

Storm Planning for the Urban Forest

May 2023



MODULE 2 Standing Contracts





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Storm Planning for the Urban Forest

Effective storm planning for the urban forest entails three foundational activities: tree risk assessments, standing contracts, and debris management sites.

These are discussed in detail in the following modules:

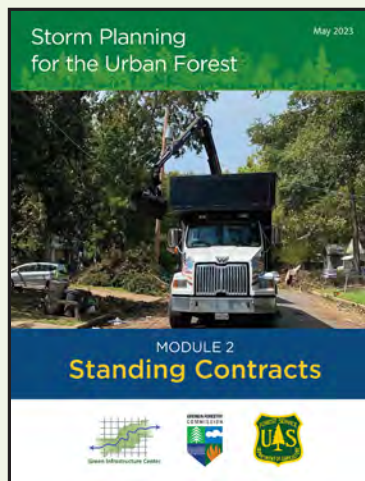
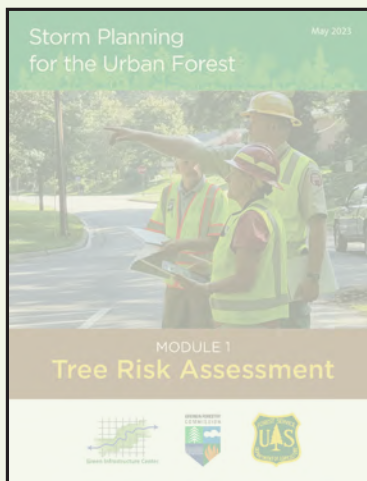
■ Module 1: Tree Risk Assessment

■ Module 2: Standing Contracts

■ Module 3: Debris Management Sites

Below, you can review the steps and requirements to develop standing contracts for debris removal, tree mitigation, and appropriate monitoring of activities post-storms. For further modules on how to create a tree risk assessment program or how to establish debris management sites in your community, check the Community Forestry Academy's website at:

<https://communityforestry.academy/courses/community-planning-for-the-urban-forest-strike-team/>



Module 2: Standing Contracts

Introduction

What Are Standing Contracts (or Pre-Contracts) and Why Are They Important?

Storm planning for the urban forest involves the establishment of a storm team that includes arborists and emergency management personnel (see Module 1: Tree Risk Assessment). Standing contracts are an important tool for this team to employ in the storm planning process. A standing contract is one that goes through the competitive solicitation and procurement of services prior to a weather event happening. Standing contracts for disaster cleanup response are typically for tree removal and pruning, debris removal, and debris monitoring services.

PRO TIP

Ensure your local leadership is on board with the idea of standing contracts. If they are hesitant, let them know there is no obligation unless you need the services.

Emergency bid procedures, though faster than standard procedures, still take time to execute and delay the start of contractor work in a storm cleanup effort. These delays impact public safety and economic costs to local businesses and residents. The benefits of securing the

Case Study – Alexandria, Louisiana

The financial impacts to a city that is unable to secure FEMA reimbursements are significant. This potential consequence provided a major incentive for Alexandria to develop its standing contracts and secure qualified and experienced debris haulers and monitors in advance of future storms.

Since Hurricane Gustav in 2008, when the city struggled to get debris haulers and reimbursements, Alexandria has established standing contracts with private haulers and monitors. These contracts cover a period of one year of services, with an additional two years of optional renewal at no cost to the city, if cleanup services are not required in the first year. This advance contracting assures the city that, in the event of a major disaster, professional and qualified debris haulers, arborists and monitors are on standby to deploy in the immediate aftermath of a major storm. This allows for a speedy cleanup, with no delays in securing contractors, but most importantly allows the city time to review the qualifications of contractors, specifically ensuring professional arborists are contracted well in advance of a disaster.



In Alexandria's case, a city arborist developed the standing contract and included specific criteria for hazardous tree removal. This enabled the contracted arborists mitigating hazardous trees and hangers (hanging limbs) to specify relevant criteria to use when making judgment calls on storm damaged trees, which resulted in fewer urban trees being removed post-storm. These specifications can be crafted more carefully during a pre-contracting process, rather than during, or just after, a storm event, when city resources are obligated to emergency response.

Check out the full case study for Alexandria at: <http://gicinc.org/>



services of pre-qualified contractors before a disaster include:

- Quicker deployment for debris cleanup.
- Securing highly quality contractors.
- Reducing the number of trees lost.
- Better monitoring efforts.
- Higher reimbursement rate from FEMA.
- Developing a more streamlined cleanup response.
- Identifying any gaps in disaster cleanup response.

The storm team should establish standing contracts for debris management and disposal, hazard mitigation (tree removal and pruning), and debris monitoring services to ensure an efficient storm clean-up response.



FEMA

Common Misconceptions About Standing Contracts and FEMA*

Be aware that contractors may inaccurately use the Federal Emergency Management Agency's name (FEMA) in contracts to suggest credibility and imply that their work would be eligible for Public Assistance Grant funding. Applicants should understand the common phrases used by contractors and why the statements are false. Three of the most common phrases are:

1. "FEMA-approved contract and rates."

FEMA does not certify, credential, or recommend contractors.

2. "FEMA eligibility determinations."

Debris contractors do not have the authority to make eligibility determinations. Only FEMA can make an eligibility determination.

3. "FEMA training in eligibility, documentation, and Project Worksheet development provided."

These services often have a fee attached. However, most of the training and information offered by a contractor is available free from FEMA or the state.

*Direct citation from the Public Assistance Program and Policy Guide.

LET'S GET STARTED!



Research Standing Contracts

Before drafting a standing contract, research and review standing contracts from communities of similar size and location. Standing contracts should be executed with equipment rental vendors, debris removal and monitoring contractors, mulch grinding contractors, tree service contractors, tree suppliers, and landscape contractors. These contracts are legally binding and should include a description of the services to be provided, the cost of the services, and the standards to be met when executing the services. By preparing and executing these before a storm occurs, the capacity for storm preparation, response, and recovery should be increased, and the overall cost of the same should be reduced.

PRO TIP

Don't "piggyback" off existing contracts. Take the time to create a separate Request for Proposal (RFP) and competitively bid. This will ensure your pre-contracts are compliant with FEMA regulations.





Include the following in each standing contract:

- ✓ Names of all parties involved.
- ✓ Address and contact information for all parties.
- ✓ Contract period – with a beginning and end date.
- ✓ Mechanism for terminating the contract.
- ✓ Detailed description of services.
- ✓ Standards to be met while providing service (safety, performance, results).
- ✓ Purchasing requirements.
- ✓ Cost for services.
- ✓ Payment schedule.
- ✓ Signatures of authorized representatives.
- ✓ Date of execution of contract.

Review FEMA Guidance

Research and review FEMA guidance on contract procurement. As a start, below are lists of contract elements required and recommended by FEMA. Note that FEMA frequently updates procurement and contracting policy guidance.

Contact the State Office of Emergency Management or the FEMA Regional Office for additional assistance with creating and implementing federally compliant procurement policies and drafting federally-compliant contracts. For more information on FEMA contract provisions, follow this link: https://www.fema.gov/sites/default/files/2020-07/fema_procurement_contract-provisions-template.pdf

Contract Elements Required by FEMA**

- Compliance with Executive Orders (EOs) 11246 and 11375 (Equal Employment Opportunity EEO) and nondiscrimination statements.
- No collusion statements.
- Contracts must be of reasonable cost, competitively bid, and comply with federal, state, and local procurement standards.
- Do not include any language that makes payment to the contractor contingent upon the applicant's receipt of funding from FEMA.
- All contracts in excess of \$10,000 must contain a provision for termination for cause and for convenience by the applicant according to 44 CFR Part 13.36(i)(2).
- For contracts over \$100,000, the applicant must have the following minimum bonding requirements, in accordance with 44 CFR Part 13.36(h):
 - A bid guarantee from each bidder equivalent to five percent of the bid price;
 - A performance bond on the part of the contractor for 100% of the contract price; and
 - payment bond on the part of the contractor for 100% of the contract price.
- Administrative and legal remedies for violation and breach of contract.
- Comply with the Copeland Anti-kickback Act.
- Comply with the Clean Air Act, the Clean Water Act, and Environmental Protection Agency (EPA) regulations.
- Statement that contractor is subject to FEMA and/or GOHSEP reporting requirements.
- Notice of awarding agency requirements to patent rights and inventions.
- Awarding agency requirements pertaining to copyrights and data.
- Access to contractor grant-related records and retention of required records for three (3) years after the closeout.
- For contracts over \$100,000 the applicant must follow minimum bonding requirements in accordance with 44 CFR Part 13.36(h).

**This list of required elements in advanced readiness contracts to meet FEMA requirements is not necessarily exhaustive nor does it cover all grant funding programs offered by the federal agency. You should research and communicate with FEMA and/or your state's emergency management office to determine what elements are required in meeting FEMA standards for advanced contracting.

FEMA Recommended Contract Elements

- The applicant's legal staff should review contracts for compliance with 44 CFR Part 13 requirements.
- Applicants should conduct reference checks on a contractor's history of performance before awarding contracts.
- A contract provision that the contractor is to restore and/or repair, at the contractor's cost, all damaged infrastructure back to its pre-existing condition if caused by their activities.
- Bid solicitation and final contract documents should include details on how the applicant will monitor the contractor's work and how to verify the contractor's costs and payment.
- A requirement for no conflicts of interest between the monitoring contractor and the debris removal contractor.
- Monitoring contracts should contain a not-to-exceed clause per the requirements of 44 CFR Part 13.
- Require debris contractors to submit the following reports:
 - Debris collected (tons).
 - Debris accepted.
 - Debris recycled/reduced.
 - Any operational or safety issues.

Considerations for a Standing Contract

Meet with the local procurement department to determine the required legal language for the standing contracts. The benefits of standing contracts include sufficient time to compose the contract, as well as time to vet contractors to find skilled and qualified professionals to complete the work. Since storm recovery work is technical and requires experience and expertise, a request for proposals (RFP) is more appropriate than an invitation to bid. An RFP can include requests for specific information on qualifications, equipment lists, references, and financial health to help narrow down the field to highly qualified and experienced contractors for each standing contract. Additionally, the term of a contract can be written to allow for optional renewal. Below are some elements to consider when writing the RFP and contract.

PRO TIP

Time and Materials Contracts: Don't use them! FEMA will only allow reimbursement for time and materials contracts under the Public Assistance Grants for up to 70 hours of emergency work.

Term of Contract (annual or more) Stipulations

The term of a contract is usually one year. Provide an option for contract renewals of two or three years. Extensions should be at no cost to the city if cleanup services are not required in the first year. This allows a community to extend a contract with a qualified vendor without repeating the bid process annually, while maintaining the ability to void a contract with a contractor whose services are unsatisfactory. Extending beyond three years is not recommended. This is because a bidder's costs may increase over several years and desired technologies and rules for monitoring and reporting may change, since technological advancements in the industry are consistently improving the efficiency of work.

Qualifications of Contractor

In the RFP, ask for a written narrative from the contractor illustrating the method or manner they will use to satisfy the scope of services in the contract. An RFP allows for the contract to be awarded to a bidder beyond just the lowest bid, with considerations for past performance, reputation, and financial capability alongside price. However, **price must be a consideration**, if you wish to get FEMA reimbursement. The term "lowest responsive and responsible bidder" is an example of language that considers price and qualifications. Work with FEMA and a local procurement officer to determine the most appropriate language and method for ranking and awarding contracts.



Contractor and Certifications

Required qualifications for personnel will also vary based on the type of contract. In the RFP, request a list of personnel assigned to the project, plus proof of qualifications for any work that requires certifications. For example, contractors that bid on tree removal and pruning must have an International Society of Arboriculture (ISA) Certified Arborist on staff who will serve as the lead in the field during the response and recovery.

Equipment

Equipment needs will vary depending on the contract type. In the RFP, ask for a list of available equipment, and if equipment is in their possession or will be available by formal agreement at the time of bidding. A responsible bidder will have access to the necessary equipment at the time of the bid.

Risk and Financial Health

Limit bidding on the contract to individuals, partnerships, and corporations actively engaged in the field of work outlined in the contract. For example, for tree removal and pruning contracts, bidders shall derive a majority of their income from arboriculture work and shall demonstrate competence, experience, and financial capability to carry out the terms of this contract.

Safety

Request a written statement on how the contractor will address safety issues and ask for a written copy of their previous 12-month safety training program.

Customer References

Require three references and a list of ALL customers for whom the contractor has provided similar services in the past two years. Ask if the contractor has ever failed to complete a project or defaulted on a contract and, if so, for details such as why, when, where, and with whom.

PRO TIP

Do your homework to properly vet contractors. Make sure to check references for qualified contractors and verify that all appropriate licensures are current.

Consider asking contractors (in the RFP) questions such as:

- How many years have you been engaged in this type of work?
- How will you stage equipment prior to a known event?
- How will you communicate (including if cell service is unavailable)?
- How will you refuel?
- How will you measure debris?
- Will you have movable scales with you?
- Do you have documentation methods for cubic yards?
- How will you house your workers for extended stays?
- Can you handle all types of vegetative debris?
- Are you familiar with state emergency management agency and FEMA protocols?
- How will you provide data and documentation?

PRO TIP

Talk to the references and ask them to discuss their experience with the contractor when handling a large-scale debris removal/cleanup project and about their service plan.

Evaluating Requests for Proposals (RFPs)

Once you know the type of questions and information to request in the RFPs you can develop a ranking system with weights for each criteria or a combination of criteria listed above. You should create a system to evaluate applicants based on a combination of costs and qualifications. **Cost must be a considering factor when ranking proposals.** Below is an example of how you could rank applicants based on qualifications and costs.

Table 1. An example list of criteria and a subsequent weighting scheme to apply to applicants' proposals.

Criteria	Weight
Experience/Qualifications	40%
References	10%
Service Plan	20%
Cost Proposal	30%

In addition, you should create an evaluation committee to assist in rating applicants using a standardized rating system. This ensures each committee member is applying a similar and consistent scale to rate each criteria listed in your weighting system. The rating from each reviewer is summed and averaged across the number of reviewers and then multiplied by the relevant weight. All weighted criteria are summed to give a final score for each applicant.

Table 2. An example of a standardized rating system reviewers can use to rate the criteria in each applicant's proposal.

Rating	Description
1-10	Very Poor
11-20	Poor
21-30	Fair
31-40	Below Average
41-50	Average
51-60	Above Average
61-70	Good
71-80	Very Good
81-90	Excellent
91-100	Superior

After all applicants are scored, a descending numerical list with the best applicants at the top. Top ranked applicants will be offered first before descending the list to lower ranked applicants. This type of evaluation process can be applied for each unique type of service contract with the specific criteria adjusted to reflect the type of service being requested.

Types of Contracts

There are various types of standing contracts a municipality should have in place before the next major disaster to be better prepared to respond during a cleanup. The following are types of contracts you need during a disaster cleanup response:

Debris Management and Disposal



Hazard Mitigation Tree Removal



Hazard Mitigation Tree Pruning



Monitoring Services



Debris Management and Disposal Contracts

Contracts for debris management cover debris pick up, debris transport to a management site for processing, debris processing, and final transportation to a disposal facility. Include in the RFP/Contract:

- Request for contractor qualifications, experience, and proof of insurance.
- Limit the number of passes a contractor can make to collect debris before resuming the normal local collection schedule. Verify and limit the passes to the number eligible for reimbursement by FEMA.
- Create separate contracts for construction debris and vegetative debris disposal.
- Negotiate and credit the value of salvageable debris materials with the contractor within the contract terms.
- Specify all publicly managed lands, such as parks, cemeteries, zoos, alleyways, or canals, and the special considerations and limitations of those sites in the RFP.

Hazard Mitigation Contracts

Contracts for hazardous tree mitigation involve the removal of trees, branches, or other tree parts that pose an immediate threat to public safety or public property. If this work is contracted out, it is typically done on a per-tree basis. For hazard mitigation contracts, make sure to select a contractor that has certified arborists on staff who will be conducting the mitigation work. Ideally, the certified arborists will have knowledge of the local or regional tree species. FEMA's criteria on what is a hazardous tree or tree part are listed below. Include these definitions in the scope of work. This ensures the contractor is only performing work that is eligible for FEMA reimbursement.

Tree Removal

Tree removal is one type of hazard mitigation. Removing a hazardous tree may be eligible for Public Assistance Grant funding. According to FEMA 325 Public Assistance Debris Management Guide, a tree is considered hazardous if its condition was caused by the disaster; if it is an immediate threat to lives, public health and safety, or improved property; if it has a diameter breast height of six inches or greater; and if one or more of the following criteria are met:

- It has more than 50 percent of the crown damaged or destroyed.
- It has a split trunk or broken branches that expose the heartwood.
- It has fallen or been uprooted within a public-use area.
- It is leaning at an angle greater than 30 degrees.

Ineligible work includes:

- Stump grinding, which is not an eligible cost unless more than 50% of the root-ball is exposed.
- Tree removals where less than 50% of the root-ball is exposed should be cut flush to the ground. Stump grinding after the tree has been cut is not eligible for reimbursement.
- Costing methods that break tree removal work into separate tasks, such as listing cutting down the hazardous tree and cutting the trunk flush to the ground as two unit costs. The scope of work should require this as one unit cost.

Limb Removal

Limb removal is another type of hazard mitigation. Removing hanging limbs may be eligible for Public Assistance Grants. According to the FEMA 325 Public Assistance Debris Management Guide, limbs must be:

- Located on improved public property.
- Greater than two inches in diameter at the point of breakage.
- Still hanging in a tree and threatening a public-use area (e.g. trails, sidewalks, golf cart paths).

FEMA requires documentation of all mitigation work. Include in the contract work scope the collection of data and documentation. Documentation required for a Public Assistance Grant (FEMA 325, Public Assistance Debris Management Guide) includes:

- Description of the immediate threat, e.g. photos of hanging limbs or leaning trees.
- Clear definition of the scope of work to remove the immediate threat.
- Specification of the improved public property location that records the nearest building address or GPS location.
- The date, labor (force account or contract), and equipment used to perform the work.

Monitoring Services Contracts

The monitoring services RFP and standing contract should be separate and independent of all other contracts, to avoid any conflict of interest. Monitoring is a time-intensive activity that requires a well-trained team. Reliance on city staff to perform monitoring just after a major storm event is unrealistic. Several monitors will be needed: one monitor to track each debris clean-up truck; another to process the truck's debris load; and additional monitors to manage the debris management site. Third-party monitors are also essential for tracking the cleanup and disposal effort.

Monitoring companies should be trained in FEMA protocols and qualified to submit the necessary paperwork. A skilled and reputable monitoring team is crucial to a successful clean-up effort. A monitor who fails to provide the appropriate documentation may jeopardize the FEMA reimbursement process. According to audits done by the Office of the Inspector General (OIG), debris cleanups lacking proper debris monitoring are susceptible to fraud and overcharges by disreputable contractors.

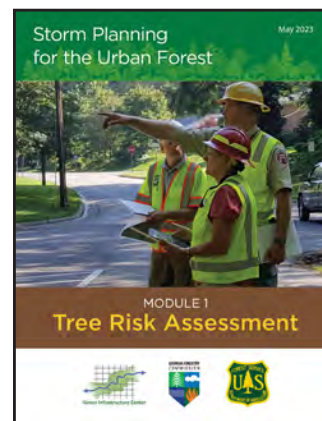
Write, Revise, and Release

Once the types of standing contracts, FEMA guidelines, procurement process, and legal language are understood, draft the RFPs or bid documents. Include the community's unique needs and considerations in the specifications. Share the documents and get feedback from the locality's emergency management department and procurement office and make needed revisions. Release the RFPs or bids with adequate response time allotted. RFPs should already have a system in place to weigh experience, qualifications, and cost, in order to award a contract that complies with FEMA requirements. When you release the RFP make sure you created the appropriate categories in procurement listings so qualified contractors can find it. It also helps if localities do a robust advertisement announcement. This can help you generate enough qualified applicants to select from out of the pool.

Conclusion

One of the foundational activities for storm planning for the urban forest is securing standing contracts for storm recovery work. This module discussed standing contract types, elements to consider, and the steps to getting a contract out to bid.

To learn more about the other two foundational activities for storm planning, read **Module 1 on Tree Risk Assessment** and **Module 3 on Debris Management Sites**.



Resources

Community Forestry Academy,
Link: <https://communityforestry.academy/courses/community-planning-for-the-urban-forest-strike-team/>

Federal Emergency Management Agency (FEMA),
Public Assistance Program and Policy Guide
Version 4 (June 1, 2020),
Link: https://www.fema.gov/sites/default/files/documents/fema_pappg-v4-updated-links_policy_6-1-2020.pdf

Federal Emergency Management Agency (FEMA), Public Assistance: Contracting Checklist (October 7, 2017),
Link: <https://www.fema.gov/press-release/20210318/public-assistance-contracting-requirements-checklist>

Green Infrastructure Center, Storm Mitigation Planning For Your Community Forest,
Link: <http://gicinc.org/>

