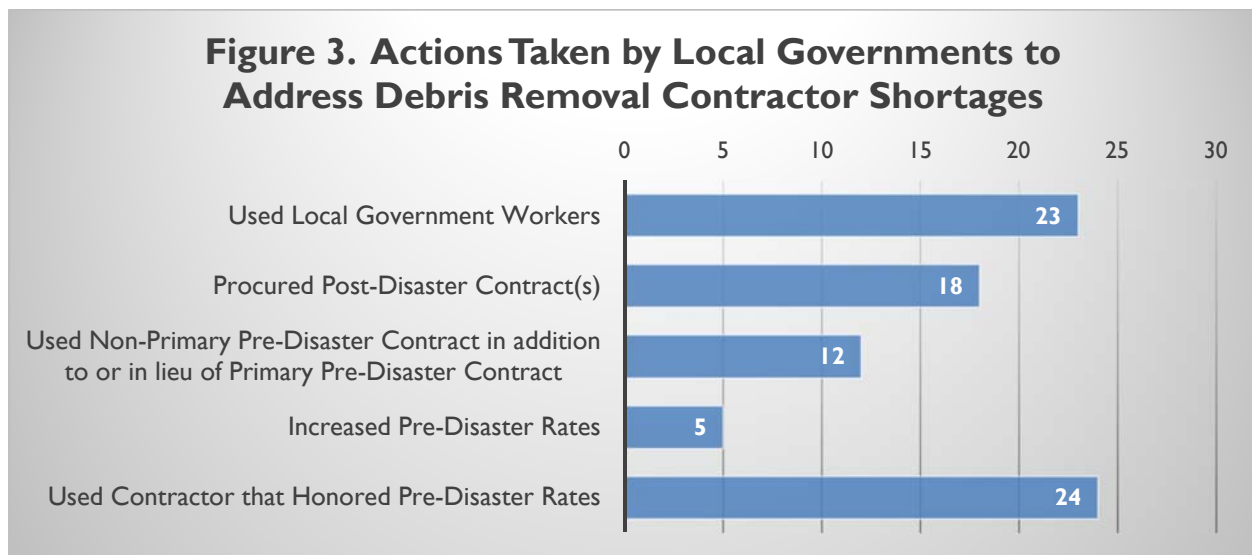
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however, its primary contractor was unresponsive to calls and the secondary contractor left 5 days after Hurricane Irma occurred. The contractor claimed the municipality did not have enough debris and that it preferred to deploy its resources elsewhere. The other four pre-disaster debris removal contractors could not find equipment and equipment operators to execute removal operations, and were ultimately unable to provide any services to the municipality. In October 2017, the municipality entered into a post-disaster contract to perform its debris removal.

Municipalities that reported performance issues with their pre-disaster debris removal contracts negotiated new contracts, modified existing pre-disaster contracts at higher rates, used local government workers to remove debris, or waited weeks for pre-disaster contractors to respond.

Figure 3 illustrates the actions taken by local governments to address debris removal contractor shortages. Appendix C, table 2, provides additional details of the actions taken by local governments to address this problem.



Source: DHS OIG analysis of information provided by local municipalities in Florida.

\*Note: The total number of actions taken is more than 50, because some municipalities took one or more actions.

Some municipalities provided detailed accounts of actions taken to address debris removal contractor shortages following Hurricane Irma.

- Of the 50 municipalities that experienced contract-related performance issues, 23 municipalities told us they used local government workers for debris removal. In some instances, municipalities used local government workers because the pre-disaster contractors did not show up or provided insufficient resources. For instance, Municipality #11 told us



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that a week after the storm, its pre-disaster contractor communicated that it would be unable to provide trucks for at least 2 more weeks. The municipality decided to remove all storm-generated debris with its own forces.

- Eighteen municipalities negotiated new contracts, six at higher rates. For example, in October 2017, Municipality #13 issued three new debris removal contracts to replace its pre-disaster contractor, resulting in a cost increase of approximately \$13.44 per cubic yard to remove debris.
- Twelve municipalities used a pre-disaster contractor other than the primary when the primary pre-disaster contractor could not fully perform the necessary debris removal activities. For 9 of the 12 municipalities, using pre-disaster contractors other than the primary contractors increased debris removal costs. For example, Municipality #19 never received a response from its primary pre-disaster contractor, but its secondary pre-disaster contractor was able to assist with debris removal services at a rate of \$1.85 more per cubic yard.
- Five municipalities modified their pre-disaster contracts, resulting in increased rates of as much as \$8.00 more per cubic yard than the pre-disaster rates.
- For 24 municipalities, the pre-disaster contractors ultimately honored their pre-disaster contracts at the previously negotiated rates. Many of these contractors provided some services immediately after the disaster, but fully performed only after completing work in other municipalities that paid higher post-disaster rates.

### **Multiple Factors Contributed to Pre-Disaster Debris Removal Contract Issues**

We found that a shortage of subcontractors and poorly defined or missing contract provisions may have contributed to the debris removal contract issues in Florida.

#### National Shortage of Subcontractors

Within a 3-week period in 2017, Hurricanes Harvey and Irma made landfall in Texas, Florida, and Georgia, causing widespread flooding and powerful winds. Soon after, Hurricane Maria affected Puerto Rico and the U.S. Virgin Islands. According to FEMA Office of Chief Counsel (OCC) officials, contractors in Florida said that these major storms occurring within weeks of each other caused a nationwide shortage of debris removal subcontractors and equipment, preventing them from honoring the pre-disaster contracts. One contractor also



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told OCC that it contacted or attempted to contact each of the subcontractors in its collective network, and sought referrals for outside subcontractors. However, the contractor claimed that the unprecedented volume and geographically disbursed demand for debris removal services exceeded the capacity of available subcontractor equipment or equipment operators. In addition, the contractor asserted that subcontractors had fled to jurisdictions that were paying higher rates, exacerbating the shortage of available assistance. Based on our discussions with FEMA officials at the JFO in Orlando and the Area Field Office in Miami, FEMA could not confirm or deny the contractor's statements because FEMA was not tracking subrecipient debris removal issues. Additionally, as we reported in our related September 2018 Management Alert, FEMA officials did not perform field monitoring of debris removal operations, which may have provided better visibility of these issues.<sup>8</sup>

### Missing Contract Provisions and Poorly Defined Contract Terms

Missing provisions and poorly defined contract terms may have contributed to delays and contract disputes in Florida. Applicable Federal regulations require federally funded non-Federal entity contracts to include specific provisions to allow a municipality to opt out of a contract for cause or convenience.<sup>9</sup>

We reviewed 34 pre- and 9 post-disaster contracts (43 total) to determine whether any of them described consequences of breach of contract,<sup>10</sup> and addressed contract termination for cause or convenience.<sup>11</sup> Appendix C, table 3, provides additional details on these 43 contracts. Of the 43 contracts we reviewed, 12 were missing provisions to terminate for cause or convenience. Without such provisions, a municipality has limited options when a contractor does not perform as expected.

We also reviewed the contracts to determine whether they stipulated milestones or timeframes for debris removal. Although not federally required, such milestones could help more clearly define terms for contract performance. In fact, prior FEMA guidance for debris management states that each contract should have a well-defined scope of work, specified costs, a basis of payment,

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<sup>8</sup> *Management Alert – Observations of FEMA's Debris Monitoring Efforts for Hurricane Irma*, OIG-18-85, September 2018

<sup>9</sup> 2 Code of Federal Regulations (CFR) Pt. 200, App. II(B)

<sup>10</sup> 2 CFR Pt. 200, App. II(A)

<sup>11</sup> 2 CFR Pt. 200, App. II(B)

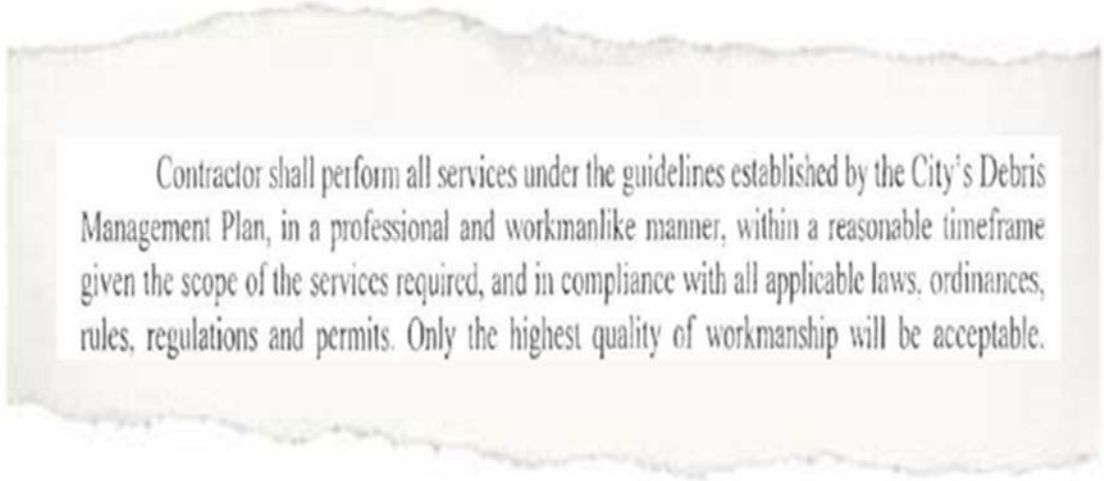


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and a performance schedule.<sup>12,13</sup> We determined that 28 of the 43 contracts did not establish timeframes for completing debris removal. Additionally, 32 of the 43 contracts did not include specific performance milestones for debris collection, such as committing the contractor to collect a minimum amount of debris in a set number of calendar days.<sup>14</sup> Figure 4 contains an excerpt regarding performance terms.

**Figure 4: Excerpt from Municipality #22 Contract**



Contractor shall perform all services under the guidelines established by the City's Debris Management Plan, in a professional and workmanlike manner, within a reasonable timeframe given the scope of the services required, and in compliance with all applicable laws, ordinances, rules, regulations and permits. Only the highest quality of workmanship will be acceptable.

Source: Contract between Municipality #22 and a debris removal contractor

In this contract, the term “reasonable timeframe” was not defined, leaving the contract terms open to interpretation. Furthermore, according to State officials, some contractors agreed to honor existing pre-disaster contracts after performing work for higher paying municipalities first. We asked State officials for a list of debris removal contractors that did not honor their pre-disaster contracts, but did not receive a reply by the end of our fieldwork in August 2019. Ultimately, affected municipalities waited with limited recourse for their pre-disaster contractors to fulfill their contract obligations.

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<sup>12</sup> Debris Management Brochure, FEMA-329 (June 29, 2006)

<sup>13</sup> Our report, *Management Alert Observations of FEMA's Debris Monitoring Efforts for Hurricane Irma* (OIG-18-85, September 2018), describes other instances where FEMA's *Public Assistance Program and Policy Guide* does not provide adequate guidance for disaster management after FEMA consolidated older, more detailed guides.

<sup>14</sup> As of October 2018, only 6 of these 43 debris removal contracts had undergone FEMA review.



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**Debris Removal Delays Increased Costs**

Some municipalities experienced increased debris removal costs. Of the 50 municipalities within our scope, 13 experienced price increases when contractors did not honor their pre-disaster contracts and the municipalities instead used other contractors. Rate increases ranged from \$0.05 to \$16.94 per cubic yard of debris removed, or a .3 percent to 109.6 percent increase in cost. Appendix C, table 4, provides additional details on the per cubic yard rates charged. For example, Municipality #49 resorted to using its secondary pre-disaster contractor when its primary pre-disaster contractor did not perform duties as outlined in the contract. As a result, Municipality #49 experienced a cost increase of \$1.25 per cubic yard, or an additional \$563,586, to have debris removed.

**FEMA Did Not Track the Extent of Debris Removal Issues in Florida**

According to the *Post-Katrina Emergency Management Reform Act of 2006*, FEMA is responsible for providing state, territorial, tribal, and local governments with the Federal leadership necessary to prepare for, protect against, respond to, recover from, or mitigate against disasters.<sup>15</sup> This responsibility includes supervising grant programs. Additionally, Office of Management and Budget Circular A-123 reminds Federal leaders and managers that they are responsible for implementing management practices that identify, assess, respond to, and report on risks. However, as we reported in September 2018, when FEMA issued its latest PA guide, it eliminated Federal and state monitoring responsibilities for debris removal operations originally established in FEMA's *2010 Public Assistance Debris Monitoring Guide*.<sup>16</sup>

FEMA officials were generally unaware of which municipalities were experiencing debris removal issues during the Hurricane Irma response and recovery phase. For example, according to the Hurricane Irma Federal Coordinating Official, FEMA had not identified debris removal contractor performance as an issue as of October 26, 2017, almost 7 weeks after the Federal disaster declaration and start of debris removal activities. This official agreed that tracking common issues across a disaster could be beneficial for making informed decisions.

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<sup>15</sup> 6 U.S.C. § 314(a)

<sup>16</sup> *Management Alert Observations of FEMA's Debris Monitoring Efforts for Hurricane Irma*, OIG-18-85, September 2018



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While FEMA was responsive by providing guidance and information to municipalities when requested, it did not have a formal method to track and address common debris issues. For example, FEMA's PDAT received requests from 13 municipalities on debris contract-related topics, including 7 municipalities that requested FEMA perform a review of debris-related contracts and 6 municipalities that submitted various procurement related questions.<sup>17</sup> In response, PDAT provided these municipalities with information, such as the proper use of modified pre-disaster and emergency contracts. For instance, PDAT officials provided us with a memo containing techniques for making a price modification to an existing contract; a frequently-asked-questions document regarding sole sourcing in exigency or emergency circumstances; and techniques for making fair and reasonable price determinations.<sup>18</sup> However, FEMA officials did not proactively disseminate this PDAT guidance to all local governments in Florida. FEMA's decision to limit the dissemination of this guidance, its inability to track debris issues, and its decision to eliminate field monitoring adversely affected FEMA's ability to assist subrecipients with debris removal issues.

The PDAT also provided Federal procurement information to entities that attended its training sessions. We determined that 22 of the 50 municipalities with debris removal contract issues attended a PDAT training session between October and November 2017. However, FEMA JFO did not have any documentation of issues or concerns raised by these entities. FEMA officials in Florida were unaware of the extent to which the debris removal contract issues affected local governments and disseminated procurement guidance on a limited basis. In these circumstances, without proper visibility of municipality issues or concerns, FEMA was generally unable to effectively manage and identify, assess, respond to, and report on risks as they emerged during disaster recovery operations.

### **FEMA Obligated Funds without Supporting Documentation**

According to Federal procurement regulations and FEMA's PA guide, all procurement transactions must be conducted in a manner providing full and open competition.<sup>19</sup> Additionally, procurement regulations require that FEMA review supporting documentation to determine the eligible amount for which each large project can be reimbursed before approving eligible costs.<sup>20</sup> To

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<sup>17</sup> Of the municipalities included in this review, municipalities #31 and #45 requested PDAT assistance.

<sup>18</sup> The FEMA Federal Coordinating Officer for Hurricane Harvey (DR-4332-TX) signed the memo *Debris Removal Contracts and Price Amendments FEMA-4332-DR-TX* on September 15, 2017. Appendix D contains a copy of the memo.

<sup>19</sup> 2 CFR § 200.319(a)

<sup>20</sup> 44 CFR § 206.205(b)(2)





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ensure these requirements are met, FEMA's PA guide requires documentation substantiating that the work is eligible, and provides a list of information the municipality should submit to support costs claimed.

According to FEMA officials at the JFO, the program delivery manager is responsible for ensuring the municipality has uploaded all required documentation to FEMA's grants management system before routing a project to the Consolidated Resource Center (CRC). The CRC staff is responsible for reviewing the project to determine whether there is sufficient documentation to support work eligibility and that contracts were procured in accordance with Federal requirements in order to recommend reimbursement. The CRC then routes projects for final review and obligation by the JFO.

However, FEMA officials at the CRC and the JFO did not always follow these procedures for requiring proper documentation when reviewing debris removal projects for reimbursement. As of October 2018, 4 of the 50 municipalities in our review submitted 8 debris removal projects for reimbursement, totaling \$18,743,659 (\$15,645,306 Federal cost share). For 5 of the 8 projects, neither the FEMA Grants Manager nor the Emergency Management Mission Integrated Environment (EMMIE) systems contained documentation to support claimed costs.<sup>21</sup> Specifically, FEMA's systems of record did not contain one or more of the following items for each of the five projects:

- invitations to bid;
- requests for proposal;
- bid tabulations and rankings;
- documented justifications for not using first ranked contractors;
- change orders;
- source documentation; or
- documented justifications for use of emergency or exigency contracts.

Nonetheless, FEMA officials approved costs and obligated \$14,095,875 (\$11,802,254 Federal cost share) for the five projects that may not have been procured properly and may have included ineligible costs. Appendix E, table 5, provides additional details on these costs.

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<sup>21</sup> EMMIE is the official system of record for grant administration and funding. The Grants Manager is a tool that complements EMMIE by automating and enhancing grant processing. Grants Manager is used by FEMA employees to assign and track action throughout PA project development, and to collect all PA project-related information and documents. The CRC Document Integrity Unit ensures all information and documentation in EMMIE matches the information and documentation in Grants Manager.



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Additionally, of the eight projects reviewed, we identified one instance when the CRC recommended for approval debris removal costs that were not supported by the executed contract. Specifically, Municipality #26 should have submitted a request for \$488,201 based on the applicable contract terms. However, it submitted a request for reimbursement of \$509,190. In this case, FEMA officials did not compare the claimed rate to the contract rate for accuracy and therefore approved \$20,989 in potentially ineligible costs. When asked about project review requirements, FEMA officials stated that, for large projects, they do not perform 100 percent validation and only review sampled costs. FEMA officials also were unable to show us their methodology for sample selection. During preparation of our report, we reached out to JFO officials and obtained missing documentation supporting the request for reimbursement. However, as of July 2020, FEMA had not yet included the documentation in EMMIE.

According to a FEMA JFO official, failure by the CRC and JFO staff to follow FEMA procedures occurred because FEMA did not provide sufficient training to its employees to identify missing documentation to support claimed costs or to ensure the claims were reviewed at all.

Because FEMA did not require documentation to support costs, it may have approved ineligible costs. In total, FEMA reimbursed \$14.1 million (\$11.8 million in Federal cost share) for debris removal costs for five projects that were not adequately documented. Additionally, FEMA officials approved \$20,989 in potentially ineligible costs. DHS OIG has an ongoing audit of debris removal procurements in Monroe County, Florida and will report on the results of the review.<sup>22</sup> The objective of the review is to determine the extent to which FEMA ensured procurements for Monroe County debris removal operations met Federal procurement requirements and FEMA guidelines, following Hurricane Irma.

### Management Comments and OIG Analysis

Because this report contains no recommendations, we consider it closed. Although not required, FEMA submitted a management response to the draft report, raising concerns regarding two of our observations. We have addressed those concerns below and included FEMA's written response in Appendix B.

**FEMA Comment:** The statement that "FEMA had not identified debris removal contractor performance as an issue as of October 26, 2017," is incorrect.

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<sup>22</sup> *Procurement of Debris Removal Services for Monroe County, FL, Following Hurricane Irma (18-127-AUD-FEMA)*



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Department of Homeland Security

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**OIG Analysis:** We disagree with FEMA's assertion. According to Hurricane Irma JFO officials we interviewed from October 17-26, 2017, some applicants were experiencing debris removal issues. However, FEMA officials were unable to provide a comprehensive list of these applicants or their concerns. After numerous requests, FEMA's PDAT provided email correspondence regarding 13 municipalities that had reached out to FEMA PDAT with questions or concerns, as discussed in this report. During the course of the audit and at the exit conference, we asked FEMA to provide additional documentation to support its statements that it had monitored debris removal contractor performance issues related to Hurricane Irma. However, FEMA did not provide any additional evidence to support its statements. FEMA's lack of oversight and situational awareness prevented it from using the challenges experienced by local municipalities to inform its policy development, procurement, and cost review processes, as well as its coordination efforts with the State of Florida. Therefore, we stand by our statement.

**FEMA Comment:** In accordance with Federal regulations, PA grant program applicants are responsible for providing oversight of debris removal activities for which costs are claimed. Applicants must monitor these activities — including all contracted debris operations — to ensure work performed complies with applicable Federal requirements and claimed work and costs meet PA grant program eligibility criteria.

**OIG Analysis:** We disagree. Although the PA grant program requires applicants to monitor debris activity, FEMA is responsible for the overall performance of the PA program and the greater share of the costs. As FEMA stated in its response, FEMA staff are supposed to review and validate the documentation that applicants submit to FEMA to support their requests for funding. However, as we determined during this review, FEMA obligated \$14.1 million in costs (\$11.8 million in Federal cost share) for debris removal costs for five projects that were not adequately supported by documentation. FEMA's failure to track known procurement and debris removal issues, coupled with its failure to review and validate supporting documentation for debris costs, increases the risk that FEMA is reimbursing millions of dollars of ineligible costs.



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### Appendix A

#### Objective, Scope, and Methodology

The Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

We conducted a review of FEMA's response to Hurricane Irma that occurred in Florida in September 2017. Our objective was to assess FEMA's and the State of Florida's response and recovery activities as a result of the major disaster declaration. During our review, we identified debris removal contract performance issues and concerns. This report discusses our observations regarding the use of pre-disaster debris removal contracts in Florida following Hurricane Irma.

To accomplish our objective, we reviewed Federal laws and regulations, and FEMA policies and procedures. We compiled, reviewed, analyzed, and summarized 8 projects, along with their supporting documentation, and 43 debris removal contracts.<sup>23</sup> We reviewed these contracts for two federally-required contract provisions and identified issues related to noncompliance with Federal procurement regulations. Additionally, we analyzed these contracts for provisions that are not federally required but may be beneficial to providing clear terms for contract performance. We also interviewed FEMA and State of Florida officials at the JFO in Orlando and Miami, Florida; and FEMA officials at the CRC in Winchester, Virginia, as well as from FEMA headquarters. We requested information from local government officials in various locations across the State of Florida. In addition, we reviewed previous DHS OIG reports to identify types of frequently reported debris removal issues, and performed other procedures we considered necessary to accomplish our objective. Specifically, we reviewed:

- *FEMA's Dissemination of Procurement Advice Early in Disaster Response Periods*, OIG-14-46-D, February 28, 2014; and
- *Management Alert—Observations of FEMA's Debris Monitoring Efforts for Hurricane Irma*, OIG-18-85, September 27, 2018.

During fieldwork, we asked FEMA to provide a list of municipalities affected by debris removal contract issues. However, FEMA officials stated they did not identify or track those municipalities. In the absence of FEMA records, we contacted 865 local government officials registered to receive Public Assistance grant funding in Florida for Hurricane Irma. We inquired whether they had

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<sup>23</sup> As of October 2018, only 6 of these 43 debris removal contracts had undergone FEMA review.



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experienced any debris removal issues. We received responses from 102 municipalities. Of the 102 municipalities, 50 reported issues directly related to debris removal contracts. For those municipalities that reported debris-related issues, we:

- determined whether the municipalities had pre-disaster debris removal contracts in place and if the contractors had honored those contracts;
- obtained and reviewed relevant pre- and post-disaster debris removal contracts;
- reviewed the pre-disaster contracts for two federally required contract provisions and five potentially beneficial contract provisions;
- identified methods used to collect debris and changes in debris collection rates; and
- reviewed FEMA's Grants Manager and EMMIE systems to identify and obtain project support documentation for obligated funds.

We conducted this review between October 2017 and April 2019 pursuant to the *Inspector General Act of 1978*, as amended, and in accordance with the Council of Inspectors General on Integrity and Excellence *Quality Standards for Inspection and Evaluation*.

Office of Audits major contributors to this report are Katherine Trimble, Deputy Assistant Inspector General for Audits; Yesi Starinsky, Director; Carlos Aviles, Audit Manager; Jason Jackson, Program Analyst; Lauren Bullis, Auditor; Angelica Esquerdo, Auditor; James Townsend, Program Analyst; Nicole Kraft, Independent Referencer; and Thomas Hamlin, Communications Analyst.



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

**Appendix B**  
**FEMA's Comments**

U.S. Department of Homeland Security  
Washington, DC 20528



**FEMA**

July 2, 2020

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.  
Inspector General

FROM: Cynthia Spishak                      CYNTHIA SPISHAK Digitally signed by CYNTHIA SPISHAK  
Date: 2020.07.02 14:31:20 -0400  
Associate Administrator  
Office of Policy and Program Analysis

SUBJECT: Management Response to Draft Report:  
"Pre-Disaster Debris Removal Contracts in Florida"  
(Project No. 18-008-AUD-FEMA (a))

Thank you for the opportunity to review and comment on this draft report. The Federal Emergency Management Agency (FEMA) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

FEMA is pleased with OIG's acknowledgement that FEMA Joint Field Office (JFO) officials were able to provide the OIG with supporting cost documentation for the more than \$14 million of reimbursement requests associated with the debris removal projects reviewed by the OIG. FEMA, however, is concerned that the OIG's draft report contained several incorrect factual and contextual statements that could be misleading to readers of the final report. Following Hurricane Irma's landfall on September 10, 2017, FEMA JFO staff effectively identified, assessed, and responded to debris removal contractor performance issues in Florida. Unfortunately, the draft report, which culminates work OIG began nearly three years ago, leaves an opposite impression.

For example, the OIG's statement that "FEMA had not identified debris removal contractor performance as an issue as of October 26, 2017," is incorrect. Starting on September 19, 2017, FEMA began receiving reports of contractor performance issues from the Florida Division of Emergency Management (FDEM) and other state and local officials. In response to these reports, FEMA Region IV and JFO staff provided additional guidance and training to enable state and local officials to make informed decisions about how to handle debris contractor performance problems, which were being tracked by FDEM. In addition, FEMA staff (1) supported FDEM's efforts to ensure municipalities were informed of the risks associated with contractor performance issues, including the re-negotiating of contracts, increased contract rates, and lack of contractor



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performance, and (2) identified and reported these issues to the Florida State Coordinating Officer.

Furthermore, FEMA's Procurement Disaster Assistance Team (PDAT) provided extensive training to state and local agencies beginning with webinars conducted on September 25, 2017, for all seven regions of Florida to support their response to the emerging debris contractor performance issues. PDAT conducted a total of 59 trainings on procurement under grants in support of Florida disasters from September 2017 through December 2018 to at least 1,731 participants, including FEMA personnel, state and local partners, and other stakeholders. Since then the PDAT has conducted an additional 13 trainings for another 1,604 participants.

FEMA provided extensive guidance and tools to State and local emergency managers on the rules governing procurement under grants both prior to and after Hurricane Irma's landfall, including a key Fact Sheet/FAQ on "Sole Sourcing in Exigency or Emergency Circumstances" that FDEM further disseminated to all Florida counties prior to September 20, 2017. FEMA also provided supplemental online guidance to states, tribes, and local governmental entities, as well as certain private non-profit organizations (hereinafter referred to as applicants). For example, FEMA published and posted to the internet a Fact Sheet (dated August 31, 2017) titled: "Public Assistance: Debris Removal Tips," which can be found at <https://www.fema.gov/media-library/assets/documents/90743>.

Regarding the OIG's contention that FEMA did not track the extent of debris removal issues in Florida, in accordance with federal regulations, Public Assistance (PA) grant program applicants are responsible for providing oversight of debris removal activities for which costs are claimed. Applicants must monitor these activities—including all contracted debris operations—to ensure that work is performed in compliance with applicable federal requirements and that claimed work and costs meet PA grant program eligibility criteria. This includes documenting debris quantities by types, quantities reduced, reduction methods, and pickup and disposal locations. If the applicant does not appropriately monitor contracted debris removal operations, it jeopardizes PA funding for that work.

While PA applicants are primarily responsible for daily monitoring operations, by regulation<sup>1</sup> the state, tribe or territory (i.e., the recipient of federal funds) is responsible for verifying the applicant complies with all federal requirements and the terms and conditions of funding, including ensuring that appropriate monitoring activities are conducted. FEMA PA grant program staff may, and often do, provide debris monitoring guidance and technical assistance to help ensure that the applicant's claimed work and costs meet PA grant program requirements and eligibility criteria in all areas of the debris

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<sup>1</sup> See 2 CFR part 200.331(d)



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operation. To ensure that claimed costs for debris removal activities satisfy the eligibility criteria of the PA grant program, FEMA staff also review and validate the debris removal documentation that applicants submit to FEMA in support of their request for PA funding.

We also noted that the OIG's review, which was accomplished between October 2017 and August 2019, did not result in any formal recommendations to improve the effectiveness and efficiency of FEMA operations.

FEMA takes seriously its partnership with recovery stakeholders, and in the furtherance of FEMA's mission of helping citizens and first responders before, during, and after disasters, and remains committed to fulfilling its responsibility to be a good steward of taxpayer funds. Debris removal activities, such as clearance, removal, and disposal, are particularly important and in the public interest when the work eliminates immediate threats to lives, public health, and safety; eliminates immediate threats of significant damage to improved public or private property; or ensures economic recovery of the affected community to the benefit of the community at large.

Again, thank you for the opportunity to review and comment on this draft report. FEMA previously submitted technical comments under a separate cover for OIG's consideration. Please feel free to contact me if you have any questions.





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**Appendix C**  
**Analysis of Debris Removal Contract Issues, Actions Taken by Local Governments, Pre-Disaster Contract Provisions, and Contract Rate Increases**

**Table 1: Debris Removal Performance Issues Reported**

<b>Municipalities</b>	Primary Pre-Disaster Contract not Honored	No Pre-Disaster Contracts Honored	Performance Deficiencies	Pre-Disaster Contractor Requested Modification
Municipality 1	X	X	X	X
Municipality 2				X
Municipality 3			X	
Municipality 4	X	X	X	X
Municipality 5			X	
Municipality 6				X
Municipality 7				X
Municipality 8	X	X	X	
Municipality 9			X	
Municipality 10			X	
Municipality 11	X		X	
Municipality 12			X	X
Municipality 13	X	X	X	X
Municipality 14			X	
Municipality 15			X	
Municipality 16			X	X
Municipality 17				X
Municipality 18			X	
Municipality 19	X			
Municipality 20			X	
Municipality 21	X		X	X
Municipality 22	X		X	
Municipality 23	X		X	X
Municipality 24	X	X	X	X
Municipality 25			X	
Municipality 26			X	
Municipality 27	X	X	X	
Municipality 28			X	
Municipality 29	X		X	
Municipality 30			X	
Municipality 31			X	
Municipality 32				X
Municipality 33			X	
Municipality 34	X	X	X	X
Municipality 35			X	X
Municipality 36	X	X	X	
Municipality 37	X		X	



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<b>Municipalities</b>	Primary Pre-Disaster Contract not Honored	No Pre-Disaster Contracts Honored	Performance Deficiencies	Pre-Disaster Contractor Requested Modification
Municipality 38			X	
Municipality 39			X	
Municipality 40	X	X	X	X
Municipality 41	X		X	
Municipality 42	X	X	X	
Municipality 43			X	X
Municipality 44			X	
Municipality 45	X		X	
Municipality 46	X		X	
Municipality 47				X
Municipality 48			X	
Municipality 49	X		X	X
Municipality 50	X		X	
<b>COUNT: 50</b>	<b>22</b>	<b>10</b>	<b>43</b>	<b>19</b>

**Table 2: Actions Taken by Local Governments to Address Debris Removal Contractor Shortages**

<b>Municipalities</b>	Used Local Government Workers	Procured Post-Disaster Contract(s)	Used Non-Primary Pre-Disaster Contract	Increased Pre-Disaster Rates	Used Contractor that Honored Pre-Disaster Rates
Municipality 1	X		X	X	
Municipality 2	X				X
Municipality 3	X				X
Municipality 4	X	X			
Municipality 5					X
Municipality 6					
Municipality 7					X
Municipality 8		X			
Municipality 9	X	X			X
Municipality 10	X				X
Municipality 11	X				
Municipality 12		X	X		X
Municipality 13		X			
Municipality 14			X		X
Municipality 15					
Municipality 16		X			X
Municipality 17					
Municipality 18	X				X



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<b>Municipalities</b>	<b>Used Local Government Workers</b>	<b>Procured Post-Disaster Contract(s)</b>	<b>Used Non-Primary Pre-Disaster Contract</b>	<b>Increased Pre-Disaster Rates</b>	<b>Used Contractor that Honored Pre-Disaster Rates</b>
Municipality 19			X		X
Municipality 20					
Municipality 21	X			X	
Municipality 22		X			
Municipality 23		X			
Municipality 24	X		X	X	
Municipality 25					
Municipality 26			X		X
Municipality 27	X	X			
Municipality 28	X				X
Municipality 29	X	X			
Municipality 30					
Municipality 31					X
Municipality 32					
Municipality 33	X				
Municipality 34		X	X	X	X
Municipality 35	X				
Municipality 36	X	X			
Municipality 37	X	X			
Municipality 38	X				X
Municipality 39	X		X		X
Municipality 40			X	X	
Municipality 41	X		X		X
Municipality 42	X	X			
Municipality 43		X			X
Municipality 44		X			X
Municipality 45	X		X		X
Municipality 46					
Municipality 47					X
Municipality 48		X			X
Municipality 49	X		X		X
Municipality 50		X			
<b>TOTAL</b>	<b>23</b>	<b>18</b>	<b>12</b>	<b>5</b>	<b>24</b>



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**Table 3: Review of Contract Provisions**

Municipalities	# of Contracts Reviewed	Did not contain Provision for Termination of Contract for Cause and Convenience	Other Provisions	
			No Performance Timeframe for Completion	No Milestones for the Amount of Debris (in cubic yards) to be Collected on a Specific Basis
Municipality 1	2			
Municipality 2	1		1	1
Municipality 4	2	2	2	2
Municipality 7	1	1		1
Municipality 9	1		1	1
Municipality 10	1	1	1	1
Municipality 11	1		1	1
Municipality 13	3		3	3
Municipality 16	1			1
Municipality 18	1		1	1
Municipality 22	2		2	2
Municipality 26	2	1	2	2
Municipality 27	4	1	4	1
Municipality 28	1	1		1
Municipality 29	2	2		
Municipality 34	2		1	2
Municipality 35	1		1	1
Municipality 36	2		1	2
Municipality 38	1	1		1
Municipality 41	2			2
Municipality 42	1		1	1
Municipality 43	1	1	1	1
Municipality 44	1		1	1
Municipality 45	2		2	2
Municipality 47	1		1	
Municipality 48	1		1	1
Municipality 49	2	1		
Municipality 50	1			
<b>MUNICIPALITY COUNT: 28</b>		<b>10</b>	<b>19</b>	<b>23</b>
<b>CONTRACT COUNT</b>	<b>43</b>	<b>12</b>	<b>28</b>	<b>32</b>



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**Table 4: Analysis of Rate Changes**

Municipalities	Comparison of Pre-Disaster Rates to Actual Cradle-to-Grave Rates			
	Primary Pre-Disaster Rate	Actual Rate for Contract Used	Difference between Primary Pre-Disaster and Rate Used	Rate Change Percentage
Municipality 1	\$10.25	\$13.15	\$2.90	28.29%
Municipality 4	8.90	9.55	0.65	7.3%
Municipality 12	14.00	13.75	(0.25)	-1.79%
Municipality 13	13.61	27.05 <sup>24</sup>	13.44	98.75%
Municipality 19	12.35	14.20	1.85	14.98%
Municipality 22	13.45	20.00	6.55	48.7%
Municipality 24	15.45	32.39	16.94	109.64%
Municipality 27	15.20	14.75	(0.45)	-2.96%
Municipality 34	12.18	14.05	1.87	15.35%
Municipality 36	15.95	16.00	0.05	.31%
Municipality 39	11.85	12.70	0.85	7.17%
Municipality 41	18.00	26.00	8.00	44.44%
Municipality 45	15.45	16.50	1.05	6.8%
Municipality 48	14.10	16.10	2.00	14.18%
Municipality 49	16.50	17.75	1.25	7.58%

<sup>24</sup> We calculated the actual rate used for Municipality #13 by averaging three post-disaster contracts used. For the remaining municipalities, the actual rate was obtained from a single contract.



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**Appendix D**  
**Debris Removal Contracts and Price Amendments FEMA-4332-DR-TX**

U.S. Department of Homeland Security  
Federal Emergency Management Agency  
FEMA Joint Field Office  
11000 North Interstate 35  
Austin, TX 78753



MEMORANDUM FOR: Tony Robinson  
Regional Administrator  
Region VI

FROM: Kevin Hannes *[Signature]*  
Federal Coordinating Office *for*  
FEMA 4332-DR-TX

SUBJECT: Debris Removal Contracts and Price Amendments FEMA-4332-DR-TX

Due to the magnitude of Hurricane Harvey and Hurricane Irma's destruction throughout portions of the United States, an unprecedented and immense strain on debris removal resources within the United States has been created. In light of this strain, FEMA has received inquiries from affected local governments with existing debris removal contracts in place, advising that their debris removal contractors indicated they intended to pursue other opportunities, unless their contracts can be amended to reflect higher price rates for debris removal work to be performed, given the current market conditions. Some of these inquiries from local governments have included a request for FEMA to review and approve the increased contract rates. While it is the intent of the Agency to provide as much technical assistance as possible to the our state, local and tribal partners, since FEMA is not a party to these contracts, the Agency cannot offer *approval* of pricing rates that a local government would pay for debris removal activities, nor can FEMA guarantee Public Assistance reimbursement at the higher rates. While FEMA cannot provide the requested approval of a rate increase in an existing contract, to which FEMA is not a party, we do provide the information below, to those local governments who want to make price modifications to an existing contract, to reflect current market conditions.

**Techniques for Making a Price Modification to an Existing Contract**

1. **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 with their attorneys to:
  - Determine whether there are any 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. §§ 200.318 – 200.326.

[www.fema.gov](http://www.fema.gov)



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Debris Removal Contracts and Price Amendments  
FEMA-4332-DR-TX

2. **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 a significant price increase, this may be considered a cardinal change which would require the contract to be re-competed through full and open competition in compliance with the Federal procurement standards at 2 C.F.R. §§ 200.318-200.326. If the cardinal change is being made under exigent and emergency circumstances, the modification may be treated as a sole source procurement and the local government should follow the steps in Attachment B: *Frequently Asked Questions: Sole Sourcing in Exigency or Emergency Circumstances* in addition to the steps below.
3. **Include Written Documentation to Support the Need for the Price Increase.** It will be 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 this time. Speculation and unsupported price quotes are not sufficient and could open the local government to risk of loss of funding.
4. **Perform a Cost or Price Analysis.** The Federal procurement standards at 2 C.F.R. § 200.323(a) and (b) require local governments to perform a cost or price analysis in connection with every procurement action, in excess of certain thresholds, including contract modifications. The requirement does not disappear under the exigent and emergency circumstances exception and is performed in support of cost/price reasonableness. The standards don't explicitly lay out a particular method for conducting the analysis, rather the method and degree of analysis is dependent on the facts surrounding the particular procurement situation. It will be critical for the local government to maintain documentation to support the cost and price analysis and maintain records sufficient to support the basis for the revised contract price.
5. **Resources.** Additional information on options for performing a Cost and Price Analysis can be found here: <https://www.fema.gov/procurement-disaster-assistance-team>. Additional guidance can also be found in Attachment A: *Techniques for Making a Fair and Reasonable Determination*. Also, any local government that is using a non-compliant contract under exigent and emergency circumstances should review the guidance in Attachment B: *Frequently Asked Questions: Sole Sourcing in Exigency or Emergency Circumstances*.



# OFFICE OF INSPECTOR GENERAL

## Department of Homeland Security

Debris Removal Contracts and Price Amendments  
FEMA-4332-DR-TX

### ATTACHMENT A

#### Techniques for Making a Fair and Reasonable Determination

1. **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.
2. **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.
3. **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.
4. **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.
5. **Comparison of proposed prices with independent estimates.** A contractor-developed cost estimate may not be used in lieu of an independent estimate.
6. **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.
7. **Analysis of pricing information provided by the offeror.** This "catch-all" category includes information that does not fall into the other categories.





# OFFICE OF INSPECTOR GENERAL

## Department of Homeland Security

Debris Removal Contracts and Price Amendments  
FEMA-4332-DR-TX

### ATTACHMENT B

#### FREQUENTLY ASKED QUESTIONS: SOLE SOURCING IN EXIGENCY OR EMERGENCY CIRCUMSTANCES

##### **What is the exigency or emergency exception?**

The Federal procurement standards allow procurement by noncompetitive proposals (commonly known as sole sourcing) under certain circumstances, including when a local or tribal government or private non-profit (non-state applicant) determines that the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. FEMA defines an “*emergency*” as an unexpected and unusually dangerous situation that calls for immediate action or an urgent need for assistance or relief. FEMA defines an “*exigency*” as something that is necessary in a particular situation that requires or demands immediate aid or action. An emergency will typically involve a threat to life, public health or safety, improved property, and/or some other form of dangerous situation, whereas an exigency is not necessarily so limited.

##### **When can I use the exigency or emergency exception?**

Use of the public exigency or emergency exception *is only permissible during the actual exigent or emergency circumstances*. Once the exigent or emergency circumstances cease to exist, the local or tribal government or private non-profit is expected to transition to a more appropriate method of contracting using full and open competition.

##### **How should I document this in my contract file?**

In order to justify using the emergency or exigency exception, the non-state applicant must include a justification in its contract file. Attachment A provides a template for justification for a noncompetitive procurement. For a debris removal requirement, the non-State applicant could alternatively obtain and provide documentation from its public health authority explaining any public health threat posed by debris from the disaster, the location of such threat, and include the anticipated duration of such threat.

##### **Do any of the Federal procurement standards still apply if I am sole sourcing my contract under emergency or exigent circumstances?**

Yes, for non-state applicants (local or tribal governments or private non-profits), you still must comply with the following requirements:

1. Your contract must include the required contract clauses (2 CFR 200.326 & Appendix II);
2. Your contract must include the Federal bonding requirements, if the contract is for construction or facility improvement (2 CFR 200.325);
3. You must award to a responsible contractor (2CFR 200.318(h));
4. You must complete a cost or price analysis to determine that the cost or price of the contract is fair and reasonable; (2 CFR 200.323(a) and (b))
5. You may not use cost-plus-percentage-of-cost contracting (2 CFR 200.323(c)).

##### **What if I want to use a pre-awarded or pre-existing contract in an exigency or emergency that may not comply with the Federal procurement standards?**

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**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

Debris Removal Contracts and Price Amendments  
FEMA-4332-DR-TX

If your pre-awarded or pre-existing contract is not in compliance with the Federal procurement standards (e.g. you did not fully and openly compete the requirement or follow the six affirmative socioeconomic contracting steps), you may likely still use your contract for the duration of the exigency or emergency. FEMA recommends that you review the list above and assess whether you can modify your pre-awarded or pre-existing contract or add additional documentation to your contract file to address the pre-awarded or pre-existing contract's non-compliance issues.

**What if I have further questions?**

FEMA has established a hotline to address Public Assistance related questions. For more information please call 1-855-336-2003.

CONCUR:

NONCONCUR:

*George A. Robinson* 9/15/17

George A. Robinson  
Regional Administrator  
Region 6

Date

George A. Robinson  
Regional Administrator  
Region 6

Date



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

**Appendix E**  
**Costs Missing Supporting Documentation in FEMA's Grants Management System**

**Table 5: Category A Projects Obligated without Supporting Documentation**

<b>Municipality</b>	<b>Obligated Amount</b>	<b>Unsupported Amount</b>	<b>Federal Share of Unsupported Amount</b>
Municipality #26	\$801,325	\$646,553	\$581,898
Municipality #38	1,281,088		
Municipality #38	2,836,755		
Municipality #38	374,833		
Municipality #49	4,619,213	4,619,212	4,157,291
Municipality #49	7,604,131	7,604,130	6,083,304
Municipality #49	1,205,510	1,205,510	964,408
Municipality #50	20,804	20,470	15,353
<b>TOTAL</b>	<b>\$18,743,659</b>	<b>\$14,095,875</b>	<b>\$11,802,254</b>



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**Appendix F**  
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Department of Homeland Security  
Office of Inspector General, Mail Stop 0305  
Attention: Hotline  
245 Murray Drive, SW  
Washington, DC 20528-0305