
CEAC Policy Conference

Emergency Procurement

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Why is this important?

- ❖ FEMA delaying obligations with procurement challenges
- ❖ FEMA unilaterally deobligating disaster assistance funds upon presumption of violations



Why is this important?

- ❖ DHS OIG disallowed more than \$300 Million of costs alleging procurement irregularities.
- ❖ DHS OIG spends on average \$5 million per audit.
- ❖ DHS OIG pursuing Katrina procurement violations (2005)



Non-Competitive emergency procurements

- ❖ Road Commissioners have Statutory Authority to determine a Road emergency. 2 RCs restricted by Board of Supervisors
- ❖ 2 RCs have competitively obtained contracts for emergency work
- ❖ California Public Contract Code permits exigent non-competitive contracting



Non-Competitive emergency procurements

- ❖ FEMA challenges almost all non-competitive contracting.
- ❖ FEMA dislikes Time & Materials contracting. Views them as having no defined scope of work or cost controls. Enforces the 70 hour limit. No authority ever cited.



FEMA's expectations

- ❖ Road Commissioner defined and managed scope of work.
- ❖ Work performed within environmental & historic preservation requirements
- ❖ Work performed at documented reasonable cost
- ❖ Contracts include applicable list of assurances items



Solicitations for emergency contracts

- ❖ As wide as possible with documented distribution
- ❖ Contractor availability – document declines
- ❖ Document minority outreach efforts
- ❖ Maintain documentation of justification for road emergency. Road emergency work does not need to be under a (CESA) local emergency proclamation.



Caltrans Force Account Contract

- ❖ NOT a time & materials contract
- ❖ Recognized as a fixed scope, fixed price agreement when current, applicable Caltrans rates and or Department of Industrial Relation labor rates are used.
- ❖ Never describe a Caltrans force account contract as a time & materials contract.
- ❖ Document defined, managed and changed SOW



Invoice management & reconciliation

- ❖ Close review to insure payment of approved work only.
- ❖ Insure payment at approve rates. Caltrans rates include overhead & profit.
- ❖ Enforce rates and disallow any duplications.
- ❖ Document review & enforcement effort.



Delegation & Exercise Road Commissioner Authority

- Authority to delegate. Identified delegates
- Have ordinances and authorizations in a file which is periodically updated.
- Have County Counsel opinion in file, update periodically
- Have Purchasing Agent opinion in file, update periodically



Delegation & Exercise Road Commissioner Authority

- ❖ Review compensable mutual aid agreements for current requirements. Pre-disaster terms & conditions apply
- ❖ Do not piggyback unless there is a pre-disaster agreement in place, piggybacking authorized for all parties
- ❖ Document or confirm cost reasonableness in piggybacked contract



Other Challenges

- ❖ Environmental, Historical Preservation
- ❖ Applicable List of Assurances in contract template & signed by contractor
- ❖ Document reasonableness of any other rates
- ❖ Wide distribution to bidders, documentation
- ❖ Wide solicitation of minority contractors, documentation



TGIF – Thank Goodness it's FEMA

- ❖ BUT:
- ❖ PL 113-2 authorized unilateral deobligations by FEMA.
- ❖ If they decide they do not like your procurement practices they can deobligate & force you to appeal to obtain reobligation. Appeals more difficult & less time provided.



TGIF – Thank Goodness it's FEMA

- ❖ BUT:
- ❖ FEMA has staffed specialist teams, with support of Counsel, in federal procurement compliance.
- ❖ On average it takes 33 days after an incident period begins to obtain a Presidential major disaster declaration for California



Cal OES Our Partner?

- Cal OES Secretary: “... I will not fight with FEMA....” 10/2/12
- Circulated FACT Sheet for comment on Proclamations & California Disaster Assistance Act funding
- FEMA deobligations become CDAA deobligations

