

**American Public Works Association
Contract Administration Subcommittee and
Municipal Research and Services Center**

Emergency Contracting

December 1, 2009

Larry Southwick

larrysouth@cablespeed.com

- City of Bellevue Public Works, 1973 to 2000
- WA Chapter APWA Past President, 1987
- Part-time consultant, 2000 to present
- FEMA Disaster Reservist, 2004 to present
- Jefferson County Dept of Emergency Management volunteer, 2007 to present
- Several related articles in the WA APWA magazine

- Thanks to APWA and CASC
- Thanks to MRSC and John Carpita

From some of my experiences, hence my goal

- Lack of preparation, understanding and documentation means you may not get paid or be underpaid
- Help educate local public works staff about FEMA and Emergency Contracting

- For some of you, parts of this will be very redundant, maybe just a refresher
- For all of you, some of this will be new
- We'll begin from the first call out and walk thru the steps up thru FEMA disaster recovery

The Emergency Management Circle

- Plan, Prepare, Event, Review, and then
- Update Plan

Plan

- What are all of the types of emergencies that you may have to deal with
- What resources do you need to have ready to implement
- Who is going to be the first responder
- What do they need in hand to be able to manage the situation
- Document every step and needed elements

Prepare

- Gather and organize all resources and processes
- Federal, RCW, MRSC, Local Plans and Policies
- Paper, electronic, web
- MRSC "Purchasing and Bidding Chart for Local Agencies in WA State"
- MRSC "Small Public Works Roster Manual"

Prepare continued

- Organize the people, who does what and how they do it
- Educate and provide them with the resources
- Work out the details and procedures
- Train and exercise
- Document every step and needed elements

The Event

- From the first emergency call (right after dinner on Friday night)
- What is the immediate situation
- Notify 911, police and fire that you are responding

The Event continued

- Who needs to be called out after the first responder
- Foreman, superintendent, director
- more resources, staff and equipment

The Event continued

- Notify officials as soon as possible
- Director, City/County Manager/Administrator, Mayor
- Have their emergency contact information prepared and in hand
- Document who and when you notified
- Describe the situation and your actions taken
- Tell them what needs to be done and if you need more resources

The Event continued

- Begin Force Account documentation
- Labor, equipment, materials
- Paper trail is essential

The Event continued

- First responder log of call out and actions taken
- Prepare a loose leaf notebook with all the forms and procedures
- Lists and emergency contacts for private sector resources, contractors, suppliers
- Provide one to every first responder

The Event continued

- Can you accomplish the response with your own resources?
- Do you need to bring in more resources?
- **First steps in Emergency Contracting**
- If you've planned and prepared, implement your plan and procedures
- If not, you should have, that's your job
- We'll get back to Emergency Contracting after we close the circle

Review

- After the event, review the steps taken and the documentation
- Did it go as planned?
- Did the plan work?
- What went right? What went wrong?

Update the Plan

- Correct the deficiencies
- Improve the Plan
- Organize and educate, etc
- Be better prepared for the next one

Emergency Contracting

- MRSC Purchasing and Bidding Chart for Local Agencies in WA State
- MRSC Small Public Works Roster Manual
- Again, thanks to MRSC and John Carpita
- Using these resources, develop your own procedures for contracting and purchasing with local resources

Incident Command System (ICS)

- The first responder is in charge (Incident Commander) until replaced
- Make decisions and implement actions
- Be prepared and have the resources needed in your vehicle
- It's already an emergency, just document it as such from the beginning
- Get trained in ICS, if not already

What is an emergency?

(MRSC Small Public Works Roster Manual)

- *"RCW 39.04.280 (3) defines Emergency as:*
- *For purposes of this section "emergency" means unforeseen circumstances beyond the control of the municipality that either:*

What is an emergency? continued

- *(a) Present a real, immediate threat to the proper performance of essential functions; or*
- *(b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken."*

What is an emergency? continued

- *"Two types of emergencies are envisioned in the statutes: **declared** (federal or state) disasters under Chapter 38.52 RCW and emergencies (**agency declared**) under RCW 39.04.280. When a federal or state declaration of emergency is made, a local agency should pass a resolution acknowledging the federal or state declaration and invoking RCW 39.04.280 as well."*

Competitive Bidding Waived

- *"Competitive bidding procedures for public works contracts may be waived under the above circumstances by adopting either a resolution at the time of contracting or by **written policies beforehand**. A resolution must state the factual basis for the exception.*

Competitive Bidding Waived continued

- *If written policies are used to waive competitive bidding requirements, the contract and the factual basis for the exception must be recorded and open to public inspection immediately after the contract is awarded."*

"Written policies before hand"

- Back to Plan, Prepare, etc
- Follow steps in MRCS Small Public Works Roster Manual

WA State Emergency Management Division, "Disaster Assistance Guide for Local Gov'ts"

- *"Local jurisdictions must keep accurate operations and financial records from the onset of the disaster.*
- *An accountant or bookkeeper in the local EOC is an invaluable asset in assisting with necessary fiscal records."*

WA State EMD continued

- *“It is strongly recommended to establish standing charge codes for emergencies before incidents occur to make it easier for local costs to be accurately documented right from the start of any incident - even if it does not become a federally-declared emergency or disaster.”*

WA State EMD continued

- *“Local officials, by resolution, make a local proclamation or declaration of emergency to authorize use of local resources, the expenditure of local funds, and to waive the usual bidding process for goods and services.”*

QUESTIONS?

- **I may not have the answers but will try to provide the resources to find them**

BREAK

Emergency event is larger than local agency can handle

- Mutual Aid Agreements with other local and regional agencies
- Prepared and adopted in the "Plan" and "Prepare" stages
- They may or may not be involved in the same event
- You may have to reach out farther to find available resources

County Emergency Management Dept

- Every county has one, get acquainted with them if you are not already
- Begin the communications if you haven't already made contact
- Coordination of resources through their Emergency Operations Center (EOC)
- If you have an event larger than your local agency can handle, they are probably already activated and in action; if not, they will be
- This will vary from county to county, each unique

County EMD continued

- They will begin keeping track of damage reports
- In the early stages, they will be requesting damage reports from local agencies
- As soon as the event settles down, they will begin developing a damage assessment for the county
- Each County EMD is responsible to report damage assessments to the State EMD

County EMD continued

- You will be responsible for reporting damage to your County EMD
- For this purpose, just for damage to your own public property
- You may also coordinate collection of damage information for private property
- Private property damage is normally outside of your responsibility

Washington State's Emergency Management Department (EMD)

- *“is responsible for coordinating national disaster recovery and local government efforts in the event of a declared (federal or state) disaster under chapter 38.52 RCW and has an informative publication on its web site (www.emd.wa.gov) titled Disaster Assistance Guide for Local Governments : April 2008.”*

WA State EMD continued

- The WSEMD also has a large emergency operations center (EOC) at Fort Murray
- They will activate the EOC for significant events that are likely to exceed local capacity
- Every County EOC will be in communication and coordination with the State EOC

WA State EMD continued

- All follow ICS (Incident Command System) organization and procedures
- Scale up and down as needed depending on the size and damage of the event
- They have a lot of additional resources that they can call in
- They are in constant communication and coordination with regional FEMA

WA State EMD continued

- They will determine if FEMA resources are needed
- WA State EMD and FEMA will coordinate response
- They will conduct a joint 'Preliminary Damage Assessment' (PDA)
- The PDA will be forwarded to the Governor for disaster declaration

WA State EMD continued

- For PDA information, go to:
<http://www.emd.wa.gov/disaster/WashingtonMilitaryDepartmentEmergencyManagementDivision-DisasterAssistance-PublicAssi.shtml>

Preliminary Damage Assessment (PDA)

- *“The intent of the PDA process is to depict the magnitude, impact, dollar damage, and the actions that are needed to deal with and recover from the event.*
- *The PDA process is necessary to request federal assistance for the state and each affected county. If damage assessment information is not received when needed, we are unable to include a county’s information in the initial assessment of needs for public facilities.”*

PDA continued

- *“Each impacted county emergency management office is responsible for notifying all jurisdictions in their county to complete a PDA.*
- *Counties are requested to complete a PDA of the county-owned damages sustained in their county and to coordinate the PDA data collection from all jurisdictions in their county.*
- ***The counties are not responsible for completing the forms for their jurisdictions.”***

PDA continued

- *“In general, the following PDA timeline exists:*
- *One week for each jurisdiction to complete their forms, submit to their county emergency manager, and the county submits to EMD. State agencies submit directly to EMD.*
- *One week for EMD to send out joint FEMA/State teams to verify all damage.*
- *One week for EMD to collate all data, prepare request for disaster declaration, submit to the Governor for approval, and forward approved request package to FEMA.”*

PDA continued

- The 'joint FEMA/State teams' will work directly with the County EMD
- They may or may not need your assistance but be prepared
- Have your documentation ready that supports your damage reports
- Be prepared to take the PDA team on a field tour of the damages

Disaster Declaration

- The Governor's declaration with a request for assistance will be sent to FEMA
- FEMA makes a determination if the damage warrants a federal declaration
- Based on a dollar value per county
- If exceeds that dollar value, it will be sent to the President
- The President makes a determination to declare the event a federal disaster

Disaster Declaration continued

- Disasters are declared on a State/County basis
- Your County has to be declared for you to be eligible for FEMA assistance
- Once the County is declared, every eligible agency and qualifying 'private non-profit' (PNP) is eligible
- PNP examples: private schools, hospitals, nursing homes, museums, etc

State/FEMA teams assigned

- State PAC (Public Assistance Coordinator)
- FEMA PAC
- FEMA Project Officers (as many as needed)
- FEMA Mitigation Specialist (my role)
- FEMA Environmental Specialist

State/FEMA teams assigned continued

- Usually one team per county
- Same team for all applicants in the county
- Team may have more than one county
- In last winter's event, our team had 11 eastern WA counties
- Depends on the magnitude of damages in the county

State/FEMA teams assigned continued

- State PAC is primary coordinator for local applicants
- FEMA PAC leads the FEMA team
- They both have to sign off on all projects

Applicant's Briefing (meeting)

- Usually one per county
- All applicants in the county are invited
- All the ground rules are presented by the State
- Applicants packets of information provided
- Applicant's Request for Public Assistance (RPA) must be submitted by local agency

Kickoff Meetings

- Individual meetings with every applicant
- First step in your process
- State PAC and FEMA PAC lead this meeting
- Assign Project Officer to applicant
- Begin discussing your losses / damages / projects
- You should be prepared with your information

Kickoff Meetings continued

- People you need to have at this meeting:
- Sometimes includes your Mayor or Manager or Director
- Your agency's primary contact person
- Your key project people, O&M, engineers
- Your accounting person (all cost records)

Project Worksheets (PW)

- ALL OF YOUR REIMBURSEMENT IS ON A PW
- Project Officer will work with you to gather documentation
- Beginning at the first moment of your event
- Thru all that has been done
- And all that has yet to be done

QUESTIONS?

- **I may not have the answers but will try to provide the resources to find them**

BREAK

FEMA Laws, Policies, Rules and Procedures

- Robert T. Stafford Disaster Relief and Emergency Assistance Act
- *"Stafford Act"*
- Enabling legislation for all public assistance
- Appendix A in Public Assistance Guide

FEMA Laws, Policies, Rules and Procedures continued

- 44 CFR (Code of Federal Regulations)
- Codifies the Stafford Act in more detail
- Appendices B and C in Public Assistance Guide

FEMA Laws, Policies, Rules and Procedures continued

- Public Assistance Policy Manual (pdf)
- Public Assistance Policy Digest, FEMA 321
- Public Assistance Guide, FEMA 322

FEMA publications

- FEMA Applicant Handbook
- Disaster Assistance – A Guide to Recovery Programs, FEMA 229
- Debris Management Guide, FEMA 325
- Preliminary Damage Assessment Manual

FEMA Publications continued

- Earthquake Hazard Mitigation Handbook
- Flood Hazard Mitigation Handbook
- Hurricane Mitigation Handbook

FEMA Publications continued

- FEMA and WA State EMD "*Greenbook*"
- Environmental considerations and contacts
- National Historic Preservation Act
- Historic, archaeological and cultural considerations and contacts

Eligibility, the key to any/all funding

- Applicant
- Facility
- Work
- Cost

Eligibility – the Applicant

- Must be within the declared county
- All state, county and local government
- Public authorities, regional governments
- Schools, districts of all kinds
- Tribes
- and qualifying private non-profits (PNP)

Eligibility – the Facility

- Must be the responsibility of Eligible Applicant
- Must be located within the declared disaster area
- Not under the authority of another federal agency (FHWA, Forest Service, BLM)
- Must be in active use at the time of the disaster

Eligibility – the Work

- Must be required as a direct result of the declared disaster
- Must be within the declared disaster area
- Must be the legal responsibility of Eligible Applicant at the time of the disaster
- Limited to restore facility to prior condition and use

Eligibility – the Costs

- Must be reasonable and necessary to accomplish the eligible Work
- Compliant with Federal, State and local [requirements for competitive procurement](#)
- Reduced by all applicable credits, insurance proceeds, salvage values
- FEMA share = 75%, matched by state and local applicant

Categories of Work

- Two broad categories
- Emergency Work:
- Category A – Debris Removal
- Category B – Emergency Measures

Categories of Work continued

- Permanent Work:
- Category C – Roads and Bridges
- Category D – Water Control Facilities
- Category E – Buildings and Equipment
- Category F – Utilities
- Category G – Parks, Recreational Facilities and other

Category A – Debris Removal

- Clearance of trees and woody debris
- Certain building wreckage
- Damaged or destroyed building contents
- Sand, mud, silt and gravel
- Vehicles
- Limited private property

Category B – Emergency Protective Measures

- Measures taken before, during and after a disaster
- To eliminate / reduce an immediate threat to life, public health or safety
- To eliminate / reduce and immediate threat of significant damage to improved public and private property
- Through cost effective measures

Category C – Roads and Bridges

- Repair of roads, bridges and associated features such as
- Shoulders, ditches, culverts, lighting, signs

Category D – Water Control Facilities

- Repair of drainage channels, pumping facilities and some irrigation facilities
- Generally not include levees, dams and flood control facilities which usually are under another federal authority, e.g. Corps of Engineers

Category E – Buildings and Equipment

- Repair or replacement of:
- Buildings, including their contents and systems
- Heavy equipment and vehicles

Category F - Utilities

- Repair of:
- Water treatment and delivery systems
- Power generation and distribution facilities
- Sewage collection and treatment facilities
- Communications systems

Category G – Parks, Recreational Facilities and other

- Repair and restoration of: parks, playgrounds
- Pools, cemeteries, mass transit facilities
- Beaches and other

Emergency Work – Debris Removal

- Plan and prepare for this
- Rules and regulations
- Environmental considerations
- Force account work
- Contract management issues

Emergency Work – Emergency Protective Measures

- Mostly force account – labor, equipment, materials
- Labor details from actual payroll including all benefits
- **Can not include regular time – only overtime**
- Volunteer labor – applies to local match
- Equipment rates – FEMA or local
- Materials – receipts/invoices/cancelled checks with actual costs

Emergency Work – Contracts

- Must be reasonable cost
- Preferably competitively bid
- Comply with Federal, State and local procurement standards

Emergency Work – Contracts continued

- Small purchase procedures
- Sealed bids – preferred for construction
- Competitive proposals – qualification based for engineering and architectural services
- Non-competitive proposals – sole source, emergency, no response to call for bids

Emergency Work – Contracts continued

- Lump sum – defined scope of work for total price
- Unit price – cost per unit of each item
- Cost plus fixed fee – lump sum or unit price with fixed contractor fee

Emergency Work – Contracts continued

- Time and materials contracts should be avoided – not open ended
- May be allowed in emergency when scope can be determined
- Not to exceed 70 hours
- Cost plus a percentage of cost contracts are NOT eligible

Emergency Work – Mutual Aid

- Is eligible for reimbursement
- Must have been charged, not volunteer
- Documentation of the work accomplished and the cost
- Costs are reasonable
- Can include regular and overtime labor

Permanent Work

- Categories C thru G
- May have been completed by force account or contract
- Actual documented costs for completed work
- Estimated costs for all work to be done – either force account or contract

Project Worksheets (PW)

- ALL reimbursement must be documented on a PW
- Applicant information and category of work
- Description of damages
- Scope of work for the PW
- Actual and/or estimated costs
- Minimum \$1,000

Funds all flow through the State

- The state is the 'grantee'
- The local agency is the 'sub-grantee'
- You get paid after the state submits the request to FEMA, FEMA pays the state and the state distributes the funds

Small / Large Projects

- Small projects are those PW where cost is less than \$60,900 (2008)
- Adjusted annually for inflation
- Large projects are those PW where cost is greater than \$60,900

Small Projects

- You are paid the amount on the PW when it's obligated and state distributes funds
- Actual or estimated, no adjustment later
- Subject to insurance deductions
- Subject to state closeout review

Large Projects

- Paid on actual costs after work is completed and costs documented
- Must submit request for reimbursement if it's on-going

Large Project Closeout

- State does final inspection, reviews documentation, reconciles actual costs
- State certifies the applicants costs were incurred in completion of the work
- All costs must have been applied to the eligible scope of work
- Transmits the information to FEMA
- FEMA may also inspect and review documentation

Large Project Closeout continued

- Documentation is essential and will be reviewed in detail
- No documentation, no payment
- Proof of damages
- Proof of competitive bidding
- All permits and assurance in compliance with laws
- No other funding available

Insurance proceeds

- FEMA deducts all insurance proceeds from the eligible PW costs, known or anticipated
- Eligible costs may include:
- Reasonable deductible cost accrued to the applicant
- Depreciation in final loss valuation used by insurers
- Costs in excess of insurance limits
- National Flood Insurance Program considerations may limit eligible costs

Insurance proceeds continued

- As a condition of receiving FEMA assistance, the applicant must obtain and maintain insurance in at least the amount of the eligible damage
- If the insurance is not maintained, the facility will not receive future assistance
- Insurance not required for facilities less than \$5,000 value or temporary facilities
- Insurance issues are determined by specialists

Stafford Act Section 406 – Mitigation funds

- 406 Mitigation funds in addition to basic repair/restoration/replacement
- Must apply only to the damaged elements
- Restore the facility to better than its pre-disaster design
- May not apply to alternate projects and may be limited for improved projects
- Upgrades to 'Codes and Standards' is eligible in basic funding – it's not mitigation

406 Mitigation

- Upgrade the facility to better withstand damages from similar future events
- Improved design, stronger materials, reinforcements
- Must be cost effective by policy and numbers
- Up to 15% considered cost effective
- Over 15% if it's on pre-approved list of proven measures
- Over 15% if it's proven by benefit/cost analysis

Alternate Projects

- If applicant determines it's not in public benefit to restore a damaged facility
- Use eligible reimbursement for other eligible projects or purchases
- Limited to 90% of the FEMA share of the eligible costs
- PNP limited to 75% of the FEMA share of the eligible costs
- Not located in flood plain
- Funds can not be used as matching for other projects

Improved Projects

- Applicant may upgrade or replace the facility but FEMA share is limited to the eligible costs
- Must be approved by the state prior to construction
- Subject to permitting, environmental and historical approval
- 406 Mitigation funds limited to original facility

QUESTIONS?

- **I may not have the answers but will try to provide the resources to find them**

THE END

- Thank you and best wishes,
- Larry Southwick