

FEMA Public Assistance (PA) Guidance

Debris Removal & Monitoring Under a Stafford Act Presidential Disaster Declaration

Debris Removal

Debris removal activities, such as clearance, removal, and disposal, are eligible as Category A 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; or
- Ensures economic recovery of the affected community to the benefit of the community at large.

Debris includes, but is not limited to, vegetative debris, construction and demolition (C&D) debris, sand, mud, silt, gravel, rocks, boulders, white goods, and vehicle and vessel wreckage.

Removal of debris from improved public property and public rights-of-way (ROWs), including Federal-aid roads, is eligible. If State, Territorial, Tribal, or local governments authorize residents to place incident-related debris on public ROWs, FEMA provides PA funding to remove the debris from the ROWs for a limited period of time.

Also eligible is the removal of leaning trees, hanging limbs, and stumps that are on public property and ROWs that present a threat to public health and safety.

Removal of debris placed on the public ROWs from commercial properties is not eligible. Additionally, removal of materials related to the construction, repair, or renovation of either residential or commercial structures is not eligible.

Debris removal from the following is not eligible:

- Federally maintained navigable channels and waterways
- Flood control works under the authority of the Natural Resources Conservation Service (NRCS)
- Agricultural land
- Natural, unimproved land, such as heavily wooded areas and unused areas
- Private roads with restricted access (e.g., roads behind locks, gates, or guards) and private property (unless approved case-by-case based on the Federal Coordinating Officer's concurrence on the demonstration of an immediate threat as determined by a public health official, and the applicant's documented legal authority to alleviate such a threat)

Debris Monitoring

Monitoring of the debris removal operations is also required and eligible. For FEMA to determine the eligibility of debris removal operations, the Applicant must provide debris types, quantities, reduction methods, and pickup and disposal locations. FEMA requires the Applicant to monitor all contracted debris operations to document this information and ensure that its contractor removes eligible debris. The Applicant may use force account resources (including temporary hires), contractors, or a combination of these for monitoring. If the Applicant does not monitor contracted debris removal operations, it will jeopardize its PA funding for that work.

If the Applicant does not use a contractor to remove the debris, and instead chooses to remove the debris using their own employees' labor and equipment, the Applicant is not required to hire a separate party to monitor the Applicant's debris removal operations. However, the Applicant still must essentially serve as their own monitor and document the same type of information that they would to monitor a debris removal contractor. This will allow FEMA to make a determination of reasonableness of cost for the debris operations performed with Applicant-owned resources, and to determine that the locations from which the Applicant removed debris was an eligible location (i.e., not on private property or roads, natural areas, commercial properties, etc.).

Temporary Debris Management Sites (TDMS)

If an applicant uses a TDMS to stage, sort, and reduce debris, the TDMS must be approved for use by the NC Department of Environmental Quality, Solid Waste Section. Failure to obtain such approval will jeopardize reimbursement of costs associated with operations at the TDMS.

Contract Procurement

Applicants must document compliance with Local, State, and Federal procurement standards (2 CFR Part 200.317-326) as a condition of receiving PA funding for contract costs for eligible work. The applicant's procurement process must provide full and open competition, and conduct all necessary affirmative steps to ensure the use of minority businesses, women's business enterprises, and labor surplus area firms when possible.

Unless your own procurement policy is more restrictive than the federal guidance, the federal guidance is most restrictive.

Federal and State Comparison document, defining how to put goods, services, repair and construction out to bid, and the dollar thresholds for each: (*UNC School of Gov't - Norma Houston*)

https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/Federal%20and%20State%20Procurement%20Comparison%20Chart%20-%20FEMA_0.pdf

Many other helpful documents from UNC's Norma Houston, regarding federal guidance and procurement:

<https://www.sog.unc.edu/resources/microsites/local-government-purchasing-and-contracting/federal-procurement-requirements>

Debris Challenges

•Contract Procurement

Failure to properly procure (according to Federal regulations) debris contracts is probably the single biggest factor that can jeopardize reimbursement for debris operations (see procurement checklist).

•Contract Types

The initial debris clearance (i.e., Phase I response "cut & toss" operations) to clear debris from the roadway and push to the ROW can be done on a time-and-materials basis for a "reasonable" period of time. Once

the roads are open and passable, debris operations shift to Phase II recovery for loading, hauling, reduction, and disposal. These debris removal operations should not be performed by a time-and-materials contract, but instead should be based on unit prices (e.g., per cubic yard, per ton, per leaning tree, per hanging limb, per stump extracted, per unit of white goods, etc.)

- **Lack of Proper Monitoring**

Failure to properly monitor debris contractors, or failure to self-monitor and document locations and quantities of debris removed by an Applicant's own forces, will jeopardize an applicant's reimbursement. FEMA has also identified circumstances in which there has been no oversight by the applicant over their debris monitoring firm, resulting in denial or de-obligation of funding.

For example, when FEMA monitored applicants' contracted monitors, funding was reduced when FEMA found incidences where the monitoring firm consistently overstated the percent full for debris truck load calls from the monitoring tower at debris management sites, giving credit for 100% full loads that were clearly less than 100% full.

- **Debris Removal from Ineligible Locations / Road Systems**

Generally, the eligible applicant to be reimbursed for removing debris (Phase II recovery) from a public ROW is determined by ownership of that road system.

- **Local Roads:** These are roads that are owned and maintained by a municipality (there are no county roads in NC). The local government is the eligible applicant to remove debris from their own system roads.

- **State/Federal Roads:** Generally, these are the responsibility of NCDOT. However, a local government (municipality within their city limits or county in unincorporated areas) can enter into a Memorandum of Agreement (MOA) with NCDOT to release authority to the local government to remove vegetative disaster debris, and FEMA accepts this legal transfer of authority and recognizes the municipal or county government as the eligible applicant for removal of vegetative disaster debris from state/federal roads within their jurisdiction. Local governments should be sure to have this MOA with NCDOT in place if they intend to remove vegetative disaster debris from a state or federal road maintained by NCDOT. If you already have an MOA with NCDOT and wish to activate it, please contact NCDOT county maintenance engineer. If you do not have an MOA and need one, please contact Josh Kellen at jlkellen@ncdot.gov

- **Private/Orphan Roads:** These types of "non-system" roads (i.e., not part of a local or state government's road system) are generally not eligible for reimbursement as these roads systems and ROWs are not the legal responsibility of an eligible PA applicant (unless approved by the Federal Coordinating Officer on a case-by-case basis). However, FEMA has issued a disaster-specific policy for Hurricane Florence which has pre-established that debris removal from private roads is in the public interest, as long as access to the private road is not restricted (e.g., no locks, gates, or guards). Therefore, for debris removal on private roads that are not restricted, the applicant does not need to demonstrate the public interest in removing the debris, as FEMA has already made that

determination. However, the applicant still must document: (1) their legal authority to perform debris removal along private roads, (2) that the road does not have restricted access, (3) from which private roads debris was removed, and (4) the quantities of debris removed and the documentation of proper disposal.

Note I: For Phase I response “cut & toss” operations necessary to make roads open/passable to traffic and emergency response operations, a local government can perform those emergency clearance operations on any road (public or private) within their jurisdiction. However, once those roads are open/passable, the eligibility of Phase II recovery operations for removal, reduction, disposal, etc. reverts back to the eligible Applicant (if any exists) that has legal responsibility for that road system, subject to potential exceptions as described above (i.e., MOA with NCDOT, FCO approval of private roads eligibility, etc.).

Note II: If you, as an applicant under the FEMA Public Assistance program, do not have a contract in place for your debris removal operations, debris monitoring operations, pumping operations, or any other “time is of the essence” contract you require, be strongly advised that misleading or misguided discussions from contractors to applicants suggesting “ways” to avoid proper federal procurement rules are rampant. Reductions to PW’s and de-obligations (after payments are made) are greatly increasing in federal disasters due to various contractors’ misleading information to applicants on federal procurement guidance.

Being falsely led to sidestep the federal regulations can result in some portion, or all, of a project worksheet(s) being reduced or de-obligated.

If you do not feel comfortable about an offer of service being made to you directly, or are offered a unique way to “get on board” another entity’s contract, or if you are being told that a “cooperative agreement” is allowed but it really sounds like piggybacking (piggybacking is never allowed under federal guidance), walk away and put the service out to bid.

Feel free to call us at NCEM Public Assistance with any debris or procurement questions:

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