



Taking a Seat at the Table:

FEMA Procurement
Knowledge for Your
Recovery Team



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DISASTER
RECOVERY
SERVICES

“Luck is a very thin wire
between survival and disaster,
and not many people can keep
their balance on it.”



Hunter S. Thompson



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SERVICES

The Risk



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FEMA's estimated
Disaster Relief Budget
exceeded
\$7 Billion for FY2019.



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2
0
1
8

124 FEMA Declarations

59 Major

14 Emergency

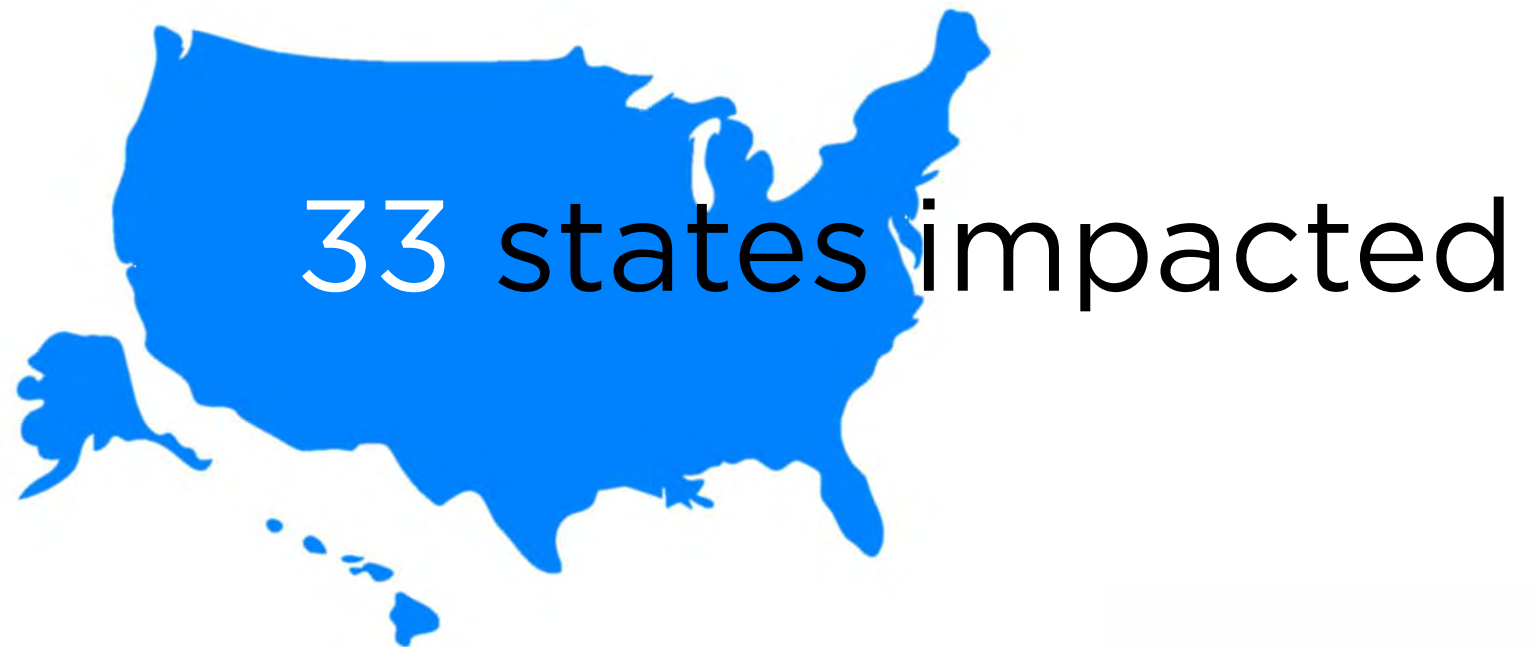
51 Fire Management



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59 Major Declarations



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2
0
1
9

85 FEMA Declarations

.....so far.



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The Challenge



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FEMA has over 40
different grant programs
with
no single set
of requirements.



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Complex
and
Hard to
Navigate



FEMA PA Program



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It's too much to learn
once the disaster hits.



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Feels like ...



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What we do **before** the disaster **sets the course** for long-term recovery.



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The time to
plan
is
now.

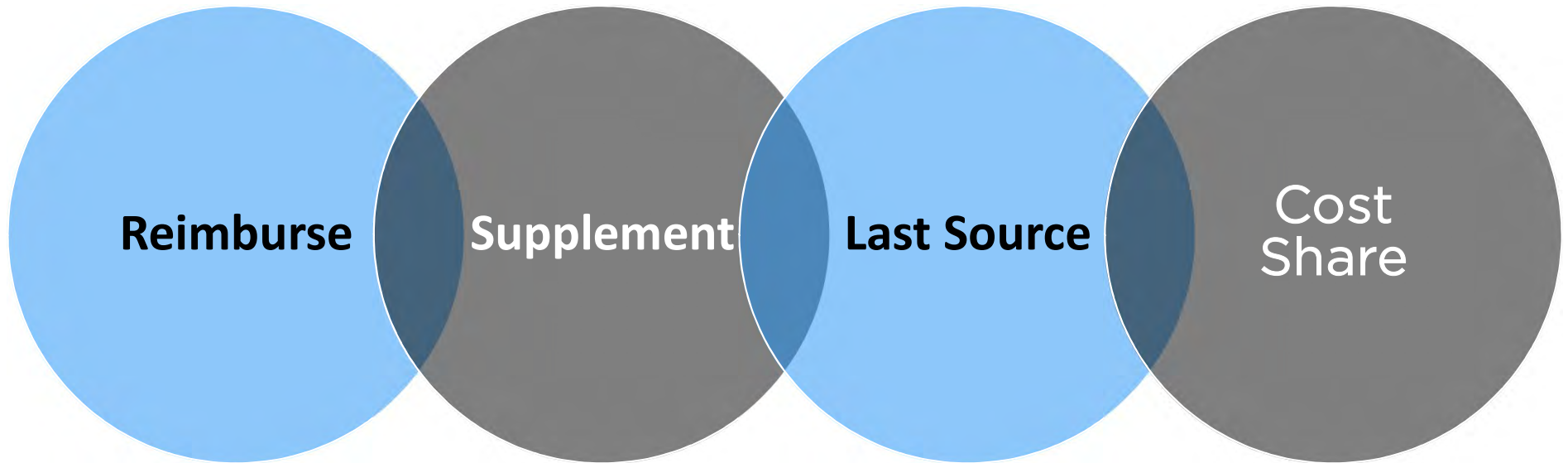


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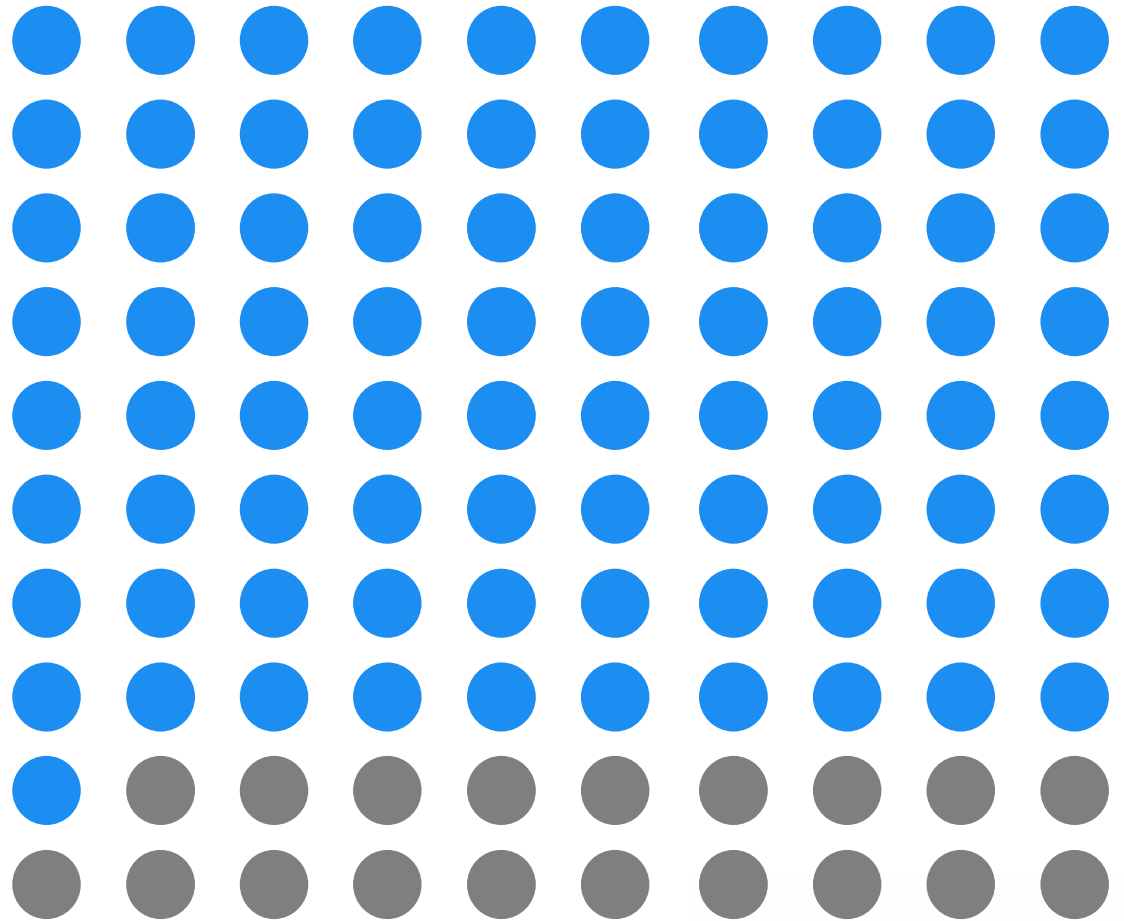
FEMA PA Grant



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81% of
recovery
funding
will be
used to
make
purchases.



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The Story



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Taking a **Seat** at the
Table:
The Story of **Public Entity #1**

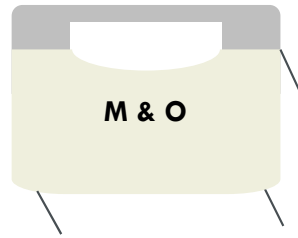


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**EMERGENCY
OPERATIONS**

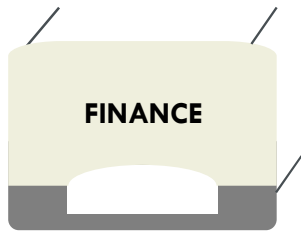


M & O



FACILITIES

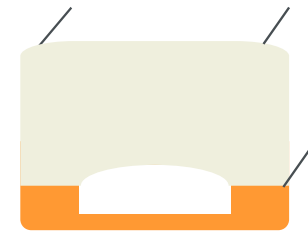
DISASTER RECOVERY PLANNING TABLE



FINANCE



RISK MGT.



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- ✓ Coordination
- ✓ Evacuation
- ✓ Communication
- ✓ Safety
- ✓ Rescue
- ✓ Policy Limits/Deductibles
- ✓ Back-up Power
- ✓ Debris
- ✓ De-watering
- ✓ Budget



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Disaster strikes.



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The



is enacted.



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All is well until...

something needs to be
purchased.



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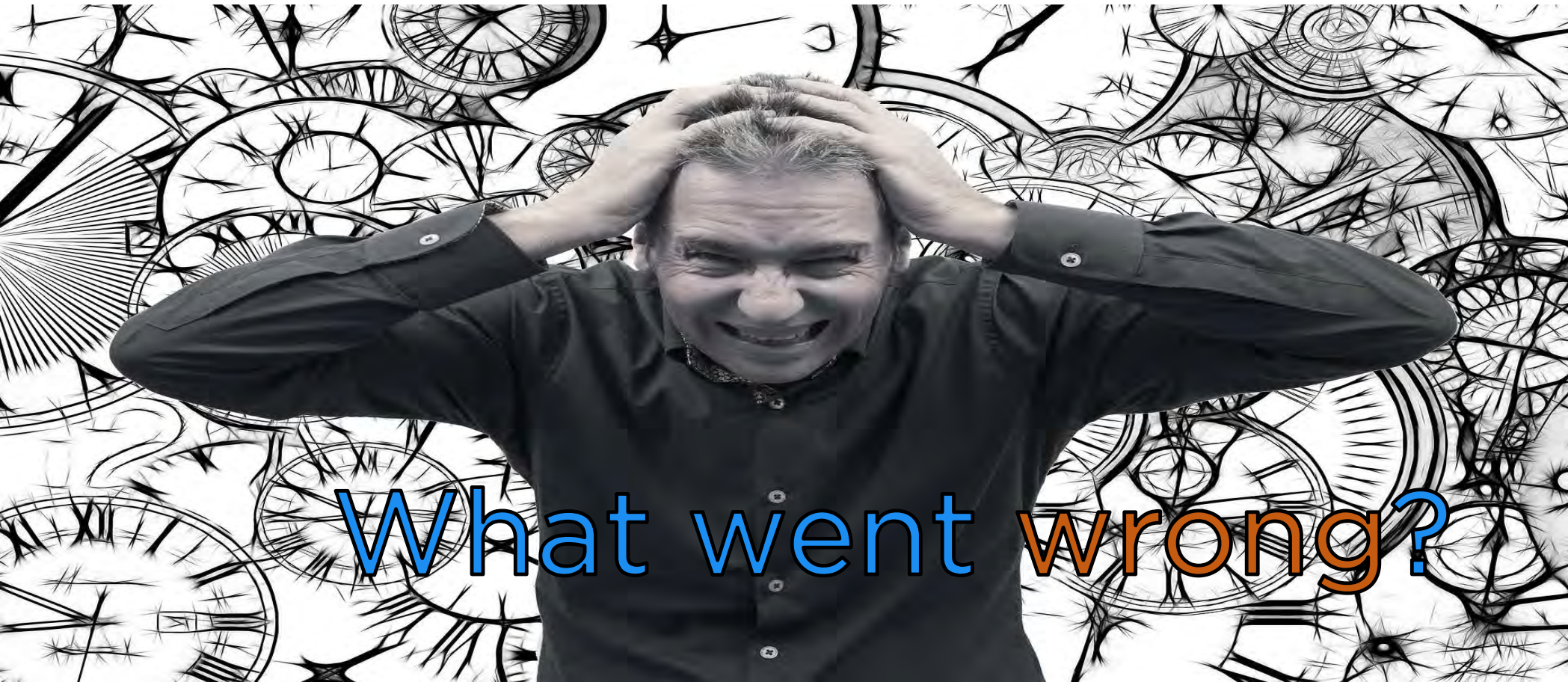




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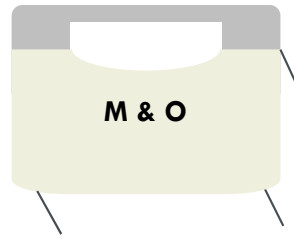
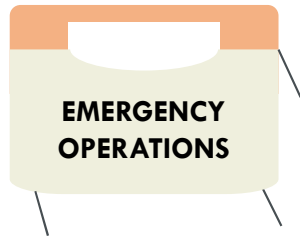
What went wrong?



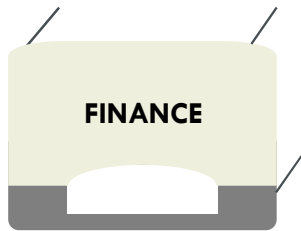
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DISASTER RECOVERY PLANNING TABLE



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Doing things
the way we've
always done
them will most
likely not meet
FEMA's
requirements.



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FEMA-Proofing Your Plan



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Top Procurement and Contracting Violations

Non-competitive contracting policies

Failure to include contract provisions

Failure to take steps to include small/minority/women-owned businesses

Cost-plus-percentage-of-cost contracting



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RULES

Be Aware of
2 CFR 200



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Determine Procurement Method



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Apply the
Most
Restrictive
Rule



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A Word About Purchasing Cooperatives



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January 2018



Fact Sheet

PUBLIC ASSISTANCE: PURCHASING GOODS OR SERVICES THROUGH COOPERATIVE PURCHASING PROGRAMS

The Federal Emergency Management Agency (FEMA) Public Assistance (PA) Program provides supplemental assistance to states, tribes, and local governmental entities, as well as certain private non-profit organizations (hereinafter referred to as applicants). FEMA's Public Assistance Program and Policy Guide (2018 PA Program and Policy Guide (PA-PFG) (V.3.0)) provides comprehensive information regarding the assistance that FEMA can provide and the requirements applicants must meet in order to receive the assistance. This guidance addresses the use of cooperative purchasing programs by non-state applicants.

As a general matter, FEMA suggests that non-state applicants exercise caution when using cooperative purchasing programs because the Agency has observed problems with non-state applicants' ability to meet all of the requirements of the federal procurement standards found in 2 C.F.R. §§ 200.317 - 200.326 when a non-state applicant uses these programs. Applicants are not permitted to use out-of-state cooperative purchasing programs.


Background

To foster economy and efficiency, the federal procurement standards encourage non-state applicants¹ to enter into local-intergovernmental agreements or inter-entity agreements where appropriate for the procurement of goods or use of common or shared goods or services under federal awards.² While the federal procurement standards encourage non-state applicants to use these agreements, non-state applicants still must ensure that their procurements meet all requirements of the federal procurement standards found in 2 C.F.R. §§ 200.317 - 200.326. A cooperative purchasing program is one type of local-intergovernmental agreement or inter-entity agreement that a non-state applicant may want to use to foster economy and efficiency when purchasing goods or services under a federal award. Cooperative purchasing programs are a type of cooperative arrangement where businesses, non-profit organizations, and/or governmental entities agree to aggregate their demand for certain goods or services to get lower prices from selected vendors. Entities typically sign up to use a cooperative purchasing program through a cooperative purchasing agreement, and program membership gives the entities access to lists of agreements or contracts for goods and services at pre-negotiated rates or prices. Typically, the member then accomplishes the actual purchase of goods or services by negotiating with participating vendors and placing purchase orders or entering into contracts based on the rates or prices listed in the cooperative purchasing program's agreements or contracts with vendors.

¹ Non-state applicants include local governments, tribal governments, and non-profit organizations who submit applications for assistance under a state or tribal government's Public Assistance award.
² 2 C.F.R. § 200.318(e).

"FEMA's mission is to support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards."
 January 26, 2018

September 2018



Fact Sheet

PUBLIC ASSISTANCE: PURCHASING GOODS OR SERVICES THROUGH COOPERATIVE PURCHASING PROGRAMS

The Federal Emergency Management Agency (FEMA) Public Assistance (PA) Program provides supplemental assistance to states, tribes, and local governmental entities, as well as certain private non-profit organizations (hereinafter referred to as applicants) to assist them with recovering from emergencies and major disasters. FEMA's Public Assistance Program and Policy Guide provides comprehensive information regarding assistance that FEMA can provide and the requirements that applicants must follow in order to receive the assistance. The purpose of this Fact Sheet is to provide key information regarding the use of cooperative purchasing programs by non-state applicants for procurements above the simplified acquisition threshold. Failure to follow federal contracting requirements may jeopardize FEMA funding for costs associated with that contract.

Understanding Cooperative Purchasing Programs

A "COOPERATIVE PURCHASING PROGRAM" is a cooperative arrangement for acquiring goods or services that involves aggregating the demand of two or more entities in an effort to obtain a more economical purchase. Entities typically sign up to use cooperative purchasing programs through a cooperative purchasing agreement. Program membership may provide entities with access to lists of agreements or contracts for goods and services at pre-negotiated rates or prices. Typically, the member then purchases the goods or services by negotiating with participating vendors and placing purchase orders or entering into contracts based on the rates or prices listed in the cooperative purchasing program's agreements or contracts with vendors.

NOTE: Cooperative purchasing programs are distinguishable from joint procurements. A "JOINT PROCUREMENT" is a method of contracting in which two or more purchasers agree from the outset to use a single solicitation and enter into a single contract with a vendor for the delivery of goods and/or services. FEMA sees fewer compliance issues with joint procurements. While joint procurements are not the focus of this fact sheet, they still must comply with the federal procurement requirements.

DISCLAIMER: This Fact Sheet is intended to provide general information on procurement compliance and is not inclusive of every rule that an applicant may need to comply with. Additional information regarding the federal procurement standards can be found at the following webpage: www.fema.gov/procurement-compliance-issues.

"FEMA's mission is to help people before, during and after disasters."

Page 1 of 3 September 18, 2018

Proceed with caution.

Provide documentation.

Explain compliance with FEMA requirements.



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DISASTER RECOVERY SERVICES



Take Affirmative Steps



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Require

Use

Establish

Divide

Ensure

M/WBE Inclusion

Include

6 Affirmative Steps



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Conduct Independent Estimate



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Publicly Post/Advertise Solicitation



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Document Bid or Qualificaiton Evaluation



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Perform Cost/Price Analysis



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Check for Suspension and Debarment



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Include FEMA Contract Provisions



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Set A Ceiling
Price/ Award
Fixed Fee or
NTE



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when
possible.



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Improvise

as **needed.**



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How do
I get to
the
table?



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SERVICES

You may have to **build your own chair.**



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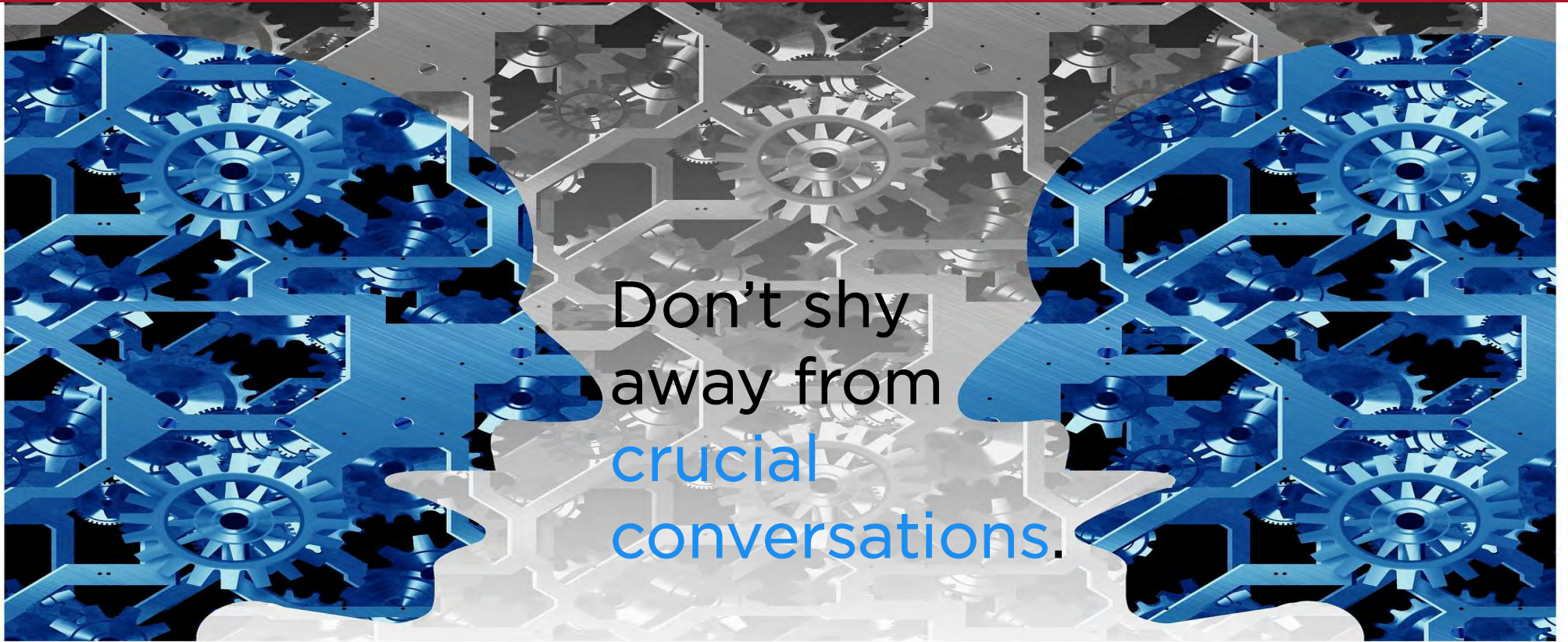
Practice a
balance of
courage and
consideration.



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Don't shy
away from
crucial
conversations.



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Ask to be part of emergency operations annual review and planning.



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Attend training with
emergency operations or risk
management; they need your
insight.



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Be accessible.



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Don't
come to
the table

empty-
handed.



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Helpful Links

FEMA – Procurement Disaster Assistance Team (PDAT) Landing Page:

<https://www.fema.gov/procurement-disaster-assistance-team>

→ PDAT Resources

- Top 10 Procurement Under Grant Mistakes
- Public Assistance Grantee and Subgrantee Procurement Requirements Field Manual and Supplement
- Cost and Pricing Guide
- Checklist for Reviewing Procurements Under Grants
- Contract Provisions Template for Procurements
- Template for Comparison of Federal and State Procurement Requirements

Public Assistance Fact Sheets Landing Page:

<https://www.fema.gov/media-library/assets/documents/90743>

- Public Assistance Fact Sheet
- Public Assistance Delivery Model Fact Sheet
- Public Assistance Reasonable Cost Evaluation Job Aid
- Public Assistance Debris Removal Tips
- Public Assistance Contracting Requirements Checklist
- Exigent or Emergency Circumstances Procurement for Public Assistance
- Purchasing Goods or Services through Cooperative Programs

National Cooperative Procurement Partners:

<https://ncppassociation.org>

- First Aid Kit for Emergency Preparedness
- Recommendation List for Emergency Contracts



FEMA

**PRICING GUIDE FOR
RECIPIENTS AND
SUBRECIPIENTS
UNDER THE UNIFORM RULES
(2 C.F.R. PT. 200)**

**PFLD-FISCAL PDAT
FEMA OFFICE OF CHIEF COUNSEL**

MAY 1, 2016



FEMA

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Introduction and Purpose

Cost or price analysis is an essential component of the procurement process associated with procurements under Federal disaster assistance, despite being overlooked due to the brief discussion afforded to it under the Federal procurement standards. Few procurement topics solicit as many collective sighs of frustration and dread as cost or price analysis. Frequently relegated to the mystical realm of accountants, pricing analysts, or other mathematically inclined, and (allegedly) well compensated individuals, cost or price analysis has frequently and preemptively challenged many, with its perceived maze of complexity and necessary recall of long lost mathematical skills last seen, much less used, in grade school. This often times results in a complete failure to perform cost or price analysis, or at the very least, results in a failure to perform the required analysis correctly.

With this in mind, this Guide is written with the specific intent of assisting FEMA's recipients and subrecipients (formerly referred to as "grantees" and "subgrantees," and now collectively referred to as "non-federal entities" or "NFEs") with identifying and executing basic contract cost or price analysis requirements associated with procurements under Federal disaster assistance grants. Accordingly, this Guide will identify and discuss commonly used general standards and techniques that various entities at all levels of government and industry use to meet the pricing requirements found within the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*¹ (hereinafter referred to as the "Uniform Rules" or "Supercircular").

Note that while this Guide is intended to be a tool in assisting NFEs with identifying and applying some of the commonly available cost or price analysis techniques to their procurements, it is not intended to provide an in-depth discussion of either the specific methods or techniques addressed in the Guide or every available method or technique associated with cost or price analysis.

This Guide is limited in its purpose to providing strictly general information about cost or price analytical methods and techniques, and accordingly, is not intended to be, nor should it be, considered legal advice.

Everyone may use this Guide as a resource in assisting with cost or price analysis requirements under the Federal procurement standards, however, ***FEMA makes no guarantee that the use of this Guide will automatically result in the full reimbursement of eligible expenses. When confronted with an actual, real-world legal issue, please direct your legal concerns to your servicing legal counsel for immediate assistance and advice.***

The guidance provided herein is directed towards and applicable to Indian Tribal governments acting as recipients and/or subrecipients and NFE's *other than* states (hereinafter, simply referred

¹ See 2 C.F.R. 200.

to as “NFEs”). The guidance provided by this document does not strictly apply to State procurements using Federal disaster assistance funds (although, it may be used as amplifying guidance where a State requires additional information in conducting its procurement and State law is silent on the issue). Pursuant to 2 C.F.R. § 200.317, States (to include, state agencies and instrumentalities, exclusive of local governments²) must follow the same policies and procedures they use for procurements from their non-Federal funds. In other words, States will follow and apply their own cost or price analysis requirements and standards to their procurements associated with Federal disaster assistance awards.

Policy:

NFEs must evaluate pricing using either cost or price analysis in order to ensure that required supplies and/or services are procured at fair and reasonable prices. The current Federal procurement standards set by the Uniform Rules states that NFEs must perform *some form* of cost or price analysis in connection with every federally assisted procurement action, including contract modifications that exceed the simplified acquisition threshold, which is currently set at \$150,000.³ (Emphasis added) The Department of Homeland Security (“DHS”) Office of Inspector General (“OIG”) has frequently opined that the absence of cost or price analysis in contracting increases the likelihood of unreasonable costs and misinterpretations, or errors in pricing. Accordingly, failure to conduct an appropriate cost or price analysis may jeopardize the possibility for full reimbursement of otherwise eligible expenses.

However, despite imposing this requirement upon NFE’s to perform a cost or price analysis, the current Federal procurement standards are curiously silent as to what *form* such a cost or price analysis should take, beyond stating that “the method and degree of analysis is dependent upon the facts surrounding the particular procurement situation.”⁴ Due to the lack of additional guidance in the current (and superseded) regulations, NFEs often inquire as to what techniques or steps they must perform in order to meet the regulatory requirements to conduct a price or cost analysis.

² 2 C.F.R. § 200.90.

³ See, 2 C.F.R. § 200.88. Simplified acquisition threshold means the dollar amount below which a NFE may purchase property or services using small purchase methods. NFEs adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. Please note that the dollar value associated with the simplified acquisition threshold is periodically adjusted for inflation.

⁴ 2 C.F.R. § 200.323(a).

When posed questions concerning the appropriate methods and techniques to use for cost or price analysis, beyond the limited information provided in the Federal procurement standards, FEMA’s response has traditionally fallen within one of the following three general categories:

- (1) As with all Federal procurement standards imposed by the *Uniform Rules*, NFE’s must ensure that their procurements comply with any cost or price analysis requirements imposed by their own local procurement laws or regulations, any and all state (and/or tribal government, where applicable) procurement laws or regulations, as well as ensure that those laws and regulations are consistent with the Federal procurement standards found in the *Uniform Rules* at 2 C.F.R. §§ 200.318 – 326.⁵ In other words, NFEs must ensure that they conform to and comply with, any local, state, and/or tribal procurement laws and regulations pertaining to the specific use and application of cost or price analysis, in order to also meet the Federal procurement standards requiring cost or price analysis for all procurements above the simplified acquisition threshold of \$150,000 – unless a more stringent requirement exists.
 - a. If for example, local procurement regulations impose a mandatory cost or price analysis on transactions valued over \$50,000, the NFE would have to perform cost or price analysis (whichever is appropriate under the local procurement requirements) at all dollar thresholds in excess of \$50,000, even though the Federal standard establishes a \$150,000 threshold. This is so because the Federal standards, as applied to NFEs other than States, establish a minimum floor for certain identified procurement standards. In other words, in situations where a direct conflict in applicable laws exists, the NFE must comply with the more stringent standard.
 - b. Conversely, if the local procurement regulation imposes a less stringent dollar threshold applying mandatory cost or price analysis only to transactions over \$200,000, the NFE could not utilize the less stringent local dollar threshold of \$200,000, but would instead be required to utilize the more stringent Federal dollar threshold for the application of cost or price analysis found in the *Uniform Rules*.
- (2) If cost or price analysis is not addressed by local, state, or tribal (where applicable) procurement laws and regulations, FEMA has previously provided very limited guidance on “cost analysis” concerning only debris removal contracts.⁶

⁵ Previously found at 44 C.F.R. § 13.36(b) – (i) for local and tribal governments; and 2 C.F.R. §§ 215.40-48 for Non-profit organizations.

⁶ FEMA Recovery Fact Sheet, RP9580.201, *Debris Contracting Guidance*, Attachment 1: Debris Removal Contract Cost Analysis, dated 9/27/10. As of 1 January 2016, FEMA’s Public Assistance Branch has replaced its 9500 series policies with FP 104-009-2, *Public Assistance Program and Policy Guide*. The *Policy Guide* does not address cost or price analysis beyond referencing 2 C.F.R. pt. 200. The 9500 series policies, however, will remain in effect for

- (3) If cost or price analysis issues are raised concerning situations involving anything other than debris removal contracts and no local, state or tribal guidance is provided, FEMA typically utilizes guiding principles drawn from the Federal Acquisition Regulations (“FAR”) (which apply to Federal government procurements) as a tool to analyze the adequacy of the cost or price analysis conducted by the NFE in connection with its procurement.⁷

Accordingly, amplifying guidance is required to supplement the limited information provided by 2 C.F.R. Part 200, and includes recommended deference and documented application of local, tribal, and state cost and pricing rules and requirements, where applicable. Furthermore, where useful, this Guide discusses the most common forms of cost or pricing techniques used by prospective applicants, to include procedures described in the Federal Acquisition Regulations (“FAR”). While not strictly applicable in this context, the FAR provides useful guiding principles on cost or price analysis that FEMA (or NFEs) may consult in conducting its reviews of NFE cost or price analyses.

The Federal Procurement Standards under the Uniform Rules.

The current Federal procurement standards, to include the revised cost or price analysis requirements found at 2 C.F.R. § 200.323, went into effect on December 26, 2014, with the implementation of the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. Prior to December 26, 2014, there were technically two cost or price analysis standards in place, each dependent upon the type of entity that was receiving Federal disaster assistance. 44 C.F.R. § 13.36(f) dealt with cost or price analysis requirements for procurements affecting local and Indian tribal governments, while 2 C.F.R. § 215.45 established the cost or price analysis standards applicable to Institutions of Higher Education (IHE), Hospitals, and other private non-profit organizations (“collectively referred to as “PNPs”).

Of these three cost or price analysis standards, 44 C.F.R. § 13.36(f) and 2 C.F.R. § 200.323 are the most similar. When drafting the new Federal procurement standards, the Office of Management and Budget (“OMB”) essentially utilized the cost or price analysis standard found at 44 C.F.R. § 13.36(f) as its template for the new cost or price analysis standards. Accordingly, those familiar with the old cost or price analysis requirements from § 13.36(f) will find comfort

all projects associated with disasters or emergencies declared prior to 1 January 2016. Accordingly NFEs may use RP9580.201 as amplifying guidance as to how to apply cost analysis to debris removal contracts, in conjunction with the information provided in this Guide.

⁷ See, 48 C.F.R. Vol. 1, Chapter 1, Parts 1-51, Federal Acquisition Regulation (e.g. “FAR”); or <http://farsite.hill.af.mil> for a streamlined website for the FAR and the various Agency FAR supplements – select for example, FAR part 15, subpart 15.4 “Contract Pricing.” While not strictly applicable to the Federal procurement standards found at 2 C.F.R. pt. 200, the FAR incorporates many commonly used techniques of cost or price analysis, and can be useful in assisting NFEs conduct their own cost or price analyses, where no additional amplifying guidance is available or applicable.

in that the new standard is much more permissive than the old. The new requirements retained much of the same language, although some of the more restrictive language and guidance was removed.

While the new cost or price analysis standards found at 2 C.F.R. § 200.323 are the default standards going forward under the *Uniform Rules*, the cost or price analysis standards that preceded it are still in effect under certain situations. For example, the old standards are still in effect for declarations (and projects associated with awards and subawards associated with those declarations regardless of start date) issued prior to December 26, 2014, as well as for projects that are initiated pursuant to the *Uniform Rules*' recognized "grace period."⁸ Accordingly, knowledge of both the old and the new standards will remain important to NFEs for the foreseeable future and both are briefly discussed below.

The *Uniform Rules*' Cost or Price Analysis Standards – 2 C.F.R. § 200.323.

The regulation at 2 C.F.R. § 200.323 includes the following contract cost or price requirements:

- (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold, including contract modifications.⁹ The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must develop an independent estimates before receiving bids or proposals.¹⁰
- (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed.¹¹ To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for work.¹²
- (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in

⁸ See, 2 C.F.R. § 200.110.

⁹ Cost or price analysis is required for all procurements exceeding the Simplified Acquisition Threshold. The Simplified Acquisition Threshold is currently set at \$150,000, but is subject to periodic revision.

¹⁰ Must conduct an independent cost estimate in all situations regardless of dollar threshold. A variety of methods exist to meet this requirement. For example, an independent cost estimate can be conducted utilizing can be established through the use of market research that identifies the median price for a particular type of supply or service.

¹¹ Cost analysis is generally performed for cost-reimbursement type contracts, Architecture & Engineering contracts, or professional services contracts, for example.

¹² In other words, the more difficult or complex the required work is, the more likely a NFE can justify higher profits as fair and reasonable within the overall context of the procurement.

negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part.¹³ The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must **not** be used.¹⁴ (Emphasis added. These contracting methods must never be used.)

These current requirements, while substantially similar to earlier cost or price analysis requirements, differ in certain regards to those found previously at 44 C.F.R. § 13.36(f), which, as earlier stated, was used by OMB as the template for the new Uniform standards:

(1) Grantees and subgrantees must perform a cost or price analysis in connection with *every* procurement action including contract modifications.¹⁵ The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, *grantees* must make independent estimates before receiving bids or proposals.¹⁶ *A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts.*¹⁷ *A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.*¹⁸ *A price analysis*

¹³ Cost principles deal with whether an expense is allowable, allocable and reasonable in nature. *See, Subpart E – Part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.*

¹⁴ These types of contracts are strictly prohibited. They are prohibited because there is no incentive for the contractor to keep its incurred costs low due to the associated percentage of profit earned on incurred costs. There is instead a reverse incentive for the contractor to continue to increase its incurred costs in order to increase its associated profit. In other words, the higher its incurred costs, the higher the contractor's profit will be. *See, PDAT Procurement Field Manual*, pp. 81-83 for further discussion of Cost Plus Percentage of Cost Contracts (CPPC).

¹⁵ Unlike the new *Uniform Rules* standards, cost or price analysis under the old standards was required at all dollar thresholds. There was no limitation based upon the Simplified Acquisition Threshold (\$150,000), as there is under the new *Uniform Rules*.

¹⁶ Unlike the new *Uniform Rules* standards where all NFEs are required to conduct independent cost estimates, here, 44 C.F.R. Sec. 13.36(f) only requires grantees to perform independent cost estimates. In other words, only states and Indian Tribal governments acting as grantees were required to produce independent cost estimates.

¹⁷ While these prior examples are no longer referenced by the new procurement standards, they still remain excellent examples of what constitutes cost analysis and when to use them, particularly where, under these situations, cost reimbursement contracts are utilized. As such, they remain useful tools for recipients and subrecipients

¹⁸ Under the previous price or cost analysis standards found at 44 C.F.R. § 13.36(f), generally speaking, cost analysis was required where inadequate price competition or sole source contracting occurred. Under the new Federal procurement standards associated with the *Uniform Rules*, this is no longer the case, as price analysis may now be used under these same circumstances, which previously required cost analysis.

*will be used in all other instances to determine the reasonableness of the proposed contract price.*¹⁹ (Emphasis added)

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see 44 C.F.R. § 13.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

2 C.F.R. § 215.45, which was applicable to Institutions of Higher Education (IHE), Hospitals and Other Non-Profit Organizations, provided the following:

*Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action.*²⁰ *Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.*²¹ (Emphasis added)

While the new *Uniform Rules* on cost or price analysis are similar to those standards that came before it, they are not entirely the same. Although the new standards are less proscriptive and excise specific guidance provided by the earlier regulations, the excised information generally represents basic tenets of cost or price analysis that are commonly used in procurement. As such, while not expressly required by the new cost or price analysis standards found in the *Uniform Rules*, the more specific information excised from the earlier cost or price analysis standards, remains useful as amplifying guidance as to when it may be appropriate to utilize cost

¹⁹ This more proscriptive language has been removed from the new Federal procurement standards addressing cost or price analysis found at 2. C.F.R. § 200.323.

²⁰ Unlike the new *Uniform Rules* standards, cost or price analysis is required at all dollar thresholds, not just those procurements that exceed the Simplified Acquisition Threshold.

²¹ While not specifically included in the new *Uniform Rules* standards for cost or price analysis, the examples provided here represent general concepts associated with the performance of cost or price analysis. Accordingly, the language here continues to provide useful information as to how to perform cost or price analysis and the situations in which they may arise.

(as opposed to price) analysis under the new Federal procurement standards that went into effect on December 26, 2014.

Implementing the Current Standards under the *Uniform Rules*.

The previous section compared the requirements in the new and old standards under the *Uniform Rules*. This section provides more details on cost or price analysis under the new Federal procurement standards.

- (1) Contract Cost or Price: NFEs must perform a cost or price analysis in connection with every procurement action in excess of the simplified acquisition threshold, including contract modifications. 2 C.F.R. § 200.323(a) In other words, whenever a procurement exceeds the current simplified acquisition threshold, which is \$150,000, the NFE must perform a cost or price analysis.
- (2) Method and Degree of Analysis and Independent Estimate. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the NFE must develop independent price or cost estimates before receiving bids or proposals. 2 C.F.R. § 200.323(a) In other words, besides the requirement to develop an independent estimate (at any dollar threshold), NFEs must determine for themselves, what the reasonable and appropriate form of analysis will take – whether that will be price or cost analysis – and the particular means of doing so. Under this scenario, the method and degree of analysis will be dictated by the complexity of the procurement and the facts and circumstances associated with it. For example, generally speaking, the less complex a procurement is, the more likely it will be reasonable and appropriate to utilize a form of price analysis to meet this requirement; while on the other hand, the more complex a procurement is, the more likely the situation will necessitate the use of a cost analysis to adequately determine a fair and reasonable price.
- (3) Amplifying Guidance. FEMA provides the following amplifying guidance as to the meaning of cost or price analysis.
 - a. Price Analysis. Price analysis is the most commonly used method to determine fair and reasonable price because it is less complex and time consuming than other methods. It involves the examination and evaluation of a proposed price without evaluating its separate cost elements (e.g. labor category rates, individual components of cost, etc.) and proposed profit (unless otherwise instructed to by the Uniform Rules).

- i. When Used. This is the form of analysis typically used when acquiring commercial items (which are items that generally maintain similar standards or quality and differ only in price) or when using the procurement through sealed bidding method.²²
- ii. Techniques. NFEs are responsible for selecting and using whatever price analysis techniques will ensure a fair and reasonable price. NFEs may use various price analysis techniques and procedures to ensure a fair and reasonable price.²³ Examples of such techniques include, but are not limited to the following:
 1. Comparing proposed prices received in response to the solicitation.²⁴ Normally, adequate price competition establishes a fair and reasonable price;
 - a. Adequate price competition is dependent on the following:
 - i. At least two responsible offerors/bidders respond to a solicitation;
 - ii. Each offeror/bidder must be able to satisfy the requirements of the solicitation;
 - iii. The offerors/bidders must independently contend for a contract to be awarded; and
 - iv. Each offeror/bidder must submit priced offers/bids that are responsive to the expressed requirements of the solicitation.²⁵
 - b. If the four conditions outlined above are met, price competition is adequate unless:

²² Under the new Federal procurement standards associated with the *Uniform Rules*, price analysis may be used in situations where adequate price competition is lacking and where non-competitive/sole source procurements exist, where price analysis techniques are available and use is appropriate. This was not the case under the previous cost or price analysis standards.

²³ See, FAR 15.404-1(b)

²⁴ For example, under sealed bidding, by virtue of opening each individual bid and comparing the associated prices to each other, a NFE will be considered to have conducted price analysis.

²⁵ See, FAR 15.403-1(c)(1)

- i. The solicitation was made under conditions that unreasonably deny one or more known and qualified offerors an opportunity to compete;
 - ii. The low competitor has such an advantage over other competitors that it is practically immune to the stimulus of competition; and
 - iii. The lowest final price is not reasonable, and this finding can be supported by facts.
2. Comparing prior (historical) proposed prices and contract prices with current proposed prices for the same or similar goods or services.
 - a. This scenario generally occurs where NFEs procure the same or similar supplies or services on a recurring or frequent basis, so that the prices proposed and ultimately accepted contain little variation.
 - b. Changes in quantity, quality, delivery schedules, and the economy cause price variations. Each differing situation must be analyzed through trend analysis. Also ensure that the previous price was fair and reasonable. This determination must be based upon a review of the documentation contained in the previous files.
3. Comparing offers with competitively published catalog prices, published market prices, or similar indices.²⁶
 - a. Established Catalog Prices. The idea behind these types of prices is that a commercial demand exists and suppliers have been developed to meet that demand. This technique tries to ensure that NFEs receive at least the same price as other buyers in the market for the same or similar items. NFEs must ensure that such prices do not simply reflect

²⁶ Under this scenario, the key requirement is that the price lists, market prices, or similar indices, such as commercial price indexes, are published or publicly available for purposes of comparison and are not based upon internal documentation not available to the general public. This ensures that the proposed prices can be compared to actual prices paid for similar supplies or services, for what in essence is the going rate determined by the market place.

internal pricing documents and must establish the following:

- i. Established catalog prices exist;
 - ii. The items are commercial in nature;
 - iii. They are sold in substantial quantities; and
 - iv. They are sold to the general public.
 - b. Established Market Prices. Similar to established catalog prices, except there is no catalog. A market price is a current price established in the usual or ordinary course of business between buyers and sellers free to bargain. These prices must be verified by buyers and sellers who are independent of the offeror.
4. Comparing proposed prices with independently developed price estimates prepared by, or on the behalf of the NFE.
- a. Under this scenario, price estimates would be developed and used as the basis by which proposed prices would be evaluated against to determine whether a proposed price was fair and reasonable. In other words, the closer the proposed price is to the independently developed price estimate for the requirement, the more likely the proposed price would be considered to be fair and reasonable.
 - b. Verify the facts, assumptions, and judgments used. Have the estimator provide the method and data used in developing the estimate. For example, did prices come from current catalogs or industry standards? Be comfortable with the estimate before relying on it as a basis for determining a price to be fair and reasonable.
5. Comparing proposed prices with prices for the same or similar items obtained through market research. Under this scenario, a NFE performing adequate and sufficient market research in preparation for the solicitation and award of a potential contract,

can use information obtained concerning pricing for similar or identical goods and services as a basis by which to compare actually received prices submitted by offerors/bidders. *See also*, established market prices (above).

6. Prices set by Law or Regulation. Prices set by law or regulation are typically considered to be fair and reasonable. Adequately document the situation by acquiring a copy of the rate schedules set by the applicable law or regulation for your contract files. Once these schedules are obtained, verify that they apply to your situation and that the correct price is being charged.

iii. Tools for Price Analysis.

1. Competitor's Catalogs – ensure that compared catalogs are from the same time frame.
 2. Newspaper Advertisements – ensure that the ad/s is/are current.
 3. Government Catalogs – FEMA's Public Assistance Schedule of Equipment Rates.²⁷ Additionally, Federal Supply Schedules may be used for price comparison even though a NFE may not be able to fulfill its requirement through them.
 4. Industrial Catalogs – for example, the National Mechanical Contractor Estimator (NMCE) is an excellent potential source for pricing mechanical items.
 5. Government Price Index. Use as a comparison approach to price and cost analysis. An index can be used with historical prices to analyze, compare, and predict current prices for a specific product or service.
- b. Cost Analysis. Cost analysis is the review and evaluation of the separate cost elements (i.e. labor hours, overhead, materials, etc.) and proposed profit or fee in an offeror's proposal in order to determine a fair and reasonable price. Cost analysis includes the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency. Cost analysis differs from price analysis in that cost

²⁷ The Schedule of Equipment Rates is available at, <https://www.fema.gov/schedule-equipment-rates>.

analysis focuses on the reasonableness of each estimated cost element and adds a reasonable rate of profit/fee to arrive at the contract price.

- i. When Used. This is the form of analysis typically used to establish the basis for negotiating contract prices when:
 1. Using the procurement through competitive proposals method;
 2. Using procurement through sealed bidding and price competition is not sufficient;
 3. Any other case when price analysis, by itself, does not ensure price reasonableness; and
 4. Procuring professional, consulting, and architectural engineering services contracts.

- ii. Techniques. NFEs are responsible for selecting and using whatever cost analysis techniques will ensure a fair and reasonable price. While the Federal procurement standards under the Uniform Rules do not describe these techniques, if local, state or tribal (where applicable) procurement standards do identify and require the use of specific techniques, these requirements should be applied. In all other situations, examples of available techniques include, but are not limited to the following:
 1. Verification of the cost or pricing data (a breakdown of costs);
 2. Evaluation and verification of individual cost elements; and
 - a. The elements add up to the total price;
 - b. Understanding the need for each element of cost;
 - c. The same thing does not appear in more than one statement of cost; and
 - d. The general format compares with the breakdown for similar items or services from the same source.

3. Comparison of costs proposed for individual cost elements with previously incurred actual costs and independently developed estimates by the NFE.
- iii. A Contractor's proposal should include comparisons of current estimated costs with:
1. Actual costs previously incurred;
 2. The most recent cost estimate for the same or similar items or with a series of prior estimates;
 3. Current cost estimates from other possible sources providing the same or similar supply or service; and
 4. Independent forecasts of future costs.
- iv. Tools for Cost Analysis. In addition to the tools for price analysis, NFEs may utilize the following tools for cost analysis:
1. Technical Evaluation. NFEs can use this method when evaluating offers by either price or cost analysis. While the technical evaluation is not directly related to price, it involves the NFE's assessment of quantitative and qualitative factors which influence the offered price. Technical evaluations allow the NFE to evaluate the functions that cause costs. Technically trained and experienced personnel are in the best position to assist in the analysis of hours, quantities, tooling, testing, head counts, productivity, and similar factors.
 2. Accounting Records can show the cost of a job, but are of limited value in determining reasonableness. Technical skills and judgments are required to determine reasonableness and necessity of those costs.

3. When a technical evaluation is required prior to negotiations, it should address such things as:
 - a. An estimate of necessary labor-hours with an indication as to where adjustments are desirable;
 - b. Reasonableness of proposed material type, quantity, and necessity;
 - c. The need for acquiring equipment and which equipment should be considered as general purpose or unique to the performance of a particular contract;
 - d. The possibility and availability of recipient or subrecipient property;
 - e. Number, location, and need for any recipient or subrecipient funded trips by contractor personnel;
 - f. A summary statement as to whether or not labor, material, travel, and other cost elements are reasonable along with the evaluator's rationale.
4. Auditor Pricing Support. Provides verification of proposed costs and an examination of the vendor's estimates; for example, certain categories of materials, salaries of contractor personnel, or the actual cost elements may have contributed to an overhead rate. The auditor should also tell the NFE of all prohibited costs included in the contractor's proposal, as determined by the Uniform Rules Cost Principles, or cost principles applicable under the local, state and/or tribal procurement policies.
- c. Negotiation of Profit. NFE's must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where a cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to:
 - i. The complexity of the work to be performed;
 - ii. The risk borne by the contractor;

- iii. The contractor's investment;
 - iv. The amount of subcontracting;
 - v. The quality of the contractor's record of past performance; and
 - vi. Industry profit rates in the surrounding geographical area for similar work.²⁸
- d. Cost Plus Percentage of Cost Contracts. NFEs are prohibited from using the cost plus percentage of cost and percentage of construction cost (also referred to as "CPPC") methods of contracting. 2 C.F.R. § 200.323(d)
- i. FEMA considers a CPPC contract to be a contract containing some element that obligates the NFE to pay the contractor an amount (in the form of either profit or cost), undetermined at the time the contract was made, to be incurred in the future, and based on a percentage of future costs. The inclusion of an overall contract ceiling price (vice a cap that specifically addresses the profit) does not make these forms of contracts acceptable.²⁹
 - ii. This type of contract is prohibited because there is no incentive for the contractor to keep its incurred costs low. Instead, there is a reverse incentive for the contractor to continue to incur additional costs in order to continue to drive the contractor's percentage of cost up. In other words, increased spending by the contractor will yield higher profits. Consequently, this type of contract is most beneficial for a contractor, but less than ideal for an Applicant who may incur unnecessary costs up to

²⁸ 2 C.F.R. § 200.323(b)

²⁹ For example, all cost reimbursement type contracts generally include an overall contract cost ceiling that the contractor exceeds at its own risk. The inclusion and existence of such an overall cost ceiling, however, does not insulate a NFE from the possible adverse ramifications of the use of a CPPC contract. Compare and contrast this situation to one where not only does the cost reimbursement type contract include an overall contract cost ceiling, but also includes a cost ceiling or cap associated with the prospective profit tied to the contractor's actual incurred costs. Under this scenario, the NFE places a cap on the potential profit to be earned by the contractor on its actual incurred costs. For example, contractor is to receive 10% of actual incurred costs as profit, but the contract caps the potential profit at \$40,000 on a \$1 million dollar contract. Here, no matter how much the contractor incurs in actual costs, its associated profit will never exceed \$40,000. Accordingly, there is no longer an inverse incentive for the contractor to continue to increase its actual incurred costs in order to continuously increase its profit. This situation is different from the aforementioned scenario involving only an overall contract cost ceiling, whereby the contractor can continue to increase its incurred costs and associated percentage of profit undeterred until the contract ceiling is reached, with no guarantee that the contract requirements are met when the overall contract ceiling is reached.

and including the contract cost ceiling, but may never receive the full benefit of the bargained for contract.

iii. Accordingly, FEMA will use the following four-part analysis to determine if a certain contract is a prohibited cost plus percentage of cost or percentage of construction cost contract:

1. Payment is made on a pre-determined percentage rate;
2. The pre-determined percentage rate is applied to actual performance costs;
3. The contractor's entitlement is uncertain at the time of contracting; and
4. The contractor's entitlement increases commensurately with increased performance costs.

iv. The prohibition against a cost plus percentage of cost and percentage of construction cost also applies to subcontracts of the contractor cases where the prime contract is a cost-reimbursement type contract or subject to price redetermination.³⁰

e. Estimated Costs. Costs or prices based on estimated costs for contracts under the FEMA award are allowable only to the extent that costs incurred or cost estimates included in the negotiated prices would be allowable for the NFE under the Federal cost principles at 2 C.F.R. Part 200, subpart E. The Cost Principles identify and discuss what costs are allowable (permissible), allocable (associated with the contract), and reasonable (self-explanatory). The NFE may also reference its own cost principles that comply with the Federal cost principles.

³⁰ This is the case because a CPPC type subcontract would allow the subcontractor to pass along the improperly incurred costs and profits to the prime contractor, which in turn would be allowed under the cost-reimbursement type contract to recover the subcontractor costs under its own cost-reimbursement contract.

PRICING EXAMPLES

Price Analysis Examples: Note, scenarios are intended to identify cost or price analysis principles, and do not address other required Federal procurement standards that may apply.

I. Adequate Price Competition:

1. **Review:** This condition exists when two or more responsible offerors compete independently and submit proposals deemed responsive to a solicitation, and there is no evidence that competition was restricted or that the lowest price is unreasonable. *See also*, pg. 11, above.

2. **Proper Pricing:**

- a. Independent cost estimate - \$500,000.
- b. Invitation for Bids (IFB) issued for school construction project.
- c. Award is to be made to the lowest priced, responsive and responsible bidder.
- d. Four bids were received in response to the IFB:

| Bidder | Price |
|---------------|--------------|
| A | \$510,000 |
| B | \$550,000 |
| C | \$495,000 |
| D | \$495,001 |

- e. All bids were reviewed and determined to be responsive at the time of bid opening.
- f. Award – Award is properly made to Bidder C as it submitted the lowest priced, responsive bid and was determined to be responsible (prior to contract award). Adequate price competition exists in this scenario by virtue of the receipt and comparison of four independently and competitively priced bids.

3. **Improper Pricing:**

- a. Identical Invitation for Bids (IFB) issued for school construction project.
- b. However, instead of receiving four bids, only one bid is received, from Bidder A.

| Bidder | Price |
|---------------|-----------------|
| A | \$510,000 |
| B | Declined to Bid |
| C | Declined to Bid |
| D | Declined to Bid |

- c. Bidder A’s bid is reviewed and determined to be responsive at the time of bid opening.
- d. Award – While award may go to Bidder A, where Bidder A is the only prospective contractor to submit a bid, the price cannot be determined to have been based on *adequate price competition*. There is no adequate price competition under this scenario because only one price was submitted and no competitive comparison is possible. Accordingly, a different method of price analysis is required to determine fair and reasonable pricing.

II. Price Based Upon Previous Purchases:

- 1. **Review:** Changes in quantity, quality, delivery schedules, and the economy can cause price variations. Each differing situation must be analyzed through trend analysis. Also ensure that the previous price was fair and reasonable. This determination must be based upon a physical review of the documentation contained in the previous files.
- 2. **Proper Pricing:**
 - a. Independent cost estimate: \$1,000,000.
 - b. IFB issued for 1000 portable generators.
 - c. Award is made to the lowest priced, responsive, responsible bidder.
 - d. One bid was received in response to the IFB.

| Bidder | Price |
|---------------|-----------------|
| A | \$985,000 |
| B | Declined to Bid |
| C | Declined to Bid |
| D | Declined to Bid |

- e. The contracting authority had previously placed an order for 1,000 generators in Purchase Order (“PO”) #5157. Review of the PO reveals the following:

- i. The award price was \$985 for each generator.
 - ii. The vendor was Bidder A.
 - iii. The order was placed six months previously.
 - iv. Four responses were previously received, ranging in unit price from \$985 to \$1,005 and price was previously determined to be fair and reasonable based on this competition.
- f. No major fluctuations in the generator industry have occurred since the previous purchase.
- g. Considering the circumstances of each requirement, Bidder A's price may be determined fair and reasonable based on the recent previously competitive purchases.

3. **Improper Pricing:**

- a. Identical situation and response as the above scenario.
- b. The only known previous purchase, which is also six months old, reveals the following:
 - i. Award was made to Bidder A for \$985 per generator, with adequate price competition cited to as the basis for a fair and reasonable price determination.
 - ii. However, upon closer inspection of the contract files, no bids other than Bidder A's bid were in fact submitted to the contracting activity. Therefore, the earlier award did not involve adequate price competition supporting a fair and reasonable price determination.

Accordingly, award cannot yet be made to Bidder A, as it is impossible to determine price reasonableness of the previous purchase. While the previous price paid was identical to the instant price, the previous price was not accurately determined to be fair and reasonable because competition did not, in fact, exist. Therefore, some other form of pricing must be used in the instant case.

III. Price Based on Published Catalogs or Price Lists:

1. **Review:** The idea behind catalog prices is that a commercial demand exists and suppliers have been developed to meet that demand. Applicants attempt to ensure that they get at least the same price as other buyers in the market for these items. Efforts should be taken to ensure that the catalog is not simply an internal pricing document. Accordingly, establish catalog prices are dependent on the following: (1) established catalog prices exist; (2) the items are commercial in nature; (3) they are sold in substantial quantities; and (4) they are sold to the general public.

2. **Proper Pricing:**

- a. Independent cost estimate: \$1,000,000.
- b. RFP issued for 1,000 portable generators.
- c. Award is made to the offeror whose offer represents the “best value” to the Applicant, in accordance with, the evaluation criteria established in the RFP.
- d. Three offers are received.

| Offeror | Price |
|----------------|-----------------|
| A | \$985 per unit |
| B | \$1000 per unit |
| C | \$1010 per unit |

- e. Offeror A submitted the lowest priced offer and states that their price of \$985 per unit is published in the firm’s current public sales catalog and attaches an electronic copy of the respective page, which accurately reflects a price of \$985 per generator.
- f. Upon evaluation, Offeror A was awarded the contract.
- g. Award is rightly made to Offeror A, as its submitted price was determined to be fair and reasonable because it was in accordance with its published catalog price.

3. **Improper Pricing:**

- a. Identical situation and response.

- b. Offeror A submitted the lowest priced offer and states that its submitted price conforms to its current internal sales pricing list, which is not available to the public at large.
- c. Upon evaluation, Offeror A was awarded the contract.
- d. Award should not be made based on Offeror A’s submitted price because its price cannot be determined fair and reasonable on the basis of a published catalog or price list. Based on the information available, the price list in question appears to be an internal pricing document that does not accurately reflect the price at which the requested generators are normally sold to the general public.

IV. Established Market Prices:

1. **Review:** These prices are based on the same principle as catalog prices, except that there is no catalog. A market price is a current price established in the usual or ordinary course of business between buyers and sellers free to bargain. These prices must be verified by buyers and sellers who are independent of the offeror. If the NFE does not know the names of other commercial buyers and sellers, the NFE may obtain this information from the offeror.

2. **Proper Pricing:**

- a. Independent cost estimate: \$1,000,000.
- b. RFP issued for 1,000 portable generators.
- c. Award is made to the offeror whose offer represents the “best value” to the Applicant, in accordance with, the evaluation criteria established in the RFP.
- d. Three offers are received.

| | Price |
|---|-----------------|
| A | \$985 per unit |
| B | \$1000 per unit |
| C | \$1010 per unit |

e. Offeror A states that the price they submitted is the “going rate” for the type of generator requested. As evidence, they submit invoices from several other sales, similar in size and scope, which demonstrate an identical price per unit.

- f. Award is made to Offeror A on the basis that it offers the best value to the Applicant based on the evaluation criteria.
 - g. Award is rightly made to Offeror A and the price may be determined fair and reasonable based on established market prices.
3. **Improper Pricing:**
- a. Identical situation as above.
 - b. Offeror A is unable to produce any record of commercial sales and can only locate one source for the generators.
 - c. Award should not be made without further analysis, as price cannot be determined to be fair and reasonable based on established market price. This does not appear to be a commercial item sold in substantial quantities to the general public.

V. Prices Set by Law or Regulation:

- 1. **Review:** Prices set by law or regulation are determined to be fair and reasonable. NFEs should acquire a copy of the rate schedules set by the applicable law or regulation. Once these schedules are obtained, verify that the rates apply to the situation and that the charges are the correct price. For utility contracts, this policy applies only to prices prescribed by an effective independent regulatory body.
- 2. **Proper Pricing:**
 - a. Independent cost estimate: \$165,000 for 8,250 cubic yards of refuse at \$20 per cubic yard.
 - b. IFB issued for temporary refuse collection and delivery to, and storage at a remote transfer site for a period of three months.
 - c. Four bids were received. The bid from Bidder A was for a price of \$150,562.50 or \$18.25 per cubic yard.

| Bidder | Price per Cubic Yard | Total Price |
|---------------|-----------------------------|--------------------|
| A | \$18.25 | \$150,562.50 |
| B | \$19.00 | \$156,750.00 |
| C | \$20.00 | \$165,000.00 |
| D | \$22.50 | \$185,625.00 |

- d. The local utility regulatory commission has set refuse collection rates based on mileage from City Hall for a radius which includes the transfer site. (The regulated rate for the site is \$18.25 per cubic yard)
- e. Award is made to Bidder A and the price was determined to be fair and reasonable, based on the local utility regulatory commission's rate schedule for refuse collection.

3. **Improper Pricing:**

- a. Identical Situation as above.
- b. The local utility regulatory commission has set refuse collection rates for a radius 30 miles away from City Hall with the highest rate being \$18.25 per cubic yard at the 30 mile point.
- c. The transfer site is 50 miles from City Hall, and unaccounted for in the local utility regulatory commission rates.
- d. Award should not be made without further analysis, because refuse collection prices for the area in questions (the transfer site) are not controlled by law or regulation.

VI. Prices Based on Comparison with a Valid Recipient or Subrecipient Estimate:

- 1. **Review:** Verify the facts, assumptions and judgments used. Have the estimator give the method and data used in developing the estimate. For example, did prices come from current catalogs or industry standards? Be comfortable with the estimate before relying on it as a basis for determining a price to be fair and reasonable.

2. **Proper Pricing:**

- a. RFP issued for 1,000 feet of fiber optic cabling, estimated to cost \$220.00 per foot for a total estimated cost of \$220,000.
- b. Three responses are received, as follows:

| Offeror | Price per Foot | Total Price |
|----------------|-----------------------|--------------------|
| A | \$215 | \$215,000 |
| B | \$220 | \$220,000 |
| C | \$230 | \$230,000 |

- c. The subrecipient estimate must be used for price analysis in this case as all other forms of price analysis have failed.
- d. The subrecipient contacts the office responsible for the subrecipient's estimate and learns the following:
 - i. The fiber optics are to be used for the new replacement High School and the subrecipient's engineer consultant provided the figure of \$220.00 per foot.
 - ii. The engineer consultant stated that this figure came from the current issue of Fiber Optics and You Magazine, a trade journal; and the same price is currently used in local Corps of Engineers contracts for which the engineer consultant has received a copy.
 - iii. The Corps of Engineers contract number and a copy of the trade journal are provided to the subrecipient.
- e. Award is made to Offeror A, and the price is determined to be fair and reasonable through comparison with the validated subrecipient estimate.

3. **Improper Pricing:**

- a. Identical situation, with all other forms of price analysis failing to provide a valid pricing basis.
- b. Upon contacting the office responsible for the estimate, the subrecipient learns the following:
 - i. The engineering consultant had used this figure in a recent construction estimate and when questioned, was fairly certain this was the price that had been paid in a recent contract, but the consultant could not remember the contract number, when it was accomplished, or exactly what it was for.

- ii. Since the engineering consultant had provided the price, the office generating the estimate had simply passed it on to contracting, as the engineering consultant is considered an expert in fiber optic cabling.
- c. Award should not have been made without further analysis, as the estimate (pricing basis) cannot be validated and therefore cannot be used to determine a fair and reasonable price.

Cost Analysis Examples: Note, scenarios are intended to identify cost or price analysis principles, and do not address other required Federal procurement standards that may apply.

I. Limited Cost Analysis:

- 1. **Review:** This scenario involves situations where a NFE decides not to evaluate all elements of cost in conducting its cost analysis. Instead, the NFE limits its cost analysis to certain specified elements of cost in order to maximize its effective use of time and resources. However, the same principles identified below for limited cost analysis, may be used for full cost analysis where all elements of cost are evaluated to determine whether a fair and reasonable price is obtained.
- 2. **Proper Cost Analysis:**
 - a. Independent Cost Analysis: See, Figure 2 on page 30.
 - b. RFP issued for construction of two concrete ramps estimated to cost a total of \$32,106.
 - c. Three responses are received as follows:

| Offeror | Price |
|----------------|---------------------|
| A | \$35,000 (Lump Sum) |
| B | \$40,000 (Lump Sum) |
| C | \$42,000 (Lump Sum) |

- d. Detailed cost estimates are obtained from the subrecipient and the contractor (see Figures 1 and 2, p. 30).

- e. Negotiation results in a compromise figure of \$34,000 based on revised material costs.
- f. File is documented to fully explain how the negotiated price was established.

3. **Improper Cost Analysis:**

- a. Identical RFP and response.
- b. Contractor provides a cost breakdown delineating total cost for labor, material, profit, and overhead, and offers a voluntary price reduction resulting in a proposal of \$34,000.
- c. The subrecipient estimator concurs in this price and forwards a Purchase Request to decrease funds to the amount of \$34,000.
- d. Award is made and the file is documented to show that price reasonableness is based on the subrecipient's acceptance of the voluntary price reduction offered by the contractor.
- e. This is improper because nothing has been done to ensure the price is actually fair and reasonable.

Figure 1: Contractor Cost Estimate – Construction of 2 Concrete Ramps

| Labor Category | Est. # of Hours | Hourly Rate | Est. Cost |
|-----------------|-----------------|-------------|--------------|
| Carpenter | 40 hours | \$ 17.50 | \$ 700.00 |
| Concrete Mason | 100 hours | \$ 20.00 | \$ 2,000.00 |
| Apprentices | 140 hours | \$ 10.00 | \$ 1,400.00 |
| Laborers | 560 hours | \$ 7.00 | \$ 3,920.00 |
| Project Manager | 140 hours | \$ 25.00 | \$ 3,500.00 |
| TOTAL | | | \$ 11,520.00 |

| Material Category | Quantity | Price | Est. Cost |
|--------------------------------|-------------|----------|--------------|
| Concrete | 140 cu. yd. | \$ 55.00 | \$ 7,700.00 |
| Reinforcing Rods | 560 units | \$ 10.00 | \$ 5,600.00 |
| Wood | 80 units | \$ 7.00 | \$ 560.00 |
| SUB-TOTAL | | | \$ 13,860.00 |
| Overhead (Including G&A) @ 15% | | | \$ 3,807.00 |
| Profit @ 10% | | | \$ 2,918.70 |
| TOTAL | | | \$ 32,105.70 |

Figure 2: Subrecipient Cost Estimate – Construction of 2 Concrete Ramps

| Labor Category | Est. # of Hours | Hourly Rate | Est. Cost |
|--------------------|-----------------|-------------|--------------|
| Concrete Mason | 100 hours | \$ 25.00 | \$ 2,500.00 |
| Mason's Apprentice | 50 hours | \$ 12.50 | \$ 625.00 |
| Carpenter | 50 hours | \$ 20.00 | \$ 1,000.00 |
| Apprentices | 25 hours | \$ 10.00 | \$ 250.00 |
| Laborer | 840 hours | \$ 5.00 | \$ 4,200.00 |
| Project Manager | 150 hours | \$ 30.00 | \$ 4,500.00 |
| TOTAL | | | \$ 13,075.00 |

| Material Category | Quantity | Price | Est. Cost |
|----------------------|-----------|-----------|--------------|
| Concrete Mix | 200 bags | \$ 5.00 | \$ 1,000.00 |
| Sand | 10 loads | \$ 25.00 | \$ 250.00 |
| Small Stone | 30 loads | \$ 50.00 | \$ 1,500.00 |
| Reinforcing Rods | 560 units | \$ 10.00 | \$ 5,600.00 |
| Mixer Rental | 8 days | \$ 150.00 | \$ 1,200.00 |
| SUB-TOTAL | | | \$ 9,550.00 |
| G&A @ 25% | | | \$ 5,656.00 |
| Other Overhead @ 10% | | | \$ 2,262.50 |
| Profit @ 15% | | | \$ 4,581.56 |
| TOTAL | | | \$ 35,125.31 |

DEFINITIONS

Actual Cost: A cost which has been incurred and can be substantiated with factual documentation.

Adequate Price Competition: This condition exists when two or more responsible offerors compete independently and submit proposals deemed responsive to a solicitation, and there is no evidence that competition was restricted or that the lowest price is unreasonable.

Allocable Cost: A cost is allocable if it is assignable or chargeable to one or more elements of work or final cost objectives (accounts, contracts, etc.) according to the relative benefits received from those objectives.

Commercial Item: Any item of supply or service that is regularly used for other than government purposes and is sold or traded in the course of conducting normal business operations.

Competition: An environment of varying dimensions relating to buy-sell relationships in which the buyer induces, stimulates, or relies on conditions in the marketplace that cause independent sellers to contend confidently for the award of a contract.

Contract: A term used to describe a variety of agreements or orders for the procurement of supplies or services.

Contract Pricing: A series of actions used to obtain, assess, verify, and adjust cost or pricing information and to record the steps taken to ascertain that prices agreed to have been determined fair and reasonable.

Cost Analysis: The evaluation of each cost element which makes up a total price. This evaluation may include obtaining certified cost or pricing data, the appropriate verification of cost data, evaluation and projection of specific cost elements to determine cost necessity, allowance for contingencies, and the basis used for allocation of overhead costs.

Cost or Pricing Data: Data consisting of all facts existing up to the time of agreement on price, which prudent buyers and sellers would expect to have a significant effect on price negotiations. Being factual, these data are types that can be verified. They do not reflect the accuracy of the contractor's judgment about estimated future costs or projection; they do, however, reflect the data upon which the contractor based his/her judgment.

Direct Cost: Any cost that is specifically identified with a particular final cost objective (contract, account, etc.) but not necessarily limited to items that are incorporated in the end product as material or labor.

Economic Price Adjustment: An alteration permitted and specified by contract provisions for the upward or downward revision of a stated contract price upon the occurrence of certain contingencies that are defined in the contract.

Established Catalog Price: A price included in a catalog, price list, schedule, or other form that (1) is regularly maintained by a manufacturer or vendor; (2) is published or made available for inspection by customers, and (3) states prices at which sales are currently or were last made to a significant number of buyers from the general public.

Fair and Reasonable Price: A price that is fair to both parties, considering the agreed-upon conditions, promised quality, and timeliness of contract performance. Although generally a fair and reasonable price is a function of the law of supply and demand, there are statutory, regulatory, and judgmental limits on the concept.

General and Administrative Expenses: Expressed normally as G&A. Indirect expenses, including a company's general and executive offices, executive compensation, the cost of staff services such as legal, accounting, public relations, financial and similar expenses, and other miscellaneous expenses related to the overall business.

Indirect Cost: Any cost not directly identified with a single final cost objective but identified with two or more final cost objectives, or with at least one intermediate cost objective. Also referred to as overhead or burden.

Price: A monetary amount given, received, or asked in exchange for property or services, expressed in terms of a single item or unit of measure for such property or services.

Price Analysis: The comparative process of evaluating total price without regard to the individual elements that make up the total price.

Reasonable Cost: A cost is reasonable if, in its nature or amount, it does not exceed what would be incurred by an ordinarily prudent person in the conduct of competitive business.



Template for Comparison of Federal and State Procurement Requirements as Applicable Under FEMA's Public Assistance Program

Purpose and Instructions: The purpose of this template is to serve as a resource to applicable to local governments, Indian tribes, nonprofit organizations, and institutions of higher education that are required to follow state procurement rules. However, this template is voluntary for the states to fill out. If the state decides to use this template, it should fill in the boxes, which include bracketed instructions, with applicable state information, such as the specific state or state agency, rule, citation, or resource.

Introduction: All Federal awards and subawards are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Rules), codified at 2 C.F.R. part 200. This includes the standards for procurement under grants, which applies to contracts for services, procurement of goods (such as supplies and equipment), and construction or repair. FEMA's Procurement Disaster Assistance Team (PDAT) has developed guidance for interpreting and applying the Uniform Rules. Additional materials referenced in this document include:

- *FEMA Procurement Disaster Assistance Team, 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses (2017) [hereinafter PDAT Contract Provisions Template].*
- *Procurement Disaster Assistance Team, Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules): Supplement to the Public Assistance Procurement Disaster Assistance Team (PDAT) Field Manual (2016) [hereinafter PDAT Supplement].*

Determining Which Rule Applies: Local governments, tribes, nonprofits, and IHEs, collectively referred to as non-Federal entities (NFEs) other than states, must follow applicable local, tribal, and state requirements except to the extent that these are inconsistent with Federal statutes, regulations, or grant conditions. In other words, an NFE other than a state should follow the rule that allows compliance with all the rules that apply to it: Federal, state, and local/tribal. If compliance with all applicable levels is not possible and no rule is more restrictive than another, follow the Federal rule. In this case, or if it is unclear which rule is most restrictive, consult the state and your organization's servicing legal counsel. 2 C.F.R. § 200.318(a).

Disclaimer: This document does not describe all the nuances and interpretations applicable to the procurement rules. Please see the Federal regulations themselves, the PDAT documents cited above, and www.fema.gov/procurement-disaster-assistance-team for more information.

Citation Notes:

Federal Procurement Requirements: Citations are from 2 C.F.R. part 200, subpart D, sections 200.317-.326. This document focuses primarily on procurement requirements; recipients and subrecipients should consult the

or FEMA to ensure compliance with other regulations applicable to the FEMA Public Assistance Program.



Template for Comparison of Federal and State Procurement Requirements as Applicable Under FEMA’s Public Assistance Program

State Law: Most state procurement requirements applicable to local governments are found in

Specific statutory citations are listed within the document.

| FEDERAL | STATE |
|--|-------|
| Insert the corresponding state rule, if any, in the blank fields in this column | |
| <p>Local governments, tribes, nonprofits, and institutions of higher education (IHE) are required to follow the Federal procurement rules in 2 C.F.R. sections 200.318 through 200.326. <i>2 C.F.R. § 200.317; see also 2 C.F.R. §§ 200.69 (definition of non-Federal entity), 200.64 (definition of local government), 200.54 (definition of Indian tribe), 200.70 (definition of nonprofit organization), and 200.55 (definition of IHE)</i></p> <p>Local governments do not follow the same Federal procurement rules applicable to states because of the way “state” is defined. States are defined as “any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof <i>exclusive of local governments.</i>” <i>2 C.F.R. § 200.90 (emphasis added); see also 2 C.F.R. § 200.64 (definition of local government)</i></p> | |
| Pre-Solicitation Requirements | |
| <p>Maintain a contract administrative system for oversight of contract compliance. <i>2 C.F.R. § 200.318(b)</i></p> | |
| <p>Avoid unnecessary/duplicative purchases <i>2 C.F.R. § 200.318(d)</i></p> | |



Template for Comparison of Federal and State Procurement Requirements as Applicable Under FEMA’s Public Assistance Program

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| <p>Consider consolidating or breaking out procurements to achieve a more economical purchase. 2 C.F.R. § 200.318(d)</p> | |
| <p>Analyze benefits of purchase versus lease where appropriate. 2 C.F.R. § 200.318(d)</p> | |
| <p>Compliance with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act</p> <ul style="list-style-type: none"> • Applies to: <ul style="list-style-type: none"> ○ States and their contractors ○ Local Governments and their contractors • Parts: <ul style="list-style-type: none"> ○ Procurement of Recovered Materials ○ Procurement of Solid Waste Management Services ○ Affirmative Procurement Program <p>Procurement of Recovered Materials</p> <ul style="list-style-type: none"> • Applies to: <ul style="list-style-type: none"> ○ Items where the purchase price exceeds \$10,000 or the value of the quantity procured during the prior fiscal year exceeded \$10,000 ○ Items designated by the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 • Requirement: <ul style="list-style-type: none"> ○ Procure such items that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition | |



Template for Comparison of Federal and State Procurement Requirements as Applicable Under FEMA’s Public Assistance Program

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| <ul style="list-style-type: none"> • Requirement: Procure solid waste management services in a manner that maximizes energy and resource recovery <p>Affirmative Procurement Program</p> <ul style="list-style-type: none"> • Requirement: Establish an affirmative procurement program for procurement of recovered materials as designated by the EPA <p>2 C.F.R. § 200.322</p> | |
| | |
| <p>Encouraged to use inter-local and cooperative agreements where appropriate.</p> <ul style="list-style-type: none"> • Joint procurements are allowed <p>2 C.F.R. § 200.318(e); PDAT Supplement at VI-8 to VI-9</p> | |
| <p>Using other entities’ contracting resources: Federal rules do not allow exceptions for the requirements of full and open competition applicable to local governments, even for state purchasing programs and piggybacking.</p> <ul style="list-style-type: none"> • Use of state purchasing program is only allowed if state contracts were procured in compliance with the rules applicable to local governments under 2 C.F.R. §§ 200.318-.326 (<i>see PDAT Supplement at VI-10 to VI-11</i>) • Assignment of contract rights (also known as “piggybacking”) is discouraged and subject to several restrictions (<i>see PDAT Supplement at VI-12 to VI-13</i>) | |
| <p>Encouraged to use Federal surplus property where feasible instead of purchasing new property.</p> <p>2 C.F.R. § 200.318(f)</p> | |
| <p>Encouraged to use value engineering for construction contracts where applicable.</p> <p>2 C.F.R. § 200.318(g)</p> | |



Template for Comparison of Federal and State Procurement Requirements as Applicable Under FEMA’s Public Assistance Program

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| <p>Local government is responsible for resolution of all disputes related to the procurement and contract in accordance with good administrative practice and sound business judgment. <i>2 C.F.R. § 200.318(k)</i></p> | |
| <p>Cost and Price Requirements</p> | |
| <p>Must perform a cost or price analysis for every procurement action above the simplified acquisition (\$150,000 as of 3/21/2017) or local/state equivalent threshold if more restrictive; requirement also applies to contract modifications. The method and degree of the cost or price analysis is dependent on the facts of the procurement. <i>2 C.F.R. § 200.323(a); PDAT Supplement at II-6</i></p> | |
| <p>Must conduct an independent estimates of costs for every procurement action prior to receiving bids or proposals. <i>2 C.F.R. § 200.323(a)</i></p> | |
| <p>Must negotiate profit as a separate element of price for each contract when price competition is lacking and in all cases where a cost analysis is performed. <i>2 C.F.R. § 200.323(b)</i></p> | |
| <p>Cost or prices based on estimated costs for contracts are only allowable if they are allowable under the cost principles part of the Uniform Rules, located at 2 C.F.R. §§ 200.400-.475. <i>2 C.F.R. § 200.323(c)</i></p> | |
| <p>Procurement Procedures – General</p> | |
| <p>Must ensure full and open competition and avoid measures that restrict competition, including:</p> <ul style="list-style-type: none"> • Unreasonable requirements • Unnecessary experience and bonding requirements • Noncompetitive pricing between companies • Noncompetitive awards to consultants on retainer • Organizational conflicts of interest | |

Template for Comparison of Federal and State Procurement Requirements as Applicable Under FEMA’s Public Assistance Program

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| <ul style="list-style-type: none"> • Specifying only brand name without permitting equal products • Arbitrary actions <p>2 C.F.R. § 200.319(a)</p> | |
| <p>Must have written selection procedures that:</p> <ul style="list-style-type: none"> • incorporate a clear and accurate description of good/service; and • identify all bidder/proposer requirements and all evaluation criteria <p>2 C.F.R. § 200.319(c)</p> | |
| <p>If prequalified bidder lists are used, enough qualified firms must be included to ensure maximum competition; cannot preclude potential bidders from qualifying during the solicitation period.</p> <p>2 C.F.R. § 200.319(d)</p> | |
| <p>Solicitation must acknowledge use of FEMA funding for the contract. The Uniform Rules allow for the Federal agency (i.e., FEMA) to require additional provisions. FEMA requires this as one of the provisions.</p> <p>PDAT Contract Provisions Template ¶ 13(a)</p> | |
| <p>Procurement Methods</p> | |
| <p><u>Micro-Purchases</u></p> <ul style="list-style-type: none"> • Applies to: <ul style="list-style-type: none"> ○ All purchase of goods and services, including construction ○ Up to the micro-purchase threshold (currently \$3,500) or the equivalent local/state threshold if more restrictive (PDAT Supplement at II-6) • Process: Can award contract without competition if price is considered fair and reasonable • Must distribute micro-purchases equitably among qualified suppliers to the extent practicable | |

Template for Comparison of Federal and State Procurement Requirements as Applicable Under FEMA’s Public Assistance Program

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| <ul style="list-style-type: none"> • Cannot divide contract to lower cost below micro-purchase threshold to avoid competitive bidding requirements <i>2 C.F.R. §§ 200.67, 200.320(a)</i> | |
| <p><u>Small Purchases</u></p> <ul style="list-style-type: none"> • Applies to: <ul style="list-style-type: none"> ○ All purchases of goods <u>and services</u>, including construction ○ Up to the simplified acquisition threshold (\$150,000 as of 3/21/2017) or the equivalent local/state threshold if more restrictive (<i>PDAT Supplement at II-6</i>); <u>and</u> ○ Fixed price or not-to-exceed contract type (<i>PDAT Supplement at V-8</i>). • Process: Obtain price or rate quotes from an adequate number of qualified sources. FEMA interprets “adequate number” as at least three quotes for purposes of small purchase procedures. <i>PDAT Supplement at V-8</i> • Standard of Award: Lowest cost responsible bidder • Cannot divide contract to bring contract cost under the threshold; changes to contract must fall within scope of original contract. <i>2 C.F.R. §§ 200.88, 200.320(b); PDAT Supplement at II-6, V-8.</i> | |
| <p><u>Sealed Bidding</u></p> <ul style="list-style-type: none"> • Applies to: <ul style="list-style-type: none"> ○ Purchase <u>and service</u> contracts costing more than the simplified acquisition threshold (currently \$150,000) or the equivalent local/state threshold if more restrictive (<i>PDAT Supplement at II-6</i>) ○ Preferred method for construction contracts above the simplified acquisition threshold. • Conditions for sealed bidding to be feasible | |

Template for Comparison of Federal and State Procurement Requirements as Applicable Under FEMA’s Public Assistance Program

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| <ul style="list-style-type: none"> ○ A complete, adequate, and realistic specification or purchase description is available; ○ At least 2 responsible bidders are willing and able to effectively compete; ○ Procurement lends itself to a firm fixed price contract and selection can be made principally on the basis of price ● Process: <ul style="list-style-type: none"> ○ Public advertisement providing sufficient time for bidders to respond before bid opening ○ Complete specifications/plans made available to bidders ○ At least 2 responsible bidders required for bid opening ○ Solicit bids from “adequate number of known suppliers” ○ Public bid opening at date and time advertised ○ Contract awarded on a firm-fixed-price basis in writing ○ Determination of the lowest price must include consideration of factors such as discounts, transportation costs, and lifecycle costs ○ Can reject any and all bids for “sound documented reasons” ● Standard of Award: Lowest responsive, responsible bidder 2 C.F.R. § 200.320(c) | |
| <p><u>Competitive Proposals (aka Contract by Negotiation)</u></p> <ul style="list-style-type: none"> ● Applies to: <ul style="list-style-type: none"> ○ Any contract costing more than the simplified acquisition threshold (currently \$150,000) or the equivalent local/state threshold if more restrictive (PDAT Supplement at II-6) when conditions are not appropriate for the use of sealed bids ● Procedure: | |

Template for Comparison of Federal and State Procurement Requirements as Applicable Under FEMA’s Public Assistance Program

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| <ul style="list-style-type: none"> ○ Request for Proposals (RFP) must be publically advertised ○ Evaluation criteria and relative importance identified in RFP ○ Any responses to the publicized RFP must be considered to the maximum extent practical ○ Proposals solicited from an “adequate number of qualified sources” ○ Must have written method for conducting technical evaluations of proposals and selecting a contractor ● Standard of Award: Responsible firm with most advantageous proposal, taking into account price and other factors identified in the RFP <p>2 C.F.R. § 200.320(d)</p> | |
| <p><u>Qualifications-Based Competitive Proposals for Architectural and Engineering (A/E) Services</u></p> <p>Applies to:</p> <ul style="list-style-type: none"> ● Architectural and Engineering professional <u>services</u> ● Required above the simplified acquisition threshold (currently \$150,000) or the equivalent local/state threshold if more restrictive (PDAT Supplement at II-6) but can be used for contracts below that amount <p>Procedures:</p> <ul style="list-style-type: none"> ● Request for Qualifications (RFQ) is issued to solicit competitive proposals from qualified firms ● RFQs must be publically advertised ● Any responses to the publicized RFQ must be considered to the maximum extent practical ● Proposals solicited from an “adequate number of qualified sources” | |

Template for Comparison of Federal and State Procurement Requirements as Applicable Under FEMA’s Public Assistance Program

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| <ul style="list-style-type: none"> • Must have written method for conducting technical evaluations of proposals and selecting a contractor • Qualifications of respondents’ are evaluated to select the most qualified firm • Evaluation criteria and relative importance must be identified in the RFQ; however; price is not a factor in the initial selection of the most qualified firm • Once the most qualified firm is selected, fair and reasonable compensation can then be negotiated • State licensure requirements apply • May use local geographic preferences for the procurement of these specific services, provided that this leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract <p>Limitations:</p> <ul style="list-style-type: none"> • Competitive proposal method for selecting A/E services can only be used for architectural and engineering professional services • Cannot be used for other services even if those services can be performed by architectural and engineering firms (such as general consulting services) • Meaning of architectural/engineering services is explained per <i>PDAT Supplement at V-15</i> <p><i>2 C.F.R. §§ 200.319(b); 200.320(d(5))</i></p> | |
| <p><u>Non-Competitive Proposals (aka Sole Source)</u></p> <p>Applies to:</p> <ul style="list-style-type: none"> • Solicitation from just one source and fit within one of the following four exceptions <p>Applies ONLY when:</p> <ul style="list-style-type: none"> • Item available from only one source; | |

Template for Comparison of Federal and State Procurement Requirements as Applicable Under FEMA’s Public Assistance Program

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| <ul style="list-style-type: none"> • Public exigency or emergency will not permit a delay that would result from competitive process; • Awarding agency or pass-through entity expressly authorizes noncompetitive procurement in response to a written request; or • Competition is deemed inadequate after soliciting from a number of sources using one of the other procurement methods identified in 2 C.F.R. § 200.320(a)-(d) (that is, micro-purchase procedures; small purchase procedures; sealed bidding; or competitive proposals). <p>2 C.F.R. § 200.320(f)</p> | |
| <p>Contract Award Requirements</p> | |
| <p>Must award contracts to responsible contractors possessing the ability to perform successfully under the contract, including such factors as integrity, compliance with public policy, record of past performance, and financial and technical resources.</p> <p>2 C.F.R. § 200.318(h)</p> | |
| <p>Maintain records of procurement, including rationale for method of procurement, selection of contract type, contractor selection or rejection, and basis for contract price.</p> <p>2 C.F.R. § 200.318(i)</p> | |
| <p>Cannot award contracts or sub-contracts to debarred / suspended companies (https://www.sam.gov (Federal))</p> <p>2 C.F.R. § 200.318(h)</p> | |
| <p>Limit use of time and materials contracts to when no other contract is suitable <u>and</u> contract includes a ceiling price that the contractor exceeds at its own risk.</p> <p>2 C.F.R. § 200.318(j)</p> | |



Template for Comparison of Federal and State Procurement Requirements as Applicable Under FEMA’s Public Assistance Program

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| <p>Cannot award “cost plus percentage of cost or percentage of construction cost contracts.” 2 C.F.R. § 200.323(d)</p> | |
| Local Preferences | |
| <p>Cannot use in-state or local geographic preferences (except for architectural/engineering services). 2 C.F.R. § 200.319(b)</p> | |
| Socioeconomic Contracting Requirements | |
| <p>Applies to:</p> <ul style="list-style-type: none"> • Generally applies to all contracts regardless of type and cost. There may be exceptions depending on facts and circumstances if the procurement fits within the sole source, exigent/emergency circumstances, or Federal agency approval exception under 2 C.F.R. § 200.320(f)(1)-(3) <p>Procedures:</p> <p>Take affirmative steps to encourage small and minority firms and women-owned business participation (but no preferences), including:</p> <ul style="list-style-type: none"> • Include on solicitation lists • Solicit when such firms are potential bidders • Divide total contract requirements where economically feasible to enable more minority participation • Establish delivery schedules to encourage participation • Utilize the resources of the Small Business Administration and the Minority Business Development Agency of U.S. Department of Commerce • Require prime contractors to take the same affirmative steps. <p>2 C.F.R. § 200.321</p> | |



Template for Comparison of Federal and State Procurement Requirements as Applicable Under FEMA’s Public Assistance Program

| Bonding Requirements | |
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| <p>Applies to:</p> <ul style="list-style-type: none"> • Construction or facility improvement contracts costing more than the simplified acquisition threshold (currently \$150,000) or the equivalent local/state threshold if more restrictive • Unless FEMA or _____ has determined the Federal interest is adequately protected <p>Bonds Required:</p> <ul style="list-style-type: none"> • Bid bond of 5% of bid price; and • Performance and payment bonds for 100% of contract price <p>For all other projects:</p> <ul style="list-style-type: none"> • Follow local/state bonding requirements <p>2 C.F.R. § 200.325; PDAT Supplement at II-6</p> | |
| Contract Provisions (also applicable to state contracts) | |
| <p>Include all applicable contract provisions</p> <ul style="list-style-type: none"> • Remedies: Applies to contracts above the simplified acquisition threshold (currently \$150,000) or the equivalent local/state threshold if more restrictive • Termination for Cause and Convenience: Applies to contracts above \$10,000 • Equal Employment Opportunity: Applies to “federally assisted construction contracts” as defined by 41 C.F.R. § 60-1.3, except as otherwise provided under 41 C.F.R. pt. 60 • Davis Bacon and Copeland Anti-Kickback Act: <u>Does not apply to contracts funded via the Public Assistance program unless state law requires it</u>; if _____ law requires it, it applies to prime construction contracts above \$2,000 | |



Template for Comparison of Federal and State Procurement Requirements as Applicable Under FEMA’s Public Assistance Program

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| <ul style="list-style-type: none"> • Contract Work Hours and Safety Standards Act: Applies to contracts above \$100,000 involving the employment of mechanics or laborers • Clean Air Act and Federal Water Pollution Control Act: Applies to contracts above \$150,000 • Debarment and Suspension: Applies to all contracts and subcontracts • Byrd Anti-Lobbying Amendment: Applies to contracts above \$100,000 • Procurement of Recovered Materials: Applies to procurement of prime contracts and subcontracts • Changes: Applies to all contracts • Access to Records: Applies to all contracts • DHS Seal, Logo, and Flags: Applies to all contracts • Compliance with Federal Law, Regulations, and Executive Orders: Applies to all contracts • No Obligation by Federal Government: Applies to all contracts • Program Fraud and False or Fraudulent Statements or Related Acts: Applies to all contracts • Socioeconomic Contracting: May want to include as a provision in prime contracts since prime contractors must take the same affirmative steps regarding socioeconomic contracting per 2 C.F.R. § 200.321(b)(6) <p><i>2 C.F.R. § 200.326; 2 C.F.R. pt. 200, App. II; PDAT Contract Provisions Template</i></p> | |
| Access to Records | |
| <p>Solicitation Documents</p> <ul style="list-style-type: none"> • Requirement: Must make technical specifications on proposed procurements available to FEMA or | |



Template for Comparison of Federal and State Procurement Requirements as Applicable Under FEMA’s Public Assistance Program

| | |
|---|--|
| <p>upon request when FEMA or _____ believes such a review is needed to ensure the item or service specified is the one being proposed for acquisition</p> <ul style="list-style-type: none"> • Timing: Generally prior to the time the specification is incorporated into a solicitation document <p>Procurement Documents</p> <ul style="list-style-type: none"> • Requirement: Must make procurement documents, such as requests for proposals or invitations for bids or independent cost estimates, available to FEMA or _____ upon request for pre-procurement review • May be exempted from this review if FEMA or _____ determines its procurement system complies with the procurement standards of the Uniform Rules <p>2 C.F.R. §200.324</p> | |
| Disposal of Property | |
| <p>Get instructions from the grant program office of the Federal awarding agency.</p> | |
| Exceptions | |
| <p>Some programs are exempt from the Uniform Rules requirements such as entitlement programs, school nutrition programs, and certain block grants. FEMA Public Assistance Funds are not exempt.</p> <p>2 C.F.R. § 200.101(d)</p> | |
| Conflicts of Interest (See detailed charts on next pages) | |
| <p>Develop and follow a written code of standards of conduct addressing conflicts of interest and gifts from contractors. Written standards of conduct must provide for disciplinary actions for violations of such standards.</p> <p>2 C.F.R. § 200.318(c)(1)</p> | |



Template for Comparison of Federal and State Procurement Requirements as Applicable Under FEMA's Public Assistance Program

| | |
|---|--|
| <p>Written standards of conduct must also cover organizational conflicts of interest if the local government has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe. 2 C.F.R. § 200.318(c)(2)</p> | |
| <p>Violations of standards of conduct may result in loss of Federal funds and disciplinary action under the NFE's policy. See 2 C.F.R. § 200.318(c)</p> | |

For more information, see



Template for Comparison of Federal and State Procurement Requirements as Applicable Under FEMA’s Public Assistance Program

Conflicts of Interest (Federal law vs. state law)

| | Federal (2 C.F.R. § 200.318(c)(1)) | |
|-----------------------|---|--|
| Who is covered | Officers, employees, and agents of recipient and subrecipient | |
| Who else is covered | Spouse, immediate family, partners, current or soon-to-be employer | |
| What kind of interest | Real or apparent financial or other interest or personal tangible benefit | |
| Exceptions | Financial interest that is not substantial | |
| Penalties | Loss of federal funds Disciplinary action Other remedies for noncompliance listed at 2 C.F.R. § 200.338 | |



Template for Comparison of Federal and State Procurement Requirements as Applicable Under FEMA’s Public Assistance Program

Gift Ban (Federal law vs. state law)

| | Federal (2 C.F.R. § 200.318(c)(1)) | |
|---------------------|---|--|
| Prohibited giver | Current or future contractor or vendor | |
| Prohibited receiver | All officers, employees, agents of recipients and subrecipients | |
| Exceptions | Unsolicited gift of nominal value | |
| Penalties | Loss of Federal funds Disciplinary action Other remedies for noncompliance listed at 2 C.F.R. § 200.338 | |

SEP 18 2018



FEMA

MEMORANDUM FOR: FEMA Regional Administrators
Regions I – X

ATTENTION: Recovery Division Directors

FROM: Keith Turi *JK & JS*
Assistant Administrator
Recovery Directorate

SUBJECT: Cooperative Purchasing Agreement Fact Sheet

The purpose of this memorandum is to issue the attached Cooperative Purchasing Fact Sheet. The previous fact sheet contained an inaccurate statement that applicants were not permitted to use out-of-state cooperative purchasing programs. This version of the fact sheet clarifies the requirements non-state applicants must meet when using cooperative purchasing agreements for procurements above the simplified acquisition threshold. The attached fact sheet is retroactive to disasters declared on or after August 23, 2017.

If you have any questions about this guidance, please contact Jonathan Hoyes, Director of the Public Assistance Division, at Jonathan.Hoyes@fema.dhs.gov.

Attachment



PUBLIC ASSISTANCE: PURCHASING GOODS OR SERVICES THROUGH COOPERATIVE PURCHASING PROGRAMS

The Federal Emergency Management Agency (FEMA) Public Assistance (PA) Program provides supplemental assistance to states, tribes, and local governmental entities, as well as certain private non-profit organizations (hereinafter referred to as applicants) to assist them with recovering from emergencies and major disasters. FEMA's *Public Assistance Program and Policy Guide* provides comprehensive information regarding assistance that FEMA can provide and the requirements that applicants must follow in order to receive the assistance. The purpose of this Fact Sheet is to provide key information regarding the use of cooperative purchasing programs by non-state applicants for procurements above the simplified acquisition threshold. Failure to follow federal contracting requirements may jeopardize FEMA funding for costs associated with that contract.

Understanding Cooperative Purchasing Programs

A “**COOPERATIVE PURCHASING PROGRAM**” is a cooperative arrangement for acquiring goods or services that involves aggregating the demand of two or more entities in an effort to obtain a more economical purchase. Entities typically sign up to use cooperative purchasing programs through a cooperative purchasing agreement. Program membership may provide entities with access to lists of agreements or contracts for goods and services at pre-negotiated rates or prices. Typically, the member then purchases the goods or services by negotiating with participating vendors and placing purchase orders or entering into contracts based on the rates or prices listed in the cooperative purchasing program's agreements or contracts with vendors.

NOTE: Cooperative purchasing programs are distinguishable from joint procurements. A “**JOINT PROCUREMENT**” is a method of contracting in which two or more purchasers agree from the outset to use a single solicitation and enter into a single contract with a vendor for the delivery of goods and/or services. FEMA sees fewer compliance issues with joint procurements. While joint procurements are not the focus of this fact sheet, they still must comply with the federal procurement requirements.

DISCLAIMER: This Fact Sheet is intended to provide general information on procurement compliance and is not inclusive of every rule that an applicant may need to comply with. Additional information regarding the federal procurement standards can be found at the following webpage: www.fema.gov/procurement-disaster-assistance-team.

ATTENTION

- **While the federal procurement standards encourage the use of cooperative purchasing where appropriate, non-state applicants should exercise caution when using such programs and work closely with the procuring entity to ensure compliance with the federal procurement standards found at 2 C.F.R. §§ 200.318- 200.326.**
- **An applicant that decides to use a cooperative purchasing program must document and explain how its use of the program complied with all federal procurement standards and applicable state, tribal and local procurement rules and policies.**

“FEMA's mission is to help people before, during and after disasters.”

**FREQUENT COMPLIANCE ISSUES WITH COOPERATIVE
PURCHASING PROGRAMS FOR PROCUREMENTS ABOVE THE SIMPLIFIED
ACQUISITION THRESHOLD**

Full and Open Competition, 2 C.F.R. § 200.319 (applicable to non-state applicants)

Non-state applicants must ensure that the solicitations used by cooperative purchasing programs include a clear and accurate description of the scope of work or goods actually required by the non-state applicant. Additionally, cooperative purchasing programs that place overly restrictive requirements on solicitations risk noncompliance with the full and open competition requirements.

Procurement Method, 2 C.F.R. § 200.320 (applicable to non-state applicants)

Cooperative purchasing programs must be in compliance with the allowable procurement methods. Some of these methods of procurement require that non-state applicants publicly advertise or publicize the solicitations, solicit bids from an adequate number of known suppliers, and award contracts to the responsible, responsive firm with the lowest price or to the responsive firm whose proposal is most advantageous to the program with price and other factors considered.

Socio-economic Contracting, 2 C.F.R. § 200.321 (applicable to non-state applicants)

Non-state applicants must ensure cooperative purchasing programs take the applicable affirmative steps to encourage participation of small businesses, minority businesses, and women owned enterprises. Failure to take any of the affirmative steps violates 2 C.F.R. § 200.321.

Geographic Preferences, 2 C.F.R. § 200.319(b) (applicable to non-state applicants)

Any geographic preferences that a cooperative purchasing program uses in evaluating bids or proposals and any additional terms and conditions in a cooperative purchasing program's pre-negotiated agreements that favor or give preference to local suppliers would violate 2 C.F.R. § 200.319(b) and be restrictive of competition.

Contract Provisions, 2 C.F.R. § 200.326 (applicable to state and non-state applicants)

Cooperative purchase programs at times do not include the federally required contract provisions in their agreements with vendors. All state and non-state applicant contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards).

Cost or Price Analysis, 2 C.F.R. § 200.323 (applicable to non-state applicants)

Non-state applicants must conduct an independent cost or price analysis when using cooperative purchasing agreements.

"FEMA's mission is to help people before, during and after disasters."

June 21, 2016



**PROCUREMENT GUIDANCE FOR RECIPIENTS AND SUBRECIPIENTS UNDER
2 C.F.R PART 200 (UNIFORM RULES)
SUPPLEMENT TO THE PUBLIC ASSISTANCE
PROCUREMENT DISASTER ASSISTANCE TEAM (PDAT) FIELD MANUAL**

1. **PURPOSE.** This document provides guidance for Non-Federal Entity (“NFE”) recipients and subrecipients of Federal financial assistance awarded by the Federal Emergency Management Agency (“FEMA”) when using that assistance to finance procurements of property and services. The guidance provided by this document only applies to Federal financial assistance (e.g., grants and cooperative agreements) subject to the procurement standards of the government-wide *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, at 2 C.F.R. §§ 200.317 to 200.326, which were adopted by the Department of Homeland Security (“DHS”). See 2 C.F.R. Part 3002.
2. **AUTHORITY.** FEMA provides Federal assistance through various financial assistance programs under the authority of various Federal laws. NFEs that are recipients and subrecipients of Federal financial assistance provided by FEMA under these programs are generally required to comply with the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (“Uniform Rules”) at 2 C.F.R. Part 200, as adopted by DHS at 2 C.F.R. Part 3002. Chapter I, ¶ 3 of this document contains a detailed list of these programs and authorizing statutes.
3. **WAIVER.** FEMA may waive any provisions of this document to the extent permitted by Federal law or regulation.
4. **DATES OF APPLICABILITY**
 - a. With one exception identified in Sec. 4.b., below, financial assistance associated with emergencies or major disasters declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (“Stafford Act”), the procurement standards at 2 C.F.R. §§ 200.317 to 200.326 are the default standards that apply to those grants associated with emergencies or major disasters declared on or after December 26, 2014. See 79 Fed. Reg. 75871, 75872 (Dec. 19, 2014). For awards made by FEMA, or for emergency or major disasters declared, prior to December 26, 2014 (this includes awards associated with prior emergencies or disasters, but not started until after this date), Federal financial assistance awards are governed by the Uniform Administrative Requirements at either 44 C.F.R. Part 13 (for state, local, and Indian tribal governments) or 2 C.F.R. Part 215 (for institutions of higher education, hospitals, and other nonprofit organizations), depending upon the type of entity.

- b. Grace Period. A Non-Federal Entity (also known as a “NFE”), however, may continue to comply with the former procurement standards applicable to FEMA awards at 44 C.F.R. Part 13 (for states, local, and Indian tribal governments) or 2 C.F.R. Part 215 (for institutions of higher education, hospitals, and other nonprofit organizations) until the completion of two additional fiscal years after December 26, 2014. This is an elective grace period. If a NFE elects to use the previous procurement standards, it must affirmatively document this decision in its internal procurement policies, including the date upon which its grace period (based upon the two additional fiscal years) will end and it will accordingly transition to the new procurement standards. 2 C.F.R. § 200.110(a). *See also*, Ch. 1, par. 2.e., below for additional amplifying guidance.
5. AMENDMENTS TO THIS DOCUMENT. FEMA may periodically update this document due to changes in other revised or new guidance or regulations.
6. SUPPLEMENT. This document is intended to supplement the *FEMA Field Manual, Public Assistance Grantee and Subgrantee Procurement Requirements Under 44 C.F.R. Pt. 13 and 2 C.F.R. pt. 215*, dated, December 2014 (“PDAT¹ Field Manual” or “Field Manual”) by providing up-to-date identification, analysis and discussion of the current Federal procurement standards found at 2 C.F.R. pt. 215, which went into effect on December 26, 2014. The Field Manual can be found online at the following web link: <https://www.fema.gov/media-library/assets/documents/96773>, and provides in-depth discussion of the previous Federal procurement standards, to include analysis of Department of Homeland Security (“DHS”) Office of Inspector General (“OIG”) audits related to various procurement violations and real-world procurement scenarios. Together, both documents provide a comprehensive analysis of the Federal procurement standards that apply to procurements associated with disaster financial assistance provided both after and prior to December 26, 2014.
7. DISCLAIMER. This document and the guidance provided therein is not intended to, nor does it provide or constitute legal advice. This document is only intended to serve as a general guide as to the Federal procurement standards identified in the Uniform Rules. Adherence to, application of, or use of this document and the information herein to a procurement subject to Federal grant money, does NOT guarantee the legal sufficiency of any procurement, nor ensure that an award or subaward will NOT be audited or investigated, and subsequently determined to be non-compliant with the procurement standards. All legal questions concerning the sufficiency or insufficiency of a procurement in regards to the Federal procurement standards should be referred to servicing legal counsel.

¹ PDAT – Procurement Disaster Assistance Team, Procurement and Fiscal Law Division, Office of Chief Counsel, FEMA

PROCUREMENT GUIDANCE FOR RECIPIENTS AND SUBRECIPIENTS

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CHAPTER I

INTRODUCTION

1. THE FEDERAL EMERGENCY MANAGEMENT AGENCY

- a. The Federal Emergency Management Agency (“FEMA”) is a Federal agency within the Department of Homeland Security (“DHS”). FEMA is headed by an Administrator. FEMA’s primary mission is to reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other man-made disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, § 503 (2002) (codified as amended at 6 U.S.C. § 313).
- b. FEMA administers its programs and carries out its activities through its headquarters offices in Washington, D.C.; ten Regional Offices; Area Offices for the Pacific, Caribbean, and Alaska; various Recovery Offices; and temporary Joint Field Offices.
- c. FEMA provides Federal financial assistance through various assistance programs. Each program is not only governed by the enabling laws, implementing regulations, and FEMA policies for those programs, but also a wide range of cross-cutting laws, executive orders, and other regulations. As the Federal awarding agency for these programs, FEMA is responsible for the proper management and administration of these programs as otherwise required by law and enforcing the terms of the agreements it enters into with Non-Federal Entities (NFEs) that receive FEMA financial assistance, consistent with the requirements at 2 C.F.R. Part 200.

2. BACKGROUND

- a. NFE recipients and subrecipients of FEMA financial assistance under the financial assistance programs may use contractors to assist them in carrying out the scope of work under their Federal financial assistance awards.
- b. As a condition of receiving FEMA financial assistance for these contractor costs, a NFE must comply with applicable Federal laws, regulations, executive orders, and other requirements. Each NFE is responsible for managing and administering its Federal awards in compliance with the applicable requirements.
- c. One such Federal requirement is the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* codified at 2 C.F.R. Part 200 (“Uniform Rules”), which DHS has adopted at 2 C.F.R. § 3002.10. 79 Fed. Reg. 75871 (Dec. 19, 2014). Of particular note, the regulations at 2 C.F.R. §§ 200.317 to 326 set forth various procurement standards that NFEs must follow when using FEMA financial assistance to finance procurements of property and

services.

- d. The regulation at 2 C.F.R. § 200.110 provides that the procurement standards set forth at 2 C.F.R. §§ 200.317 to 200.326 apply to all FEMA awards issued on or after December 26, 2014. For grants and cooperative agreements under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, these procurement standards apply to those grants and cooperative agreements associated with emergencies or major disasters declared on or after December 26, 2014. *See* 79 Fed. Reg. 75871, 75872 (Dec. 19, 2014).
- e. A NFE, however, may continue to comply with the former procurement standards applicable to FEMA awards at 44 C.F.R. Part 13 (for states, local, and Indian tribal governments) or 2 C.F.R. Part 215 (for institutions of higher education, hospitals, and other nonprofit organizations) under two scenarios:
 - i. Until the completion of two additional fiscal years after December 26, 2014. “Two additional fiscal years” is interpreted to refer to the NFE’s fiscal year. Accordingly, if the NFE’s fiscal year is the equivalent of a calendar year (January 1 – December 31), the two additional fiscal year periods will begin on January 1, 2015 and end on December 31, 2016. If another NFE’s fiscal year runs from 1 July – 30 June, its two additional fiscal year periods will begin on July 1, 2015 and end on June 30, 2017. During the period of the two additional fiscal years, the NFE may continue to follow the procurement standards found at 44 C.F.R. Part 13 or 2 C.F.R. Part 215 (depending upon the type of entity). Once the two additional fiscal years are complete, the NFE must transition to the new procurement standards found in 2 C.F.R. Part 200. As the grace period is voluntary, if a NFE elects to utilize the grace period, it must affirmatively document this decision in its internal procurement policies, including the date upon which it will transition to the new procurement standards. 2 C.F.R. § 200.110(a). There is no template or one way to do this.
 - ii. The previous procurement standards must continue to be used in situations involving declarations that were issued prior to December 26, 2014, to include all projects associated with such a declaration, regardless of project start date. For example, if a disaster declaration was issued on November 1, 2014, the previous procurement standards would apply. If a project associated with this declaration did not begin until June 1, 2015, the previous procurement standards would remain applicable because the project is associated with a disaster declaration that was issued prior to the effective date of the procurement standards found in the Uniform Rules.²

² FEMA Office of Chief Counsel Procurement Disaster Assistance Team, Field Manual – Public Assistance Grantee and Subgrantee Procurement Requirements under 44 C.F.R. pt. 13 and 2 C.F.R. pt. 215, § V.C.2 (Dec. 2014), available at <http://www.fema.gov/media-library-data/1419360792322->

- f. The purpose of this document is to describe how a recipient or subrecipient of FEMA financial assistance can comply with the procurement standards of 2 C.F.R. §§ 200.317 to 200.326.

3. AUTHORIZING LEGISLATION AND GRANT AND COOPERATIVE AGREEMENT PROGRAMS

- a. This circular applies to all of the grant and cooperative agreement programs listed in Appendix A.
- b. Appendix A also identifies the programs' authorizing statutes and implementing regulations.

4. DEFINITIONS

- a. Appendix B provides the definitions used in this document, which are consistent with the definitions set forth in 2 C.F.R. Part 200, subpart A, except where otherwise noted.

5. FEMA'S ROLE

- a. General. As the Federal awarding agency, FEMA is responsible for monitoring financial assistance execution, and ensuring proper performance under the FEMA award, including compliance with the procurement standards. FEMA may, in exercising this responsibility, conduct both pre- and post-procurement reviews of a NFE's procurements consistent with the terms of 2 C.F.R. §§ 200.317-200.326.
- b. Pre-Award Procurement Review.
 - i. Technical Specifications. A NFE must make available, upon request by FEMA or a pass-through entity, technical specifications of proposed procurements by the NFE where FEMA or the pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review will generally take place before the time the specification is incorporated into a solicitation document. However, if the NFE requests a procurement review after a solicitation has been developed, FEMA or a pass-through entity, may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase. 2 C.F.R. § 200.324(a).
 - ii. Procurement Documents. The NFE must make available upon request, for FEMA or a pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when any of the following conditions are

present. 2 C.F.R. § 200.324(b).

- (1) The NFE's procurement procedures or operation fails to comply with the procurement standards in 2 C.F.R. Part 200;
- (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
- (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold. 2 C.F.R. § 200.324(b).

iii. Exemption. The NFE is exempt from pre-procurement review if FEMA or the pass-through entity determines that the NFE's procurement systems comply with the standards of 2 C.F.R. Part 200. There are two possible methods for a NFE to avail itself of this exemption.

- (1) FEMA or Pass-Through Entity Review. The NFE may request that its procurement system be reviewed by FEMA or a pass-through entity to determine whether its system meets the standards under 2 C.F.R. Part 200 in order for its system to be certified. 2 C.F.R. § 200.324(c)(1). Generally, these reviews must occur where there is continuous high-dollar funding and third party contracts are awarded on a regular basis. In all cases where a recipient reviews a subrecipient's procurement system, it must provide the results of that review to FEMA.
- (2) Self-Certification. The NFE may self-certify its procurement system. Such self-certification must not limit FEMA's right to survey the system. Under a self-certification procedure, FEMA may rely on written assurances from the NFE that it is complying with the procurement standards at 2 C.F.R. §§ 200.317 to 200.326. The NFE must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review. 2 C.F.R. § 200.324(c)(2). Even if a NFE self-certifies, this does not prevent the NFE from requesting review by FEMA or a pass-through entity.

c. Post-Award Procurement Review. FEMA may review a NFE's procurement documents subsequent to the NFE's contract award as part of FEMA's authority

and responsibility to monitor financial assistance execution, and ensure proper performance and compliance with the terms and conditions of the FEMA award. Such a review may occur during close-out of a FEMA award, close-out of an individual project under a FEMA award, or through a FEMA audit or monitoring visit. *See* 2 C.F.R. § 200.336.

- d. Standard of Review. A “standard of review” is the criterion or level of deference by which FEMA will measure the propriety of a decision or action made by a NFE when conducting pre- and post-award review.
 - i. Mandatory Provisions. The regulations at 2 C.F.R. §§ 200.317 to 326 will, in some cases, set forth a mandatory procurement standard. For example, 2 C.F.R. § 200.323 requires NFEs that are not states to perform a price or cost analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold, including contract modifications. FEMA affords no deference to a NFE when making the determination of whether it complied with the mandatory regulation.
 - ii. Discretionary Provisions. The regulations at 2 C.F.R. §§ 200.317 to 326 will, in other cases, allow the NFE to take an action that involves the exercise of discretion or judgment. For example, the regulation at 2 C.F.R. § 200.318(j) provides that a NFE may use a time and materials contract only after, among other things, it makes a determination that no other contract is suitable. FEMA will review such discretionary procurement decisions by a NFE to determine whether: (1) the NFE’s decision lacked a rational basis; and/or (2) the procurement procedure involved a violation of Federal law, regulation, or FEMA policy. In reviewing whether a decision lacked a rational basis, FEMA does not substitute its judgment for that of a NFE, but may impose any one of the remedies for non-compliance available to it, for example, by identifying and substituting reasonable costs for actually incurred costs (that are determined to be unreasonable). 2 C.F.R. § 200.338
- e. Access to Records. The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity (e.g. the recipient), or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the NFE which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the NFE’s personnel for the purpose of interview and discussion related to such documents. 2 C.F.R. § 200.336.
- f. Audits. FEMA may perform or contract for audits of Federal awards or monitoring visits, which could include a review of a NFE’s procurements. 2 C.F.R. §§ 200.336 and 200.503.
- g. Training and Technical Assistance. FEMA provides procurement training and

technical assistance to NFEs at both the regional and national levels. For assistance, please contact your FEMA Regional Office.

CHAPTER II

APPLICABILITY

1. LEGAL EFFECT

- a. FEMA has developed this document to assist NFEs in complying with the Federal procurement standards at 2 C.F.R. Part 200 and considers this document, in its entirety, to be a guidance document and not a legislative regulation. Although this guidance document does not have the force and effect of law or regulation, it does contain information about the regulations at 2 C.F.R. Part 200 that are mandatory.
- b. This document describes how a NFE can comply with a particular procurement standard. Unless stated otherwise, such examples should not be treated as the exclusive manner in which a NFE can comply with a particular procurement standard. If a NFE identifies an alternate method to comply with a particular regulation, it may contact FEMA for comment before pursuing that alternate method.

2. APPLICABILITY

- a. General.
 - i. The regulation at 2 C.F.R. § 200.110 provides that the procurement standards set forth at 2 C.F.R. §§ 200.317 to 326 apply to all FEMA awards issued on or after December 26, 2014. For financial assistance under the Stafford Act, these procurement standards apply to those financial assistance awards associated with emergencies or major disasters declared on or after December 26, 2014. *See* 79 Fed. Reg. 75871, 75872 (Dec. 19, 2014).
 - ii. A NFE, however, may continue to comply with the former procurement standards applicable to FEMA awards at 44 C.F.R. Part 13 (for states, local, and Indian tribal governments) or 2 C.F.R. Part 215 (for institutions of higher education, hospitals, and other nonprofit organizations) until the completion of two additional fiscal years after December 26, 2014. This is an elective grace period and, if a NFE affirmatively elects to use the previous procurement standards, it must document this decision in its internal procurement policies, including the date upon which it will transition to the new procurement standards. 2 C.F.R. § 200.110(a). *See* Ch. I, ¶ e.
 - iii. This document only applies to those financial assistance awards that are awarded on or after the date of this circular's issuance or the end of the NFE's grace period, whichever is later. For financial assistance authorized under major disaster and emergency declarations pursuant to

the Stafford Act, this document only applies to financial assistance awarded under declarations occurring after December 26, 2014 or the end of the NFE's grace period (where affirmatively elected), whichever is later.

- b. States. When procuring property and services under a grant or cooperative agreement, a state (to include state agencies and instrumentalities of the state³) must use the same policies and procedures that it uses for procurements from its non-Federal funds. 2 C.F.R. § 200.317. A state must comply with 2 C.F.R. § 200.322 (Procurement of Recovered Materials), must ensure that every purchase order or other contract included any clauses required by 2 C.F.R. § 200.326 (Contract Provisions), and must follow all applicable Federal laws, executive orders, implementing regulations, and policies. As such, Chapter I (*Introduction*), Chapter II, ¶ 1 (*Legal Effect*), Chapter II, ¶¶ 3 (*Federal Laws, Regulations, and Executive Orders*) and 4 (*State, Local, and Indian Tribal Laws and Regulations*), Chapter III (*Procurement by a State*), Chapter IV, ¶ 12 (Contract Provisions), and Chapter V, ¶ 7 (Procurement of Recovered Materials) of this Supplement apply to the procurement of services or property by a state.
- c. Non-States. When procuring property and services under a grant or cooperative agreement, all other NFEs, must follow the regulations at 2 C.F.R. § 200.318 (General Procurement Standards) through 2 C.F.R. § 200.326 (Contract Provisions). 2 C.F.R. § 200.318. This includes local governments, institutions of higher education, hospitals, and other non-profit organizations, as well as Indian tribes (irrespective of whether they are serving as a recipient or subrecipient), institutions of higher education (that do not meet the definition of "state" instrumentality at 2 C.F.R. § 200.90), hospitals (that do not meet the definition of "state" instrumentality at 2 C.F.R. § 200.90), and other non-profit organizations. As such, Chapter I (*Introduction*), Chapter II, ¶ 1 (*Legal Effect of This Circular*), Chapter II, ¶¶ 3 (*Federal Laws, Regulations, and Executive Orders*) and 4 (*State, Local, and Indian Tribal Laws and Regulations*⁴), Chapter IV (*General Procurement Standards*), Chapter V (*Procedures and Guidance for Open Market Procurements*), and Chapter VI (*Other Procurement Methods and Additional Topics*) of this Supplement apply to the procurement of services or property by the NFEs that are not a state.
- d. Recipients of Federal Financial Assistance from FEMA and other Federal Agencies. A NFE that uses funding provided by another Federal agency or agencies for a third party procurement also supported by FEMA financial assistance must comply with the procurement requirements of both FEMA and the other Federal agencies providing Federal financial assistance. These

³ 2 C.F.R. § 200.90. "State" is defined as "any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

⁴ Id.

requirements may sometimes differ, with the result that FEMA expects the NFE to comply with both sets of requirements. If compliance with all applicable Federal requirements is impossible, the NFE should notify FEMA or its pass-through entity, as appropriate, for resolution by FEMA.

3. FEDERAL LAWS, REGULATIONS, EXECUTIVE ORDERS, AND OTHER FEMA REQUIREMENTS

- a. Enabling Laws, Implementing Regulations, and FEMA Policies. The property or services acquired by a NFE must be eligible for support and otherwise comply with the relevant enabling laws, regulations, and FEMA policies for the specific financial assistance programs set forth in Chapter I, ¶ 3.
- b. Scope of the Grant or Cooperative Agreement. The property or services acquired must be within the scope of work of the underlying grant or cooperative agreement.
- c. Period of Performance. FEMA expects the NFE to use sound business judgment in establishing and extending a contract's period of performance, with such period generally not exceeding the time necessary to accomplish the purpose of the contract. Furthermore, FEMA will not reimburse a NFE for contract work performed outside of the period of performance of the financial assistance award. 2 C.F.R. § 200.309; Standard Form 424D, ¶ 6.
- d. Contract Costs Incurred Prior to the FEMA Federal Assistance Award.
 - i. Pre-Award Costs. Pre-award costs are those costs incurred before the effective date of the FEMA award directly pursuant to negotiation and in anticipation of the FEMA award where such costs are necessary for efficient and timely performance of the scope of work. 2 C.F.R. § 200.458. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the FEMA award and only with the written approval of FEMA. For example, FEMA may fund pre-award planning or project costs directly related to the development of a Hazard Mitigation Grant Program project or planning proposal. *See* 44 C.F.R. § 206.439.
 - ii. Project Implementation Before Award.
 - (1) Contract costs associated with project implementation but incurred before FEMA has awarded a grant or cooperative agreement (or project under a grant or cooperative agreement) are generally unallowable for reimbursement. *See also* Appendix C, ¶ 6 (concerning environmental and historic preservation implications). For example, contract costs associated with the commencement of actual implementation of a project under the Hazard Mitigation Grant Program before FEMA has awarded that project are ineligible for reimbursement. *See* 44 C.F.R. § 206.439.

- (2) There are limited exceptions to this prohibition, and recipients should engage the appropriate Regional or FEMA Headquarters staff with specific questions. Furthermore, even where contract costs are incurred before the effective date of award, if those costs are ultimately deemed otherwise allowable, the NFE must still comply with the procurement standards of 2 C.F.R. Part 200 when procuring property or services.
- e. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- i. General. The procurement standards set forth in the Uniform Rules at 2 C.F.R. §§ 200.317 to 200.326 apply to all awards as detailed in Chapter II, ¶ 2.a.
 - ii. Waivers. FEMA may, subject to certain limitations, approve exceptions to the procurement standards on a case-by-case basis for individual NFEs pursuant to 2 C.F.R. § 200.102(b). Recipients should contact their respective Regional Office for information about submitting waiver requests.
 - iii. More Restrictive Procurement Standards. FEMA may apply more restrictive procurement standards, to a class of FEMA awards or NFEs when approved by OMB or required by Federal statutes or regulations. 2 C.F.R. § 200.102(c). As of the date of this document, FEMA has not sought approval from OMB for any more restrictive requirements for any FEMA grant or cooperative agreement program or class of NFEs.
 - iv. Less Restrictive Procurement Standards. FEMA may also apply less restrictive procurement standards when making fixed amount awards, except for those requirements imposed by statute. 2 C.F.R. § 200.102(c).
 - v. Cost Principles. The costs under a FEMA grant or cooperative agreement must conform to the cost principles set forth under the Uniform Rules at 2 C.F.R. Part 200, subpart E. In general, costs must be necessary and reasonable; allocable to the FEMA award; conform to any limitations or exclusions set forth in the Cost Principles or in the FEMA award as to types or amount of cost items; be consistent with policies and procedures that apply uniformly to both Federally-financed and other activities of the NFE; be accorded consistent treatment; not be included as a cost or used to meet cost sharing or matching requirements of any other Federally-financed program in either the current or a prior period and authorized by Federal law or regulation; be adequately documented; and be determined in accordance with generally accepted accounting principles (“GAAP”), except, for state and local governments and Indian tribes only, as otherwise provided for in 2 C.F.R. Part 200, subpart E. 2 C.F.R. § 200.403.

- f. Other Federal Laws, Regulations, and Executive Orders.
 - i. In addition to complying with the Uniform Rules and the enabling laws, implementing regulations, and FEMA policies for a financial assistance program, each NFE must also comply with all other applicable Federal laws, regulations, and executive orders.
 - ii. Many of these laws, regulations, and executive orders will need to be included in third party contracts to the lowest tier necessary, and others, although not expressly referenced in a contract, will have a direct and indirect effect on a NFE's third party contracts.
 - iii. DHS issues, on an annual basis, Standard Terms and Conditions that apply to recipients of Federal awards from all DHS Components, including FEMA. In addition, a recipient executes a Standard Form ("SF") 424B or 424D with its financial assistance application to FEMA that contains standard assurances. The DHS Standard Terms and Conditions and SF 424B and D contain references to many cross-cutting Federal laws and regulations that may apply to a FEMA award.
 - iv. Appendix C provides a non-exhaustive list and description of some of the cross-cutting laws, regulations, and executive orders that may affect a NFE's procurement.
- g. Federal Acquisition Regulation. The Federal Acquisition Regulation ("FAR"), 48 C.F.R. Chapter 1, does not apply to FEMA-assisted procurements, absent Federal laws or regulations to the contrary. Nevertheless, in the case where the regulations at 2 C.F.R. §§ 200.317 to 200.326 need amplification as they relate to a particular procurement or a NFE's procurement laws, regulations, or policies do not provide guidance on a particular issue, then the FAR may prove helpful if the NFE's circumstances are suitable for application of the specific FAR provision under consideration.

4. STATE, LOCAL, AND TRIBAL LAWS AND REGULATIONS AND STANDARDS

- a. General. The Uniform Rules provide that a state must, among other things, follow the same policies and procedures it uses for procurements from its non-Federal funds. 2 C.F.R. § 200.317. They also provide that all other NFEs must use their own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided that the procurement conform to applicable Federal law and the procurement standards set forth at 2 C.F.R. §§ 200.317 to 200.326. 2 C.F.R. § 200.318.
- b. Waivers of Local, State, and/or Tribal Procurement Standards. Under certain circumstances, NFE authorities may, pursuant to their own legal requirements, waive local, state, or tribal procurement standards or regulations as a result of, or in anticipation of a disaster or emergency. However, even though the appropriate NFE may have waived local, state or tribal procurement standards or regulations,

the NFE cannot waive the applicable Federal procurement standards, which would continue to apply to the NFE, even where local, state, or tribal procurement standards or regulations have been waived.

- c. Direct Conflicts Between the Federal Procurement Standards and the Procurement Standards Applicable to NFEs Other Than States. The Federal procurement standards are relatively brief. They only address certain, limited procurement concepts and do not address all possible procurement issues. Where the Federal procurement standards do not address a particular area of procurement, FEMA expects the NFE to apply local, state, and/or tribal procurement standards or regulations – whichever applies to the particular NFE. However, where a *direct conflict* exists between a Federal procurement standard and a local, state and/or tribal procurement standard or regulation, FEMA expects the NFE to apply the more restrictive procurement standard.

NFE procurement standards may, in some cases, be more restrictive than the Federal procurement standards at 2 C.F.R. §§ 200.318 to 200.326. For example, the regulation at 2 C.F.R. § 200.320(b) allows a NFE to use procurement by small purchase procedures when the services, property, or other property acquired do not cost more than the simplified acquisition threshold (which is currently \$150,000). It may be the case that the applicable state, local, and/or Indian tribal procurement laws and regulations do not permit small purchase procedures for acquisitions over \$50,000. In such a circumstance where there is a direct conflict between local, state (and/or tribal) procurement standards and these Federal procurement standards, the NFE is required to follow the more restrictive applicable state, local, or tribal laws and regulations. A more permissive procurement standard of the Uniform Rules would not, in other words, control over more restrictive state, local, or tribal standards. Note that this concept of direct conflicts and more or less restrictive standards *only applies to NFEs other than states*. States will always follow the procurement standards found at 2 C.F.R. § 200.317, which directs them to utilize their own procurement standards, comply with 2 C.F.R. § 200.322 (procurement of recovered materials), and 2 C.F.R. § 200.326 (contract provisions).

CHAPTER III

PROCUREMENT BY A STATE

1. GENERAL STANDARD

- a. When procuring property and services under a grant or cooperative agreement, a state must follow the same policies and procedures that it uses for acquisitions from its non-Federal funds. 2 C.F.R. § 200.317. A state must comply with 2 C.F.R. § 200.322 (Procurement of Recovered Materials) and ensure that every purchase order or other contract includes any clauses required by 2 C.F.R. § 200.326 (Contract Provisions). As such, Chapter IV, ¶ 12 (Contract Provisions) and Chapter V, ¶ 7 (Procurement of Recovered Materials), which discuss the regulations at 2 C.F.R. §§ 200.322 and 326, apply to a state. A state must also follow all other applicable Federal law, executive orders, and implementing regulations.
- b. A “state” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments. As such, the procurement standard at 2 C.F.R. § 200.317 and described in Chapter III, ¶ 1.a apply to a state agency irrespective of whether that agency is acting as recipient or subrecipient under a FEMA award.
- c. Under the Stafford Act and other FEMA financial assistance programs, an Indian tribe may potentially serve as a recipient. An Indian tribe is not defined as a “state” at 2 C.F.R. § 200.90, however, meaning that the procurement standards applicable to an Indian tribe will always be 2 C.F.R. §§ 200.318 through 200.326 and not 2 C.F.R. § 200.317, unless the definition is subsequently revised by the Office of Management and Budget, which is responsible for the Uniform Rules.

2. COST ALLOWABILITY

- a. The Uniform Rules require financial costs to conform to the Cost Principles at 2 C.F.R. Part 200, subpart E, for allowable costs. In general, costs must be necessary and reasonable; allocable to the FEMA award; conform to any limitations or exclusions set forth in the Cost Principles or in the FEMA award as to types or amount of cost items; be consistent with policies and procedures that apply uniformly to both Federally-financed and other activities of the NFE; be accorded consistent treatment; not be included as a cost or used to meet cost sharing or matching requirements of any other Federally-financed program in either the current or a prior period and authorized by Federal law or regulation; be adequately documented; and be determined in accordance with generally accepted accounting principles (“GAAP”), except, for state and local governments and Indian tribes only, as otherwise provided for in 2 C.F.R. Part 200, subpart E. *See* 2 C.F.R. § 200.403.

- b. Even if a state complies with its own policies and procedures when procuring services or property under a FEMA award, FEMA will not provide full reimbursement of a state's third party contract costs if FEMA determines the costs do not conform to the cost principles. For example, FEMA will not provide full reimbursement in the case of cost plus percentage of cost or cost plus percentage of construction cost contracts, as FEMA considers the percentage of cost portion of the contract to be unreasonable.
 - c. A state must use the cost principles at 2 C.F.R. Part 200, subpart E as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price. 2 C.F.R. § 200.401.
3. LAW, REGULATIONS, AND EXECUTIVE ORDERS
- a. A state must comply with all applicable Federal laws, regulations, and executive orders when procuring services or property under a FEMA award.
 - b. This document provides a list of some of the applicable Federal laws, executive orders, and regulations at Appendices A and C.
4. PROCUREMENTS BY NFEs OTHER THAN STATES
- a. The remaining chapters of this circular discuss the procurement standards that apply to Institutions of Higher Education (both public and private), Hospitals, and other Private Non-Profit Organizations. Unlike the procurement standards for states, found in 2 C.F.R. § 200.317, the procurement standards for Institutions of Higher Education, Hospitals, and other Private Non-Profit Organizations are found at 2 C.F.R. §§ 200.318-326. With the exception of the requirements for Recovered Materials (2 C.F.R. § 200.322) and contract provisions (2 C.F.R. § 200.326), there is no other overlap of the procurement standards between States and NFEs other than States.
 - b. Accordingly, NFEs must be cognizant of the fact that the Federal procurement standards are differentiated by the type of entity receiving Federal disaster assistance from FEMA. In other words, the Federal procurement standards are divided into those that apply to States (as defined above and by the Uniform Rules) and those that apply to NFEs other than States – in other words, everyone else.
 - c. With the exception of the following discussion on the standards associated with 2 C.F.R. § 200.322 (Procurement of Recovered Materials) and 2 C.F.R. § 200.326 (contract provisions), the remaining sections and chapters of this document refer to the procurement standards applicable to NFEs other than States (local and tribal governments, institutions of higher education, hospitals, and other non-profit organizations). 2 C.F.R. § 200.318 – 200.326.

CHAPTER IV

GENERAL PROCUREMENT STANDARDS FOR NFEs OTHER THAN STATES

1. GENERAL

- a. A NFE that is NOT a state, must use its own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided the procurement conforms to applicable Federal law and the standards set forth in 2 C.F.R. Part 200.
- b. The regulations at 2 C.F.R. §§ 200.318, 319, and 326 set forth various general procurement standards for NFEs, some of which are mandatory and some of which are encouraged. These standards are discussed in this chapter.
- c. A NFE must comply with all other applicable Federal laws, regulations, and executive orders when procuring services or property under a FEMA award. The requirements identified in this supplement only address the Federal procurement standards and not the other requirements established and made applicable through the Uniform Rules. This supplement provides a (non-exclusive) list of some of the applicable Federal laws, executive orders, and regulations at Appendices A and C.

2. CONTRACTING CAPACITY AND OVERSIGHT

- a. NFEs must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. 2 C.F.R. § 200.318(b).
- b. A NFE should maintain adequate technical capacity to comply with the procurement standards at 2 C.F.R. §§ 200.318 to 326. If a NFE lacks qualified personnel (force account labor) within its organization to undertake the various tasks (such as evaluating contractors, drafting specifications, overseeing contract performance), then FEMA expects the NFE to acquire the necessary services from sources outside the NFE's organization. If the NFE obtains such services, those services are eligible under a particular FEMA grant or cooperative agreement, and the NFE seeks to fund those services using FEMA award funding, then the procurement standards at 2 C.F.R. Part 200 and this circular will apply to those contracts and to those contractors selected to perform procurement functions on behalf of the NFE.

3. STANDARDS OF CONDUCT

- a. Written Standards. The NFE must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. 2 C.F.R. § 200.318(c)(1).

- b. Personal Conflicts of Interest. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a FEMA award if he or she has a real or apparent conflict of interest. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these parties, has a financial or other interest in or a tangible personal benefit from a firm considered for award. 2 C.F.R. § 200.318(c)(1); *See also* Standard Form 424D, ¶ 7; Standard Form 424B, ¶ 3.
 - i. FEMA considers a “financial interest” to be the potential for gain or loss to the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these parties as a result of the particular procurement. The prohibited financial interest may arise from ownership of certain financial instruments or investments such as stock, bonds, or real estate, or from a salary, indebtedness, job offer, or similar interest that might be affected by the particular procurement.
 - ii. FEMA considers an “apparent” conflict of interest to exist where an actual conflict does not exist, but where a reasonable person with knowledge of the relevant facts would question the impartiality of the employee, officer, or agent participating in the procurement.
- c. Gifts. The officers, employees, and agents of the NFE must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, NFEs may set standards for situations in which the financial interest is *de minimus*, not substantial, or the gift is an unsolicited item of nominal value. 2 C.F.R. § 200.318(c)(1).
- d. Violations. The NFE’s written standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the NFE. 2 C.F.R. § 200.318(c)(1). For example, the penalty for a NFE’s employee may be dismissal, and the penalty for a contractor might be the termination of the contract.
- e. Organizational Conflicts of Interest.
 - i. Parent, Subsidiaries, and or Affiliates. If a NFE has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the NFE must maintain written standards of conduct governing organizational conflicts of interest. Organizational conflicts of interest within this context means that because of relationships with a parent company, affiliate, or subsidiary organization, the NFE is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. 2 C.F.R. § 200.318(c)(2).
 - ii. Other Contractors. An organizational conflict of interest can also arise

within the context of contractors that are not related organizations. An organizational conflict of interest arises in these cases where a person, because of other activities or relationships with other persons, is unable or potentially unable to render impartial assistance of advice to the NFE, the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage. Chapter V, ¶ 1.b provides more information about such organizational conflicts of interest.

- iii. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such requirements. 2 C.F.R. § 200.319(a).

4. DETERMINING NFE NEEDS

- a. Eligibility. The property and services to be acquired must be eligible under the Federal financial assistance award, including the Federal law authorizing the FEMA award and any implementing regulations and policies. Furthermore, if FEMA assistance will finance the cost of property or services, the property or services must be within the scope of work of the specific FEMA grant or cooperative agreement (or project within that grant or cooperative agreement). *See* Chapter II, ¶ 3.a.
- b. Necessity. The Uniform Rules require the NFE to establish procedures to avoid the purchase of unnecessary or duplicative items. 2 C.F.R. § 200.318(d). In monitoring whether a NFE has complied with its procedures to avoid the purchase of unnecessary or duplicative items, FEMA bases its determination on what would have been the NFE's reasonable expectations at the time it entered into the contract.
 - i. General Prohibition. FEMA expects the NFE to limit an acquisition to its current and reasonably expected needs to carry out the scope of work under the FEMA award, and may not add quantities or options to the contract solely for needs unrelated to the scope of work under the FEMA award or for the purpose of assignment to another party at a later date. The prohibition does not apply, however, to joint procurements or state or local government purchasing schedules or contracts.
 - ii. Advance Contracts for Future Work. A NFE may award advance contracts before an incident occurs for the potential performance of work under a Stafford Act emergency or major disaster. These are also known as pre-positioned or pre-awarded contracts. These types of contracts are eligible for reimbursement when used to support response and recovery efforts pursuant to a financial assistance award; however, NFEs must ensure that these contracts are awarded in accordance with the Federal

procurement standards found at 2 C.F.R. §§ 200.318 – 200.326 and that the scope of work adequately encompasses the type and extent of work anticipated for its use in response to and recovery from the disaster.

- c. Procurement Size. The NFE should consider whether to consolidate or break out the procurement to obtain a more economical purchase. 2 C.F.R. § 200.318(d).
 - i. Joint Procurements. It may be economically advantageous for a NFE to enter into a joint procurement with others that have similar needs. A joint procurement will enable the two or more NFE's to obtain advantages unavailable for smaller procurements.
 - ii. Smaller Procurements. The regulations require a NFE to take the affirmative step, when possible, to divide total requirements by breaking out procurements when economically feasible into smaller tasks or quantities to permit maximum participation of small and minority businesses and women's business enterprises. 2 C.F.R. § 200.321(b)(3). Absent efforts to permit maximum participation of small and minority businesses and women's business enterprises, a NFE should not break out a larger procurement merely to bring it under the micro-purchase or simplified acquisition thresholds. In other words, NFEs should not perform what is commonly referred to as "project splitting," by which a single requirement is broken up into smaller components simply to defeat an established dollar threshold in order to take advantage of streamlined procurement procedures under the micro-purchase and small purchase procedures, methods of contracting.
- d. Options. The NFE's contracts may include options to ensure the future availability of property or services as long as the NFE justifies them as needed for the purpose of the FEMA grant or cooperative agreement.
- e. Lease vs. Purchase. A NFE must, where appropriate, make an analysis of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. 2 C.F.R. § 200.318(d). FEMA will review any costs used in the comparison for reasonableness, realistic current market conditions, and based on the expected useful service life of the asset. The following provide examples of where the lease vs. purchase analysis is required under FEMA financial assistance programs.
 - i. Temporary Facilities under the Public Assistance Grant Program. Eligible Public Assistance applicants may request FEMA financial assistance for temporary facilities following a Stafford Act declaration to continue the essential community services⁵ previously performed at a damaged facility.

⁵ "Essential community services" are those services of a governmental nature that are necessary to save lives, protect property and the public, and preserve the proper function and health of the

Applicants may decide to lease, purchase, or construct eligible temporary facilities; whichever option is selected, it must be reasonable, cost-effective, and temporary in nature. FEMA does not mandate that the applicant pursue a specific option, but will fund only the most cost-effective option. Before FEMA will provide financial assistance for temporary facilities under the Public Assistance Grant Program, FEMA requires the applicant to perform a cost comparison of the options and provide that to FEMA. Id.

- ii. Equipment to Perform Emergency Work under the Public Assistance Grant Program. FEMA may provide FEMA financial assistance to a NFE to acquire equipment to perform emergency work following an emergency or major disaster declaration under the Stafford Act. In those circumstances, the NFE must analyze its options to either lease or purchase equipment. FEMA, in most cases, does not mandate that the NFE either purchase or lease equipment but will fund only the most cost-effective option, and will review the applicant's analysis of comparative costs and other factors. *See* Public Assistance Program and Policy Guide, Ch. 2, Section V (C). The following provides several factors that FEMA will consider: estimated length of the period the equipment is to be used and the extent of use within that period; cumulative rental payments for the estimated period of use; net purchase price; transportation and installation costs; maintenance and other service costs; availability of purchase options; and trade-in or salvage value.

5. VALUE ENGINEERING

- a. A NFE is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lowest cost. 2 C.F.R. § 200.318(g).
- b. Under value engineering clauses, contractors are incentivized to submit change proposals which reduce the cost of contract performance by promising the contractor a share of the savings.
- c. Part 48 of the FAR is dedicated to the subject of value engineering and may provide a useful reference for a NFE.

6. CONTRACTOR QUALIFICATIONS

- a. Responsibility.

community at large. Stafford Act § 102(11)(B), 42 U.S.C. 5122. *See also*, Public Assistance Program and Policy Guide, Ch. 2, Section VI (B) (17).

- i. Requirement. A NFE must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed requirement. 2 C.F.R. § 200.318(h). The Uniform Rules require a NFE to give consideration to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The following provide amplifying information in regard to these mandatory criteria.

- (1) Integrity. A contractor must have a satisfactory record of integrity and business ethics. Contractors that are debarred or suspended as described in Chapter III, ¶ 6.d must be rejected and cannot receive contract awards at any level. A NFE, for those contractors that are not debarred or suspended, may also analyze whether the contractor has:

- a. Committed fraud or a criminal offense in connection with obtaining or attempting to obtain a contract;
- b. Violated Federal or state antitrust statutes;
- c. Committed embezzlement, theft, forgery, bribery, falsification or destruction of records, or tax evasion;
- d. Made false statements;
- e. Violated Federal criminal tax laws;
- f. Received stolen property;
- g. Committed any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the contractor;
- h. Been indicted for any of the offenses described in ¶ 6.a.(1)(a)-(g); or
- i. Has delinquent Federal or state taxes

- (2) Public Policy. A contractor must have complied with the public policies of the Federal Government and state, local government, or tribal government. This includes, among other things, past and current compliance with the:

- a. Equal opportunity and nondiscrimination laws described in Appendix C, ¶ 5;
- b. Five affirmative steps described at 2 C.F.R. § 200.321(b) for all subcontracting under contracts supported by FEMA financial assistance; and

- c. Applicable prevailing wage laws, regulations, and executive orders

(3) Record of Past Performance. A contractor must be able to provide a satisfactory past performance record, which could include:

- a. Sufficient Resources. The contractor has key personnel with adequate experience and subcontractors with adequate experience that will be performing work under the prospective contract.

- b. Adequate Past Experience. A contractor has successful past experience in carrying out similar work, including a record of:

- i. Having the necessary organization, accounting, and operational controls;
- ii. Conforming to requirements and standards of good workmanship;
- iii. Forecasting and controlling costs and showing appropriate budgetary controls;
- iv. Adherence to schedules, including the administrative aspects of performance;
- v. Reasonable and cooperative behavior and commitment to customer satisfaction;
- vi. Business-like concern for the interest of the customer; and
- vii. Meeting quality requirements

(4) Financial Resources. A contractor must have adequate financial resources to perform the contract or the ability to obtain such resources. A NFE could analyze the existing cash flow of the contractor, account receivables, and other financial data as well as existing business prospects in making this evaluation.

(5) Technical Resources. A contractor must have or be able to acquire the required construction, production, and/or technical facilities, equipment, employees, and other resources to perform the work under the contract.

- ii. While the NFE is afforded great discretion in its Responsibility determination, FEMA requires a NFE exercising this discretion to make a documented determination that a prospective contractor qualifies as responsible and set forth the basis for that determination. 2 C.F.R. §

200.318(h).

- b. Organizational Conflict of Interest. The Uniform Rules require a NFE to exclude contractors that developed or drafted specifications, requirements, statements of work, or invitations for bids or requests for proposals from competing for such procurements in order to ensure objective contractor performance and eliminate unfair competitive advantage. *See* ¶ 3.e; 2 C.F.R. § 200.319(a).
- c. Lobbying Certification. The NFE must obtain a lobbying certification and, if applicable, a lobbying disclosure from a prospective contractor if the contract will exceed \$100,000 before awarding the contract. *See* 2 C.F.R. § 200.450; Chapter IV, ¶ 12.ix and Appendix C, ¶ 4; 44 C.F.R. Part 18 (New Restrictions on Lobbying).
- d. Debarment and Suspension. A NFE's contractor or subcontractor must not be debarred nor suspended from Federal programs. *See* 2 C.F.R. § 200.213.
 - i. OMB Guidelines. The rules of assistance exclusion are governed by the OMB guidelines to agencies on government-wide debarment and suspension set forth at 2 C.F.R. Part 180. These guidelines prohibit a NFE from entering into a "covered transaction" with a party listed on the System for Award Management ("SAM) Exclusions list. *See* 2 C.F.R. Part 200, Appendix II, ¶ I; Appendix C, ¶ 2.
 - ii. Department Guidelines. The Department has adopted debarment and suspension guidelines at 2 C.F.R. Part 3000, which adopt OMB's regulations at 2 C.F.R. Part 180 and provide supplemental policies and procedures.
 - iii. Covered Transactions. As detailed in 2 C.F.R. Part 180 and 2 C.F.R. Part 3000, the following comprise "covered transactions" of a NFE under a FEMA award:
 - (1) Contract awarded by a NFE in the amount of at least \$25,000 or more;
 - (2) Contract awarded by NFE that requires approval of FEMA (irrespective of contract amount);
 - (3) Contract awarded by a NFE for a Federally required audit (irrespective of the contract amount);
 - (4) A subcontract awarded by a NFE's contractor or subcontractor that requires the approval of FEMA (irrespective of amount) or is in the amount of at least \$25,000. 2 C.F.R. § 3000.220; 2 C.F.R. § 180.220.
 - iv. State Debarment and Suspension Lists. A NFE may treat, consistent with applicable state, local, and/or Indian tribal laws and regulations, any

prospective contractor or subcontractor listed on a centralized government debarment and suspension list as non-responsible and ineligible for contract award, pursuant to applicable state, local or tribal law. This would not fall within the Federal Suspension and Debarment classification, but would instead fall within the NFE's requirement to determine and award contracts only to contractors determined to be responsible.

7. RECORD KEEPING

- a. Procurement History. The Uniform Rules require a NFE to maintain records sufficient to detail the history of a procurement. These records include, but are not limited to, the following: rationale for method of procurement, selection of contract type, contractor selection or rejection, and the basis for contract price. 2 C.F.R. § 200.318(i).
 - i. Procurement Method. A NFE must document its rationale for the method of procurement used for each contract (micro-purchases, small purchase procedures, sealed bidding, competitive proposals, and noncompetitive proposals), including a justification for using the procurement by noncompetitive proposals method.
 - ii. Contract Type. A NFE must document its rationale for selecting the contract type it used (fixed price, cost reimbursement, or time and materials). In addition, time and materials contracts have additional requirements described at 2 C.F.R. § 200.318(j). *See* Chapter IV, ¶ 8.
 - iii. Contractor Selection. A NFE must document its rationale for contractor selection or rejection, including a written responsibility determination for the successful contractor.
 - iv. Price. A NFE must document the basis for the contract price, which will include the cost or price analysis for contracts exceeding the simplified acquisition threshold. *See* 2 C.F.R. § 200.323; Chapter V, ¶ 4.
 - v. Other Documentation. A procurement file should also include the following documentation as appropriate:
 - (1) Acquisition planning information and other pre-solicitation documents;
 - (2) List of sources solicited;
 - (3) Copies of published notices of proposed contract action;
 - (4) Independent cost estimate;
 - (5) Copy of the solicitation, all addenda, and all amendments;
 - (6) Determination of contractor's responsiveness;

- (7) Notice of award;
 - (8) Notice to unsuccessful bidders or offerors and record of any debriefing;
 - (9) Record of protests, disputes, and claims;
 - (10) Bid, performance, payment, and other bond documents;
 - (11) Notice to proceed
- b. Extent of Documentation. FEMA expects that the NFE will maintain reasonable documentation, such that documents included in a procurement history should be commensurate with the size and complexity of the procurement.
- c. Access to Records.
- i. The Uniform Rules provide that FEMA, DHS Office of Inspector General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the NFE which are pertinent to the FEMA award, in order to make audits, examinations, excerpts, and transcripts. 2 C.F.R. § 200.336; DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (Dec. 4, 2013).
 - ii. A NFE must acknowledge and agree—and require any contractors, successors, transferees, and assignees acknowledge and agree—to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (Dec. 4, 2013).

8. TIME AND MATERIALS CONTRACTS

- a. Definition. A time and materials type contract means a contract whose cost to a NFE is the sum of the actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. 2 C.F.R. § 200.318(j)(1)(i) and (ii).
- b. Conditions Precedent. A NFE may use a time and materials type contract only after a determination that (1) no other contract is suitable; and (2) if the contract includes a ceiling price that the contractor exceeds at its own risk. 2 C.F.R. § 200.318(j).
- c. Oversight. Time and materials type contracts provide no positive profit incentive to the contractor for cost control or labor efficiency, which is why the Uniform Rule requires the inclusions of a contract ceiling price. The Uniform Rules also require the NFE to assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls. 2 C.F.R. § 200.318(j)(2).

- d. Differentiating Time and Materials and Cost Plus Percentage of Cost Contracts.
 - i. As described above, a time and materials (T&M) contracts provides for the payment of labor costs on the basis of fixed hourly billing rates which are specified in the contract. These hourly billing rates would include wages, indirect costs, general and administrative expense, and profit. No fee or profit is allowed except as part of the fixed billing rate for direct labor hours, such that materials are billed at cost.
 - ii. To include for the payment of labor costs on the basis of fixed hourly billing rates and allow the contractor to bill for actual costs other than labor (such as materials or travel) plus a percentage rate of those actual costs would constitute a prohibited cost-plus-percentage-of-cost contract. A contractor, however, is allowed to recover overhead costs on its direct costs, such as materials or travel, if the contractor's accounting system clearly separates the overhead costs associated with those direct costs and those overhead costs are not included in the overhead pool that is applied to direct labor costs. In other words, there must be no duplicate billing for material handling overhead costs in the rates applied to labor hours.
- e. FEMA Review.
 - i. FEMA will review a NFE's determination to use a time and materials contract under a reasonable basis standard.
 - ii. FEMA generally discourages a NFE from using time and materials type contracts; however, where their use is unavoidable, FEMA generally limits the use of these contracts to a reasonable time based on the circumstances during which the Applicant could not define a clear scope of work. FEMA also encourages a NFE to ensure that it has a unilateral right to terminate the contract for convenience that will enable the NFE to award a follow-on fixed price or cost reimbursement contract type.

9. SETTLEMENT OF ALL CONTRACTUAL AND ADMINISTRATIVE ISSUES

- a. General. A NFE alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. 2 C.F.R. § 200.318(k). While not specifically defined in the Uniform Rules, these terms generally have the following meaning:
 - i. A "protest" is a disagreement before or over the award of a contract. Such disagreements can arise from, among other things, content in a solicitation, an award or proposed award of a contract, or termination or cancellation of an award of the contract.
 - ii. A "dispute" is a disagreement between the NFE and its contractor

regarding the rights of the parties after a contract has been awarded that do not concern award of the contract itself.

- iii. A “claim” is a written demand or assertion by the NFE or its contractor seeking payment of a specific sum of money, an adjustment or interpretation of contract terms, or other relief arising under or relating to the contract.
 - iv. A “source evaluation” generally refers to the evaluation by a NFE of a prospective contractor’s proposal when using the procurement by competitive proposal method.
- b. Contractual Responsibilities. Neither FEMA nor the Uniform Rules relieve the NFE of any contractual responsibilities under its contracts. 2 C.F.R. § 200.318(k).
 - c. Violations of Law. FEMA and NFEs must refer violations of law to the local, state, or Federal authority having proper jurisdiction. 2 C.F.R. § 200.318(k).
 - d. FEMA Review. FEMA will not substitute its judgment for that of the NFE in resolving contractual and administrative issues unless the matter is primarily a Federal concern. 2 C.F.R. § 200.318(k). An example of a matter that is “primarily a Federal concern” includes, but is not limited to, a violation of Federal law, violation of any of the procurement standards at 2 C.F.R. §§ 200.318 to 326, and violation of other Federal regulations or executive orders, impropriety, waste, fraud, or abuse.
 - e. Liquidated Damages. If a NFE’s contract includes a liquidated damages provision, FEMA requires the NFE to credit any liquidated damages recovered to the FEMA award unless FEMA approves other uses for the liquidated damages.

10. WRITTEN PROCEDURES FOR PROCUREMENT TRANSACTIONS

- a. General. The Uniform Rules require that a NFE must have written procedures for procurement transactions. 2 C.F.R. § 200.319(c). FEMA expects these written procedures to address the following items.
- b. Solicitations. The NFE’s written procedures must ensure that all solicitations meet the following requirements. 2 C.F.R. § 200.319(c).
 - i. Clear Description. The solicitation must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. 2 C.F.R. § 200.319(c)(1).
 - ii. Nonrestrictive Specification. The description of the technical requirements must not contain features that unduly restrict competition. 2 C.F.R. § 200.319(c)(1).

- iii. Qualitative Requirements. The description of the technical requirements may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. 2 C.F.R. § 200.319(c)(1). The NFE should avoid detailed product specifications if at all possible.
 - (1) Brand Name or Equal. When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the property or services to be acquired, a NFE may use a “brand name or equal” description as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors must be clearly stated.
 - (2) Preference for Performance Specifications. FEMA interprets the Uniform Rules, in setting the requirements for solicitations, as expressing a preference for performance or functional specifications, although they do not prohibit the use of detailed technical specifications when appropriate. A performance specification describes an end result, an objective, or standard to be achieved, and leaves the determination of how to reach the result to the contractor. Using performance specifications, a NFE should describe what the product should be able to do or the services to accomplish without imposing unnecessarily detailed requirements on how to accomplish the tasks.
- iv. Requirements. The solicitation must identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. 2 C.F.R. § 200.319(c)(2). If using the procurement through competitive proposals method, the NFE should state if it is reserving its right to award the contract to other than the lowest priced offeror.
- v. FEMA Funding. The solicitation must acknowledge the NFE’s use of FEMA funding for the contract, in compliance with the terms of its financial assistance award from FEMA. Specifically, the document should indicate that FEMA is providing the funds, the Catalog of Federal Domestic Assistance Number, as applicable, and the amount provided. *See* Financial Services and General Government Appropriations Act, 2015, Pub. L. No. 113-83, Division E, § 724 (2015); DHS Standard Terms and Conditions, v 3.0, ¶ II (Dec. 4, 2013); Appendix C, ¶ 3.
- vi. Contract Type. The solicitation should state the type of contract that will be awarded.
 - (1) Fixed Price. A fixed price contract provides for a firm price that remains irrespective of the contractor’s actual cost of performing

the scope of work under the contract. The risk of performing the work, at the fixed price, is borne by the contractor. Fixed price contracts may include an economic price adjustment, incentives, or both.

- (2) Cost Reimbursement. Cost-reimbursement type contracts provide for payment of certain incurred costs to the extent provided in the contract. They normally provide for the reimbursement of the contractor for its reasonable, allocable, actual, and allowable costs, with an agreed-upon fee. There is a limit to the costs that a contractor may incur at the time of contract award, and the contractor may not exceed those costs without the NFE's approval or does so at its own risk. In a cost-reimbursement contract, the NFE bears more risk than in a fixed price contract. There are many varieties of cost-reimbursement contracts, such as cost-plus-fixed-fee, cost-plus-incentive-fee, and cost-plus-award-fee.
 - (3) Time and Materials Contracts. A time and materials type contract is a contract whose cost to a NFE is the sum of the actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. 2 C.F.R. § 200.318(j)(1)(i) and (ii). The Uniform Rules prohibit the use of this type of contract unless certain conditions precedent are met. *See* ¶ 8.b.
 - (4) Cost Plus Percentage of Cost. The use of cost plus percentage of cost and cost plus a percentage of construction cost methods of contracting are prohibited. *See* Chapter V, ¶ 4.c; 2 C.F.R. § 200.323(d).
- vii. Prohibitions. The Uniform Rules prohibit a NFE from using a solicitation that contains features that unduly restrict competition. 2 C.F.R. § 200.319(a). Some of the situations considered restrictive of competition include the following. *See also* Chapter V, ¶ 1.b.
- (1) Excessive Qualifications. Placing unreasonable requirements on firms in order for them to qualify to do business. 2 C.F.R. § 200.319(a)(1).
 - (2) Unnecessary Experience. Requiring unnecessary experience. 2 C.F.R. § 200.319(a)(2).
 - (3) Unnecessary Bonding. Requiring excessive bonding. 2 C.F.R. § 200.319(a)(2).
 - (4) Improper Qualification. Using improper prequalification procedures that conflict with 2 C.F.R. § 200.319(d).
 - (5) Retainer Contract. Making a noncompetitive solicitation only to a

person or firm on retainer contract where that award is not for property or services specified for delivery under the scope of work of the retainer contract. 2 C.F.R. § 200.319(a)(4).

(6) In-State, Local, or Tribal Geographic Preferences. Imposing prohibited in-state, local, or tribal geographic preferences that conflict with 2 C.F.R. 200.319(b).

(7) Organizational Conflicts of Interest. Allowing entities to submit bids or proposals in response to the solicitation where there would be a prohibited organizational conflict of interest. 2 C.F.R. § 200.319(a)(5).

viii. Federal Laws, Regulations, Executive Orders, and FEMA Requirements Affecting the Procurement. The solicitation should inform prospective contractors that they will need to comply with all applicable Federal laws, regulations, executive orders, and FEMA requirements.

- c. Necessity. The Uniform Rules require a NFE's written procedures to avoid acquisition of unnecessary or duplicative items. 2 C.F.R. § 200.318(d); Chapter IV, ¶ 4.b
- d. Records. The procurement procedures must ensure the generation of records sufficient to detail the history of the procurement. 2 C.F.R. § 200.318(i); Chapter IV, ¶ 7.
- e. Lease vs. Purchase. The procurement procedures must ensure that, where appropriate, the NFE makes an analysis of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. 2 C.F.R. § 200.318(d); Chapter IV, ¶ 4.e.
- f. Procurement Methods. The NFE's procurement procedures must address what procurement methods will be used, including a description of those methods and the circumstances when used. These methods should ensure that a procurement complies with at least the minimum standards at 2 C.F.R. § 200.320 (Methods of Procurement to Be Followed) when using FEMA financial assistance for that procurement. These methods should also include a description of how and when the NFE will use joint procurements, purchasing agents, and Federal and state supply schedules.
- g. Additional Content. FEMA also recommends that a NFE's written procurement procedures address the following:
 - i. Legal Restrictions. The NFE's procurement procedures should include a description of any Federal, state, local, and tribal restrictions on the NFE's acquisitions.
 - ii. Third Party Contract Provisions. The NFE's procurement procedures

should address the required third party contract provisions required for third party contracts under Federal law, regulation, and executive order, including requirements for each third-party contractor to extend applicable requirements subcontractors. *See* 2 C.F.R. § 200.326; Chapter IV, ¶ 12.

- iii. Resolution of Procurement Issues. The NFE's procurement procedures should provide procedures for settling contractual and administrative issues arising out of procurements, including source evaluation, protests, disputes, and claims, in order to meet the requirements of 2 C.F.R. § 200.318(k).

11. STATE AND LOCAL INTERGOVERNMENTAL AGREEMENTS

- a. Use Encouraged. The Uniform Rules, to foster greater economy and efficiency, encourage a NFE to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. 2 C.F.R. § 200.318(e).
- b. Joint Procurements. FEMA interprets the regulation at 2 C.F.R. § 200.318(e) as encouraging NFEs to enter into intergovernmental agreements to conduct joint procurements. FEMA uses the term "joint procurement" to mean a method of contracting in which two or more NFEs agree to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum or total maximum. *See* Chapter VI, ¶ 3.
- c. Purchasing Schedules or Purchasing Contracts. FEMA has interpreted the regulation at 2 C.F.R. § 200.318(e) as encouraging NFEs to enter into intergovernmental agreements for procurements and use of property and services through government purchasing schedules and contracts. FEMA uses the term "government purchasing schedule and contract" to mean an arrangement that a state, local, or Indian tribal government has established with several or many vendors in which those vendors agree to provide the option to the state, local, or Indian tribal government, their subordinate government entities, and others it might include in their programs to acquire specific property or services in the future at established prices. In establishing this arrangement, the NFE may also seek the agreement of a vendor to provide the listed property and services to others with access to the schedules. *See* Chapter VI, ¶ 4.

12. CONTRACT PROVISIONS

- a. Requirement under the Uniform Rules. A NFE's contracts must contain the applicable provisions described in Appendix II to the Uniform Rules (Contract Provisions for NFE Contracts Under Federal Awards), which are set forth below. 2 C.F.R. § 200.326. FEMA has provided model language for these required contract clauses at: <https://www.fema.gov/media-library/assets/documents/96773>.
 - i. Remedies.

- (1) Standard. Contracts for more than the simplified acquisition threshold must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. *See 2 C.F.R. Part 200, Appendix II, ¶ A.*
 - (2) Applicability. This requirement applies to all FEMA financial assistance programs in excess of \$150,000, which is the current simplified acquisition threshold.
- ii. Termination for Cause and Convenience.
- (1) All contracts in excess of \$10,000 must address termination for cause and for convenience by the NFE including the manner by which it will be effected and the basis for settlement. *See 2 C.F.R. Part 200, Appendix II, ¶ B.*
 - (2) Applicability. This requirement applies to all FEMA grant and cooperative agreement programs, in excess of \$10,000.
- iii. Equal Employment Opportunity.
- (1) Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “Federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). *See 2 C.F.R. Part 200, Appendix II, ¶ C.*
 - (2) Key Definitions.
 - a. Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “Federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the

Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

- b. Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

- (3) Applicability. This requirement applies to all FEMA financial assistance programs.

iv. Davis Bacon Act and Copeland Anti-Kickback Act.

- (1) Applicability of Davis-Bacon Act and Copeland-Anti-Kickback Act. The Davis-Bacon and Copeland-Anti-Kickback Acts only apply to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. These Acts do not apply to other FEMA grant and cooperative agreement programs, such as FEMA’s Public Assistance Grant Program. However, if the NFE’s own procurement standards include equivalents to, or adopt the Davis-Bacon and Copeland-Anti-Kickback Acts, under those circumstances, they should be applied by the NFE.
- (2) All prime construction contracts in excess of \$2,000 awarded by NFEs must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). *See* 2 C.F.R. Part 200, Appendix II, ¶ D.
- (3) In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- (4) The NFE must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must

be conditioned upon the acceptance of the wage determination. The NFE must report all suspected or reported violations to the Federal awarding agency.

- (5) In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The NFE must report all suspected or reported violations to FEMA.

v. Contract Work Hours and Safety Standards Act.

- (1) Where applicable (*see* 40 U.S.C. § 3701), all contracts awarded by the NFE in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. *See* 2 C.F.R. Part 200, Appendix II, ¶ E.
- (2) Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- (3) The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of property or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (4) Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

vi. Rights to Inventions Made Under a Contract or Agreement.

- (1) If the FEMA award meets the definition of a “funding agreement” under 37 C.F.R. § 401.2(a) and the NFE wishes to enter into a

contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the NFE must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. *See* 2 C.F.R. Part 200, Appendix II, ¶ F.

- (2) The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the *performance of experimental, developmental, or research work* funded in whole or in part by the Federal government. (emphasis added) This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.
- (3) Applicability. This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”

vii. Clean Air Act and the Federal Water Pollution Control Act.

- (1) Contracts for amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. *See* 2 C.F.R. Part 200, Appendix II, ¶ G.
- (2) Applicability. This requirement applies to all FEMA financial assistance programs, in excess of \$150,000.

viii. Debarment and Suspension.

- (1) NFEs and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and*

Suspension (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension). These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. *See* 2 C.F.R. Part 200, Appendix II, ¶ I; and Chapter IV, ¶ 6.d and Appendix C, ¶ 2.

- (2) A contract award must not be made to parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. *See* 2 C.F.R. § 180.530; Chapter IV, ¶ 6.d and Appendix C, ¶ 2.
- (3) Applicability. This requirement applies to all FEMA financial assistance programs.

ix. Byrd Anti-Lobbying Amendment.

- (1) Contractors that apply or bid for an award of \$100,000 or more must file the required certification. *See* 2 C.F.R. Part 200, Appendix II, ¶ J; 44 C.F.R. Part 18; Chapter IV, ¶ 6.c; Appendix C, ¶ 4.
- (2) Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. *See* Chapter IV, ¶ 6.c and Appendix C, ¶ 4.
- (3) Applicability. This requirement applies to all FEMA financial assistance programs where contractors apply or bid for an award of \$100,000 or more.

x. Procurement of Recovered Materials.

- (1) A NFE that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the

Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). *See* 2 C.F.R. Part 200, Appendix II, ¶ K; 2 C.F.R. § 200.322; Chapter V, ¶ 7.

(2) The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(3) Applicability. This requirement applies to all FEMA financial assistance programs, consistent with the guidance found in ¶ (2) above.

b. Additional FEMA Requirements. The Uniform Rules authorize FEMA to require additional provisions for NFE contracts. FEMA, pursuant to this authority, requires or recommends the following:

- i. Changes. To be eligible for FEMA assistance under the NFE's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. *See* Chapter V, ¶ 8. FEMA recommends, therefore, that a NFE include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.
- ii. Access to Records. All NFEs must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. *See* DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (Dec. 4, 2013).
- iii. DHS Deal, Logo, and Flags. All NFEs must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. *See* DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (Dec. 4, 2013).

- iv. Compliance with Federal Law, Regulations, and Executive Orders. All NFEs must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable Federal law, regulations, executive orders, and FEMA policies, procedures, and directives. *See* Standard Form 424D, ¶ 19; Chapter IV, ¶ 10.b.v; Appendix C, ¶ 3.
- v. No Obligation by Federal Government. The NFE should include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the NFE, contractor, or any other party pertaining to any matter resulting from the contract.
- vi. Program Fraud and False or Fraudulent Statements or Related Acts. The NFE must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

CHAPTER V

PROCEDURES AND GUIDANCE FOR OPEN MARKET PROCUREMENTS

1. COMPETITION

- a. Competition Required. The Uniform Rules require a NFE to conduct all procurement transactions in a manner providing full and open competition consistent with the standards of 2 C.F.R. § 200.319. FEMA considers “full and open” competition to mean that a complete requirement is publicly solicited (except if specifically not required) and all responsible sources that are interested in doing so, are permitted to compete.
 - i. There are numerous benefits to full and open competition, such as increasing the probability of reasonable pricing from the most qualified contractors and helping discourage and prevent favoritism, collusion, fraud, waste, and abuse.
 - ii. FEMA will scrutinize procurements not providing for full and open competition, even if they result in the same or lower contract price than if conducted through full and open competition.
- b. Prohibited Situations Restrictive of Competition. The Uniform Rules identify seven situations considered to be restrictive of competition. 2 C.F.R. § 200.319(a)(1)-(7). **This is an illustrative and non-exclusive list, such that FEMA may consider other situations as restrictive of competition, even though they are not specifically listed.**
 - i. Unreasonable Requirements. A NFE must not place unreasonable requirements on firms in order for them to qualify to do business. 2 C.F.R. § 200.319(a)(1). This means that the NFE should include only those requirements that are the least restrictive to establish the contractor’s necessary qualifications.
 - ii. Unnecessary Experience and Excessive Bonding. A NFE must not require unnecessary experience and excessive bonding. 2 C.F.R. § 200.319(a)(2).
 - (1) Unnecessary experience could include unnecessary levels or years of experience for contractors as organizations, the contractors’ workforce, or for the contractors’ key personnel on a project.
 - (2) Excessive bonding increases the cost associated with the contract and restricts competition by reducing a prospective bidder’s or offeror’s capability to bid or offer a proposal on bonded work. FEMA does not require any additional bonding requirements other than construction or facility improvement contracts or subcontracts set forth at 2 C.F.R. § 200.325. Notwithstanding, a NFE might

find it desirable to exceed the bid, performance, or payment bond requirements at 2 C.F.R. § 200.325 for construction or facility improvements, or might find bonds desirable for work other than construction or facility improvements. In these cases, FEMA expects the NFE's bonding requirements to be reasonable, not unduly restrictive, and in accordance with any applicable local, state or tribal government standards.

iii. Noncompetitive Pricing Practices. A NFE should undertake reasonable efforts to ensure that prospective contractors have not engaged in noncompetitive pricing practices in responding to a solicitation. 2 C.F.R. § 200.319(a)(3). The most prominent form of noncompetitive pricing is referred to as "bid rigging," which is when conspiring competitors effectively raise prices under a process where a purchaser acquires goods or services by soliciting competing bids. Essentially, competitors agree in advance who will submit the winning bid on a contract being awarded through the competitive bidding process. Bid rigging takes many forms, but bid-rigging conspiracies usually fall into one or more of the following categories: bid suppression, complementary bidding, and bid rotation.

- (1) In bid suppression schemes, one or more competitors, who otherwise would be expected to bid or who have previously bid, agree to refrain from bidding or withdraw a previously submitted bid so that the designated winning competitor's bid will be accepted.
- (2) Complementary bidding (also known as "cover" or "courtesy" bidding) occurs when some competitors agree to submit bids that are either too high to be accepted or contain special terms that will not be acceptable to the buyer. Such bids are not intended to secure the buyer's acceptance, but are merely designed to give the appearance of genuine competitive bidding. Complementary bidding schemes are the most frequently occurring forms of bid rigging, and they defraud purchasers by creating the appearance of competition to conceal secretly inflated prices.
- (3) In bid rotation schemes, all conspirators submit bids but take turns being the low bidder. The terms of the rotation may vary. For example, competitors may take turns on contracts according to the size of the contract, allocating equal amounts to each conspirator or allocating volumes that correspond to the size of each conspirator company.

iv. Noncompetitive Contracts to Consultants.

- (1) A NFE must not make a noncompetitive award to a consultant on a retainer contract. 2 C.F.R. § 200.319(a)(4).

- (2) Although the Uniform Rules do not define the term “retainer contract,” FEMA considers a retainer contract to be a form of agreement for general, unspecified services entered into in advance of work to be done. Under such an agreement, the consultant remains available when the client needs services during a specific period or on a specified matter. As such, it would be restrictive of competition if a NFE simply made a noncompetitive contract award for work to be done under a FEMA award to a consultant that was already on retainer, specifically where the noncompetitive contract award was for property or services not specified for delivery under the retainer contract or where the retainer contract was not originally procured in a manner that met all of the requirements of 2 C.F.R. §§ 200.318 to 200.326.
- v. Organizational Conflicts of Interest. A NFE must ensure that its procurements are free from organizational conflicts of interest. 2 C.F.R. § 200.319(a)(5).
- (1) Meaning of Organizational Conflict of Interest. The Uniform Rules provide that an organizational conflict of interest can arise where, because of relationships with a parent company, affiliate, or subsidiary organization, a NFE is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. 2 C.F.R. § 200.318(c)(2). In addition, an organizational conflict of interest may also occur in circumstances of impaired objectivity, unequal access to information, and biased ground rules, irrespective of whether the contractor is a related organization (parent, affiliate, or subsidiary) or not.
- a. Impaired objectivity arises where a contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the NFE due to other relationships, contracts, or circumstances. This would comprise circumstances where a contractor’s work under one contract could entail it evaluating itself through an assessment of performance under another contract or an evaluation of proposals.
 - b. Unequal access to information occurs when a contractor has access to nonpublic information as part of its performance under another contract with the NFE and where that information may provide the contractor with a competitive advantage in a later competition for a NFE contract.
 - c. Biased ground rules issues arise where a contractor, as part of its performance of work under a contract with the NFE, has in some sense set the ground rules for another NFE

contract. An example of such a situation would be where a NFE prepares a statement of work or specifications for a contract and later competes for that contract. Notably, the Uniform Rules require that, in order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. 2 C.F.R. § 200.319(a).

- (2) Advance Acquisition Analysis. FEMA expects a NFE to analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible and avoid or mitigate potential conflicts.
 - vi. Specifying Only a Brand Name. A NFE shall not specify only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement. When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the property or services to be acquired, a NFE may use a “brand name or equal” description as a means to define the performance or other salient requirements of procurement. Should a NFE determine that only a brand name product is acceptable to fulfill a requirement, that determination must be documented and justified in the same manner as a noncompetitive procurement. The specific features or salient characteristics of the named brand which must be met by offers must be clearly stated. 2 C.F.R. § 200.319(a)(6) and (c)(1).
 - vii. Any Arbitrary Action. A NFE must not engage in any other arbitrary action in the procurement process that would restrict competition. 2 C.F.R. § 200.319(a)(7). The term “arbitrary” generally refers to an action or decision founded on prejudice or preference rather than on reason or fact or something that is otherwise unreasonable or unsupported. Accordingly, FEMA considers an “arbitrary action” within the procurement context to include, among other things, a discretionary action that showed preference or prejudice to certain contractors in a manner not consistent with full and open competition.
- c. Prohibited Geographical Preferences.
- i. Prohibition. A NFE must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. 2 C.F.R. § 200.319(b). Prohibited geographic preferences may come in a variety of forms, such as the

following:

- (1) Exclusion of Contractors from Outside a Geographic Area. A NFE could exclude from consideration for a procurement all contractors incorporated or primarily doing business outside the state, local, or tribal geographical area in which the NFE is located. In other words, the NFE simply sets aside the contract for an in-state or local contractor.
 - (2) Price Matching. Price matching is where a NFE will give an opportunity for a local vendor—within a certain percentage of the lowest bid to a solicitation—to match the lowest bid. If the local vendor does not match the bid, then the NFE awards the contract to the next lowest bidder.
 - (3) Reducing Bids. A NFE may reduce by a percentage a bid submitted by a local vendor during the evaluation of bids submitted during sealed bidding. For example, a preference may deem a bid submitted by a resident business to be five percent lower than the bid actually submitted.
 - (4) Adding Weight to Evaluation Factors. A NFE may add weight on evaluation factors to an in-state or local business as part of a procurement by competitive proposals.
- ii. Exception – Architectural and Engineering Contracts. When contracting for architectural and engineering services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. 2 C.F.R. § 200.319(b).
 - iii. Exception – State Licensing Laws. Nothing in the Uniform Rules or this document preempts state licensing laws. 2 C.F.R. § 200.319(b).
 - iv. Exception – Federal Law.
 - (1) General. A NFE may use a state, local, or tribal geographical preference in the evaluation of bids or proposals where applicable Federal statutes expressly mandate or encourage geographic preference.
 - (2) Federal Laws Establishing FEMA Grant and Cooperative Agreement Programs. None of the Federal laws establishing or governing FEMA grant and cooperative agreement programs mandate or encourage geographic preferences by NFEs. Of particular note, NFEs frequently have questions concerning Section 307 of the Stafford Act, which appears to direct local preferences in the award of response and recovery contracts;

however, Section 307 only applies to procurements conducted by FEMA or other Federal agencies, not NFEs.

- (3) Tribal Self-Determination and Education Act. Tribal preferences may be permissible if certain requirements are met under the Indian Self - Determination and Education Assistance Act.⁶ Pursuant to this Act, an Indian tribal government acting as either a recipient or subrecipient may give a preference in the award of contracts funded in whole or in part with Public Assistance funding to businesses falling within the meaning of “Indian organizations” or “Indian-owned economic enterprises,” as further defined by section 3 of the Indian Financing Act of 1974.⁷ This determination would generally be issued and documented by the tribal government claiming such an exception.

d. Prequalified Lists.

- i. General. A NFE may use prequalified lists of persons, firms, and products among which to compete property and services under a FEMA award. 2 C.F.R. § 200.319(d). Prequalified lists, however, are not contracts. They are tools to aid in the procurement of future requirements by allowing NFEs to review the qualifications of prospective contractors prior to contract award of an anticipated future need. The Uniform Rules set forth two requirements that must be met in using such a list.
 - (1) Sources. A NFE must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition.
 - (2) Qualification Period. A NFE must not exclude potential bidders or offerors from qualifying during the solicitation period. When using FEMA award funding, a NFE must allow vendors an opportunity to qualify during the solicitation period for the service or property, although FEMA does not expect a NFE to delay a proposed award (extend the solicitation period) in order to afford a vendor the opportunity to demonstrate that its product or services meet the pre-qualification requirements (*e.g.*, technical capability, management capability, prior experience, and past performance).
- ii. Other Requirements. As pre-qualified lists are not contracts, but merely tools to assist NFEs with the solicitation and award of a future requirement, even after such a list is created, a NFE must still comply with

⁶ Indian Self Determination and Education Assistance Act, Pub. L. No. 93-638, 88 Stat. 2205 (1975) (codified as amended at 25 U.S.C. § 5150(a)(3))

⁷ Indian Financing Act of 1974, Pub. L. No. 93-262, § 2(e), 88 Stat 77 (codified as amended at 25 U.S.C. § 1452(e) and (f)).

all other applicable procurement standards identified in 2 C.F.R. §§ 200.318-326 in the award of a contract. While a NFE may submit a solicitation directly to those contractors identified on a pre-qualified list, NFEs must still publicly solicit the requirement pursuant to the applicable standards contained in the Uniform Rules, and allow any additional interested contractors to submit their qualifications and, if deemed qualified, submit their bids or proposals in response to the solicitation. The solicitation, evaluation, and subsequent award of a contract or contracts must also conform to the standards identified in this Supplement.

2. METHODS OF PROCUREMENT

- a. General. The NFE must use one of the following five methods of procurement: procurement by micro-purchases; procurement by small purchase procedures; procurement by sealed bids; procurement by competitive proposals; and procurement by noncompetitive proposals.
- b. Procurement by Micro-Purchases. The Uniform Rules authorize a NFE to use simplified acquisition procedures to purchase property and services where the aggregate dollar amount of the property or services does not exceed the micro-purchase threshold. While the Micro-Purchase threshold is adjusted from time to time, as of October 2015, the Micro-Purchase threshold was adjusted to \$3,500. Micro-purchase procedures comprise a subset of a NFE's small purchase procedures, and a NFE uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. 2 C.F.R. §§ 200.67 and 320(a).
- c. When Appropriate. A NFE may use the micro-purchases procurement method for the acquisition of property or services when the aggregate dollar amount of the services or property does not exceed the micro-purchase threshold.
- d. Procedures. The following procedures apply to micro-purchases.
 - i. Competition. A NFE may award micro-purchases without soliciting competitive quotations if the NFE considers the price to be fair and reasonable. To the extent practicable, a NFE must distribute micro-purchases equitably among qualified suppliers. 2 C.F.R. § 200.320(a).
 - ii. Prohibited Divisions. A NFE must not split a larger procurement merely to lower the cost of a procurement to less than the micro-purchase threshold in order to take advantage of the streamlined procurement process associated with this method.
 - iii. Documentation. A NFE must document its determination that the price is fair and reasonable, and the basis for that determination, but does not need to document its rationale for the procurement method used or selection of contract type. It also does not need to document its reasons for contractor selection or rejection if it did not utilize competitive quotations. If the

NFE solicited competitive quotations and made an award to other than the lowest bidder, it must document its explanation for the award decision.

- iv. Responsibility. A NFE must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the solicitation and contract. 2 C.F.R. § 200.318(h). This is a “go/no-go” determination. A NFE must give consideration to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The NFE must document its responsibility determination for the winning bidder, and must (if applicable) also document its determination that the otherwise lowest bidder is not responsible. *See* Chapter IV, ¶ 6.
- e. Procurement by Small Purchase Procedures. A NFE may use relatively simple and informal small purchase procedures when securing services, property, or other property where the aggregate dollar amount of the services, property, or other property does not exceed the simplified acquisition threshold, which is currently \$150,000. NFEs adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. 2 C.F.R. §§ 200.88 and 320(b).
 - i. When Appropriate.
 - (1) Small purchase procedures may be used to acquire services and property where the aggregate dollar amount of the acquisition does not exceed the simplified acquisition threshold.
 - (2) The contracts should be fixed price or not to exceed cost-reimbursement contracts with assurances that the scope of work can be completed for less than the simplified acquisition threshold.
 - ii. Procedures. The following procedures apply to small purchases.
 - (1) Competition. The NFE must obtain price or rate quotations from an adequate number of qualified sources. What is an adequate number of sources will depend upon the facts and circumstances of the procurement, but in no case should this be less than three. 2 C.F.R. § 320(b).
 - (2) Prohibited Divisions. A NFE must not split a larger procurement merely to bring the cost of a procurement under the simplified acquisition threshold. Similarly, a NFE may not intentionally limit the size of a procurement to only a portion of a known requirement in order to lower the cost of a procurement to under the simplified acquisition threshold and then, to fulfill the entire requirement, issue a follow-on change order that brings the procurement above the simplified acquisition threshold.

- (3) Documentation. The NFE must document the procurement history as detailed in 2 C.F.R. § 200.318(i). *See* Chapter IV, ¶ 7. This should include an independent NFE estimate of the costs of the procurement that indicates the total estimated cost to fall below the simplified acquisition threshold.
- (4) Responsibility. A NFE must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the solicitation and contract. 2 C.F.R. § 200.318(h). This a “go/no-go” determination. A NFE must give consideration to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The NFE must document its responsibility determination for the winning bidder, and must (if applicable) also document its determination that the otherwise lowest bidder is not responsible. *See* Chapter IV, ¶ 6.

iii. Future Changes that Cause the Contract to Exceed the Simplified Acquisition Threshold.

- (1) It may be the case that a NFE properly used small purchase procedures to acquire services or property below the simplified acquisition threshold, but later needs to modify the contract to an amount above the threshold to cover unforeseen circumstances or an unexpected overrun in the quantity of work.
- (2) Such a change may be permissible under certain facts and circumstances, particularly where such a change falls within the scope of the original contract. The NFE should document its justification. FEMA will utilize this justification along with the independent NFE’s estimate completed before the procurement in reviewing whether or not the NFE’s decision to use small purchase procedures was permissible.

f. Procurement by Sealed Bids. Sealed bidding is a permissible method of procurement, where bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. 2 C.F.R. § 200.320(c).

i. When Appropriate. Sealed bidding is the preferred method for procuring construction if the following conditions apply. 2 C.F.R. § 200.320(c)(1).

- (1) Specification. A complete, adequate, and realistic specification or purchase description is available.
- (2) Adequate Price Competition. Two or more responsible bidders are willing and able to compete effectively for the business.

- (3) Fixed Price Contract. The procurement lends itself to a firm fixed price contract.
 - (4) Price Determinative. The NFE selects the successful bidder principally on the basis of price, which includes the price-related factors included within the solicitation. *See* Chapter V, ¶ 2.d.ii.(5). Other than the responsibility determination, the NFE may not select a contractor on the basis of non-price related factors.
- ii. Procedures. The following procedures apply to procurement by sealed bids. 2 C.F.R. § 200.320(c)(2).
- (1) Public Advertisement. A local or tribal government must publicly advertise the invitation for bids. *Public advertisement is not a requirement for other NFEs.* 2 C.F.R. § 200.320(c)(2)(i).
 - (2) Solicitation from Adequate Sources. The NFE must solicit bids from an adequate number of known suppliers, providing them with sufficient response time before the date set for opening the bids. 2 C.F.R. § 200.320(c)(2)(ii). What is an adequate number of sources will depend upon the facts and circumstances of the procurement. Unlike small purchase procedures, FEMA has not defined an “adequate number” of qualified sources here, as obtaining at least three quotes.
 - (3) Invitation for Bids. The invitation for bids must define the items or services in order for the bidder to properly respond and must include any specifications and pertinent attachments. 2 C.F.R. § 200.320(c)(2)(ii).
 - (4) Bid Opening. The NFE must open the bids at the time and place prescribed in the invitation for bids. For local and Indian tribal governments, the bids must be publicly opened. Other NFEs are not required to open bids publicly. 2 C.F.R. § 200.320(c)(2)(iii).
 - (5) Firm Fixed Price Contract. The NFE will make a firm fixed price contract in writing to the lowest responsive and responsible bidder. 2 C.F.R. § 200.320(c)(2)(iv).
 - a. Price-Related Factors. Where specified in the bidding documents, the NFE may consider discounts, transportation costs, and life cycle costs in determining which bid is lowest. The NFE will only use payment discounts to determine the low bid when prior experience indicates such discounts are usually taken advantage of.
 - b. Incentives and Economic Adjustments. FEMA considers a fixed price incentive contract or inclusion of an economic price adjustment provision in a fixed price contract as

permissible if the NFE documents a rational basis for using those forms of fixed price contracts.

- (6) Rejection of Bids. The NFE may reject any or all bids if it documents a sound reason for the rejection. 2 C.F.R. § 200.320(c)(2)(5).
 - (7) Documentation. The NFE must document the procurement history as detailed in 2 C.F.R. § 200.318(i). *See* Chapter IV, ¶ 7.
 - (8) Affirmative Steps. The NFE must take all necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor area surplus firms are used when possible. The affirmative steps must include those set forth at 2 C.F.R. § 200.321(b). *See* Chapter V, ¶ 6.
 - (9) Responsibility. A NFE must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the solicitation and contract. 2 C.F.R. § 200.318(h). This is a “go/no-go” determination. A NFE to give consideration to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The NFE must document its responsibility determination for the winning bidder, and must (if applicable) also document its determination that the otherwise lowest bidder is not responsible. *See* Chapter IV, ¶ 6.
- g. Procurement by Competitive Proposals. Procurement by the competitive proposal method is an acceptable form of procurement, which is where more than one vendor submits an offer and the NFE awards either a fixed price or cost-reimbursement type contract. 2 C.F.R. § 200.320(d).
- i. When Appropriate. A NFE will generally use this method when conditions are not appropriate for the use of sealed bids. FEMA considers the following as some of the possible factors that a NFE could use to justify procurement by competitive proposals.
 - (1) Types of Specifications and Other than Price-Related Factors. The procurement by competitive proposals method is used when the NFE cannot base the contract award exclusively on price or price-related factors due to the nature of the service or property to be acquired. When the NFE’s material requirements are clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection and weighs against the need to use this procurement method. On the other hand, the less definitive the requirements, the more development work required, or the greater the performance risk, the more that technical capability, past performance, and prior

experience considerations may play a dominant role in source selection and weigh in favor of this procurement method.

- ii. Procedures. The following procedures apply to procurement by competitive proposals. 2 C.F.R. § 200.319(d).
 - (1) Public Advertisement. The NFE must publicize the request for proposals. 2 C.F.R. § 200.319(d)(1).
 - (2) Solicitation from Adequate Sources. In addition to publicizing the request for proposals, the NFE must solicit proposals from an adequate number of qualified sources, providing them with sufficient response time before the date set for the receipt of proposals. 2 C.F.R. § 200.319(d). What is an adequate number of sources will depend upon the facts and circumstances of the procurement. Unlike small purchase procedures, FEMA has not defined an “adequate number” of qualified sources here, as meaning obtaining no less than three quotes. 2 C.F.R. § 200.320(c)(ii).
 - (3) Responsibility. A NFE must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the solicitation and contract. 2 C.F.R. § 200.318(h). A NFE must give consideration to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The NFE must document its responsibility determination for the winning contractor, and must (if applicable) also document its determination that the otherwise lowest bidder is not responsible. *See Chapter IV, ¶ 6.*
 - (4) Evaluation Factors. The request for proposals must identify all evaluation factors and their relative importance. 2 C.F.R. § 200.319(d). The following provides several considerations for NFEs when developing evaluation factors:
 - a. The evaluation factors for a specific procurement should reflect the subject matter and elements that are most important to the NFE.
 - b. The evaluation factors may include such things as technical design, technical approach, length of delivery schedules, past performance, and quality of proposed personnel.
 - c. A NFE may use any one or a combination of source selection approaches as permitted under state, local, and tribal laws, regulations, and procedures, and these approaches will often differ based on the relative

importance of price or cost for the procurement.

- d. If permitted by the NFE's written procurement procedures and applicable non-Federal laws and regulations, a NFE may award a contract to the offeror whose proposal offers the "best value" to the NFE. The solicitation must, in addition to the items described above, inform potential offerors that the award will be made on a "best value" basis, which should include a statement that the NFE reserves the right to award the contract to other than the lowest priced offeror.
 - e. Two examples of source selection approaches are "tradeoff" and "lowest price technically acceptable" ("LPTA") methods. Under the "tradeoff" process, a NFE may consider award to other than the lowest-priced offeror or other than the highest technically rated offeror. The process allows trade-offs among cost or price and non-cost factors and allows the NFE to accept other than the lowest priced proposal (meaning that the benefits of the higher priced proposal merit the additional cost). The LPTA process is similar to sealed bidding with the award going to the lowest priced offer that is technically acceptable. A cost-technical tradeoff is not used under the LPTA process—the award goes to the lowest price which meets the minimum technical standards. The technical factors, in other words, are go/no-go and rated only for acceptability (and not ranked or scored).
 - f. The request for proposals must identify evaluation factors and their relative importance, but need not disclose numerical or percentage ratings or weights.
 - g. FEMA does not require any specific evaluation factors or analytic process. Notwithstanding, the evaluation factors must support the purposes of the grant or cooperative agreement.
- (5) Consideration. The NFE must consider any response to publicized requests for proposals to the maximum extent practical. 2 C.F.R. § 200.319(d)(1).
- (6) Affirmative Steps. The NFE must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor area surplus firms are used when possible. The affirmative steps must include those set forth at 2 C.F.R. § 200.321(b). *See* Chapter V, ¶ 6.

- (7) Evaluation Method. The NFE must have a written method for conducting technical evaluations of the proposals received and for selecting offerors. 2 C.F.R. § 200.319(d)(4).
 - a. When evaluating proposals, FEMA expects the NFE to consider all evaluation factors specified in its solicitation documents and evaluate offers only on the evaluation factors included in the solicitation documents.
 - b. The NFE may not modify its evaluation factors after proposals have been submitted without re-opening the solicitation.
 - c. In awarding a contract that will include options, FEMA expects the NFE to evaluate proposals for any option quantities or periods contained in the solicitation if it intends to exercise those options after the contract is awarded.
 - (8) Award. The NFE must make the award to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered. Price must be a factor evaluated by the NFE, unless the procurement is for architectural/engineering professional services. 2 C.F.R. § 200.319(d)(4).
 - (9) Documentation. The NFE must document the procurement history as detailed in 2 C.F.R. § 200.318(i). *See* Chapter IV, ¶ 7.
- iii. Architectural and Engineering Services. A NFE may use competitive proposal procedures for qualifications-based procurement of architectural/engineering professional services.
- (1) Price Not Used as an Evaluation Factor. Under this qualifications-based procurement, a NFE evaluates competitors' qualifications and selects the most qualified competitor for award, subject to negotiation of fair and reasonable compensation. 2 C.F.R. § 200.319(d)(5). The following provides amplifying guidance in the case of failed negotiations for compensation:
 - a. If failing to agree on a fair and reasonable price, the NFE may conduct negotiations with the next most qualified offeror.
 - b. Then, if necessary, the NFE will conduct negotiations with successive offerors in descending order until contract award can be made to the offeror whose price the NFE believes is fair and reasonable.
 - (2) Limitation. This method, where price is not used as an evaluation

factor, may only be used in procurement of architectural/engineering professional services. It cannot be used to purchase other types of services though architectural/engineering firms are a potential source to perform the proposed effort.

(3) Meaning of Architectural/Engineering Professional Services.

FEMA considers the following to fall within the scope of architectural/engineering professional services:

- a. Professional services of an architectural or engineering nature, as defined by applicable state law, and which the state law requires to be performed or approved by a registered architect or engineer.
 - b. Professional services of an architectural or engineering nature associated with design or construction of real property.
 - c. Other professional services of an architectural or engineering nature or services incidental thereto (including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals and other related services) that logically or justifiably require performance by registered architects or engineers or their employees.
 - d. Professional surveying and mapping services of an architectural or engineering nature.
- h. Procurement by Noncompetitive Proposals. Procurement by noncompetitive proposals is an acceptable method of procurement under certain circumstances, where solicitation of a proposal occurs from only one source or a limited number of sources. 2 C.F.R. § 200.320(f).
- i. When Appropriate. A NFE may use procurement by noncompetitive proposals only when one or more of the following circumstances apply.
 - (1) One Source. The item is only available from one source. An item or service is available from only one source when no other property or services will satisfy the NFE's requirements. 2 C.F.R. § 200.320(f)(1).
 - a. Examples. The following provide examples of some circumstances under which a NFE could consider property or services as available from only one source.

and an “exigency” is that 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.

- c. Duration. 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 NFE is expected to transition to a more appropriate method of contracting using full and open competition. Failure to properly transition to a more appropriate method of contracting at the cessation of the exigent or emergency circumstance has frequently been identified by the Department of Homeland Security (“DHS”), Office of Inspector General (“OIG”) as problematic, resulting in frequent recommendations to de-obligate or disallow all or a portion of incurred costs.
- d. Applicability to Categories of Work. The Federal procurement standards are not limited to the Public Assistance emergency work period under Category A or B. The Federal procurement standards apply to all categories of work.

(3) FEMA or Pass-Through Entity Approval. FEMA or the pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the NFE. While identified as a potential exception to full and open competition under the noncompetitive procurement process, approval for this exception has been exceptionally rare at both the FEMA and pass-through entity levels. NFEs that are considering the use and application of this exception, should first consult with their servicing FEMA Public Assistance Coordinator to ascertain whether this option is available and what steps are necessary to undertake its use. 2 C.F.R. § 200.320(f)(3).

(4) Competition Inadequate. The NFE determines that, after solicitation of a number of sources, competition is inadequate. 2 C.F.R. § 200.320(f)(4).

- a. FEMA considers competition “inadequate” when a NFE has complied with all of the procurement standards and receipt of a single offer or bid, single responsive offer or bid, or no responsive bids or proposals is caused by conditions outside of the NFE’s control.
- b. FEMA will not, on the other hand, consider competition

inadequate where a NFE did not sufficiently publicize the requirement, solicited only a few sources that chose not to submit a proposal, set unduly restrictive specifications, and/or took arbitrary actions or failed to take other actions that resulted in the inadequate competition. In those cases, adequate competition may be attainable; however, the NFE failed to take the proper steps and actions to ensure such competition.

- c. It is important for a NFE to document its justification for why there is inadequate competition and why it moved forward with a noncompetitive award without revising or cancelling the solicitation and re-soliciting offers or bids.
 - i. In making this justification, it may be necessary for the NFE to evaluate whether or not it sufficiently publicized the invitation for bids or requests for proposals and/or solicited an adequate number of firms.
 - ii. It may also be necessary to speak to those firms solicited to find out why they did not submit offers or bids. If the reason is an overly restrictive specification or delivery requirement, then the NFE would need to evaluate whether it should cancel the solicitation, change that specification to allow for more bids or offers, and re-solicit bids or offers. If the NFE chooses to move forward with the award in light of the restrictive specification, then the NFE should document in the procurement file why the restrictive specification or delivery requirement was necessary and could not be modified so as to enable additional competition.

(5) When Inappropriate. Procurement by noncompetitive proposals is not justified based on the NFE's failure to adequately plan its procurement, concerns about the amount of FEMA financial assistance available to support a procurement, or ability to save money.

(6) Procedures. The following procedures apply to a procurement through noncompetitive proposal:

- a. Justification and Documentation. The NFE must document the procurement history as detailed in 2 C.F.R. § 200.318(i). *See* Chapter IV, ¶ 8. Of particular note, the NFE must adequately document its justification for the sole source contract in light of the requirement for full and open

competition.

- b. Negotiation of Profit. The NFE must negotiate profit as a separate element of the price. 2 C.F.R. § 200.323(b).
- c. Preaward Review. The NFE must submit proposed procurement documents to either FEMA or the pass-through entity as directed. *See* 2 C.F.R. § 200.324(b); Chapter I, ¶ 5.

(7) Affirmative Steps. Where there is sufficient justification for the NFE to use procurement through noncompetitive proposals, FEMA will generally consider it not possible for the NFE to take affirmative steps to assure that minority businesses, women's business enterprises, and labor area surplus firms are used under those circumstances.

3. METHODS OF PROCUREMENT – ADDITIONAL TOPICS

- a. Design-Bid-Build. Constitutes the traditional system of construction in the United States. Involves the selection of an architect who completes a fully detailed design, solicitation of construction bids based on the 100 percent complete design, and the selection of the lowest eligible and responsible bidder to complete construction. In this process, the three phases of planning, design, and construction run sequentially and the construction contractor has no involvement until the construction stage.
 - i. Use Permitted. FEMA allows a NFE to use design-bid-build procurement procedures under FEMA awards if permitted by state, local, and/or Indian tribal laws and regulations.
 - ii. Procurement Process. Involves two (2) separate and distinct solicitations and contract awards. The first solicitation and contract award is for the complete building designs, drawings, and/or specifications. This is followed by a second solicitation and contract award for construction associated with the complete building designs, drawings, and/or specifications. Both procurements must comply with all of the procurement standards of the Uniform Rules.
 - iii. Prohibition. 2 C.F.R. § 200.319 prohibits a contractor that is awarded a contract to develop designs, drawings, and/or specifications from competing for and receiving award for the associated construction portion of the work.
- b. Two-Step Procurement Procedures. A two-step procurement procedure is a selection method used during either procurement by competitive proposals or sealed bidding in which the NFE selects a limited number of contractors during step 1 to submit detailed proposals or bids for step 2.

- i. Use Permitted. FEMA allows a NFE to use two-step procurement procedures under FEMA awards if permitted by state, local, and/or Indian tribal laws and regulations.
- ii. Procurement Process. The procurement must comply with all of the procurement standards of the Uniform Rules. In addition, FEMA expects that the NFE's procurement will, at a minimum, meet the following requirements.
 - (1) Review of Technical Qualifications and Approach. The first step consists of a review of the prospective contractors' technical approaches to the NFE's request and technical qualifications to carry out that approach. The NFE may then narrow the competitive range to prospective contractors that demonstrate a technically satisfactory approach and have satisfactory qualifications.
 - (2) Review of Bids and Proposals Submitted by Qualified Prospective Contractors. The second step consists of soliciting and reviewing complete proposals (including price) or bids submitted by each prospective contractor that the NFE has determined to be qualified during step 1. The NFE should attempt to obtain bids or quotations from as many qualified sources as possible, but should solicit bids or proposals from at least three qualified sources. In the case where the NFE conducts a qualifications based procurement during step 2, the NFE must evaluate contractors on price as well as any non-price evaluation factors.
- c. Design-Build Contracts. The design-build procurement method consists of contracting for design and construction simultaneously with a contract award to a single contractor or contractor team that will be responsible for both the project's design and construction.
 - i. Use Permitted. FEMA allows the use of "design-build" contracts, if permitted by state, local, or tribal laws and regulations, under FEMA awards involving construction and design. The use of such a method must meet the following minimum requirements.
 - ii. Procurement Method Determined by Value. The NFE must separate the various contract activities to be undertaken and classify them as either design or construction, and then calculate the estimated total value of each. FEMA expects the NFE to use the procurement method appropriate for the services having the greatest cost.
 - (1) The construction costs normally comprise a greater estimated total value than design costs. If so, then FEMA expects the NFE to use procurement by competitive proposals or sealed bidding for the entire procurement rather than a qualifications-based procurement

by competitive proposals.

(2) If architectural and engineering services are predominant (which is usually not the case), then the NFE may use sealed bidding, procurement by competitive proposals, or a qualifications-based procurement by competitive proposals.

iii. Selection Processes. A NFE may use a one-step or two-step procurement process when conducting a design-build procurement.

- d. Construction Manager at Risk (CMAR) Delivery Method. Under a CMAR delivery method, a project owner conducts a procurement of a construction manager firm early in or before the design process that will later serve as the project's general contractor. The construction manager, during the design and planning process, is the equivalent of an agent or consultant of the project owner and conducts early coordination with the architect, project cost, estimating, value engineering, construction scheduling, and constructability reviews. After the project owner selects a design, the construction manager and the NFE negotiate a Guaranteed Maximum Price (GMP).⁸ If a GMP is agreed upon, the CM then acts as the equivalent of a general contractor during the construction phase to select, schedule, and sequence subcontractors to complete the required construction work. (However, jurisdictions differ as to the purpose and extent of performance required during the construction phase, which provides an added layer of complexity in defining a uniform rule pertaining to the CMAR delivery method.)⁹
- i. Use Permitted. The Federal procurement standards do not expressly prohibit the potential use of the CMAR delivery process by a NFE. However, because there is no uniform CMAR standard across the different NFEs, particularly in regards to the construction phase and the evaluation thereof, FEMA will review the use of the CMAR delivery method on a case-by-case basis to ensure that the method utilized conforms to the requirements outlined by the Federal procurement standards for the solicitation and award of contracts using federal disaster assistance funds – even where use of the CMAR delivery method is otherwise permitted by state, local, and/or Indian tribal laws and regulations.
- ii. Procurement Process. NFEs will generally issue a Request for

⁸ The GMP includes hard (estimated) costs of construction, associated fees, and contingencies applicable to the construction phase of the project. If agreed upon by the CM and the NFE, any cost overruns over the GMP (that are not due to change orders from the NFE) will be borne by the CM, hence, the CM “at risk.” Conversely, any savings under the GMP will be attributed to the NFE and not to the CM, unlike traditional fixed price/lump sum contracts.

⁹ In other words, some CMAR processes provide for the CM to directly perform the work once a GMP is agreed upon, while other CMAR processes prohibit the CM from performing such work itself, and require the CM to either subcontract out the work or conduct solicitations, evaluations and awards for construction work on the behalf of the NFE.

Qualifications (RFQ)/Request for Proposals (RFP) for construction management at risk preconstruction and construction management services and require prospective offerors to submit both a price and non-price related proposal – the extent and thoroughness of which differs between jurisdictions.

- (1) Preconstruction Phase. This phase includes the performance of tasks such as developing professional construction cost estimates and schedules, developing value-added concepts and value engineering reviews, providing advice relative to the overall project budget and constructability reviews; collaborating with project architects on design, and preparing detailed estimates of the schematic design.
- (2) Construction Phase. There is no uniformity between NFE jurisdictions concerning this phase of the CMAR delivery method. Some jurisdictions prohibit the Construction Manager (CM) from performing the construction work itself – instead requiring the CM to use its construction and management expertise to procure and manage subcontractors and trade subcontractors to construct the project more efficiently – while other jurisdictions have no such prohibition. Accordingly, in situations such as these, questions are appropriately raised as to the propriety of the solicitation, evaluation, and award of CMAR contracts, particularly when it comes to the construction phase of work.

4. CONTRACT COST OR PRICE

- a. Cost or Price Analysis. A NFE must perform a cost or price analysis in connection with every procurement action in excess of the simplified acquisition threshold, including contract modifications. 2 C.F.R. § 200.323(a).
 - i. Method and Degree of Analysis and Independent Estimate. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the NFE must make independent estimates before receiving bids or proposals. 2 C.F.R. § 200.323(a).
 - ii. Amplifying Guidance. FEMA provides the following guidance as to the meaning and use of cost and price analysis.
 - (1) Price Analysis. A price analysis is the examination and evaluation of a proposed price without evaluating its separate cost elements and proposed profit.
 - a. This is the form of analysis typically used when acquiring commercial items or when using the procurement through sealed bidding method.

- b. The NFE is responsible for selecting and using whatever price analysis techniques will ensure a fair and reasonable price. Some of the ways in which a price analysis could be performed include comparing offers with one another; comparing prior proposed prices and contract prices with current proposed prices for the same or similar goods or services; comparing offers with competitive published price lists, published market prices, or similar indexes; comparing proposed prices with independently developed estimates of the NFE; and comparing proposed prices with prices of the same or similar items obtained through market research.

(2) Cost Analysis. A cost analysis is the review and evaluation of the separate cost elements (such as labor hours, overhead, materials, etc.) and proposed profit in a proposal in order to determine a fair and reasonable price for a contract and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

- a. This is the form of analysis typically used to establish the basis for negotiating contract prices when using the procurement through competitive proposals method; using procurement through sealed bidding where price competition was not sufficient; making contract modifications; and any other case when a price analysis, by itself, does not ensure price reasonableness.
- b. The NFE is responsible for selecting and using whatever cost analysis techniques will ensure a fair and reasonable price. Some of the ways in which a cost analysis could be performed include verification of the cost or pricing data and evaluation of cost elements and comparison of costs proposed for individual cost elements with previously incurred actual costs and independently developed estimates by the NFE.

b. Negotiation of Profit. A NFE must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where a cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. 2 C.F.R. § 200.323(b).

c. Cost Plus Percentage of Cost. A NFE is prohibited from using the cost plus

percentage of cost and percentage of construction cost methods of contracting. 2 C.F.R. § 200.323(d).

- i. FEMA considers a cost plus a percentage of cost or percentage of construction cost contract to be a contract containing some element that obligates the NFE to pay the contractor an amount (in the form of either profit or cost), undetermined at the time the contract was made and to be incurred in the future, based on a percentage of future costs. The inclusion of a ceiling price does not make these forms of contracts acceptable.
- ii. FEMA will use the following four-part analysis to determine if a certain contract is a prohibited cost plus percentage of cost or percentage of construction cost contract:
 - (1) Payment is made on a pre-determined percentage rate;
 - (2) The pre-determined percentage rate is applied to actual performance costs;
 - (3) The contractor's entitlement is uncertain at the time of contracting; and
 - (4) The contractor's entitlement increases commensurately with increased performance costs.
- iii. The prohibition against a cost plus percentage of cost and percentage of construction cost applies to subcontracts of the contractor in the case where the prime contract is a cost-reimbursement type contract or subject to price redetermination.
- d. Estimated Costs. Costs or prices based on estimated costs for contracts under the FEMA award are allowable only to the extent that costs incurred or cost estimates included in the negotiated prices would be allowable for the NFE under the Federal cost principles at 2 C.F.R. Part 200, subpart E. The NFE may reference its own cost principles that comply with the Federal cost principles.

5. BONDING REQUIREMENTS

- a. General. There are bonding requirements for ***construction or facility improvement contracts*** exceeding the simplified acquisition threshold. 2 C.F.R. § 200.325.
 - i. A bond is a written instrument executed by a contractor (the "principal"), and a second party ("the surety" or "sureties") to assure fulfillment of the principal's obligations to a third party (the "obligee"), identified in the bond. If the principal's obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the obligation.

- ii. FEMA or the pass-through entity may accept the bonding policy and requirements of the NFE provided that FEMA or pass-through entity has made a determination that the Federal interest is adequately protected. This means that FEMA will approve the bonding policy and requirements of a recipient, and that the recipient will approve the bonding policy and requirements of its subrecipients.
 - iii. If FEMA or the pass-through entity has not made such a determination, then the NFE must meet the bid guarantee, performance bond, and payment bond requirements described in ¶ 5.b through 5.d.
- b. Bid Guarantee. Each bidder must provide a bid guarantee equivalent to five percent of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid by the NFE, execute such contractual documents as may be required within the time specified. 2 C.F.R. § 200.325(a).
 - c. Performance Bond. There must be a performance bond on the part of the contractor for 100% of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract. 2 C.F.R. § 200.325(b).
 - d. Payment Bond. There must be a payment bond on the part of the contractor for 100 percent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law for all persons supplying labor and material in the execution of work provided for in the contract. 2 C.F.R. § 200.325(c).
 - e. Not Construction or Facility Improvement. If the NFE is procuring neither construction nor facility improvement services, then there are no bonding requirements imposed by the Uniform Rules or this document.

6. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN’S BUSINESS ENTERPRISES, AND LABOR AREA SURPLUS FIRMS

- a. Requirement. A NFE must take all necessary, affirmative steps to assure that small and minority businesses, women’s business enterprises, and labor area surplus firms are used when possible. 2 C.F.R. § 200.321(a). *These steps are in addition to full and open competition* and must include, at a minimum, the following six affirmative steps.

- i. Solicitation Lists. The NFE must place small and minority businesses and women's business enterprises on solicitation lists. 2 C.F.R. § 200.321(b)(1).
- ii. Solicitations. The NFE must assure that it solicits small and minority businesses and women's business enterprises whenever they are potential sources. 2 C.F.R. § 200.321(b)(2).
- iii. Dividing Requirements. The NFE must divide total requirements, *when economically feasible*, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises. 2 C.F.R. § 200.321(b)(3).
- iv. Delivery Schedules. The NFE must establish delivery schedules, *where the requirement permits*, which encourage participation by small and minority businesses and women's business enterprises. 2 C.F.R. § 200.321(b)(4).
- v. Obtaining Assistance. The NFE must use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce. 2 C.F.R. § 200.321(b)(5).
- vi. Prime Contractor Requirements. The NFE must require the prime contractor, if subcontracts are anticipated or let, to take the five affirmative steps described in ¶ 6.a.i through 6.a.v above. 2 C.F.R. § 200.321(b)(6).

b. Additional Guidance.

- i. Meaning of Terms. The Uniform Rules do not define the terms small business, minority business, women's business enterprises, and labor area surplus firms. FEMA will use the following meaning of the terms when evaluating compliance with the requirements of the Uniform Rules. If state, local, or tribal law and procedures provide different meanings of small business, women's business enterprise, and minority business, then FEMA may accept those meanings.
 - (1) Small Business. A business that is independently owned and operated, not dominant in the field of operation in which it is bidding on NFE contracts, and qualified as a small business under the Small Business Administration criteria and size standards at 13 C.F.R. Part 121.
 - (2) Women's Business Enterprise. A business enterprise that is: (a) at least 51 percent owned by one or more women or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more women; and (b) whose management and daily

operations are controlled by one or more women.

- (3) Minority Business. A business that is (a) at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more minority group members; and (b) whose management and daily operations are controlled by one or more minority group members.
 - (4) Labor Area Surplus Firm. A labor surplus area firm is one that, together with its first tier subcontractors, will perform substantially in labor surplus areas. The Department of Labor's Employment and Training Administration has defined labor surplus areas (LSA) as localities that have a "civilian average annual unemployment rate during the previous two calendar years of 20 percent or more above the average annual civil unemployment rate for all states" during that same period. 20 C.F.R. §§ 654.4-654.5. More information about LSAs is available at 20 C.F.R. pt. 654, subchapter A as well as on this website: <https://www.doleta.gov/programs/laborsurplus02.cfm>. The Department of Labor has also issued a list for FY 2016 of all the LSAs: <https://www.doleta.gov/programs/lssa.cfm>.
- ii. Documentation of Compliance. A NFE must document its compliance with the six affirmative steps. As it relates to the prime contractor requirements, FEMA recommends the inclusion of the requirement in the solicitation and also in the contract.
 - iii. Set-Asides.
 - (1) A set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to small businesses, minority business, women's business enterprises, and/or labor area surplus firms. FEMA considers set-asides or percentages as impermissible (unless otherwise authorized by Federal law).
 - (2) Noticeably, the Federal procurement standards do NOT mandate a set aside of a solicitation or reservation of an award to any socioeconomic contractor, but merely that they are used, when possible, e.g. in other words, given the opportunity to compete for such awards.
 - (3) Indian tribes may use preferences pursuant to the requirements and conditions set forth in the Indian Self-Determination and Education Assistance Act, Pub. L. No. 93-638, 88 Stat. 2205 (1975) (codified as amended at 25 U.S.C. § 450 *et seq.*).

7. PROCUREMENT OF RECOVERED MATERIALS

- a. Requirement. A NFE that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. 2 C.F.R. § 200.322.
- b. Additional Background.
 - i. Inapplicability to Indian Tribes and Private Parties. The requirements of Section 6002 and its implementing regulations at 40 C.F.R. Part 247 do not apply to procurements by Indian tribes or private party NFEs (such as hospitals, institutions of higher education, and non-profit organizations).
 - ii. Product Designation and Associated Procurement Requirement. EPA is required to designate products that are or can be made with recycled materials, and to recommend best practices for buying these products. EPA has currently designated 61 products across eight categories, which are construction products, landscaping products, non-paper office products, paper products, park and recreation products, transportation products, vehicular products, and miscellaneous products. *See* 40 C.F.R. Part 247, subpart B.
 - (1) Once EPA designates a product, Section 6002(c)(1) of the Solid Waste Disposal Act (codified as amended at 42 U.S.C. § 6962(c)(1)) requires a NFE to procure that designated item composed of the highest recovered material content level practicable, consistent with maintaining a satisfactory level of competition, considering such guidelines. *See also* 40 C.F.R. § 247.2(d).
 - (2) A NFE may decide not to procure such items if they are not reasonably available in a reasonable period of time; fail to meet reasonable performance standards; or are only available at an unreasonable price. *See* Section 6002(c) of the Solid Waste Disposal Act (codified as amended at 42 U.S.C. § 6962(c)); 40 C.F.R. § 247.2(d).

- iii. Affirmative Procurement Program. Section 6002(i) of the Solid Waste Disposal Act (codified as amended at 42 U.S.C. § 6962(i)) provides that each NFE that purchases items designated by EPA must establish an affirmative procurement program, containing four specific elements, for procuring such items containing recovered materials to the maximum extent practicable. *See also* 40 C.F.R. § 247.6. The four required elements of the affirmative procurement program are:
 - (1) Preference program for purchasing the designated items;
 - (2) Promotion program;
 - (3) Procedures for obtaining estimates and certifications of recovered materials content and for verifying the estimates and certifications; and
 - (4) Annual review and monitoring of the effectiveness of the program
- iv. Solid Waste Disposal Services. Section 6002(f) of the Solid Waste Disposal Act (codified as amended at 42 U.S.C. § 6962(f)) requires a NFE, to the maximum extent practicable, manage or arrange for the procurement of solid waste management services in a manner which maximizes energy and resource recovery.
- v. Certifications. Section 6002(c)(3) of the Solid Waste Disposal Act (codified as amended at 42 U.S.C. § 6962(c)(3)) and 40 C.F.R. § 247.4 provide that a NFE must require that its vendors:
 - (1) Certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements; and
 - (2) Estimate the percentage of the total material utilized for the performance of the contract which is recovered materials (for contracts greater than \$100,000).

8. CHANGES

- a. General. There are many reasons why a NFE may wish to make changes to an existing contract. For example, during performance, changes may be required in order to fix inaccurate or defective specifications, react to unforeseen circumstances, or otherwise modify the work to ensure the contract meets NFE requirements.
- b. NFE Responsibilities. The NFE is responsible for issuing, evaluating, and making necessary decisions involved any change to its third party contracts and any change orders it may issue. The NFE is also responsible for evaluating and making the necessary decisions involving any claim of a constructive change.

- c. Cardinal Change.
 - i. A cardinal change is a significant change in contract work (property or services) that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract.
 - ii. FEMA considers a cardinal change to a contract to be a noncompetitive award and will evaluate whether the NFE meets the necessary conditions precedent for using the procurement through noncompetitive proposal method.
 - iii. A change within the scope of the contract (sometimes referred to as an “in-scope” change) is not a cardinal change. Nothing restricts a NFE from exercising reasonable freedom to make minor adjustments contemplated fairly and reasonably by the parties when they entered into the contract.
- d. Evaluation of Changes. FEMA will, in determining whether the NFE has made a prohibited cardinal change, evaluate whether the change is “within the general scope of the contract” and “within the scope of competition.”
 - i. Scope of the Contract. FEMA will, in determining whether changes are beyond the scope of the contract, usually compare the total work performed by the contractor to the work called for by the original contract. This includes evaluating the nature of the work being performed and also the amount of effort the contractor is required to perform in order to evaluate the cumulative impact on the contract’s quantity, quality, costs, and delivery terms.
 - ii. Scope of Competition. FEMA will, in determining whether changes are beyond the scope of competition, usually evaluate whether there is a material difference between the modified and original contract that was originally competed, to include considering whether the solicitation for the original contract adequately advised offerors of the potential for the type of changes at issue or whether the changes are of a nature that potential offerors would have reasonably anticipated them.
 - iii. In both evaluations, FEMA has not adopted a specific detailed list of acceptable contract changes, as cardinal changes cannot be easily established by setting specific objective and measurable threshold criteria that would apply in all cases. Such evaluations will be conducted on a case-by-case basis.
- e. Changes Clause. FEMA recommends that NFEs incorporate a “changes clause” in their contracts. A changes clause is one that permits the NFE contracting officer to make unilateral changes, in designated areas, within the general scope

of the contract, to be followed by such equitable adjustments in the price and delivery schedule as the changes make necessary.

CHAPTER VI

OTHER PROCUREMENT METHODS AND ADDITIONAL TOPICS

1. **FEDERAL SUPPLY SCHEDULES**

- a. **Background.** GSA establishes long-term government-wide multiple award schedule (“MAS”) contracts with commercial firms to provide access to millions of commercial products and services at volume discount pricing. The MAS contracts, also referred to as GSA Schedule and Federal Supply Schedule contracts, are indefinite delivery, indefinite quantity contracts.
- b. **Permissible Use of Federal Supply Schedules – Disaster Purchasing.**
 - i. Federal law authorizes “state and local governments” access to buy goods and services from GSA Federal Supply Schedules to facilitate recovery from a major disaster declared by the President under the Stafford Act; facilitate disaster preparedness or response; or facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack. 40 U.S.C. § 502(d)(1).
 - ii. The Department of Homeland Security has determined that all of the products and services available under GSA Federal Supply Schedules qualify as those that could be used in preparation or response to all disasters, as well as recovery from major disasters declared by the President, or recovery from terrorism or nuclear, biological, chemical, or radiological attack. 40 U.S.C. § 502(d)(2).
 - iii. Participation by a firm that sells to the Federal Government through the schedule is voluntary with respect to a sale to the state or local government through such supply schedule. 40 U.S.C. § 502(d)(1).
 - iv. **Key Definitions.**
 - (1) **State and Local Governments.** Only states or local governments may access and buy goods and services from GSA Federal Supply Schedules. A NFE falling outside the definition of a state or local government is not authorized to use GSA Federal Supply Schedules pursuant to 40 U.S.C. § 502(c) or (d).
 - a. The term “state or local government” includes any state, local, regional, or tribal government, or any instrumentality thereof (including any local educational agency or institution of higher education). 40 U.S.C. § 502(c)(3)(A).
 - b. The term “tribal government” means: (1) the governing body of any Indian tribe, band, nation, or other organized

group or community located in the continental United States (excluding the State of Alaska) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, and (2) any Alaska Native regional or village corporation established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 *et seq.*). 40 U.S.C. § 502(c)(3)(B).

- c. The term “local educational agency” has the meaning given that term in section 8013 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 7713). 40 U.S.C. § 502(c)(3)(C).
- d. The term “institution of higher education” has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. § 1001(a)). 40 U.S.C. § 502(c)(3)(D).

(2) Preparedness, Response, and Recovery. State and local governments may buy goods and services from GSA Federal Supply Schedules in preparation or response to all disasters, facilitate *recovery* from a major disaster declared by the President under the Stafford Act; or facilitate *recovery* from terrorism or nuclear, biological, chemical, or radiological attack.

- a. “Preparedness” means actions that involve a combination of planning, resources, training, exercising, and organizing to build, sustain, and improve operational capabilities. Preparedness is the process of identifying the personnel, training, and equipment needed for a wide range of potential incidents, and developing jurisdiction – specific plans for delivering capabilities when needed for an incident. U.S. General Services Administration, [Disaster Purchasing FAQs](#).
- b. “Response” means immediate actions to save lives, protect property and the environment, and meet basic human needs. Response also includes the execution of emergency plans and actions to support short-term recovery. U.S. General Services Administration, [Disaster Purchasing FAQs](#).
- c. “Recovery” means the development, coordination, and execution of service- and site-restoration plans; the reconstitution of government operations and services; individual, private-sector, nongovernmental, and public-assistance programs to provide housing and to promote

restoration; long-term care and treatment of affected persons; additional measures for social, political, environmental, and economic restoration; evaluation of the incident to identify lessons learned; post incident reporting; and development of initiatives to mitigate the effects of future incidents. U.S. General Services Administration, [Disaster Purchasing FAQs](#).

c. Permissible Use of Federal Supply Schedules – Information Technology, Law Enforcement, Security, and Certain Other Related Items.

- i. Federal law authorizes state and local governments access to buy information technology (“IT”) through GSA’s Federal Supply Schedule, which includes automated data processing equipment (including firmware), software, property, support equipment, and services (as contained in Federal supply classification code group 70). 40 U.S.C. § 502(c)(1)(A).
- ii. Federal law also authorizes state and local governments access to buy alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Federal supply classification code group 84 or any amended or subsequent version of that Federal supply classification group). 40 U.S.C. § 502(c)(1)(B).
- iii. Participation by a firm that sells to the Federal Government through the supply schedule shall be voluntary with respect to a sale to the state or local government through such supply schedule. 40 U.S.C. § 502(c)
- iv. Key Definitions. The definitions of state and local government, tribal government, local educational agency, and institution of higher education are set forth in Chapter VI, ¶ 1.b.iv(1).

d. Ordering Procedures and Additional Information.

- i. Federal law requires that all users of Federal supply schedules, including non-Federal users, shall use the schedules in accordance with the ordering guidance provided by the GSA Administrator. 40 U.S.C. § 502(f).
- ii. GSA has provided guidance that a NFE must follow its own procurement procedures when ordering goods and services from the GSA Federal Supply Schedules. In addition to ensuring compliance with its own procurement procedures, a NFE is encouraged—but not required—to use GSA’s Schedule Ordering Procedures to ensure competition and to receive best value from GSA Federal Supply Schedule contractors. See U.S. General Services Administration, [Disaster Purchasing FAQs](#) and [Cooperative Purchasing FAQs](#). These ordering procedures can be found

at 48 C.F.R. § 8.405-1 (Ordering Procedures for Property and Services Not Requiring a Statement of Work) and § 8-405-2 (Ordering Procedures for Services Requiring a Statement of Work).

- iii. Orders placed under the Disaster Purchasing program must include the following statement: “This order is placed under GSA Schedule number _____ under the authority of the GSA Disaster Purchasing program. The products and services purchased will be used in preparation or response to disasters or recovery from major disaster declared by the President, or recovery from terrorism or nuclear, biological, chemical, or radiological attack.”
- iv. If a NFE uses the GSA ordering procedures, *it will have fulfilled the requirements for full and open competition*. The NFE must also ensure that all required clauses in 2 C.F.R. § 200.326 are included in the contract and determine whether the GSA price is reasonable. The NFE may seek a lower price than that published on the schedules.
- v. If a NFE does not follow the GSA ordering procedures, it must at least follow ordering procedures that meet the minimum requirements for full and open competition.

2. USE OF EXISTING CONTRACTS

- a. Background. A NFE may wish to use an existing contract in order to perform work under a FEMA award. FEMA considers an “existing contract” as a contract that, when formed, was intended to be limited to the parties, and does not include state, local, or tribal purchasing schedules or purchasing contracts.
- b. Permissible Use of Existing Contracts. FEMA permits a NFE to use an existing contract in the following circumstances:
 - i. The NFE originally procured the contract in full compliance with the procurement standards under the Uniform Rules.
 - ii. The scope of work to be performed falls within the scope of work of the original contract and there are no cardinal changes.
 - iii. The scope of work of the contract as originally procured did not exceed the amount of property and services required to meet the NFE’s original, reasonably expected needs.
 - (1) The Uniform Rules require the NFE to establish procedures to avoid the purchase of unnecessary or duplicative items. 2 C.F.R. § 200.318(d).
 - (2) The NFE should only contract for its current and reasonably expected needs under the FEMA award, and may not add

quantities or options to contract for solely for the purpose of a potential use at a later date. Therefore, an existing contract could have an improper, original scope if the NFE added excess capacity in the original procurement primarily for its future use. Moreover, an existing contract with an overbroad scope of work may lead to unreasonable pricing and should not be used.

- (3) The quantity of property or services a NFE reasonably believes it may need at the time of contract award could decrease due to changed circumstances or other reasons. In those situations, the NFE may use the excess contract authority to perform work under the FEMA award.
- c. Advance Contracts. A NFE may award advance contracts, also referred to as prepositioned contracts or pre-awarded contracts, before an incident occurs for the potential performance of work under the Public Assistance Grant Program under a Stafford Act emergency or major disaster.
- i. This approach enables a NFE to conduct a deliberate procurement process outside of the pressure and immediate demands of an incident and also helps to ensure that the NFE has a contractor(s) ready to perform work very quickly after an incident occurs when needed most.
 - ii. The use of such contracts is permissible so long as the circumstances below are met:
 - (1) The NFE originally procured the contract in full compliance with the procurement standards under the Uniform Rules.
 - (2) The scope of work originally procured must not exceed the reasonably expected needs during a future declaration.
 - (3) The scope of work performed must fall within the scope of work of the original contract and there are no cardinal changes.
 - (4) The pricing structure must be reasonable.
 - a. The contract price may come at a premium based on the need for the contractor to be able to perform services with little or no notice. Such a pricing structure is not, per se, unreasonable, although FEMA will scrutinize premium prices for work. For example, FEMA will scrutinize such work at premium prices extending beyond the period of time in which the NFE could have completed a competitive procurement following the declaration and the winning contractor begun work at non-premium prices.
 - b. The contract price may have built-in contingencies that result in unreasonable pricing for the work to be performed.

For example, a state could procure a statewide debris removal contract that is available for use by all state agencies and also all local governments in the state. Even assuming the procurement was conducted in full compliance with the Uniform Rules for non-state recipients and subrecipients and consistent with Chapter VI, ¶ 2.c.ii.(1)-(3), the contract would presumably have unit pricing that builds in a contractor's costs for potential debris removal anywhere in the state and on a large-scale basis. This means that the application of such a rate to a particular jurisdiction—where the scope of work is very narrow and the market rate for such services are less—may result in unreasonable pricing as applied to that particular jurisdiction. While this may be the case, per 2 C.F.R. § 200.404, costs are not unreasonable simply because there may have been a method whereby the recipient could have received a better price. A finding of “unreasonable costs” must be based on a determination that the costs incurred appear to be unreasonable because they do not reflect the actions a prudent person would take in the circumstances.

iii. Permissibility of Use of Contracts Awarded Under the Old Procurement Standards After the Implementation of the Uniform Rules.

- (1) If a prepositioned (advanced/pre-awarded) contract was properly awarded in accordance with the old Federal procurement standards found at 44 C.F.R. pt. 13 – and to a lesser extent, 2 C.F.R. pt. 215 – on a general basis, the NFE would not likely be required to necessarily re-solicit or re-award the existing contract for use during a disaster or emergency declaration issued after December 26, 2014. If the existing contracts were properly solicited and awarded under the old procurement standards at 44 C.F.R. § 13.36(a)-(i), they'll likely be in compliance when it comes to using these existing contracts today and maintaining the potential for maximum reimbursement of eligible expenses – at least from a purely procurement-related perspective. The final determination of course will need to be made on a case-by-case basis.
- (2) The old procurement standards found at 44 C.F.R. § 13.36(a)-(i) served as the basis for the new procurement standards identified at 2 C.F.R. §§ 200.317-200.326. However, with few exceptions, the new procurement standards are much more lenient than the older standards. If for example, the competition requirements, socioeconomic requirements and non-competitive proposal requirements were met under the prior rules, they would most likely survive any scrutiny under the current rules. Many of the requirements under the Uniform Rules were carried over from the old standards found at 44 C.F.R. § 13.36(b)-(i). For example, the

competition requirement (with the exception of the prohibition on award to contractors that assist in the development of a specification or requirement, Invitations for Bid or Requests for Proposals from competing for and receiving that very same contract award) and the socioeconomic standards are identical. Few requirements are more onerous such as the prohibition on award mentioned immediately above, while most changes are in fact more lenient, such as the elimination of the two-step process of analysis under non-competitive proposals, involving a preliminary determination as to whether any other contract method is infeasible for use under the four contemplated circumstances (only one source, exigent/emergency circumstances, FEMA or pass through entity pre-approval, or inadequate competition), or requirement to conduct cost or price analysis only where procurements are in excess of the simplified acquisition threshold.

- (3) As indicated above, contracts that are found to have been properly solicited and awarded IAW the old procurement standards will most likely meet the current standards, with two noticeable potential exceptions:
 - a. 2 C.F.R. § 200.319 – prohibiting a contractor from developing the specifications and requirements; Invitation for Bids or Request for Proposals; and competing for and receiving the subsequent award. This prohibition wasn't specifically addressed in the old regulations. If this situation exists in the existing contract, it would be difficult to impossible to cure this deviation in order to ensure that the existing contract meets the requirements of the current procurement standards.
 - b. 2 C.F.R. § 200.326 – requiring each purchase order or contract to include certain contract provisions. The contract provisions required by the new procurement standards have been revised in subtle ways. It would be a matter of local, state, and tribal analysis to determine whether the current contract provisions could be added through a contract modification to the existing contract and still remain within scope.
- (4) As the differences between the new standards and the old procurement standards for Institutions of Higher Education, Hospitals, and certain Private Non-profits has changed more drastically with the conversion to the Uniform Rules, use of existing contracts for these types of entities that were awarded under the old procurement standards would necessarily require a more intensive analysis by these entities to ensure that the existing contracts were solicited and awarded in a manner that would have

met the new procurement standards.

- (5) Additionally, while states have fewer requirements under the Federal procurement standards than other entities, existing contracts awarded by a state would need to be analyzed on a case-by-case basis in order to determine whether they meet the new procurement standards at 2 C.F.R. § 200.317, requiring compliance with the new contract provisions found at 2 C.F.R. § 200.326.
 - (6) However, in the absence of such confirmations, the grace period available at 2 C.F.R. § 200.110 could be exercised by a NFE, in accordance with the Uniform Rules' requirements for doing so, with the existing contracts (compliant with the old procurement standards but not the new) continuing to be used during the two additional fiscal years associated with the grace period, while follow on contracts were solicited and awarded pursuant to the new procurement standards. Under this scenario, the NFE would have an additional two fiscal years after the Uniform Rules went into effect on December 26, 2014 to get its procurement systems and contracts in line with the new standards.
- iv. Impermissible Use of Existing Contracts. A NFE may not use FEMA assistance to finance cardinal changes (e.g. out of scope changes – after-the-fact addition of parties able to use the contract, changes in the type or extent of work to be performed, use of the contract in manner and/or duration that was not originally anticipated, etc.) of an existing contract for its use under a subsequent FEMA award.

3. JOINT PROCUREMENTS

- a. Background. The Uniform Rules provide that—to foster greater economy and efficiency and in accordance with efforts to promote cost-effective use of shared services across of the Federal government—a NFE is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. 2 C.F.R. § 200.318(e). FEMA has interpreted this regulation as encouraging NFEs to collaborate in joint procurements.
- b. Meaning of Joint Procurement. FEMA uses the term “joint procurement” to mean a method of contracting in which two or more NFEs agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum or total maximum. This is typically done to obtain advantages unavailable for smaller procurements, and a joint procurement is separate and distinct from a purchasing schedule.
- c. Compliance with Uniform Rules. When procuring goods or services using a joint procurement, the NFEs must comply with all applicable procurement standards

set forth in the Uniform Rules and detailed in this document.

- d. Responsibilities under the Joint Procurement. The NFE responsible for undertaking the joint procurement may, upon contract award, assign to the other participants responsibilities for administering those parts of the contract affecting their property or services. Participation in a joint procurement, however, does not relieve any participating NFE from the requirements and responsibilities it would have if it were procuring the property or services itself, and does not relinquish responsibility for the actions of other participants merely because the primary administrative responsibility for a particular action resides in another NFE other than in itself. In other words, each party taking action under a joint procurement, must ensure that all applicable Federal procurement standards are met in order to maximize the potential for reimbursement for all eligible expenses incurred under the procurement.
- e. Joint Procurements: Statewide Debris Removal Contracts. A state may establish a statewide debris removal contract that could permissibly be used by a local government under a Public Assistance award through a joint procurement. Under such an approach, the state would procure a single contractor to provide debris removal services statewide for state agencies and, at their election, for the local government.
- f. Compliance with State Law and Regulation. The state's procurement of the original contract and its use by local governments must comply with state and local law, regulations, and written procurement procedures. Importantly, the state must procure the contract with the express purpose of making it available to local governments and the contract must specifically allow for such use.
- g. Scope of Work. The scope of the work to be performed for the local government must fall within the scope of work under the statewide contract as to type, amount, haul distance, and geography.
- h. Definitive Requirements. FEMA expects the state to limit the acquisition of Federally-assisted debris removal services to the amount it needs to support its and other NFE's Public Assistance project(s).
- i. Compliance with the Uniform Rules. The state's procurement of the contract must comply with all of the procurement standards *applicable to a local government* at 2 C.F.R. §§ 200.318 to 326. This is a very important caveat, as the state would otherwise not be required to comport with the regulations when procuring services or property for its own use, but only with the regulation at 2 C.F.R. § 200.317. However, because local governments are subject to the requirements of 2 C.F.R. §§ 200.318 to 326, the state must comply with those procurement standards in order for the local governments to permissibly use the statewide contract.
- j. Pricing. It is possible that a joint procurement may not have pricing that accounts

for variables in geographic and market conditions unique to the local government availing itself of the contract. This may or may not lead to a local government paying more than it otherwise may have paid had the local government procured its own contract. While this may be the case, per 2 C.F.R. § 200.404, costs are not unreasonable simply because there may have been a method whereby the recipient could have received a better price. A finding of “unreasonable costs” must be based on a determination that the costs incurred appear to be unreasonable because they do not reflect the actions a prudent person would take in the circumstances.

4. PURCHASING SCHEDULES

- a. Background. FEMA uses the term “state, local, or tribal purchasing schedule” to mean an arrangement that a state, local, or tribal government has established with several or many vendors in which those vendors agree to provide essentially an option to the state, local, or tribal government (and their subordinate government entities) to acquire specific property or services in the future at established, binding prices. If permitted by state, local, or tribal laws and regulations, a non-governmental NFE may also use the state, local, or Indian tribal purchasing schedule.
- b. Use Permitted. The Uniform Rules encourage state, local, and tribal governments to enter into intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. As such, FEMA allows a NFE to use a state, local, or tribal purchasing schedule to procure services and property under a FEMA award if the schedule was established in a manner that complies with 2 C.F.R. §§ 200.318 to 326.
- c. Ordering Procedures.
 - i. A NFE must follow its own procurement procedures which reflect applicable state, local, or tribal laws and regulations when ordering property and services. These procedures must at least meet the minimum requirements of full and open competition and the source selection requirements under the Uniform Rules. FEMA may, in reviewing such a procurement, request not only the procurement records for originally establishing the supply schedule, but also records concerning the ordering solicitation prepared by the ordering NFE, documentation demonstrating that an adequate number of sources were solicited, documentation showing the evaluation of bids or offers received, rationale for source selection (including the cost or price analysis), and other documentation as required.
 - ii. Any property ordered must be an end item from the supply schedule, such as office property, computers, other commercial off the shelf items, and construction materials. Minor modifications or modifications customarily available in the marketplace may be permissible so long as the

modifications do not comprise a cardinal change.

- iii. Any services ordered must be for the specific tasks and/or specific outcomes to be achieved as detailed in the supply schedule, and not for tasks and/or specific outcomes falling outside the scope of the supply schedule. The acquisition of new construction services or non-routine alterations and repair services will rarely, if ever, be appropriate to order from a supply schedule, as a purchasing schedule or contract for new construction or non-routine alterations and repairs will lack the specificity for critical circumstances common to such efforts, such as the technical approach for completion of the work, innumerable combinations of site requirements (weather, physical conditions, etc.), and tailored pricing.

5. OBTAINING GOODS AND SERVICES THROUGH MUTUAL AID AGREEMENTS

- a. FEMA, pursuant to Subchapter H of Ch. V of the Public Assistance Program and Policy Guide, FP 104-009-2, January 2016, allows a subrecipient to use Public Assistance funding to pay for work performed by another entity through a mutual aid agreement.
- b. FEMA does not treat a mutual aid agreement as a procurement for the purposes of 2 C.F.R. pt. 200 so long as the work provided under the agreement falls within certain categories of work. Rather, FEMA treats the mutual aid assistance performed by a providing entity's employees as akin to temporary hires of the requesting entity.
- c. This applies to all forms of mutual aid assistance, including agreements between a requesting and providing entity, statewide mutual aid agreements, and mutual aid services provided under the Emergency Management Assistance Compact ("EMAC").
- d. There are three types of mutual aid work eligible for FEMA assistance:
 - i. **Emergency Work (Public Assistance Categories A and B)** – Mutual aid work provided in the performance of emergency work necessary to meet immediate threats to life, public safety, and improved property.
 - ii. **Emergency Utility Restoration (Regardless of whether it is deemed Category B or F)** – Work that is of a permanent nature but is necessary for emergency restoration of utilities. For example, work performed to restore electrical and other power.
 - iii. **Grant Management Work** – Work associated with the performance of the grantee's responsibilities as grant administrator. EMAC provided assistance to perform these tasks is eligible mutual aid work.
- e. If mutual aid work falls within the scope described above, then FEMA will next look to see if the providing entity performed the work using force account labor or

contract resources. A subrecipient (the requesting entity) may use Public Assistance funding to pay for the costs of *the force account labor or use of equipment* of the entity providing assistance (the providing entity) consistent with Subchapter H of Ch. V of the Public Assistance Program and Policy Guide, FP 104-009-2.

- f. If, however, the providing entity performs mutual aid work through contract, then FEMA will perform the following analysis:
 - i. Contract Services or Supplies are Incidental to the Work Performed by the Providing Entity. In those cases where contract services or supplies are incidental to the work performed by the providing entity, then FEMA will generally not treat the mutual aid agreement as a procurement and evaluate it according to the criteria at 2 C.F.R. Part 200.
 - ii. The Providing Entity Predominantly or Exclusively Performs Mutual Aid Work Through Contract. In other cases, however, a providing entity may perform the work under the mutual aid agreement predominantly or exclusively through contract. FEMA will, in these cases, treat the mutual aid agreement as a procurement and evaluate it against the criteria of 2 C.F.R. §§ 200.318-200.326.

6. ASSIGNMENT OF CONTRACT RIGHTS

- a. Background. A NFE may find it advantageous to use existing contract rights of another NFE. An “existing contract” does not include, for the purposes of this section, a state, local, or tribal supply schedule or the GSA Federal Supply Schedule.
- b. Exercise of Assignment Rights. Although FEMA generally discourages a NFE from obtaining contract rights from another NFE, a NFE may exercise contractual rights obtained through assignment subject to the following limitations.
 - i. Original Procurement. The original contract must have been procured in full compliance with the procurement standards under the Uniform Rules.
 - ii. Original Scope. The scope of the contract originally procured by the assigning party does not exceed the amount of property and services required to meet the assigning party’s original, reasonably expected needs. The regulation at 2 C.F.R. § 200.318(d) requires a NFE to have procurement procedures that preclude it from acquiring property or services it does not need. Therefore, a contract would have an improper original scope if the original party added excess capacity in the original procurement primarily to permit assignment of those contract rights to another entity. Moreover, an assignable contract with an overbroad scope of work may lead to unreasonable pricing and thus should not be used.
 - iii. Assignability Provisions. The original contract must contain appropriate

assignability provisions that permit the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions.

- iv. No Cardinal Changes. The scope of work, terms, and conditions of the assigned contract rights that the NFE seeks to exercise must be the same or substantially similar to those in the original contract and there are no cardinal changes.
 - v. Quantities. The quantities the assigning party acquired, coupled with the quantities the acquiring recipient or subrecipient seeks, do not exceed the amounts available under the assigning entity's contract
 - vi. Price. The NFE may not exercise assigned contract rights unless it has determined that the price is fair and reasonable.
- c. Noncompetitive Procurement. FEMA will treat an assignment of contract rights that does not meet the limitations described in Chapter VI, ¶ 5.b as a sole source procurement, such that a NFE may only use such a method if it meets the requirements for procurement through noncompetitive proposals.

7. USE OF PURCHASING AGENTS

- a. General. FEMA uses the term “purchasing agent” to generally refer to a contracted agent of the NFE that assists in the procurement of goods and services. The purchasing agent may assist the NFE in, among other things, conducting market research, preparing solicitations, evaluating bids or proposals, and negotiating contracts, and screening information about products on the behalf of the recipient or subrecipient.
- b. Use Permitted. If the NFE lacks qualified personnel within its organization to undertake the various tasks required to comply with the procurement standards, FEMA expects the NFE to acquire the necessary services from sources outside the NFE's organization, such as a purchasing agent. The use of a purchasing agent should be specified in the NFE's written procurement procedures.
- c. Conflicts of Interest. A purchasing agent shall not participate in the selection, award, or administration of a contract supported by a FEMA award if he or she has a real or apparent conflict of interest. *See* 2 C.F.R. § 200.318(c)(1); Chapter IV, ¶ 3. In addition, the NFE must take appropriate steps to prevent or mitigate organizational conflicts of interest that would result in conflicting roles that might bias a contractor's judgment or would result in unfair competitive advantage.

8. FEDERAL EXCESS PROPERTY

- a. The Uniform Rules encourage NFEs to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and

reduces project costs. 2 C.F.R. § 200.318(f). A NFE would acquire such equipment and property through the Federal Surplus Personal Property Donation Program.

- b. The General Services Administration (“GSA”) carries out the Federal Surplus Personal Property Donation Program under which GSA will donate “surplus” Federal property—through a state agency for surplus property—to eligible public agencies and eligible nonprofit educational or public health institutions. *See* 40 U.S.C. § 549; 41 C.F.R. Part 102-37. Surplus personal property (surplus property) means excess personal property not required for the needs of any Federal agency, as determined by GSA.
- c. A NFE interested in obtaining Federal surplus personal property should contact its servicing FEMA Regional Administrator for additional information.

APPENDIX A

AUTHORIZING LEGISLATION AND GRANT PROGRAMS

1. A number of Federal laws provide the authority for FEMA to carry out its grant and cooperative agreement programs.
2. Public Assistance Grant Program. The Public Assistance (“PA”) Grant Program is authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288, §§ 402, 403, 406, 407, and 502 (1974) (codified as amended at 42 U.S.C. §§ 5170a, 5170b, 5172, 5173, and 5192) (“Stafford Act”). The implementing regulations for this program are set forth at 44 C.F.R. Part 206, subparts C, G, H, I, and M. FEMA has also issued the *Public Assistance Program and Policy Guide* (“PAPPG”), which includes most of the Public Assistance policy. Additional documents not yet superseded by the PAPPG are available online.
3. Hazard Mitigation Grant Program. The Hazard Mitigation Grant Program (“HMGP”) is authorized by the Stafford Act, § 404 (codified as amended at 42 U.S.C. § 5170c) under a major disaster declaration. The implementing regulations are set forth at 44 C.F.R. Part 206, subpart N. FEMA has also issued the [Hazard Mitigation Assistance Unified Guidance](#) to provide additional guidance.
4. Fire Management Assistance Grant Program. The Fire Management Assistance Grant (“FMAG”) Program is authorized by the Stafford Act, § 420 (codified as amended at 42 U.S.C. § 5187) under a fire declaration. The implementing regulations are set forth at 44 C.F.R. Part 204. FEMA has also issued a number of [policy documents](#) and issued the [FMAG Guide](#) to describe the basic provisions, processes, and procedures of the program.
5. Crisis Counseling Assistance and Training Grant Program. The Crisis Counseling Assistance and Training Grant Program is authorized by the Stafford Act, § 416 (codified as amended at 42 U.S.C. § 5183) under a major disaster declaration. The implementing regulations are set forth at 44 C.F.R. § 206.171.
6. Disaster Case Management Grant Program. The Disaster Case Management Service Grant Program is authorized by the Stafford Act, § 426 (codified as amended at 42 U.S.C. § 5189d) under a major disaster declaration. FEMA has adopted [Disaster Case Management Program Guidance](#) to provide implementing guidance for this grant program.
7. Federal Assistance to Individual and Households – Other Needs Assistance (State Option). The Other Needs Assistance (“ONA”) program is authorized by the Stafford Act, § 408 (codified as amended at 42 U.S.C. § 5174) under either an emergency or major disaster declaration. The implementing regulations are set forth at 44 C.F.R. Part 206, subpart D.
8. Flood Mitigation Assistance Grant Program. The Flood Mitigation Assistance (“FMA”) Program is authorized by the National Flood Insurance Act of 1968, Pub. L. No. 90-448, § 1366 (1968) (codified as amended at 42 U.S.C. § 4104c) (“NFIA”). The implementing

regulations are set forth at 44 C.F.R. Parts 78 and 79. FEMA has also issued the [Hazard Mitigation Assistance Unified Guidance](#)

9. Pre-Disaster Mitigation Grant Program. The Pre-Disaster Mitigation (“PDM”) Program is authorized by Stafford Act, § 203 (codified as amended at 42 U.S.C. § 5133). FEMA has issued the [Hazard Mitigation Assistance Unified Guidance](#) to provide additional guidance.
10. Cooperating Technical Partners Cooperative Agreement Program. The Cooperating Technical Partners Program (“CTPP”) is authorized by the NFIA, § 1360 (codified as amended at 42 U.S.C. § 4101).
11. National Dam Safety Grant Program. The National Dam Safety Program is authorized by the National Dam Safety Program Act, Pub. L. No. 93-367, § 8 (1972) (codified as amended at 33 U.S.C. § 467f).
12. Earthquake Hazards Reduction Cooperative Agreement Program. The Earthquake Hazard Reduction Program is authorized by the Earthquake Hazard Reduction Act (“EHRA”) of 1977, Pub. L. No. 95-124, § 5 (1977) (codified as amended at 42 U.S.C. § 7704). The implementing regulations are set forth at 44 C.F.R. Part 361.
13. Emergency Management Preparedness Grant. The Emergency Management Preparedness Grant (“EMPG”) is authorized by the Stafford Act, §§ 611 and 613 (codified as amended at 42 U.S.C. §§ 5196 and 5196b); Post-Katrina Emergency Management Reform Act of 2006, Pub. L. No. 109-295, § 662 (2006) (codified as amended at 6 U.S.C. § 762); NFIA; and EHRA. FEMA publishes each year the *Emergency Management Performance Grant Program Funding Opportunity Announcement* that provides detailed information about this program. This announcement is posted on the Preparedness (Non-Disaster) Grants [webpage](#).
14. Homeland Security Grant Program. The Homeland Security Grant Program is authorized by the Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 2002 and 2003 (2002) (codified as amended at 6 U.S.C. §§ 603 and 604) (“Homeland Security Act”). The Homeland Security Grant Program is comprised of three interconnected grant programs: State Homeland Security Program, Urban Areas Security Initiative, and Operation Stonegarden. FEMA publishes each year the *Homeland Security Grant Program Funding Opportunity Announcement* that provides detailed information about this program. This announcement is posted on the Preparedness (Non-Disaster) Grants [webpage](#).
15. Nonprofit Security Grant Program. The Non-Profit Security Grant Program is authorized by the Homeland Security Act, § 2003 (codified as amended at 6 U.S.C. § 604). FEMA publishes each year the *Nonprofit Security Grant Program Funding Opportunity Announcement* that provides detailed information about this program. This announcement is posted on the Preparedness (Non-Disaster) Grants [webpage](#).
16. Tribal Homeland Security Grant Program. The Tribal Homeland Security Grant Program is authorized by the Homeland Security Act, § 2005 (codified as amended at 6 U.S.C. § 606). FEMA publishes each year the *Tribal Homeland Security Grant Program Funding*

Opportunity Announcement that provides detailed information about this program. This announcement is posted on the Preparedness (Non-Disaster) Grants [webpage](#).

17. Transit Security Grant Program. The Transit Security Grant Program is authorized by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, § 1406 (2007) (codified as amended at 6 U.S.C. § 1135). FEMA publishes each year the *Transit Security Grant Program Funding Opportunity Announcement* that provides detailed information about this program. This announcement is posted on the Preparedness (Non-Disaster) Grants [webpage](#).
18. Port Security Grant Program. The Port Security Grant Program is authorized by the Maritime Transportation Security Act of 2002, Pub. L. No. 107-295, § 102 (2002) (codified as amended at 46 U.S.C. § 70107). FEMA publishes each year the *Port Security Grant Program Funding Opportunity Announcement* that provides detailed information about this program. This announcement is posted on the Preparedness (Non-Disaster) Grants [webpage](#).
19. Fire Prevention and Safety Grant Program. The Fire Prevention and Safety Grant Program is authorized by the Federal Fire Prevention and Control Act of 1974, Pub. L. No. 93-498, § 33 (1974) (codified as amended at 15 U.S.C. § 2229) (“Federal Fire Prevention and Control Act”). The implementing regulations are set forth at 44 C.F.R. Chapter I, Subchapter C. FEMA also publishes each year the *Fire Prevention and Safety Grant Program Funding Opportunity Announcement* that provides detailed information about this program. This announcement is posted at the Assistance to Firefighters Grant Program [webpage](#).
20. Staffing for Adequate Fire and Emergency Response. The Staffing for Adequate Fire and Emergency Response Program is authorized by the Federal Fire Prevention and Control Act, § 34 (codified as amended at 15 U.S.C. § 2229a). The implementing regulations are set forth at 44 C.F.R. Chapter I, Subchapter C. FEMA also publishes each year the *Staffing for Adequate Fire and Emergency Response Funding Opportunity Announcement* that provides detailed information about this program. This announcement is posted at the Assistance to Firefighters Grant Program [webpage](#).
21. Continuing Training Grants. The Continuing Training Grant Program is authorized by the annual DHS Appropriations Acts.

APPENDIX B

DEFINITIONS

1. All definitions at 2 C.F.R. Part 200, subpart A apply to this circular, and the definitions marked by an “*” below are restatements of several of those definitions. In addition, there are additional definitions provided below that apply to this Supplement.
2. Approval means a written statement transmitted in written hard copy or in electronic format or medium of a FEMA official authorized to permit the NFE to take or omit an action required by the grant agreement, cooperative agreement, Uniform Rules, or this circular, which action may not be taken or omitted without such permission. An oral permission or interpretation has no legal effect, force, or authority.
3. Best value means a procurement by competitive proposal process in which the NFE reserves the right to select the most advantageous offer by evaluating and comparing factors in addition to cost or price, consistent with the stated evaluation criteria. Under such a process, the NFE may award a contract to the offeror whose offer is the most technically superior but is higher in price than the lowest priced, technically acceptable proposal.
4. Cardinal change means a significant change in contract work (property or services) that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract.
5. Change order means an order authorized by the recipient or subrecipient to make changes, pursuant to contract provisions for such changes; may be issued with or without consent of the contractor, depending upon the language of the provision.
6. Constructive change means an act or omission by the NFE that, although not identified as a “change order,” does in fact cause a change in the contract work.
7. *Contract means a legal instrument by which a NFE purchases property or services needed to carry out the project or program under a Federal award. The term does not include legal instrument, even if the NFE considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward. 2 C.F.R. § 200.22.
8. *Cooperative agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a NFE that, consistent with 31 U.S.C. §§ 6302-6305:
 - a. Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the NFE to carry out a public purpose authorized by a law of the United States (*see* 31 U.S.C. § 6101(3));

and not to acquire property or services for the Federal government or pass-through entity's direct benefit or use;

- b. Is distinguished from a grant in that a cooperative agreement provides for substantial involvement between the Federal awarding agency or pass-through entity and the NFE in carrying out the activity contemplated by the Federal award.
 - c. The term does not include:
 - i. A cooperative research and development agreement as defined in 15 U.S.C. § 3710a;
 - ii. An agreement that provides only: (a) Direct United States Government cash assistance to an individual; (b) A subsidy; (c) A loan; (d) A loan guarantee; or (e) Insurance. 2 C.F.R. § 200.24.
9. Department or DHS means the Department of Homeland Security.
 10. Design-build means a procurement method consisting of contracting for design and construction simultaneously with a contract award to a single contractor or contractor team that will be responsible for both the project's design and construction.
 11. *Federal awarding agency means the Federal agency that provides a Federal award directly to the NFE. 2 C.F.R. § 200.37. In this circular, the Federal awarding agency is FEMA.
 12. FEMA financial assistance means the assistance that NFEs receive or administer in the form of grants and cooperative agreements under the programs set forth in Chapter I, ¶ 3.
 13. FEMA means the Federal Emergency Management Agency.
 14. FEMA Award or "Award" has the meaning, depending on the context, of:
 - a. The FEMA financial assistance that a NFE receives directly from FEMA or indirectly from a pass-through entity under one of the grant and cooperative agreement programs set forth in Chapter I, ¶ 3; or
 - b. The instrument setting forth the terms and conditions associated with FEMA financial assistance.
 15. *Fixed amount award means a type of grant agreement under which the Federal awarding agency or pass-through entity provides a specific level of support without regard to actual costs incurred under the Federal award. This type of Federal award reduces some of the administrative burden and recordkeeping requirements for both the NFE and Federal awarding agency or pass-through entity. Accountability is based primarily on performance and results. 2 C.F.R. § 200.45.
 16. Full and open competition generally means that a complete requirement is publicly solicited and all responsible sources are permitted to compete.

17. *Grant agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a NFE that, consistent with 31 U.S.C. §§ 6302, 6304:
 - a. Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the NFE to carry out a public purpose authorized by a law of the United States (*see* 31 U.S.C. § 6101(3)); and not to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use;
 - b. Is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the Federal awarding agency or pass-through entity and the NFE in carrying out the activity contemplated by the Federal award.
 - c. Does not include an agreement that provides only: (1) Direct United States Government cash assistance to an individual; (2) A subsidy; (3) A loan; (4) A loan guarantee; or (5) Insurance. 2 C.F.R. § 200.51.
18. *Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. § 450b(e)). *See* annually published Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services. 2 C.F.R. § 200.54.
19. *Institution of higher education is defined at 20 U.S.C. § 1001. 2 C.F.R. § 200.55.
20. *Local government means any unit of government within a state, including a: (a) County; (b) Borough; (c) Municipality; (d) City; (e) Town; (f) Township; (g) Parish; (h) Local public authority, including any public housing agency under the United States Housing Act of 1937; (i) Special district; (j) School district; (k) Intrastate district; (l) Council of governments, whether or not incorporated as a nonprofit organization under state law; and (m) any other agency or instrumentality of a multi-, regional, or intra-state or local government. 2 C.F.R. § 200.64.
21. Joint procurement means a method of contracting in which two or more purchasers agree to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services for a fixed quantity. The fixed quantity may be expressed as a total minimum and total maximum. Unlike a State, local, or Indian tribal purchasing schedule, a joint procurement is not drafted for the purpose of accommodating the needs of other parties that may later choose to participate in the benefits of that contract.
22. *Micro-purchase means a purchase of property or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchase procedures comprise a subset of a NFE's small purchase procedures. The NFE uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burdens and costs. The

micro-purchase threshold is set by the Federal Acquisition Regulation at 48 C.F.R. Part 2 (Definitions of Words and Terms), subpart 2.1 (Definitions). The regulations state that it is \$ 3,000 *except as otherwise discussed in subpart 2.1 of that regulation*, but this threshold is periodically adjusted for inflation. 2 C.F.R. § 200.67. As of 1 October 2015, the current micro-purchase threshold, after adjustment for inflation, is \$ 3,500.

23. *NFE means a state, local government, Indian tribe, institution of higher education, hospital, or nonprofit organization that carries out a Federal award as a recipient or subrecipient. 2 C.F.R. § 200.69.
24. *Nonprofit organization means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
 - a. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - b. Is not organized primarily for profit; and
 - c. Uses net proceeds to maintain, improve, or expand the operations of the organization. 2 C.F.R. § 200.69.
25. Option means a unilateral right in a contract by which, for a specified time, a NFE may elect to purchase additional equipment, property, or services called for by the contract, or may elect to extend the term of the contract for a set period of time.
26. Office of Inspector General or “OIG” means the independent auditing organization within the Department of Homeland Security.
27. *Pass-through entity means a NFE that provides a subaward to a subrecipient to carry out part of a Federal program. 2 C.F.R. § 200.74.
28. *Personal property means property other than real property. It may be tangible, having physical existence, or intangible. 2 C.F.R. § 200.78.
29. *Property means real property or personal property. 2 C.F.R. § 200.81.
30. Purchasing agent means an agent of the NFE that assists in the procurement of goods and services. The purchasing agent may assist the NFE in, among other things, conducting market research, preparing solicitations, evaluating bids or proposals, and negotiating contracts, and screening information about products.
31. *Real property means land, including land improvements, structures or appurtenances thereto, but excludes machinery and equipment. 2 C.F.R. § 200.85.
32. *Recipient (formerly “Grantee) means a NFE that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients. 2 C.F.R. § 200.86.

33. *Simplified acquisition threshold means the dollar amount below which a NFE may purchase property or services using small purchase methods. NFEs adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 C.F.R. Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. § 1908. As of the publication of this circular, the simplified acquisition threshold is \$150,000, but this threshold is periodically adjusted for inflation. 2 C.F.R. § 200.88.
34. *State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments. 2 C.F.R. § 200.90. A State does not include an Indian tribe.
35. State, local government, or Indian tribe purchasing schedule or purchasing contract means an arrangement that a State, local government, or Indian tribe has established with multiple vendors in which those vendors agree to provide essentially an option to the State, local government, or Indian tribe and their subordinate government entities and others it might include in their programs, to acquire specific property or services in the future at established prices and consistent with the terms established in the schedule or purchasing contract.
36. *Subaward (formerly “Subgrant”) means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. 2 C.F.R. § 200.92.
37. *Subrecipient (formerly “Subgrantee”) means a NFE that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. 2 C.F.R. § 200.93.
38. Third party contract means a “contract” as defined above.
39. Uniform Rules (also referred to as the Super Circular) means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards codified at 2 C.F.R. Part 200, which DHS adopted on December 19, 2014.
40. *Value engineering means the systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lowest cost. Normally associated with construction or production contracts. 2 C.F.R. § 200.318(g).

APPENDIX C

APPLICABLE FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS

1. Background.

- a. In addition to complying with the Uniform Rules and the enabling laws, implementing regulations, and FEMA policies for a grant or cooperative agreement program, each NFE must also comply with all other applicable Federal laws, regulations, and executive orders.
- b. Many of these laws, regulations, and executive orders will need to be included in third party contracts to the lowest tier necessary, and others, although not expressly referenced in a contract, will have a direct and indirect effect on a NFE's third party contracts.
- c. DHS issues, on an annual basis, Standard Terms and Conditions that apply to recipients of Federal awards from all DHS Components, including FEMA. In addition, a recipient executes a Standard Form ("SF") 424B or 424D with its grant or cooperative agreement application to FEMA that contains standard assurances. The DHS Standard Terms and Conditions and SF 424B and D contain references to many cross-cutting Federal laws and regulations that may apply to a FEMA award.
- d. The following provides a non-exhaustive list and description of some of the cross-cutting laws, regulations, and executive orders that may affect a NFE's procurement.

2. Debarment and Suspension

- a. NFEs and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension). These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities.
- b. The regulations at 2 C.F.R. Part 180 and 2 C.F.R. Part 3000 specifically prohibit a NFE from entering into a "covered transaction" with a party listed on the System for Award Management Exclusions ("SAM Exclusions"). SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. §§ 180.530.
- c. The Department of Homeland Security regulations at 2 C.F.R. Part 3000 include, within the meaning of a "covered transaction," a third party contract at any tier of

\$25,000 or more; a third party contract at any tier for a Federally required audit (irrespective of the contract amount); and a third party contract at any tier that must be approved by an FEMA official irrespective of the contract amount. 2 C.F.R. § 3000.220; 2 C.F.R. § 180.220.

- d. The Uniform Rules require a NFE to include contract provisions that require compliance with debarment and suspension prohibitions. *See* Chapter IV, ¶¶ 6.d and 12.a.ix; 2 C.F.R. Part 200, Appendix II, ¶ I; DHS Standard Terms and Conditions, v 3.0, ¶ X (Dec. 4, 2013)
3. Acknowledgement of FEMA Funding. A NFE must acknowledge its use of Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with FEMA financial assistance. Specifically, the document shall indicate that FEMA is providing the funds, the Catalog of Federal Domestic Assistance Number, as applicable, and the amount provided. *See* Financial Services and General Government Appropriations Act, 2015, Pub. L. No. 113-83, Division E, § 724 (2015); DHS Standard Terms and Conditions, v 3.0, ¶ II (Dec. 4, 2013).
 4. Lobbying Certification and Disclosure.
 - a. A NFE must comply with 31 U.S.C. § 1352 and 44 C.F.R. Part 18, which provides that no FEMA financial assistance may be expended by a recipient, subrecipient, contractor, or subcontractor to pay any person to influence, or attempt to influence, an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning the award or renewal.
 - b. If a third party contract will exceed \$100,000, before awarding the contract, the NFE must obtain a lobbying certification and, if applicable, a lobbying disclosure from a prospective third party contractor. 44 C.F.R. § 18.110.
 - c. The Uniform Rules require a contractor to include provisions in its contracts of \$100,000 or more for compliance with lobbying certification and disclosure requirements. *See* Chapter IV, ¶ 12.a.x; 2 C.F.R. Part 200, Appendix II, ¶ J; DHS Standard Terms and Conditions, v. 3.0, ¶ XVIII (Dec. 4, 2013).
 5. Civil Rights Requirements. A NFE is required to follow various civil rights requirements when carrying out activities under a FEMA award, and these requirements will flow down to a NFE's contractors at every tier.
 - a. Nondiscrimination.
 - i. Nondiscrimination on the Basis of Race, Color, and National Origin. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*), FEMA's implementing regulations at 44 C.F.R. Part 7 (*Nondiscrimination in Federally Assisted Programs*), and the Department's implementing regulations at 6 C.F.R. Part 21 (*Nondiscrimination on the Basis of Race, Color, or National Origin in Programs*

or Activities Receiving Federal Financial Assistance) provide that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. See DHS Standard Terms and Conditions, v 3.0, ¶ VII (Dec. 4, 2013); Standard Form 424D, ¶ 10.

- ii. Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972 (codified as amended at 20 U.S.C. § 1681 et seq.), FEMA's implementing regulations at 44 C.F.R. Part 19 (*Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*), and the Department's implementing regulations at 6 C.F.R. Part 15 (*Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*) prohibit discrimination on the basis of sex in any education program or activity receiving Federal financial assistance. See DHS Standard Terms and Conditions, v 3.0, ¶ IX (Dec. 4, 2013); Standard Form 424D, ¶ 10.
- iii. Nondiscrimination on the Basis of Disability. The Americans with Disability Act of 1990 (codified as amended at 42 U.S.C. §§ 12101-12213) prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private public and private entities. Contractors must comply with the responsibilities under Titles I, II, III, IV, and V of the Americans with Disability Act of 1990 in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies. See DHS Standard Terms and Conditions, v 3.0, ¶ V (Dec. 4, 2013); Standard Form 424D, ¶ 10.
- iv. Nondiscrimination on the Basis of Handicap. Section 504 of the Rehabilitation Act of 1973 (codified as amended at 29 U.S.C. § 794) and FEMA's implementing regulations at 44 C.F.R. Part 16 (*Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Federal Emergency Management Agency*) provide that no otherwise qualified handicapped individual in the United States will, solely by reason of handicap, be excluded from participation in, be denied the benefits of, or be subjected to, discrimination under any program or activity receiving Federal financial assistance. See DHS Standard Terms and Conditions, v 3.0, ¶ XXIII (Dec. 4, 2013); Standard Form 424D, ¶ 10.
- v. Nondiscrimination on the Basis of Age. The Age Discrimination Act of 1975 (codified as amended at 42 U.S.C. § 6101 et seq.), and Department of Health and Human Services implementing regulations at 45 C.F.R. Part 90 (*Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance*) prohibit discrimination against individuals on the basis of age in any program or activity receiving Federal financial assistance. See DHS Standard Terms and Conditions, v 3.0, ¶ IV (Dec. 4, 2013); Standard Form 424D, ¶ 10.

- vi. Nondiscrimination on the Basis of Limited English Proficiency. Title VI of the Civil Rights Act of 1964 prohibition against discrimination on the basis of national origin requires that recipients and subrecipients of FEMA assistance take reasonable steps to provide meaningful access to persons with limited English proficiency. Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency* (Aug. 11, 2000), requires Federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. The Department published the required guidance, which is entitled DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 76 Fed. Reg. 21755-21768 (Apr. 18, 2011). See DHS Standard Terms and Conditions, v 3.0, ¶ XVII (Dec. 4, 2013).
 - vii. Consistent with the preceding nondiscrimination requirements, a NFE's contractors must comply with the following requirements.
 - (1) A contractor of a NFEs must not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, English proficiency, or disability.
 - (2) A contractor of a NFE carrying a program or activity under a FEMA award must not, on the grounds of race, color, creed, national origin, sex, age, English proficiency, or disability, exclude a person from participation in, deny him/her benefits, or subject him/her to discrimination.
 - (3) Contractors must adhere to any Federal implementing regulations and other requirements that the Department and the FEMA have with respect to nondiscrimination.
- b. Equal Opportunity
- i. Race, Creed, National Origin, Sex. A contractor must, in accordance with Title VII of the Civil Rights Act of 1968, comply with all applicable equal employment opportunity requirements of U.S. Department of Labor regulations at 41 C.F.R Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor), which implement Executive Order No. 11246, *Equal Employment Opportunity*, as amended by Executive Order No. 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, 42 U.S.C. § 2000e note. The Contractor must take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. See DHS Standard Terms and Conditions, v 3.0, ¶ VII (Dec. 4, 2013); Standard Form 424D, ¶ 10.

- ii. Age. A contractor must refrain from discrimination against present and prospective employees for reason of age in accordance with section 4 of the Age Discrimination in Employment Act of 1967 (codified as amended at 29 U.S.C. § 623).
 - iii. Disabilities. A contractor must, in accordance with Section 102 of the Americans with Disabilities Act of 1990 (codified as amended at 42 U.S.C. § 12112) and the requirements of the U.S. Equal Employment Opportunity Commission at 29 C.F.R. Part 1630 (Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act) pertaining to employment of persons with disabilities.
 - iv. Except as otherwise provided under 41 C.F.R. Part 60, the Uniform Rules require that all contracts that meet the definition of “Federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). *See* Chapter IV, ¶ 12.a.iii; 2 C.F.R. Part 200, Appendix II, ¶ C.
6. Environmental and Historic Preservation Protections. Federal laws, regulations, and executive orders and the terms and conditions of specific FEMA award require the NFE to comply with applicable environmental and historic preservation requirements, which will, in turn, necessitate the NFE’s implementation of these requirements as necessary in its third party contracts. *See* Standard Form 424D, ¶¶ 15, 16, and 17.
 - a. General – Environmental and Historic Preservation Compliance. FEMA will identify various environmental and historic preservation mitigation measures with which a NFE must comply when performing the scope of work under a FEMA award. FEMA expects the NFE to include adequate third party provisions to facilitate compliance with such measures that the NFE has agreed to implement as a term and condition of the FEMA award. The following sections provide brief discussion of a few of the applicable environmental and historic preservation statutes.
 - b. National Environmental Policy Act
 - i. The National Environmental Policy Act (“NEPA”) requires FEMA to consider the environmental impact of proposed actions (such as awarding Federal grants and cooperative agreements), including adverse consequences and reasonable alternatives, before making decisions or taking actions that may significantly affect the quality of the human environment. *See* National Environmental Policy Act of 1969, Pub. L. No. 91-190 (1969) (codified as amended at 42 U.S.C. §§ 4321-4347); Standard Form 424D, ¶ 15.

- ii. A NFE should not have a contractor proceed with contract work until FEMA has completed any necessary NEPA review and awarded the grant, cooperative agreement, and individual project under such grant or cooperative agreement.
 - iii. Occasionally, a NFE will request funding for an action that has been initiated and/or completed before FEMA has completed environmental review and documentation as required by NEPA and FEMA's implementing regulations at 44 C.F.R. Part 10 (Environmental Considerations) and the Council for Environmental Quality implementing regulations at title 40 of the C.F.R.
 - iv. It is FEMA policy that actions initiated and/or completed without fulfilling the specific documentation and procedural requirements of NEPA may not be considered for funding. There are, notably, statutory exclusions to this requirement, and FEMA may provide additional exceptions in emergency situations. *See FEMA Environmental Planning and Historic Preservation Policy No. 108.024.4, Projects Initiated Without Environmental Review Required by the National Environmental Policy Act (NEPA) (Dec. 18, 2013).*
 - v. The statutory exclusions and exceptions do not relieve FEMA of the responsibility to comply with other legal requirements under the National Historic Preservation Act, Endangered Species Act, Clean Water Act, other laws, and various executive orders. Furthermore, FEMA may not consider for funding work commenced before FEMA has completed review under these other legal requirements, even where NEPA review is not required.
- c. Endangered Species Act
- i. The Endangered Species Act ("ESA") requires all Federal agencies to consider the effects of their actions (such as grants and cooperative agreement awards) on listed species and their critical habitats. *See Endangered Species Act of 1973, Pub. L. No. 93-205 (1973) (codified as amended at 16 U.S.C. §§ 1531-1544); Standard Form 424D, ¶ 15.*
 - ii. FEMA must consult with the National Marine Fisheries Service or U.S. Fish and Wildlife Services to ensure that any proposed action funded under a grant or cooperative agreement is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of a habitat. This consultation, if necessary, must take place before the action is taken, although there are exceptions for emergency actions.
- d. Clean Air Act
- i. The Clean Air Act establishes the basic structure for regulating air pollutants, which requires the Environmental and Protection Agency ("EPA") to establish national air quality standards and states to adopt enforceable plans to achieve the standards. 42 U.S.C. §§ 7401-7671q.

- ii. Section 306 of the Clean Air Act (42 U.S.C. § 7606) and EPA’s implementing regulations at 2 C.F.R. Part 1523, subpart J, disqualify persons convicted of certain offenses from eligibility to receive any contract, subcontract, assistance, subassistance, loan, or other nonprocurement benefit or transaction that is prohibited by a Federal agency under the government debarment and suspension system if a person will perform any part of the transaction or award at the facility giving rise to the conviction and the person owns, leases, or supervises the facility.
 - iii. The Uniform Rules require a contractor to agree to comply with this and all other applicable standards, orders, or regulations issued pursuant to the Clean Air Act for contracts over \$150,000. *See* Chapter IV, ¶ 12.a.vii and 2 C.F.R. Part 200, Appendix II, ¶ G; Standard Form 424D, ¶ 15.
- e. Federal Water Pollution Control Act
- i. The Federal Water Pollution Control Act (“Clean Water Act”) establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. 33 U.S.C. §§ 1251-1387.
 - ii. Section 508 of the Clean Water Act (33 U.S.C. § 1368) and EPA’s implementing regulations at 2 C.F.R. Part 1523, subpart J, disqualify persons convicted of certain offenses from eligibility to receive any contract, subcontract, assistance, subassistance, loan, or other nonprocurement benefit or transaction that is prohibited by a Federal agency under the government debarment and suspension system if a person will perform any part of the transaction or award at the facility giving rise to the conviction and the person owns, leases, or supervises the facility.
 - iii. The Uniform Rules require a contractor to agree to comply with this and all other applicable standards, orders, or regulations issued pursuant to the Clean Water Act for contracts over \$150,000. *See* Chapter IV, ¶ 12.a.vii and 2 C.F.R. Part 200, Appendix II, ¶ G; Standard Form 424D, ¶ 15.
- f. Recycled Products
- i. A NFE that is a State agency or agency of a political subdivision of a State and its contractors must comply with section 6002 of the Resource Conservation and Recovery Act of 1976. 42 U.S.C. § 6962; 2 C.F.R. § 200.322.
 - ii. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- iii. The Uniform Rules require a NFE to include provisions in its contracts for compliance with section 6002 of the Resource Conservation and Recovery Act of 1976. *See* Chapter IV, ¶ 12.a.xi and Chapter V, ¶ 7; 2 C.F.R. Part 200, Appendix II, ¶ K.

7. Davis-Bacon Act

- a. When required by FEMA grant or cooperative agreement program legislation, all prime construction contracts in excess of \$2,000 awarded by NFEs must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction). *See* Chapter IV, ¶ 12.a.iv; 2 C.F.R. Part 200, Appendix II, ¶ D.
- b. In accordance with the statute, a NFE's contractors must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- c. The Davis-Bacon Act only applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It does not apply to other FEMA grant and cooperative agreement programs, such as the Public Assistance Grant Program.

8. Copeland "Anti-Kickback" Act

- a. The Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by its implementing regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States) apply to any NFE contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. This law prohibits a contractor from inducing, by any means, any employee to give up any part of his or her compensation to which he or she is otherwise entitled.
- b. The Uniform Rules require a NFE to include a provision for compliance with the Copeland Anti-Kickback Act in all contracts *subject to* the Davis-Bacon Act. *See* Chapter IV, ¶ 12.a.iv; 2 C.F.R. Part 200, Appendix II, ¶ D.

9. Contract Work Hours and Safety Standards Act

- a. The Uniform Rules require, where applicable, all contracts awarded by the NFE in excess of \$100,000 that involve the employment of mechanics or laborers to include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 and 29 C.F.R. Part 1926. *See* Chapter IV, ¶ 12.a.v; 2 C.F.R. Part 200, Appendix II, ¶ E.

- b. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- c. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of property or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence

10. Seismic Safety

- a. All construction of new buildings for which FEMA award funding will be used must use appropriate seismic design and construction standards and practices pursuant to the Earthquake Hazard Reduction Act of 1977, Pub. L. No. 95-124 (1977) (codified as amended at 42 U.S.C. §§ 7701-7709) and Executive Order 12699, *Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction* (1990).
- b. A NFE should include compliance with seismic safety provisions in its third party contracts for construction.

11. Hotel and Motel Fire Safety. The Hotel and Motel Fire Safety Act of 1990, Pub. L. No. 391 (1990) (codified at 15 U.S.C. § 2225a) prohibits, among other things, a NFE from using FEMA award funding to source contract costs to sponsor or fund in whole or in part a meeting, convention, conference, or training seminar that is conducted in, or that otherwise uses the rooms, facilities, or services of, a place of public accommodation that does not meet the requirements of the fire prevention and control guidelines described in section 29 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. § 2225).

12. Buy American Act.

- a. General. The Buy American Act is a major domestic preference statute governing procurement by the Federal government. 41 U.S.C. §§ 8301-8305; 48 C.F.R. Part 25. In brief, the Federal government is required to buy domestic “articles, materials, and property” when they are acquired for public use unless a specific exception applies. The Buy American Act, however, only applies to direct procurements by the Federal government and does not apply to procurement by NFEs even when using FEMA assistance funding.
- b. “Little Buy American Acts.” In addition to the Buy American Act, Congress has passed numerous “Little Buy American Acts” to govern specific types of procurements that are not covered by the Buy American Act. There are currently no such Little Buy American Acts for FEMA grant and cooperative agreements subject to this circular.
- c. Stafford Act Grant Programs. The Disaster Mitigation Act of 2000 amended various provisions of the Stafford Act—this included Sections 404, 406, and 408 of the

Stafford Act, which are the enabling authorities for the Hazard Mitigation Grant Program, Public Assistance Grant Program, and Individual and Households Program. Notably, Section 306(a) of the Disaster Mitigation Act of 2000 also had a general provision that provided that “No funds *authorized to be appropriated* under...any amendment made by [the Disaster Mitigation Act of 2000] may be expended by an entity unless the entity, in expending the funds, complies with chapter 83 of title 41.” Disaster Mitigation Act of 2000, Pub. L. No. 106-390, § 306(a) (2000) (codified at 42 U.S.C. § 5206(a)) (emphasis added). There is, however, currently no authorization of appropriations for the Stafford Act, rendering Section 306(a) of the Disaster Mitigation Act of 2000 inapplicable to Stafford Act grant and cooperative agreements.

13. Federal Criminal Law. A NFE may not use funding under a FEMA award to violate any Federal criminal law either directly or through its contractors. Any such activity that FEMA administratively determines to violate a criminal law is ineligible for FEMA assistance, and FEMA may terminate an entire award based on the violation. The following provides a summary of several of those laws.
 - a. Representational Statutes. Sections 203 and 205 of title 18 of the United States Code impose restrictions on outside activities of Federal employees involving representation of others before the Federal government. The prohibitions under 18 U.S.C. §§ 203 and 205 apply to all FEMA employees, including Disaster Reservists. Disaster Reservists are personnel authorized by the special hiring authority in the Stafford Act that are not full-time employees, but rather work on an on-call, intermittent basis to perform disaster response and recovery activities. In some cases, a NFE may hire a contractor to perform work under a FEMA award, and the contractor may have employees who are also Disaster Reservists (not currently activated by FEMA) perform that work. These Disaster Reservists are prohibited from performing any representational activity on behalf of the contractor and NFE before any Federal agency, including FEMA.
 - b. False Statements Act. The False Statement Act sets forth liability for, among other things, any person who knowingly submits a false claim to the Federal government or causes another to submit a false claim to the government or knowingly makes a false record or statement to get a false claim paid by the government. 31 U.S.C. §§ 3729-3733. For example, a false claim could include false billing documentation submitted by a NFE from a third-party contractor under a FEMA award.



Public Assistance Program and Policy Guide

FP 104-009-2 / April 2018



FEMA

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FOREWORD

On behalf of the Federal Emergency Management Agency (FEMA), I am pleased to issue this revised Third Edition (Version 3.1) of the Public Assistance (PA) Program and Policy Guide. FEMA has archived the First and Second Editions at www.fema.gov/media-library/assets/documents/111781. FEMA applies the First Edition to incidents declared from January 1, 2016 through March 31, 2017. FEMA applies the Second Edition to incidents declared from April 1, 2017 through August 22, 2017. And FEMA applies this Version 3.1 to incidents declared on or after August 23, 2017 or, with respect to the changes made in this version, any application for assistance that was pending before FEMA as of August 23, 2017 and has not been finally resolved as of January 1, 2018. This version supersedes Version 3.0 issued on January 2, 2018.

On February 9, 2018, Congress passed and the President signed the Bipartisan Budget Act of 2018 (P.L. 115-123). The Act includes a provision amending the Stafford Act in a manner that largely codifies the changes related to houses of worship which were made in Version 3.0 of this Guide.

Version 3.0 incorporated the following revisions:

- Deleting “Community centers operated by a religious institution that provides secular activities, such as fundraising activities that help the community at large”;
- Replacing “Social activities to pursue items of mutual interest or concern” with “Activities to pursue items of mutual interest or concern or social engagement” and adding the example “Activities of community centers or houses of worship open to the general public, without regard to their secular or religious nature”;
- Deleting “religious” from the sentence “Facilities established or primarily used for political, athletic, religious, recreational, vocational, or academic training, conferences, or similar activities are not eligible”;
- Deleting language excluding “religious education,” “religious services,” and “religious activities, such as worship, proselytizing, religious instruction, or fundraising activities that benefit a religious institution and not the community at large” as ineligible services;
- Deleting from Appendix B examples of mixed-use facilities that suggest FEMA must deduct from primary-use analysis activities associated with religious worship and instruction.

This Version 3.1 makes the following additional revisions to align with the changes made by the Bipartisan Budget Act:

- Changes the terms “essential governmental services” and “essential governmental-type services” to “essential social services” and “essential social-type services.”
- Adds houses of worship as eligible private nonprofit facilities, distinct from community centers.
- Clarifies that houses of worship cannot be deemed ineligible because leadership or membership in the organization operating the house of worship is limited to persons who share a religious faith or practice.
- Removes the exclusion of buildings and items used primarily for religious purposes or instruction from the definition of eligible private nonprofit educational facilities and

makes clear that such facilities are eligible regardless of their religious character or use for religious instruction.

These changes do not affect or change other general eligibility requirements for nonprofit eligibility. These include the requirement pursuant to 44 C.F.R. § 206.221(f) that private nonprofit facilities must have been granted tax exemption under Sections 501(c), (d), or (e) of the Internal Revenue Code of 1954 or provide satisfactory evidence the organization is a nonprofit organized or doing business under state law; and that pursuant to 42 U.S.C. § 5172(a)(3), private nonprofit facilities that do not provide critical services must apply to the Small Business Administration (SBA) for disaster loans and either (1) be determined ineligible for such a loan or (2) have obtained such a loan in the maximum amount for which the SBA determines the facility is eligible.

Version 3.1 also clarifies that new construction is prohibited in Coastal High Hazard Areas pursuant to 44 C.F.R. § 9.11(d)(1). This addition is included in Chapter 2:VII.B.5(a) *Minimum Requirement for Structures in a Floodplain*.

FEMA will make updates to this guide at www.fema.gov/public-assistance-policy-and-guidance on an annual basis, as necessary, and will conduct a comprehensive review no less than every three years. We look forward to your feedback to help inform the next version of this guide. Please send policy recommendations to FEMA-PAPolicy@fema.dhs.gov.



Keith Turi
Acting Assistant Administrator
Recovery Directorate

HOW TO USE THIS PUBLICATION

The Public Assistance Program and Policy Guide is organized as shown in Figure 1. A brief summary of each chapter follows.

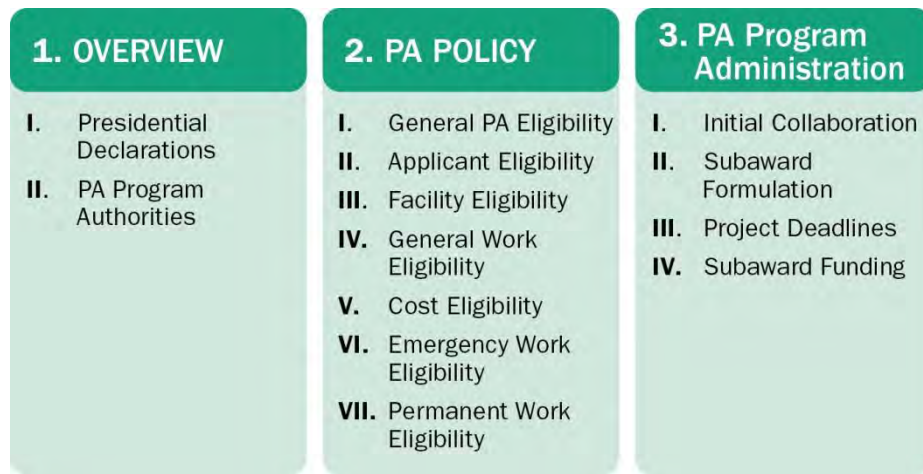


Figure 1. Public Assistance Program and Policy Guide Organization

Chapter 1: Overview

[Chapter 1](#) provides an overview of the Presidential declaration process, the purpose of the Public Assistance (PA) Program, and the authorities authorizing the assistance that the Federal Emergency Management Agency (FEMA) provides under the PA Program.

Chapter 2: Public Assistance Policy

[Chapter 2](#) provides PA policy language to guide eligibility determinations. Overarching eligibility requirements are presented first and are not reiterated for each topic. For example, cost eligibility is discussed prior to work eligibility as it applies to all work. The requirement that costs be reasonable applies to costs related to all work. The requirement that contracts be properly procured applies to all contracted work.

[Chapter 2 Sections I, General PA Eligibility](#); [II, Applicant Eligibility](#); [IV, General Work Eligibility](#); and [V, Cost Eligibility](#) apply to all work and must be considered when evaluating assistance for any work discussed in [Chapter 2 Sections VI, Emergency Work Eligibility](#), and [VII, Permanent Work Eligibility](#). [Chapter 2 Section III, Facility Eligibility](#) applies to all work except where otherwise specified.

Chapter 3: Public Assistance Program Administration

[Chapter 3](#) provides a synopsis of the PA Program implementation process beginning with pre-declaration activities and continuing through closeout of the PA Program award, as shown in Figure 2. In addition to describing these processes, this chapter provides checklists of specific information that entities need to document throughout the response and recovery phases of the incident to help substantiate claims for assistance.

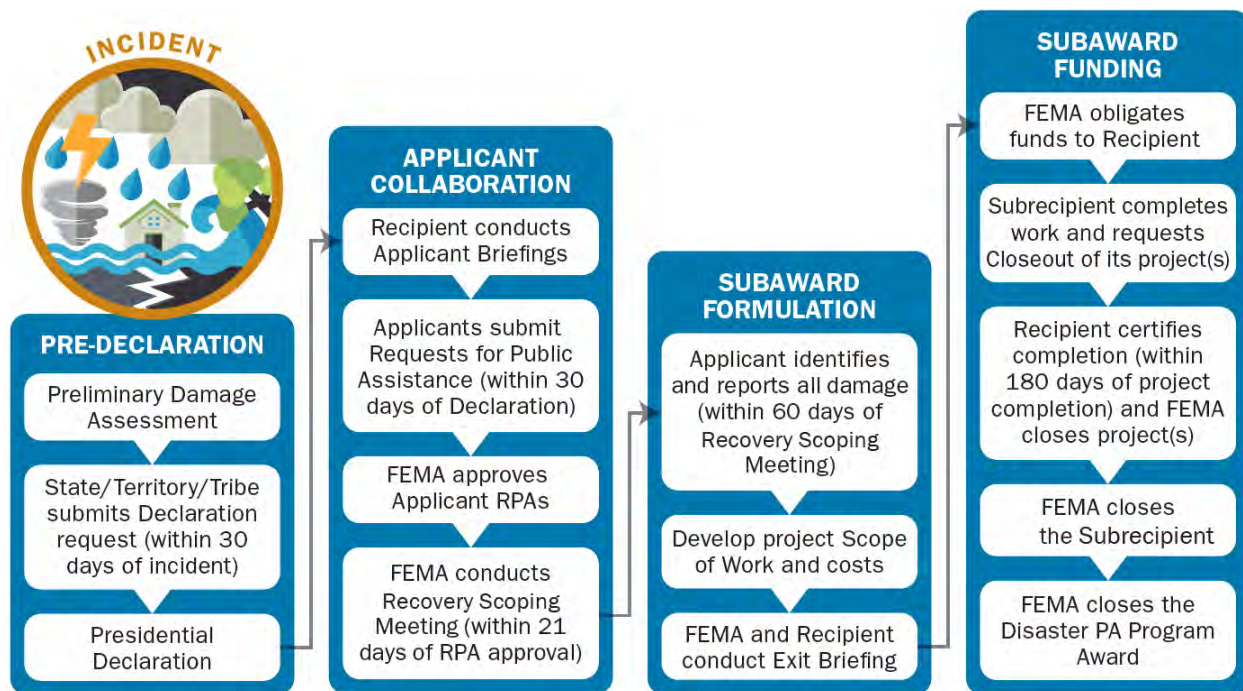


Figure 2. PA Program Implementation Process

Title 2 of the Code of Federal Regulations (CFR) Part 200 provided new terms for Grantee and Subgrantee as follows:

- Recipient: A non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program
- Applicant: A non-Federal entity submitting an application for assistance under the Recipient's Federal award
- Pass-through entity: A non-Federal entity that provides a subaward to an Applicant
- Subrecipient: An Applicant that receives a subaward from a pass-through entity

For simplicity, FEMA generally uses the term Applicant throughout this document when referring to the responsible entity for a project rather than making distinctions between an entity as an Applicant, Recipient, pass-through entity, or Subrecipient.

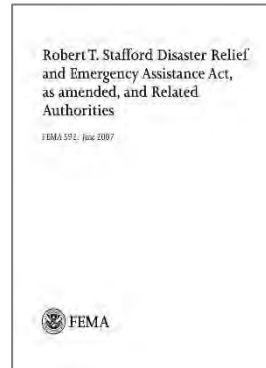
Appendices

This document includes several appendices, most of which are related to specific types of work and are referenced throughout Chapter 2. Of specific note are Appendices A, D, and K.

- [Appendix A, Environmental and Historic Preservation Compliance](#), provides summaries of various Federal environmental and historic preservation laws that entities need to consider prior to conducting work.
- [Appendix D, Debris Management Plan Job Aid](#), is a tool to assist entities with establishing written procedures for managing debris in an expeditious, efficient, and environmentally sound manner.
- [Appendix K, Work Eligibility Considerations by Type of Facility](#), provides a summary of eligibility considerations by facility type.

CHAPTER 1: OVERVIEW

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as Amended (Stafford Act), Title 42 of the United States Code (U.S.C.) § 5121 et seq.,¹ authorizes the President to provide Federal assistance when the magnitude of an incident or threatened incident exceeds the affected State,² Territorial,³ Indian Tribal,⁴ and local⁵ government capabilities to respond or recover.



I. Presidential Declarations

When a State, Territorial, or Indian Tribal Government determines that an incident may exceed State, Territorial, Indian Tribal, and local government capabilities to respond, it requests a joint Preliminary Damage Assessment (PDA) with the Federal Emergency Management Agency (FEMA).⁶ Federal, State, Territorial, Indian Tribal, local government, and certain private nonprofit (PNP) organization officials work together to estimate and document the impact and magnitude of the incident.⁷

The Governor⁸ or Indian Tribal Chief Executive⁹ must request a declaration from the President through FEMA within 30 days of the incident.¹⁰ FEMA may extend the deadline if the Governor or Indian Tribal Chief Executive submits a written time extension request within 30 days of the incident stipulating the reason for the delay.¹¹

For FEMA to provide assistance, the President must declare that an emergency or major disaster exists. The declaration¹² establishes the:

¹ See <http://www.fema.gov/robert-t-stafford-disaster-relief-and-emergency-assistance-act-public-law-93-288-amended>.

² Robert T. Stafford Disaster Relief and Emergency Assistance Act, as Amended (Stafford Act) § 102(4), 42 United States Code (U.S.C.) § 5122 and Title 44 of the Code of Federal Regulations (CFR) § 206.2(a)(22), State governments include the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands.

³ Territories are included in the definition of a State and are also listed separately throughout this document. FEMA Public Assistance (PA) requirements are the same for States and Territories.

⁴ Stafford Act § 102(6), Title 42 of the U.S.C. § 5122, and 44 CFR § 206.201(i), An Indian Tribal Government is any Indian or Alaska Native tribe, band, nation, pueblo, village, or community listed as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994.

⁵ Stafford Act § 102(8), 42 U.S.C. § 5122; and 44 CFR § 206.2(a)(16), local governments include counties, municipalities, cities, towns, townships, local public authorities, school districts, special districts established under State law, intrastate districts, councils of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entities, agencies or instrumentalities of a local government; State-recognized Tribes; and rural communities, unincorporated towns or villages, or other public entities, for which an application for assistance is made by a State or political subdivision of a State.

⁶ 44 CFR § 206.33(a).

⁷ 44 CFR § 206.33(b).

⁸ Stafford Act § 102(5), 42 U.S.C. § 5122, and 44 CFR § 206.2(12).

⁹ Stafford Act § 102(12), 42 U.S.C. § 5122.

¹⁰ Stafford Act § 401, 42 U.S.C. § 5170; Stafford Act § 501, 42 U.S.C. § 5191; and 44 CFR §§ 206.35 and 206.36.

¹¹ 44 CFR §§ 206.35(a) and 206.36(a).

¹² Each Presidential declaration is available at <http://www.fema.gov/disaster>.

- Federal cost share
- Type of incident
- Incident period
- Designated areas
- Types of assistance
- Federal Coordinating Officer (FCO)

A. Type of Incident

The declaration designates the type of incident (e.g., hurricane, tsunami, or earthquake). For Emergency Declarations, an incident is any instance that the President determines warrants supplemental emergency assistance to save lives and protect property and public health and safety, or to lessen or avert the threat of a catastrophe.¹³ For Major Disaster Declarations, an incident is any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion.¹⁴ Major Disaster Declarations may include a combination of incident types, such as storms and landslides.

B. Incident Period

The declaration designates the incident period. The incident period is the span of time during which the federally declared incident occurs.¹⁵ This period varies in length, depending on the incident.

C. Designated Areas

The declaration designates which areas (e.g., county, parish, city, or Indian Tribal Government) are eligible to receive Federal assistance.¹⁶ FEMA may add additional areas after the initial designation. However, for FEMA to consider adding an additional area, the Governor or Governor's Authorized Representative (GAR)¹⁷ or, for Indian Tribal declarations, the Indian Tribal Chief Executive or Indian Tribal Authorized Representative (TAR) must request the addition within 30 days of the declaration date or the end of the incident period, whichever is later.¹⁸ FEMA may extend the deadline if the Governor, GAR, Indian Tribal Chief Executive, or TAR submits a written time extension request within the 30-day deadline with justification of the inability to meet the deadline.¹⁹

D. Types of Assistance

The declaration designates the types of Federal assistance authorized.²⁰ The President may authorize assistance to individuals, households, and State, Territorial, Indian Tribal, and local governments, and certain types of PNP organizations. FEMA provides assistance to individuals

¹³ Stafford Act § 102(1), 42 U.S.C. § 5122, and 44 CFR § 206.2(a)(9).

¹⁴ Stafford Act § 102(2), 42 U.S.C. § 5122, and 44 CFR § 206.2(a)(17).

¹⁵ 44 CFR § 206.32(f).

¹⁶ 44 CFR §§ 206.2(6) and 206.40(b).

¹⁷ 44 CFR §§ 206.2(a)(13) and 206.41(d).

¹⁸ 44 CFR § 206.40(c).

¹⁹ 44 CFR § 206.40(d).

²⁰ 44 CFR § 206.40(a).

and households via its Individual Assistance (IA) programs. FEMA provides assistance to State, Territorial, Indian Tribal, and local governments and certain types of PNP organizations via its Public Assistance (PA) Program. The type of assistance available may vary among designated areas. FEMA may add additional types of assistance after the declaration. However, for FEMA to consider adding additional types of assistance, the Governor or GAR or, for Indian Tribal declarations, the Indian Tribal Chief Executive or TAR must request the assistance within 30 days of the declaration date or the end of the incident period, whichever is later.²¹ FEMA may extend the deadline if the Governor, GAR, Indian Tribal Chief Executive, or TAR submits a written time extension request within the 30-day deadline with justification of the inability to meet the deadline.²²

FEMA Regional Administrators (RAs)²³ have the authority to issue Fire Management Assistance Grant (FMAG) declarations for wildfires that threaten such destruction that would constitute a major disaster.²⁴ The FMAG Program is separate and distinct from the PA Program. FMAG declaration criteria, eligibility, and other program information are available at Title 44 of the Code of Federal Regulations (CFR)²⁵ Part 204, Fire Management Assistance Grant Program, and in FEMA's *Fire Management Assistance Grant Program Guide* (FEMA P-954).²⁶

If significant damage occurs as a result of one or more FMAG fire incidents, the Governor or Indian Tribal Chief Executive may subsequently request a Major Disaster Declaration for the fire incident(s). FEMA will evaluate such requests based on damage and costs not covered under the FMAG Program, such as public infrastructure damage. If the President declares a Major Disaster and authorizes the PA Program, FEMA generally funds all of the costs related to those fire incidents under the PA Program for efficiency in administration of assistance and to avoid a duplication of benefits between programs.

E. Federal Cost Share

The assistance FEMA provides through its PA Program is subject to a cost share.²⁷ The Federal share is not less than 75 percent of the eligible costs.²⁸ Although the Federal share is usually 75



Required Forms

The declared State, Territorial, and/or Indian Tribal Government must submit an Application for Federal Assistance (SF-424) and Assurances (SF 424-D) before FEMA provides assistance. FEMA provides PA funds via the U.S. Department of Health and Human Services (HHS) Payment Management System (SmartLink). Therefore, if the President issues a declaration for an Indian Tribal Government for the first time, the Tribal Government must also submit a Payment Management System Access Form and a Direct Deposit Form (SF-1199A) to obtain a FEMA-specific SmartLink account before FEMA can provide funding. These 2 forms are available at <https://pms.psc.gov/>.

²¹ 44 CFR § 206.40(c).

²² 44 CFR § 206.40(d).

²³ 44 CFR § 206.2(a)(21).

²⁴ Stafford Act § 420, 42 U.S.C. § 5187, and 44 CFR Part 204.

²⁵ See <http://www.ecfr.gov>.

²⁶ <http://www.fema.gov/media-library/assets/documents/92379>.

²⁷ 44 CFR § 206.203(b).

²⁸ Stafford Act §§ 403(b), 406(b), 407(d), and 503(a), 42 U.S.C. §§ 5170b, 5172, 5173, 5193; and 44 CFR §§ 206.47(a) and 206.65.

percent, if actual Federal obligations, excluding administrative costs, meet or exceed a qualifying threshold, FEMA may recommend an increase up to 90 percent.²⁹ The Federal cost share for Emergency Work may be increased in limited circumstances if warranted.³⁰

F. FEMA-State/Territory/Tribe Agreement

After every declaration, the applicable State, Territorial, or Indian Tribal Government enters into an agreement with FEMA regarding the understanding, commitments, and conditions under which FEMA will provide assistance (FEMA-State/Territory/Tribe Agreement). FEMA and the Governor or Indian Tribal Chief Executive must sign this agreement before FEMA provides assistance. If necessary, because of exigent circumstances, FEMA may authorize essential emergency services or housing assistance under the Individuals and Households Program (IHP) while the agreement is in process for signature.³¹

G. Federal, State, Territorial, Indian Tribal, and Local Government Coordination

The *National Response Framework*³² and *National Disaster Recovery Framework*³³ detail Federal, State, Territorial, Indian Tribal, and local government roles and responsibilities during response and recovery operations.

The declaration identifies the FCO.³⁴ The FCO works in partnership with the State Coordinating Officer³⁵ and GAR (or for Indian Tribal declarations, the Indian Tribal Coordinating Officer and TAR) to coordinate Federal resources and disaster assistance programs.³⁶ FEMA and the State, Territorial, or Indian Tribal Government may initially operate at Emergency Operations Centers (EOCs) and, when warranted, subsequently establish a Joint Field Office (JFO) for Federal, State, Territorial, and Indian Tribal government coordination and administrative activities.



²⁹ 44 CFR § 206.47(b).

³⁰ 44 CFR § 206.47(d).

³¹ 44 CFR § 206.44(a).

³² <http://www.fema.gov/national-response-framework>.

³³ <http://www.fema.gov/national-disaster-recovery-framework>.

³⁴ Stafford Act §§ 302(a) and (d), 42 U.S.C. § 5143; 44 CFR §§ 206.2(a)(11) and 206.41(a).

³⁵ Stafford Act § 302(c), 42 U.S.C. § 5143, and 44 CFR §§ 206.2(a)(23) and 206.41(c).

³⁶ Stafford Act § 302(b), 42 U.S.C. § 5143, and 44 CFR § 206.42.

FEMA uses the following terms provided in 2 CFR when discussing PA funding:

- **Recipient:** A non-Federal entity that receives a Federal award³⁷ directly from a Federal awarding agency to carry out an activity under a Federal program³⁸
- **Applicant:** A non-Federal entity submitting an application to the Recipient for assistance under the Recipient's Federal award
- **Pass-through entity:** A non-Federal entity that provides a subaward³⁹ to an Applicant to carry out part of a Federal program⁴⁰
- **Subrecipient:** An Applicant that receives a subaward from a pass-through entity to carry out part of a Federal program⁴¹



Use of the Term Applicant in this Document

When a non-Federal entity applies for PA funding, it is an **Applicant**. Once an Applicant receives funding, it is either a **Recipient/pass-through entity** or a **Subrecipient**. For simplicity, FEMA uses the term Applicant throughout this document when referring to the responsible entity for a project rather than making distinctions between an entity as an Applicant, Recipient, pass-through entity, or Subrecipient. FEMA uses the terms Recipient and Subrecipient in this document when necessary to differentiate between the two entities.

FEMA provides PA funding to the applicable State, Territorial, or Indian Tribal Government (Recipient).

An Indian Tribal Government may elect to be a Subrecipient under a State declaration or request its own declaration and be a Recipient.⁴² The Recipient distributes the funds to the appropriate Subrecipient.⁴³ When a Recipient distributes funds, it is a pass-through entity.

FEMA may approve a State or Tribal Recipient to manage small disasters. Participation in the State Management of Small Disasters program is voluntary. Small disasters are those with sufficient severity and magnitude to warrant a major disaster declaration by the President, but are limited in scope and size as defined by the following:

- Statewide infrastructure damage is less than \$2 per capita;
- Total estimated infrastructure damage is less than \$15 million;
- Categories of work are limited to debris removal and emergency protective measures; or
- The PA operation is within a Recipient's capability to manage (varies by State).

If a Recipient is interested in managing a disaster, it must specify this in the request for a disaster declaration. FEMA will determine whether the Recipient is capable of managing a disaster.

Interested Recipients should have:

- Recent disaster experience;

³⁷ Per 2 CFR § 200.38, a Federal award is the Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity; or the cost-reimbursement contract under the Federal Acquisition Regulation that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity.

³⁸ 2 CFR § 200.86.

³⁹ Per 2 CFR § 200.92, a subaward is an award provided by a pass-through entity to a Subrecipient for the Subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

⁴⁰ 2 CFR § 200.74.

⁴¹ 2 CFR § 200.93.

⁴² 44 CFR § 206.201(e).

⁴³ 44 CFR § 206.202(a).

- Adequate staff;
- A State or Tribal Management Addendum to the Administrative Plan;
- A fiscal accounting system that can track specific projects, prepare for and undergo audit, and be used to evaluate appeals; and
- An established record of having met deadlines for grant management activities.

H. Correspondence

Throughout this document, FEMA notes specific instances in which the Applicant needs to submit written correspondence to obtain FEMA approval. The Applicant needs to submit all written correspondence through the Recipient.⁴⁴ The Recipient will forward the correspondence to FEMA with its recommendation. The RA has the authority to respond to all written correspondence unless otherwise noted. The RA delegates this authority to the FCO upon a Presidential declaration. The RA or FCO may further delegate authorities as appropriate. FEMA provides its response to the Recipient, which subsequently forwards FEMA’s determination to the Applicant. In general, the Recipient addresses all correspondence to the FCO while the JFO is active and to the RA upon closure of the JFO when the FEMA Regional Office assumes responsibility for that incident. See Figure 3 for the geographical responsibilities of each FEMA Region.



Figure 3. Map of FEMA Regions

II. Public Assistance Program Authorities

The mission of FEMA’s PA Program is to provide assistance to State, Territorial, Indian Tribal, and local governments, and certain types of PNP organizations so that communities can quickly

⁴⁴ A Recipient is a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program.

respond to and recover from major disasters or emergencies declared by the President. Through the PA Program, FEMA provides supplemental Federal disaster grant assistance for debris removal, emergency protective measures, and the restoration of disaster-damaged, publicly owned facilities and the facilities of certain PNP organizations. The PA Program also encourages protection of these damaged facilities from future events by providing assistance for hazard mitigation measures.

FEMA provides this assistance based on authority in statutes, executive orders (EOs), regulations, and policies. If an entity does not comply with all applicable statutes, EOs, regulations, and policies, FEMA may take one of several actions including disallowing all or part of the cost of the project not in compliance.⁴⁵

A. Statutes

Statutes are Federal laws passed by U.S. Congress and signed by the President. All PA Program assistance must comply with all applicable statutes.⁴⁶ The statute that authorizes FEMA to provide assistance via the PA Program is the Stafford Act. The following sections of the Stafford Act specifically authorize the assistance FEMA provides under the PA Program:

- Title I – Findings, Declarations and Definitions
- Title III – Major Disaster and Emergency Assistance Administration
 - 311, Insurance
 - 312, Duplication of Benefits
 - 324, Management Costs
- Title IV – Major Disaster Assistance Programs (applies to Major Disaster Declarations)
 - 403, Essential Assistance
 - 406, Repair, Restoration, and Replacement of Damaged Facilities
 - 407, Debris Removal
 - 428, Public Assistance Program Alternative Procedures

Section 428 of the Stafford Act authorizes FEMA to provide specific exceptions, or “Alternative Procedures,” to PA Program regulations.⁴⁷ FEMA is currently implementing these Alternative Procedures via pilot programs. These pilot programs are available to each Applicant on a voluntary basis. The specific alternatives are presented throughout this document, where applicable.

- Title V – Emergency Assistance Programs (applies to Emergency Declarations)
 - 502, Federal Emergency Assistance
- Title VII – Miscellaneous
 - 705, Disaster Grant Closeout Procedures

⁴⁵ 2 CFR § 200.338.

⁴⁶ 44 CFR § 206.200(b).

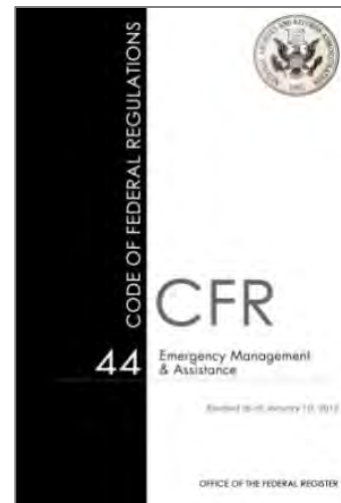
⁴⁷ Stafford Act § 428, 42 U.S.C. § 5189f.

B. Regulations

Regulations are Federal rules with the force and effect of law that implement a statute based on a Federal agency's interpretation of that statute.⁴⁸ FEMA and any entity receiving PA assistance must comply with all applicable Federal Regulations.⁴⁹

FEMA publishes PA Program rules in the following parts of 44 CFR:⁵⁰

- Part 206 Subpart G, Public Assistance Project Administration;
- Part 206 Subpart H, Public Assistance Eligibility;
- Part 206 Subpart I, Public Assistance Insurance Requirements; and
- Part 207, Management Costs.



The Office of Management and Budget establishes regulations regarding administrative requirements, cost principles, and audit requirements in 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.⁵¹

C. Environmental and Historic Preservation Requirements

Several statutes, EOs, and regulations establish requirements to protect the environment and preserve the Nation's historic and prehistoric resources. FEMA must review each PA project to ensure the work complies with applicable Federal environmental and historic preservation (EHP) laws and their implementing regulations, and applicable EOs.⁵² The Applicant is responsible for complying with applicable Federal, State, Territorial, or Tribal EHP laws even if FEMA is not providing PA funding for all of the work. See [Appendix A: Environmental and Historic Preservation Compliance](#) for a description of applicable EHP statutes, EOs, and regulations.

D. Public Assistance Policy

FEMA issues policy to articulate the Agency's intent and direction in applying statutory and regulatory authority to guide decision-making, achieve desired outcomes, and ensure consistent implementation of programs across the Nation. FEMA generally publishes proposed PA policy language in the *Federal Register* for public comment prior to publishing in this document.⁵³ PA policy is included in Chapter 2 of this document. This document also references other FEMA policies that apply to both the PA Program and other FEMA programs. FEMA will conduct a comprehensive review of this publication no less than every 3 years.

⁴⁸ Stafford Act § 321, 42 U.S.C. § 5164.

⁴⁹ 44 CFR § 206.200(b).

⁵⁰ Stafford Act § 325, 42 U.S.C. § 5165c, and 44 CFR § 1.4.

⁵¹ 2 CFR § 200.101.

⁵² 2 CFR § 200.300.

⁵³ FEMA is required to publish policies for comment if they are deemed "significant" by the Office of Management and Budget, pursuant to the Final Bulletin on Agency Good Guidance Practices, 72 *Fed. Reg.* 3432 (Jan. 25, 2007) and when the policy reduces assistance, pursuant to Stafford Act § 325, 42 U.S.C. § 5165, Public Notice, Comment, and Consultation Requirements.

CHAPTER 2: PUBLIC ASSISTANCE POLICY

This chapter discusses the eligibility criteria for Public Assistance (PA) funding and provides comprehensive PA policy to use when evaluating eligibility.

I. General Public Assistance Eligibility

The four basic components of eligibility are:

- Applicant
- Facility
- Work
- Cost



Figure 4. Eligibility Pyramid

FEMA refers to these components as the building blocks of an eligibility pyramid. Generally, FEMA must determine each building block eligible, starting at the foundation (Applicant) and working up to cost at the top of the pyramid (Figure 4). There are two exceptions to the standard eligibility pyramid. For private nonprofits (PNPs), FEMA must determine whether the PNP owns or operates an eligible facility in order to determine whether the Applicant is eligible (see [Chapter 2:II.D](#) for additional information and a pyramid specific to PNP eligibility). Secondly, for State, Territorial, Tribal, and local government Applicants, evaluating facility eligibility is not a necessary step for most Emergency Work, as described in [Chapter 2:VI](#).

The Applicant is responsible for providing documentation to support that each component is eligible. FEMA accepts a variety of documentation to substantiate eligibility. [Chapter 3](#) provides lists of recommended documentation. In some cases, FEMA requires specific documentation to support eligibility. FEMA specifies these requirements in this chapter, where applicable.

II. Applicant Eligibility

FEMA provides assistance to eligible Applicants, which are defined below.⁵⁴ As shown in Figure 5, FEMA must first determine whether an Applicant is eligible before evaluating the Applicant's claim.



Figure 5. Applicant Eligibility

A. State and Territorial Governments

State and Territorial governments, including the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands, are eligible Applicants.⁵⁵

⁵⁴ 44 CFR § 206.222.

⁵⁵ Stafford Act § 102(4), 42 U.S.C. § 5122; 44 CFR §§ 206.2(a)(22) and 206.222(a); and 2 CFR § 200.90.

B. Indian Tribal Governments

Federally recognized Indian Tribal Governments, including Alaska Native villages and organizations (hereinafter referred to as “Tribal Governments”), are eligible Applicants. Alaska Native Corporations are not eligible as they are privately owned.⁵⁶

C. Local Governments

The following types of local governments are eligible Applicants:⁵⁷

- Counties and parishes
- Municipalities, cities, towns, boroughs, and townships
- Local public authorities
- School districts
- Intrastate districts
- Councils of governments (regardless of whether incorporated as nonprofit corporations under State law)
- Regional and interstate government entities
- Agencies or instrumentalities of local governments
- State-recognized Tribes
- Special districts established under State law
 - Community Development Districts are special districts that finance, plan, establish, acquire, construct or reconstruct, operate, and maintain systems, facilities, and basic infrastructure within their respective jurisdictions. To be eligible, a Community Development District must be legally responsible for ownership, maintenance, and operation of an eligible facility that is accessible to the general public.

The State or a political subdivision of the State may submit applications on behalf of rural communities, unincorporated towns or villages, and other public entities not listed above.⁵⁸

D. Private Nonprofit Organizations

Only certain PNPs are eligible Applicants. To be an eligible PNP Applicant, the PNP must show that it has:

- A current ruling letter from the U.S. Internal Revenue Service granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954; or



Figure 6. PNP Eligibility

⁵⁶ Stafford Act § 102(6), 42 U.S.C. § 5122; 44 CFR §§ 206.201(i) and 206.222(c); and 2 CFR § 200.54.

⁵⁷ Stafford Act § 102(8), 42 U.S.C. § 5122; 44 CFR §§ 206.2(a)(16) and 206.222(a); and 2 CFR § 200.64.

⁵⁸ Stafford Act § 102(8)(c), 42 U.S.C. § 5122, and 44 CFR § 206.2(a)(16)(iii).

- Documentation from the State substantiating it is a non-revenue producing, nonprofit entity organized or doing business under State law.⁵⁹

Additionally, as shown in Figure 6, prior to determining whether the PNP is eligible, FEMA must first determine whether the PNP owns or operates an eligible facility.⁶⁰ For PNPs, an eligible facility is one that provides an eligible service as listed below:

- A facility that provides a critical service, which is defined as education, utility, emergency, or medical (see Table 1);⁶¹ or
- A facility that provides a non-critical, but essential social service AND provides those services to the general public (see Table 2).⁶² PNP facilities generally meet the requirement of serving the general public if ALL of the following conditions are met:
 - Facility use is not limited to any of the following:
 - A certain number of individuals;
 - A defined group of individuals who have a financial interest in the facility, such as a condominium association;
 - Certain classes of individuals; or
 - An unreasonably restrictive geographical area, such as a neighborhood within a community;
 - Facility access is not prohibited with gates or other security systems; and
 - Any membership fees meet all of the following criteria:
 - Are nominal;
 - Are waived when an individual can show inability to pay the fee;
 - Are not of such magnitude to preclude use by a significant portion of the community; and
 - Do not exceed what is appropriate based on other facilities used for similar services.
- Certain types of facilities, such as senior centers, that restrict access in a manner clearly related to the nature of the facility, are still considered to provide essential social services to the general public.⁶³

In cases where the facility provides multiple services, such as a community center, FEMA reviews additional items to determine the primary service that facility provides, such as:

- U.S. Internal Revenue Service documentation
- Pre-disaster charter, bylaws, and amendments
- Evidence of longstanding, routine (day-to-day) use (e.g., a calendar of activities)

Facilities established or primarily used for political, athletic, recreational, vocational, or academic training, conferences, or similar activities are not eligible (see Table 3).

⁵⁹ 44 CFR § 206.221(f).

⁶⁰ 44 CFR § 206.222(b).

⁶¹ Stafford Act § 406(a)(3)(B), 42 U.S.C. § 5172, and 44 CFR § 206.221(e).

⁶² 44 CFR § 206.221(e)(7).

⁶³ As amended by the Bipartisan Budget Act of 2018, Stafford Act sections 102(11)(B) and 406(a)(3)(C) make clear that an organization operating houses of worship that limits leadership or membership to persons who share a religious faith or practice still provides essential social services to the general public.

Table 1. PNP Eligible Critical Services

| PNP ELIGIBLE CRITICAL SERVICES | |
|---|--|
| <p style="text-align: center;">EDUCATION</p> <ul style="list-style-type: none"> • Primary or secondary education as determined under State law and provided in a day or residential school, including parochial schools, OR • Higher-education institutions that meet all of the following criteria: <ul style="list-style-type: none"> ○ Admit students or persons having a high school diploma or equivalent; ○ Are legally authorized to provide education beyond a secondary level; ○ Award a bachelor’s degree or a 2-year degree that is acceptable as full credit toward a bachelor’s degree or provides at least a 1-year training program to prepare students for gainful employment in a recognized occupation; and ○ Are accredited by a nationally recognized agency or association (as determined by the Secretary of Education). • Educational facilities that meet the above criteria are eligible without regard to their religious character or use for religious instruction | <p style="text-align: center;">MEDICAL</p> <ul style="list-style-type: none"> • Emergency medical care (diagnosis or treatment of mental or physical injury or disease) provided in: <ul style="list-style-type: none"> ○ Clinics ○ Facilities that provide in-patient care for convalescent or chronic disease patients ○ Hospices and nursing homes ○ Hospitals and related facilities, including: <ul style="list-style-type: none"> ➤ Central service facilities operated in connection with hospitals ➤ Extended-care facilities ➤ Facilities related to programs for home-health services ➤ Laboratories ➤ Self-care units ➤ Storage, administration, and record areas ○ Long-term care facilities ○ Outpatient facilities ○ Rehabilitation centers that provide medical care |
| <p style="text-align: center;">UTILITY</p> <ul style="list-style-type: none"> • Communications transmission and switching, and distribution of telecommunications traffic • Electric power generation, transmission, and distribution. • Irrigation to provide water for drinking water supply, fire suppression, or electricity generation • Sewer and wastewater collection, transmission, and treatment • Water treatment, transmission, and distribution by a water company supplying municipal water | <p style="text-align: center;">EMERGENCY SERVICES</p> <ul style="list-style-type: none"> • Ambulance • Fire protection • Rescue |
| <p>Administrative and support buildings essential to the operation of PNP critical services are eligible facilities.</p> | |

Table 2. PNP Eligible Non-critical, Essential Social-Type Services

| PNP ELIGIBLE NON CRITICAL, ESSENTIAL SOCIAL TYPE SERVICES | |
|--|--|
| <p>Community centers established and primarily used for the purpose of offering the following services (or similar) to the community at large:</p> <ul style="list-style-type: none"> • Art services authorized by a State, Territorial, Tribal, or local government, including, but not limited to: <ul style="list-style-type: none"> • Arts administration • Art classes • Management of public arts festivals • Performing arts classes • Educational enrichment activities that are not vocational, academic, or professional training; examples include hobby or at-home pursuits, such as: <ul style="list-style-type: none"> ○ Car care ○ Ceramics ○ Gardening ○ Personal financial and tax planning ○ Sewing ○ Stamp and coin collecting • Multi-purpose arts programming • Senior citizen projects, rehabilitation programs, community clean-up projects, blood drives, local government meetings, and similar activities • Services and activities intended to serve a specific group of individuals (e.g., women, African Americans, or teenagers) provided the facility is otherwise available to the public on a non-discriminatory basis • Social activities to pursue items of mutual interest or concern, such as: <ul style="list-style-type: none"> ○ Community board meetings ○ Neighborhood barbecues ○ Various social functions of community groups ○ Youth and senior citizen group meetings • Youth and senior citizen group meetings • Activities of community centers that serve the general public | <ul style="list-style-type: none"> • Child care • Day care for individuals with disabilities or access and functional needs (for example, those with Alzheimer’s disease, autism, muscular dystrophy) • Food assistance programs • Health and safety services • Homeless shelters • Houses of worship • Libraries • Low-income housing (as defined by Federal, State, Territorial, Tribal, or local law or regulation) • Museums: <ul style="list-style-type: none"> ○ Constructed, manufactured, or converted with a primary purpose of preserving and exhibiting a documented collection of artistic, historic, scientific, or other objects ○ Buildings, associated facilities, fixed facilities, and equipment primarily used for the preservation or exhibition of the collection, including: <ul style="list-style-type: none"> ➢ Permanent infrastructure, such as walkways and driveways of outdoor museum-type exhibition areas ➢ Historic buildings, such as barns and other outbuildings, intended for the preservation and exhibition of historical artifacts within a defined area ➢ Permanent facilities and equipment that are part of arboretums and botanical gardens ➢ Infrastructure, such as utilities, and administrative facilities necessary for support ○ The grounds at museums and historic sites are not eligible. ○ Open natural areas/features or entities that promote the preservation/conservation of such areas are not eligible. • Residential and other services for battered spouses • Residential services for individuals with disabilities • Senior citizen centers • Shelter workshops that create products using the skills of individuals with disabilities • Zoos • Performing arts centers with a primary purpose of producing, facilitating, or presenting live performances, including: <ul style="list-style-type: none"> ○ Construction of production materials ○ Creation of artistic works or productions ○ Design ○ Professional training ○ Public education ○ Rehearsals • Public broadcasting that monitors, receives, and distributes communication from the Emergency Alert System |
| <p>Facilities that do not provide medical care, but do provide:</p> <ul style="list-style-type: none"> • Alcohol and drug treatment • Assisted living • Custodial care, even if the facility is not open to the general public (including essential administration and support facilities) • Rehabilitation | <ul style="list-style-type: none"> • Public broadcasting that monitors, receives, and distributes communication from the Emergency Alert System |

With the exception of custodial care facilities and museums, administrative and support buildings essential to the operation of PNP non-critical services are NOT eligible facilities.

Table 3. PNP Ineligible Services

| PNP INELIGIBLE SERVICES | |
|---|---|
| <p style="text-align: center; color: #800000;">COMMUNITY CENTER SERVICES</p> <ul style="list-style-type: none"> • Training individuals to pursue the same activities as full-time paying careers (for example, vocational, academic, or professional training) • Meetings or activities for only a brief period, or at irregular intervals | <p style="text-align: center; color: #800000;">OTHER COMMUNITY SERVICES</p> <ul style="list-style-type: none"> • Advocacy or lobbying groups not directly providing health services • Cemeteries • Conferences • Day care services not included in previous table of eligible services • Irrigation solely for agricultural purposes⁶⁴ • Job counseling • Property owner associations with facilities such as roads and recreational facilities (except those facilities that could be classified as utilities or emergency facilities) • Public housing, other than low-income housing • Recreation • Parking not in direct support of eligible facility |
| <p style="text-align: center; color: #800000;">EDUCATION</p> <ul style="list-style-type: none"> • Athletic, vocational, academic training, or similar activities • Political education | |

III. Facility Eligibility

In general a facility must be determined eligible in order for work to be eligible. There are exceptions for some emergency work activities as shown in Figure 7 and discussed in [Chapter 2:VI](#).

A facility is a building, works, system, or equipment, built or manufactured, or an improved and maintained natural feature.⁶⁵

An example of a system that qualifies as a facility is a water distribution system. Mechanical, electrical, plumbing, and other systems that are components of a facility in which they operate are considered part of that facility.

A natural feature is improved and maintained if it meets all of the following conditions:

- The natural feature has a designed and constructed improvement to its natural characteristics, such as a terraced slope or realigned channel
- The constructed improvement enhances the function of the unimproved natural feature



For PNPs, the facility must be eligible in order for the work to be eligible.

For State, Territorial, Tribal, and local governments, the facility must be eligible in order for Permanent Work, temporary repairs, or mold remediation to be eligible. Facility eligibility is not applicable to other Emergency Work.

Figure 7. Facility Eligibility

⁶⁴ 44 CFR § 206.221(e)(3).

⁶⁵ 44 CFR § 206.201(c).

- The Applicant maintains the improvement on a regular schedule to ensure that the improvement performs as designed

Only the section of a natural feature that meets the criteria above is eligible. For example, if only 150 linear feet of a natural channel bank is armored with rip rap and maintained, the eligible facility would be limited to that 150-linear-foot section.

The following are not eligible facilities:

- Unimproved property (e.g., a hillside or slope, forest, natural channel bank)
- Land used for agricultural purposes⁶⁶

A. Public Facility

An eligible public facility is one that a State, Territorial, Tribal, or local government owns or has legal responsibility for maintaining, including any:

- Flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility
- Non-Federal-aid street, road, or highway
- Other public building, structure, or system, including those used for educational, recreational, or cultural purposes
- Park⁶⁷

When a facility maintained by a Community Development District⁶⁸ is not open to the general public or does not provide a service to the general public, the facility is not eligible.

B. Private Nonprofit Facility

An eligible PNP facility is one that provides educational, utility, emergency, medical, or custodial care, including for the aged or disabled, and other essential social-type services to the general public (further described in Tables 1 and 2).⁶⁹

If a PNP operates multiple facilities, or a single facility composed of more than one building, FEMA must evaluate each building independently, even if all are located on the same grounds. Buildings that are part of a complex that includes outdoor facilities (e.g., swimming pools, athletic fields, or tennis courts) are not evaluated separately from the rest of the complex when determining eligibility of the building. For example, an outdoor pool usually has a building for bathrooms and controlling entry. In such cases, FEMA does not evaluate the building for eligibility separately because it is an intrinsic part of the pool complex.

See Appendix B: Private Nonprofit Facility Eligibility Examples, for various examples of PNP facilities and corresponding eligibility determinations.

⁶⁶ Ibid.

⁶⁷ Stafford Act § 102(10), 42 U.S.C. § 5122, and 44 CFR § 206.221(h).

⁶⁸ Community Development Districts are special districts that finance, plan, establish, acquire, construct or reconstruct, operate, and maintain systems, facilities, and basic infrastructure within their respective jurisdictions.

⁶⁹ Stafford Act § 102(11), 42 U.S.C. § 5122, and 44 CFR § 206.221(e).

1. Mixed-Use Facility

PNP facilities that provide both eligible and ineligible services are considered mixed-use facilities. Eligibility of mixed-use PNP facilities is dependent on the *primary* use of the facility, which is determined by the amount of physical space dedicated to eligible and ineligible services. “Primary use” is the use for which *more* than 50 percent of the physical space in the facility is dedicated. FEMA evaluates the entire structure when determining primary use; it does not separately address individual areas, such as floors, basements, or wings. Common space, such as bathrooms, hallways, lobbies, closets, stairways, and elevators, is not included when calculating mixed-use space.

If FEMA determines that 50 percent or more of physical space is dedicated to ineligible services, the entire facility is ineligible. If the facility is eligible, FEMA prorates funding based on the percentage of physical space dedicated to eligible services. The Applicant is responsible for the balance of costs to restore the facility and must restore the entire facility to receive funding for repairs to the eligible-use portions of the facility.

Eligible PNP irrigation and eligible PNP public broadcasting facilities are exempt from primary use requirements.

(a) *Mixed-Use Space*

In cases where the same physical space is used for both eligible and ineligible services, the primary use is the use for which more than 50 percent of the operating time is dedicated in that shared physical space. If space is available for use, but the Applicant cannot support that it is used for eligible services for more than 50 of the percent of operating time, this criterion is not met.

If FEMA determines that 50 percent or more of the operating time in the shared physical space is dedicated to ineligible services, then FEMA does not include that physical space when evaluating primary use.

(b) *Use by Multiple Entities*

In cases where a PNP Applicant shares use of a facility, in order to be eligible, the facility must be primarily owned by the PNP Applicant and meet the primary use requirement. FEMA prorates funding for these facilities based on the percentage of physical space that the Applicant owns and dedicates to eligible services. The following guidelines are used to determine the eligibility of such facilities:

- If the eligible PNP owns the entire facility and leases a portion of it to another entity, the facility is eligible provided that the PNP dedicates more than 50 percent of the facility for eligible services. If the PNP leases 50 percent or more of the facility to an ineligible Applicant, or for ineligible services, then the facility is ineligible.
- If the eligible PNP only owns a portion of the facility, it is eligible provided that the PNP owns more than 50 percent of the facility and dedicates more than 50 percent of physical space for eligible services.

2. Small Business Administration Loan Requirement

Following a Major Disaster Declaration, the U.S. Small Business Administration (SBA) can provide loans to individuals and businesses for facility restoration. For PNPs that provide non-

critical, essential social services, FEMA only provides PA funding for eligible Permanent Work costs that an SBA loan will not cover. Therefore, non-critical PNPs must also apply for a disaster loan from the SBA.⁷⁰ Possible outcomes are shown in Figure 8.

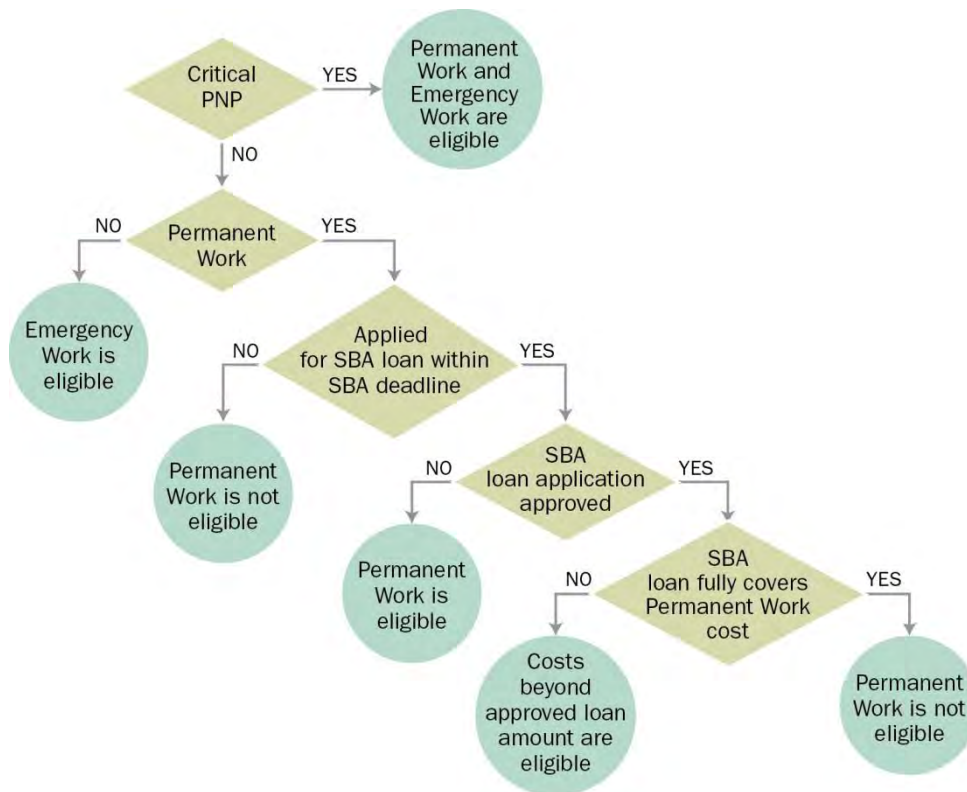


Figure 8. SBA Loan Outcomes

PNPs that provide critical services can apply to FEMA without having to apply to SBA. If the eligible portion of a mixed-use facility provides critical services (or is partially used to provide critical services), the Applicant may apply for PA funding without also applying to SBA for a loan. If the eligible portion of a mixed-use facility is used to provide services that are entirely non-critical, the Applicant must also apply to SBA for a loan.

C. Facility under the Specific Authority of Other Federal Agencies

Other Federal agencies also have authority to provide assistance after disasters. If a facility is under the specific authority of another Federal agency, FEMA does not provide assistance to restore that facility even if that Federal agency does not provide funding to restore the facility.⁷¹ Public Housing Authority facilities are eligible unless Congress appropriates funds to the U.S. Department of Housing and Urban Development (HUD) for emergency capital needs for that facility.

Additionally, other Federal agencies have authority to conduct specific work that may overlap with FEMA’s authority. FEMA does not provide assistance for that work except in certain, limited circumstances as described in [Chapter 2:VIA.4\(b\)](#).

⁷⁰ Stafford Act § 406(a)(3)(A)(ii), 42 U.S.C. § 5172, and 44 CFR § 206.226(c).

⁷¹ 44 CFR § 206.226(a).

The Applicant should apply to the respective agency for assistance with a facility or work under that agency's authority.

D. Inactive or Partially Inactive Facility

To be eligible, a facility must have been in active use at the start of the incident period. Inactive facilities are not eligible, unless one of the following conditions is met:

- The facility was only temporarily inactive for repairs or remodeling (provided a contractor is not responsible for repair of disaster-related damage);
- The Applicant firmly established future active use in an approved budget; or
- The Applicant can clearly demonstrate its intent to begin use within a reasonable amount of time.⁷²

The above criteria also apply to facilities that are partially inactive at the start of the incident period. Inactive portions are not eligible unless one of the exceptions noted above applies.

When eligible repairs benefit an area that was not in active use, FEMA prorates funding based on the percentage of the facility that was in active use. For example, if the roof of a partially used building is destroyed, FEMA limits the eligible cost to a prorated amount of the total cost to replace the roof based on the percentage of the building that was in active use.

For PNP facilities, more than 50 percent of the facility had to be in active use for an eligible purpose at the time of the incident in order for the facility to be eligible.

E. Facility Scheduled for Repair or Replacement

Facilities that are not yet under contract, but are scheduled for repair or replacement using non-Federal funds are eligible provided that the claimed damage did not exist prior to the incident (FEMA may review the bid and contract documents to validate). If damage existed prior to the incident, only the repair of damage caused by the incident is eligible.

A facility scheduled for replacement within 12 months of the start of the incident period using Federal funds is not eligible. In such a case, the Applicant should coordinate with the agency funding the project to expedite replacement, if possible.

⁷² 44 CFR § 206.226(k)(2).

IV. General Work Eligibility

Through the PA Program, FEMA provides:

- Grant funding for emergency protective measures and debris removal (Emergency Work)
- Grant funding for permanent restoration of damaged facilities, including cost-effective hazard mitigation to protect the facilities from future damage (Permanent Work)

A. Categories of Work

To facilitate the processing of PA funding, FEMA separates Emergency Work into two categories and Permanent Work into five categories based on general types of facilities. These categories are shown in Figure 9.

B. Minimum Work Eligibility Criteria

At a minimum, work must meet each of the following three general criteria to be eligible:

- Be required as a result of the declared incident;
- Be located within the designated area, with the exception of sheltering and evacuation activities; and
- Be the legal responsibility of an eligible Applicant.⁷³

1. Result of Declared Incident

The Applicant is responsible for showing that work is required:

- Due to an immediate threat resulting from the declared incident (for Emergency Work); or
- To address damage caused by the declared incident.

For debris removal, the Applicant must demonstrate that the debris causing an immediate threat was generated during the declared incident period and directly by declared incident.

For temporary repairs, mold remediation, and Permanent Work, the Applicant must demonstrate that damage was caused directly by the declared incident. FEMA does not provide PA funding for repair of damage caused by:

- Deterioration
- Deferred maintenance
- The Applicant's failure to take measures to protect a facility from further damage



Administrative Plan Requirement for PA funding

In accordance with 44 CFR § 206.207(b), State Administrative Plan, before FEMA provides PA funding for any project, a Recipient must have a FEMA-approved Administrative Plan that describes how it intends to administer the PA Program. A Recipient must submit its Administrative Plan to FEMA on an annual basis. For any new incident that occurs within the year, the Recipient must also submit amendments to its Administrative Plan to address specifics of the new incident.

Emergency Work

Address an immediate threat:

- A** Debris removal
- B** Emergency protective measures

Permanent Work

Restoration of:

- C** Roads/bridges
- D** Water control facilities
- E** Buildings/equipment
- F** Utilities
- G** Parks, recreational, and other facilities

Figure 9. Categories of Work

⁷³ 44 CFR § 206.223(a).

- Negligence⁷⁴

2. Within Designated Area

To be eligible, work must be located in the designated area defined in the declaration (with the exception of sheltering and evacuation activities).⁷⁵ Emergency Work or Permanent Work performed on a facility located outside of the designated area is not eligible. This is true even if an eligible Applicant is legally responsible for the work, including work performed outside the designated area to protect a facility within the designated area.

Tribal Governments do not always have geographical boundaries and some have boundaries that cross State lines. Therefore, Tribal Government declarations do not usually define specific designated geographical areas. If a specific designated area is not defined in the declaration, FEMA determines eligibility based on legal responsibility and whether the work is directly related to the declared incident.

3. Legal Responsibility

To be eligible, work must be the legal responsibility of the Applicant requesting assistance.⁷⁶

To determine legal responsibility for Emergency Work, FEMA evaluates whether the Applicant requesting the assistance either had jurisdiction over the area or the legal authority to conduct the work related to the request at the time of the incident.

To determine legal responsibility for facility restoration, FEMA evaluates whether the Applicant claiming the costs had legal responsibility for disaster-related restoration of the facility at the time of the incident based on ownership and the terms of any written agreements (such as for facilities under construction, leased facilities, and facilities owned by a Federal agency).

(a) Facility Ownership

When an Applicant requests PA funding to restore a facility, it is the Applicant's responsibility to provide proof that it owns the facility. To determine ownership, FEMA may review deeds, title documents, and local government tax records.

Ownership of a facility is generally sufficient to establish the Applicant's legal responsibility to restore the facility, provided it is not under construction by a contractor or leased to another entity at the time of the incident.

(b) Facilities under Construction

If the facility is under construction by a contractor at the time of the incident, FEMA reviews the contract to determine whether the Applicant is legally responsible for the repair of damage caused by the incident.⁷⁷ At a minimum, FEMA evaluates the contract to determine if it:

- Identifies the contractor or owner as being responsible for disaster-related repairs;
- Requires a builder's risk policy for losses that occur while the contractor has control of the facility;

⁷⁴ 44 CFR § 206.223(e).

⁷⁵ 44 CFR § 206.223(a)(2).

⁷⁶ 44 CFR § 206.223(a)(3).

⁷⁷ Stafford Act § 406(e)(2), 42 U.S.C. § 5172.

- Has a Force Majeure provision, which is a clause that relieves the contractor from responsibility for damage beyond its reasonable control, such as natural disasters (often referred to “acts of God”) or acts of war; or
- Has a provision that identifies the point at which the contractor transfers legal responsibility for the facility, or portions of the facility, back to the owner.

(c) *Leased Facilities*

An Applicant may own a facility and lease it to a tenant, or an Applicant may lease a facility owned by another party. In either case, FEMA reviews the lease agreement to determine legal responsibility for repair of damage caused by the incident. If the lease does not specify either party as responsible, FEMA considers the owner of the facility legally responsible for the costs to restore the facility.

If the lease is between two eligible Applicants, FEMA provides PA funding to the Applicant legally responsible for the restoration.

(d) *Federal Facilities*

Facilities owned and maintained by Federal agencies are not eligible. However, if a Federal agency constructed a facility and formally designated the Applicant as the legally responsible entity for facility operation, maintenance, and repairs, then the facility is eligible. FEMA reviews the agreement between the Federal agency and the Applicant to confirm the legally responsible entity.

(e) *Jurisdiction over an Area*

In general, an Applicant only has legal responsibility to conduct Emergency Work activities within its jurisdiction. If an Applicant conducts Emergency Work activities outside its jurisdiction, it must demonstrate its legal basis and responsibility to conduct those activities.

(f) *Conducting Activities on Private Property*

To determine whether a State, Territorial, Tribal, or local government has legal responsibility to conduct activities on private property, FEMA reviews the Applicant’s legal basis and authority to conduct the activities.

V. Cost Eligibility

The final component evaluated for eligibility, as shown in Figure 10, are the costs claimed by the Applicant. Not all costs incurred as a result of the incident are eligible. To be eligible, costs must be:

- Directly tied to the performance of eligible work;
- Adequately documented;⁷⁸

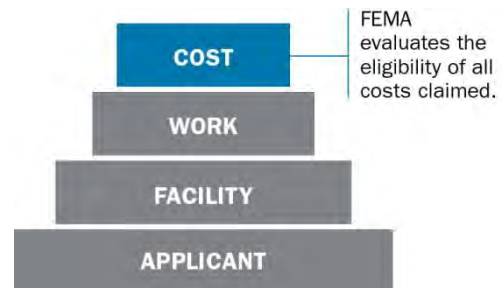


Figure 10. Cost Eligibility

⁷⁸ 2 CFR § 200.403(g).

- Reduced by all applicable credits, such as insurance proceeds and salvage values;⁷⁹
- Authorized and not prohibited under Federal, State, Territorial, Tribal, or local government laws or regulations;
- Consistent with the Applicant’s internal policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the Applicant; and
- Necessary and reasonable to accomplish the work properly and efficiently.⁸⁰

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the Applicant makes the decision to incur the cost.⁸¹

FEMA determines reasonableness by evaluating whether:

- The cost is of a type generally recognized as ordinary and necessary for the type of facility or work.⁸²
- The cost is comparable to the current market price⁸³ for similar goods or services based on:
 - Historical documentation;
 - Average costs in the area; or
 - Published unit costs from national cost estimating databases.
- Any of the following factors caused escalation of costs:
 - Shortages in equipment, materials, supplies, labor, or contractors. When escalating costs are due to shortages, FEMA considers whether the Applicant’s work continued beyond the period of shortages and whether there was an opportunity for the Applicant to obtain more reasonable pricing;
 - Project-specific complexities, such as environmental or historic issues, remote access or location, provision of a unique service with few providers, or elements requiring an extraordinary level of effort; or
 - The Applicant deviated from its established practices.⁸⁴
- Exigent circumstances existed. If so, FEMA evaluates the length of time the circumstances existed compared to the length of time costs were incurred.
- The Applicant participated in ethical business practices, ensuring parties to a transaction are independent of each other, without familial ties or shared interests and on equal footing without one party having control of the other.⁸⁵
- The Applicant complied with procurement requirements (see [Chapter 2:V.G.](#)).

The Applicant is responsible for providing documentation to demonstrate its claimed costs are reasonable. If FEMA determines any of the costs to be unreasonable based on its evaluation,

⁷⁹ Stafford Act § 312, 42 U.S.C. § 5155, and 2 CFR § 200.406.

⁸⁰ 2 CFR § 200.403.

⁸¹ 2 CFR § 200.404.

⁸² 2 CFR § 200.404(a).

⁸³ 2 CFR § 200.404(c).

⁸⁴ 2 CFR § 200.404(e).

⁸⁵ 2 CFR § 200.404(b).

FEMA may disallow all or part of the costs by adjusting eligible funding to an amount it determines to be reasonable.

A. Applicant (Force Account) Labor

FEMA refers to the Applicant's personnel as "force account." FEMA reimburses force account labor based on actual hourly rates plus the cost of the employee's actual fringe benefits. FEMA calculates the fringe benefit cost based on a percentage of the hourly pay rate. Because certain items in a benefit package are not dependent on hours worked (e.g., health insurance), the percentage for overtime is usually different than the percentage for straight-time. Fringe benefits may include:

- Holiday leave
- Accrued vacation leave
- Sick leave
- Social security matching
- Medicare matching
- Unemployment insurance
- Workers compensation
- Retirement
- Health insurance
- Life and disability insurance
- Administrative leave

1. Labor Policies

FEMA determines the eligibility of overtime, premium pay, and compensatory time costs based on the Applicant's pre-disaster written labor policy, provided the policy:

- Does not include a contingency clause that payment is subject to Federal funding;
- Is applied uniformly regardless of a Presidential declaration; and
- Has set non-discretionary criteria for when the Applicant activates various pay types.

If these requirements are not met, FEMA limits PA funding to the Applicant's non-discretionary, uniformly applied pay rates.

All costs must be reasonable and equitable for the type of work being performed.

FEMA will determine whether the number of hours claimed are reasonable and necessary by evaluating:

- The severity of the incident;
- Whether the work was performed at a time when it was necessary to work extraordinary hours based on the circumstances of the incident;
- The function of the employee for which the hours are claimed; and
- The number of consecutive hours the employee worked.

2. Eligibility Criteria Based on Type of Employee and Work Performed

FEMA's criteria for reimbursing straight-time labor costs differ depending on the type of employee and whether that employee is performing Emergency Work or Permanent Work.

For Permanent Work, both straight-time and overtime labor costs are eligible for both budgeted and unbudgeted employees.⁸⁶ For Emergency Work, only overtime labor is eligible for budgeted employees.⁸⁷ For unbudgeted employees performing Emergency Work, both straight-time and overtime labor are eligible. Figure 11 indicates different types of budgeted and unbudgeted employees.

Regular Time for Debris Removal Projects

- Alternative Procedures: Eligible
- Standard Program: Ineligible

Under the alternative procedures authorized by Section 428 of the Stafford Act, if the Applicant opts to participate in the straight-time procedure for debris removal, straight-time labor costs are eligible for budgeted employees conducting eligible debris removal (Category A) activities. See [Chapter 2:VI.A.1\(b\)](#) for further information.

| Emergency Work Labor Eligibility | | |
|---|-----------------|----------------------|
| Budgeted Employees | Overtime | Straight-Time |
| Permanent employee | ☑ | |
| Seasonal employee working during normal season of employment | ☑ | |
| Unbudgeted Employees | Overtime | Straight-Time |
| Essential employee called back from administrative leave | ☑ | ☑ |
| Permanent employee funded from external source | ☑ | ☑ |
| Temporary employee hired to perform eligible work | ☑ | ☑ |
| Seasonal employee working outside normal season of employment | ☑ | ☑ |

Figure 11. Emergency Work Labor Eligibility

Reassigned Employees

The Applicant may assign an employee to perform work that is not part of the employee’s normal job. For example, a police officer may clear debris. FEMA provides PA funding based on the reassigned employee’s normal pay rate, not the pay level appropriate to the work, because the Applicant’s incurred cost is the employee’s normal pay rate.

Straight-time of a permanent employee funded from an external source (such as a grant from a Federal agency or statutorily dedicated funds) is eligible if the employee is reassigned to perform eligible Emergency Work that the external source does not fund. FEMA must confirm that no duplication of funding exists prior to approval.

Backfill Employees

The Applicant may need to temporarily replace an employee who is responding to the incident. Overtime costs for the backfill employee are eligible even if the backfill employee is not performing eligible work as long as the employee that he/she is replacing is performing eligible Emergency Work.

⁸⁶ Stafford Act § 406(a)(2)(C), 42 U.S.C. § 5172, and 44 CFR § 206.228(a)(2)(i).

⁸⁷ Stafford Act § 403(d)(1)(B), 42 U.S.C. § 5170b, and 44 CFR § 206.228(a)(2)(iii).

FEMA also provides PA funding for straight-time if the backfill employee is a:

- Contracted or temporary employee; or
- Permanent employee called in on a normally scheduled day off (weekend or other off day).

If the backfill employee is called in from scheduled leave, only overtime is eligible.

Supervisors

Second-level supervisors and above (e.g., commissioners, mayors, department directors, police and fire chiefs) are usually exempt employees⁸⁸ and are not directly involved in the performance of a specific project. Therefore, they are not eligible for overtime, unless the Applicant:

- Demonstrates that the employee was directly involved with a specific project;
- Normally charges that individual's time to specific projects regardless of Federal funding; and
- Incurs overtime costs for the employee in accordance with a labor policy that meets the criteria in [Chapter 2:V.A.1.](#)

Other

Extraordinary costs (such as call-back pay, night-time and weekend differential pay, and hazardous duty pay) for essential employees who are called back to duty during administrative leave to perform eligible Emergency Work are eligible if costs are paid in accordance with a labor policy that meets the criteria above.

Administrative leave or similar labor costs incurred for employees sent home or told not to report due to emergency conditions are not eligible.

Stand-by Time

Subject to the provisions of labor cost eligibility criteria, FEMA also provides PA funding for costs related to stand-by time incurred in preparation for and directly related to actions necessary to save lives and protect public health and safety. To be eligible, stand-by time must be reasonable, necessary, and consistent with the Applicant's practice in non-federally declared incidents. Examples of when FEMA may reimburse costs for stand-by time include, but are not limited to:

- When bus drivers are prudently deployed to transport evacuees, even if the bus is not ultimately used for evacuations
- When first responders are prudently deployed for the purpose of evacuating or providing emergency medical care to survivors in order to save lives or protect health and safety, even if the employee does not ultimately perform eligible Emergency Work
- When a contract or union agreement requires payment for stand-by time

FEMA will determine whether any stand-by time claimed is reasonable and necessary based on whether:

- There is a contractual obligation to pay for stand-by time based on a labor agreement

⁸⁸ These employees are exempt from the overtime pay requirements set forth in the Fair Labor Standards Act.

- The stand-by time occurred when it was necessary to have resources available to save lives and protect health and safety

For instance, the Applicant may be required to pay firefighter costs from portal-to-portal, which may result in paying for 24-hour shifts with periods of rest. FEMA will reimburse costs based on such requirements. However, FEMA limits its reimbursement to that which is reasonable and necessary, not to exceed 14 calendar days from the start of the incident period.

B. Applicant (Force Account) Equipment and Purchased Equipment

FEMA provides PA funding for the use of Applicant-owned equipment (force account equipment), including permanently mounted generators, based on hourly rates.⁸⁹ FEMA may provide PA funding based on mileage for vehicles, if the mileage is documented and is less costly than hourly rates.

There are instances when an Applicant does not have sufficient equipment to effectively respond to an incident. If the Applicant purchases equipment that it justifiably needs to respond effectively to the incident, FEMA provides PA funding for both the purchase price and either:

- The use of the equipment based on equipment rates (without the ownership and depreciation components); or
- The actual fuel and maintenance costs.

FEMA only applies equipment rates to the time the Applicant is actually operating equipment. Although costs associated with mobilizing equipment to a project site are eligible, costs for standby time (time spent on hold or in reserve) are not eligible unless the equipment operator uses the equipment intermittently for more than half of the working hours for a given day. In this case the intermittent standby time is eligible.

Executive Order (EO) 13688, Federal Support for Local Law Enforcement Equipment Acquisition, requires Federal agencies to ensure careful coordination and oversight of providing military and military-styled equipment, firearms, and tactical vehicles, including property covered under 22 CFR Part 121, The United States Munitions List, and 15 CFR Part 774, The Commerce Control List, (collectively “controlled equipment”), to State, Territorial, Tribal, and local law enforcement agencies. FEMA must comply with this EO when providing PA funding for purchase of this type of equipment.⁹⁰ The PA Division at FEMA Headquarters provides specific guidance when an Applicant seeks PA funding for law enforcement equipment.⁹¹

FEMA provides PA funding for force account equipment usage based on FEMA, State, Territorial, Tribal, or local equipment rates in accordance with the specific criteria noted below.

FEMA Rates

FEMA publishes equipment rates applicable on a national basis.⁹² FEMA’s rate schedule includes any item powered by fuel or attached to any item powered by fuel. FEMA develops equipment rates based on all costs associated with ownership and operation of equipment, with

⁸⁹ 44 CFR § 206.228(a)(1).

⁹⁰ Executive Order (EO) 13688, 80 *Fed. Reg.* 3451 (January 22, 2015).

⁹¹ As of the date of this publication, FEMA policy to meet the requirements of EO 13688 is under development. Absent publication of a specific policy, Recipients and Applicants must obtain specific guidance from FEMA.

⁹² www.fema.gov/schedule-equipment-rates.

the exception of operator labor. FEMA equipment rate components include depreciation, overhead, equipment overhaul (labor, parts, and supplies), maintenance (labor, parts, and supplies), lubrication, tires, ground engaging component (if applicable), and fuel. Because the rates include maintenance costs, a mechanic's labor costs to maintain Applicant-owned equipment are not eligible.

State and Territorial Rates

State and Territorial rates are those established under State or Territorial guidelines for use in normal day-to-day operations. FEMA provides PA funding based on State or Territorial rates up to \$75 per hour.⁹³ FEMA only provides PA funding for a rate above \$75 per hour if the Applicant demonstrates that each of the components of the rate is comparable to current market prices.⁹⁴

Tribal Rates

Tribal rates are those developed under Tribal Government guidelines for use in normal day-to-day operations. FEMA generally provides PA funding for equipment usage based on the lower of either the Tribal rate or the FEMA rate. However, if the Tribal rate is lower, but it does not reflect all of the costs associated with operating the equipment, FEMA may provide PA funding based on the higher FEMA rate. Additionally, if the Tribal rate is higher, the Applicant must document the basis for that rate and obtain approval from FEMA for the higher rate.⁹⁵

If determining the lowest rate for each piece of equipment is overly burdensome because of the number of different types of equipment used, or if the Applicant prefers, FEMA will reimburse all equipment use based on the lower of the two rate schedules, rather than based on a comparison of each individual rate. In these cases, the PA Division at FEMA Headquarters will determine which schedule of rates is lower.

Local Rates

Local rates are those developed under local government guidelines for use in normal day-to-day operations. FEMA generally provides PA funding for equipment usage based on the lower of either the local rate or the FEMA rate. However, if the local rate is lower, but it does not reflect all of the costs associated with operating the equipment, FEMA may provide PA funding based on the higher FEMA rate. Additionally, if the local rate is higher, the Applicant must document the basis for that rate and obtain approval from FEMA for the higher rate.⁹⁶

If determining the lowest rate for each piece of equipment is overly burdensome because of the number of different types of equipment used, or if the Applicant prefers, FEMA will reimburse all equipment use based on the lower of the two rate schedules, rather than based on a comparison of each individual rate. In these cases, the PA Division at FEMA Headquarters will determine which schedule of rates is lower.

⁹³ 44 CFR § 206.228(a)(1)(i).

⁹⁴ Per 44 CFR § 206.228(a)(1)(i), reimbursement of rates in excess of \$75 is determined on a case-by-case basis by FEMA. FEMA evaluates the rate for approval based on current market prices.

⁹⁵ 44 CFR § 206.228(a)(1)(ii).

⁹⁶ Ibid.

Equipment with No Established Rate

If the Applicant uses equipment that has no established State, Territorial, Tribal, or local rate, FEMA reimburses that equipment based on the FEMA rate.⁹⁷ If FEMA does not have a rate established for the equipment, the Applicant may either submit a rate for approval or request that FEMA provide a rate. If the Applicant submits a rate, it must include documentation demonstrating that each component of the rate is comparable to current market prices. The rate cannot be based on rental rates as such rates include cost components, such as profit, that are above and beyond what is necessary to operate and maintain force account equipment.

C. Leased Equipment

When the Applicant leases equipment, FEMA provides PA funding based on the terms of the lease. Leasing costs are eligible if:

- The Applicant performed an analysis of the cost of leasing versus purchasing the equipment;⁹⁸ and
- The total leasing costs do not exceed the cost of purchasing and maintaining equipment during the life of the eligible project.

If the leasing costs exceed the cost of purchasing and maintaining the equipment, FEMA determines the amount of eligible costs based on an evaluation of the reasonableness of the costs claimed, including whether the Applicant acted with prudence under the circumstances at the time it leased the equipment.

If the Applicant has a lease-purchase agreement and obtains ownership during completion of eligible work, FEMA provides PA funding for the equipment use based on the hourly equipment rate, as described in [Chapter 2:V.B.](#)

If the Applicant has a lease-purchase agreement and completes the eligible work prior to obtaining ownership, FEMA provides PA funding based on the cost to lease the equipment.

D. Supplies

The cost of supplies, including materials, is eligible if:

- Purchased and justifiably needed to effectively respond to and/or recover from the incident; or
- Taken from the Applicant's stock and used for the incident.

The Applicant needs to track items taken from stock with inventory withdrawal and usage records.

FEMA provides PA funding for these items based on invoices, if available. If invoices are not available for items used from stock, FEMA provides PA funding based on the Applicant's established method of pricing inventory.⁹⁹ If the Applicant does not have an established method, FEMA provides PA funding based on historical data or prices from area vendors.

⁹⁷ 44 CFR § 206.228(a)(1)(iii).

⁹⁸ 2 CFR § 200.318(d).

⁹⁹ 2 CFR § 200.453(b).

FEMA consults with the U.S. Department of Homeland Security Office of Inspector General Emergency Management Oversight Team in cases where it has difficulty determining a reasonable value.

E. Disposition of Purchased Equipment and Supplies

The discussion below describes disposition requirements when purchased equipment or supplies (including materials) are no longer needed for federally funded projects.

In the context of disposition, equipment is any tangible personal property (including information technology systems) having a useful life of more than 1 year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the Applicant for financial statement purposes, or \$5,000.¹⁰⁰ Tangible personal property that does not fall under this definition of equipment is a supply.¹⁰¹

When equipment or supplies (including materials) purchased with PA funding are no longer needed for response to or recovery from the incident, the Applicant may use the items for other federally funded programs or projects, provided the Applicant informs FEMA.¹⁰²

1. Disposition of Purchased Equipment

In accordance with Federal regulations, State and Territorial government Applicants dispose of equipment in accordance with State or Territorial laws and procedures.¹⁰³

Tribal and local governments and PNPs must calculate the current fair market value of each individual item of equipment. The Applicant must provide the current fair market for any items that have a current fair market value of \$5,000 or more. FEMA reduces eligible funding by this amount.¹⁰⁴

If an individual item of equipment has a current fair market value less than \$5,000, FEMA does not reduce the eligible funding.¹⁰⁵

2. Disposition of Purchased Supplies

All Applicants, including State and Territorial government Applicants, must calculate the current fair market value of any unused residual supplies (including materials) that FEMA funded for any of its projects and determine the aggregate total.



Terminology

Personal property means property other than real property.

Real property means land, including land improvements, structures, and appurtenances thereto, but excludes moveable machinery and equipment.



Terminology

Fair market value is either the selling price or the advertised price for a similar item in a competitive market.

¹⁰⁰ 2 CFR § 200.33.

¹⁰¹ 2 CFR § 200.94.

¹⁰² 2 CFR § 200.313(c).

¹⁰³ 2 CFR § 200.313(b).

¹⁰⁴ 2 CFR § 200.313(e)(2).

¹⁰⁵ 2 CFR § 200.313(e)(1).

The Applicant must provide the current fair market value if the aggregate total of unused residual supplies is greater than \$5,000. FEMA reduces eligible funding by this amount.¹⁰⁶

If the aggregate total of unused residual supplies is less than \$5,000, FEMA does not reduce the eligible funding.

F. Disposition of Real Property

If the Applicant acquires or improves real property with PA funds, disposition and reporting requirements apply.¹⁰⁷ The PA Division at FEMA Headquarters provides disposition instructions when acquired or improved real property is no longer needed for the originally authorized purpose.¹⁰⁸

G. Procurement and Contracting Requirements

FEMA provides PA funding for contract costs based on the terms of the contract if the Applicant meets Federal procurement and contracting requirements. This section provides information on Federal procurement and contracting requirements. FEMA's *Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules)* provides additional details regarding Federal procurement and contracting requirements.¹⁰⁹

1. Procurement Standards

Applicants must comply with Federal procurement standards as a condition of receiving PA funding for contract costs for eligible work. Federal procurement standards for State and Territorial governments are different than those for Tribal and local governments and PNPs.

State and Territorial government Applicants must follow the same policies and procedures they would use for procurements with non-Federal funds; comply with 2 CFR § 200.322, Procurement of recovered materials; and ensure that every purchase order or other contract includes any clauses required by 2 CFR § 200.326, Contract provisions.¹¹⁰

Non-State Applicants (Tribal and local governments and PNPs) must use their own documented procurement procedures that reflect applicable State, Territorial, Tribal, and local government laws and regulations, provided that the procurements conform to applicable Federal law and standards.¹¹¹ This requirement applies to Tribal Governments even when the Tribe is a Recipient.

Tribal and local governments and PNPs must conduct procurement transactions in a manner that complies with the following Federal standards:

- Provide full and open competition;¹¹²

¹⁰⁶ 2 CFR § 200.314(a).

¹⁰⁷ 2 CFR §§ 200.311 and 200.329.

¹⁰⁸ 2 CFR § 200.311(c). As of the date of this publication, FEMA policy to meet these requirements is under development. Absent publication of a specific policy, Recipients and Applicants must obtain specific disposition instructions from FEMA.

¹⁰⁹ www.fema.gov/media-library/assets/documents/96773.

¹¹⁰ 2 CFR § 200.317.

¹¹¹ 2 CFR § 200.318(a).

¹¹² 2 CFR § 200.319(a).

- Conduct all necessary affirmative steps to ensure the use of minority businesses, women’s business enterprises, and labor surplus area firms when possible;¹¹³
- Exclude contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals from competing for such procurements to ensure objective contractor performance and eliminate unfair competitive advantage;¹¹⁴
- Maintain written standards of conduct covering conflicts of interest and governing the performance of employees who engage in the selection, award, and administration of contracts; and¹¹⁵
- Maintain records sufficient to detail the history of the procurement. These records will include, but are not limited to:
 - Rationale for the method of procurement
 - Selection of contract type
 - Contractor selection or rejection
 - The basis for the contract price¹¹⁶

Tribal and local governments and PNP’s must use one of the following procurement methods:¹¹⁷

- Micro-purchase
- Small purchase procedure
- Sealed bid (formal advertising)
- Competitive proposal

FEMA may reimburse costs incurred under a contract procured through a noncompetitive proposal only when one or more of the following apply:

- The item is only available from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- FEMA or the Recipient expressly authorizes a noncompetitive proposal in response to a written request from the Applicant; or
- After solicitation of a number of sources, competition is determined inadequate.¹¹⁸



Terminology

Micro-purchase: purchase of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold.

Small purchase procedure: relatively simple and informal procurement method for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1.

Sealed bid: publicly solicited bid awarded via a firm fixed price contract to the lowest responsible bidder.

Competitive proposal: normally conducted with more than one source submitting an offer and generally used when conditions are not appropriate for the use of sealed bids.

Noncompetitive proposal: solicitation of a proposal from only one source.

¹¹³ 2 CFR § 200.321.

¹¹⁴ 2 CFR § 200.319(a).

¹¹⁵ 2 CFR § 200.318(c)(1).

¹¹⁶ 2 CFR § 200.318(i).

¹¹⁷ 2 CFR § 200.320.

¹¹⁸ 2 CFR § 200.320(f).

Tribal or local governments and PNPs must perform a cost or price analysis in connection with every procurement action in excess of the simplified acquisition threshold,¹¹⁹ including contract modifications. The method and degree of analysis depends on the facts surrounding the particular procurement situation. As a starting point, the Applicant must make independent estimates before receiving bids or proposals.¹²⁰ Additionally, the Applicant must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where a cost analysis is performed.¹²¹

FEMA PA staff coordinate with FEMA's Office of Chief Counsel when evaluating whether the Applicant complied with Federal procurement requirements. In the case of non-compliance with Federal procurement requirements, FEMA determines a reasonable cost for the eligible work completed based on all available information and documentation.¹²²

2. Contracts

FEMA reimburses costs incurred using three types of contract payment obligations: fixed-price, cost-reimbursement, and, to a limited extent, time and materials (T&M). The specific contract types related to each of these are described in FEMA's *Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules)*.¹²³

The Applicant must include required provisions in all contracts awarded¹²⁴ and maintain oversight to ensure contractors perform according to the conditions and specifications of the contract and any purchase orders.¹²⁵

FEMA does not reimburse costs incurred under a cost plus a percentage of cost contract or a contract with a percentage of construction cost method.¹²⁶

FEMA advises against the use of T&M contracts and generally limits the use of these contracts to a reasonable time based on the circumstances during which the Applicant could not define a clear scope of work (SOW). T&M contracts do not provide incentives to the contractor for cost control or labor efficiency. Therefore, FEMA may reimburse costs incurred under a T&M contract only if all of the following apply:

- No other contract was suitable;
- The contract has a ceiling price that the contractor exceeds at its own risk; and
- The Applicant provides a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.¹²⁷

The Applicant should define the SOW as soon as possible to enable procurement of a more acceptable type of contract.

¹¹⁹ The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR § 2.101. The threshold is adjusted periodically for inflation.

¹²⁰ 2 CFR § 200.323(a).

¹²¹ 2 CFR § 200.323(b).

¹²² 2 CFR § 200.338.

¹²³ www.fema.gov/media-library/assets/documents/96773.

¹²⁴ 2 CFR § 200.326.

¹²⁵ 2 CFR § 200.318(b).

¹²⁶ 2 CFR § 200.323(d).

¹²⁷ 2 CFR § 200.318(j).

Some entities, such as Rural Electrical Cooperatives, provide the materials necessary to restore their facilities and refer to such contracts as Time and Equipment (T&E) contracts. The limitations and requirements that apply to T&M contracts also apply to T&E contracts.

The Davis Bacon Act, which requires “prevailing wage” payment to contracted workers based on the local union wage scale defined by the U.S. Department of Labor, does not apply to State, Territorial, Tribal, local government, or PNP contracts for PA-funded projects. However, if the Applicant incorporates prevailing wage rates as part of its normal practice for all contracts regardless of the funding source, then those rates are eligible.

H. Mutual Aid

When an Applicant does not have sufficient resources to respond to an incident, it may request resources from another jurisdiction through a “mutual aid” agreement. FEMA refers to the entity requesting resources as the Requesting Entity. FEMA refers to the entity providing the requested resource as the Providing Entity.

FEMA provides PA funding to the Requesting Entity as it is legally responsible for the work. FEMA does not provide PA funding directly to the Providing Entity. For the work to be eligible, the Requesting Entity must have requested the resources provided.

Some States have a statewide mutual aid agreement that designates the State as being responsible for reimbursing mutual aid costs. In these States, the Providing Entity may request funding directly from the State, with prior consent of the Requesting Entity, in accordance with applicable State laws and procedures. If the Requesting entity and the State approve the request and the State pays the Providing Entity, FEMA provides PA funding to the State. The Requesting Entity may be responsible for reimbursing the State for any non-Federal local cost share, depending on specific State requirements.

The Requesting Entity or State, if applicable, must provide a description of the services requested and received, along with documentation of associated costs (e.g., labor, equipment, supplies, or materials) to FEMA in support of a request for PA funding.

Post-Incident Agreements

When the Requesting and Providing Entities do not have a written agreement, OR where such an agreement exists but is silent on reimbursement, the entities may verbally agree on the resources to be provided and on the terms, conditions, and costs of such assistance.

The agreement should be consistent with past practices for mutual aid between the entities. For example, if the Requesting Entity does not normally reimburse a Providing Entity for its costs, it should not agree to do so specifically for the declared incident.

Prior to funding, the Requesting Entity must document the verbal agreement in writing, have it executed by an official of each entity with the authority to request and provide assistance, and submit it to FEMA (preferably within 30 days of the Applicant’s Briefing).¹²⁸

¹²⁸ The Recipient conducts Applicant Briefings to provide PA Program information to potential applicants. This briefing is described in Chapter 3 Section I.B.

Eligibility

Three types of mutual aid are eligible: Emergency Work, emergency utility restoration (regardless of whether it is deemed Category B or F), and grant management. Mutual aid work is subject to the same eligibility criteria as contract work. Costs to transport the Providing Entity's equipment and personnel to the declared area are eligible.

Ineligible work performed by a Providing Entity includes, but is not limited to:

- Preparing to deploy or "standing-by"
- Dispatch operations outside the receiving State, Territory, or Tribe
- Training and exercises
- Support for long-term recovery and mitigation operations

The Emergency Management Assistance Compact (EMAC) is a national interstate mutual aid agreement that enables States and Territories to share resources in response to an incident. Work performed outside the receiving State or Territory that is associated with the operation of EMAC, including tracking of resources, is not eligible unless the work is associated with the receiving State's or Territory's emergency operations for the incident.



The Providing Entity's straight-time and overtime labor are eligible, including fringe benefits. When the Requesting Entity is a State, Territorial, Tribal, or local government and the Providing Entity is another division within the same State, Territorial, Tribal, or local government, straight-time for budgeted employees of the Providing Entity is not eligible.

If the Providing Entity backfills deployed personnel, overtime for backfill personnel is eligible even if they are not performing eligible work. However, straight-time for backfill personnel is not eligible.

FEMA reimburses the use of equipment provided to a Requesting Entity based on either the terms of the agreement or equipment rates (detailed in [Chapter 2:V.B](#)). FEMA provides PA funding to repair damage to this equipment the same way as it provides PA funding to repair damage to Applicant-owned equipment (detailed in [Chapter 2:VI.C](#)).

I. Prisoners

FEMA provides PA funding for prisoner labor costs based on the rate that the Applicant normally pays prisoners. FEMA also provides PA funding for prisoner transportation to the worksite and extraordinary costs of security guards, food, and lodging.¹²⁹

J. National Guard

The Governor may activate National Guard personnel to State Active Duty in response to an incident. Labor costs and per diem, if applicable, are eligible for State Active Duty personnel performing eligible work. Both straight-time and overtime are eligible, including fringe benefits.

The U.S. Department of Defense funds National Guard personnel activated under Full-Time National Guard Duty (Title 32) or Active Duty (Title 10). Therefore, Title 32 and Title 10

¹²⁹ Stafford Act § 406(a)(2)(B), 42 U.S.C. § 5172.

personnel costs, and any other costs funded by the U.S. Department of Defense, such as training, are not eligible.

K. Direct Federal Assistance

When the impact of an incident is so severe that the State, Territorial, Tribal, and local governments lack the capability to perform or contract eligible Emergency Work, the Recipient may request that the Federal Government provide this assistance directly. FEMA may task another Federal agency to perform or contract the work provided it is an eligible activity under [Chapter 2:VI.A](#) or [B](#).¹³⁰ FEMA issues a “Mission Assignment” to task the work and refers to it as Direct Federal Assistance (DFA).¹³¹ FEMA cannot task work that another Federal agency has its own authority to perform.¹³² DFA has the same cost-share provisions applicable to the declaration (as described in [Chapter 1:I.E](#)).

L. Donated Resources

Individuals and organizations often donate resources (equipment, supplies, materials, or labor) to assist with response activities. FEMA does not provide PA funding for donated resources; however, the Applicant may use the value of donated resources to offset the non-Federal share of its eligible Emergency Work projects and DFA.

The Applicant may apply the offset if all of the following conditions are met:

- The donated resource is from a third party (a private entity or individual that is not a paid employee of the Applicant or Federal, State, Territorial, or Tribal government);
- The Applicant uses the resource in the performance of eligible Emergency Work; and
- The Applicant or volunteer organization tracks the resources and work performed, including description, specific locations, and hours.¹³³

FEMA considers unpaid individuals who volunteer their labor to an Applicant to be third party even if they are officially members or employees of the Applicant organization (e.g. volunteer fire fighters at a PNP volunteer fire department).

Resources donated to the Applicant by an organization that would normally provide the same resources under its mission are eligible as an offset provided the organization is not federally funded. Additionally, if a mutual aid agreement provides for assistance at no cost to the Applicant, the Applicant may use the value of that assistance to offset the non-Federal cost share of its Emergency Work.

Resources donated by a Federal agency, funded through a Federal award, or from another federally funded source are not eligible as an offset to the



Donated Resource Project Preparation

FEMA prepares the donated resource project separate from the Emergency Work projects for the Applicant’s incurred costs. FEMA does not obligate the donated resource project until after it obligates all of that Applicant’s Emergency Work projects.

¹³⁰ 44 CFR § 206.208(a).

¹³¹ 44 CFR § 206.208(c)(1).

¹³² 44 CFR § 206.208(c)(2).

¹³³ 2 CFR § 200.434(d).

non-Federal share.¹³⁴ Additionally, when an Applicant uses donated resources for ineligible Emergency Work, or for any Permanent Work (eligible or ineligible), the value of those resources are not eligible as an offset to the non-Federal share.

All projects approved under PA are subject to cost sharing¹³⁵; therefore, FEMA applies the Federal cost share to the total value of donated resources. FEMA does not apply the offset toward other State, Territorial, or Tribal government obligations, toward Permanent Work, or toward another Applicant's projects.

Offset Amounts

- **Volunteer Labor:** The offset for volunteer labor is based on the same straight-time hourly labor rate, and fringe benefits, as a similarly qualified person in the Applicant's organization who normally performs similar work. FEMA does not offset volunteer labor based on overtime or premium rates. If the Applicant does not have employees performing similar work, FEMA credits the non-Federal share based on a rate consistent with those ordinarily performing the work in the same labor market.¹³⁶
- **Donated Equipment:** The offset for donated equipment is based on equipment rates. See [Chapter 2:V.B](#) for information on equipment rates.
- **Donated Supplies or Materials:** The offset for donated supplies or materials is based on current commercial rates, which FEMA validates based on invoices from previous purchases or information available from vendors in the area.¹³⁷
- **Logistical Support:** Reasonable logistical support for volunteers doing eligible work, such as donations warehousing and management related to eligible Emergency Work, may be eligible either for funding (if the Applicant provides the logistical support) or as a donations credit (if a third party provides the logistical support), subject to approval by FEMA.

M. Project Management and Design Services

Project management activities, such as procurement, document review, and construction oversight, are eligible provided the activities are tracked and directly related to a specific, eligible project.

Engineering and design services and construction inspection are also eligible provided the services are necessary to complete eligible work. Some projects require only very basic services or none at all, while others require specialized engineering and design.

When evaluating the eligibility of project management and design services and the reasonableness of associated costs, FEMA considers all of the following:

- Project complexities;
- Whether redesign was necessary as a result of unexpected site conditions;
- Whether the project includes improvements that are not eligible for funding (management and design costs associated with ineligible work are not eligible); and

¹³⁴ 2 CFR § 200.306(b)(5).

¹³⁵ 44 CFR § 206.203(b).

¹³⁶ 2 CFR § 200.306(e).

¹³⁷ 2 CFR § 200.306(g).

- Applicable cost factors noted in the beginning of [Chapter 2:V](#).

N. Grant Management and Administration

FEMA provides PA funding for administrative costs related to managing the PA Program and PA projects. FEMA provides PA funding differently depending on whether the costs are indirect, administrative, or other expenses the Recipient or Subrecipient incurs in administering and managing PA awards that are not directly chargeable to a specific project or if the costs are directly chargeable to a specific project.¹³⁸

1. Section 324 Management Costs

Section 324 of the Stafford Act authorizes PA funding for management costs. Management costs are indirect costs, administrative expenses, and other expenses a Recipient or Subrecipient incurs in administering and managing PA awards that are not directly chargeable to a specific project.¹³⁹ Examples include, but are not limited to:

- Preliminary Damage Assessments (PDAs)
- Meetings regarding the PA Program or overall damage claim
- Organizing damage sites into logical groups
- Travel expenses
- Correspondence

FEMA provides 100 percent Federal funding for management costs based on actual costs incurred up to a percentage of the Federal share of projected eligible program costs, not including DFA. For PA, the maximum percentage is 3.34 percent for Major Disaster Declarations¹⁴⁰ and 3.90 percent for Emergency Declarations.¹⁴¹ Management costs are capped at a combined total of \$20 million dollars per declaration across both PA and the Hazard Mitigation Grant Program (HMGP), unless FEMA approves an exception.¹⁴²

If a State and Tribal Government are both Recipients for the same incident within the same State, then both are eligible to receive management cost funding. The Recipient determines the amount of funds, if any, that it will pass through to Subrecipients for management costs.¹⁴³

The Recipient can expend management cost funds for a maximum time of:

- Eight years from the date of a Major Disaster Declaration, or 180 days after the latest performance period of a non-management cost PA project or HMGP project narrative, whichever is sooner¹⁴⁴
- Two years from the date of an Emergency Declaration, or 180 days after the latest performance period of a non-management cost PA project, whichever is sooner¹⁴⁵

¹³⁸ Stafford Act § 324(a), 42 U.S.C. § 5165b; 44 CFR § 207.2; and 2 CFR §§ 200.56 and 200.412.

¹³⁹ Stafford Act § 324(a), 42 U.S.C. § 5165b; 44 CFR § 207.2; and 2 CFR §§ 200.56 and 200.412.

¹⁴⁰ 44 CFR § 207.5(b)(4)(i).

¹⁴¹ 44 CFR § 207.5(b)(4)(iii).

¹⁴² 44 CFR § 207.5(c).

¹⁴³ 44 CFR § 207.4(c).

¹⁴⁴ 44 CFR § 207.8(b)(1).

¹⁴⁵ 44 CFR § 207.8(b)(2).

The Recipient can submit a written justification for an extension on the period of availability to FEMA.¹⁴⁶ If approved, FEMA limits any additional time to a maximum of 180 days after the expiration of any performance period extensions granted under PA for project completion of a non-management cost project.¹⁴⁷

2. Direct Administrative Costs

If the Recipient or Subrecipient incurs administrative costs that it tracks, charges, and accounts for directly to a specific eligible project, the costs are eligible as Direct Administrative Costs (DAC). The Recipient or Subrecipient cannot charge costs to a project if it previously allocated similar costs incurred for the same purpose in like circumstances to indirect costs.

Costs associated with the following activities are eligible as DAC if they are related to only one project and meet the above requirements (this list is not all-inclusive):

- Site inspections
- Developing the detailed site-specific damage description
- Evaluating Section 406 hazard mitigation measures
- Reviewing the Project Worksheet (PW)¹⁴⁸
- Preparing Small Projects¹⁴⁹
- Preparing correspondence
- Travel Expenses
- Collecting, copying, filing, or submitting documents to support the claim
- Requesting disbursement of PA funds

FEMA normally considers the salaries of administrative and clerical staff as indirect costs.

Direct charging of these costs may be appropriate only if all of the following conditions are met:

- Administrative or clerical services are integral to a project or activity;
- Individuals involved are specifically identified with the project or activity;
- Such costs are explicitly included in the budget for that project or have FEMA's prior written approval; and
- The costs are not also recovered as indirect costs.

FEMA considers the following factors when determining the reasonableness of DAC:

- Whether the type of employee and skill level is appropriate for the activities performed; and



Recipient DAC Claim

Recipients may claim all DAC for each declaration on one PW provided DAC related to different Subrecipients are documented on separate site sheets within that PW. The Recipient must link the costs and activities to specific subawards within each site sheet. Some Recipients submit DAC quarterly. To minimize Federal, State, and Tribal administrative costs, once a Recipient submits its initial DAC claim, FEMA does not process another DAC claim related to the same subaward until the Recipient submits its final DAC claim for that subaward.

See [Chapter 3:II](#) for information on PWs and sites sheets.

¹⁴⁶ The FEMA Chief Financial Officer must approve the request.

¹⁴⁷ 44 CFR § 207.8(b)(3).

¹⁴⁸ A Project Worksheet (PW) is the form FEMA uses to document the details of the Applicant's project and costs claimed.

¹⁴⁹ The Applicant may prepare its own Small Projects. Chapter 3 Section IV.B defines Small Projects.

- The level of effort required to perform an activity.

If the type of employee or skill level is not appropriate for the specific task, FEMA limits PA funding to a rate based on the appropriate employee type or skill level. For complex projects, staff with a higher level of technical proficiency and experience may be appropriate.

FEMA will use the level of effort required by FEMA staff to perform similar functions as a reference point to determine whether the level of effort claimed by the Recipient or Subrecipient is reasonable.

FEMA does not reimburse DAC based on blended rates (e.g., a labor rate plus a percentage of overall travel expenses or one rate for all levels of employees involved in a project). Labor and travel expenses must be tracked separately and shown as directly related to a specific project.

FEMA provides PA funding for DAC at the same cost-share provisions applicable to the declaration (as described in [Chapter 1:I.E](#)).

O. Surveys to Assess or Locate Damage or Debris Impacts

The Applicant is responsible for identifying locations of incident-related damage or debris impacts. Costs related to assessing overall impacts of an incident, locating damage or debris impacts, and conducting PDAs are indirect costs and eligible as management costs, described in [Chapter 2:V.N.1](#). They are not eligible as project costs or DAC.

If, during a survey after the declaration, the Applicant identifies incident-related damage to a facility, the costs related to the inspection of that facility are eligible as DAC provided the Applicant tracks the costs to a specific project.

Further detailed inspections of that damage to determine the extent of damage or quantity of debris and method of repair or removal, including professional evaluations, are eligible as part of the work to restore the facility or work to remove the debris. If the Applicant performs a detailed inspection of a partially damaged system, eligible costs are based on the percentage of that system that was actually damaged. For example, if after inspecting 500 linear feet of sewer line, the Applicant identified 100 linear feet of damaged line, only one-fifth of the total inspection costs are eligible.

FEMA has specific eligibility criteria for inspecting earthquake damage to buildings constructed with welded steel-moment frames. FEMA bases the eligibility criteria on *Recommended Post Earthquake Evaluation and Repair Criteria for Welded Steel Moment Frame Buildings* (FEMA 352).¹⁵⁰ The criteria are summarized in Appendix C: Welded Steel Moment Frame.

Safety inspections are eligible as discussed in [Chapter 2:VI.B.14](#).

P. Duplication of Benefits

FEMA is legally prohibited from duplicating benefits from other sources. If the Applicant receives funding from another source for the same work that FEMA funded, FEMA reduces the eligible cost or de-obligates funding to prevent a duplication of benefits.¹⁵¹

¹⁵⁰ www.fema.gov/media-library/assets/documents/747.

¹⁵¹ Stafford Act § 312, 42 U.S.C. § 5155, and 2 CFR § 200.406.

1. Insurance Proceeds

FEMA cannot provide PA funding that duplicates insurance proceeds.¹⁵² Consequently, FEMA reduces eligible costs by the amount of:

- Actual insurance proceeds, if known;¹⁵³ or
- Anticipated insurance proceeds based on the Applicant's insurance policy, if the amount of actual insurance proceeds is unknown. FEMA subsequently adjusts the eligible costs based on the actual amount of insurance proceeds the Applicant receives.

FEMA requires the Applicant to take reasonable efforts to pursue claims to recover insurance proceeds that it is entitled to receive from its insurer(s). If the Applicant expends costs to pursue its insurance claim, FEMA offsets the insurance reduction with the Applicant's reasonable costs to pursue the claim.

If the Applicant receives insurance proceeds for ineligible losses (e.g., business interruption), FEMA calculates a relative apportionment of insurance proceeds to determine the insurance reduction based on:

- The proceeds received per type of loss as specified by the insurance policy or settlement documentation;
- Policy limits for categories of loss as specified in the insurance policy; or
- The ratio of total eligible losses to total ineligible losses.

FEMA Recovery Policy (FP) 206-086-1, *Public Assistance Policy on Insurance*, describes insurance reductions in detail.¹⁵⁴

2. Non-Federal Grants and Cash Donations

Grants and cash donations from non-Federal sources are subject to the following criteria based on whether the funds are provided toward a specific purpose and whether that specific purpose is otherwise eligible for PA funding.

- If the funds are designated for the same purpose as eligible work, the following apply:
 - The Applicant may use the funds toward its non-Federal cost share.
 - If the funds are not used toward the non-Federal cost share, FEMA considers the donation or non-Federal grant a duplication of benefits and reduces eligible costs by the duplicated amount.
 - If the funds exceed the amount of the non-Federal cost share, FEMA reduces eligible costs by the excess amount.
- If the funds are designated for non-specific purposes, FEMA does not consider the funds a duplication of benefits. The Applicant may use the funds toward its non-Federal cost share. If the funds exceed the amount of the non-Federal share, the Applicant can apply the excess amount toward ineligible work.
- If the funds are designated for a specific purpose that is not eligible, FEMA does not allow the Applicant to apply the funds toward its non-Federal cost share.

¹⁵² Ibid.

¹⁵³ 44 CFR §§ 206.252(c) and 253(a).

¹⁵⁴ www.fema.gov/media-library/assets/documents/107564.

3. Third-Party Liability

When a third party¹⁵⁵ causes damage (e.g., an oil spill) or increases the cost of repair or cleanup and an Applicant requests FEMA funding for the costs, FEMA requires the Applicant to make reasonable efforts to pursue claims to recover costs it is entitled to receive from the third party.

If the costs recovered are not adequate despite the Applicant's good faith effort, FEMA reduces eligible costs based on the recovered amount. If the Applicant receives funds from the third party for eligible and ineligible work or losses, FEMA determines the offset amount based on:

- The proceeds received for eligible losses as specified by the settlement documentation; or
- The ratio of total eligible losses to total ineligible losses.

4. Other Federal Awards

If the Applicant receives funds from another Federal agency for the same purpose as PA funding, it is a duplication of benefits. FEMA cannot duplicate funds provided by another Federal agency.

The Applicant can only apply other Federal award funds toward the PA non-Federal cost share if the other Federal award has specific statutory authority allowing it to be utilized to meet cost-share requirements.¹⁵⁶ For example, the Community Development Block Grant program administered by HUD may be used for the non-Federal share on PA projects if certain requirements are met. The Applicant cannot apply PA funds toward the non-Federal cost share of other Federal agency funding.

Q. Duplication of Funding Between FEMA Programs

FEMA provides assistance under its Individual Assistance (IA) programs and HMGP that could duplicate assistance that is available under the PA Program. FEMA must ensure it does not duplicate funds in areas where its programs overlap.

For IA, individuals may receive assistance for work that, under certain circumstances, is also eligible under PA when a State, Territorial, Tribal, or local government has legal authority to perform the work. For example, a homeowner may receive Individuals and Households Program (IHP) assistance for debris clearance from a privately owned road and the local government may request PA funding for debris clearance from the same road for emergency vehicle access. FEMA must ensure it does not provide PA funding for the same work to two different entities.

For HMGP, FEMA can provide funding for a wide range of mitigation measures, including measures that may also be eligible under the PA Program. FEMA must ensure that PA funds do not duplicate HMGP funds.

R. Ineligible Costs

The Stafford Act authorizes FEMA to provide PA funding for specific work performed as a result of the incident. It does not authorize FEMA to provide PA funding for all losses or costs resulting from the incident. The following costs are not eligible because the Stafford Act does not authorize FEMA to provide PA funding for these items.

¹⁵⁵ A third party is a private entity or individual that is not involved in the Federal award, i.e., not the Applicant or Federal, State, Territorial, or Tribal government.

¹⁵⁶ Stafford Act § 312, 42 U.S.C. § 5155.

1. Loss of Revenue

FEMA cannot provide PA funding for revenue lost as a result of the incident. The following are examples of when loss of revenue may occur as a result of an incident:

- Hospitals release non-critical patients to make room for survivors
- Hospitals sustain damage that reduces pre-existing capacity
- States open a toll road for evacuation and do not charge a toll
- States waive the normal fee for ferry service to encourage alternate transportation after an incident
- A utility system is shut down as a result of the incident
- Events are cancelled as a result of an entity using a venue for incident-related activities, such as sheltering

2. Loss of Useful Service Life

FEMA cannot provide PA funding for the projected loss of useful service life of a facility. For example, if a road has been inundated by flood waters for an extended period of time, FEMA cannot provide PA funding for the value of the projected loss of useful life of the road due to the long-term effects the inundation might have on the road.

3. Tax Assessments

State, Territorial, Tribal, and local governments may conduct tax assessments to re-assess real property values after an incident. Costs related to conducting these assessments are not eligible because the assessments are neither essential to addressing an immediate threat to life or improved property, nor connected with the permanent restoration of eligible facilities.

4. Increased Operating Costs

Increased costs of operating a facility or providing a service are generally not eligible, even when directly related to the incident. However, short-term increased costs that are directly related to accomplishing specific emergency health and safety tasks as part of emergency protective measures may be eligible, as discussed in [Chapter 2:VI.B.2](#).

VI. Emergency Work Eligibility

FEMA is authorized to provide PA funding for Emergency Work,¹⁵⁷ including emergency protective measures and debris removal. Emergency Work is that which must be done immediately to:

- Save lives;
- Protect public health and safety;
- Protect improved property; or



Figure 12. Emergency Work Eligibility

¹⁵⁷ 44 CFR § 206.201(b).

- Eliminate¹⁵⁸ or lessen an immediate threat of additional damage.¹⁵⁹

“Immediate threat” is the threat of additional damage or destruction from an incident that can reasonably be expected to occur within 5 years of the declared incident.¹⁶⁰

For flood incidents specifically, an immediate threat is a threat from a 5-year flood (a flood that has a 20 percent chance of occurring in any given year). For other incidents, an immediate threat means imminent danger from an incident that can reasonably be expected to occur within 5 years of the declared incident. The declared incident must have caused the immediate threat to exist. However, the threat itself can be from any type of incident; it is not limited to the type of incident that caused the initial damage or threat.

The deadline to complete Emergency Work is 6 months from the declaration date unless the Recipient or FEMA authorize an extension.¹⁶¹ Although regulations allow 6 months to complete Emergency Work, eligible Emergency Work is that which is necessary to address an immediate threat (as shown in Figure 12). FEMA considers the urgency with which the Applicant proceeds with work when evaluating eligibility. The Applicant should not delay in following its normal policies and procedures when taking actions to address threats to life, public health and safety, and improved property.

For PNP Applicants, eligible Emergency Work is generally limited to that associated with an eligible PNP facility as follows:

- Debris removal from the facility property; and
- Emergency protective measures to prevent damage to the facility and its contents.

In limited circumstances, PNPs may be eligible for other types of Emergency Work when essential components of a facility are urgently needed to save lives or protect health and safety (see [Chapter 2:III.B](#) for details).

For State, Territorial, Tribal, and local Applicants, evaluating facility eligibility is not necessary for most Emergency Work. For these Applicants, eligibility of Emergency Work is primarily based on evaluation of an immediate threat and legal authority to perform the work.

Environmental and Historic Preservation

The Applicant is responsible for obtaining all required environmental and historic preservation (EHP) permits from the appropriate agencies before proceeding with Emergency Work. The Applicant should make every effort to inform the Recipient and FEMA of necessary Emergency Work prior to performing the work, when appropriate, to afford FEMA the opportunity to perform EHP reviews prior to the start of work.

Emergency Work is excluded from National Environmental Policy Act (NEPA) review through a statutory exclusion (STATEX).¹⁶² However, FEMA must ensure compliance with other Federal

¹⁵⁸ While the regulatory definition of the term “Emergency Work” includes the term “avert,” the regulatory language used for the specific eligibility criteria for debris removal and emergency protective measures includes the term “eliminate,” not “avert.”

¹⁵⁹ In addition to addressing immediate threats to life, health and safety, and improved property, debris removal may be authorized to ensure economic recovery of the affected community.

¹⁶⁰ 44 CFR § 206.221(c).

¹⁶¹ 44 CFR §§ 206.204(c) and (d).

¹⁶² Stafford Act § 316, 41 U.S.C. 5159.

EHP laws, regulations, and EOs, including those related to floodplains, wetlands, federally listed threatened and endangered species and their critical habitats, and historic properties. Most EHP laws contain emergency provisions to expedite response activities that must be taken to prevent imminent loss of human life or damage to improved property.

When performing Emergency Work, the Applicant should avoid new ground disturbance when possible. If the Applicant cannot avoid new ground disturbance, it must consider impacts to natural and cultural resources and obtain all necessary permits.

A. Debris Removal (Category A)

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;
- Ensures economic recovery of the affected community to the benefit of the community at large,¹⁶³ or
- Mitigates risk to life and property by removing Substantially Damaged¹⁶⁴ structures and associated structures and appurtenances as needed to convert property acquired using HMGP funds to uses compatible with open space, recreation, or wetlands management practices. Such removal must be completed within 2 years of the declaration date unless extended by the FEMA Assistant Administrator of the Recovery Directorate.¹⁶⁵

Debris includes, but is not limited to, vegetative debris, construction and demolition debris, sand, mud, silt, gravel, rocks, boulders, and vehicle and vessel wreckage.

For a PNP, eligible debris removal is limited to that associated with an eligible facility, including debris on the property of the eligible facility.

Removal of debris from improved public property and public rights-of-way (ROWs), including Federal-aid roads,¹⁶⁶ 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.

Removal of debris placed on the public ROWs from commercial properties is not eligible unless it is pre-approved by FEMA (see [Chapter 2.VI.A.6\(d\)](#)). Additionally, removal of materials related to the construction, repair, or renovation of either residential or commercial structures is not eligible.

¹⁶³ This condition is generally restricted to debris removal from large commercial areas when a significant percentage of the commercial sector of a community is impacted and coordinated debris removal is necessary to expedite restoration of the economic viability of the affected community.

¹⁶⁴ Substantial Damage is damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

¹⁶⁵ Stafford Act § 407, 42 U.S.C. § 5173, and 44 CFR § 206.224(a).

¹⁶⁶ The term “Federal-aid roads” means the highways on the Federal-aid highway system and all other public roads not classified as local roads or rural minor collectors. The Federal-aid highway system means the National Highway System and the Dwight D. Eisenhower National System of Interstate and Defense Highways (the Interstate System).

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

Removing debris to restore the pre-disaster capacity of engineered facilities may be eligible as Permanent Work if the Applicant can substantiate the pre-disaster capacity and maintenance of that facility as described in [Chapter 2:VII.H.2\(a\)](#).



Terminology

Flood control works are those structures such as levees, flood walls, flood control channels, and water control structures designed and constructed to have appreciable effects in preventing damage by irregular and unusual rises in water levels.

Environmental and Historic Preservation Compliance Considerations

Although debris removal is generally statutorily excluded from NEPA review, FEMA must ensure compliance with other Federal laws, regulations, and EOs prior to funding the work. Accordingly, FEMA must ensure that the Applicant's debris removal operations avoid impacts to floodplains, wetlands, federally listed threatened and endangered species and their critical habitats, and historic properties (including maritime or underwater archaeological resources if waterways are impacted). The Applicant must stage debris at a safe distance from property boundaries, surface water, wetlands, structures, wells, and septic tanks with leach fields.

The Applicant should contact applicable Federal, State, Territorial, and Tribal regulatory agencies to ensure compliance with requirements and permits for debris-related operations. Upon completion of debris removal and disposal, site remediation may be necessary at staging sites and other impacted areas.

1. Alternative Procedures Pilot Program for Debris Removal

The Applicant may elect to participate in one or more of the following Alternative Procedures for debris removal:¹⁶⁷

- Increased Federal cost share based on a sliding scale linked to the accelerated completion of debris removal
- Reimbursement of straight-time for force account labor
- Retention of income generated from recycling debris
- A one-time 2 percent increased cost-share incentive for a FEMA-accepted debris management plan¹⁶⁸ with pre-qualified debris removal contractors before the start of the incident period

The Applicant must notify FEMA of its intent to participate in the pilot program by signing and submitting the *Public Assistance Alternative Procedures Pilot Program for Debris Removal*

¹⁶⁷ The Debris Removal Alternative Procedures Pilot Program is currently authorized for declarations through June 27, 2017. On or before that date, FEMA will provide information as to whether the program is extended beyond that date at www.fema.gov/alternative-procedures.

¹⁶⁸ FEMA reviews debris management plans as described in Appendix D: Debris Management Plan Job Aid.

*Acknowledgement*¹⁶⁹ before obligation of its first debris removal project or within 60 days of its Recovery Scoping Meeting, whichever is sooner. If the Applicant submits the acknowledgement and subsequently wishes to rescind its participation in one or more of the Alternative Procedures, it may do so provided it submits written notification prior to obligation of its first debris removal project. The process for participating in and preparing projects under the Alternative Procedures is further detailed at www.fema.gov/alternative-procedures.

(a) *Accelerated Debris Removal – Increased Federal Cost Share*

With the Accelerated Debris Removal Procedure, FEMA increases its Federal cost share above the minimum 75 percent based on the timeframes shown in Table 4. Each percentage applies to the costs related to the work conducted during each timeframe. The timeframe is based on the start date of the incident period.

FEMA will not provide PA funding for costs associated with debris removal activities conducted after 180 days from the start of the incident period, unless FEMA grants an extension. Recipients may not grant time extensions under the Accelerated Debris Removal Procedure. FEMA is unlikely to authorize extensions for weather-related delays or the inability to obtain permits in a timely manner. Additional debris removal beyond the 180 days cannot be completed via DFA.

Table 4. Accelerated Debris Removal Alternative Procedure

| Timeframe (days from start of incident period) | Federal Cost Share |
|---|--|
| 1–30 | 85% |
| 31–90 | 80% |
| 91–180 | 75% |
| 181+ | 0% (unless FEMA approves a time extension) |

To participate in the Accelerated Debris Removal Procedure, the Applicant must apply the procedure to all of its debris removal projects. The projects must reflect actual costs for all debris removal activities conducted from the incident’s start date until the end of the applicable timeframe. FEMA will not process Accelerated Debris Removal projects based on estimates, even for Small Projects.

The Accelerated Debris Removal Procedure is only available for grant assistance. FEMA will not apply this procedure to debris removal conducted via DFA.

(b) *Reimbursement of Straight-Time for Force Account Labor*

Reimbursement of straight-time for the Applicant’s employees conducting debris removal activities is eligible.

(c) *One-Time 2 Percent Increased Federal Cost Share Incentive for a FEMA-Accepted Debris Management Plan*

FEMA encourages State, Territorial, Tribal, and local governments to establish written procedures and guidance for managing debris in an expeditious, efficient, and environmentally sound manner. FEMA refers to this as a Debris Management Plan (DMP). When the Applicant

¹⁶⁹ www.fema.gov/media-library/assets/documents/89675.

has both a FEMA-accepted DMP and pre-qualified¹⁷⁰ debris removal contractors before the start of the incident period, the Applicant may request the DMP incentive under the Alternative Procedures. The incentive consists of an additional 2 percent Federal cost share for debris removal activities conducted within 90 days from the start of the incident period. The Applicant must implement the DMP for that incident. FEMA will only provide this incentive toward one incident for each Applicant during the Alternative Procedures Pilot Program for Debris Removal.

The content of a DMP will vary depending on State, Territorial, Tribal, and local vulnerabilities, ordinances, zoning, critical infrastructure locations, disposal locations, and other localized factors. The following 10 elements are the basic components of a comprehensive DMP:

- Debris management overview
- Incidents and assumptions
- Debris collection and removal plan
- Debris removal from private property
- Public information
- Health and safety requirements
- Environmental considerations and other regulatory requirements
- Temporary debris management sites and disposal locations
- Force account or contract resources and procurement
- Monitoring of debris operations

FEMA's [Debris Management Plan Job Aid \(Appendix D\)](#) discusses each of these components in detail.

Pre-qualified Contractor

The Applicant must have pre-qualified contractors in order to be eligible for the additional 2 percent Federal cost share. A pre-qualified contractor is one that the Applicant 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. To pre-qualify a contractor, the Applicant:

- Should identify the qualifications during the development of its DMP, which should include specific contract requirements, and explain how it established the qualifications;
- Should ensure pre-qualification procedures do not restrict full and open competition and should document its justification for the use of pre-qualified contractors in procurements using Federal funds; and
- Must ensure that the list is current and includes enough qualified sources to ensure maximum full and open competition.

A pre-qualified contractor is not entitled to a “stand-by” contract. The Applicant must still conduct full and open competition that meets the requirements of [Chapter 2:V.G](#). The Applicant must allow additional contractors to qualify during the solicitation period.

¹⁷⁰ 2 CFR § 200.319(d).

Review and Acceptance

The Applicant should submit its DMP to the State or Territory for review and coordination. The State or Territory should review the DMP to ensure that it meets the overall intent of establishing processes and procedures to remove debris expeditiously, efficiently, and in an environmentally sound manner and subsequently forward it to FEMA. FEMA reviews the DMP to confirm that it sufficiently addresses each of the components. FEMA generally provides its determination of whether the DMP is acceptable within 30 days of receipt of the DMP.

FEMA's review and acceptance of the DMP does not constitute FEMA approval of any operational component of the plan and does not commit FEMA to funding any aspect of the plan. FEMA determines the eligibility of costs for debris removal and management based on established PA Program authorities, regulations, policies and guidance.

(d) Recycling Revenue

Standard PA Program

If the Applicant receives revenue for recycling debris, FEMA reduces PA funding by the amount of revenue received. The Applicant may deduct costs for administering and marketing the sale of the salvageable materials from the fair market value.

If a contract allows the contractor to take possession of salvageable material and benefit from its sale to lower bid prices, there is no salvage value to be recovered at the end of the project. Therefore, the Applicant has no further obligation to FEMA.

Alternative Procedures Pilot Program

One of the alternative procedures authorizes the Applicant to retain revenue received through recycling if used prior to the period of performance deadline for any of the following purposes:

- To offset the non-Federal cost share of the Applicant's debris projects
- To develop disaster preparedness and assistance plans, programs, and capabilities
- To reduce the risk of future damage, hardship, or suffering from an incident
- To improve future debris removal operations or planning, including, but not limited to, the following:
 - Developing, updating, or revising DMPs
 - Enhancing Applicant-owned landfills and debris management sites
 - Installing mechanisms to control the flow of debris in future incidents (e.g., debris trash racks, K-Rail debris guards, silt fences)
 - Purchasing equipment to facilitate sorting, reducing, recycling, or removing debris (e.g., street sweepers, shredders, backhoes, balers, sorting conveyors)
 - Purchasing software and hardware products to facilitate quantifying debris
 - Purchasing onboard weight measurement systems for debris-collection trucks



Recycling Revenue

- Standard Program: Applicant cannot retain; FEMA reduces PA funding by the amount of revenue received.
- Alternative Procedures: Applicant may retain if used for an approved purpose.

- Purchasing software systems for debris load management to assist in tracking trucks, drivers, and routes

FEMA does not provide PA funding for the cost of establishing or managing the recycling program or process, or additional sorting or processing of debris for recycling purposes.

The Applicant must provide written notification of the revenue received. It should submit this information within 30 days of completion of its debris removal operations. This should include the completion date of the debris removal operations, the quantity and types of debris recycled, and the cost for processing the debris for recycling. The Applicant must provide an accounting of how it used the revenue. It should submit this information within 90 days of the period of performance deadline.

If the Applicant does not use the revenue for an authorized purpose, FEMA reduces PA funding by the amount of the recycling revenue.

2. Hazardous Limbs, Trees, and Stumps

Eligible vegetative debris may include tree limbs, branches, stumps, or trees that are still in place, but damaged to the extent they pose an immediate threat. These items are not eligible if the hazard existed prior to the incident, or if the item is in a natural area and does not extend over improved property or public-use areas, such as trails, sidewalks, or playgrounds.

Contractors typically charge debris removal based on a unit price for volume (cubic yards) or weight (tons). A hazardous tree or stump may be collected individually. When these items are collected individually, contractors often charge a price per tree or stump based on its size. FEMA encourages Applicants to procure branch or limb removal from trees on a one-time charge per tree basis as opposed to a unit price per limb or branch to facilitate more cost-effective operations. FEMA has specific eligibility criteria and documentation requirements for funding these items based on a price per each item instead of by volume or weight. If the Applicant does not provide sufficient documentation, it will jeopardize its PA funding.

Bracing a tree is eligible (as Category B) only when doing so is less costly than removal and disposal. If the Applicant chooses to brace a tree rather than remove it, the tree is not eligible for removal later if it dies.

Pruning, maintenance, trimming, and landscaping are not eligible.

(a) Broken Limb or Branch Removal

Removal of broken limbs or branches that are 2 inches or larger in diameter (measured at the point of break) that pose an immediate threat are eligible. An example is a broken limb or branch that is hanging over improved property or public-use areas, such as trails, sidewalks, or playgrounds if it could fall and cause injury or damage to improved property.

FEMA does not fund removal of broken limbs or branches located on private property unless:

- The limbs or branches extend over the public ROW;
- The limbs or branches pose an immediate threat; and
- The Applicant removes the hazard from the public ROW (without entering private property).

Only the minimum cut necessary to remove the hazard is eligible. For example, cutting a branch at the trunk is not eligible if the threat can be eliminated by cutting it at the closest main branch junction.

(b) Tree Removal

FEMA considers incident-damaged trees to be hazardous and eligible if the tree has a diameter of 6 inches or greater measured 4.5 feet above ground level, and the tree:

- Has a split trunk;
- Has a broken canopy; or
- Is leaning at an angle greater than 30 degrees.

For trees that have 50 percent or more of the root-ball exposed, removal of the tree and root-ball and filling the root-ball hole are eligible. For contracted removal of a tree with a root-ball, FEMA will not reimburse two separate unit costs to remove the tree and its root-ball.

For trees that have less than 50 percent of the root-ball exposed, FEMA only provides PA funding to flush cut the item at ground level and dispose of the cut portion based on volume or weight. Grinding any residual stump after cutting the tree is not eligible.

(c) Stump Removal

For stumps that have 50 percent or more of the root-ball exposed, removal of the stump and filling the root-ball hole are eligible. If grinding a stump in-place is less costly than extraction, grinding the stump in-place is eligible.

Stump removal in areas with known or high potential for archaeological resources usually requires that FEMA further evaluate and consult with the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO). If the Applicant discovers any potential archeological resources during stump removal, the Applicant must immediately cease work and notify FEMA.

Contracted Stump Removal

FEMA only reimburses contracted costs charged on a per-stump basis if:

- The stump is 2 feet or larger in diameter measured 2 feet above the ground; and
- Extraction is required as part of the removal.

The Applicant needs to ensure the price for stump removal includes extraction, transport, disposal, and filling the root-ball hole.

For stumps that have less than 50 percent of the root-ball exposed, FEMA only provides PA funding to flush cut the item at ground level and dispose of the cut portion based on volume or weight. Grinding any residual stump is not eligible.

For stumps smaller than 2 feet in diameter, or for stumps of any size that do not require extraction, FEMA only provides PA funding based on volume or weight as removal of these stumps does not require special equipment. If the Applicant claims reimbursement of these stumps on a per stump basis, FEMA limits PA funding based on a unit price for volume or tons, calculated using the [Stump Conversion Table \(Appendix E\)](#).

If the Applicant incurs additional costs in picking up stumps 2 feet or larger in diameter that the contractor did not extract, it should complete the [Hazardous Stump Worksheet \(Appendix F\)](#) and present documentation to substantiate the costs as reasonable based on the equipment required to perform the work.

(d) *Documentation Requirements*

The Applicant must provide all of the following documentation to support the eligibility of removing tree limbs, branches, stumps, or trees that are still in place:

- Specifics of the immediate threat with the U.S. National Grid (USNG) location and photograph or video documentation that establishes the item is on public property;
- Diameter of each item removed (measurement must be 2 feet up the trunk from the ground for stumps and 4.5 feet up for trees);
- Quantity of material to fill root-ball holes; and
- Equipment used to perform the work.

3. Hazardous Materials

Removal and disposal of pollutants and hazardous substances are eligible. Eligible activities include:

- Separation of hazardous materials from other debris
- Specialized procedures for handling and disposing of hazardous materials
- Control or stabilization of the hazardous material
- Pumping and treating water contaminated with the hazardous material
- Clean-up and disposal of the hazardous material

Testing for contaminants in water, air, or soil necessary to ensure elimination of the immediate threat is eligible, but testing for the purpose of long-term cleanup actions is not eligible.

The Applicant must comply with Federal, State, Territorial, Tribal, and local government environmental requirements for handling hazardous materials. Before handling or disposing of hazardous materials, the Applicant should contact the appropriate Federal, State, Territorial, or Tribal agency and obtain required permits. Additionally, appropriate certified hazardous waste specialists should handle, capture, recycle, reuse, or dispose of hazardous materials. When providing PA funding for work involving the handling of hazardous materials, FEMA must ensure compliance with the Resource Conservation and Recovery Act (RCRA).

Additionally, the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) authorizes the Federal Government to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. Under CERCLA and the Clean Water Act (CWA), the U.S. Environmental Protection Agency (EPA)¹⁷¹ and the U.S. Coast Guard (USCG) have the authority to respond to actual or potential discharges of oil, hazardous substances, pollutants, and contaminants that may present an imminent and substantial danger to public health or welfare. EPA has responsibility for responses in the inland

¹⁷¹ See Recovery Policy 9523.8, *Mission Assignments for ESF#10*, for discussion on U.S. Environmental Protection Agency (EPA) and U.S. Coast Guard (USCG) authority with respect to removal of hazardous waste: www.fema.gov/media-library/assets/documents/136089.

zone¹⁷² and the USCG has responsibility for responses in the coastal zone.¹⁷³ Response actions may include containment, stabilization, decontamination, collection (e.g., orphan tanks, drums), and disposal.

4. Waterways

Debris removal from waterways that is necessary to eliminate the immediate threat to life, public health and safety, or improved property is eligible. Removal of debris in a waterway that does not meet this criterion is not eligible, even if the debris is deposited by the incident.

EPA and USCG have the specific authority to remove hazardous materials, as described in the previous section. EPA is responsible for removing such material from inland water zones and USCG is responsible for coastal water zones.

(a) Navigable Waterways

If the Applicant has legal responsibility for maintenance of a navigable waterway, removal and disposal of debris that obstructs the passage of vessels is eligible to a maximum depth of 2 feet below the low-tide draft of the largest vessel that utilized the waterway prior to the incident. Any debris below this zone is not eligible unless it is necessary in order to remove debris extending upward into an eligible zone.

If a tree is still rooted to an embankment and is floating or submerged, the cost to cut the tree at the water's edge is eligible.

Debris removal from federally maintained navigable waterways is ineligible. USCG and the U.S. Army Corps of Engineers (USACE) have specific authorities for removal of hazardous substances, vessels, and other obstructions from federally maintained navigable waterways.

(b) Non-navigable Waterways, Including Flood Control Works and Natural Waterways

Debris deposited by the incident may obstruct a natural waterway (that is, a waterway that is not improved or maintained) or a constructed channel, including flood control works. In these cases, removal of the debris from the channel is eligible if the debris poses an immediate threat, such as when the debris:

- Obstructs, or could obstruct, intake structures;
- Could cause damage to structures, such as bridges and culverts; or
- Is causing, or could cause, flooding to improved public or private property during the occurrence of a 5-year flood.

¹⁷² The inland zone is the environment inland of the coastal zone, excluding the Great Lakes and specified ports and harbors on inland rivers. Precise boundaries are identified in Federal regional contingency plans.

¹⁷³ The coastal zone includes coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of coastal States, including islands, transitional and intertidal areas, salt marshes, wetlands, and beaches.

Removal of the obstruction is eligible even in streams where debris removal would also be eligible under the NRCS Emergency Watershed Protection Program (EWP)¹⁷⁴ unless NRCS provides assistance for the debris removal. However, debris removal from flood control works that are under the specific authority of NRCS is not eligible for PA funding, even if NRCS does not have sufficient funding or does not provide assistance.

For flood control works that are eligible for the USACE Rehabilitation and Inspection Program (RIP),¹⁷⁵ debris removal is eligible for PA funding. USACE does not reimburse Applicants for debris removal, but conducts this activity directly when necessary.

(c) Identifying Debris Impact Locations

The Applicant is responsible for identifying debris deposited by the incident that poses an immediate threat. Random surveys to look for debris, including surveys performed using side scan sonar, are not eligible.

However, if the Applicant identifies an area of debris impacts and demonstrates the need for a survey to identify specific immediate threat, FEMA may provide PA funding for the survey in that location, including the use of side scan sonar.

(d) Documentation

For FEMA to determine that debris removal from waterways is eligible, the Applicant must provide documentation that:

- Establishes legal responsibility;
- Includes the basis of the immediate threat determination;
- Identifies locations, types, and quantities of debris; and
- Demonstrates the debris claimed was deposited by the incident and was not pre-existing.

5. Privately Owned Vehicles and Vessels

Removal of privately owned vehicles and vessels is eligible if all of the following conditions are met:

- The vehicle or vessel blocks access to a public-use area;
- The vehicle or vessel is abandoned and the Applicant is unable to identify the owner;
- The Applicant follows applicable State, Territorial, Tribal, and local government ordinances or laws for private vehicle or vessel removal; and
- The Applicant verifies the chain of custody of the vehicle or vessel.



NRCS EWP and USACE RIP

The **NRCS EWP** is an emergency recovery program designed to relieve imminent hazards to life and property caused by floods, fires, windstorms, and other natural occurrences. Activities include, but are not limited to, providing financial and technical assistance to:

- Remove debris from stream channels, road culverts, and bridges
- Reshape and protect eroded banks
- Correct damaged drainage facilities
- Establish cover on critically eroding lands
- Repair levees and structures
- Repair conservation practices

The **USACE RIP** provides rehabilitation assistance for flood risk reduction structures.

¹⁷⁴ See www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/landscape/ewpp.

¹⁷⁵ See www.usace.army.mil/Missions/CivilWorks/LeveeSafetyProgram/LeveeInspections.aspx.

A limited timeframe for vehicle and vessel storage is eligible if it is necessary to remove the item prior to being able to identify the owner. If the owner is subsequently identified, the Applicant must return to FEMA the Federal share of any funds it recovers for storage costs.

6. Debris Removal from Private Property (Requires Prior FEMA Approval)

In limited circumstances, based on the severity of the impact of an incident, FEMA may determine that debris removal from private property is eligible under the PA Program. In making its determination, FEMA evaluates whether the impacts of debris on private property affect the general public in that community and whether the Applicant has legal authority to perform the work.



If debris on private property is so widespread that it threatens public health and safety or the economic recovery of the community, FEMA may provide PA funding for debris removal from private property. This debris removal must be in the public interest, not merely benefiting an individual or a limited group of individuals within the community.¹⁷⁶

In such cases, FEMA works with the State, Territorial, Tribal, and local governments to designate specific areas where debris removal from private property, including private waterways, is eligible.



Clarification of Demolition versus Debris

If more than one wall of a structure is standing, FEMA considers the removal of that structure to be demolition and not debris removal. Demolition is subject to additional documentation to determine eligibility and must comply with [Chapter 2:VI.B.16](#).

(a) *Written Request*

Prior to commencing work on private property, the Applicant must submit a written request and receive approval from FEMA. The written request must include:

- A public interest determination;
- Documentation supporting the Applicant's legal authority to remove the debris; and
- Indemnification.

The Applicant needs to identify the specific properties or areas of properties for which it is requesting approval.

Public Interest Determination

The Applicant must provide the basis for the determination that removing the debris from the private property requested is in the public interest. The determination must be made by the State, Territorial, Tribal, county, or municipal government's public health authority or other public entity that has legal authority to make a determination that disaster-generated debris on private property in the designated area constitutes an immediate threat to life, public health, or safety, or to the economic recovery of the community at large.

¹⁷⁶ Stafford Act § 407, 42 U.S.C. § 5173, and 44 CFR § 206.224(b).

Additionally, the Applicant must submit its established, specific legal requirements for declaring the existence of a threat to public health and safety.

Legal Authority and Responsibility

The Applicant must provide documentation to confirm its legal authority and responsibility to enter private property and remove disaster-related debris. This includes:

- Citation of the law, ordinance, code, or emergency powers for which it is exercising its legal authority to remove debris from private property. The authority cited must be applicable to the condition representing the immediate threat and not merely the Applicant's uniform level of services. Typically, solid waste disposal ordinances are part of an Applicant's uniform level of services and not a justification for entering private property to remove disaster-related debris.
- Confirmation that a legally authorized official of the Applicant has ordered the exercise of public emergency powers or other appropriate authority to enter onto private property in the designated area to remove debris to address immediate threats to life, public health, and safety.

Indemnification

The Applicant must indemnify the Federal Government and its employees, agents, and contractors from any claims arising from the removal of debris from private property.

(b) FEMA Approval

FEMA will provide a written response to the request specifying any properties or area of properties for which debris removal is approved.

The Applicant must provide confirmation that it satisfied all legal processes and obtained permission requirements from the property owners (rights-of-entry) and agreements to indemnify and hold harmless the Federal Government before FEMA will provide PA funding for debris removal from private property.

(c) Debris Removal from Gated Communities

Debris removal from private residential property within a gated community is not eligible. However, if the debris is placed on a private road within the gated community, debris removal from the road may be eligible in accordance with the eligibility and request criteria listed in [Chapter 2.VI.A.6\(a\)](#).

(d) Debris Removal from Commercial Property

Removal of debris from commercial properties, such as industrial parks, golf courses, cemeteries, apartments, condominiums, and trailer parks, is generally ineligible because commercial enterprises are expected to retain insurance that covers debris removal. In very limited, extraordinary circumstances, FEMA may provide an exception. In such cases, the Applicant must meet the requirements of [Chapter 2.VI.A.6\(a\)](#) and [\(b\)](#).

(e) Duplication of Benefits

The Applicant should work with private property owners to pursue and recover insurance proceeds and credit FEMA the Federal share of any insurance proceeds received. In some

circumstances, FEMA may provide IA assistance to individuals for debris removal; consequently, FEMA PA staff will coordinate closely with IA staff to ensure FEMA does not fund the same work under both programs.

7. Disposal

FEMA provides PA funding for various costs related to disposing of debris. The Applicant should dispose of debris in an efficient and cost-effective manner.

Vegetative debris is bulky and can consume a significant volume of landfill space. To minimize the use of landfill space, FEMA encourages the Applicant to reduce the volume of vegetative debris before burying. Costs to reduce vegetative debris using methods such as mulching, grinding, or burning are eligible.

Certain types of construction and demolition debris are reusable or recyclable. The Applicant should conserve landfill space by separating materials for reuse or recycling.

(a) Temporary Staging Sites

Establishing and operating a temporary staging site necessary for the purpose of debris separation and reduction is eligible. The cost to lease property is eligible. Additionally, if the terms of the lease require that the Applicant restore the leased property back to its condition prior to the Applicant's use, the costs related to that restoration are also eligible as part of the Category A project.

(b) Hand-Loaded Trucks and Trailers

FEMA has determined that, for vegetative debris, hand-loaded trucks and trailers achieve approximately half the compaction level of mechanically loaded trucks and trailers. Therefore, FEMA only provides PA funding for 50 percent of the vegetative debris in hand-loaded trucks and trailers.

Similarly, trucks without solid tailgates cannot be compacted to full capacity. Therefore, FEMA will only fund a maximum of 85 percent of the debris in trucks without solid tailgates.

The Applicant must document the types and total quantity of debris that was hand-loaded and the types and total quantity of debris hauled in trucks without solid tailgates and provide this information to FEMA to ensure appropriate reductions are taken for this debris.

(c) Tipping Fees

Landfill tipping fees usually include fixed and variable costs, along with special taxes or fees assessed by the jurisdiction in which the landfill is located. Eligible tipping fee costs are limited to the variable and fixed costs that are directly related to landfill operations, such as recycling tax. The components of tipping fees that are not directly related to landfill operations, such as special taxes or fees related to other government services or



Eligible Tipping Fee Components

Eligible fixed costs include:

- Equipment
- Construction
- Permits
- Landfill closure
- Post-closure activities
- Amortized costs for facilities that support the landfill

Eligible variable costs include:

- Labor
- Supplies
- Maintenance
- Operation of utilities
- Operation of gas recovery systems

public infrastructure, are not eligible as part of the tipping fee. When providing PA funding for tipping fees, FEMA removes any ineligible components.

The Applicant may use a significant portion of the available capacity of a landfill to dispose of incident-related debris. Although FEMA provides PA funding for tipping fees, it cannot provide PA funding for the value of the loss of landfill capacity due to incident-related debris.

8. Monitoring Debris Removal Operations

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. If the Applicant does not monitor contracted debris removal operations, it will jeopardize its PA funding for that work.

The Applicant may use force account resources (including temporary hires), contractors, or a combination of these for monitoring. It is not necessary, or cost-effective, to have Professional Engineers or other certified professionals perform debris monitoring duties. FEMA considers costs unreasonable when associated with the use of staff that are more highly qualified than necessary for the associated work. If the Applicant uses staff with professional qualifications to conduct debris monitoring, it must document the reason it needed staff with those qualifications.

FEMA provides training to the Applicant's force account debris monitors upon request.

Eligible activities associated with debris monitoring include, but are not limited to:

- Field supervisory oversight
- Monitoring contracted debris removal at both the loading and disposal sites
- Compiling documentation, such as load tickets and monitor reports, to substantiate eligible debris
- Training debris monitors on debris removal operations, monitoring responsibilities and documentation processes, and FEMA debris eligibility criteria

B. Emergency Protective Measures (Category B)

Emergency protective measures conducted before, during, and after an incident are eligible if the measures:

- Eliminate or lessen immediate threats to lives, public health, or safety; OR
- Eliminate or lessen immediate threats of significant additional damage to improved public or private property in a cost-effective manner.¹⁷⁷

FEMA may require certification by Federal, State, Territorial, Tribal, or local government officials that a threat exists, including:

- Identification and evaluation of the threat
- Recommendations of the work necessary to cope with the threat¹⁷⁸

¹⁷⁷ 44 CFR § 206.225(a)(3).

¹⁷⁸ 44 CFR § 206.225(a)(2).

Saving Lives and Protecting Public Health and Safety

The following is a list of emergency protective measures and costs that are eligible. These actions save lives or protect public health or safety. This list is not all-inclusive. Some of these actions are discussed in detail below.

- Transporting and pre-positioning equipment and other resources for response
- Flood fighting
- Emergency Operation Center (EOC)-related costs
- Emergency access
- Supplies and commodities
- Medical care and transport
- Evacuation and sheltering, including that provided by another State or Tribal government
- Child care
- Safety inspections
- Animal carcass removal¹⁷⁹
- Demolition of structures¹⁸⁰
- Search and rescue to locate survivors, household pets, and service animals requiring assistance
- Fire fighting
- Security, such as barricades, fencing, or law enforcement
- Use or lease of temporary generators for facilities that provide essential community services
- Dissemination of information to the public to provide warnings and guidance about health and safety hazards using various strategies, such as flyers, public service announcements, or newspaper campaigns
- Searching to locate and recover human remains
- Storage and interment of unidentified human remains
- Mass mortuary services

The following are eligible under limited circumstances based on specific criteria described in each of the referenced sections:

- Expenses related to operating a facility or providing an emergency service (see [Chapter 2:VI.B.2](#))
- Mosquito abatement (see [Chapter 2:VI.B.12](#))
- Repair of residential electrical meters (see [Chapter 2:VI.B.13](#))
- Temporary relocation of essential services, including safe rooms for schools (see [Chapter 2:VI.B.17](#))
- Snow-related activities when specifically authorized in the declaration (see [Chapter 2:VI.B.18](#))

¹⁷⁹ FEMA may fund the removal of animal carcasses as Category A if the removal is part of the Applicant's overall debris disposal operation as opposed to a separate and distinct operation.

¹⁸⁰ FEMA usually reimburses demolition of a public structure as part of the Permanent Work project to replace the facility.

Protecting Improved Property

The following is a list of eligible emergency protective measures to protect improved property,¹⁸¹ some of which are discussed in further detail below. This list is not all-inclusive.

- Constructing emergency berms or temporary levees to provide protection from floodwaters or landslides
- Emergency repairs necessary to prevent further damage, such as covering a damaged roof to prevent infiltration of rainwater
- Buttressing, shoring, or bracing facilities to stabilize them or prevent collapse
- Temporary slope stabilization
- Mold remediation
- Removal and storage of contents from eligible facilities for the purpose of minimizing additional damage
- Extracting water and clearing mud, silt, or other accumulated debris from eligible facilities if the work is conducted expeditiously for the purpose of addressing an immediate threat (if the work is only necessary to restore the facility, it is Permanent Work, not Emergency Work)
- Taking actions to save the lives of animals that are eligible for replacement (see [Chapter 2:VII.H.3\(e\)](#))

Emergency Protective Measures on Private Property

In limited circumstances, FEMA may determine that emergency protective measures conducted on private property are eligible under the PA Program if:

- The immediate threat is widespread, affecting numerous homes and businesses in a community such that it is a threat to the health and safety of the general public in that community;
- The Applicant has legal authority to perform the work; and
- The Applicant obtained rights-of-entry and agreements to indemnify and hold harmless the Federal Government.

Examples of situations where this may occur include:

- Demolition of unsafe private structures that endanger the public
- Pumping of flooded basements
- Pumping of septic tanks or decontamination of wells causing a pollution threat
- Stabilizing a slope

Upon submittal of its claim, the Applicant must include the following support documentation for the work to be eligible:

- A detailed explanation documenting the Applicant's legal authority and responsibility to enter private property;
- The basis for the determination that a threat exists to the general public in that community; and

¹⁸¹ 44 CFR § 206.221(d). Improved property means a structure, facility or item of equipment which was built, constructed or manufactured. Land used for agricultural purposes is not improved property.

- Copies of the rights-of-entry and agreements to indemnify and hold harmless the Federal Government.

If the above criteria are not met, the private property owner may be eligible for assistance under FEMA’s IA Programs. FEMA PA staff will coordinate closely with IA staff to ensure FEMA does not fund the same work under both programs.

Emergency Protective Measures Conducted by Private Nonprofit Organizations

For PNPs, eligible emergency protective measures are generally limited to activities associated with preventing damage to an eligible facility and its contents.

Emergency services are usually the responsibility of State, Territorial, Tribal, or local governments. Therefore, PNPs are generally not legally responsible for those services and FEMA does not provide PA funding to PNPs for the costs associated with providing those services. When a PNP provides emergency services at the request of, and certified by, the legally responsible government entity, FEMA provides PA funding through that government entity as the eligible Applicant. These services include:

- Fire and rescue activities
- Animal control
- Emergency ambulance service for evacuation
- 211 call services, if tracked and related to eligible work
- Other similarly urgent governmental services

PNPs that own or operate a medical or custodial care facility are eligible for direct reimbursement of costs related to patient evacuation. In limited circumstances, FEMA may also reimburse a PNP directly when essential components of a facility are urgently needed to save lives or protect health and safety, such as an emergency room of a PNP hospital or a PNP sewage or water treatment plant.

Additionally, if a PNP volunteer fire department operates based on established agreements with a State, Territorial, Tribal, or local government that designates the volunteer fire department as an official recognized entity legally authorized to provide emergency services in areas of coverage specifically designated by the State, Territorial, Tribal, or local government, FEMA may reimburse the volunteer fire department directly as an eligible Applicant.

1. Pre-positioning Resources

Costs related to pre-positioning resources specifically for the declared incident are eligible if the resources are used in the performance of eligible Emergency Work.

Pre-positioning resources for the purpose of evacuating, or providing emergency medical care during the evacuation period (such as ambulances and busses), is eligible even if those resources are not ultimately used, provided the staging of those resources was necessary and prudent based on the data at the time of staging.

2. Expenses Related to Operating a Facility or Providing a Service

The Applicant may incur additional costs related to operating a facility as a result of the incident because of an increased demand for the services the facility provides.

These additional costs are only eligible if:

- The services are specifically related to eligible emergency actions to save lives or protect public health and safety or improved property;
- The costs are for a limited period of time based on the exigency of the circumstances; and
- The Applicant tracks and documents the additional costs.

Potentially eligible increased operating costs include, but are not limited to, costs for:

- Generators at a hospital or police station
- Water testing and treatment supplies in the immediate aftermath of the incident to counter a specific threat
- Fuel for increased use of a pumping station
- EOC facility costs (e.g., utilities)

Examples of ineligible operating costs include, but are not limited to, costs for:

- Patient care, except as noted in [Chapter 2:VI.B.9](#)
- Administrative activities
- Provision of food, except as noted in [Chapter 2:VI.B.5, 7, and 8](#)
- Obtaining electrical power from an alternate source
- Obtaining water from an alternate source
- School make-up days, including contracted costs for bus service for make-up days
- Provision of fuel for school bus service

For PNPs, operating costs are generally not eligible even if the services are emergency services, unless the PNP performs an emergency service at the request of and certified by the legally responsible government entity. In such case, FEMA provides PA funding through that government entity as the eligible Applicant.

3. Emergency Public Transportation and Communication (DFA only)

A State, Territorial, Tribal, or local government may provide emergency communication services and public transportation when existing systems are damaged to the extent vital functions of community life or incident response are disrupted. The costs of these services are not eligible for reimbursement.¹⁸² However, FEMA may provide short-term DFA for these services.¹⁸³

4. Flood Fighting

Flood fighting activities may include, but are not limited to, sandbagging, dewatering behind a levee by breaching or pumping, or increasing the height of a levee. These activities are eligible if necessary to reduce an immediate threat to life, public health and safety, or improved property. These activities are eligible even if they are associated with a facility that is eligible for the USACE RIP, as USACE cannot reimburse Applicants for flood fighting. However, they are not eligible if associated with flood control works under the specific authority of NRCS.

The repair of deliberate breaches made by the Applicant to accomplish dewatering is eligible as part of the Emergency Work project.

¹⁸² Transportation costs for the purpose of evacuation are eligible for reimbursement as described in [Chapter 2:VI.B.10](#).

¹⁸³ Stafford Act §§ 418 and 419, 42 U.S.C. §§ 5185 and 5186, and 44 CFR § 206.225(c) and (d).

Dewatering agricultural and natural areas behind levees and other water control structures is not eligible.

5. Emergency Operations Centers

The Applicant may use its EOC to direct and coordinate resources and response activities for a period of time. Response activities conducted at EOCs are eligible provided they are associated with eligible work. Costs associated with operating the EOC are also eligible, including, but not limited to:

- Increased utility costs
- Costs to lease a facility
- Supply costs
- Meal costs, as described in [Chapter 2:VI.B.8](#)

6. Emergency Access

There are times when the incident damages or impairs all access routes to an essential community service, or to a community with survivors. If the extent of damage makes these areas inaccessible, work related to providing access may be eligible. This includes debris removal from or emergency repairs to an access facility, such as a road or bridge. Eligible work is limited to that necessary for the access to remain passable.

Removal of debris from a privately owned facility, including those within gated communities, is eligible only when all of the following conditions are met:

- There is no other access point;
- Debris impedes emergency access;
- The Applicant completes all legal processes and obtains rights-of-entry and agreements to indemnify and hold harmless the Federal Government; and
- Work is performed by an eligible Applicant with legal authority to perform the work.

Emergency repairs to a privately owned facility, including those within gated communities, are eligible only when all of the following conditions are met:

- There is no other access point;
- Repair of the damage economically eliminates the need for temporary housing;
- The Applicant completes all legal processes and obtains rights-of-entry and agreements to indemnify and hold harmless the Federal Government; and
- Work is performed by an eligible Applicant with legal authority to perform the work.

Upon submittal of its claim, the Applicant must include documentation supporting that it met the conditions above in order for the work to be eligible.

7. Supplies and Commodities

The purchase of supplies and commodities required for emergency protective measures is eligible.

Costs related to the Applicant purchasing supplies or using its own stock to perform Emergency Work are eligible and reimbursed in accordance with [Chapter 2:V.D](#). Examples include, but are not limited to, safety equipment, personal protective equipment, radios, power tools, sand, and tarps.



Purchasing and packaging life-saving and life-sustaining commodities and providing them to the impacted community are eligible. Examples of such commodities include, but are not limited to, food, water, ice, personal hygiene items, cots, blankets, tarps, plastic sheeting for roof damage, and generators, as well as food and water for household pets and service animals. The cost of delivering these same commodities to unsheltered residents in communities where conditions constitute a level of severity such that these items are not easily accessible for purchase is also eligible. This includes food and water for household pets whose owners are in shelters.

The cost of leasing distribution and storage space for the commodities is also eligible.

8. Meals

Applicants often provide meals for emergency workers. Provision of meals, including beverages and meal supplies, for employees and volunteers engaged in eligible Emergency Work, including those at EOCs, is eligible provided the individuals are not receiving per diem and one of the following circumstances apply:

- Meals are required based on a labor policy or written agreement that meets the requirements of [Chapter 2:V.A.1](#);
- Conditions constitute a level of severity that requires employees to work abnormal, extended work hours without a reasonable amount of time to provide for their own meals; or
- Food or water is not reasonably available for employees to purchase.

FEMA only reimburses the cost of meals that are brought to the work location and purchased in a cost-effective and reasonable manner, such as bulk meals. FEMA does not reimburse costs related to group outings at restaurants or individual meals.¹⁸⁴

9. Medical Care

When the emergency medical delivery system within a declared area is destroyed, severely compromised or overwhelmed, FEMA may fund extraordinary costs associated with operating emergency rooms and with providing temporary facilities for emergency medical care of survivors. Costs associated with emergency medical care should be customary for the emergency

¹⁸⁴ FEMA reimburses meal costs as part of a contract in accordance with the contract terms provided it meets the requirements in [Chapter 2:V.G](#).

medical services provided. Costs are eligible for up to 30 days from the declaration date unless extended by FEMA.

Eligible medical care includes, but is not limited to:

- Triage and medically necessary tests and diagnosis
- Treatment, stabilization, and monitoring
- First-aid assessment and provision of first aid
- A one-time 30-day supply of prescriptions for acute conditions or to replace maintenance prescriptions
- Vaccinations for survivors and emergency workers to prevent outbreaks of infectious and communicable diseases
- Durable medical equipment
- Consumable medical supplies
- Temporary facilities, such as tents or portable buildings for treatment of survivors
- Leased or purchased equipment for use in temporary medical care facilities
- Security for temporary medical care facilities
- Use of ambulances for distributing immunizations and setting up mobile medical units

Long-term medical treatment is not eligible. FEMA determines the reasonableness of these costs based on Medicare's cost-to-charge ratio (a ratio established by Medicare to estimate a medical service provider's actual costs in relation to its charges).

FEMA does not provide PA funding for these costs if underwritten by private insurance, Medicare, Medicaid, or a pre-existing private payment agreement.¹⁸⁵ The Applicant must take reasonable steps to provide documentation on a patient-by-patient basis verifying that insurance coverage or any other source funding including private insurance, Medicaid, or Medicare, has been pursued and does not exist for the costs associated with emergency medical care and emergency medical evacuations.

Ineligible costs include:

- Medical care costs incurred once a survivor is admitted to a medical facility on an inpatient basis
- Costs associated with follow-on treatment of survivors beyond 30 days of the declaration
- Administrative costs associated with the treatment of survivors



Terminology

Durable medical equipment is reusable medical equipment necessary for the treatment of an illness or injury or to prevent a patient's further deterioration. The equipment includes, but is not limited to:

- Oxygen equipment
- Wheelchairs
- Walkers
- Hospital beds
- Crutches
- Other medical equipment

Consumable medical supplies are medical supplies that are ingested, injected, or applied or are for one-time use only, including, but not limited to:

- Medical supplies
- Medications
- Diapers
- Adult incontinence briefs
- Bandages

¹⁸⁵ Stafford Act § 312, 42 U.S.C. § 5155.

10. Evacuation and Sheltering

Evacuation and sheltering of survivors are eligible activities. This includes household pets and service and assistance animals, but not exhibition or livestock animals.

(a) *Evacuation Including Accessible Transportation and Emergency Medical Transportation*

Transportation of evacuees, household pets, service animals, luggage, and durable medical equipment is eligible. This includes emergency medical transportation. The mode of transportation should be customary and appropriate for the work required. Eligible activities include, but are not limited to:

- Transferring patients from inoperable, compromised, or overwhelmed eligible medical or custodial care facilities to another medical facility or to a shelter.
- Transferring patients back to original medical or custodial care facility, when appropriate.
- Transporting survivors, including shelterees, who require emergency medical care to and from the nearest existing or temporary medical care facility equipped to adequately treat the medical emergency. Transport may include emergency air, sea, or ground ambulance services if necessary.
- Use of equipment such as buses, trucks, or other vehicles (including accessible vehicles) to provide one-time transportation to evacuate survivors and their household pets and service and assistance animals to emergency shelters from pre-established pick-up locations. This includes stand-by time for drivers and contracted equipment while waiting to transport survivors.
- Paratransit transportation services, such as vans, minibuses, and buses, (including accessible vehicles) to transport senior citizens, individuals with disabilities (including mobility disabilities) or access and functional needs, individuals in nursing homes and assisted-living facilities, and homebound individuals impacted by the incident.
- Tracking of evacuees, household pets, service animals, luggage, and durable medical equipment. This includes the use of animal microchips for the purpose of tracking evacuated animals.
- Food and water provided during transport.
- Emergency medical care provided during transport, including emergency medical personnel and supply costs.
- Stabilization of individuals injured during evacuation.



Terminology

Household pets are domesticated animals that:

- Are traditionally kept in the home for pleasure rather than for commercial purposes
- Can travel in commercial carriers
- Can be housed in temporary facilities

Examples are dogs, cats, birds, rabbits, rodents, and turtles.

Household pets do not include reptiles (except turtles), amphibians, fish, insects, arachnids, farm animals (including horses), or animals kept for racing purposes.

Service animals are dogs that are individually trained to do work or perform tasks for people with disabilities or access and functional needs.

Assistance animals are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or provide emotional support that alleviates identified symptoms or effects of a person's disability.

Although dogs are the most common type of assistance animal, other animals can also be assistance animals.

- Costs incurred in advance of an incident necessary to prepare for evacuations in threatened areas. Costs may include mobilization of ambulances and other transport equipment. Contracts for staging ambulance services must be part of the State, Territorial, Tribal, or regional evacuation plan. Costs of staging ambulances are eligible even if the incident does not impact the area normally served by those ambulances. PA funding for activating, staging, and using ambulance services ends when any of the following occurs:



- FEMA, and the State, Territorial, or Tribal Government, determines that the incident did not impact the area where it staged ambulances;
- Evacuation and return of medical patients and individuals with disabilities or access and functional needs is complete; or
- The immediate threat caused by the incident has been eliminated and the demand for services has returned to normal operation levels.

FEMA does not provide PA funding for ambulance services that are covered by private insurance, Medicare, Medicaid, or a pre-existing private payment agreement.¹⁸⁶

(b) Sheltering

FEMA provides PA funding to State, Territorial, Tribal, and local government Applicants for costs related to emergency sheltering for survivors. Typically such sheltering occurs in facilities with large open spaces, such as schools, churches, community centers, armories, or other similar facilities. FEMA refers to these shelters as congregate shelters.

Generally, FEMA does not provide PA funding for emergency sheltering in non-congregate environments, which are locations where each individual or household has living space that offers some level of privacy (e.g., hotels, motels, casinos, dormitories, retreat camps, etc.). In limited circumstances, such as when congregate shelters are not available or sufficient, FEMA may reimburse costs related to emergency sheltering provided in non-congregate environments.

FEMA’s Assistant Administrator for Recovery has the authority to approve this policy exception. The Applicant must submit a request for PA funding for costs related to emergency, non-congregate sheltering and obtain FEMA approval prior to sheltering survivors in non-congregate facilities. At a minimum, the Applicant should include the following information in its request:

- Justification for the necessity of non-congregate sheltering;
- Whether the State or Tribal Government has requested Transitional Sheltering Assistance;



Transitional Sheltering Assistance Program

FEMA’s Transitional Sheltering Assistance program provides short-term lodging to eligible survivors who, after an evacuation, cannot return to their homes for an extended period of time because their community is either uninhabitable or inaccessible as a result of the incident.

FEMA implements and manages Transitional Sheltering Assistance directly through a contract agent.

¹⁸⁶ Stafford Act § 312, 42 U.S.C. § 5155.

- The type of non-congregate sheltering available and which type the Applicant intends to utilize;
- An analysis of the available options with the associated costs of each option; and
- The time frame requested (i.e., date of activation and length of time).¹⁸⁷

FEMA will limit any approval to that which is reasonable and necessary to address the needs of the event (generally no more than 30 days). FEMA determines the eligible costs based on the contractual agreement, including reimbursement for repairing damage if it is the Applicant's legal responsibility based on the agreement. The Applicant must obtain FEMA approval for any time extensions, which should include a detailed justification for the continued need and a revised analysis of options, including the costs for each option.

If FEMA approves the request, the Recipient will need to maintain tracking mechanisms to provide sufficient data and documentation to establish eligibility (including the need for non-congregate sheltering resulting from the disaster, reasonableness, and costs). Sufficient documentation includes:

- The number of non-congregate shelterees:
 - By age groups 0-2, 3-6, 7-12, 13-17, 18-21, 22-65, and 66+;
 - With disabilities or access and functional needs;
 - Registered for assistance from FEMA's IA Programs; and
 - Referred to State or non-governmental organization programs for assistance.
- Number of household pets, and assistance and service sheltered and the type of shelter provided (e.g., stand alone, co-located, or co-habitational);
- Length of stay per "household unit;" and
- Number of meals and other services provided.

As with any activity, lack of full documentation may result in FEMA determining that some or all of the costs are ineligible.

Eligible costs related to sheltering include, but are not limited to, the items listed below, as necessary based on the type of shelter and the specific needs of the shelterees. If any of the items listed are donated, including labor, the Applicant may offset the non-Federal share of its eligible Emergency Work projects in accordance with [Chapter 2:V.L](#). Sheltering and caring for household pets is only eligible while the pet owner is in an emergency shelter.

Shelter Facility Costs

- Facility lease or rent, including space for food preparation
- Utilities such as power, water, and telephone
- Minor facility modifications if necessary to make the facility habitable, compliant with the Americans with Disabilities Act (ADA), functional as a child care facility, or functional as an animal shelter
- Restoration to return the facility to its condition prior to use
- Generator costs
- Secure storage space for medical supplies

¹⁸⁷ 44 CFR §§ 206.225(a)(2) and 206.202(c) and (d).

If an eligible State, Territorial, Tribal, or local government Applicant owns or leases the shelter facility, and a volunteer agency operates the shelter, the facility costs described above are eligible. However, the labor costs for the volunteer agency's workers are not eligible (except as a donated resource in accordance with the criteria in [Chapter 2:V.L](#)).

Shelter Staff Costs

- Medical staff
- Personal assistance service staff
- Veterinary staff
- Public Information Officer
- Social workers
- Food service workers
- Custodial and facilities staff
- National Guard personnel (See [Chapter 2:V.J](#))

Shelter Supplies and Commodities

- Hot and cold meals, snacks, beverages, and related supplies for survivors
- Cooking and serving supplies
- Food, water, and bowls for household pets and service and assistance animals
- Durable medical equipment
- Consumable medical supplies
- Medication for animal decontamination and parasite control
- Infant formula, baby food, and diapers
- Refrigerators, microwaves, and crock pots
- Cots, cribs, linens, blankets, pillows, tables, and chairs
- Crates, cages, leashes, and animal transport carriers
- Personal hygiene kits with items such as shampoo, soap, toothpaste, a toothbrush, towels, and washcloths
- Animal cleaning tables and supplies
- Televisions or radios – one per 50 shelterees
- Basic cable service
- Computers – one per 25 shelterees
- Internet service
- Washers and dryers – one of each per 50 shelterees
- Toys and books

Shelter Services

Shelter services are eligible for the time the facility is actively used to shelter survivors.

- Shelter management
- Supervision of paid and volunteer staff
- Cleaning the shelter, linens, and animal crates
- Shelter safety and security

- Use of equipment, such as ambulances, buses, trucks, or other vehicles, to provide sheltering support
- Phone banks for survivors
- Care for survivors with disabilities or access and functional needs, including the provision of the following personal assistance services:
 - Grooming, eating, walking, bathing, toileting, dressing, and undressing
 - Movement between a cot and wheelchair (transferring)
 - Maintaining health and safety
 - Taking medications
 - Communicating or accessing programs and services
- Emergency medical and veterinary services for sheltered survivors, household pets, and service and assistance animals, including:
 - Emergency and immediate life stabilizing care, including necessary prescriptions (not to exceed 30-day supply)
 - Triage, medically necessary tests, diagnosis, treatment, stabilization, and monitoring
 - First-aid assessment
 - Provision of first aid and health information
 - Care for evacuees with chronic conditions
 - Administering vaccinations to shelterees and workers for transmissible or contagious diseases, including, but not limited to, tetanus and hepatitis
 - Administering vaccinations to household pets, and service and assistance animals, for transmissible or contagious diseases, including, but not limited to, Bordetella (kennel cough)
 - Medical waste disposal
 - Mental-health care
 - Outpatient costs for sheltered survivors requiring emergency life-sustaining treatment not available at the shelter for the period of time that a survivor is housed in a congregate shelter. Eligible outpatient services are limited to:
 - Physician services in a hospital outpatient department, urgent care center, or physician's office;
 - Related outpatient hospital services and supplies, including X-rays, laboratory and pathology services, and machine diagnostic tests; and
 - Local professional transport services to and from the nearest hospital equipped to adequately treat the emergency.
- Sheltering self-evacuees (self-evacuee transportation costs are not eligible)
- Costs paid to the American Red Cross (ARC) or other Non-Governmental Organizations (NGO) to operate shelters under a written agreement [costs that ARC or other NGOs incur under their own authorities (i.e., independent of any Federal, State, Tribal, or local request) are not eligible for reimbursement]

(c) *Child Care Services*

FEMA reimburses State, Territorial, Tribal, and local governments for the cost of providing licensed child care services to support sheltered populations. This includes the cost of the labor, facility, supplies, and commodities. Additionally, FEMA may provide PA funding for the cost of

child care services that the eligible Applicant provides to other survivors, and beyond the period of emergency sheltering, with certification that temporary child care is necessary to meet immediate threats to life, public health and safety, or property.

Child care includes services such as:

- Day care for children
- Before- and after-school care

The Applicant may provide these services within a shelter facility or in a separate facility, as appropriate. FEMA PA staff will coordinate with IA staff to ensure there is no duplication with IHP assistance.

(d) Host-State or Host-Tribe Evacuation and Sheltering

If the impacted State or Tribe (Impact-State or Impact-Tribe)¹⁸⁸ has evacuation and sheltering needs beyond its ability to address within its jurisdictional area, it may request assistance either from another State or Tribal Government (Host-State or Host-Tribe)¹⁸⁹ through mutual aid agreements such as EMAC, or from FEMA.

If the Impact-State/Tribe requests assistance directly from another State or Tribal Government, FEMA reimburses costs based on the mutual aid agreement as described in [Chapter 2:V.H](#). FEMA may also provide PA funding to a Host-State/Tribe directly, even if the Impact-State/Tribe already requested assistance directly from that Host-State/Tribe, provided that:

- The Host-State/Tribe agrees to accept evacuees based on need—without restriction;
- The Host-State/Tribe makes at least 10 percent of its normal day-to-day sheltering capacity available;
- An authorized official from the Host-State/Tribe transmits a written agreement of these two terms to FEMA; and
- The Governor or Tribal Chief Executive of the Host-State/Tribe signs the FEMA/Host-State or FEMA/Host-Tribe Agreement pursuant to the terms and conditions in 44 CFR § 206.44, FEMA-State Agreements, to establish the Host-State/Tribe as the Recipient.¹⁹⁰



If the Impact-State/Tribe requests assistance from FEMA, FEMA determines whether potential Host-States/Tribes have sufficient capability to meet some or all of the sheltering and evacuation needs of the Impact-State/Tribe. If FEMA determines a potential Host-State/Tribe has sufficient

¹⁸⁸ Impact-State or Impact-Tribe means the State or Tribal Government for which the President declared an Emergency or Major Disaster and requested FEMA assistance because of a need to evacuate and/or shelter affected individuals outside the State.

¹⁸⁹ Host-State or Host-Tribe means a State or Tribal Government that by agreement with FEMA provides sheltering or evacuation support to evacuees from an Impact-State or Impact-Tribe.

¹⁹⁰ 44 CFR § 206.202(f)(1)(i).

capability and the Host-State/Tribe meets the three conditions described above, FEMA provides PA funding to the Host-State/Tribe directly.¹⁹¹

When FEMA provides PA funding directly to a Host-State/Tribe, FEMA reimburses 100 percent of the Host-State/Tribe's eligible costs, including straight-time and benefits of the Host-State/Tribe's permanent employees¹⁹² so that they have no out-of-pocket costs. In these cases, the Impact-State/Tribe is responsible for the non-Federal cost share and must subsequently reimburse FEMA for the non-Federal cost share of the eligible costs incurred by the Host-State/Tribe. The non-Federal cost share is based on the Category B cost-share amount designated in the declaration. The Impact-State/Tribe cannot offset its non-federal cost share with the Host-State/Tribe's volunteer labor.

In addition to the evacuation and sheltering costs noted in [Chapter 2:VI.B.10](#), FEMA also reimburses Host-States/Tribes for the following:

- Straight-time and benefits of entities' employees that provide assistance under a mutual aid agreement or a contract with the Host-State/Tribe such as a local government or PNP.
- Costs to provide the requested shelter capacity, even if the shelter was underused or not used at all.
- Costs related to arrest and incarceration of evacuees who commit unlawful acts in a Host-State/Tribe congregate shelter, including costs incurred by on-duty law enforcement officers in order to detain, take into custody, or make an arrest (costs of chemical tests, processing, charging, booking, and holding such persons are not eligible costs). Costs to transport a detainee back to the shelter is eligible if the individual was not charged.
- When patients in hospitals in the Impact-State/Tribe are evacuated, transported, and admitted into hospitals in the Host-State/Tribe through mission assignment with U.S. Department of Health and Human Services (HHS), and the patients are treated and discharged but require follow-on care while they await transport and shelters are not available, the costs that a Host-State/Tribe's hospital incurs for hotel rooms during patients' follow-on care until the patients can be transported back to the Impact-State/Tribe, provided that Medicare, Medicaid, or private insurance does not cover these costs.
- Bus or shuttle transport to pick up evacuees at the airport, train station, or bus terminal when the expected plane, train, or bus is re-routed, canceled, or rescheduled.
- Ambulance costs for hospital-to-hospital transfers, provided it is a transfer within the Host-State/Tribe.
- When the Impact-State/Tribe determines that it is safe for re-entry, it will coordinate with the Host-State/Tribe and FEMA to return evacuees, household pets, and service and assistance animals to the Impact-State/Tribe by air, rail, or bus. Return transportation costs are eligible along with food, water, and security during transport.
- Return transportation costs for family members of an Impact-State/Tribe evacuee who was admitted to a hospital after the congregate shelters close.
- When evacuees are discharged from a hospital after all congregate shelters have closed and transportation cannot be arranged for departure on the same day discharged, FEMA will reimburse up to five (5) nights of hotel lodging while awaiting return transport.

¹⁹¹ 44 CFR § 206.208(c)(3).

¹⁹² 44 CFR § 206.202(f)(1)(ii).

- FEMA will reimburse a State agency from the Impact-State/Tribe for the transportation costs and related expenses to transport deceased evacuees and accompanying family members to the Impact-State/Tribe. The costs of State/Tribe-mandated embalming or cremation of the body prior to return are also eligible.

The Host-State/Tribe must determine whether any ambulance or medical service costs are covered by a patient's private insurance, Medicare, Medicaid, or a pre-existing private payment agreement as FEMA will deduct this amount from the Host-State/Tribe's eligible cost.

Fees that a Host-State/Tribe waives for the use of State parks by self-evacuees with recreational vehicles (RVs) are not eligible. Additionally, purchase and distribution of gas cards, bus passes, cash vouchers, debit cards, food vouchers, or direct payments to evacuees are not eligible.

11. Infectious Disease Event

The HHS Centers for Disease Control and Prevention (CDC) has primary authority to enable support and assistance to States, Territorial, or Tribal Governments in response to an infectious disease event. FEMA may provide assistance for the rescue, evacuation, and movement of persons; movement of supplies; and care, shelter, and other essential needs of affected human populations. Any assistance provided by FEMA in response to an infectious disease event is done in coordination with the CDC. The Office of Response and Recovery Fact Sheet FP 104-009-001, *Infectious Disease Event*, provides additional details.¹⁹³

12. Mosquito Abatement

Mosquito abatement measures may be eligible when a State, Territorial, Tribal, or local government public health official validates in writing that a mosquito population poses a specific health threat as discussed further in [Appendix G: Mosquito Abatement](#). FEMA consults with the CDC to determine the eligibility of mosquito abatement activities. FEMA only provides PA funding for the increased cost of mosquito abatement. This is the amount that exceeds the average amount based on the last 3 years of expenses for the same period.

13. Residential Electrical Meters

To reduce the number of survivors needing shelter, FEMA may provide limited PA funding to a State, Territorial, Tribal, or local government to repair residential electrical meters. To receive PA funding, the State, Territorial, Tribal, or local government must:

- Issue a finding of an immediate threat to safety due to loss of power caused by damaged meters or weather heads;
- Request participation in this program; and
- Receive FEMA approval for each identified property.

Only residential properties are eligible for this program. Commercial properties, including apartment complexes, are not eligible.

If approved, the applicable State, Territorial, Tribal, or local government will:

- Obtain a signed right-of-entry from each residential property owner;
- Take reasonable measures to document any known insurance proceeds;
- Contract with licensed electricians to perform electrical meter repair;

¹⁹³ www.fema.gov/media-library/assets/documents/99710.

- Coordinate the work with the property owner, the power company, and the contracted electricians; and
- Be responsible for payment of the non-Federal share.

Eligible work is limited to that associated with repairing damage to items otherwise installed and maintained by a homeowner’s electrician, including the weather head, service cable, and meter socket.

FEMA generally provides PA funding up to \$800 per meter per residential dwelling. This amount includes equipment, materials, labor, and inspection fees to restore the meter to current local codes. It is also inclusive of limited debris clearance if necessary to access the damaged meter or weather head. Removal and disposal of the debris is not eligible. Eligible work is limited to that completed within 30 days from the declaration date unless extended by FEMA.

FEMA does not provide PA funding for repair costs if it is not safe to restore power to the residence or if other impacts would restrict the dwelling from being habitable even after power restoration.

FEMA PA staff will coordinate closely with IA staff to ensure FEMA does not fund the same work under both programs.

14. Safety Inspections

Post-incident safety inspections for public and private facilities are eligible, as well as posting appropriate placards (e.g., “red-tagging” a building that is unsafe).

The specific purpose of the inspection must be to determine whether the facility is safe for entry, occupancy, and lawful use. The Applicant must clearly substantiate that the purpose of the inspection was for safety and not to assess damage. Building inspections are not eligible if the purpose of the inspection is to:

- Determine whether the building is Substantially Damaged for the purpose of compliance with the community’s floodplain management ordinance;
- Determine whether the building needs to be elevated or relocated, in accordance with the community’s floodplain management ordinance; or
- Ensure that repairs are completed in accordance with the community’s building code or standard.

15. Animal Carcasses

Removal and disposal of animal carcasses, including interim processing,¹⁹⁴ is eligible. If the removal and disposal is conducted as part of the overall debris removal operations, the work may be funded as Category A.

FEMA may require certification from the State, Territorial, Tribal, or local government health department, HHS, or the U.S. Department of Agriculture (USDA) that a threat to public health and safety exists.

¹⁹⁴ Interim processing may include burning, incinerating, rendering, mounding, composting, or other pre-processing activities.

When few in number, smaller animal carcasses (e.g., rodents, skunks, or possums) do not usually pose an immediate threat to public health or safety. Removal and disposal of these carcasses is not eligible.

FEMA does not provide PA funding when another Federal agency has authority to provide assistance for carcass removal and disposal. NRCS has authority to remove animal carcasses and to provide technical assistance to the Applicant under its EWP program. The USDA's Farm Service Agency may provide assistance for farmland debris cleanup. The EPA and USCG have authority to provide technical assistance and to remove animal carcasses contaminated with oil, hazardous substances, pollutants, or contaminants.¹⁹⁵

16. Demolition of Private Structures

Emergency demolition of structures located on private property may be eligible when partial or complete collapse is imminent and that collapse poses an immediate threat to the general public.

In some instances, restricting public access to an unsafe structure and the surrounding area, such as securing the area with a fence, is sufficient to alleviate the immediate threat and is more cost-effective than demolition. In these cases, demolition is not eligible.

If a structure is condemned prior to the incident, emergency protective measures related to that structure are not eligible.

FEMA must review the Applicant's demolition process for compliance with all applicable EHP laws, regulations, and EOs.

(a) Conditions for Eligibility

For demolition to be eligible, the Applicant must:

- Certify that the structures are unsafe and pose an immediate threat to lives or public health and safety.
- Provide documentation to confirm its legal authority and responsibility to enter private property and demolish privately owned unsafe structures. This includes:
 - Citation of the law, ordinance, code, or emergency powers for which it is exercising its legal authority to demolish privately owned unsafe structures. The authority cited must be applicable to the structural condition representing the immediate threat and not merely the Applicant's uniform level of services.
 - Confirmation that a legally authorized official of the Applicant has ordered the exercise of public emergency powers or other appropriate authority to enter onto private property in the designated area in order to demolish privately owned unsafe structures and remove the resulting debris.
- Indemnify the Federal Government and its employees, agents, and contractors from any claims arising from the demolition of privately owned unsafe structures and removal of the resulting debris.

Before FEMA will provide PA funding, the Applicant must provide confirmation that it satisfied all legal processes and obtained permission requirements from the property owners (rights-of-

¹⁹⁵ See Recovery Policy 9523.8, *Mission Assignments for ESF#10*, for discussion on EPA and USCG authority with respect to removal of hazardous waste: www.fema.gov/media-library/assets/documents/136089.

entry) and agreements to indemnify and hold harmless the Federal Government. Additionally the Applicant must provide evidence that it obtained all necessary permits and complied with EHP requirements.

(b) Commercially Owned Structures

Demolition of structures owned by commercial enterprises, including businesses, apartments, condominiums, and mobile homes in commercial trailer parks, are generally ineligible as it is expected that the commercial enterprises retain insurance that can and will cover the cost of demolition.

(c) Eligible Work

If FEMA approves the demolition of private structures, eligible work associated with the demolition includes, but is not limited to:

- Capping wells
- Pumping and capping septic tanks
- Filling open below-grade structures, such as basements and swimming pools
- Testing for hazardous materials
- Securing utilities
- Obtaining permits and licenses
- Performing title searches

Fees for permits, licenses, and titles issued directly by the Applicant are not eligible unless the Applicant demonstrates that the fees are above and beyond its normal administrative costs. Overtime labor directly related to issuing these permits, licenses, and titles for facilities that are eligible for demolition is eligible.

The following work is also eligible and may be funded as Category A if the removal and disposal is conducted as part of the overall debris removal operations:

- Removing demolition debris, including personal effects
- Removing hazardous materials, such as asbestos and household hazardous waste

The Applicant should work with the property owner to pursue and recover insurance proceeds and credit FEMA the Federal share of any insurance proceeds recovered. In some circumstances, the property owner may be eligible for IA funding. FEMA PA staff will coordinate closely with IA staff to ensure FEMA does not fund the same work under both programs.

(d) Ineligible Work

Ineligible work associated with the demolition of private structures includes, but is not limited to:

- Removal or covering of concrete pads and driveways except for structures in a FEMA-funded buyout program
- Removal of slabs or foundations that do not present a health or safety hazard, except for structures in a FEMA-funded buyout program through the HMGP (the removal of Substantially Damaged structures and associated facilities acquired through HMGP may be eligible as Category A; see [Chapter 2:VIA](#))

17. Temporary Relocation of Essential Services

If the Applicant provides essential community services at a facility that is unsafe, inaccessible, or destroyed as a result of the incident, temporary relocation of these services to another facility is eligible.¹⁹⁶ Essential community services are those services of a governmental nature that are necessary to save lives, protect property and the public, and preserve the proper function and health of the community at large. These services differ from the list of eligible PNP essential social services.¹⁹⁷ FEMA evaluates the criticality of the service and safety of the facility to determine the need for temporary relocation.

(a) *Eligible for Temporary Relocation: State, Territorial, Tribal, and Local Government Applicants*

Essential community services provided by a State, Territorial, Tribal, or local government Applicant are eligible to be relocated. Services provided by these Applicants that are eligible for temporary relocation are:

- Police
- Fire protection
- Emergency services
- Medical care
- Education
- Election and polling
- Library
- Utility
- Other essential community services

Services provided in administrative and support facilities essential to the provision of the essential community service are also eligible for relocation.

If the Applicant provides the service at a leased, private facility prior to the incident, the service is still eligible to be relocated.

(b) *Eligible for Temporary Relocation: PNPs*

Certain essential community services provided by PNPs are eligible to be relocated, provided the PNP owns and operates the facility in which the services are provided. These services differ from the list of eligible PNP essential social services.¹⁹⁸ PNP services eligible for temporary relocation include:

- Alcohol and drug rehabilitation
- Child care
- Custodial care
- Fire protection and emergency services
- Education
- Homeless shelters
- Libraries

¹⁹⁶ Stafford Act § 403(a)(3)(D), 42 U.S.C 5170b.

¹⁹⁷ Stafford Act § 102(11)(B), 42 U.S.C. 5122, and 44 CFR § 206.221(e)(7).

¹⁹⁸ Ibid.

- Medical care
- Utilities
- Other facilities that provide public health and safety services of a governmental nature

Services provided in support facilities, such as administration buildings and hospital laundry facilities, essential to the operation of such facilities may also be eligible for relocation.

(c) Ineligible for Temporary Relocation

Facilities that do not provide essential community services are ineligible for temporary relocation. These include facilities such as museums, zoos, community centers, shelter workshops, performing arts centers, recreation and parking facilities, athletic stadiums, research and warehouse facilities, and student union buildings.¹⁹⁹

(d) Determining Eligibility for Temporary Relocation

FEMA determines the eligibility of relocating services to another facility based on the safety of the damaged facility as follows:

- If the facility can be made usable with the performance of emergency protective measures or minor repairs, a temporary facility may not be eligible.
- If the damage is to the extent that it cannot be occupied safely and restoration cannot be completed without suspending operations of the facility for an unacceptable period of time, then a temporary facility may be eligible.
- If the facility is not damaged but lacks a critical utility or operational item, such as potable water, electricity, or road access, and a temporary facility will restore services to the community before the restoration of the disrupted critical utility or operational item at the current site, then a temporary facility may be eligible.

The capacity of the temporary facility must not exceed the pre-disaster capacity of the facility that housed the displaced services. The Applicant must use the temporary facility to provide the eligible service to the same extent and manner as was provided prior to the incident.

Relocation to a site that requires ground disturbance or alteration of an existing property requires EHP review before the Applicant implements the action.

FEMA does not require the Applicant to obtain and maintain insurance for temporary facilities.

If the Applicant has a facility that does not meet eligibility requirements for temporary relocation and the facility's damage is to such an extent that the contents are at risk, FEMA may provide PA funding for temporary space to store the contents as an emergency protective measure if the space is:

- Limited to an area necessary to house the contents;
- Used solely for storage; and
- Not intended for public access, alternate office space, exhibits, or other purposes.

FEMA is not responsible for damage that may occur to contents in temporary storage.

¹⁹⁹ Ibid.

(e) *Lease, Purchase, or Construct*

The Applicant may lease, purchase, or construct a temporary facility. The Applicant needs to make the decision to rent or purchase space and equipment based on the most cost-effective and practical option. The Applicant must provide FEMA with a cost analysis,²⁰⁰ which should include at least three proposals with cost estimates based on the timeline to restore the original facility. Cost estimates for leasing a facility must account for the entire timeline of the project.

FEMA does not mandate that the Applicant pursue a specific option for a temporary facility, but FEMA only provides PA funding for the most cost-effective option.

If the Applicant relocates a service from a facility it owns, the lease costs of a temporary facility are eligible provided that leasing is the most cost-effective option. If the Applicant was leasing the damaged facility and had to temporarily relocate to another leased facility, the increase in rent is eligible.

Purchasing or constructing a temporary facility is eligible if FEMA confirms that it is the most cost-effective option. With the exception of modular or manufactured units, the Applicant must obtain FEMA approval prior to purchasing or constructing the facility.

(f) *Safe Rooms for Temporary School Facilities*

Funding for accessible safe rooms as part of a temporary school facility may be eligible if the damaged school contained a safe room or other space that served as a storm shelter and there are no other cost-effective, reasonable alternatives available to address the safety needs of the students and faculty. If approved, the safe room capacity is based on student population and the number of faculty who are expected to use the temporary school facility. The capacity of the safe room cannot exceed the pre-disaster capacity of the safe room in the damaged school. The safe room should be available no later than the opening day of classes at the temporary facility.

If the Applicant wishes to seek funding for a safe room as part of a temporary school facility, it needs to submit a written request and obtain prior approval from FEMA. The request needs to include:

- A description of the safe room or safe space that was used as a storm shelter prior to the incident;
- The population of students and faculty that need access to the safe room;
- Verification that no other cost-effective reasonable alternatives are within proximity that can be used as a safe space for the school population; and
- An indication that the Applicant will have the safe room installed and operational when school resumes and students occupy the temporary classroom space.

Safe rooms provided as part of a temporary school facility must comply with the requirements of *Safe Rooms for Tornadoes and Hurricanes, Guidance for Community and Residential Safe Rooms* (FEMA P-361).²⁰¹

The timeframe for providing PA funding for the temporary safe room space coincides with the approved timeframe for providing PA funding for the temporary school facility.

²⁰⁰ 2 CFR § 318(d).

²⁰¹ www.fema.gov/media-library/assets/documents/3140.

(g) Temporary Relocation Costs

Eligible work or costs associated with the provision of temporary facilities include, but are not limited to:

- Rental or purchase of equipment necessary to continue the services in the temporary facility
- Reasonable alterations of the temporary facility, if required to make the space functional based on the pre-disaster use of the damaged facility
- Restoration of the temporary facility to its pre-disaster condition when no longer needed
- Moving expenses to and from the temporary facility
- Minimal life-safety or other building upgrades required by an applicable code or standard in effect at the time the temporary facility is purchased or leased
- Public outreach and messaging costs necessary to inform the public that the service will temporarily be provided at a different location

FEMA does not provide PA funding for utility, maintenance, or operating costs in a temporary facility, even if these costs increase.

(h) Time Limitations

The regulatory time limitation for temporary facilities (Emergency Work) is 6 months from the declaration date.²⁰²

Depending on the extent of damage to the facility, the Applicant may be unable to restore the facility to its pre-disaster design and function within 6 months. Normally, the Recipient has the authority to extend the deadline for Emergency Work for up to 6 additional months.²⁰³ However, for temporary facilities, FEMA must approve any extensions to the project deadline.

FEMA considers the timeframe necessary to restore the damaged facility when evaluating time extensions for temporary facilities. If the Applicant requests funding for a temporary facility and knows at that time that the restoration of the original facility will exceed 6 months, FEMA may approve additional time and funding up to 12 months. If the Applicant needs additional time beyond this 12-month deadline, it must submit a written time extension request that includes the status of work and a timeline for completion.

FEMA only grants additional time if the Applicant begins construction on the damaged facility within 12 months of the declaration date, unless circumstances beyond the control of the Applicant prevented the start of construction within this 12-month timeframe.

(i) Disposition Requirements

If the Applicant purchased or constructed a temporary facility, it must return to FEMA the Federal share of the equity in the facility. The Applicant must report the equity to FEMA when the approved deadline has expired or when the facility is no longer needed for the authorized purpose, whichever occurs first.

If FEMA only funded a portion of the cost of the facility, the Applicant must return to FEMA the Federal share of FEMA's proportionate equity in the facility. The amount due FEMA is

²⁰² 44 CFR § 206.204(c)(1).

²⁰³ 44 CFR § 206.204(c)(2)(ii).

computed by applying FEMA’s percentage of participation in the cost of the purchase or construction to the fair market value or sale proceeds, taking into consideration reasonable out-of-pocket costs related to the sale.

The Applicant may either retain the facility or sell it. If the Applicant disposes of real property (land or structures) acquired with PA funding and acquires replacement real property using funds from the same PA project, the net proceeds of the sale may be used to offset the cost of the replacement property.

18. Snow-Related Activities

When the President declares an incident as a Snowstorm or specifically authorizes snow assistance in a declaration for a Severe Winter Storm, FEMA provides PA funding for impacts related to snow, but the assistance is limited.²⁰⁴ See [Appendix H: Snow Assistance](#), for detailed information.

(a) Limited Time Period

Snow-related activities are eligible for a continuous 48-hour period to address the most critical emergency needs. Each Applicant designates the beginning of its 48-hour period. However, a State agency that conducts snow-related activities in multiple locations throughout a State, such as a Department of Transportation, may use different 48-hour periods for different locations.

Once FEMA approves a project for the Applicant’s designated 48-hour period, the Applicant cannot change its selected period.

If the Applicant awards a contract for periods greater than the 48-hour period, PA funding is limited to the costs incurred during the 48-hour period.

The FEMA Assistant Administrator of the Recovery Directorate may extend the eligible period by 24 hours in counties, parishes, or Tribal Government areas where the snowfall exceeds the historical record snowfall by at least 50 percent.

(b) Eligible Work

Eligible work includes:

- Snow-related activities (for limited time as discussed above):
 - Snow removal
 - Snow dumps
 - De-icing
 - Salting
 - Sanding of roads and other eligible facilities
- Other emergency protective measures (not restricted to the limited time), including but not limited to, search and rescue and sheltering

Limited snow-related activities necessary to carry out emergency protective measures, such as clearing snow in the *immediate* area of a downed power line, are eligible outside of the limited time period and in counties declared but not designated for snow assistance.

²⁰⁴ 44 CFR § 206.227.

For Severe Winter Storm Declarations that do not specifically authorize snow assistance, FEMA only provides PA funding for limited snow-related activities that are necessary to perform otherwise eligible work. For example, snow removal necessary to repair downed power lines is eligible, while normal snow removal from roads is not eligible.

19. Emergency Berms on Beaches

If a natural or engineered beach has eroded to a point where a 5-year flood could damage improved property, cost-effective emergency protective measures on the beach that protect against damage from that flood are eligible.²⁰⁵

Eligible measures typically include the construction of emergency sand berms to protect against additional damage from a 5-year flood. Emergency sand berms are not intended to permanently restore the beach; they are intended only to provide protection from immediate threats. The Applicant may construct emergency berms with sand recovered from the beach or with imported sand. If the Applicant constructs the berm with imported sand, FEMA will only provide PA funding if the sand is from a source that meets applicable environmental regulations and one of the following circumstances exists:

- Recoverable quantities are insufficient; or
- State, Territorial, Tribal, or local government regulations prohibit placement of the recovered sand.

Based on the average expected erosion for a 5-year flood, FEMA only provides PA funding for emergency berms constructed with up to 6 cubic yards per linear foot of sand above the 5-year stillwater elevation or the berm's pre-storm profile, whichever is less. Stillwater elevation is the maximum storm-induced water-surface elevation. In some cases, placing sand below the 5-year stillwater elevation may be necessary to provide a base for the berm. The placement of that sand is also eligible as part of the emergency protective measure.

Placement of dune grass on an emergency berm is only eligible if it is required by permit and is an established, enforced, uniform practice that applies to the construction of all emergency berms within the Applicant's jurisdiction, regardless of the circumstance. The Applicant must include the dune grass placement cost in the berm construction cost when evaluating cost-effectiveness. Any maintenance of the dune grass after the initial installation is not eligible.

20. Temporary Emergency Repair or Stabilization

Temporary emergency repair or stabilization of an eligible facility is eligible as Emergency Work if it eliminates or lessens an immediate threat.²⁰⁶ Work performed under an exigent circumstance that restores the pre-disaster design and function of the facility in accordance with codes and standards is Permanent Work,²⁰⁷ not Emergency Work.

Temporary emergency repair of a facility is not eligible if another Federal agency has the specific authority to provide assistance for the facility,²⁰⁸ such as for:

- Federal-Aid highways – Federal Highway Administration (FHWA)

²⁰⁵ 44 CFR § 206.226(j).

²⁰⁶ 44 CFR § 206.201(b).

²⁰⁷ 44 CFR § 206.201(j).

²⁰⁸ 44 CFR § 206.226(a).

- Flood control works – USACE and NRCS

For Tribal Governments specifically, although the Bureau of Indian Affairs (BIA) or FHWA may have authority to provide temporary emergency repair of Tribal roads, such roads may be eligible for PA funding provided the Tribal Government does not receive funding from BIA or FHWA for the work.

21. Temporary Slope Stabilization

If a landslide or other slope instability is triggered by the incident and poses an immediate threat to life, public health and safety, or improved public or private property, emergency protective measures to stabilize the slope may be eligible.

FEMA only provides PA funding for the least costly option necessary to alleviate the threat. FEMA limits eligible stabilization measures to the area of the immediate threat, not the entire slope. Work must be reasonable relative to the size and scope of the area of instability.

FEMA may authorize funding for post-disaster inspections and limited geotechnical investigations to determine if the instability creates an unsafe condition that poses an immediate threat.

Eligible emergency protective measures include, but are not limited to:

- Temporary drainage measures
- Temporary ground protection to better stabilize the mass (rip rap, sheeting)
- Partial excavation at the head of a sliding mass to reduce its driving force
- Backfilling or buttressing at the toe of a sliding mass using measures such as gabions, rock toes, cribwalls, binwalls, and soldier pile walls
- Installation of barriers to redirect debris flow

22. Mold Remediation

The incident may cause facilities to be inundated or exposed to wet and humid weather conditions for extended periods of time. These conditions may cause growth and spreading of mold in structures and on contents, causing threats to public health and increasing the repair cost.

The following remediation activities may be eligible as emergency protective measures:

- Wet vacuuming, damp wiping, or vacuuming with High-Efficiency Particulate Air (HEPA) equipment of the interior space
- Removal of contaminated gypsum board, plaster (or similar wall finishes), carpet or floor finishes, and ceilings or permanent light fixtures
- Cleaning of contaminated heating and ventilation (including ductwork), plumbing, and air conditioning systems or other mechanical equipment

Pre-remediation mold sampling is only eligible when the sampling reveals the presence of mold. Post-remediation sampling is eligible to confirm that remediation is complete.

The Applicant may use a variety of mold cleanup methods to remediate mold damage based on the extent of damage and type of damaged material. [Appendix I: Mold Remediation](#), provides information for consideration when developing a SOW for mold remediation. The Applicant must follow applicable State, Territorial, Tribal, and local government guidelines for mold sampling and remediation.

FEMA only provides PA funding for mold sampling performed by an indoor environmental professional, such as a Certified Industrial Hygienist, Certified Indoor Environmental Consultant, or Certified Microbial Consultant. The indoor environmental professional should not be employed by the remediation company to avoid a conflict of interest. FEMA considers technical evaluations performed by licensed professionals when determining the eligibility of mold remediation.

For mold remediation to be eligible, mold must not be a result of poor facility maintenance or failure to take protective measures to prevent the spread of mold in a reasonable time after the incident. If the Applicant can document and justify why it did not take measures to prevent further contamination, or why measures taken were insufficient to prevent further damage, mold remediation may be eligible.

Examples of extenuating circumstances include:

- Disruption of power
- Facility is underwater
- Facility is inaccessible
- Heating, ventilation, and air conditioning (HVAC) equipment is damaged
- Insufficient resources to remediate the entire facility

FEMA evaluates whether the facility had pre-existing water infiltration conditions when determining whether mold remediation is eligible. For this evaluation, FEMA considers whether there is evidence of:

- Improperly sealed windows or exterior vents
- Standing water against an exterior wall
- Poorly maintained drains or gutters with rust or vegetative growth
- Absence of rain gutters
- Leaking ceiling tiles

C. Damage Caused During Performance of Emergency Work (Category A or B)

An Applicant may damage improved property, supplies, or equipment during the performance of eligible emergency response activities or debris removal operations. The repair of this damage is eligible as part of that respective project if the damage was:

- Due to severe conditions resulting from the incident;
- Unavoidable; and
- Not due to improper or excessive use.

Replacement of damaged crops, trees, shrubs, or other ground cover is not eligible, unless the replacement meets the criteria in [Chapter 2:VII.H.5](#).

For equipment damage, FEMA requires maintenance records to demonstrate that the equipment was regularly maintained and in good operational order prior to the incident, and details regarding when, where, and how the damage occurred.

For damage to private property, the repair is eligible if:

- The property is an easement and the Applicant is legally responsible for repairing the damage it causes to the easement; or

- The Applicant leased the property either for sheltering or for a temporary debris staging site, and the lease agreement establishes that the Applicant is legally responsible for the repair.

Damage caused by snow-related activities conducted outside of the authorized period, as described in [Chapter 2:VI.B.18](#), is not eligible.

VII. Permanent Work Eligibility

Permanent Work (Categories C–G) is work required to restore a facility to its pre-disaster design (size and capacity) and function in accordance with applicable codes and standards.²⁰⁹ Temporary emergency repair or stabilization for the purpose of eliminating or lessening an immediate threat is Emergency Work. All Permanent Work is subject to the eligibility of the facility as described in [Chapter 2:III](#) and shown in Figure 13.

Pre-disaster design means the size or capacity of a facility as originally constructed or subsequently modified. It does not mean the capacity at which the Applicant was using the facility at the time of the incident if different from the most recent designed capacity.²¹⁰

Pre-disaster function is the function for which the facility was originally designed or subsequently modified. For example, if an Applicant designed and constructed an administrative building, but later altered it in accordance with applicable construction codes or standards to use as a school, the pre-disaster function would be as a school. If the facility was serving an alternate function at the time of the incident, but was not altered to provide that function, FEMA provides PA funding to restore the facility either to the original pre-disaster function, OR pre-disaster alternate function, whichever costs less.²¹¹

FEMA may approve changes to the pre-disaster design or construction method (including materials) if the changes are required due to access issues, site

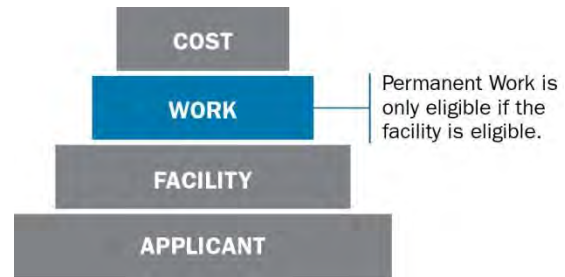


Figure 13. Permanent Work Eligibility



Example of Restoring to Pre-disaster Design

If a school designed for a capacity of 100 students is damaged beyond repair, the eligible funding for the replacement facility is limited to that necessary for 100 students, even if more than 100 students were attending the school prior to the event.



Example of Restoring to Pre-disaster Function

If an Applicant is using an office building as a storage facility at the time of an incident, and it is less costly to restore the facility as a storage facility, only those repairs necessary to restore it as a storage facility are eligible.

Any special lighting or wall and floor finishes that are typical of an office building are not necessary for a storage facility and, therefore, are not eligible.

²⁰⁹ 44 CFR § 206.201(j). Although this section of 44 CFR does not reference function as part of the definition of Permanent Work, 44 CFR § 206.203(d)(2) states that if the Applicant does not restore the function, it is an Alternate Project. See Chapter 2:VII.G. for discussion on Alternate Projects.

²¹⁰ 44 CFR § 206.201(k).

²¹¹ 44 CFR § 206.226(k)(1).

conditions, or to tie in to existing infrastructure. The changes must not impact the capacity or function of the facility. The Applicant must show that the changes are reasonable based on the type and extent of restoration and are consistent with the Applicant's general construction practices.

In cases where ineligible damage, such as a pre-existing condition, if not repaired, may compromise repair of eligible damage, FEMA may make PA funding for repair of the eligible damage contingent upon the Applicant repairing the ineligible damage. For example, FEMA may determine that repairs to a damaged bridge deck are eligible. However, the deck cannot be repaired unless the Applicant replaces rotting timbers that support the deck.

PA funding is always based on pre-disaster size, capacity, and function. However, FEMA allows the Applicant to accept these funds as a capped amount if they wish to utilize the funds differently. Capped projects are detailed in [Chapter 2:VII.G](#).



Hazard Mitigation Plan Requirement for Permanent Work Funding

The Recipient must have a FEMA-approved Hazard Mitigation Plan before FEMA will provide PA funding for any Permanent Work. The plan must show how the Recipient intends to reduce risks from natural hazards and must be updated every 5 years.

Tribal Governments must meet the requirements of 44 CFR § 201.7, Tribal Mitigation Plans. States must meet the requirements of 44 CFR § 201.4, Standard State Mitigation Plans.

The Recipients may also have an Enhanced Mitigation Plan that meets the requirements of 44 CFR § 201.5, Enhanced State Mitigation Plans.

Environmental and Historic Preservation Considerations

The Applicant needs to make every effort to afford FEMA the opportunity to perform EHP reviews prior to the start of construction for any Permanent Work project. Proceeding with Permanent Work before FEMA completes EHP reviews jeopardizes PA funding.²¹²

Permanent Work projects that restore a damaged facility essentially to pre-disaster design are excluded from NEPA review through a STATEX.²¹³ All others require NEPA review. Many qualify for one of the Categorical Exclusions (CATEXs), which are actions that typically have little or no impact on the environment.²¹⁴ Although many projects are statutorily excluded from NEPA review or covered by a CATEX, most projects still require review for compliance with other EHP laws, regulations, and EOs.

Projects that involve changes in the location, footprint, alignment, or size of a facility may have adverse effects on wetlands; floodplains, flood elevations, or upstream/downstream velocities; federally listed threatened and endangered species and their critical habitats; essential fish habitats; historic properties, including archaeological resources; and other environmental or historic resources. When a project has potential to impact the environment or historic properties, it may not qualify for a STATEX or CATEX and will require a higher level of analysis. The most common higher level analysis is referred to as an environmental assessment (EA).²¹⁵ In rare circumstances, a project may require an environmental impact statement (EIS),²¹⁶ the highest level of analysis, which requires a much more detailed analysis than an EA. FEMA is

²¹² Stafford Act § 316, 41 U.S.C. 5159, and 44 CFR Part 19.

²¹³ Stafford Act § 316, 41 U.S.C. 5159.

²¹⁴ FEMA Instruction 108-1, Section 3.2 and DHS Instruction 023-01-001-01, Appendix A.

²¹⁵ FEMA Instruction 108-1, Section 3.2.

²¹⁶ Ibid.

responsible for NEPA compliance and identifying the required level of review.²¹⁷ FEMA may conduct the EA or EIS. If the Applicant chooses to conduct the EA or EIS, it must obtain FEMA approval prior to initiating the EA or EIS and submit the EA or EIS to FEMA for review, approval, and final determination prior to construction. When the Applicant conducts the EA or EIS FEMA reimburses the associated cost based on the cost share of the project.

FEMA is required to consult with Federal, State, Territorial, and Tribal government resource agencies before the Applicant begins work. These agencies may include the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) for impacts to federally-listed threatened and endangered species; and the SHPO or THPO for impacts to historic properties. If the Applicant begins construction work before FEMA completes its EHP review, the Applicant will jeopardize PA funding for that project. FEMA generally cannot conduct consultation with resource agencies after the Applicant initiates work on a project because those agencies lose the ability to consider alternatives that would avoid, minimize, or mitigate adverse effects to the environment or historic properties.

When EHP laws, regulations, or EOs require actions to mitigate adverse effects, the Applicant is responsible for all costs associated with performing the required mitigation measures, unless such actions are directly related to the restoration of disaster-related damage.

FEMA is responsible for reviewing any connected actions associated with a proposed project, even if FEMA is not funding the connected action. Actions are connected if they automatically trigger other actions that may require EISs; cannot or will not proceed unless other actions are taken previously or simultaneously; or are interdependent parts of a larger action and depend on the larger action for their justification.

A. Requirement to Obtain and Maintain Insurance

Applicants that receive PA funding for permanent work to replace, repair, reconstruct, or construct a facility must obtain and maintain insurance to protect the facility against future loss.²¹⁸ This requirement applies to insurable facilities or property (buildings, contents, equipment, and vehicles). FP 206-086-1, *Public Assistance Policy on Insurance*, describes these requirements in detail.²¹⁹

The Applicant must insure facilities with the types and extent of insurance reasonably available, adequate, and necessary to protect against future loss to the property.²²⁰ The type of insurance refers to the hazard(s) that caused the damage and extent refers to the amount of insurance required, which is calculated based on the eligible costs prior to any reductions (including the non-Federal share reduction).

The Applicant is not required to obtain and maintain insurance on facilities with less than \$5,000 in eligible costs (prior to any reductions).²²¹

The Applicant may request that FEMA modify the insurance requirement when:

- The required insurance is not reasonably available,

²¹⁷ Public Law 91-190, 42 U.S.C. 4321–4347.

²¹⁸ Stafford Act § 311, 42 U.S.C. 5154, and 44 CFR 206 Subpart I.

²¹⁹ www.fema.gov/media-library/assets/documents/107564.

²²⁰ Stafford Act § 311, 42 U.S.C. 5154, and 44 CFR 206 Subpart I.

²²¹ 44 CFR § 206.253(d).

- An alternative to the insurance requirement provides adequate protection against future loss to the property, or
- The required insurance is not necessary to protect against future loss to the property.

Additionally, FEMA does not require greater types and amounts of insurance than are certified as reasonably available, adequate, or necessary by the appropriate State Insurance Commissioner.²²² The State Insurance Commissioner cannot waive Federal insurance requirements, but may certify the types and extent of insurance reasonable to protect against future loss to an insurable facility.²²³

The Applicant may comply with the insurance requirement for both flood and non-flood hazards with coverage available through commercial property insurance, which may include blanket insurance policies, standard flood insurance policies, insurance pools, or a combination of these sources.²²⁴ In some cases, with FEMA approval, the Applicant may comply with the insurance requirement using a self-insurance plan.²²⁵

If the Applicant does not comply with the requirement to obtain and maintain insurance, FEMA will deny or deobligate PA funds from the current disaster.

Insurance Reductions and Impact on Facility Eligibility in Subsequent Disasters

If the Applicant does not maintain the required insurance from a previous disaster, then the facility is not eligible for PA funding in a subsequent disaster, regardless of the hazard(s) that caused the damage.²²⁶

When the Applicant receives PA funding for a facility damaged by the same hazard in a subsequent disaster, FEMA reduces funding in this subsequent disaster by the amount of insurance required from the previous disaster. If FEMA or the State Insurance Commissioner certification modified the Applicant’s insurance requirement, FEMA reduces funding by the modified insurance amount. If the Applicant’s anticipated or actual insurance proceeds are higher than the amount of insurance required in the previous disaster, FEMA reduces funding by the anticipated or actual amount of insurance proceeds to avoid a duplication of benefits.

B. Codes and Standards

FEMA provides PA funding to restore facilities on the basis of pre-disaster design and function in conformity with current applicable codes, specifications, and standards.²²⁷

1. Eligibility Criteria

Facility repairs and new construction may “trigger” upgrade requirements established by codes or standards. Upgrades required by Federal, State, Territorial, Tribal, or local repair or replacement codes or standards are eligible only if the code or standard:²²⁸

- Applies to the type of restoration required;

²²² 44 CFR § 206.253(c).

²²³ 44 CFR §§ 206.252(d) and 206.253(c).

²²⁴ 44 CFR § 206.253(b)(2).

²²⁵ Stafford Act § 311(c), 42 U.S.C. 5154 (c), and 44 CFR Part 75.

²²⁶ Stafford Act § 311(b), 42 U.S.C. 5154 (c), and 44 CFR § 206.253(f).

²²⁷ Stafford Act § 406(e), 42 U.S.C. 5172(e), and 44 CFR § 206.226(d).

²²⁸ 44 CFR § 206.226(d).

- Is appropriate to the pre-disaster use of the facility;
- Is reasonable, in writing, formally adopted by the State, Territorial, Tribal, or local government, and implemented by the Applicant on or before the declaration date, OR is a legal Federal requirement;
- Applies uniformly; and
- Was enforced during the time it was in effect.

Applies to the Type of Restoration Required

Codes and standards must apply to the type of restoration required. Codes and standards for new construction are often different than codes and standards for repair work. If FEMA determines a facility is eligible for replacement, compliance with current codes and standards for new construction is eligible. If FEMA determines a facility is not eligible for replacement, only code-required upgrades applicable to repairs are eligible.

A code or standard may include a trigger that requires:

- Upgrades to all structural components; or
- In addition to upgrading all structural components, bringing the non-structural components into conformance with current codes or standards for new construction.

If an upgrade to an entire structural or non-structural system within a building is triggered, the upgrade is only eligible if there is a direct relationship between the upgrade work and eligible damage.²²⁹ Only upgrade work within the same system as the damage is eligible.

FEMA evaluates the eligibility of the work to upgrade or change the configuration of damaged systems for reasonableness with respect to the type and extent of damage.



Examples of Codes or Standards that Do Not Apply to the Restoration Required

An Applicant requests PA funding for the repair of a damaged building and the construction of a parking garage. The Applicant states that while there was no parking garage prior to the incident, zoning codes and other local ordinances require one. Because parking improvements have no relationship to the disaster-related repairs, they do not apply to the type of restoration required and are not eligible.

Similarly, if a code or standard that applies to new construction or the rehabilitation of an entire road requires the construction of paved shoulders, drainage swales, and berms, the construction of these improvements is not eligible for a project involving repairs to discrete damaged portions of the road shoulders.

²²⁹ 44 CFR § 206.223(a)(1).

Appropriate to Pre-disaster Use

Codes and standards must be appropriate to the pre-disaster use of the facility. FEMA determines the eligibility of code-required upgrades based on the facility's pre-disaster design or actual use at the time of the disaster. The least costly of the following is eligible:

- Pre-disaster use of the facility, if serving the same function for which it was originally designed; or
- Alternate use of the facility, if serving an alternate function at the time of the incident.

Reasonable

Codes and standards must be reasonable. When determining reasonableness, FEMA:

- Examines the general reasonableness of the code or standard and the trigger for application of the code or standard;
- Determines whether the upgrade and trigger relate to the type of restoration required by the damage and whether the upgrade and trigger are justified based on the extent of damage;
- Considers whether the upgrade and the trigger are technically defensible from an engineering perspective; and
- Determines whether the cost of the upgrade is reasonable.

FEMA may determine a very large upgrade based on a very low trigger to be unreasonable.

Written, Formally Adopted, and Implemented

Codes and standards must be in writing, formally adopted by the State, Territorial, Tribal, or local government, and implemented by the Applicant on or before the declaration date, OR be a legal Federal requirement, such as a requirement of ADA or seismic safety. An appropriate legislative body or regulatory authority within the jurisdiction must:

- Approve the code or standard;
- Make it a matter of public record; and
- Formally incorporate it into the building code or other applicable ordinance.



Example of a Code or Standard that Is Not Appropriate to the Pre-disaster Use of the Facility

The original design of a facility was a warehouse; however, the Applicant was using the facility as a classroom before the incident. Restoring the facility as a classroom in conformance with classroom codes or standards would not be eligible if it would be more costly than restoring the facility as a warehouse in accordance with code or standards applicable to a warehouse.



Example of Reasonableness

Installation of a code or standard-required new sprinkler system throughout a building is eligible if that building is replaced. However, installation of that sprinkler system is not eligible if the eligible work only involved repair of the building, even if required by the code or standard, unless it is reasonable based on the eligible repair.



Example of a Standard that Is Not in Writing, Formally Adopted, and Implemented

FEMA approves funding to replace a culvert that was washed out by a flood. The State natural resources department denies the Applicant's permit application for replacing the culvert, and recommends the Applicant construct a bridge instead. The decision of the permitting officials is discretionary and not based on a written and formally adopted code or standard; therefore, the bridge construction is not eligible.

The code or standard must apply to the facility in question. For example, if a State has jurisdiction over a particular type of work and formally adopts a code or standard related to that work, a Tribal or local government in that State does not necessarily have had to formally adopt the code or standard for it to apply to its facility. The Tribal or local government meets the above requirement as long as it shows that it implements the code or standard consistently.

FEMA does not recognize codes or standards adopted by a PNP specifically for its facilities when determining whether compliance with codes or standards is eligible. FEMA also does not accept codes or standards adopted by agencies or divisions of State, Territorial, or local governments that are not authorized to set codes or standards within the broad governmental jurisdiction of the State, Territorial, or local government.

Applies Uniformly

Codes and standards must apply uniformly to all similar types of facilities, whether private or public, eligible or ineligible, in the Applicant's jurisdiction or (if applicable) in a particular hazard zone within its jurisdiction.

For FEMA to find that a code or standard and its triggers are uniformly applied, the code or standard must meet all of the following conditions. The code or standard must:

- Provide for uniform accountability in the event of noncompliance;
- Not be subject to discretionary enforcement by public officials; and
- Not allow for selective application.

A code or standard must meet three tests to demonstrate that it is not selectively applied:

- The upgrade is generally triggered regardless of the cause of damage and is also triggered for renovations or improvements.
- The code or standard is applied regardless of the source of funding for the work.
- The code or standard is not applied selectively based on the availability of funds.

Enforced

The code or standard must have been enforced during the time it was in effect. FEMA may provide PA funding for costs related to an upgrade based on confirmation of previous enforcement and in reliance on continued enforcement. If the local jurisdiction subsequently violates this criterion, no further work to comply with the code or standard is eligible within the local jurisdiction.

If FEMA determines a jurisdiction has had no reasonable opportunity to enforce the code or



Example of a Standard that Does Not Apply Uniformly

A local jurisdiction has authority over all facilities, both public and private. A statewide code or standard imposes seismic retrofit requirements for all public buildings, but not for privately owned buildings. The seismic retrofitting is not eligible as it does not apply uniformly to all similar types of facilities within the Applicant's jurisdiction.



Example of a Code or Standard that Was Not Enforced While in Effect

An Applicant requests funding to upgrade the foundation of several damaged trailers based on a code requirement applying to repairs to trailers and installation of new trailers. The Applicant installed several new trailers after the incident and did not use the code or standard-required foundation. The upgrades to the foundation of the damaged trailers are not eligible because the Applicant did not enforce the standard.

standard, the upgrade may be eligible. A reasonable opportunity to enforce may be lacking when a code or standard is new or when a facility affected by the code or standard has not been damaged during the time the code or standard was in effect.

2. FEMA Required Minimum Codes and Standards

If the building is eligible for repair, replacement, or is being constructed as an improved or alternate project,²³⁰ FEMA generally requires that the Applicant incorporate the natural hazard-resistant codes and standards and related provisions referenced in the most recent published edition of the International Code Council's (ICC) International Building Code (IBC), International Existing Building Code (IEBC), or International Residential Code (IRC) into the building design and construction.²³¹ This includes natural hazard-resistant provisions, such as tornado, wind, seismic, and flood as identified in the IBC, IEBC, or IRC regardless of the type of incident that caused the damage. In accordance with these codes and standards, the Risk Category of the eligible building determines the applicable tornado, wind, seismic, flood, snow, ice, and rain loads.²³² FEMA provides PA funding for the eligible increased cost associated with meeting these codes and standards at the cost-share for the disaster.

Generally, the IBC, IEBC, or IRC apply when a building:

- Is substantially damaged;²³³
- Suffered substantial structural damage;²³⁴ or
- Is eligible for replacement in accordance with 44 CFR part 206.226(f).²³⁵

The determination of whether a code or standard is triggered may be made by:

- A building official or inspector;
- The Recipient's or Applicant's registered design professional; or
- Other appropriate and qualified individual.

FEMA will generally accept this determination, but may review the determination to ensure it is consistent with the above codes and standards and other PA policies. FEMA may deviate from this policy in circumstances where utilization of the codes or standards would create an extraordinary burden on the applicant or would otherwise be inappropriate for the facility.

²³⁰ This includes Alternative Procedure Projects. Per Stafford Act § 428, 42 U.S.C. § 5189f, and 44 CFR § 206.203(d), funding for these types of projects is capped at the cost to restore the facility to its pre-disaster design and function in accordance with codes and standards, including the required codes and standards referenced in this section, that would be applicable to the building if rebuilt as it existed.

²³¹ FEMA determined that these codes represent the minimum adequate standards which are generally necessary to protect the Federal investment of PA funding. Stafford Act §§ 323 and 406(e), 42 U.S.C. §§ 5165a, 5172, and 44 CFR § 206.400.

²³² Risk Category is defined in the International Building Code (IBC) as a categorization of buildings and other structures for determination of flood, wind, snow, ice and seismic loads based on the risk associated with unacceptable performance.

²³³ Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

²³⁴ Significant damage to the vertical elements of the lateral force-resisting system or the vertical gravity load-carrying components in accordance with the IBC or International Existing Building Code (IEBC).

²³⁵ Disaster-related damage exceeds 50 percent of the cost to replace a facility to its pre-disaster design and function.

FEMA generally requires that the applicant incorporate these codes and standards in the design of eligible repair, replacement, or construction of the building even if they exceed local codes or standards or in instances where communities have not adopted a building code or standard. If the IBC, IEBC, or IRC have been adopted under another name (for example the California Building Code), it meets the natural hazard-resistant provisions in the model codes, then FEMA will consider the adopted code or standard compliant with the minimum codes and standards requirement. FEMA will evaluate the eligibility of locally adopted natural hazard-resistant building codes or standards that exceed those referenced in the IBC, IEBC, or IRC, based on the criteria found in [Chapter 2:VII.B.1](#).²³⁶

When triggered by the eligible scope of work, natural hazard-specific requirements include, but are not limited to, the following:²³⁷

- In areas where tornado shelter design wind speeds are 250 mph or greater, the Applicant must incorporate a storm shelter or safe room (designed to ICC 500 standards) for elementary and secondary schools with an occupant load of 50 or more, EOCs, 911 call stations, fire stations, rescue stations, ambulance stations, and police stations.
- For wind-resistant requirements, the Applicant must incorporate applicable wind-resistant design and construction standards contained in the IBC, IEBC or IRC and its referenced standards [e.g., American Society of Civil Engineers (ASCE)/Structural Engineering Institute (SEI) 7].
- For seismic-resistant requirements, the Applicant must incorporate applicable seismic-resistant design and construction standards contained in the IBC, IEBC or IRC and its referenced standards (e.g., ASCE/SEI 7 and 41).²³⁸
- For flood-resistant requirements, the Applicant must incorporate applicable flood-resistant design and construction standards contained in the IBC, IEBC or IRC and its referenced standards (e.g., ASCE/SEI 7 and 24).²³⁹

FEMA also provides PA funding for costs associated with meeting the load requirements in the most recent IBC, IEBC, and IRC for snow, rain, and ice loads.

Costs related to conforming to these codes and standards are generally eligible. These codes and standards must apply to the type of restoration required (e.g., repair or construction), be appropriate to the pre-disaster use of the facility, and be reasonable.

Upon completion of the project, the Applicant must provide proof of compliance.²⁴⁰ Acceptable forms of proof include, but are not limited to:

- A written certification by a registered design professional that the natural hazard-resistant design elements comply with IBC, IEBC, or IRC requirements; or
- A valid certificate of occupancy from the local building department that supports that

²³⁶ 44 CFR § 206.226(d).

²³⁷ See www.fema.gov/building-code-resources for additional guidance on natural hazard-specific standard requirements.

²³⁸ These seismic-resistant requirements are also mandated by EO 13717, *Establishing a Federal Earthquake Risk Management Standard*.

²³⁹ Eligible projects involving substantial improvement or new construction in the flood hazard area may be required to meet the floodproofing or elevation requirements as described in 44 CFR § 9.11(d), or the IBC, IEBC, or International Residential Code (IRC), whichever is higher.

²⁴⁰ Stafford Act § 323, 42 U.S.C. § 5165a, and 44 CFR § 206.402.

the project was constructed or repaired as designed.

Non-compliance may result in denial or de-obligation of PA funding for the facility. Therefore, the Applicant should work with its local building department and any other authorities having jurisdiction to ensure compliance with this and other Federal, State, Territorial, Tribal, and local government code and standard requirements.

3. Ineligible Upgrades

Upgrades recommended by design standards, guidelines, policies, industry practices, or other non-mandatory provisions are not eligible if the provisions do not meet all of the criteria noted in Chapter 2:VII.B.1. Upgrades that are deemed ineligible, but enhance a facility's ability to resist similar damage in a future incident, may be eligible as hazard mitigation. See [Chapter 2:VII.C](#) for further discussion.

4. Historic Preservation Compliance

(a) Federal Requirement

If the facility is listed in, or meets the criteria to be listed in, the National Register of Historic Places, and an applicable code or standard requires repair in a certain manner, costs associated with work to comply with that code or standard are eligible, even if repair costs exceed replacement costs. This is an exception to the regulatory requirement that when a facility is eligible for replacement, FEMA limits eligible costs to the less expensive of repairs or replacement.²⁴¹ (See discussion on repair versus replacement in [Chapter 2:VII.D.](#))

(b) State, Territorial, or Tribal Government Requirement

If a State, Territorial, or Tribal historic building code or standard requires specific work be performed, FEMA evaluates the code or standard using the eligibility criteria in [Chapter 2:VII.B.1](#). Most State historic building codes and standards encourage code officials to allow *less* intrusive alternatives to requirements of the prevailing codes or standards, but do not require any particular work be performed. As a result, the codes and standards usually fail to meet the eligibility criteria.

5. Floodplain Management and Wetland Protection

When providing PA funding for a project in or impacting a floodplain or wetland, the following requirements apply. The terms in this section are defined in [Chapter 2:VII.F](#).

(a) Minimum Requirement for Structures in a Floodplain

For any structure (walled or roofed buildings, including mobile homes and gas or liquid storage tanks)²⁴² that is built, replaced, or Substantially Improved in a Special Flood Hazard Area (SFHA), the Applicant must, at a minimum, either elevate or floodproof the lowest floor (including the basement) to or above the 100-year base flood elevation (BFE).²⁴³

If the structure houses critical actions and is in the 100-year floodplain, the Applicant must, at a minimum, elevate the lowest floor (including the basement) to or above the 500-year BFE.²⁴⁴ If

²⁴¹ 44 CFR § 206.226(f)(2) and (3).

²⁴² 44 CFR § 9.4.

²⁴³ 44 CFR § 9.11(d)(3)(i) and (iii).

²⁴⁴ 44 CFR § 9.11(d)(3)(i).

the structure is non-residential, the Applicant may opt to floodproof to the required level instead of elevating.²⁴⁵

Similarly, if the structure houses critical actions and is in the 500-year floodplain, the Applicant must elevate the lowest floor (including the basement) to or above the 500-year flood level.²⁴⁶ Again, if the structure is non-residential, the Applicant may opt to floodproof to the required level instead of elevating.²⁴⁷

Further, if the structure is substantially improved in a Coastal High Hazard Area, the Applicant must elevate the facility to the BFE (the 500-year level for critical actions) (including wave height) on open works (walls columns, piers, piles, etc.) and anchor it properly.²⁴⁸ New construction is prohibited in a Coastal High Hazard Area.²⁴⁹

(b) Requirement for Communities Participating in the National Flood Insurance Program

A community that participates in the National Flood Insurance Program (NFIP) must adopt and enforce a floodplain management ordinance that meets or exceeds the minimum NFIP requirements.²⁵⁰ Such an ordinance must contain construction requirements for new construction or Substantial Improvement of buildings located in a SFHA. In addition to other requirements, the ordinance must require that new or Substantially Improved buildings be elevated so that the lowest floor is at or above the BFE or floodproofed to a level equal to or above the BFE (some communities have more restrictive ordinances that require elevation or floodproofing to greater levels.)

Work required for compliance with the floodplain ordinance is eligible provided the ordinance meets the eligibility criteria for codes and standards and the Substantial Improvements are disaster-related repairs. If the cost to repair a facility in accordance with the floodplain ordinance is greater than the cost to replace the facility in accordance with the ordinance, the eligible cost is capped at the replacement cost.

²⁴⁵ 44 CFR § 9.11(d)(3)(iii).

²⁴⁶ 44 CFR § 9.11(d)(3)(ii).

²⁴⁷ 44 CFR § 9.11(d)(3)(iii).

²⁴⁸ 44 CFR § 9.11(d)(2) and (7).

²⁴⁹ 44 CFR § 9.11(d)(1)

²⁵⁰ 44 CFR § 60.3.

6. Americans with Disabilities Act Access Requirements

(a) Federal Requirement

The ADA requires that any public, residential, or workplace facility be accessible to and usable by disabled persons.²⁵¹ FEMA provides PA funding for costs related to Federal ADA accessibility requirements based on the criteria below.

Facilities Eligible for Replacement

When a facility is eligible for replacement, FEMA provides PA funding for compliance with reasonable accessibility requirements triggered by ADA in newly constructed facilities. FEMA provides PA funding regardless of whether the facility was in compliance prior to the incident, provided the Applicant was not cited for an ADA violation.

A new facility is not required to be fully compliant with ADA if the Applicant can demonstrate that it is structurally impractical to meet the requirements.

For some PNPs, exceptions are available for installation of elevators in small buildings less than three stories or less than 3,000 square feet per story. These exceptions do not apply to any publicly owned or operated facility.

Facilities Eligible for Repair

For ADA-relevant repairs, FEMA provides PA funding for required ADA upgrades that have a reasonable and technically supportable relationship to the damaged elements of the facility.

In addition, when disaster-related and ADA-relevant repairs are made to a primary function area of the facility, FEMA provides PA funding to make the path of travel to the primary function area accessible to the maximum extent feasible, including facilities that serve the primary function area. Examples of facilities that serve the primary function area include restrooms, telephones, drinking fountains, pathways, and similar service facilities. Pathways include internal and external paths of travel, such as hallways, sidewalks, and parking lots.



Accessibility Triggers for ADA-Relevant Repairs

An ADA-relevant repair is a repair that affects or could affect the usability of the facility by the disabled. This is referred to as an “alteration” in the ADA.

Only ADA-relevant repairs trigger accessibility requirements; not all repairs are ADA-relevant repairs. Repairs of structural components—flooring, walls, partitions, or load-bearing elements—are considered ADA-relevant repairs.

Alterations to windows, hardware, controls, electrical outlets, and signage and repair of façades (such as dry wall, plaster, and facial brick), whether interior or exterior, are not ADA-relevant repairs.

Activities such as normal maintenance, re-roofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not ADA-relevant repairs, unless they affect the usability of, or access to, an area containing a primary function.



Terminology

A **primary function area** is the area where a major activity occurs for which the facility is intended.

Examples include the dining area of a cafeteria, meeting rooms of a conference center, and public offices providing governmental services to the public.

²⁵¹ 42 U.S.C. 12101, et seq.

PA funding to make the path of travel and service facilities to a repaired primary function area accessible may not exceed 20 percent of the total cost of the repair of the primary function area in an ADA-compliant manner.

For calculation purposes, the total costs of the primary function area repair also include the repair costs of the roof, HVAC system, mechanical rooms, janitorial closets, locker rooms, and private offices directly associated with the repair of the primary function area.

If ADA-relevant repairs are made to areas that also happen to provide access to and usability of the repaired primary function area (damaged walls, stairs, corridors, and restrooms), the cost of those repairs are eligible costs as non-primary function areas and are not applied to the 20-percent capped amount.

When 20 percent is not adequate to meet ADA-accessible path-of-travel and service facility requirements, the Applicant must apply ADA access requirements to the maximum extent possible with the limited funds. The Applicant should make limited changes in the following order of priority:

- Accessible entrance
- Accessible route to the altered area
- At least one accessible restroom for each sex or single unisex restroom
- Phones
- Drinking fountain
- Other elements such as parking, storage, and alarms

If the Applicant was notified of being in violation of an ADA law or building code or standard prior to the incident and was required to bring the facility into compliance, then triggered accessibility requirements related to the violation are not eligible.

Repairs to non-primary function areas do not trigger the path-of-travel and service facility requirements. However, the Applicant must complete the repairs to the non-primary function area in an ADA-compliant manner.

The Applicant is not required by ADA to reconstruct non-damaged areas of a partially damaged facility for ADA access unless they are the path of travel or service facility to a repaired primary function area requiring ADA-relevant repairs.

If the Applicant triggers ADA requirements by engaging in repairs that are not eligible, the cost of those ADA changes are also not eligible.

Some special provisions apply when ADA requirements “threaten or destroy the historic significance of qualified historic buildings and facilities.”²⁵² FEMA will address these provisions during its consultation with the SHPO or THPO and will incorporate them into the agreement regarding the repairs to the building.

(b) State, Territorial, Tribal, or Local Government Requirement

FEMA may provide PA funding for additional State, Territorial, Tribal, or local government ADA requirements. These requirements must meet the eligibility criteria for codes or standards, as described in [Chapter 2:VII.B.1](#).

²⁵² 28 CFR § 36.405.

7. Permit Requirements





If a Federal, State, Territorial, Tribal, or local government permitting agency requires additional work based on a code or standard that does not meet the eligibility criteria in [Chapter 2:VII.B.1](#), the cost of the additional work is only eligible if the work:

- Does not change the pre-disaster size, capacity, or function of the facility;
- Applies to the type of repair or restoration required;
- Is reasonable based on the type and extent of damage; and
- Is an established, enforced, uniform practice that applies to all similar types of facilities within the Applicant’s jurisdiction, regardless of the circumstance.

C. Hazard Mitigation

Hazard mitigation is any sustained action taken to reduce or eliminate long-term risk to people and property from natural hazards and their effects. FEMA has authority to provide PA funding for cost-effective hazard mitigation measures for facilities damaged by the incident.²⁵³

In addition to providing funding for hazard mitigation under the PA Program, FEMA also provides hazard mitigation funding under its Hazard Mitigation Assistance (HMA) programs. FEMA’s Federal Insurance and Mitigation Administration administers the HMA programs, which are briefly described in Figure 14. The eligibility criteria, procedures, and timelines for implementation of the hazard mitigation measures funded under the HMA programs differ from the hazard mitigation measures funded under the PA Program.

| Stafford Act Section 406 | Stafford Act Section 404 | National Flood Insurance Act of 1968 NFIA | Stafford Act Section 203 |
|--|--|--|---|
| PA Programs | HMA Programs | | |
| <i>Disaster-related programs</i> | <i>Disaster-related programs</i> | | <i>Non-disaster-related programs</i> |
|  <p>PA: Mitigation of incident-caused damage</p> <p>Funding: Available for disaster-damaged facilities only*</p> |  <p>HMGP: Multi-hazard, statewide mitigation</p> <p>Funding: Available for damaged and non-damaged facilities based on a percentage of dollars obligated to the PA and IA programs</p> |  <p>FMA: Flood mitigation for insured properties</p> |  <p>PDM: Multi-hazard, project-specific</p> |
| NOTE: PA = Public Assistance HMA = Hazard Mitigation Assistance HMGP = Hazard Mitigation Grant Program | | FMA = Flood Mitigation Assistance PDM = Pre-Disaster Mitigation IA = Individual Assistance | |

* See exception for Alternative Procedure Projects in Chapter 2, Section VII.G.4(c).

Figure 14. FEMA Hazard Mitigation Programs

FEMA commonly refers to PA-funded hazard mitigation as Section 406 hazard mitigation and mitigation funded under HMGP as Section 404 hazard mitigation. These references are based on the authorizing sections of the Stafford Act.

²⁵³ Stafford Act § 406(e), 42 U.S.C. 5172 (e), and 44 CFR 206.226(e).

The Applicant may use both 406 and 404 mitigation funds to implement mitigation measures on the same facility, but not for the same work. The Applicant cannot use funds from one of these mitigation programs to meet the non-Federal cost share of work funded under the other mitigation program.

This document provides details regarding Section 406 hazard mitigation funding under PA. FEMA's *Hazard Mitigation Assistance Guidance* provides further details on the HMA programs.²⁵⁴

Section 406 Hazard Mitigation

FEMA evaluates proposed mitigation measures for cost-effectiveness, technical feasibility, and compliance with EHP laws, regulations, and EOs. In addition, FEMA ensures that the mitigation does not negatively impact the facility's operation or surrounding areas, or create susceptibility to damage from another hazard.

Mitigation measures must be cost-effective. FEMA considers mitigation measures to be cost-effective if any of the following criteria are met:

- The cost for the mitigation measure does not exceed 15 percent of the total eligible repair cost (prior to any insurance reductions) of the facility or facilities for which the mitigation measure applies.
- The mitigation measure is specifically listed in [Appendix J: Cost-Effective Hazard Mitigation Measures](#), AND the cost of the mitigation measure does not exceed 100 percent of the eligible repair cost (prior to any insurance reductions) of the facility or facilities for which the mitigation measure applies.
- The Recipient or Applicant demonstrates through an acceptable benefit-cost analysis (BCA) methodology that the measure is cost-effective. FEMA's BCA software²⁵⁵ provides appropriate BCA methodologies.

Many mitigation measures that do not meet the first two requirements above prove to be cost-effective based on a BCA. If the mitigation measure is not cost-effective based on the first two criteria, FEMA, the Recipient, and the Applicant will work together to develop a BCA to determine whether it is cost-effective.

A BCA is based on a comparison of the total eligible cost for the mitigation measure to the total value of expected benefits. Benefits include reductions in:

- Damage to the facility and its contents
- The need for emergency protective measures
- The need for temporary facilities
- Loss of function
- Casualties (typically included only for earthquake, tornado, and wildfire mitigation)

²⁵⁴ www.fema.gov/media-library/assets/documents/103279.

²⁵⁵ www.fema.gov/benefit-cost-analysis.

To be eligible, the mitigation measures must directly reduce the potential of future, similar damage to the facility. Generally, eligible mitigation measures are those the Applicant performs on the damaged portion(s) of the facility. If the Applicant proposes mitigation measures that are distinct and separate from the damaged portion(s) of the facility, FEMA evaluates the proposal and determines eligibility on a case-by-case basis considering how the mitigation measure protects the damaged portion(s) of the facility and whether the mitigation measure is reasonable based on the extent of damage. Some examples of such measures include:

- Constructing floodwalls around damaged facilities
- Installing new drainage facilities (including culverts) along a damaged road
- Dry floodproofing both damaged and undamaged buildings that contain components of a system that are functionally interdependent (i.e., cases where the entire system is jeopardized if any one component of the system fails)

If FEMA determines mitigation measures to undamaged portions ineligible as 406 hazard mitigation, the Applicant may request HMGP (Section 404) funding from the State or Territory to provide protection to undamaged portions, while utilizing PA Program (Section 406) mitigation funds to provide protection to damaged portions.

Section 406 hazard mitigation opportunities usually present themselves during facility repair. However, in cases where the Applicant must repair a facility in an expedited manner, it may miss an opportunity to implement mitigation measures during repair. If the Applicant implements mitigation measures after the PA-funded repair is complete, the mitigation work may be eligible; however, FEMA will not provide PA funding for any duplicative work as a result of the subsequent mitigation.

In some instances, the Applicant may implement mitigation measures after the incident occurs but before the incident is declared or before FEMA has the opportunity to evaluate the measure for eligibility. In these cases, the mitigation work may still be eligible if it is cost-effective and FEMA confirms compliance with applicable EHP laws, regulations, and EOs.

If FEMA approves mitigation funding and the Applicant does not complete the mitigation work, FEMA will deobligate the mitigation funds.



Section 404 Hazard Mitigation Grant Program

The Recipient manages HMGP and is responsible for soliciting applications from State, Tribal, and local government agencies. Projects submitted to the Recipient must be in accordance with the Recipient's Hazard Mitigation Plan, address severe detrimental impacts, and have the greatest potential to reduce future losses. Eligible projects include acquisition of hazard-prone property, retrofitting existing buildings and facilities, elevation of flood-prone structures, infrastructure protection measures, and hazard mitigation planning. State, Tribal, and local government agencies should direct questions regarding HMGP to the State Hazard Mitigation Officer: www.fema.gov/state-hazard-mitigation-officers.

D. Repair vs. Replacement

When evaluating whether a damaged facility is eligible for replacement, FEMA compares the repair cost with the replacement cost and evaluates the feasibility of repairing the facility.²⁵⁶

A facility is considered repairable when:

- The cost to repair the disaster-related damage does not exceed 50 percent of the cost to replace the facility based on its pre-disaster size, capacity, and function; and
- It is feasible to repair the facility so that it can perform the pre-disaster function as well as it did prior to the incident.²⁵⁷

The comparison of the repair cost to the replacement cost results in a fraction that expresses repair as a percentage of replacement. The percentage is calculated with the repair cost as the numerator and the replacement costs as the denominator. FEMA refers to this calculation as the “50% Rule.”

1. Calculation

The repair cost (numerator) is the cost of repairing disaster-related damage only and includes costs related to compliance with codes or standards that apply to the repair of the damaged elements only (including federally required codes and standards).²⁵⁸ The numerator does not include costs associated with:

- Upgrades of non-damaged elements even if required by codes or standards (e.g., elevation of an entire facility triggered by repair)
- Demolition beyond that which is essential to repair the damaged elements
- Site work
- Soft costs
- Contents
- Hazard mitigation measures
- Emergency Work



Substantial Damage Determination

A floodplain manager’s Substantial Damage determination (which is part of the NFIP eligibility process and described in [Chapter 2:VII.B.5](#)) is separate and distinct from FEMA’s 50% Rule.

FEMA’s eligibility determination for funding replacement is based on the 50% Rule regardless of a Substantial Damage determination.



Terminology

Soft costs are those not considered as direct construction costs, including:

- Architectural costs
- Engineering costs
- Project management costs
- Financing
- Legal fees
- Other pre-/post-construction expenses

²⁵⁶ 44 CFR § 206.226(f).

²⁵⁷ 44 CFR § 206.226(f)(1).

²⁵⁸ This includes FEMA’s minimum required codes and standards.

The replacement cost (denominator) is the cost of replacing the facility on the basis of its pre-disaster design (size and capacity) and function in accordance with applicable codes or standards. The denominator does not include costs associated with:

- Demolition
- Site work
- Soft costs
- Contents
- Hazard mitigation measures
- Emergency Work



Floodplain Management Ordinance Compliance

The costs to comply with a local floodplain management ordinance that requires elevation or floodproofing of a Substantially Damaged facility in an SFHA are eligible for PA funding. For the purpose of the 50% Rule calculation, these costs are not included in the repair cost of the calculation, but are included in the replacement cost of the calculation.

Although certain costs are not included in the 50% Rule calculation to determine whether the facility is eligible for replacement, the costs may be eligible for PA funding subject to all other eligibility requirements.

2. Written Request

The Applicant should submit its request for replacement within 1 year of the Major Disaster Declaration. The request should include both repair and replacement cost estimates with supporting documentation, prepared in accordance with the requirements described in [Chapter 3:II.D](#).

A FEMA licensed engineer/architect with cost-estimating expertise or a certified cost estimator reviews all requests for replacement and validates the estimates. For any replacement requests over \$5 million, the USACE Center for Excellence for Cost Engineering performs an additional review of the repair and replacement estimates. FEMA considers the results of the USACE review prior to approving replacement.

3. Eligible Funding

If the estimated repair cost exceeds 50 percent of the estimated replacement cost,²⁵⁹ the actual replacement cost is eligible. The Applicant may elect to repair the facility in conformance with applicable codes and standards. In this case, FEMA limits the eligible cost to the estimated cost of repair or replacement, whichever is lower.²⁶⁰

If the repair cost does not exceed 50 percent of the replacement cost, AND upgrades to undamaged elements are triggered by codes or standards, AND the total of both is greater than 100 percent of the estimated replacement cost, FEMA caps the total eligible cost at the estimated replacement cost.

Demolition of a facility that is eligible for replacement is eligible as part of the work to replace the facility. Eligible costs include removal of the associated demolition debris.

²⁵⁹ For repair versus replacement, the term “replacement cost” means the cost of replacement in accordance with applicable codes and standards.

²⁶⁰ 44 CFR § 206.226(f)(2).

With exception of specific projects identified in [Appendix J: Cost Effective Hazard Mitigation Measures](#), 406 hazard mitigation funding cannot be applied to replacement facilities, unless the facility is part of an Alternative Procedures Project (described in [Chapter 2:VII.G.4](#)).

As discussed in [Chapter 2:VII.B.4\(a\)](#), if an applicable code or standard requires that a historic facility be restored in a certain manner and does not allow other options, the cost to restore the facility in accordance with the code or standard is eligible and may exceed the estimated replacement cost.²⁶¹ A historic facility is defined as one listed in, or eligible for listing in, the National Register of Historic Places.

4. Replacement of Components of a Facility or System

FEMA does not apply the 50% Rule to a facility's structural or mechanical components (e.g., windows, roofs, HVAC; electrical, plumbing). For example, FEMA does not apply the 50% Rule to a damaged HVAC system to determine whether the system should be repaired or replaced because it is a component of a building. As long as the HVAC system is repairable, as determined by an inspector or engineer with appropriate technical expertise, FEMA limits its funding to the repair of the system.

For facilities that are systems composed of multiple components that are easily segregated, FEMA applies the 50% Rule to individual components of the system, rather than the system as a whole.

The following are examples of facilities that are systems to which FEMA applies the 50% Rule calculation to individual components:

- Drainage channel or irrigation system: a section from node to node
- Water or sewer line system: a section of piping from manhole to manhole, a lift station, or a manhole structure
- Water or wastewater treatment plant: a control building, clarifier, or sedimentation pond
- Roadway: each damaged roadway section

Electrical distribution systems are evaluated for replacement based on the criteria in [Chapter 2:VII.H.4\(b\)](#).

The following are examples of facilities to which FEMA applies the 50% Rule to the entire facility:

- Bridge
- Culvert
- Building
- Pumping station
- Pier
- Pool, including integral pumping
- Bath house or rest room
- Equipment
- Lighting structure
- Sign

²⁶¹ 44 CFR § 206.226(f)(3).

E. Relocation

FEMA may approve funding for and require restoration and relocation of an Applicant's destroyed (i.e., eligible for replacement) facility at a new location when all of the following conditions apply:

- The facility is subject to repetitive heavy damage because of its location. For example, facilities located in a SFHA are subject to repetitive heavy damage;
- Project approval is not barred by other regulations;²⁶² and
- The overall project, including all costs, is cost-effective. If the cost to relocate the facility is less than the eligible cost to replace the facility at its original location (the value of the land at the original site is not included as part of this evaluation) then the project is cost effective. In instances where the cost of relocation exceeds the cost to replace the facility at its original location FEMA may use its BCA process and software to determine cost effectiveness.

An applicable Federal, State, or local code or standard, such as a floodplain management regulation, may also require that a damaged facility be relocated away from a hazardous area (e.g. floodway). If the facility is destroyed (i.e. eligible for replacement) then FEMA determines whether relocation is cost-effective in the same manner as described above. If the facility is eligible for repair, FEMA may evaluate cost effectiveness using its BCA process and software²⁶³ to compare the benefits of the damage prevented to the facility at its original location against the cost of replacement and relocation at the new location.

If relocation is not feasible or cost effective, the Applicant may request an Improved, Alternate, or Alternative Procedure project as detailed in [Chapter 2.VII.G](#).

1. Eligible Work and Funding

Eligible work associated with relocation includes land acquisition and construction of necessary support facilities, such as roads, parking lots, and utilities. Demolition and removal of the original facility are also eligible if deemed necessary.²⁶⁴ FEMA limits PA funding to the amount necessary to make the relocated facility and its associated components operational.

FEMA considers the proximity of the new site to utilities (water, sewer, and electric) and approves the least costly solution. Construction of an off-site support facility is only eligible if it is a utility that would serve the relocated facility exclusively.

For land acquisition, if the facility was located on 10 acres of land at the time of the incident, and FEMA determines that 10 acres is not necessary for the operation of the facility, FEMA limits PA funding to the necessary amount of land.

In situations where the Applicant owns the facility, but not the land or the support facilities at the original location, the cost to purchase the land or build support facilities is not eligible.

When FEMA requires relocation, FEMA does not provide future PA funding for repair or replacement of the original facility or for other facilities at the original site unless the facility

²⁶² 44 CFR § 206.226(g)(1).

²⁶³ www.fema.gov/benefit-cost-analysis.

²⁶⁴ 44 CFR § 206.226(g)(2).

facilitates an open space use.²⁶⁵ For example, if the Applicant converts the original site to a park, FEMA may provide PA funding in the future for park components, such as benches, tables, restrooms, or gravel roads.

2. Sale or Lease of Property at Original Site

The Applicant may sell or lease the original facility or the land on which a relocated facility was originally located. The Applicant must inform the purchaser of the property that FEMA will not provide future PA funding for repair or replacement of the original facility or for other facilities at the original site unless the facility facilitates an open space use.

The property which the facility is relocated to, and the relocated facility itself, are subject to the real property provisions of 2 CFR part 200 including disposition and reporting requirements under 2 CFR §§ 200.311 and 329, respectively.

If the Applicant takes an action, such as demolition, using PA funds at the original site, FEMA must complete an EHP review before the action occurs.

F. Facility Located in or Impacting a Floodplain

When FEMA provides PA funding for restoration of a facility located in or impacting a floodplain, FEMA is required to ensure minimization of harm to or within the floodplain.

1. 8-Step Decision-making Process

FEMA is responsible for determining whether a PA project will have an adverse impact on the 100-year floodplain (500-year floodplain for critical actions). To make this determination, FEMA initiates the 8-Step Decision-making Process defined in 44 CFR § 9.6. As part of this process FEMA evaluates the impacts the project may have on the floodplain and practicable alternatives. FEMA evaluates environmental, social, economic, technical, and legal factors, as defined in 44 CFR § 9.4. Some alternatives may not be eligible for PA funding. FEMA considers

²⁶⁵ 44 CFR § 206.226(g)(3).

whether each alternative identified is eligible for PA funding and, if not, whether the Applicant has funding available to proceed with the alternative without PA funding.

Projects in the 100-year floodplain (500-year floodplain for critical actions) are only eligible if, as a result of completing the 8-step process, FEMA is unable to identify a practicable alternative to restoring the facility within the floodplain. The 8-step process is not required for projects where the repair cost is less than \$5,000.²⁶⁶

2. Facility Located in a Special Flood Hazard Area

SFHAs²⁶⁷ are areas that are subject to inundation during a 100-year flood (a flood having a 1 percent chance of occurrence in a given year).

National Flood Insurance Program

For an NFIP-insurable facility located in an SFHA, FEMA must reduce PA funding when the facility is:

- Located in an area that FEMA has identified as an SFHA for more than 1 year;
- Damaged by flooding; and
- Uninsured for flood loss.

If the Applicant believes that its property is incorrectly identified on a FIRM as being located within the SFHA, it may request a Letter of Map Amendment or Letter of Map Revision from FEMA within 6 months of the declaration. If the Applicant's request is approved and FEMA determines that the property is not located in an SFHA, FEMA may reinstate PA funding. Costs incurred in pursuit of a Letter of Map Amendment or Letter of Map Revision are not eligible for PA funding.

If the Applicant does not have flood insurance for the facility or carries inadequate flood insurance for the insurable facility, FEMA will reduce eligible project costs by the lesser of:



Terminology

FEMA publishes **Flood Insurance Rate Maps (FIRMs)** that identify the following:

- **Special Flood Hazard Area (SFHA):** The land area subject to inundation during a flood having a 1 percent chance of occurring in a given year (also referred to as the base flood or 100-year flood).
- **Base Flood:** The flood which has a one percent chance of being equaled or exceeded in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.
- **Base Flood Elevation (BFE):** The computed elevation to which floodwater is anticipated to rise during the base flood.
- **Coastal High Hazard Area:** The area subject to high velocity waters including but not limited to hurricane wave wash or tsunamis. On a Flood Insurance Rate Map (FIRM), this appears as zone V1-30, VE or V.
- **Floodway:** The portion of the floodplain which is effective in carrying flow, within which this carrying capacity must be preserved and where the flood hazard is generally highest, i.e., where water depths and velocities are the greatest. It is that area which provides for the discharge of the base flood so the cumulative increase in water surface elevation is no more than one foot.

²⁶⁶ 44 CFR § 9.5(c)(13).

²⁶⁷ 44 CFR § 206.251.

- The maximum amount of insurance proceeds that could have been obtained from an NFIP standard flood insurance policy for the building and its contents;²⁶⁸ or
- The value of the building and its contents at the time of the incident.

FEMA does not apply this reduction to PNP facilities in communities that do not participate in the NFIP.²⁶⁹ However, for FEMA to provide PA funding for the PNP facility, the community must agree to participate in the NFIP within 6 months of the declaration and the PNP must purchase the required flood insurance; or the PNP must obtain and maintain flood insurance from another source.²⁷⁰

G. Capped Projects

FEMA provides three options that provide flexibility for the Applicant to use PA funding differently than restoring the pre-disaster design and function of the facility. For these options, FEMA caps the amount of PA funding based on the estimated amount to restore the damaged facility to its pre-disaster design and function, including applicable and federally required codes and standards.²⁷¹

The three capped project options are:

- **Improved Project:**²⁷² A project that restores the pre-disaster function, and at least the same capacity, of the damaged facility and incorporates improvements or changes to its pre-disaster design not required by eligible codes or standards.
- **Alternate Project:**²⁷³ The use of funds toward a project that does not restore the pre-disaster function of the damaged facility. If the Applicant determines the public welfare would not be best served by restoring a damaged facility or its function, it may use the funds toward a different facility (or facilities) that benefit the same community.

²⁶⁸ 44 CFR § 206.252(a).

²⁶⁹ 44 CFR § 206.252(b).

²⁷⁰ Ibid.

²⁷¹ This includes FEMA's minimum required codes and standards.

²⁷² 44 CFR § 206.203(d)(1).

²⁷³ 44 CFR § 206.203(d)(2).



Terminology

A **critical action** is an action for which even a slight chance of flooding is too great. The minimum floodplain of concern for critical actions is the 500-year floodplain (also referred to as the critical action floodplain).

Critical actions are defined in 44 CFR § 9.4, Definitions, which includes examples of actions that FEMA deems critical.

If an action is not specified in 44 CFR Part 9, Floodplain Management and Protection of Wetlands, FEMA utilizes the U.S. Water Resource Council Floodplain Management Guidelines to determine whether a proposed action is deemed a critical action by considering the following:

- The potential for additional impacts if the proposed project is flooded in a future incident (e.g., the facility contains volatile or toxic materials).
- The ability for occupants of buildings such as hospitals, schools, and nursing homes to evacuate in time to avoid loss of life and injury given the flood warning lead-time available in a future incident.
- The potential for emergency services and utilities to become inoperative, or essential and irreplaceable records to be lost if a facility is flooded in a future incident.

The term “critical action” should not be confused with a PNP “critical service” or “critical facility.”

- Alternative Procedures Pilot Program for Permanent Work Project (Large Projects only):²⁷⁴ The use of Large Project funds toward a project(s) that restores the facility to its pre-disaster design and function or toward a project that would otherwise be an Improved or Alternate Project, or other projects, including a combination of projects. This type of capped project offers the maximum amount of funding options to include flexibility with how the Applicant may use the funds and retention of funds not authorized under the standard Improved and Alternate Project options, including the following four alternative procedures:
 - Consolidation of multiple capped projects
 - Elimination of reduced funding for an Alternate Project
 - Retention of excess funds for approved purposes
 - Third-party expert panel²⁷⁵ review for estimates with a Federal share of \$5 million or greater (FEMA requires this review for estimates that exceed \$25 million).

Each of these options is subject to different eligibility and process requirements, which are described in detail below. As FEMA is implementing the Alternative Procedures via a pilot program, FEMA may periodically adjust program specifics. Therefore, FEMA maintains additional policy specifics at www.fema.gov/alternative-procedures.

Capped Amount

As stated above, FEMA caps the amount of PA funding based on the estimated amount to restore the damaged facility to its pre-disaster design and function, including applicable and federally required codes and standards. The capped amount may include a reasonable amount of DAC and soft costs based on the SOW to restore the facility to its pre-disaster design and function. However, the capped amount does not include costs that are only related to, or only triggered by, changes to the pre-disaster design or function of the damaged facility. These include, but are not limited to, costs related to:

- Additional engineering and design
- EHP compliance
- Work required by applicable and federally required codes or standards

For Alternative Procedures Projects specifically, FEMA does not adjust the capped amount even if the Applicant discovers hidden damage during the course of completing previously approved work.

If the Applicant's actual costs exceed the capped amount, FEMA does not approve additional funds.

Alternative Procedures Project: Expert Panel Cost Estimate Review

For an Alternative Procedures Project with an estimated Federal share of at least \$5 million, upon the Applicant's request, FEMA provides a FEMA-funded,²⁷⁶ independent validation of the cost estimate. The validation is conducted by an expert panel composed of design, engineering,

²⁷⁴ Stafford Act § 428, 42 U.S.C. § 5189f.

²⁷⁵ FEMA utilizes the U.S. Army Corps of Engineers (USACE) Center for Excellence for Cost Engineering as the expert panel.

²⁷⁶ The expert panel is fully funded by FEMA and does not require a non-Federal cost share.

construction, cost-estimating, and industry professionals retained by a contractor or another agency with which FEMA has established an agreement for the panel's services. The panel is independent of FEMA, the Recipient, and the Applicant. FEMA also has discretion to direct estimates to the panel for review. FEMA does not use this panel for appeals.

If the Applicant requests this validation, the panel:

- Conducts its review before the Applicant's acceptance and before FEMA's obligation of funds
- Limits its review to issues pertaining to the estimated cost (the panel will not make decisions related to the eligibility of the damage or SOW); however, it may make determinations with regard to incorporation of cost elements relating to project execution that could affect the SOW
- May review cost documentation for completed work, if applicable and necessary

If the estimated amount deemed appropriate by the expert panel is less than the Applicant is willing to accept as a capped amount, the Applicant may forgo the Alternative Procedures and request that FEMA process the project using standard procedures. In these cases, FEMA obligates the project based on the estimated amount determined by the expert panel and final funding is based on actual eligible costs.

Environmental and Historic Preservation Review

Capped projects may involve significant changes to the pre-disaster configuration of a facility (e.g., location, footprint, or size). As with all projects, the Applicant needs to obtain FEMA approval prior to the start of construction so that FEMA can ensure that the project complies with appropriate EHP laws, regulations, and EOs. If the Applicant starts construction prior to FEMA's completion of this review, it will jeopardize PA funding for the entire project.

Insurance

FEMA will reduce the amount of the fixed estimate to account for insurance coverage based on:

- Actual insurance proceeds, if known; or
- Anticipated insurance proceeds based on the Applicant's insurance policy, if the amount of actual proceeds is unknown.

Upon completion of the project, FEMA adjusts the fixed estimate to account for actual insurance proceeds as described in [Chapter 2:V.P.1](#).

The Applicant must obtain and maintain insurance in accordance with FP 206-086-1, *Public Assistance Policy on Insurance*.²⁷⁷

1. Capped Project Approval

Approval requirements differ for each type of capped project.

(a) Improved Project

For Improved Projects, the Applicant must obtain approval from the Recipient.²⁷⁸ If the Improved Project significantly changes the pre-disaster configuration of the facility, the

²⁷⁷ www.fema.gov/media-library/assets/documents/107564.

²⁷⁸ 44 CFR § 206.203(d)(1).

Recipient must forward the request to FEMA to ensure that the Improved Project complies with appropriate EHP laws, regulations, and EOs.

(b) Alternate Project

For Alternate Projects, the Applicant must obtain approval from FEMA. If the Alternate Project involves construction, the Applicant must obtain FEMA approval prior to the start of construction.²⁷⁹

(c) Alternative Procedures Project

For Alternative Procedures Projects, FEMA, the Recipient, and the Applicant must reach agreement on the capped amount within 12 months of the declaration date. Upon request from the Applicant, FEMA may approve a time extension on a project-by-project basis. The Applicant's request must include the circumstances that justify the extension and demonstrate progress on reaching an agreement. In complex or catastrophic incidents, upon request from the Recipient, FEMA may approve an extension for all Applicants.

FEMA, the Recipient, and the Applicant document the agreed upon capped amount with either a Fixed Cost Agreement Letter or a Letter of Undertaking, as appropriate. Once the Applicant signs and submits either the Fixed Cost Agreement Letter or the Letter of Undertaking, it may not revert back to a project funded based on actual costs.

If FEMA, the Recipient, and the Applicant cannot agree on the fixed estimate by the deadline, the project will not be eligible for the Alternative Procedures and FEMA will process it using standard procedures.

Details regarding the process for participating in, and preparing projects under, the Alternative Procedures, along with templates of the Fixed Cost Agreement Letter and Letter of Undertaking are provided at www.fema.gov/alternative-procedures.

2. Capped Project Funding

Once FEMA caps the funding, the type of capped project impacts the maximum Federal funding the Applicant can receive.

(a) Improved Project Funding

Federal funding for an Improved Project is limited to the lesser of the following:

- The Federal share of the approved estimated cost to restore the damaged facility to its pre-disaster design and function; or
- The Federal share of the actual costs of completing the Improved Project.²⁸⁰

FEMA only increases eligible funding for an Improved Project if the Applicant identifies an error or omission in the original SOW or cost estimate related to restoring the facility to its pre-disaster design and function.

²⁷⁹ 44 CFR § 206.203(d)(2)(v).

²⁸⁰ Ibid.

(b) *Alternate Project Funding*

Federal funding for an Alternate Project is capped at the lesser of:

- Ninety percent (75 percent for PNPs) of the Federal share of the estimate to restore the original facility; or
- The Federal share of the actual cost of completing the Alternate Project.²⁸¹

(c) *Alternative Procedures Project*

An Alternative Procedures Project is capped at the Federal share of the estimate to restore the original facility. If the Applicant does not expend all of those funds, it may use the excess funds for approved purposes as described in [Chapter 2:VII.G.3\(c\)](#).

Alternative Procedures Alternate Project

The Applicant may use Alternative Procedures Project funds toward an Alternate Project. In this case, FEMA does not implement the reduction that is applied under the standard program (described in the preceding section). All other Alternate Project requirements under the standard PA Program apply to Alternative Procedures Alternate Projects, such as how the Applicant may or may not use the funds.

3. Use of Capped Project Funds

FEMA has different requirements for how the Applicant can use the funds related to each type of capped project.

(a) *Use of Improved Project Funds*

When restoring a damaged facility, the Applicant may decide to make improvements to the facility. A project that incorporates such improvements is an Improved Project.²⁸² The improved facility must have the same function and at least the same pre-disaster capacity as the damaged facility. The following are examples of Improved Projects:

- Laying asphalt on a gravel road
- Replacing a firehouse that originally had two bays with a firehouse that has three bays
- Incorporating requirements dictated by a code or standard that does not meet PA eligibility criteria
- Relocating a facility when the relocation is not required by FEMA

The Applicant can combine PA funds with funding from another Federal agency to construct the Improved Project. However, the Applicant cannot use funding from another Federal agency toward the non-Federal cost share of the PA-funded project, unless the legislation for the other



Alternate Project Calculation

| | |
|--------------------------------------|-----------|
| Project Estimate of Eligible Damage: | \$100,000 |
| 10% Reduction (25% for PNPs): | x .90 |

| | |
|-------------------------|-----------|
| New Project Amount: | \$ 90,000 |
| 75% Federal Cost Share: | x .75 |

| | |
|---------------------------|----------|
| Maximum Federal Funding:* | \$67,500 |
|---------------------------|----------|

* Applicant must spend at least 90% of the project estimate to receive the maximum amount of Federal funding. PNP Applicants must spend at least 75% of the project estimate.

These reductions are not taken if the project is an Alternative Procedures Project.

²⁸¹ 44 CFR § 206.203(d)(2)(ii) and (iii).

²⁸² 44 CFR § 206.203(d)(1).

grant allows such use. The Community Development Block Grant program²⁸³ is an example of a Federal program that, in certain circumstances, allows its funding to be used to meet the non-Federal share of another Federal grant program.

(b) Use of Alternate Project Funds

An Applicant may determine that the public welfare is not best served by restoring the function of the damaged facility. When this occurs, the Applicant may request approval from FEMA to apply PA funding toward a different project(s). FEMA refers to this as an Alternate Project.²⁸⁴ The Alternate Project must be a permanent project that benefits the general public, serving the same general area that was being served by the original facility. The Applicant may use Alternate Project funds to:

- Repair, expand, mitigate, or construct a facility that would otherwise be an eligible facility under the PA Program²⁸⁵
- Demolish facilities
- Purchase capital equipment that has a useful life of at least 1 year and is equal to, or greater than, \$5,000 per unit
- Fund project shortfalls due to mandatory flood insurance reductions taken from PA Program funding for repairs to buildings in SFHAs (see [Chapter 2:VII.F.2](#))
- Supplement funds for an Improved Project
- Conduct cost-effective hazard mitigation measures, regardless of whether the facility was damaged by the incident and whether the measures reduce the risk of future damage from the same type of incident or of the same type of damage caused by the incident. Alternate Project funds may be use used for hazard mitigation provided that:
 - Funding does not duplicate other FEMA mitigation funding; and
 - Measures reduce the risk of future damage to a facility that is otherwise eligible either under the PA or HMA programs. If the measures are the same type as those eligible for HMA funding, they must meet a need for governmental services and functions or eligible PNP services and functions in the area affected by the incident.

The Applicant may not use Alternate Project funds to:

- Meet budget shortfalls
- Create a new community plan
- Landscape
- Pay for operating expenses²⁸⁶
- Purchase supplies, furniture, or equipment costing less than \$5,000 per unit
- Pay the non-Federal share of any PA project²⁸⁷
- Fund buyouts for mitigation, such as acquisition of flood-prone property to create open space
- Supplement funds on projects that utilize other Federal agency grants

²⁸³ http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs.

²⁸⁴ 44 CFR § 206.203(d)(2).

²⁸⁵ 44 CFR § 206.203(d)(2)(iv).

²⁸⁶ Ibid.

²⁸⁷ Ibid.

- Fund a project located in a FEMA-designated floodway

(c) *Use of Alternative Procedures Project Funds*

When the Applicant agrees to a capped project under the Alternative Procedures, it may utilize any one or more of the following procedures:

- Consolidation of multiple capped projects
- Elimination of reduced funding for Alternate Projects
- Retention of excess funds for approved purposes
- Third-party expert panel review for estimates with a Federal share of \$5 million or greater

The Applicant may use Alternative Procedures Project funds to restore the pre-disaster design and function of the facility or it may use the funds to complete a project with a different design and/or function. The Applicant may use the funds to construct new facilities, purchase equipment, or conduct measures that reduce future risk.

The Applicant may not use the funds for the following:

- Facilities or equipment that are not otherwise eligible for PA funding
- To meet the local cost share for other Federal projects
- To pay down debts, cover budget shortfalls, or meet operating expenses
- To conduct planning and design that go beyond the work related to the project, such as community-wide planning

Consolidated Project

The Applicant may combine two or more capped projects into a single project, creating a Consolidated Project. FEMA caps funding for the Consolidated Project at the aggregate amount of the eligible costs for the formerly separate, individual, capped projects. The Applicant must consolidate each individual project in its entirety (i.e., all sites from the project).



Example of an Alternative Procedures Project

A county road crosses a water course and its adjacent floodplain using five culverts. During the incident, floodwaters overtop the road and damage the crossings, either by washing out the culverts or by damaging the roadway and headwalls. FEMA prepares and approves a subaward with five site sheets to repair or replace each culvert crossing, including hazard mitigation measures to increase the size of the culverts. Subsequently, the Applicant requests that the aggregate funding for the five crossings be used to replace the current configuration with one bridge.



Example of an Alternative Procedures Consolidated Project

The Applicant operates 10 facilities located throughout the declared area. FEMA approves 10 subawards for restoration of each facility and the Applicant accepts 10 capped subawards. The Applicant determines that, because of changes in the local economy and population, the community is best served by re-aligning the facility footprint. The Applicant proposes to demolish four facilities, restore the remaining six, open a new facility in a different location, and construct an administrative building and a community center. As a result, the Applicant requests to consolidate the total amount of funding for all 10 capped subawards into a single subaward to restore six buildings and construct three new buildings.

The Applicant may consolidate projects regardless of the status of construction. It may consolidate projects with different categories of Permanent Work (e.g., by combining Category C and Category E projects) or consolidate within the same category of work (e.g., multiple school-campus locations).

The Applicant may share funding across any of the facilities or sites within the Consolidated Project to meet its post-disaster recovery needs.

The Applicant must notify FEMA of the projects to be consolidated and the final SOW to be completed under the Consolidated Project within 12 months of the declaration date. Upon request from the Applicant, FEMA may approve a time extension for the Applicant to consolidate its capped projects. The Applicant's request must include the circumstances that justify the extension.



Consolidated Project Preparation

In cases where the Applicant decides, prior to obligation, that a Consolidated Project is preferred, in the interest of efficiency, the Consolidated Project can be defined during project formulation (i.e., the facilities being consolidated do not need to be prepared separately, approved, and then consolidated). The fixed funding is based on the eligible SOWs to restore the original damaged facilities to pre-disaster design and function.

Use of Excess Funds

When the Applicant completes the approved SOW of the capped project, leftover funds are excess funds and the Applicant may use these funds for specific approved purposes.

When the Applicant completes an Alternative Procedures Project for less than the capped amount, it must submit its certified final costs to FEMA (through the Recipient) within 90 days of project completion. As part of this submittal, the Applicant must describe its intended use of the excess funds, to include the SOW and project timeline. FEMA will close the original project and prepare a new project to document the approved use of the excess funds and an appropriate deadline for completion. The Applicant may use the excess funds for the following:

- Cost-effective hazard mitigation measures that will reduce the risk of damage in future incidents. The Applicant may use the funds for hazard mitigation on facilities not damaged in the incident, provided the facilities would otherwise be eligible for PA funding, and toward hazard mitigation activities on other Alternative Procedures Projects.
- Activities that improve future PA Program Permanent Work operations, such as training and planning for future disaster recovery operations.

Unacceptable uses include:

- Payment of debts
- Payment of the non-Federal share of PA projects or other Federal awards
- Operating expenses
- Cost overruns on other PA projects (that are not part of the Consolidated Project)
- Incorporation into the community's General Fund
- Restoring a facility not damaged in the declared incident (with the exception of hazard mitigation, as described in [Chapter 2:VII.G.4\(c\)](#))
- Restoring a facility that would not otherwise be eligible for PA funding

Obtain-and-maintain requirements for insurance apply to work funded with excess funds, as appropriate.

4. Retention of 406 Mitigation Funds

If FEMA approves mitigation funds as part of the capped amount, FEMA's allowance for the Applicant to retain those funds depends upon the type of capped project and the SOW being conducted.

(a) Improved Project

If the capped amount for an Improved Project includes mitigation funds and the Applicant either does not complete the mitigation work, or replaces or relocates the original facility, FEMA deobligates the mitigation funds.

(b) Alternate Project

If the SOW to restore a facility includes mitigation, and the Applicant elects to proceed with an Alternate Project, FEMA does not include costs related to the mitigation in the capped amount for the Alternate Project.

(c) Alternative Procedures Project

If the capped amount for an Alternative Procedures Project includes mitigation funds, FEMA may allow the Applicant to retain the mitigation funds on a case-by-case basis. The level of risk reduction achieved for the Alternative Procedures Project must equal, or exceed, the benefit that the Applicant would have achieved through completion of the approved mitigation measures.

5. Funding from a Facility with an Approved Temporary Facility

If FEMA approves a capped project for a facility for which it also approved temporary relocation of the services to a temporary facility, FEMA does not apply funds from the temporary facility toward the capped project. Additionally, continued funding for that temporary facility is restricted as described below.

(a) Improved Project

If FEMA approves an Improved Project for a facility for which it also approved temporary relocation of the services to a temporary facility, the temporary facility is only eligible for PA funding for the estimated amount of time necessary to restore the facility to its pre-disaster design and function. If the actual time to restore the facility with the improvements extends beyond this timeframe and causes the Applicant to continue its use of the temporary facility, FEMA does not reimburse any cost associated with that continued use. However, FEMA may reimburse costs associated with relocating its services back into the facility as part of the approved temporary facility project.

(b) Alternate Project

If FEMA approves an Alternate Project for a facility for which it also approved temporary relocation of the services to a temporary facility, FEMA does not reimburse any temporary facility costs incurred after the date the Applicant requests that Alternate Project.

(c) *Alternative Procedures Project*

If FEMA approves an Alternative Procedures Project for a facility for which it also approved temporary relocation of the services to a temporary facility, continued PA funding for the temporary facility is dependent upon the SOW of the Alternative Procedures Project.

6. Disposition of Original Facility

For Alternate and Alternative Procedures Projects, if the Applicant does not repair, replace, or sell the damaged facility for which the capped project funding was based, and that facility is unsafe if not repaired, the Applicant must render the facility safe and secure (e.g., by restricting access, locking doors and windows, constructing a fence around the property) or demolish it.

If the Applicant receives funds for salvaged components of the facility, FEMA adjusts the capped project by the value or anticipated fair market value of salvaged materials less the estimated costs necessary to demolish the facility, grade the site, or make the facility safe and secure.

For any action at the original site, such as demolition, that is completed using PA funds, FEMA must conduct an EHP review. However, if the Applicant completes the work at the original site using non-PA funds, a FEMA EHP review is not required.

If the Applicant opts to keep a damaged facility for a later use, the facility may be eligible for PA funding in future incidents, provided the Applicant repaired the facility in accordance with current codes and standards, and completed any mitigation measures that FEMA included in the original SOW prior to the incident.

H. Eligibility Considerations by Facility

This section details the types of facilities captured within each category of work along with specific eligibility criteria related to one or more of the facilities within each category. See [Appendix K: Work Eligibility Considerations by Type of Facility](#), for a summary of eligibility by facility type.

1. Roads and Bridges (Category C)

Roads may be paved, gravel, or dirt. Road components include, but may not be limited to:

- Surfaces
- Bases
- Shoulders
- Ditches
- Drainage structures, such as culverts
- Low water crossings
- Associated facilities, such as lighting, sidewalks, guardrails, and signs

Bridge components include, but may not be limited to:

- Decking
- Guardrails
- Girders
- Pavement
- Abutments

- Piers
- Slope protection
- Approaches
- Associated facilities, such as lighting, sidewalks, and signs

Permanent Work to restore roads and bridges is eligible unless restoration is under the specific authority of another Federal Agency such as FHWA. However, for Tribal Governments specifically, although BIA or FHWA may have authority to provide permanent restoration of public Tribal roads, such roads may be eligible for PA funding provided the Tribal Government does not receive funding from BIA or FHWA for the same work.

FHWA has authority to restore public roads under the Emergency Relief (ER) Program²⁸⁸. Roads that are eligible for ER assistance are identified as Federal-aid routes, which include highways on the Federal-aid highway system and all other public roads not classified as local roads or rural minor collectors. The ER Program is activated separately from Presidential declarations under the Stafford Act and may not be activated for all incidents. Federal-aid routes are not eligible for Permanent Work even if the ER Program is not activated or if the program is activated but FHWA does not provide funding for the work. FHWA also has authority to assist with restoration of transportation facilities under the Emergency Relief for Federally Owned Roads Program (ERFO).²⁸⁹

Private roads, including homeowners' association roads, are not eligible. However, roads owned by a Tribal Government may be eligible even if they are not open to the general public.

Work to repair scour or erosion damage to a channel or stream bank is eligible if the repair is necessary to restore the structural integrity of an eligible road, culvert, or bridge. Earthwork in a channel or stream embankment that is not related to restoring the structural integrity of an eligible facility is not eligible.

Maintenance

The incident may cause minor damage to roads that result in damage similar to that which may occur over time from other causes, such as the age of the road, traffic flow, and frequent rain. Therefore, distinguishing between pre-existing damage and damage caused by the incident is often difficult. For the repair of this type of damage to be eligible, the Applicant must demonstrate that the damage was directly caused by the incident.

When evaluating eligibility of reported road damage, in addition to evaluating how the incident caused the damage, FEMA reviews maintenance records or documentation establishing that the Applicant has a routine maintenance program. In the absence of maintenance records, FEMA reviews material purchase invoices and activity logs and inspects other sections of the Applicant's road system to confirm the performance of normal maintenance activities.

Normal maintenance is not eligible. Work to repair potholes or fatigue cracking is generally ineligible as this type of damage is rarely caused directly by one incident.

²⁸⁸ <http://www.fhwa.dot.gov/programadmin/erelief.cfm>

²⁸⁹ <http://flh.fhwa.dot.gov/programs/erfo/>

2. Water Control Facilities (Category D)

Water control facilities are those facilities built for the following purposes:

- Channel alignment
- Recreation
- Navigation
- Land reclamation
- Irrigation
- Maintenance of fish and wildlife habitat
- Interior drainage
- Erosion prevention
- Flood control
- Storm water management

They include:

- Dams and reservoirs
- Levees and floodwalls
- Lined and unlined engineered drainage channels
- Canals
- Aqueducts
- Sediment and debris basins
- Storm water retention and detention basins
- Coastal shoreline protective devices
- Irrigation facilities
- Pumping facilities
- Navigational waterways and shipping channels

(a) *Restoring the Capacity of Channels, Basins, and Reservoirs*

Restoring the pre-disaster carrying or storage capacity of engineered channels, debris and sediment basins, storm water detention and retention basins, and reservoirs may be eligible, but only if the Applicant provides documentation to establish:

- The pre-disaster capacity of the facility; and
- That the Applicant maintains the facility on a regular schedule.

If the Applicant chooses to remove non-incident-related material along with that deposited as a result of the incident, the project is considered an Improved Project.



Documentation Supporting Pre-disaster Capacity

Survey data that is either *recent* or covers a multi-year period such that FEMA is able to determine the amount of new material reasonably attributable to the incident.



Documentation Supporting Regular Maintenance

Written maintenance plan and/or activity logs documenting regular intervals of activity. Applicant logs documenting clearance of blockages in response to resident complaints are not sufficient to substantiate a regular maintenance schedule.

(b) *Flood Control Works*

Flood control works are those structures such as levees, flood walls, flood control channels, and water control structures designed and constructed to have appreciable effects in preventing damage by irregular and unusual rises in water levels.

Generally, flood control works are under the authority of USACE or NRCS and restoration of damaged flood control works under the authority of another Federal agency is not eligible.

Secondary levees riverward of a primary levee are ineligible, unless the secondary levee protects human life.

3. Buildings and Equipment (Category E)

Buildings, including:

- All structural and non-structural components, including mechanical, electrical, and plumbing systems
- Contents and equipment within the building
- Furnishings

Equipment includes:

- Vehicles
- Construction equipment

Repair or replacement of buildings and equipment is eligible.

(a) *Buildings*

For buildings and building systems, distinguishing between damage caused by the incident and pre-existing damage may be difficult. Before making an eligibility determination, FEMA considers each of the following:

- The age of the building and building systems
- Evidence of regular maintenance or pre-existing issues, such as water damage from a leaky roof
- The severity and impacts of the incident

Mold remediation and removal of mud, silt, or other accumulated debris is eligible as Permanent Work when conducted in conjunction with restoration of the facility.

Earthquake Damage to Welded Steel Moment Frame Buildings

FEMA has specific eligibility criteria for evaluating and repairing earthquake damage to buildings constructed with welded steel moment frames. FEMA bases the eligibility criteria on *Recommended Post Earthquake Evaluation and Repair Criteria for Welded Steel Moment Frame Buildings* (FEMA 352).²⁹⁰

The repair of the damaged frame connections to pre-earthquake design in accordance with FEMA 352, Chapter 6, is eligible, but only if FEMA approves a specific SOW for the repairs

²⁹⁰ www.fema.gov/media-library/assets/documents/747.

prior to the Applicant performing the work. Repair of the architectural finishes and fire retardants removed in the area of the damage are also eligible.

(b) Equipment and Supplies

Repairing damaged—or replacing destroyed—equipment and supplies with the same number of equivalent items is eligible.²⁹¹ Equivalent items are similar in age, condition, and capacity.

The Applicant may replace equipment or supplies with different items used for the same general purpose. However, FEMA caps the eligible cost at the estimated amount for items equivalent to those damaged.

When equipment is not repairable, FEMA uses “blue book” values or similar price guides to estimate the eligible cost.

When a used item is not reasonably available (within a reasonable cost, time, or distance) or does not meet applicable national consensus standards, the purchase of a new item with similar capacity is eligible.

If the cost to replace the item is less than the cost to repair it, FEMA limits PA funding to the replacement cost.



Terminology

Consensus standards are standards that have been adopted by a nationally recognized standards-producing organization.

(c) Files

Eligible activities associated with the recovery of files include, but are not limited to:

- Recovery of damaged hard copies
- Stabilizing the damaged hard copies
- Sanitizing damaged hard copies
- Photocopying or scanning damaged hard copies to re-establish files
- Recovering data from water-damaged computer hard drives

Recovery of damaged hard copies includes labor and materials, such as bags, boxes, and containers. Stabilizing damaged hard copies includes freeze-drying. Photocopying or scanning includes labor and materials such as new folders and paper.

Not all activities are eligible. Examples of ineligible activities include:

- Establishing new information databases
- Manually entering data that was lost in damaged computers
- Scanning re-established hardcopy files into computers to create digital files
- Deciphering photocopies of damaged hard copies

²⁹¹ 44 CFR § 206.226(h).

(d) *Research-Related Contents*

Reagents and specimen collections are eligible for replacement based on the following criteria.

The number of units of each reagent eligible for replacement is equal to the number actually lost OR to the number necessary to restore basic research activity, whichever is less.

FEMA reimburses the purchase price from commercial sources or other institutions, whichever is less. The replacement of reagents that are so unique that they are considered an outcome of a research program is not eligible.

Replacing a representative, but not necessarily a whole portion, of a specimen collection may be eligible. To be eligible for replacement, the specimen types should be available for purchase from commercial sources or other institutions and support an ongoing eligible educational or medical program.

(e) *Animals*

Animals housed or exhibited in an eligible facility are eligible for replacement with the same number of comparable animals if they are:

- Injured to the extent they are no longer able to function for the intended purpose
- Killed
- A destroyed specimen
- A damaged specimen that is not recoverable

The animal is not eligible for replacement if a comparable animal is not available for purchase or the Applicant is unable to obtain a comparable at a reasonable cost.

Eligible animals may include, but are not limited to:

- Police animals
- Trained and certified rescue dogs
- Animals in museums, zoos, or publicly owned nature centers
- Fish in fish hatcheries
- Taxidermy specimens
- Animals used by rehabilitation facilities as part of diagnosis or treatment
- Laboratory animals used in an active research program

The replacement of animals on loan to an eligible facility at the time they are destroyed is eligible if the Applicant is able to provide documentation that establishes legal responsibility.

Additionally, FEMA may provide PA funding for actions taken to save the lives of these animals as a Category B emergency protective measure.



Terminology

A **reagent** is a substance used in a chemical reaction to detect, measure, examine, or produce other substances. Some reagents are very common and available for purchase from commercial sources.

A **specimen** is a portion or quantity of material for use in testing, examination, or study, including blood plasma and flesh tissue.

A **specimen collection** is a repository of specimens related to biomedical, marine, or agricultural research.



Terminology

A **taxidermy specimen** is an animal that has been preserved and mounted in a lifelike representation.

Determining Costs

The estimated cost to replace an animal is usually determined through market surveys. Costs associated with acquiring donated, loaned, or wild animals as replacement animals are eligible provided they do not exceed the estimated cost of purchasing a comparable animal.

When a destroyed animal is replaced through a donation or loan of a comparable animal, costs associated with the purchase of another comparable animal are not eligible.

For laboratory animals, eligible costs associated with replacement include, but are not limited to, the replacement cost of a laboratory animal that is as genetically close as possible to, but does not exceed, the genetic progression of the lost animal AND can be reasonably procured commercially. If an identically genetic animal is not available, the eligible cost is based on a readily procured animal that is as genetically close as possible to the original animal. The Applicant, using its scientific research staff, an independent member of the scientific community, or a certified expert, needs to make reasonable decisions on the genetic likeness of the replacement lab animals.

Ineligible costs associated with replacing laboratory animals include:

- The cost of reproducing a new animal with all the characteristics of the lost animal to re-establish research
- The cost of using a laboratory to perform a breeding program to advance benchmark stock to the genetic changes lost because of the incident
- The cost associated with surgery required to replace a surgically altered animal
- The cost associated with the replacement of a laboratory animal when an animal of similar genetic characteristics can be obtained at no cost from other researchers or institutions

If the Applicant requests, and the Recipient approves, other than in-kind and exact number of replacement animals, FEMA caps the Federal share based on the estimated in-kind replacement costs.



Terminology

Archives are materials created or received by a person, family, or organization, public or private, and preserved because of the enduring value they contain, or as evidence of the functions and responsibilities of their creator, especially those materials maintained using the principles of provenance, original order, and collective control.

Accession is formal process used to legally accept and record a specimen or artifact as a collection item.

A **catalog** is a full record of information specific to an item and cross-referenced to other records and files, including identification and documentation of the material.

Stabilization is a series of treatment measures intended to maintain the integrity of a collection or object and to minimize deterioration. It involves the minimum steps necessary to return a collection or object to a condition in which it can function in the same capacity as it did prior to the disaster.

Conservation is the preservation of a collection or object for the future. Conservation activities include examination, documentation, treatment, and preventive care, supported by research (e.g., scholarly and technological, x-rays, paint sampling) and education.

Special library collections typically include unique, rare printed books, first editions (often author-signed), manuscripts, archives, artifacts, photos, engravings, graphics, music, and ephemera, as well as limited edition print runs of special collections of maps or other important topics.

(f) *Irreplaceable Collections and Individual Objects*

Collections and individual objects are artifacts, specimens, artworks, archives, public records, and other items that are often considered irreplaceable because of their artistic, educational, historic, legal, scientific, or social significance. They are nonliving and, therefore, do not include animals or plant material, and are usually one-of-a-kind. Eligible collections and individual objects may be in storage or on display in a public or PNP facility and may include items located outdoors, such as sculptures and public art installations.

Stabilization of damaged collections or individual objects is eligible. Stabilization is a series of treatment measures to maintain the integrity of a collection or object and to minimize deterioration. Stabilization involves taking the minimum steps necessary to return a collection or object to a condition in which it can function in the same capacity as it did prior to the incident. This includes:

- Treating damaged items through proper environmental controls, such as temperature and humidity; and
- Chemical or mechanical cleaning to stabilize items to prolong their existence, maintain their integrity, and minimize further deterioration from the damaging effects of the incident.

Additional treatment beyond stabilization is eligible if it is necessary to maintain the integrity of the collection or object and return it to its pre-disaster function.

In some cases, costs associated with restoring an item to pre-disaster—but not original—condition may be eligible. For example, repairing a tear in a painting that was a direct result of the incident may be eligible, whereas costs to remove signs of pre-disaster aging, such as layers of old varnish, are not eligible.

Costs associated with the development of a treatment plan for a damaged collection or individual object are eligible.

Treatment is conducted by qualified conservation professionals with the appropriate specialty and in accordance with the American Institute for Conservation of Historic and Artistic Works Code of Ethics and Guidelines for Practice.²⁹²

FEMA, in consultation with the Recipient and Subrecipient, may recommend no treatment when non-intervention best serves to promote the preservation of damaged items.

Collections and individual objects damaged to the extent that stabilization is not practicable or possible are considered destroyed. Replacement of destroyed collections or individual objects is not eligible.

Restoring materials, equipment, and exhibition furnishings associated with the



**Documentation Supporting
Classification as Collection or
Individual Object**

Generally, documentation of collections and individual objects include accession, catalog, and inventory documentation. Subrecipients should submit all associated documentation along with a clear title to all items.

²⁹² www.nps.gov/training/tel/Guides/HPS1022_AIC_Code_of_Ethics.pdf

storage, display, preservation, or exhibition of collections and individual objects is eligible. These may include, but are not limited to:

- Equipment regulating temperature or humidity
- Exhibit panels
- Models
- Video and audio equipment

(g) *Library Books and Publications*

Replacement of damaged or destroyed library books and publications is eligible based on the pre-disaster inventory of the quantities of the books and publications. Re-shelving, cataloging, and other work incidental to the replacement of library books and publications is also eligible.²⁹³

However, special library collections, including rare books, manuscripts, and other fragile materials, are only eligible for treatment, not replacement.

4. Utilities (Category F)

Utilities include:

- Water storage facilities, treatment plants, and delivery systems
- Power generation, transmission, and distribution facilities, including, but not limited to, wind turbines, generators, substations, and power lines
- Natural gas transmission and distribution facilities
- Sewage collection systems and treatment plants
- Communication systems

(a) *Right-of-Way Clearance*

The Applicant may need to clear its ROW to obtain access to repair a utility. It is the Applicant's responsibility to maintain its ROW. FEMA may fund limited clearance of disaster-related debris from the ROW to enable access to the facility. Additionally, if trees in the vicinity of the facility were damaged by the incident and an arborist confirms that the trees cause an immediate threat of further damage to the facility (e.g., overhead power lines), FEMA may provide PA funding to remove those trees. Any further clearance of debris in the ROW is not eligible for FEMA funding.

(b) *Conductor Replacement*

For electrical transmission or distribution systems, determining the disaster-related damage to some components, such as poles, guys, and cross-arms, can usually be accomplished by visual inspection. However, determining the full extent of disaster-related damage to conductors is more challenging, particularly with older



Conductor Spans

The number of conductor spans is calculated by multiplying the number of conductors per span by the number of spans.

For example, a three-phase line section with three spans has 12 conductor spans:

$$4 \text{ conductors} \times 3 \text{ spans} = 12$$

If a single conductor span has damage in more than one location, it only counts as one damaged conductor span. Similarly, if more than one conductor is damaged, it still only counts as one damaged span.

²⁹³ 44 CFR § 206.226(i).

systems. A conductor is eligible for replacement when it is stretched beyond the point where it can be effectively repaired and re-sagged to meet appropriate clearances, sag, and tension, and to meet pre-disaster reliability.

A conductor is only eligible for replacement (reconductoring) when the Applicant cannot effectively repair it because one of the following exists within a line section:

- Twenty-five percent or more of the conductor spans have visible damage, such as broken strands, splices, or sleeves (installed as a result of the event) or severe pitting, burns, or kinks.
- Thirty percent or more of the line spans are visually stretched (out of sag), or do not meet clearance requirements such as conductor-to-conductor or conductor-to-ground clearance.
- Forty percent or more of the supporting poles need to be replaced or plumbed (straightened). A pole is considered to be in need of straightening if it is leaning such that it is unsafe to climb.
- Forty percent or more of the supporting structures (other than poles) have damage such as broken cross-arms, braces, ties, insulators, guys, pulled anchors, or bent pins. If more than one element of the support structure is damaged, it still only counts as one damaged support structure. If a pole is counted under the previous bullet, FEMA does not count the supporting structure under this criterion.
- Sixty-five percent or more of any combination of the damage described in the bullets above.
- Evidence provided by a licensed Professional Engineer that demonstrates the conductor is damaged beyond repair.



Terminology

A **line section** is a group of contiguous spans selected for evaluation. A span is the distance between two poles or structures.

An Applicant has flexibility in defining a line section. A line section can be:

- A single span
- All the spans between two dead-end structures
- All the spans on a feeder
- All the spans on a tap
- Any other group of contiguous spans that are evaluated together

If the Applicant provides sufficient documentation establishing the pre-disaster condition and a line section of its system meets one of the six criteria above, that line section is eligible to be reconducted.

The use of #2 Aluminum Conductor Steel Reinforced (ACSR) is considered a lower cost alternative to replacing conductor with equal or lesser amperage capacity such as copper weld conductor, hard and soft drawn copper wire, smaller ACSR, and Amerductor. Therefore, if a conductor with equal or lesser amperage capacity to #2 ACSR is eligible for reconductoring, the line section is eligible to be replaced with #2 ACSR. When the Applicant replaces conductor with #2 ACSR, adjustments to other components of the electric distribution and transmission systems to accommodate #2 ACSR, including, but not limited to, adjusting span lengths between utility poles and increasing pole heights and standards to meet appropriate design requirements are eligible. The Applicant does not need to cite a code or standard for this additional work even though the appropriate design requirements may come from Federal, State, Territorial, Tribal, or

local codes or standards, including National Electrical Safety Code or Rural Utilities Service (RUS) standards.

If the Applicant prefers to reductor a line with conductor of lesser amperage capacity than #2 ACSR, such as #4 ACSR (including associated adjustments in span lengths and pole heights), FEMA will provide PA funding for the work as long as the cost is less than the cost of reductoring with #2 ACSR (including associated adjustments in span lengths and pole heights).

If the Applicant plans to upgrade its conductor to an amperage capacity above #2 ACSR, and there is no code or standard requiring the upgrade that meets the eligibility requirements discussed in B, the additional upgrades are not eligible and the Applicant must request an Improved Project.

If the damage does not meet the criteria for replacement, only the repair of the damaged line section(s) is eligible.

5. Parks, Recreational, Other (Category G)

Eligible publicly owned facilities in this category include:

- Mass transit facilities such as railways
- Beaches
- Parks
- Playground equipment
- Swimming pools
- Bath houses
- Tennis courts
- Boat docks
- Piers
- Picnic tables
- Golf courses
- Ball fields
- Fish hatcheries
- Ports and harbors
- Other facilities that do not fit in Categories C–F



Documentation Supporting Pre-disaster Condition of a Conductor

To document the pre-disaster condition of a conductor, the Applicant should provide the following information:

- A signed, dated, and stamped letter from a licensed professional engineer who has direct experience with the damaged electrical transmission or distribution system certifying the pre-disaster capacity and condition of the conductor along with records providing satisfactory evidence of the pre-disaster capacity and condition of the conductor. Records may include, but are not limited to, maintenance records, contract documents, work orders, inspection logs, or a description of past inspection and maintenance activities certified by a licensed professional engineer.
- If available, copies of construction work plans demonstrating the utility's past practices and current and future projects.
- If required by RUS, a copy of any corrective action plans submitted to RUS in compliance with 7 CFR §1730.25, Corrective action (RUS borrowers only).

If the Applicant is able to provide the information above, FEMA does not require further documentation to establish pre-disaster condition. The Applicant is not precluded from substantiating the pre-disaster condition with other documentation if it is unable to provide the documentation described above.

Unimproved natural features are not eligible.

Plantings (such as trees, shrubs, and other vegetation) are eligible when they are part of the restoration of an eligible facility for the purpose of erosion control, to minimize sediment runoff, or to stabilize slopes, including dunes on eligible improved beaches.

Grass and sod replacement is eligible if it is an integral part of the restoration of an eligible recreational facility. Vegetation replacement is also eligible if necessary to restore the function of the facility (e.g., if vegetation is a component of a sewage filtration system).

Plantings required to mitigate environmental impacts, such as those required to address impacts to wetlands or endangered species habitat, are only eligible if required by a Federal, State, Territorial, Tribal, or local code or standard or permit that meets the criteria described in [Chapter 2:VII.B.7](#).

Long-term monitoring to ensure vegetative growth is not eligible even if it meets the requirements above.

Plantings ineligible for replacement include, but are not limited to:

- Replacement of trees, shrubs, and other vegetation.
- Replacement of destroyed crops.
- Cosmetic or aesthetic vegetation, such as landscaping around public facilities or in median strips along roadways. This restriction applies even when the vegetation is damaged during performance of eligible work, such as when repairing underground utilities within landscaped areas.

Beaches

Replacement of sand on beaches is only eligible under certain conditions, described below. A beach is considered an eligible facility when all of the following conditions exist:

- The beach is not a federally constructed shoreline under the specific authority of USACE;
- The beach was constructed by the placement of imported sand—of proper grain size—to a designed elevation, width, and slope;²⁹⁴ and
- The Applicant has established and adhered to a maintenance program involving periodic renourishment with imported sand to preserve the original design.²⁹⁵ Placement of sand under the following circumstances does not meet this requirement:
 - Emergency or “one-time” nourishment, even if to a design

²⁹⁴ 44 CFR § 206.226(j)(2)(i).

²⁹⁵ 44 CFR § 206.226(j)(2)(ii).



Documentation Supporting Eligibility of a Beach

To document eligibility of a beach as a designed and maintained facility, the Applicant should provide the following information:

- All design studies, plans, construction documents, and as-builts for the original nourishment;
- All studies, plans, construction documents, and as-builts for every renourishment;
- Documentation and details of the maintenance plan, including how the need for renourishment is determined and funded; and
- Pre-and post-storm profiles that extend at least to the seaward edge of the subaqueous nearshore zone (closure depth, usually -15 to -20 feet). (See Figure 15)

- Emergency or “as-needed” renourishments when the beach has eroded to a critical condition where all of the original nourishment is gone
- Partial renourishments or “hot-spot” nourishments
- Renourishment using material from a channel maintenance project, because dredge spoils do not meet compatibility design criteria and the amount placed is dependent on the amount dredged, not the beach design

The amount of sand eligible for replacement is limited to the amount lost as a result of the incident. FEMA uses the pre- and post-storm profiles of the beach to determine the eligible volume of sand for replacement. If pre-storm profiles are not available, FEMA estimates the amount of sand lost using design documents and renourishment history.

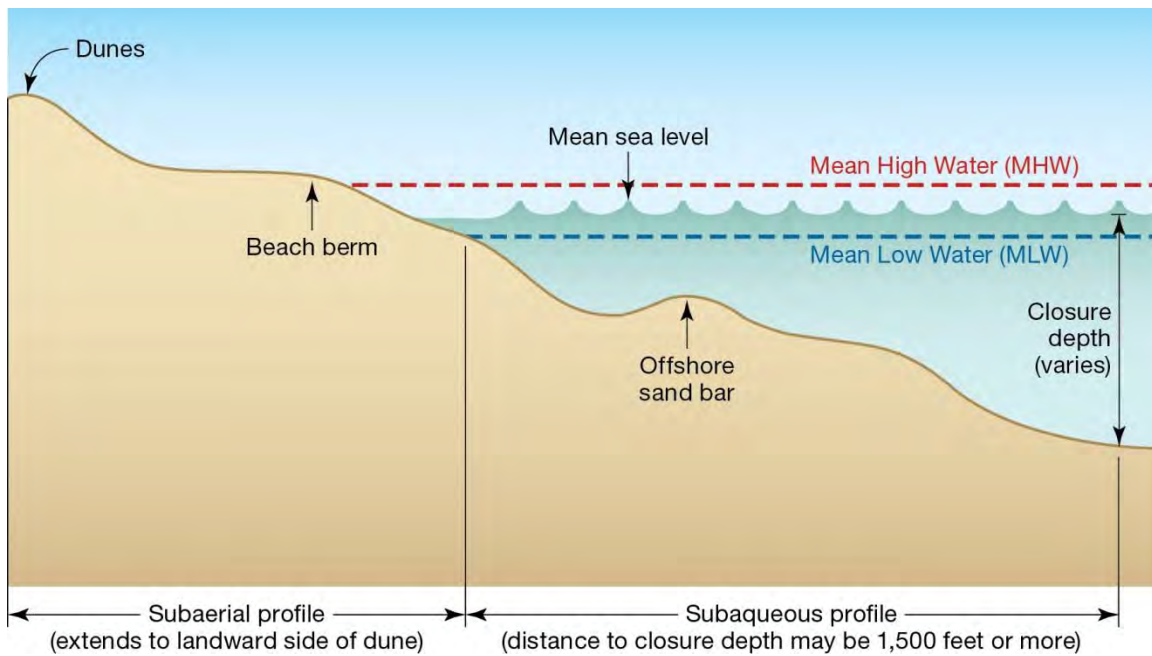


Figure 15. Typical Beach Profile

Replacing sand that eroded prior to the incident is not eligible. However, the Applicant is encouraged to renourish the project to achieve the design profile.

If removal of sand from a maintained facility is eligible, disposal of the sand spoils on a public beach may be eligible as part of that project when it is the most cost-effective method of disposal.

6. Landslides and Slope Stabilization

If an eligible facility is located on a slope and is damaged as a result of a landslide or slope instability triggered by the incident, FEMA determines the stability of the slope that supports the facility before it approves PA funding to restore the facility.

Restoration of the integral ground that supports the facility may also be eligible. The impact of slope stability on eligibility is as follows:

- If the site is stable, permanent restoration of the facility and its integral ground is eligible.
- If the site is unstable and there is no evidence of pre-disaster instability after the facility was constructed, permanent restoration of the facility and its integral ground is eligible, including measures to stabilize the integral ground.
- If the site is unstable and there is evidence of pre-disaster instability after the facility was constructed, restoration of the facility's integral ground is not eligible. Restoration of the facility is eligible only upon the Applicant stabilizing the site and restoring the integral ground.

Site inspections and limited geotechnical assessments to determine site stability and to obtain a technical opinion of the cause of the slope failure are eligible.

Permanent repair to stabilize natural ground that is not integral to an eligible facility's function is not eligible.

FEMA may approve permanent relocation of the facility if the facility is subject to repetitive heavy damage and relocation is cost-effective. Eligible costs for relocation are described in E.

An Applicant may request an Alternate Project if restoration of the facility is not feasible because of soil instability.



Terminology

Integral ground refers to only the ground necessary to physically support a facility.

Integral ground may be natural or improved ground upon which an eligible facility is located and that is essential to support the structural integrity and utility of the facility.

CHAPTER 3: PUBLIC ASSISTANCE PROGRAM ADMINISTRATION

This chapter provides information on each phase of the Public Assistance (PA) Program implementation process, including project development and requirements for administering the PA Program award. Figure 16 provides an overview of the entire process.

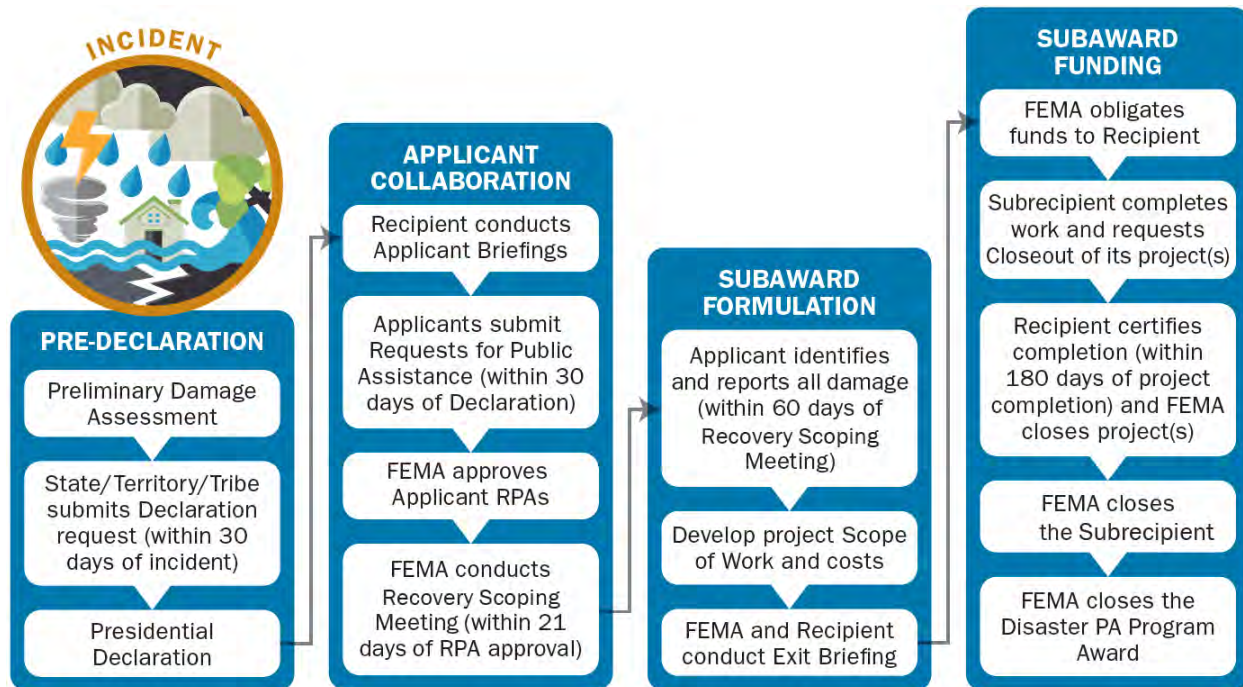


Figure 16. PA Program Implementation Process

I. Initial Collaboration

FEMA and the Recipient work in partnership to administer the PA Program.

A. Preliminary Damage Assessment

When a Tribal or local government determines an incident exceeds its capabilities to respond, it requests assistance from the State. If the State subsequently determines that the incident may exceed the combined capabilities of the State, Tribal, and local governments to respond, it requests that FEMA join the State, Tribal, and local governments to assess the impacts and magnitude of damage.²⁹⁶ FEMA refers to this as a joint Preliminary Damage Assessment (PDA).²⁹⁷ When a Tribal Government is applying as a Recipient, it may request a damage assessment directly from FEMA.

²⁹⁶ 44 CFR § 206.33(a).

²⁹⁷ 44 CFR § 206.33(b).

The Governor or Indian Tribal Chief Executive must request a declaration²⁹⁸ from the President through FEMA within 30 days of the incident.

B. Applicant Briefing

As soon as possible following the President's declaration, the Recipient conducts briefings for all potential Applicants (i.e., State, Territorial, Tribal, and local government entities and private nonprofits (PNPs)).²⁹⁹ The Recipient is responsible for notifying potential Applicants of the date, time, and location of the Applicant Briefing. During these briefings, the Recipient provides high-level information regarding the PA Program, such as:

- Application procedures
- Project funding
- Hazard mitigation
- Administrative requirements
- Procurement requirements
- Environmental and historic preservation (EHP) compliance requirements
- General eligibility criteria
- Documentation requirements
- Recordkeeping

To obtain maximum benefit from the information presented at the briefing, a potential Applicant should:

- Send representatives from its management, emergency response, public works, and accounting/finance/procurement operations; and
- Designate a primary point of contact to interact with the Recipient and FEMA.

C. Request for Public Assistance

If a State, Territorial, Tribal, or local government entity or PNP wishes to seek PA funding, it must first submit a Request for Public Assistance (RPA) to FEMA, through the Recipient, within 30 days of the respective area being designated in the declaration.³⁰⁰ The RPA (FEMA Form 90-49)³⁰¹ is the form to apply for the PA Program; FEMA also refers to it as a pre-application. Given the necessity to collaborate with Applicants early in the PA Program implementation process, FEMA's expectation is that the Recipient collect RPAs as soon as possible after the respective area is designated in the declaration or at the conclusion of the Applicant Briefing. However, FEMA accepts RPAs up to the 30-day deadline. If a Tribal Government is its own Recipient, it submits its RPA directly to FEMA. FEMA may extend the deadline for submitting an RPA if the Recipient submits a request in writing with justification based on extenuating circumstances beyond the Applicant's or Recipient's control.³⁰²

²⁹⁸ Information and forms for Presidential declaration requests are available at www.fema.gov/media-library/assets/documents/28122.

²⁹⁹ 44 CFR § 206.207(b)(1)(iii)(B).

³⁰⁰ 44 CFR § 206.202(c).

³⁰¹ www.fema.gov/media-library/assets/documents/10145.

³⁰² 44 CFR § 206.202(f)(2).

Using the RPA, the Applicant provides general information about its organization, including physical location and point of contact. The RPA must indicate the Applicant’s active Dun and Bradstreet (DUNS) number. If the Applicant does not have an active DUNS number, it may request one at: www.dnb.com/get-a-duns-number.html. Table 5 indicates the RPA documentation required for PNPs.

FEMA and the Recipient review the RPA to determine whether the Applicant is eligible for assistance.³⁰³ See [Chapter 2:II](#) for a detailed discussion on Applicant eligibility. Once FEMA approves the RPA, it assigns a PA representative to that Applicant. The PA representative is a program expert who serves as the Applicant’s customer service agent on PA Program matters and manages FEMA’s processing of the Applicant’s projects.

Table 5. PNP RPA Documentation Requirements

| PNP RPA Documentation Requirements | |
|------------------------------------|--|
| All PNP Applicants | |
| <input type="checkbox"/> | PNP Facility Questionnaire (FEMA Form 90-121) available at www.fema.gov/media-library/assets/documents/10579 . |
| <input type="checkbox"/> | A current ruling letter from the Internal Revenue Service granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954; OR documentation from the State substantiating it is a non-revenue producing, nonprofit entity organized or doing business under State law |
| <input type="checkbox"/> | If the Applicant owns the facility, proof of ownership |
| <input type="checkbox"/> | If the Applicant leases the facility, proof of legal responsibility to repair the incident-related damage |
| <input type="checkbox"/> | List of services provided in the facility and when and to whom |
| Membership Organization | |
| <input type="checkbox"/> | Who is allowed membership |
| <input type="checkbox"/> | What fees are charged |
| <input type="checkbox"/> | Policy regarding waiving memberships |
| Education/School | |
| <input type="checkbox"/> | Proof that the school is accredited or recognized by the State Department of Education |
| Child Care Facility | |
| <input type="checkbox"/> | Proof that the State Department of Children and Family Services, Department of Human Services, or similar agency, recognizes it as a licensed child care facility |
| Mixed-Use Facility | |
| <input type="checkbox"/> | Proof of the established purpose of the facility with documentation such as: <ul style="list-style-type: none"> • Pre-disaster charter, bylaws, and amendments • Calendar of activities |

D. Recovery Scoping Meeting

FEMA or the Recipient’s PA representative should contact the Applicant to schedule an initial meeting (Recovery Scoping Meeting) within 10 days of receiving notice of RPA approval. If the Applicant is not contacted after 10 days, it should call the Recipient to arrange the meeting.

³⁰³ 44 CFR § 206.207(b)(1)(iii)(C).

Unless there are extenuating circumstances, FEMA and the Recipient should conduct the Recovery Scoping Meeting within 21 days of approval of the RPA.

While the Applicant Briefing is designed to address high-level information for all potential Applicants, the Recovery Scoping Meeting is designed to address the specific needs of each eligible Applicant. At the Recovery Scoping Meeting, FEMA, the Recipient, and the Applicant discuss:

- Details of the Applicant’s impacts from the incident
- Hazard mitigation opportunities
- Eligibility criteria for work and costs
- Project formulation
- Insurance requirements
- EHP compliance requirements
- Documentation requirements
- Appeal process

The Applicant should ensure staff with knowledge of the incident-related damage, emergency activities performed, and related costs attend the meeting (e.g., public works official, finance staff, risk manager). The Applicant should be prepared to provide the information in Table 6 at the Recovery Scoping Meeting.

Table 6. Applicant Documentation for the Recovery Scoping Meeting

| Applicant Documentation to Provide at Recovery Scoping Meeting | |
|--|--|
| A list of all impacts by site, including: | |
| <input type="checkbox"/> | Map of jurisdiction showing all sites |
| <input type="checkbox"/> | Specific location of debris impacts and facility damage using either the address or U.S. National Grid (USNG) location |
| <input type="checkbox"/> | Facility names |
| <input type="checkbox"/> | Documentation to support legal responsibility <ul style="list-style-type: none"> • Deeds • Titles • Lease agreements • Contracts for facilities under construction |
| <input type="checkbox"/> | Whether the facility was damaged in a prior incident |
| <input type="checkbox"/> | Pre-incident photographs of impacted site or facility, if available |
| <input type="checkbox"/> | Photographs of debris impacts or facility damage <ul style="list-style-type: none"> • Estimated quantities of debris by type • Brief description of damage with dimensions |
| <input type="checkbox"/> | Emergency Work activities |
| <input type="checkbox"/> | Estimated costs |
| <input type="checkbox"/> | Whether the project is high priority |
| <input type="checkbox"/> | Proposed, or completed, repair scope of work, including hazard mitigation measures |

| Applicant Documentation to Provide at Recovery Scoping Meeting | |
|--|--|
| <input type="checkbox"/> | Whether the work is complete <ul style="list-style-type: none"> • Summary of actual costs for completed work, including support documentation • Professional cost estimates for uncompleted work, if available |
| <input type="checkbox"/> | Who performed, or will perform, the work |
| <input type="checkbox"/> | Potential environmental issues or historic preservation concerns |
| <input type="checkbox"/> | Age of the facility |
| <input type="checkbox"/> | Age of nearby facilities that may be affected by the project |
| <input type="checkbox"/> | Debris reduction and disposal sites |
| <input type="checkbox"/> | Summary of insurance coverage, including copy of policy, schedule of values, statements of loss, and settlement documents |

II. Project Formulation

FEMA and the Recipient work with the Applicant to formulate incident-related damage and work into projects (i.e., subawards) based on logical groupings of the damage and work.³⁰⁴ This process is a collaborative effort beginning at the Recovery Scoping Meeting and concluding with an Exit Briefing.

FEMA uses the Project Worksheet (PW) (FEMA Form 90-91)³⁰⁵ as the Subaward Application. FEMA uses the PW to document details of the Applicant’s project, including a detailed description of the disaster-related damage and dimensions and the associated scope of work (SOW) and costs. If the project involves multiple locations, FEMA may use site sheets to differentiate damage, work, and costs by site within the PW.³⁰⁶ The disaster damage and dimensions, SOW, and costs for each site are documented on separate site sheets.

This section provides information on the project formulation process. FEMA’s *Public Assistance Program Field Operations Pocket Guide* (FEMA P-1011) addresses these processes in detail.³⁰⁷

Additionally, FEMA requires documentation to support that the work is eligible in accordance with laws, regulations, Executive Orders (EOs), and policies. This chapter provides checklists of documentation that may support eligibility. These checklists are not all-inclusive lists. Documentation should provide the “who, what, when, where, why, and how much” for each item claimed. If the specific documentation discussed below is not available, FEMA and the Recipient work with the Applicant to obtain alternative documentation to support eligibility. However, it is the Applicant’s responsibility to substantiate its claim as eligible. If the Applicant does not provide sufficient documentation to support its claim as eligible, FEMA cannot provide PA funding for the work.

³⁰⁴ 44 CFR § 206.201(1).

³⁰⁵ www.fema.gov/media-library/assets/documents/9720.

³⁰⁶ 44 CFR § 206.201(1)(2).

³⁰⁷ www.fema.gov/media-library/assets/documents/95650.

A. Identify and Report Damage

The Applicant is required to identify and report all of its disaster-related damage, Emergency Work activities, and debris quantities to FEMA within 60 days of the Recovery Scoping Meeting.³⁰⁸ FEMA may extend the deadline for identifying and reporting damage if the Recipient submits a request in writing with justification based on extenuating circumstances beyond the Recipient's or Applicant's control.³⁰⁹ For example, if a site is inaccessible, FEMA may extend the deadline for that site.

FEMA and the Recipient conduct site inspections with the Applicant to validate, quantify, and document the cause, location, and details of the reported damage and debris impacts and identify EHP issues and hazard mitigation opportunities within this 60-day period. Table 7 lists information that FEMA may request to determine the eligibility of damage claimed.

FEMA, the Recipient, and the Applicant should reach agreement on the disaster-related damage description and dimensions, emergency protective measures, and debris impacts before proceeding with SOW development.



Expedited Funding

If an Applicant has an immediate need for Emergency Work funding, FEMA may provide funding based on estimated costs provided the Applicant substantiates its legal responsibility for the work and provides a detailed description of the activities, a cost summary, and sufficient documentation to substantiate that the work is eligible and the cost estimate is reasonable. If the funding is related to debris removal, the Applicant must also provide debris quantities, locations, and documentation to substantiate environmental compliance. FEMA must validate the eligibility of the debris quantities and locations. FEMA will not provide funding based on estimated costs for a debris removal project funded under the Accelerated Debris Removal Alternative Procedure ([Chapter 2:VI.A.1.a](#)).

Table 7. Documentation to Support Damage Claim

| Documentation Supporting Immediate Threats, Debris Impacts, or Damage |
|--|
| <p>The following information is obtained, or validated, during the site inspection (not an all-inclusive list).</p> <ul style="list-style-type: none"><input type="checkbox"/> The Information listed in Table 6, if not previously provided <p>For Emergency Work:</p> <ul style="list-style-type: none"><input type="checkbox"/> Description of immediate threat<input type="checkbox"/> Records demonstrating presence of immediate threat (e.g., technical reports, safety inspector report, photographs)<input type="checkbox"/> Additionally, for debris specifically:<ul style="list-style-type: none">• Actual debris quantities by type• For waterway debris, documentation supporting pre-and post-incident levels, such as waterway soundings |

³⁰⁸ 44 CFR § 206.202 (d)(1)(ii).

³⁰⁹ 44 CFR § 206.202 (f)(2),

Documentation Supporting Immediate Threats, Debris Impacts, or Damage

For Permanent Work:

- Photographs of site, overall facility, and specific damage
- Detailed description of damage with specific dimensions
- Drawings, sketches, and plans (to scale) of disaster-related damage
- Plans and specifications showing pre-disaster design of the facility
- Documentation supporting pre-disaster condition of facility (e.g., facility maintenance records, inspection/safety reports)

For electric transmission and distribution facility conductors specifically:

- A signed, dated, and stamped letter from a licensed Professional Engineer who has direct experience with the damaged electrical transmission or distribution system certifying the pre-disaster condition of the conductor along with records providing satisfactory evidence of the pre-disaster capacity and condition of the conductor. Records may include, but are not limited to, maintenance records, contract documents, work orders, inspection logs, or a description of past inspection and maintenance activities certified by a licensed Professional Engineer.
- Construction work plans demonstrating the utility's past practices and current and future projects.
- If required by the Rural Utilities Service (RUS), a copy of any corrective action plans submitted to RUS in compliance with Title 7 of the Code of Federal Regulations (CFR) § 1730.25, Corrective action (RUS borrowers only).
- Staking sheets.

B. Develop Scope of Work

Once FEMA, the Recipient, and the Applicant agree on the damage description and dimensions, the Applicant provides its proposed SOW, including its hazard mitigation proposal (HMP) or, if the work is finished, the completed SOW for each of its projects.

For Emergency Work, the SOW includes work required to address immediate threats and to remove debris. For Permanent Work, the SOW includes a description of how the Applicant plans to repair, or has repaired, the damage, including repair dimensions and HMP description and dimensions.

If the SOW has a potential of impacting environmental or historic resources, FEMA EHP staff review the SOW to determine if modifications would reduce potential impacts.

Some projects may require an engineering analysis to determine the method of repair. In these cases, FEMA may provide PA funding for engineering and design services. Once the Applicant determines its preferred method of repair, it must submit a detailed SOW and cost estimate for FEMA's review. Table 8 lists information necessary to develop the SOW.

Table 8. Information to Develop Scope of Work

| Information to Develop Scope of Work | |
|--|--|
| The Applicant should provide the following for each site (not an all-inclusive list): | |
| <input type="checkbox"/> | Site map showing the location of all proposed project components and the extent of ground disturbance (including any staging areas, access roads, parking, landscaping, grading, or utilities) |
| For emergency protective measures: | |
| <input type="checkbox"/> | Description of emergency response activities |
| For debris removal: | |
| <input type="checkbox"/> | Quantities of debris removed, reduced, disposed, and recycled (by type) with a representative sampling of load tickets to support quantities |
| <input type="checkbox"/> | Debris monitor reports |
| <input type="checkbox"/> | Pick-up locations |
| <input type="checkbox"/> | Address and/or U.S. National Grid (USNG) location of temporary reduction sites and permanent disposal sites, including recycling locations <ul style="list-style-type: none">• Copies of permits for reduction and disposal sites• Lease agreement if applicable |
| <input type="checkbox"/> | For abandoned vehicles and vessels, documentation supporting that the Applicant followed applicable ordinances or laws for private vehicle and vessel removal |
| For Permanent Work: | |
| <input type="checkbox"/> | Drawings, sketches, and plans (to scale) of proposed or completed repair |
| <input type="checkbox"/> | Applicable design requirements |
| <input type="checkbox"/> | Applicable repair/reconstruction codes or standards and documentation to support they have been formally adopted, implemented, and uniformly applied |
| <input type="checkbox"/> | Replacement projects: estimate for 50% Rule calculations |
| <input type="checkbox"/> | Relocation projects: justification for relocation request |
| <input type="checkbox"/> | HMPs, including Benefit-Cost Analyses (BCAs) when necessary |
| <input type="checkbox"/> | Hydrologic and hydraulic studies that address potential upstream and downstream impacts (if applicable) |
| <input type="checkbox"/> | Technical studies, reports, and assessments (including environmental assessments) |
| <input type="checkbox"/> | Historic property designations or surveys, including archaeological surveys |
| <input type="checkbox"/> | Copies of permits and correspondence with regulatory agencies <ul style="list-style-type: none">• State, Territorial, or Tribal Historic Preservation Officer (historic properties)• U.S. Army Corps of Engineers (work involving dredging or discharging dredged materials or fill in waterways or wetlands)• U.S. Fish and Wildlife Service (federally listed threatened and endangered species, migratory birds, work in Coastal Barrier Resource System areas, work in or near waterways or wetlands)• National Marine Fisheries Service (federally listed threatened and endangered species, work in or near waterways or wetlands)• State, Territorial, or Tribal environmental agencies |

C. Change in Scope of Work

While proceeding with the project, the Applicant must ensure that it uses PA funding only for eligible work. The Applicant should engage the Recipient and FEMA as soon as it identifies a change to the SOW to allow FEMA time to review changes for eligibility and EHP compliance

requirements prior to commencement of work. If the Applicant begins work associated with a change before FEMA review and approval, it will jeopardize PA funding.

With the exception of Permanent Work Alternative Procedures Projects, FEMA may approve revisions under any of the following circumstances (this is not an all-inclusive list):

- The Applicant discovers damage not visible during the site inspection. The Applicant must report this damage within 60 days of the Recovery Scoping Meeting.
- The Applicant discovers hidden damage during the course of completing previously approved work.
- The repair method documented in the PW is not feasible.
- Professional recommendations for repair differ from the repair documented in the PW, provided the recommendations are limited to the least costly method of repairing only the agreed upon disaster-related damage.
- The PW contains inadvertent errors or omissions.
- The Applicant wishes to pursue an Improved or Alternate Project.

A change requires a written request from the Applicant to the Recipient, including detailed justification and documentation to support the eligibility of the requested revision.³¹⁰ If the request involves previously unreported damage, the Applicant must also provide documentation demonstrating how the incident caused the damage. Table 9 indicates the information necessary for FEMA to evaluate a request for a change in SOW.

The Recipient must forward the request to FEMA with its written recommendation.³¹¹

FEMA engages subject matter experts for technical assistance when necessary to reach a determination of whether the requested change is eligible for PA funding.

Changes in SOW due to one of the following reasons are generally eligible:

- Alternate repair method is more cost-effective than the original proposed repair method
- Original repair method is not technically feasible
- Increase in previously approved quantities due to errors and omissions
- Hidden damage is discovered during construction and is disaster-related

³¹⁰ 44 CFR § 206.204(e).

³¹¹ Ibid.

Table 9. Information to Support Change in SOW

| Information to Support Change in SOW | |
|---|--|
| Change in SOW requests should be submitted prior to the approved project deadline and include the following (not an all-inclusive list): | |
| <input type="checkbox"/> | Detailed changes to SOW and cost estimate |
| <input type="checkbox"/> | Reason for changes <ul style="list-style-type: none">• If more cost-effective repair: both cost estimates• If original SOW not feasible: supporting documentation such as technical reports• If hidden damage (must be found during performance of eligible work):<ul style="list-style-type: none">• Documentation substantiating the damage is related to the declared incident• Photographs documenting damage• Change orders |
| <input type="checkbox"/> | Construction timeline / project schedule <ul style="list-style-type: none">• Time extension, if necessary (include information in Table 11) |

D. Develop Project Cost

FEMA or the Recipient prepares the PW based on actual or estimated costs as follows:

- If the Applicant has completed the SOW, the PW is prepared based on actual costs.
- If the Applicant has not completed the SOW, FEMA or the Applicant estimates the costs.

FEMA uses the Applicant's cost estimate if the estimate:

- Is prepared by a licensed Professional Engineer or other estimating professional, such as a licensed architect or certified professional cost estimator³¹² who certifies that the estimate was prepared in accordance with industry standards;
- Includes certification that the estimated cost directly corresponds to the repair of the agreed upon damage;
- Is based on unit costs for each component of the SOW and not a lump sum amount;
- Contains a level of detail sufficient for FEMA to validate that all components correspond with the agreed-upon SOW; and
- Is reasonable.

If the Applicant lacks the resources, it may request technical assistance from FEMA to develop the cost estimates. Table 10 lists the information that the Applicant should submit to support costs claimed.



Small Project Preparation

In addition to FEMA or the Recipient, Applicants may also prepare Small Project PWs with FEMA validation. If the Applicant prepares its own Small Projects, it must submit them to FEMA for validation within 60 days of the Recovery Scoping Meeting. See [Chapter 3:IV.B](#) for the differentiation between Small and Large Projects.

³¹² In lieu of a license or certification, an individual with professional experience and proficiency in the field of cost estimating may prepare and sign the cost estimate.

Table 10. Documentation to Support Costs Claimed

| Documentation to Support Costs Claimed |
|---|
| <p>The Applicant should submit the following to support costs claimed (not an all-inclusive list): Applicant (Force Account) Labor and Prisoner Labor:</p> <p>For each individual:</p> <ul style="list-style-type: none"><input type="checkbox"/> Name<input type="checkbox"/> Job title and function<input type="checkbox"/> Type of employee (i.e., full-time exempt, full-time non-exempt, part-time, temporary, prisoner, etc.)<input type="checkbox"/> Days and hours worked<input type="checkbox"/> Pay rate(s) and fringe benefit rate(s)<input type="checkbox"/> Description of work performed with representative sample of daily logs / activity reports, if available<input type="checkbox"/> Representative sample of timesheets<input type="checkbox"/> Fringe benefit calculations<input type="checkbox"/> Pay policy <p>Applicant-Owned (Force Account) Equipment:</p> <p>For each piece of equipment:</p> <ul style="list-style-type: none"><input type="checkbox"/> Type of equipment and attachments used, including year, make, and model<input type="checkbox"/> Size/capacity (e.g., horsepower, wattage)<input type="checkbox"/> Locations and days and hours used with usage logs<input type="checkbox"/> Operator name<input type="checkbox"/> Schedule of rates, including rate components <p>Rented or Purchased Equipment:</p> <ul style="list-style-type: none"><input type="checkbox"/> Rental or lease agreements, invoices, receipts<input type="checkbox"/> Days used <p>Supplies from Stock:</p> <ul style="list-style-type: none"><input type="checkbox"/> Historical cost records<input type="checkbox"/> Inventory records<input type="checkbox"/> Type of supplies and quantities used, with support documentation such as daily logs <p>Purchased Supplies:</p> <ul style="list-style-type: none"><input type="checkbox"/> Receipts or invoices <p>Contracts:</p> <ul style="list-style-type: none"><input type="checkbox"/> Procurement policy<input type="checkbox"/> Procurement and bid documents<input type="checkbox"/> For procurements in excess of the simplified acquisition threshold, a cost/price analysis<input type="checkbox"/> Contracts, change orders, and invoices<input type="checkbox"/> Dates worked<input type="checkbox"/> For time and materials (T&M) contracts, monitoring documentation <p>Mutual aid:</p> <ul style="list-style-type: none"><input type="checkbox"/> Written agreement<input type="checkbox"/> Services requested and received<input type="checkbox"/> Same information listed for labor, equipment, and supplies above (as applicable)<input type="checkbox"/> Invoices |

Documentation to Support Costs Claimed

Donated Resources:

For each individual:

- Name
- Days and hours worked
- Location of work and work performed

Equipment:

- Same information listed under Applicant-Owned Equipment above
- Who donated each piece of equipment

Supplies or materials:

- Quantity donated
- Who donated
- Location(s) used

Cost Estimates:

- Cost estimate for the agreed-upon SOW developed with unit costs
- Qualifications of the company or individual who prepared the cost estimate

Cost reasonableness (if requested by FEMA):

- Documentation showing current market price for similar goods or services, such as:
 - Historical documentation;
 - Average costs in the area; or
 - Published unit costs from national cost estimating databases.
- Documentation supporting necessity of unique services or extraordinary level of effort
- Documentation supporting shortages, challenging procurement circumstances, and length of time shortages or procurement challenges existed, such as:
 - News stories
 - Supply chain vendor reports

For Direct Administrative Costs (DAC):

- Specific description of administrative task performed by individual
- Skill level and position description of individual performing task

Other:

- Documentation regarding cash donations or other funding received
- Cost comparisons and source documentation, if applicable
- Actual insurance proceeds, if available

E. Project Documentation

The Applicant must maintain all source documentation supporting the project costs.³¹³ To facilitate closeout and audits, the Applicant should file all documentation pertaining to each project with the corresponding PW as the permanent record of the project.

The Recipient and the Applicant must keep all financial and program documentation for 3 years after the date of the Recipient's final Financial Status Report (FSR) (FEMA Form 112-0-1).³¹⁴ Records are subject to audit by State auditors, FEMA, the U.S. Department of Homeland Security Office of Inspector General, and the U.S. Government Accountability Office.³¹⁵

³¹³ 2 CFR § 200.302.

³¹⁴ 2 CFR § 200.333; www.fema.gov/media-library/assets/documents/29496.

³¹⁵ 2 CFR § 200.336.

F. Exit Briefing

FEMA and the Recipient conduct an Exit Briefing with the Applicant when project formulation is complete and all claimed damage is documented.

FEMA uses this meeting to:

- Ensure all claimed damage is sufficiently and accurately documented
- Discuss record retention requirements
- Explain deadlines for completion of work and appeals
- Review EHP compliance issues
- Transition primary point-of-contact from field personnel to the Recipient
- Discuss questions or concerns

III. Project Deadlines

FEMA only provides PA funding for work completed and costs incurred³¹⁶ within regulatory deadlines (See Figure 17). The deadline for Emergency Work is 6 months from the declaration date. The deadline for Permanent Work is 18 months from the declaration date.³¹⁷ FEMA considers these timeframes to be a project's period of performance.

| Deadlines for Completion of Work | |
|----------------------------------|--------|
| Type of Work | Months |
| Emergency Work | 6 |
| Permanent Work | 18 |

Figure 17. Regulatory Project Deadlines

If the Applicant determines it needs additional time to complete the project, including direct administrative tasks related to the project, it must submit a written request for a time extension to the Recipient with the following information:

- Documentation substantiating delays beyond its control;
- A detailed justification for the delay;
- Status of the work; and
- The project timeline with the projected completion date.³¹⁸

The Recipient has authority to extend deadlines for individual projects based on extenuating circumstances. It may extend Emergency Work projects by 6 months³¹⁹ and Permanent Work projects by 30 months.³²⁰ FEMA has authority to extend individual project deadlines beyond these timeframes if extenuating circumstances justify additional time.³²¹

With exception of debris removal operations funded under the Accelerated Debris Removal Procedure of the Alternative Procedures Pilot Program, FEMA generally considers the following to be extenuating circumstances beyond the Applicant's control:

- Permitting or EHP compliance related delays due to other agencies involved
- Environmental limitations (such as short construction window)

³¹⁶ 2 CFR § 200.309 and 44 CFR § 206.204(d)(2).

³¹⁷ 44 CFR § 206.204(c)(1).

³¹⁸ 44 CFR § 206.204(d)(2).

³¹⁹ The Recipient may not grant time extensions on debris removal projects funded under the Accelerated Debris Removal Alternative Procedure.

³²⁰ 44 CFR § 206.204(c)(2)(ii).

³²¹ 44 CFR § 206.204(d).

- Inclement weather (site access prohibited or adverse impact on construction)

FEMA generally considers the following to be circumstances within the control of the Applicant and not justifiable for a time extension:

- Permitting or environmental delays due to Applicant delays in requesting permits
- Lack of funding
- Change in administration or cost accounting system
- Compilation of cost documentation

Although FEMA only provides PA funding for work performed on or before the approved deadline, the Applicant must still complete the approved SOW for funding to be eligible.³²² FEMA deobligates funding for any project that the Applicant does not complete. If the Applicant completes a portion of the approved SOW and the completed work is distinct from the uncompleted work, FEMA only deobligates funding for the uncompleted work. For example, if one project includes funds for three facilities and the Applicant restores only two of the three facilities, FEMA only deobligates the amount related to the facility that the Applicant did not restore.

Table 11 indicates the information that the Applicant should submit to support a request for a time extension.

Table 11. Information to Support Time Extension

| Information to Support Time Extension | |
|---|--|
| Request should be submitted prior to current approved deadline, be specific to one project, and include the following information with supporting documentation: | |
| <input type="checkbox"/> | Dates and provisions of all previous time extensions |
| <input type="checkbox"/> | Construction timeline / project schedule in support of requested time |
| <input type="checkbox"/> | Basis for time extension request: <ul style="list-style-type: none"> • Delay in obtaining permits • Permitting agencies involved and application dates • Environmental delays or limitations (e.g., short construction window, nesting seasons) • Dates of correspondence with various agencies • Specific details • Inclement weather (prolonged severe weather conditions prohibited access to the area, or adversely impacted construction) <ul style="list-style-type: none"> • Specific details • Other reason for delay <ul style="list-style-type: none"> • Specific details |

IV. Project Funding

The PW contains the information necessary for authorized FEMA personnel to review and approve the SOW and costs. If approved, FEMA obligates the Federal share of the eligible

³²² 44 CFR § 206.204(d)(2).

project cost to the Recipient.³²³ Once obligated, the PW constitutes the official record of the approved SOW for the project.

Funds that FEMA has obligated are available to the Recipient via electronic transfer and reside in a Federal account until the Recipient provides the funds to the appropriate Applicant.³²⁴ The Recipient is responsible for notifying the Applicant that funds are available.³²⁵

A. Strategic Funds Management

Strategic Funds Management is FEMA’s process for obligating PA funding based on the Applicant’s schedule to execute the work. If a Permanent Work project is greater than \$1 million and the Applicant does not need funds for more than 180 days from the time the PW is ready for obligation, FEMA obligates funds based on the project completion schedule. FEMA’s *Strategic Funds Management – Implementation Procedures for the Public Assistance Program* (FEMA SOP 9570.24) addresses this obligation process in detail.³²⁶

B. Project Thresholds

FEMA establishes a minimum project threshold for each Federal fiscal year. The threshold applies to incidents declared within that fiscal year and is based on the Consumer Price Index. If a PW totals less than the minimum threshold³²⁷ after the Applicant has accounted for all project costs—including DAC and reductions to avoid duplication of benefits—the project is not eligible.³²⁸ This limitation applies to each PW and not to each site sheet used in one PW. Because of the administrative cost involved, FEMA does not process PWs under the minimum threshold unless the Applicant is eligible, is disputing the SOW or costs, and is planning to appeal an amount that would increase the project amount to at least the minimum threshold.

Additionally, FEMA does not combine work among several sites or projects onto one PW for the **sole** purpose of reaching the minimum threshold.

FEMA also establishes a dollar threshold each Federal fiscal year for the implementation of Simplified Procedures under Section 422 of the Stafford Act. This threshold defines a project as large or small.³²⁹ FEMA categorizes projects as large or small based on the final approved amount of eligible costs after any cost adjustments, including insurance reductions:

- A Large Project is a PW with a cost equal to or greater than the threshold.
- A Small Project is a PW with a cost below the threshold.³³⁰

The threshold applies to incidents declared within that fiscal year. FEMA administers funding for Large and Small Projects differently. For Large Projects that are not capped projects, FEMA adjusts any estimated costs to the actual incurred amount so that the final approved funding is

³²³ 44 CFR § 206.202(e).

³²⁴ 44 CFR § 206.200(b)(2)(ii).

³²⁵ 44 CFR § 206.200(2)(i).

³²⁶ www.fema.gov/media-library/assets/documents/30301.

³²⁷ The minimum threshold is available at: www.fema.gov/public-assistance-indicator-and-project-thresholds.

³²⁸ 44 CFR § 206.202(d)(2).

³²⁹ The project threshold amount is available at: www.fema.gov/public-assistance-indicator-and-project-thresholds.

³³⁰ Stafford Act § 422, 42 U.S.C. § 5189, and 44 CFR § 206.203(c).

based on actual costs.³³¹ For Small Projects, FEMA does not adjust estimated costs to the actual incurred amount.³³²

C. Project Reconciliation and Closeout

The purpose of closeout is for the Applicant to certify that all work has been completed.³³³ FEMA closes Large Projects individually as each is completed.³³⁴ FEMA closes all Small Projects together when the last Small Project is completed.³³⁵ To ensure a timely closeout process, the Applicant should notify the Recipient immediately as it completes each Large Project and when it has completed its last Small Project.

The Subrecipient should include the following information with its closeout request:

- Certification that project is complete;
- Date of project completion; and
- Copies of any Recipient time extensions.

1. Large Projects

With exception of Capped Projects, the final eligible amount for a Large Project is the actual documented cost of the completed, eligible SOW.³³⁶ Therefore, upon completion of each Large Project that FEMA obligated based on an estimated amount; the Subrecipient should provide the documentation in Tables 8 and 10 to support the actual costs.³³⁷ If the actual costs significantly differ from the estimated amount, the Subrecipient should provide an explanation for the significant difference.³³⁸

The Recipient must certify that all incurred costs are associated with the approved SOW and that the Subrecipient completed all work in accordance with FEMA regulations and policies.³³⁹ The Recipient must submit its certification of the Applicant's completion of each Large Project with the final payment of claim³⁴⁰ and supporting documentation to FEMA within 180 days of the project deadline.³⁴¹ The Recipient must submit its certification of each of its own Large Projects within 180 days of the project deadline.

FEMA reviews the documentation and, if necessary, obligates additional funds or reduces funding based on actual costs to complete the eligible SOW.³⁴²

If the project included approved hazard mitigation measures; FEMA does not re-evaluate the cost-effectiveness of the HMP based on the final actual cost. If during the review, FEMA determines that the Subrecipient performed work that was not included in the approved SOW,

³³¹ 44 CFR § 206.205(b).

³³² 44 CFR § 206.205(a).

³³³ 2 CFR § 200.343.

³³⁴ 44 CFR § 206.205(b).

³³⁵ 44 CFR § 206.205(a).

³³⁶ 44 CFR § 206.203(c)(1).

³³⁷ 44 CFR § 206.205(b)(1).

³³⁸ 44 CFR § 206.204(e).

³³⁹ 44 CFR § 206.205(b)(1).

³⁴⁰ This means the final claim for PA funding for the project.

³⁴¹ 2 CFR § 200.343.

³⁴² 44 CFR § 206.205(b)(2).

FEMA will designate the project as an Improved Project, cap the funding at the original estimated amount, and review the additional SOW for EHP compliance.³⁴³

For Capped Projects, the Applicant must provide documentation to support that it used the funds in accordance with the eligibility criteria described in [Chapter 2:VII.G](#) and guidance provided at www.fema.gov/alternative-procedures.

Once FEMA completes the necessary review and funding adjustments, FEMA closes the project.

2. Small Projects

Once FEMA obligates a Small Project, FEMA does not adjust the approved amount of an individual Small Project. This applies even when FEMA obligates the PW based on an estimate and actual costs for completing the eligible SOW differ from the estimated amount. FEMA only adjusts the approved amount on individual Small Projects if one of the following conditions applies:

- The Subrecipient did not complete the approved SOW;
- The Subrecipient requests additional funds related to an eligible change in SOW;
- The PW contains inadvertent errors or omissions; or
- Actual insurance proceeds differ from the amount deducted in the PW.

In these cases, FEMA only adjusts the specific cost items affected.

If none of the above applies, the Subrecipient may request additional funding if the total actual cost of all of its Small Projects combined exceeds the total amount obligated for all of its Small Projects. In this case, the Subrecipient must request the additional funding through the appeal process, described in [Chapter 3:IV.D](#), within 60 days of completion of its last Small Project.³⁴⁴ FEMA refers to this as a net small project overrun appeal. The appeal must include actual cost documentation, as detailed in Tables 8 and 10, for all Small Projects that FEMA originally funded based on estimate amounts.³⁴⁵

To close Small Projects, the Recipient must certify that the Subrecipient completed the approved SOWs for all of its Small Projects and complied with all EHP requirements.³⁴⁶ The Recipient must submit the certification of completion of all small projects to FEMA within 180 days from the approved deadline of its last Small Project. The Recipient must submit its certification of completion of all of its Small Projects within 180 days of the approved deadline of its last small project.³⁴⁷ Once FEMA receives the Recipient's certification, FEMA closes all of the Subrecipient's Small Projects.

D. Appeals

The Applicant may appeal any FEMA determination related to an application for, or the provision of, assistance under the PA Program.³⁴⁸ For Alternative Procedures Projects, the

³⁴³ 44 CFR § 206.203(d)(1).

³⁴⁴ 44 CFR § 206.204(e)(2).

³⁴⁵ 44 CFR § 206.204(e).

³⁴⁶ 44 CFR § 206.205(a).

³⁴⁷ 2 CFR § 200.343.

³⁴⁸ Stafford Act § 423, 42 U.S.C. § 5189a, and 44 CFR § 206.206.

Applicant may submit an appeal only for insurance or corrective actions resulting from reviews such as an audit.

FEMA provides the Applicant with two opportunities to request FEMA reconsider a determination. The first appeal is to the FEMA RA.³⁴⁹ If the Applicant disagrees with the first appeal determination, it may submit a second appeal to the Assistant Administrator of the Recovery Directorate at FEMA Headquarters.³⁵⁰

The Applicant must submit a written appeal to the Recipient within 60 days of receiving written notification of FEMA's determination.³⁵¹ The Recipient must forward the appeal with its written recommendation to FEMA within 60 days of its receipt of the appeal.³⁵²

FEMA reviews the appeal and, within 90 days of receiving it, takes one of two actions:

- Provides its final written decision to the Recipient; or
- Requests additional information specifying the date FEMA must receive the information (usually 30 days).³⁵³

E. Audits

Recipients and Subrecipients are subject to Federal and non-Federal audits.³⁵⁴ A Recipient or Subrecipient that expends \$750,000 or more in Federal funds during its fiscal year must perform a single or program-specific audit.³⁵⁵

F. Stafford Act Section 705

Section 705 of the Stafford Act imposes a three (3) year limit on FEMA's authority to recover payments made to State, Tribal, or local government Recipients and Subrecipients unless there is evidence of fraud. Section 705 does not apply to PNPs. In order to ensure consistent application of the provisions contained in Section 705, FEMA issued Recovery Policy (FP 205-081-2), *Stafford Act Section 705, Disaster Grant Closeout Procedures*, which describes the limitations and requirements in detail.³⁵⁶

V. Grant Management and Administration

This section provides information on grant management, administration, and the closeout process and requirements. FEMA's *Public Assistance Program Management and Grant Closeout Standard Operating Procedure* (SOP 9570.14) provides additional details.³⁵⁷

A. Quarterly Progress Reports

The Quarterly Progress Report is a tool for FEMA and the Recipient to track the progress of Large Projects. FEMA requires the Recipient to report on the status of all open Large Projects on

³⁴⁹ 44 CFR § 206.206(b)(1).

³⁵⁰ 44 CFR § 206.206(b)(2).

³⁵¹ 44 CFR § 206.206(c)(1).

³⁵² 44 CFR § 206.206(c)(2).

³⁵³ 44 CFR § 206.206(c)(3).

³⁵⁴ Stafford Act § 318, 42 U.S.C. § 5161, and 44 CFR § 206.207(c).

³⁵⁵ 2 CFR § 200.501.

³⁵⁶ www.fema.gov/media-library/assets/documents/115804.

³⁵⁷ www.fema.gov/media-library/assets/documents/86377.

a quarterly basis.³⁵⁸ Recipients need to submit Quarterly Progress Reports to FEMA no later than 30 days after the end of each quarter.

The Recipient must report the status of each open Large Project by providing the following:

- Amount of expenditures to date;
- Amount of funds the Recipient has drawn against the project to date;
- Projected project completion date;
- Time extensions granted; and
- Problems or circumstances that might delay the project.

The Subrecipient must submit the following for each uncompleted Large Project on a quarterly basis:

- Total expenditures to date for each project;
- Status of the project;
- Projected completion date; and
- Any circumstances that could delay the project.

B. Section 324 Management Costs

Section 324 management costs are indirect costs, administrative expenses, and other expenses a Recipient or Subrecipient incurs in administering and managing PA awards that are not directly chargeable to a specific project.³⁵⁹ [Chapter 2:V.N.1](#) discusses the eligibility and overall funding criteria for these costs. This section discusses the process. FEMA categorizes Recipient management costs as Category Z.

Management Cost Cap

Management cost funding is capped at a percentage of the Federal share of assistance granted.³⁶⁰

The rate for Major Disaster Declarations is 3.34 percent.³⁶¹ The rate for Emergency Declarations is 3.90 percent.³⁶² This rate covers management costs of both the Recipient and Subrecipients. The Recipient determines the portion it distributes to Subrecipients.³⁶³

FEMA determines the capped amount in three phases:

- Initial cap: 30–35 days after declaration³⁶⁴
- Interim cap: 6 months after declaration³⁶⁵
- Final cap: 12 months after declaration³⁶⁶

The Recipient may request funds upon notification of the initial cap amount and upon notification of the final cap. If the Recipient can justify a need for an interim obligation at

³⁵⁸ 44 CFR § 206.204(f).

³⁵⁹ Stafford Act § 324(a), 42 U.S.C. § 5165b; 44 CFR § 207.2; and 2 CFR §§ 200.56 and 200.412.

³⁶⁰ 44 CFR § 207.5(b).

³⁶¹ 44 CFR § 207.5(b)(4)(i).

³⁶² 44 CFR § 207.5(b)(4)(iii).

³⁶³ 44 CFR § 207.4(c) and 206.207(b)(1)(iii)(K).

³⁶⁴ 44 CFR § 207.5(b)(1).

³⁶⁵ 44 CFR § 207.5(b)(2).

³⁶⁶ 44 CFR § 207.5(b)(3).

6 months, the Recipient may submit a request with justification to FEMA. An interim obligation does not exceed 10 percent of the 6-month cap amount.³⁶⁷

The Recipient submits its initial management cost funding request to FEMA.³⁶⁸ Upon receipt of the request, FEMA obligates 25 percent of the estimated capped amount.³⁶⁹

The Recipient must submit documentation no later than 120 days after the declaration date to support costs and activities for which the projected lock-in amount will be used. In extraordinary circumstances, the Recipient may request additional time.

Documentation must include the following information:

- A description of activities, personnel requirements, and other costs for which the Recipient will use the funding throughout the incident;
- A plan for expending and monitoring funds provided and ensuring sufficient funds are budgeted for grant closeout; and
- An estimate of the percentage or amount of pass-through funds the Recipient intends to make available to Subrecipients, including the basis, criteria, or formula for determining the percentage or pass-through amounts.

FEMA approves or rejects the documentation within 30 days of receiving it. If rejected, the Recipient has 30 days from the date of the rejection letter to resubmit for approval. FEMA does not obligate the balance of the lock-in amount until after it approves the Recipient's documentation.³⁷⁰

After notification of the final cap amount, the Recipient submits a final management costs request to FEMA with any necessary revisions to the 120-day documentation it submitted. FEMA only obligates the remaining funds if it received and approved the 120-day documentation.³⁷¹

The Recipient must retain documentation on how it spent the funds for 3 years after the date of submission of its final FSR.³⁷²

C. PA Award Closeout

To close the PA grant award to the Recipient, FEMA and the Recipient conduct a financial reconciliation. For FEMA to close the PA award, the following conditions should be met:

- FEMA has issued final determinations on all appeals;
- FEMA has obligated all eligible PA funding;
- The Recipient and Subrecipients have completed all PA Program projects and have met the statutory and regulatory requirements governing the program, including compliance with EHP requirements and insurance purchase requirements;
- The Recipient has passed through all obligated funds appropriately and submitted its final expenditure report to FEMA;

³⁶⁷ 44 CFR § 207.7(e).

³⁶⁸ 44 CFR § 207.7(c).

³⁶⁹ 44 CFR § 207.5(b)(1).

³⁷⁰ 44 CFR § 207.7(d).

³⁷¹ 44 CFR §§ 207.7(f) and 207.5(b)(3).

³⁷² 44 CFR § 207.8(f), and 2 CFR § 200.333.

- FEMA has adjusted the funding level for the program, as appropriate; and
- Both FEMA and the Recipient have completed all administrative actions related to the PA Program.

ABBREVIATIONS AND ACRONYMS

| | |
|--------|---|
| ACSR | Aluminum Conductor Steel Reinforced |
| ADA | Americans with Disabilities Act |
| BCA | benefit-cost analysis |
| BFE | Base Flood Elevation |
| BIA | Bureau of Indian Affairs |
| CAA | Clean Air Act |
| CATEX | Categorical Exclusion |
| CBRA | Coastal Barrier Resources Act |
| CBRS | Coastal Barrier Resource System |
| CDC | Centers for Disease Control and Prevention |
| CERCLA | Comprehensive Environmental Response Compensation and Liability Act |
| CFR | Code of Federal Regulations |
| CWA | Clean Water Act |
| CZMA | Coastal Zone Management Act |
| DAC | Direct Administrative Costs |
| DFA | Direct Federal Assistance |
| DMP | Debris Management Plan |
| DUNS | Dun and Bradstreet |
| EA | environmental assessment |
| EHP | environmental and historic preservation |
| EIS | environmental impact statement |
| EMAC | Emergency Management Assistance Compact |
| EO | Executive Order |
| EOC | Emergency Operation Center |
| EPA | U.S. Environmental Protection Agency |
| ER | Emergency Relief (Program) |
| ERFO | Emergency Relief for Federally Owned Roads (Program) |
| ESA | Endangered Species Act |
| EWP | Emergency Watershed Protection Program |
| FCO | Federal Coordinating Officer |
| FHWA | Federal Highway Administration |

| | |
|------|--|
| FIRM | Flood Insurance Rate Map |
| FMAG | Fire Management Assistance Grant |
| FP | FEMA Recovery Policy |
| FSR | Financial Status Report |
| HEPA | High-Efficiency Particulate Air |
| HHS | U.S. Department of Health and Human Services |
| HHW | household hazardous waste |
| HMA | Hazard Mitigation Assistance |
| HMGP | Hazard Mitigation Grant Program |
| HMP | Hazard Mitigation Proposal |
| HUD | U.S. Department of Housing and Urban Development |
| HVAC | heating, ventilation, and air conditioning |
| IA | Individual Assistance |
| IHP | Individuals and Households Program |
| JFO | Joint Field Office |
| NCEI | National Centers for Environmental Information |
| NEPA | National Environmental Policy Act |
| NFIP | National Flood Insurance Program |
| NHPA | National Historic Preservation Act |
| NMFS | National Marine Fisheries Service |
| NRCS | Natural Resources Conservation Service |
| NWS | National Weather Service |
| PA | Public Assistance |
| PDA | Preliminary Damage Assessment |
| PNP | private nonprofit |
| PW | Project Worksheet |
| RA | Regional Administrator |
| RCRA | Resource Conservation and Recovery Act |
| RIP | Rehabilitation and Inspection Program |
| ROW | right-of-way |
| RPA | Request for Public Assistance |
| RUS | Rural Utilities Service |
| SBA | U.S. Small Business Administration |

| | |
|--------|--------------------------------------|
| SFHA | Special Flood Hazard Area |
| SHPO | State Historic Preservation Officer |
| SOW | scope of work |
| STATEX | Statutory Exclusion |
| T&M | time and materials |
| THPO | Tribal Historic Preservation Officer |
| USACE | U.S. Army Corps of Engineers |
| U.S.C. | United States Code |
| USCG | U.S. Coast Guard |
| USDA | U.S. Department of Agriculture |
| USFWS | U.S. Fish and Wildlife Service |
| USNG | U.S. National Grid |

REFERENCES AND RESOURCES

Public Assistance (PA) Program References

www.fema.gov/public-assistance-local-state-tribal-and-non-profit

Archived Policy Documents: www.fema.gov/media-library/assets/documents/128488

Archived Publications: www.fema.gov/publications-archive

Alternative Procedures Pilot Program: www.fema.gov/alternative-procedures

Appeal Procedures Manual and Directive: www.fema.gov/media-library/assets/documents/93610

Debris Estimating Field Guide (FEMA 329):

www.fema.gov/pdf/government/grant/pa/fema_329_debris_estimating.pdf

Debris Contractor Registry Tool: <https://asd.fema.gov/inter/drcr/home.htm>

Direct Reimbursement for Host-State Evacuation and Sheltering Costs (FEMA SOP 9570.1):

www.fema.gov/media-library/assets/documents/28328

Dun and Bradstreet (DUNS) Number: www.dnb.com/get-a-duns-number.html

Elements of a Project Worksheet (FEMA Fact Sheet 9580.5):

www.fema.gov/pdf/government/grant/pa/9580_5.pdf

Equipment Rates: www.fema.gov/schedule-equipment-rates

Infectious Disease Event Fact Sheet (FP 104-009-001): www.fema.gov/media-library/assets/documents/99710

Mission Assignments for ESF #10 (FEMA 9523.8): www.fema.gov

Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules): www.fema.gov/media-library/assets/documents/96773

PA Policy on Insurance (FP 206-086-1): www.fema.gov/media-library/assets/documents/107564

PA Field Operations Pocket Guide (FEMA P-1011): www.fema.gov/media-library/assets/documents/95650

PA Program Management and Grant Closeout (FEMA SOP 9570.14): www.fema.gov/media-library/assets/documents/86377

Project Specialist Transition at Joint Field Offices (FEMA SOP 9570.15):

www.fema.gov/media-library/assets/documents/28370

Recovery of Improper Payments (FEMA SOP 9570.16): www.fema.gov/media-library/assets/documents/92114

Recommended Post Earthquake Evaluation and Repair Criteria for Welded Steel Moment Frame Buildings (FEMA 352): www.fema.gov/media-library/assets/documents/747

Safe Rooms for Tornadoes and Hurricanes, Guidance for Community and Residential Safe Rooms (FEMA P-361): www.fema.gov/media-library/assets/documents/3140

Small Business Administration Loans: www.sba.gov/content/sba-loans

Strategic Funds Management – Implementation Procedures for the PA Program (FEMA SOP 9570.24): www.fema.gov/media-library/assets/documents/30301

Validation of Small Projects (FEMA SOP 9570.6): www.fema.gov/media-library/assets/documents/28349

Forms

Application for Federal Assistance (SF-424) and Assurances (SF 424-D):

www.grants.gov/web/grants/form-instructions/sf-424-instructions.html

www.grants.gov/web/grants/form-instructions/sf-424d-instructions.html

Financial Status Report (FSR) (FEMA Form 112-0-1): www.fema.gov/media-library-data/20130726-1856-25045-9653/sf_financial_status_report.pdf
Payment Management System Access Form and a Direct Deposit Form (SF-1199A): www.dpm.psc.gov/grant_recipient/access_procedure/access_procedure.aspx?explore.event=true
PNP Facility Questionnaire (FEMA Form 90-121): www.fema.gov/media-library/assets/documents/10579?id=2726
Request for Public Assistance (RPA) (FEMA Form 90-49): www.fema.gov/media-library/assets/documents/10145
Subaward Application / Project Worksheets (PWs) (FEMA Form 90-91): www.fema.gov/media-library/assets/documents/9720

Statutes

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as Amended (Stafford Act), Title 42 of the United States Code (U.S.C.) § 5121 et seq. www.fema.gov/robert-t-stafford-disaster-relief-and-emergency-assistance-act-public-law-93-288-amended
Federally Recognized Tribe List Act of 1994: <http://uscode.house.gov/statutes/pl/103/454.pdf>

Code of Federal Regulations

2 CFR, Grants and Agreements: www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&tpl=/ecfrbrowse/Title02/2tab_02.tpl
2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards: www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&node=pt2.1.200&rgn=div5
7 CFR § 1730.25, Corrective action (Rural Utilities Service [RUS] borrowers only): www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&node=pt7.11.1730&rgn=div5#se7.11.1730_125
15 CFR Part 774, The Commerce Control List: www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&node=pt15.2.774&rgn=div5
22 CFR Part 121, The United States Munitions List: www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&node=pt22.1.121&rgn=div5
40 CFR Part 261, Identification and Listing of Hazardous Waste: www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&node=pt40.26.261&rgn=div5
40 CFR Parts 1500–1508, NEPA Regulations: www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&tpl=/ecfrbrowse/Title40/40cfrv33_02.tpl#1500
44 CFR, Emergency Management and Assistance: www.ecfr.gov/cgi-bin/text-idx?SID=e9db96b738b11340c696c4ee451d3865&mc=true&tpl=/ecfrbrowse/Title44/44tab_02.tpl
44 CFR Part 9, Floodplain Management and Protection of Wetlands: www.ecfr.gov/cgi-bin/text-idx?SID=e9db96b738b11340c696c4ee451d3865&mc=true&node=pt44.1.9&rgn=div5
44 CFR Part 201, Mitigation Planning: www.ecfr.gov/cgi-bin/text-idx?SID=e9db96b738b11340c696c4ee451d3865&mc=true&node=pt44.1.201&rgn=div5

44 CFR Part 204, Fire Management Assistance Grant (FMAG) Program: www.ecfr.gov/cgi-bin/text-idx?SID=e9db96b738b11340c696c4ee451d3865&mc=true&node=pt44.1.204&rgn=div5
44 CFR Part 206, Federal Disaster Assistance: www.ecfr.gov/cgi-bin/text-idx?SID=e9db96b738b11340c696c4ee451d3865&mc=true&node=pt44.1.206&rgn=div5
48 CFR Subpart 2.1, Federal Acquisition Regulation: www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&node=pt48.1.2&rgn=div5#sp48.1.2.2
11

Environmental Protection Laws and Executive Orders (EOs)

Clean Air Act (CAA): www.epa.gov/air/caa/
Clean Water Act (CWA): www.epa.gov/agriculture/lcwa.html
Coastal Barrier Resources Act (CBRA): www.fws.gov/ecological-services/habitat-conservation/cbra/Act/index.html
John H. Chafee Coastal Barrier Resources System (CBRS): www.fws.gov/ecological-services/habitat-conservation/coastal.html
Coastal Zone Management Act (CZMA): <http://coast.noaa.gov/czm/act/>
Comprehensive Environmental Response Compensation and Liability Act (CERCLA): www.epa.gov/superfund/policy/cercla.htm
Endangered Species Act (ESA): www.fws.gov/endangered/laws-policies/
Farmland Protection Policy Act (FPPA): www.nrcs.usda.gov/wps/portal/nrcs/detail/?cid=nrcs143_008275
Fish and Wildlife Coordination Act: www.fws.gov/laws/lawsdigest/fwcoord.html
Magnuson-Stevens Fishery Conservation and Management Act: www.nmfs.noaa.gov/sfa/magact/
Migratory Bird Treaty Act: www.fws.gov/laws/lawsdigest/migtrea.html
National Environmental Policy Act (NEPA): www.epa.gov/nepa
Resource Conservation and Recovery Act (RCRA): www.epa.gov/agriculture/lrca.html
Wild and Scenic Rivers Act: www.rivers.gov/wsr-act.php
EO 11988, Floodplain Management: www.fema.gov/executive-order-11988-floodplain-management
EO 11990, Protection of Wetlands: www.fema.gov/executive-order-11990-protection-wetlands-1977
EO 12898, Environmental Justice: www.fema.gov/executive-order-12898-environmental-justice-low-income-minority-populations-1994

Historic Preservation Laws and Tools

Advisory Council on Historic Preservation: www.achp.gov
American Institute for Conservation of Historic and Artistic Works Code of Ethics and Guidelines for Practice: www.conservation-us.org/about-us/core-documents/code-of-ethics-and-guidelines-for-practice
National Historic Preservation Act (NHPA): www.nps.gov/history/local-law/nhpa1966.htm
National Register of Historic Places: <http://nps.gov/nr/>

Other Laws and EOs

Americans with Disabilities Act (ADA): www.ada.gov

EO 13717, Establishing a Federal Earthquake Risk Management Standard:

www.gpo.gov/fdsys/pkg/FR-2016-02-05/pdf/2016-02475.pdf

EO 13688, Federal Support for Local Law Enforcement Equipment Acquisition:

www.whitehouse.gov/sites/default/files/docs/le_equipment_wg_final_report_final.pdf

Federal Emergency Management Agency (FEMA) References

FEMA: www.fema.gov

FEMA Stafford Act Declaration Process Fact Sheet: www.fema.gov/declaration-process-fact-sheet

FMAG Program: www.fema.gov/fire-management-assistance-grant-program

FMAG Program Guide (FEMA P-954): www.fema.gov/media-library/assets/documents/92379

Federal Insurance and Mitigation Administration (FIMA): www.fema.gov/what-mitigation/federal-insurance-mitigation-administration

FIMA Policy (FP 306-112-1): www.fema.gov/media-library-data/52b14d2dfb254480e7cac82fa2acda58/FP_303_112_1_508.pdf

National Flood Insurance Program (NFIP): www.fema.gov/national-flood-insurance-program

Hazard Mitigation Assistance (HMA) Programs: www.fema.gov/hazard-mitigation-assistance

HMA Guidance: www.fema.gov/media-library/assets/documents/103279

Hazard Mitigation Grant Program (HMGP): www.fema.gov/hazard-mitigation-grant-program

State Hazard Mitigation Officer: www.fema.gov/state-hazard-mitigation-officers

Individual Assistance (IA) Programs: www.fema.gov/individual-assistance-program-tools

Individuals and Households Program (IHP): www.fema.gov/media-library/assets/documents/24945

National Disaster Recovery Framework (NDRF): www.fema.gov/national-disaster-recovery-framework

National Response Framework (NRF): www.fema.gov/national-response-framework

Other Federal Agencies

Bureau of Indian Affairs (BIA): www.indianaffairs.gov

Federal Highway Administration (FHWA): www.fhwa.dot.gov

FHWA Emergency Relief Program (ERP): www.fhwa.dot.gov/programadmin/erelief.cfm

National Oceanic and Atmospheric Administration (NOAA): www.noaa.gov

National Marine Fisheries Service (NMFS): www.nmfs.noaa.gov

National Centers for Environmental Information (NCEI), formerly known as the National Climatic Data Center (NCDC): www.ncei.noaa.gov

NWS Cooperative Network Stations: www.nws.noaa.gov/om/coop/

Natural Resources Conservation Service (NRCS): www.nrcs.usda.gov

NRCS Emergency Watershed Protection Program (EWP):

www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/landscape/ewpp

National Weather Service (NWS): www.weather.gov

U.S. Army Corps of Engineers (USACE): www.usace.army.mil

USACE Rehabilitation and Inspection Program (RIP):
www.usace.army.mil/Missions/CivilWorks/LeveeSafetyProgram/LeveeInspections.aspx

U.S. Coast Guard (USCG): www.uscg.mil

U.S. Department of Agriculture (USDA): www.usda.gov
Farm Service Agency: www.fsa.usda.gov

U.S. Department of Health and Human Services (HHS): www.hhs.gov
Centers for Disease Control and Prevention (CDC): www.cdc.gov

U.S. Department of Homeland Security (DHS): www.dhs.gov
DHS Office of Inspector General (OIG): www.oig.dhs.gov
OIG Emergency Management Oversight Team:
www.oig.dhs.gov/index.php?option=com_content&view=article&id=38%3Aemo&catid=5&Itemid=17

U.S. Department of Housing and Urban Development (HUD): www.hud.gov
Community Development Block Grant Program: www.hud.gov/cdbg

U.S. Department of Labor: www.dol.gov

U.S. Environmental Protection Agency (EPA): www.epa.gov

U.S. Fish and Wildlife Service (USFWS): www.fws.gov

U.S. Government Accountability Office (GAO): www.gao.gov

TERMS AND DEFINITIONS

Acquisition cost

The net invoice price of equipment including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose it was acquired. Other charges such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the Recipient's regular accounting practices.

Animal

Any living or dead member of the animal kingdom, including any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate or any part thereof.

Applicant

A non-Federal entity submitting an application for assistance under the Recipient's Federal award.

Assistance Animal

An animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provide emotional support that alleviates identified symptoms or effects of a person's disability. Although dogs are the most common type of assistance animal, other animals can also be assistance animals.

Award (Federal)

The financial assistance that a non-Federal entity receives either directly from a Federal awarding agency or indirectly from a pass-through entity; or the cost-reimbursement contract under the Federal Acquisition Regulation that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity.

Backfill Employee

A replacement employee who performs the regular duties of other personnel.

Coastal zone

The coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of coastal States, including islands, transitional and intertidal areas, salt marshes, wetlands, and beaches.

Cost-to-charge ratio

A ratio established by Medicare to estimate a medical service provider's actual costs in relation to its charges.

Critical action

An action for which even a slight chance of flooding is too great. The minimum floodplain of concern for critical actions is the 500-year floodplain (also referred to as the critical action floodplain).

Current fair market value

The value of equipment and supplies determined by selling them in a competitive market or by researching advertised prices for similar items on the used market.

Direct Administrative Cost (DAC)

A cost incurred that can be identified separately and assigned to a specific project.

Duplication of Benefits

Funding received from two sources for the same item of work.

Educational institution

Any elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965; any secondary school as defined by section 801(h) of the Elementary and Secondary Education Act of 1965; or any institution of higher education as defined by section 1201 of the Higher Education Act of 1965.

Emergency

Any occasion or instance for which the President determines Federal assistance is needed to supplement State, Territorial, Tribal, and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

Emergency Protective Measure

An action taken by a community before, during, and after a disaster to save lives, protect public health and safety, and prevent damage to improved public and private property.

Emergency Work

Work that must be done immediately to save lives, protect improved property, protect public health and safety, or avert or lessen the threat of a major disaster.

Equipment

Tangible personal property, including information technology systems, having a useful life of more than 1 year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000.

Facility

Any publicly or privately owned building, works, system or equipment—built or manufactured—or an improved and maintained natural feature. Land used for agricultural purposes is not a facility.

Federal agency

Any department, independent establishment, government corporation, or other agency of the executive branch of the Federal government, including the United States Postal Service, but not including the American National Red Cross.

Federal share

The portion of the total project costs that are paid by Federal funds.

Final expenditure report

The report the Recipient submits to FEMA for all of a Subrecipient's projects, certifying that the grant terms and conditions have been met and project costs are reconciled.

Flood control work

A structure such as a levee, flood wall, flood control channel, or water control structure that was designed and constructed to have appreciable effects in preventing damage by irregular and unusual rises in water level.

Flood fighting

An activity or measure (e.g., sandbagging, buttressing) intended to prevent or stop flooding, at levels above flood stage, or to prevent structural failure.

Force account

An Applicant's own labor forces and equipment.

Fringe benefits

A percentage of the actual wages that pays for employee benefits.

Immediate threat

The threat of additional damage or destruction from an event that can reasonably be expected to occur within 5 years.

Improved property

A structure, facility, or item of equipment that was built, constructed, or manufactured. Land used for agricultural purposes is not improved property.

Incident period

The time span during which the disaster-causing incident occurs.

Indian Tribal Government

Any federally recognized governing body of an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Tribe List Act of 1994, Title 25 of the U.S. Code (U.S.C.) 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

Indirect cost

A cost incurred for a common or joint purpose benefiting more than one cost objective that is not readily assignable to the cost objectives specifically benefited.

Inland zone

The environment inland of the coastal zone excluding the Great Lakes and specified ports and harbors on inland rivers. Precise boundaries are identified in Federal regional contingency plans.

Large Project

A project for which the final obligated (Federal and non-Federal) amount is equal to or *greater* than the annually adjusted cost threshold for small project grants.

Local government

A county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government; an Indian Tribe or authorized tribal organization, or Alaska Native village or organization that does not meet the definition of Indian Tribal Government; or a rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State.

Major disaster

Any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, for which the President determines causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as Amended to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

Management cost

Any indirect cost, administrative expense, and any other expense that a Recipient or Subrecipient reasonably incurs in administering and managing the Public Assistance (PA) award that is not directly chargeable to a specific project.

Museum

A facility that preserves and exhibits a documented collection of artistic, historic, scientific, or other objects.

Non-Federal entity

An institution of higher education, nonprofit organization, local government, Indian Tribe, or State that carries out a Federal award as a Recipient or Subrecipient.

Pass-through entity

A non-Federal entity that provides a subaward to a Subrecipient to carry out part of a Federal program.

Period of performance

The time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal award.

Permanent Work

Restorative work that must be performed through repairs or replacement to restore an eligible facility on the basis of its pre-disaster design and current applicable codes and standards.

Personal property

Property other than real property. It may be tangible, having physical existence, or intangible.

Pet (household)

A Domesticated animal that is traditionally kept in the home for pleasure rather than for commercial purposes, can travel in a commercial carrier, and can be housed in a temporary facility. Examples are dogs, cats, birds, rabbits, rodents, and turtles. Household pets do not include reptiles (except turtles), amphibians, fish, insects, arachnids, farm animals (including horses), or animals kept for racing purposes.

Private nonprofit (PNP) custodial care facility

A building, structure, or system, including those for essential administration and support, that is used to provide institutional care for persons who require close supervision and some physical constraints on their daily activities for their self-protection, but do not require day-to-day medical care.

PNP educational facility

Classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes.

PNP emergency facility

A building, structure, equipment, or system used to provide emergency services, such as fire protection, ambulance, or rescue, to the general public, including the administrative and support facilities essential to the operation of such emergency facilities, even if not contiguous.

PNP medical facility

A hospital, outpatient facility, rehabilitation facility, or facility for long-term care as such terms are defined in Section 645 of the Public Health Service Act (42 U.S.C. 2910) and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of such medical facilities even if not contiguous.

Pre-disaster design

The size or capacity of a facility as originally designed and constructed or subsequently modified by changes or additions to the original design. It does not mean the capacity at which the facility was being used at the time the major disaster occurred if different from the most recent designed capacity.

Pre-disaster function

The function the facility was performing immediately prior to the disaster.

Private nonprofit (PNP) organization

Any nongovernmental agency or entity that currently has an effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under Sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or satisfactory evidence from the State that the nonrevenue producing organization or entity is a nonprofit one organized or doing business under State law.

Project

A logical grouping of work required as a result of the declared major disaster or emergency.

Project Worksheet (PW)

A tool used by the Applicant and FEMA to develop projects. The PW (FEMA Form 90-91) is the primary form used to document the location, damage description and dimensions, scope of work, and cost estimate for each project.

Providing Entity

The entity providing mutual aid assistance to a requesting entity pursuant to a local or statewide mutual aid agreement.

Public entity

An organization formed for a public purpose whose direction and funding are provided by one or more political subdivisions of the State.

Public facility

Any of the following facilities owned by a State, Territorial, Tribal, or local government: any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal aid, street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes; or any park.

Real property

Land, including land improvements, structures, and appurtenances thereto, but excludes moveable machinery and equipment.

Recipient

A non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program.

Reasonable cost

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In other words, a reasonable cost is a cost that is both fair and equitable for the type of work being performed.

Rehabilitation facility

A facility that primarily provides diagnosis and treatment for rehabilitation of injuries, disabilities, or illness. (Consistent with the definition of “comprehensive outpatient rehabilitation facility” in 42 U.S.C. §1395x(cc)(2)).

Request for Public Assistance (RPA)

The form a public entity or PNP organization uses to apply for disaster assistance.

Requesting Entity

An entity that requests mutual aid assistance from a Providing Entity for work resulting from a declared fire, emergency, or major disaster within its legal jurisdiction.

Service animal

A dog that is individually trained to do work or perform tasks for people with disabilities or access and functional needs.

Simplified acquisition threshold

The dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this part, the simplified acquisition threshold is \$150,000, but this threshold is periodically adjusted for inflation.

Small Project

A project for which the final obligated (Federal and non-Federal) amount is less than the annually adjusted cost threshold for small project grants.

Special Flood Hazard Area (SFHA)

The land area subject to inundation during a flood having a 1 percent chance of being equaled or exceeded in a given year (also referred to as the base flood or 100-year flood). SFHAs are shown on FIRMs published by FEMA.

State

Any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Subaward

An award provided by a pass-through entity to a Subrecipient for the Subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

Subrecipient

A non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program. It does not include an individual that is a beneficiary of such program. A Subrecipient may also be a Recipient of other Federal awards directly from a Federal awarding agency.

Substantial Damage

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Supply

Any tangible personal property other than that meeting the definition of equipment.

Trust land

Land, the title to which is held by the United States in trust for an Indian Tribe or individual, or which is held by an Indian Tribe or individual subject to a restriction by the United States against alienation. "Trust or restricted interest in land" or "trust or restricted interest in a parcel of land" means an interest in trust land. Collectively referred to as "trust lands."

Wetland

An area that is saturated by water with a frequency sufficient to support or, under normal hydrologic conditions would support, a prevalence of vegetation or aquatic life typically adapted to saturated or seasonally saturated soil conditions (e.g., swamp, fresh and saltwater marsh, bog, fen).

Zoo

Any facility, maintained under the care of a Doctor of Veterinary Medicine, in which live animal(s) are kept for public exhibition or education. Aquariums and wildlife or zoological parks may meet this definition.

APPENDIX A: ENVIRONMENTAL AND HISTORIC PRESERVATION COMPLIANCE

The following statutes, Executive Orders (EOs), and regulations establish requirements to protect the environment and preserve the Nation's historic and prehistoric resources. FEMA must review each Public Assistance (PA) project to ensure the work complies with applicable Federal environmental and historic preservation (EHP) laws, their implementing regulations, and applicable EOs.

National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires FEMA to consider the effects a project will have on historic properties and provide the Advisory Council on Historic Preservation the opportunity to comment on the effects of the project.³⁷³ Historic properties include buildings or groups of buildings (districts), structures, objects, landscapes, archaeological sites, and traditional cultural properties included in, or eligible for inclusion in, the National Register of Historic Places.³⁷⁴

National Environmental Policy Act

Section 102 of the National Environmental Policy Act (NEPA) requires Federal agencies to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions.³⁷⁵ The White House Council on Environmental Quality publishes its NEPA regulations in Title 40 of the Code of Federal Regulations (CFR) Parts 1500–1508. The U.S. Department of Homeland Security publishes NEPA requirements and provides a specific decision-making process that FEMA must follow before funding a project. The process ensures consideration of environmental consequences of the project and informs the general public.

Endangered Species Act

Section 7 of the Endangered Species Act (ESA) requires Federal agencies to use their authorities to conserve federally listed threatened and endangered species (listed species) and critical habitats. FEMA must consult with the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration Fisheries, also known as the National Marine Fisheries Service (NMFS), to ensure that proposed projects will not jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat for listed species.³⁷⁶

Clean Water Act

The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants in the waters of the United States (e.g., rivers and streams, lakes and ponds, coastlines, wetlands, estuaries). The CWA makes it unlawful to discharge any pollutant from a specific

³⁷³ 16 U.S.C. § 470f.

³⁷⁴ <http://nps.gov/nr/>.

³⁷⁵ 42 U.S.C. § 4332.

³⁷⁶ 16 U.S.C. § 1531, Section 7.

source into navigable waters without the appropriate CWA permits from the U.S. Army Corps of Engineers (USACE) or State regulatory agency.³⁷⁷

Clean Air Act

The Clean Air Act (CAA) protects the Nation's air through the reduction of smog and atmospheric pollution. Except for activities in non-attainment areas (defined as those areas that do not meet national standards for air quality and, therefore, require more rigorous compliance measures), air quality compliance often requires certain measures be implemented, such as dust abatement, vehicle emissions control, fuel storage, and distribution procedures.³⁷⁸

Coastal Barrier Resources Act

The Coastal Barrier Resources Act (CBRA)³⁷⁹ established the John H. Chafee Coastal Barrier Resources System (CBRS), which consists of relatively undeveloped coastal barriers along the Atlantic, Gulf, and Great Lakes coasts. CBRA minimizes adverse impacts to these areas by restricting Federal assistance that encourages development within the CBRS. USFWS publishes maps designating these areas.³⁸⁰ FEMA must consult with USFWS prior to providing PA funding for work within the CBRS.³⁸¹

Migratory Bird Treaty Act

The Migratory Bird Treaty Act makes it unlawful to pursue, hunt, take, capture, kill, or sell migratory birds listed in the statute without a waiver from USFWS.³⁸² FEMA consults with USFWS regarding projects likely to trigger compliance with this Act.

Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act (RCRA) established a framework for Federal, State, Territorial, and local cooperation for controlling the management of hazardous and non-hazardous solid waste. The U.S. Environmental Protection Agency's (EPA's) role is to establish minimum regulatory standards, usually implemented by the States, and to provide technical assistance. RCRA requires the safe disposal of waste materials, promotes the recycling of waste materials, and encourages cooperation with local agencies.³⁸³

Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) provides for the management of the Nation's coastal resources. The CZMA establishes a voluntary partnership between the Federal Government and coastal and great lakes States and Territories. It requires participating States to develop State coastal zone management plans. PA projects located in, or near, established coastal zone management areas must be consistent with the enforceable policies of the State's federally

³⁷⁷ 33 U.S.C. § 1251 et seq.

³⁷⁸ 42 U.S.C. § 7401 et seq.

³⁷⁹ 16 U.S.C. § 3501 et seq.

³⁸⁰ 16 U.S.C. §§ 3501 and 3503. USFWS publishes CBRS maps at: www.fws.gov/ecological-services/habitat-conservation/cbra/Maps/index.html.

³⁸¹ 16 U.S.C. § 3505.

³⁸² 16 U.S.C. §§ 703–712.

³⁸³ 42 U.S.C. § 6901 et seq.

approved coastal zone management plan.³⁸⁴ Before approving a project in a coastal zone management area, FEMA consults with the State agency overseeing the implementation of the CZMA plan to ensure the project is consistent with the plan's provisions.

Farmland Protection Policy Act

The Farmland Protection Policy Act minimizes the extent to which Federal programs contribute to the conversion of prime or unique farmland, or land of statewide or local importance, to non-agricultural uses and to ensure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, Territorial, local, and private programs and policies to protect farmland. The Farmland Protection Policy Act and U.S. Department of Agriculture (USDA) implementing procedures require FEMA to evaluate projects for adverse effects to such farmland and to consider alternative actions that could avoid adverse effects. For projects that have the potential to affect such farmland, FEMA must consult with the USDA Natural Resources Conservation Service (NRCS) to identify potential impacts to that farmland.³⁸⁵

Fish and Wildlife Coordination Act

The Fish and Wildlife Coordination Act protects fish and wildlife when Federal actions result in the control or modification of a natural stream or body of water. The Fish and Wildlife Coordination Act requires Federal agencies to determine whether a proposed action will result in the control or modification of a body of water. Projects involving the control or modification of any water body require Federal agencies to consult with USFWS and NMFS (as appropriate) and State wildlife agencies to develop measures to protect, develop, and improve fish and wildlife conditions.³⁸⁶

Wild and Scenic Rivers Act

The Wild and Scenic Rivers Act preserves the free-flowing State of rivers that are listed in the National Wild and Scenic Rivers System (System) or are under study for inclusion in the System because of their scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values. If a proposed project is located on a river included in the System, FEMA must review it for compliance with the Wild and Scenic Rivers Act and consult with the managing agency for the affected designated river.³⁸⁷

Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Fishery Conservation and Management Act is the primary law for managing and maintaining sustainable fisheries in waters of the United States. The Magnuson-Stevens Fishery Conservation and Management Act protects essential fish habitat, which includes the waters and substrate necessary to maintain healthy fisheries. FEMA must consult with NMFS when any proposed PA project could have an adverse effect on essential fish habitat.³⁸⁸

³⁸⁴ 16 U.S.C. § 1451 et seq.

³⁸⁵ 7 U.S.C. § 4201 et seq.

³⁸⁶ 16 U.S.C. §§ 661–667e.

³⁸⁷ 16 U.S.C. § 1271 et seq.

³⁸⁸ 16 U.S.C. §§ 1801–1884.

Executive Order 11988, Floodplain Management

EO 11988, Floodplain Management, requires Federal agencies to minimize or avoid activity that adversely affects floodplains. It requires Federal agencies to use a systematic decision-making process to evaluate the potential effects of projects located in, or affecting, floodplains; document each step of the process; and involve the public in the decision-making process. This process is designed to:

- Reduce flood loss risks;
- Minimize the impacts of floods on human safety, health, and welfare; and
- Restore and preserve the natural and beneficial functions of floodplains.

FEMA publishes its implementing regulations for EO 11988 in 44 CFR Part 9, Floodplain Management and Protection of the Wetlands. These regulations set forth the policy, procedures, and responsibilities to implement and enforce the EO, including the decision-making process, which is referred to as the 8-step process.³⁸⁹

Executive Order 11990, Protection of Wetlands

EO 11990, Protection of Wetlands, requires Federal agencies to minimize or avoid activity that adversely affects wetlands and to encourage the preservation and enhancement of the beneficial functions of wetlands. To meet these objectives, EO 11990 requires Federal agencies to use a systematic decision-making process to evaluate the potential effects of projects in, or affecting, wetlands; document each step of the process; and involve the public in the decision-making process.

FEMA publishes its implementing regulations for EO 11990, Protection of Wetlands in 44 CFR Part 9, Floodplain Management and Protection of the Wetlands. These regulations set forth the policy, procedures, and responsibilities to implement and enforce the EO, including the decision-making process, which is referred to as the 8-step process.

Executive Order 12898, Environmental Justice

EO 12898, Environmental Justice, requires Federal agencies to identify and address any disproportionately high and adverse human health or environmental effects on minority and low-income populations as a result of their actions.

³⁸⁹ 44 CFR § 9.6, Decision-making process.

APPENDIX B: PRIVATE NONPROFIT FACILITY ELIGIBILITY EXAMPLES

Below are examples of private nonprofit (PNP) facility eligibility determinations.

Facility owned by PNP – PNP Leases Portion of Space to For-Profit Service

Parkland Hospital is an eligible PNP that owns a medical office building and leases a portion of it to doctors and laboratories that are providing for-profit services. The for-profit leases are for 70 percent of the floor space, excluding the common area floor space, as defined in this policy.

Analysis:

The building is not eligible because the eligible services were offered in less than 50 percent of the building space.

PNP Recreational Center Providing Eligible Services

The PNP Springtown Recreation Center claims that it provides eligible essential social services in addition to its recreation activities and should be eligible for assistance. The organization claims that its services now include day care for elderly adults, senior citizen center programs, programs for battered spouses, and shelter workshops. These programs are provided by the recreation center staff and offered 5 days a week. Recreation activities are limited to evenings and weekends. The entire center is used for the eligible services.

Analysis

The organization would not appear to be eligible based upon its name and presumed mission. A detailed examination is necessary to determine the eligibility of the organization and its facility based upon the eligible services provided. In cases where space is not dedicated to any specific activity, the amount of time dedicated to eligible purposes in such spaces will determine eligibility and the level of assistance. Therefore, even though the entire facility is used for eligible purposes, FEMA will pro-rate PA funding based on the proportion of the total time it is used for eligible services.

Support Facility Owned by PNP

A parking garage is owned by an eligible PNP hospital to support its nearby hospital facility. The ground floor is leased to retail businesses and totals 15 percent of the total space of the garage.

Analysis

Title 44 of the Code of Federal Regulations (CFR) § 206.221(e), Private nonprofit facility, authorizes assistance for administrative and support facilities essential to the operation of medical facilities and emergency facilities, which in this example includes the parking garage. Because the hospital uses more than 50 percent of the parking garage, the facility is eligible based on primary use. FEMA assistance would be pro-rated based on the percentage of space used for the eligible parking purpose. The parking garage is eligible only because of its association with the hospital.

Facilities Owned by PNP Homeowners' Association

The Woodlands Homeowners' Association is a PNP organization responsible for providing certain services for a 200-home development. The Homeowners' Association's facilities are local neighborhood streets, water system, sewage system, fire station, medical clinic, neighborhood park, community center, and a recreational lake and dam.

Analysis

The Homeowners' Association operates facilities that provide essential social services and therefore is an eligible PNP. The lake and dam, park, and streets do not meet the definition of eligible facilities. The water and sewage systems meet the definition of a utility and are eligible for assistance. The fire station and medical clinic are eligible as emergency and medical facilities. The community center might be eligible if it is open to the general public outside the Homeowners' Association community and if it is established and primarily used as a gathering place for a variety of social, educational enrichment, and community service activities.

Recreational Center – Primarily Athletic Services

Westover Recreation Center sponsors a number of activities.

The center is available for rental Friday, Saturday, and Sunday evening to companies, religious groups, clubs, and civic organizations. It is offered as a location for league parties, office parties, seminars, conferences, and holiday celebrations. The center has rooms set aside for seniors' bridge and other card games, along with occasional workshops for photography, pottery and ceramics, and art.

However, the center is primarily oriented to athletics, as exemplified by a large indoor pool and locker room, a half dozen squash/racquetball courts, a weight/exercise room, and a 9,200-square-foot gymnasium/basketball court.

Analysis

Although Westover Recreation Center offers a number of activities generally considered eligible community center functions, it is, first and foremost, a recreation center. In contrast to the definition of an eligible community center, it is neither established nor primarily used as a "gathering place for a variety of social, educational enrichment, and community service activities," even though it does offer some of these.

"Facilities established or primarily used for athletic (or) recreational activities are not eligible community centers." It is not necessary to calculate the percentage of time or space devoted to community activities versus athletic and recreational activities, because Westover is overwhelmingly athletic and recreational. For these reasons, a PNP facility similar to Westover would not be eligible.

Mixed Use Community Center – Nominal Fee

Somerset Community Center consists of a number of meeting rooms, a lending library, social services room, health services room, dining room, activity area with games and a wide-screen TV, darkroom, pianos for practice, ceramics lab, woodshop, computer room, sewing machines, exercise room, and a large foyer. Outside are a fitness trail, garden plots, an outdoor basketball court and softball field, a gazebo, and picnic area.

A nominal membership fee is charged. Classes are offered in piano, bridge, arts and crafts, and cooking. The center sponsors numerous seniors' activities, which include trips, luncheons, and recreational and educational activities. A lunch program is offered for seniors and their spouses. Some exercise classes are also offered. Health screenings and immunizations are regularly offered. Door-to-door transportation is provided to those who need it.

Analysis

By virtue of the wide range of community activities, Somerset Community Center would be an eligible community center. Although it does offer athletic and recreational activities, these are minimal in the time and space allocated to them; therefore, it is not a recreational center. The minimal fee makes it open to the public.

School Operated by a Religious Institution

The Community Church operates a State-certified private school offering first through eighth grades. The teaching curriculum includes math, science, English, history, physical education, and religious doctrine. The school has an average attendance of 500 students. The campus consists of three buildings: one used primarily for the secular curriculum, one used primarily for religious instruction, and a chapel primarily used for religious worship. Admissions to the school are restricted to members of Community Church.

Analysis

Evaluate the three buildings separately. The two buildings used, respectively, for secular and religious education are each eligible as educational facilities. As educational facilities, they are considered to provide critical services and therefore Community Church will not have to apply to SBA prior to receiving funding for permanent work on those buildings. The chapel is eligible as a house of worship. Houses of worship are considered to provide non-critical services, so Community Church will be required to apply for an SBA loan for the chapel. The restricted admissions process does not affect eligibility. Pursuant to the Stafford Act, no PNP facility may be excluded from eligibility because leadership or membership in the organization is limited to people that share a religious faith or practice.

APPENDIX C: WELDED STEEL MOMENT FRAME

FEMA has specific eligibility criteria for inspecting, evaluating, and repairing earthquake damage to buildings constructed with welded steel moment framing connections subject to brittle fracture, such as those constructed prior to 1995 using the prescribed detail of the 1991 Uniform Building Code (Section 2710(g)(B) or its equivalent). FEMA bases the eligibility criteria on *Recommended Post Earthquake Evaluation and Repair Criteria for Welded Steel Moment Frame Buildings* (FEMA 352).³⁹⁰

Reimbursement for Preliminary Post-earthquake Assessment

The process of preliminary screening, which helps to rapidly identify buildings that are likely to have sustained significant damage to welded steel moment frame connections, is not eligible for Public Assistance (PA) funding. Preliminary screening is typically performed by building department officials immediately following an earthquake to determine if a building needs further evaluation.

Following the preliminary screening, the Applicant may use the preliminary evaluation method described in FEMA 352 to determine, on a preliminary basis, whether a building has sustained either structural or nonstructural damage that results in a hazardous condition. Preliminary evaluations include:

- A general review of the building's construction characteristics to determine its structural system and vulnerable features.
- A visit to the building site to observe its overall condition and note obvious signs of damage.
- A determination of an appropriate posting category for the building, on the basis of the preceding results and engineering judgment. Posting categories are described by the following designations:
 - Green – Little or no damage. Poses no immediate threat.
 - Yellow – Structural or nonstructural damage. Limited or localized safety hazard.
 - Red – Significant damage to structural elements. Significant safety hazard.

Preliminary evaluation is eligible only when conditions result in a yellow or red designation.

Reimbursement for Detailed Post-earthquake Evaluations

As recommended in FEMA 352, the Applicant should conduct a detailed evaluation on all buildings determined to have potential welded steel moment frame fractures, as identified in the preliminary assessment, and designated with a yellow or red posting. Eligible work includes the reasonable evaluation of the effects of the identified, significant connection damage to the future performance of the building structure. To be eligible, this evaluation should be limited to the recommendations in FEMA 352, Chapter 4, as follows:

³⁹⁰ www.fema.gov/media-library/assets/documents/747.

- Visual bottom flange connection inspections performed at locations selected in accordance with FEMA 352, Chapter 4, Method 2 (Inspection of a Sample of Connections) are eligible.
- The inspection of a sample of the total welded steel moment frame connections in the building, in accordance with guidance provided in FEMA 352, Chapter 4, Method 2 is eligible.
- If an Applicant discovers certain types of damage, additional visual inspection of bottom or top flange connections at locations recommended in FEMA 352, Chapter 4, are also eligible but only after the Applicant informs FEMA of the frame damage already discovered and FEMA approves the follow-on inspection.

The eligible work associated with connection inspection includes:

- Removal of necessary architectural finishes, such as plaster/drywall.
- Removal of fire retardants in the inspection area of the connection.
- Visual inspection.
- Nondestructive testing as appropriate, necessary, and approved by FEMA. Testing may include liquid dye-penetrant testing or magnetic particle testing, but not ultrasonic testing.

In circumstances where a building is assigned a green posting, visual inspections are only eligible for those connections where the Applicant has found significant damage (as defined in FEMA 352, Chapter 4) associated with the declared earthquake disaster.

Visual inspection of additional connections (at locations recommended by FEMA 352, following the discovery of damaged connections) will also be eligible, but only after the Applicant has informed FEMA of the frame damage already discovered and FEMA approves the follow-on inspection. FEMA may also approve nondestructive testing if the visual inspections indicate a significant potential for concealed damage.

Except as detailed above, any inspections that do not yield discovery of significant connection damage attributable to the earthquake are not eligible.

Generally, detailed analytical or experimental studies or Level 2 evaluations as described in FEMA 352, Chapter 5, are not eligible unless FEMA provides approval before the Applicant initiates the work.

APPENDIX D: DEBRIS MANAGEMENT PLAN

JOB AID

FEMA encourages State, Territorial, Tribal, and local governments to establish written procedures and guidance for managing debris in an expeditious, efficient and environmentally sound manner. FEMA refers to this as a Debris Management Plan (DMP).

The content of a DMP will vary depending on State, Territorial, Tribal, and local vulnerabilities, ordinances, zoning, critical infrastructure locations, disposal locations, and other localized factors. The following 10 elements are the basic components of a comprehensive DMP:

Overview

This section should include the following information:

- The purpose of the DMP and its overarching goals,
- How the DMP was developed and who participated in development (include all internal departments and external entities that may be involved with debris operations), and
- Whether the DMP is officially adopted by the governing body.

Incidents and Assumptions

Forecasting the type and quantity of debris is essential to the debris removal operations planning process. The DMP should include:

- Identification of the types and severity of incidents most likely to occur along with the types and anticipated quantities of debris that may be generated,
- Identification of the type of handling and equipment necessary to safely manage the debris, and
- A description of the general terrain types, land use, and accessibility for the areas that would most likely be impacted by the incident and how these characteristics may affect debris operations.

There are many types of debris with various considerations for each, as shown in the table below.

| | |
|---|---|
| Vegetative Debris | Vegetative debris includes whole trees, stumps, trunks, branches, limbs, and other leafy material. |
| Construction and Demolition Debris | Construction and demolition debris includes components of buildings and structures, such as lumber and wood, gypsum wallboard, glass, metal, roofing material, tile, carpeting and other floor coverings, window coverings, pipe, concrete, asphalt, equipment, furnishings, and fixtures. The definition of construction and demolition debris may vary between jurisdictions. |

| | |
|---|--|
| <p>Hazardous Waste</p> | <p>Hazardous waste is a waste that appears on one of the four hazardous waste lists in Title 40 of the Code of Federal Regulations (CFR) Part 261 or exhibits at least one of the following four characteristics:</p> <ul style="list-style-type: none"> • Ignitability • Corrosivity • Reactivity • Toxicity <p>Hazardous waste is regulated under the Resource Conservation and Recovery Act (RCRA) and contains properties that make it potentially harmful to human health or the environment. The State or Tribal environmental office and the U.S. Environmental Protection Agency (EPA) provide first response functions in cases of commercial, agricultural, industrial, and toxic waste spills. The DMP should include the contact information for both parties in case of a large contamination issue.</p> |
| <p>Household Hazardous Waste</p> | <p>Household Hazardous Waste (HHW) is a hazardous product or material used and disposed of by residential consumers, rather than commercial or industrial consumers. HHW includes some paints, stains, varnishes, solvents, pesticides, and other products or materials containing volatile chemicals that catch fire, react, or explode under certain circumstances, or that are corrosive or toxic. HHW mixed with other debris types will contaminate the entire load, which necessitates special disposal methods. The overall cost of debris disposal can escalate quickly if HHW collection and disposal is not planned and executed with care.</p> <p>Pre-disaster planning should include training for hazardous waste response teams to collect, sort, store, and dispose of excessive quantities of HHW. The planning staff should consider having emergency hazardous waste removal contracts in place with pre-qualified contractors to perform the work.</p> <p>After an incident, the Applicants should set-up HHW collection centers to avoid commingling of HHW with other debris.</p> |
| <p>White Goods</p> | <p>White goods are defined as discarded household appliances such as refrigerators, freezers, air conditioners, heat pumps, ovens, ranges, washing machines, dryers, and water heaters. Many white goods contain ozone-depleting refrigerants, mercury, or compressor oils. The Clean Air Act prohibits the release of refrigerants into the atmosphere and requires that certified technicians extract refrigerants from white goods before disposal or recycling. Some States and Tribal Governments also require certified technicians to extract compressor oils before disposal or recycling. To avoid releases of refrigerants or oils, the collection of white goods should be accomplished carefully by manually placing the appliance on trucks or by using lifting equipment that will not damage the elements that contain the refrigerants or oils.</p> <p>The DMP should identify certified recycling centers that are permitted to take white goods.</p> |
| <p>Electronic Waste</p> | <p>Electronic waste (e-waste) refers to electronics that contain hazardous materials, such as computer monitors, televisions, cell phones, and batteries. These products may contain minerals and chemicals that require specific disposal methods.</p> |

| | |
|--|---|
| Soil, Mud, and Sand | Floods, landslides, winds, and storm surges often deposit soil, mud, and sand on improved public property and public rights-of-way. Facilities commonly affected by this type of debris include streets, sidewalks, storm and sanitary sewers, water treatment facilities, drainage canals and basins, parks, and public swimming pools. |
| Vehicles and Vessels | Vehicles and vessels may be damaged, destroyed, displaced, or lost as a result of a disaster. These vehicles and vessels may eventually be abandoned because of the damage incurred or because the original owners have relocated. Vehicles and vessels may be classified as debris if they block public access and critical facilities. |
| Putrescent Debris | Putrescent debris is any debris that will decompose or rot, such as animal carcasses and other fleshy organic matter. |
| Infectious Waste | Infectious waste is waste capable of causing infections in humans and can include contaminated animal waste, human blood, blood products, medical waste, pathological waste, and discarded sharp objects (needles, scalpels, or broken medical instruments). Clearance, removal, and disposal of infectious waste may be under the authority of another Federal agency (the Centers for Disease Control and Prevention, EPA, etc.). |
| Chemical, Biological, Radiological, and Nuclear–Contaminated Debris | Chemical, biological, radiological, and nuclear–contaminated debris is any debris contaminated by chemical, biological, radiological, or nuclear materials. |

Debris Collection and Removal

A debris collection strategy establishes a systematic approach for the efficient removal of debris. The clearance and collection of debris should be structured to meet response and recovery priorities. As such, the DMP should:

- Identify and prioritize facilities that may be impacted by debris;
- Define the priorities during both the response and recovery phase operations;
- Describe the coordination process with other entities responsible for managing debris;
- Identify the roles and responsibilities for all entities and departments involved; and
- Describe the methods that will be used to collect debris (e.g., curbside collection, community drop-off bins).

Debris Removal from Private Property

Debris removal from private property is generally the responsibility of the individual property owners; however, when it is in the public interest to remove debris, the Applicant may act to abate the threat. The DMP should include:

- Identification of the circumstances under which the Applicant will take such action;
- The enabling laws that allow government to intercede in private property matters;

- The process the jurisdiction will use to obtain permissions to enter onto private property; and
- The process the Applicant will undertake to recoup costs (such as insurance proceeds).

Public Information

The dissemination of debris removal information is critical to the effective and efficient removal of debris. The DMP should include a public information strategy to ensure that residents receive accurate and timely information about the parameters, rules, and guidelines for debris removal. For example, if allowing residents to place debris on the curb, information regarding the timeframe allowed and where and how to place the debris (e.g., segregated in shared piles with neighbors, not placed on sidewalks, in roadways, against fire hydrants or power lines).

Health and Safety Requirements

Debris operations can pose safety hazards and health risks to emergency workers and the public. The DMP should include specific details on safety rules and procedures to protect workers and the public and specific measures for adherence to safety rules and procedures.

Environmental Considerations and Other Regulatory Requirements

The removal and disposal of certain types of debris have impact on the human and physical environment. Successful debris operations depend on compliance with Federal, State, Territorial, Tribal, and local environmental laws. The DMP should identify all debris operations that may trigger compliance with environmental and historic preservation (EHP) laws, regulations, and Executive Orders. It should also identify how compliance will be achieved.

Temporary Debris Management Sites and Disposal Locations

The DMP should identify locations where the debris will be segregated, reduced, and disposed and whether it will be recycled.

The Applicants should avoid selecting sites in or near environmentally or historically sensitive areas such as floodplains, wetlands, critical habitats of federally endangered species, historic districts, and archaeologically sensitive areas. Debris must be staged a safe distance from property boundaries, surface water, wetlands, structures, wells, and septic tanks with leach fields. If an EHP concern is identified, the potential site should be ranked lower than others.

Environmental permits and land-use variances may be required to establish a temporary site. Several agencies may be involved in issuing permits and granting approvals. The planning process should identify the potential permits that will be required to establish a facility. A listing of the permits should be part of the DMP and may include:

- Waste processing and recycling operations permit
- Temporary land-use permits
- Land-use variances
- Traffic circulation strategies
- Air quality permits
- Water quality permits
- Coastal commission land-use permits

- HHW permits
- Fire department permits
- Burn permits

The DMP should address traffic circulation at each of the disposal sites, disposal capacity, and how debris will be managed if there is a lack of landfill capacity. The DMP should identify the final disposal site of whole, reduced, or recycled debris.

Force Account or Contract Resources and Procurement

Jurisdictions can use staff resources, contractors, or a combination of both to monitor or conduct debris removal operations. The DMP should clearly define the types of work that the Applicant will perform with staff resources versus contracted services.

The DMP should describe the process and procedure for acquiring competitively procured contracted services, provide specific contract requirements, and explain how contractor qualifications are established.

Monitoring Debris Operations

The Applicant must monitor contracted debris removal operations. It may use staff resources, contractors, or a combination of both to monitor debris removal operations. FEMA encourages the Applicant to use its own employees to monitor debris removal operations. Professional Engineers and other certified professionals are not necessary for debris monitoring. The primary role for debris monitors is to document the location and amount of debris collected. Debris monitors should be able to estimate debris quantities, differentiate between debris types, properly fill out load tickets, and follow all site safety procedures.

The DMP should include details as to how the jurisdiction will monitor its debris removal contractor at pickup sites and all disposal sites, including temporary sites and final disposal areas. The DMP should discuss who will perform the monitoring and describe each monitoring task. If the jurisdiction outsources a monitoring task, it must award the contract to a contractor who has no vested interest in the debris removal contract or contractor. There must be no conflict of interest between the monitoring contractor and the debris removal contractor.



Debris Removal Contractor Registry

FEMA developed an on-line debris contractor registry tool to assist Applicants in identifying and contacting contractor resources. The registry tool can be found on FEMA's website (www.fema.gov/debris-removal-contractor-registry-information). The information provided in the registry is maintained by contractors and their representatives. FEMA does not verify and takes no responsibility for the accuracy of the information submitted. FEMA does not endorse, approve, or recommend any contractors, including those in the registry. State, Tribal, and local governments should perform all appropriate due diligence prior to entering into a contract. Contracting with any of the entities listed in the registry does not ensure reimbursement.

Debris Management Plan Checklist

| Yes | No | Plan Requirements | Comment |
|-----|----|--|---------|
| | | Overview – Does the plan describe the purpose and objectives? | |
| | | Incidents and Assumptions – Does the plan provide information on the types and anticipated quantities of debris that will be generated from various types and sizes of incidents? | |
| | | Debris Collection and Removal – Does the plan have a debris collection strategy? Does the plan discuss the methods that will be used to remove debris and establish priorities for clearance and removal? Does the plan outline the roles and responsibilities of the various functions involved (Public Works, Finance, and Solid Waste Departments, etc.)? | |
| | | Debris Removal on Private Property – Does the plan address the authority and processes for private property debris removal? | |
| | | Public Information – Does the plan include a public information strategy to ensure that residents receive accurate and timely information about debris operations? | |
| | | Health and Safety Requirements – Does the plan describe how workers and the public will be protected and discuss the specific measures for adherence to safety rules and procedures? | |
| | | Environmental Considerations and Other Regulatory Requirements – Does the plan identify all debris operations that will trigger compliance with environmental and historic preservation laws and how compliance will be attained? | |
| | | Debris Management Sites and Disposal Locations – Does the plan identify where the disaster debris will be segregated, reduced, and disposed or whether debris will be hauled to a recycler? | |
| | | Use and Force Account or Contracted Resources and Procurement – Does the plan define the types of work force account labor will accomplish and the types of debris operations that will be contracted? Does the plan describe the process and procedure for acquiring competitively procured contracted services? Does the jurisdiction identify debris contractors that it has prequalified? | |
| | | Monitoring of Debris Operations – Does the plan describe how debris removal contractors will be monitored and who will monitor at pickup sites, Debris Management Sites / Temporary Debris Storage and Reduction Sites, and final disposal? | |

APPENDIX E: STUMP CONVERSION TABLE

Diameter to Volume Capacity

FEMA quantifies the amount of cubic yards of debris for each size of stump based on the following formula:

$$\frac{[(\text{Stump Diameter}^2 \times 0.7854) \times \text{Stump Length}] + [(\text{Root-Ball Diameter}^2 \times 0.7854) \times \text{Root-Ball Height}]}{46,656}$$

0.7854 is one-fourth Pi and is a constant.

46,656 is used to convert cubic inches to cubic yards and is a constant.

The formula used to calculate the cubic yardage used the following factors, based upon findings in the field:

- Stump diameter measured 2 feet up from the ground
- Stump diameter to root-ball diameter ratio of 1:3.6
- Root-ball height of 31 inches

| Stump Diameter (Inches) | Debris Volume (Cubic Yards) | Stump Diameter (Inches) | Debris Volume (Cubic Yards) |
|----------------------------|--------------------------------|----------------------------|--------------------------------|
| 6 | 0.3 | 46 | 15.2 |
| 7 | 0.4 | 47 | 15.8 |
| 8 | 0.5 | 48 | 16.5 |
| 9 | 0.6 | 49 | 17.2 |
| 10 | 0.7 | 50 | 17.9 |
| 11 | 0.9 | 51 | 18.6 |
| 12 | 1 | 52 | 19.4 |
| 13 | 1.2 | 53 | 20.1 |
| 14 | 1.4 | 54 | 20.9 |
| 15 | 1.6 | 55 | 21.7 |
| 16 | 1.8 | 56 | 22.5 |
| 17 | 2.1 | 57 | 23.3 |
| 18 | 2.3 | 58 | 24.1 |
| 19 | 2.6 | 59 | 24.9 |
| 20 | 2.9 | 60 | 25.8 |
| 21 | 3.2 | 61 | 26.7 |
| 22 | 3.5 | 62 | 27.6 |
| 23 | 3.8 | 63 | 28.4 |
| 24 | 4.1 | 64 | 29.4 |

| Stump Diameter (Inches) | Debris Volume (Cubic Yards) | Stump Diameter (Inches) | Debris Volume (Cubic Yards) |
|------------------------------------|--|------------------------------------|--|
| 25 | 4.5 | 65 | 30.3 |
| 26 | 4.8 | 66 | 31.2 |
| 27 | 5.2 | 67 | 32.2 |
| 28 | 5.6 | 68 | 33.1 |
| 29 | 6 | 69 | 34.1 |
| 30 | 6.5 | 70 | 35.1 |
| 31 | 6.9 | 71 | 36.1 |
| 32 | 7.3 | 72 | 37.2 |
| 33 | 7.8 | 73 | 38.2 |
| 34 | 8.3 | 74 | 39.2 |
| 35 | 8.8 | 75 | 40.3 |
| 36 | 9.3 | 76 | 41.4 |
| 37 | 9.8 | 77 | 42.5 |
| 38 | 10.3 | 78 | 43.6 |
| 39 | 10.9 | 79 | 44.7 |
| 40 | 11.5 | 80 | 45.9 |
| 41 | 12 | 81 | 47 |
| 42 | 12.6 | 82 | 48.2 |
| 43 | 13.3 | 83 | 49.4 |
| 44 | 13.9 | 84 | 50.6 |
| 45 | 14.5 | | |

APPENDIX F: HAZARDOUS STUMP WORKSHEET

Applicant: _____

Date: _____

Applicant Representative: _____

Signature: _____

FEMA Representative (if available) _____

Signature: _____

| # | Physical Location (i.e., Street address, road, cross streets, etc.) | Description of Facility (ROW, Park, City Hall, etc.) | Hazard | | U.S. National Grid (USNG) Location | Tree Size (Diameter) | Eligible | | Fill For Debris Stumps | Comments (See attached sketch, photo, etc.) |
|----|---|--|--------|----|---------------------------------------|-------------------------|----------|----|------------------------------|---|
| | | | Yes | No | | | Yes | No | CY | |
| 1 | | | | | | | | | | |
| 2 | | | | | | | | | | |
| 3 | | | | | | | | | | |
| 4 | | | | | | | | | | |
| 5 | | | | | | | | | | |
| 6 | | | | | | | | | | |
| 7 | | | | | | | | | | |
| 8 | | | | | | | | | | |
| 9 | | | | | | | | | | |
| 10 | | | | | | | | | | |

APPENDIX G: MOSQUITO ABATEMENT

FEMA may provide reimbursement for mosquito abatement measures at the written request of the State, Territorial, Tribal, or local public health officials after FEMA consults with the Centers for Disease Control and Prevention (CDC), based on:

- Evidence of:
 - Higher levels of disease transmitting mosquitoes in the disaster area following the event;
 - A significant number of disease-carrying mosquitoes in the area due to the increase in event-related standing water; or
 - The potential for disease transmission and human exposure to disease carrying mosquitoes based on the detection of arboviral diseases in sentinel organisms (poultry, wild birds, mosquito pools) in the impacted area prior to the storm event, discovered during surveillance as part of mosquito abatement activities, or reported human cases in which transmission occurred prior to the storm event.
- A determination that a significant increase in the mosquito population and/or the change of biting mosquito species poses a threat to emergency workers who are required to work out-of-doors, thereby significantly hampering response and recovery efforts.

Such evidence may include an abnormal rise in landing rates or trap counts, significant changes in species composition or estimate of infection rates, when compared to pre-disaster surveillance results.

- Verification from medical facilities within the affected area that an increase in the general public's exposure to mosquitoes has directly resulted in secondary infections, especially among those with weakened immune systems such as the elderly, the very young, or the sick.

This may occur when increased numbers of residents in disaster areas with extended power outages are forced to open buildings for air circulation.

Where possible, a determination of the need for vector control measures should be based on surveillance data provided by local agencies, or on surveillance conducted as a component of the



Terminology

An **arbovirus** is a virus utilizing arthropods as vectors and is transmitted via their feeding to a definitive host.

The **landing rate**, expressed as number of mosquitoes landing per minute, is used as an adult mosquito surveillance measure utilizing human volunteers as bait.

Methoprene Briquettes are formulated with methoprene (compound that mimics the action of an insect growth-regulating hormone and prevents the normal maturation of insect larvae) growth inhibitor and a timed-release carrier that resembles a charcoal briquette.

A **sentinel organism** is an organism, usually fowl, purposely exposed to mosquito bites outdoors to monitor pathogen transmission by mosquitoes.

Seroconversion is the development of detectable antibodies in the blood of a sentinel organism directed against an infectious agent.

Trap count is the number of female mosquitoes captured in a trap receptacle each night the traps are set.

emergency response. Similarly, termination of control efforts should be based on mosquito density and disease transmission monitoring, and on the degree of exposure to mosquitoes of residents and responders. Information useful in determining the need for emergency mosquito control measures includes:

- The local jurisdiction's mosquito population density estimates pre- and post-disaster, including information about species composition
- Arbovirus transmission activity indices, including information about the location of surveillance activities; indices may consist of:
 - Infection rates in mosquitoes
 - Seroconversion in sentinel chickens
 - Equine case
 - Human cases
- The amount and type of flooding (e.g., saltwater/freshwater, coastal/inland)
- The extent and location of damage to housing
- The extent, location, and anticipated duration of power interruption
- The anticipated extent and duration of cleanup and recovery operations
- A description of the type of mosquito management required (e.g., aerial or ground-based adulticide applications, larvicide applications), and duration of application to reduce the threat and the areas where the interventions are needed

To be eligible for Public Assistance (PA) funding, insecticide formulations must be among those approved and registered by the U.S. Environmental Protection Agency for use in urban areas for mosquito control, and must be applied according to label directions and precautions by appropriately trained and certified applicators. Furthermore, mosquito abatement measures must comply with all Federal, State, Territorial, and local laws, ordinances, and regulations concerning vector control. Mosquito abatement measures include, but are not limited to the following:

- Adulticiding – The ground or aerial spraying of insecticides to kill adult mosquitoes
- Larviciding – The application of chemicals, including methoprene briquettes, by ground or air to kill mosquito larvae or pupae
- Breeding habitat removal or alteration – The modification of potential breeding habitat to make it unsuitable for mosquito breeding or to facilitate larval control, including:
 - Draining or removing standing water in close proximity to homes, schools, sheltering facilities, and businesses
 - Increased dewatering through the pumping of existing drainage systems
 - Dissemination of information (e.g., inserting flyers with resident's water bills, public service announcements, newspaper campaigns) to direct residents to remove the mosquito breeding habitat

APPENDIX H: SNOW ASSISTANCE

Snow-related activities, including snow removal, de-icing, salting snow dumps, and sanding of roads and other eligible facilities, is only an eligible emergency protective measure when a winter storm event results in record or near-record³⁹¹ snowfall.³⁹² FEMA authorizes snow assistance by county based on a finding that the county received record or near-record snowfall or meets the contiguous county criteria as described below. FEMA will evaluate Tribal lands as part of a requested county or separately.

Record or Near-Record Snowfall

FEMA utilizes data collected by the National Oceanic and Atmospheric Administration's National Centers for Environmental Information (NCEI) to identify the historical 1-, 2-, and 3-day snowfall records for each county. For current event snowfall, FEMA relies primarily on snowfall measurements taken at National Weather Service (NWS) Cooperative Network Stations, but will accept measurements from other sources if those measurements are verified as reasonable and accurate by the NWS. Historical 1-, 2-, and 3-day snowfall records by county are available on the NCEI Snow Climatology Database (SCDB) at the following website: www.ncdc.noaa.gov/snow-and-ice/snowfall-extremes. Daily snowfall reports by county are available at: www.ncdc.noaa.gov/snow-and-ice/daily-snow.

FEMA follows the following process to determine record or near-record snowfalls:

- Compare current snowfall amounts with the historical record snowfall amounts for a like number of days without regard for the month in which the record snowfall or current event occurred.
- For multiple-day snowstorms, a county or Tribal lands that meet the 1-day record or near-record requirement on any 1 day, or the 2-day record or near record over 2 consecutive days, or the 3-day record or near record over 3 consecutive days, etc., will have met the record or near-record criteria for that county or Tribal lands.
- FEMA relies on the NWS to determine the duration of the snowstorm.
- When data from multiple NWS-verified sources exist within a county, or Tribal lands, compare the highest current event snowfall reported by the NWS within that county or Tribal land with the highest historical record snowfall for that county or Tribal land.
- For counties or Tribal lands that do not have NCEI or NWS historical record snowfall data, use the historical record from the nearest NWS Cooperative Network Station in an adjacent county or Tribal land, even if located in an adjacent State, for determining historical snowfall records.
- If current event snowfall data are not available from the NWS for a county or Tribal land, use the nearest NWS Cooperative Network Station data from an adjacent county, even if located in an adjacent State.
- FEMA may designate a county or Tribal land that does not receive a record or near-record snowfall, but is contiguous to a county (generally referred to as a “core county”) that does receive a record or near-record snowfall, for snow assistance if the county or Tribal land has current event snowfall that meets or exceeds the current event snowfall of

³⁹¹ FEMA generally considers near record as being within 10 percent of the record snowfall.

³⁹² 44 CFR §206.227.

the core county, to which it is contiguous. Base this comparison on the highest current event snowfall received by each county as reported by the NWS.

- Consider counties or Tribal areas that experience snowfalls occurring over a period exceeding 3 consecutive days that do not reach record or near-record snowfalls during a 3-day period, and for which there are no historical snowfall records for a period exceeding 3 days with NCEI or NWS, on a case-by-case basis.

Winter Storm or Snowstorm Declaration Requests

The request for a Major Disaster Declaration must include a request for snow assistance as part of that declaration. All such requests are subject to the requirements and processes established in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, and FEMA regulations.³⁹³ In addition to the information required in every disaster request, requests for snow assistance must include the following information:

- Identification of core and contiguous counties³⁹⁴ for which a snowstorm declaration is requested;
- Duration of snowfall, as identified or confirmed by the NWS; and
- For each requested county or Tribal land, daily snowfall totals from NWS stations or NWS-verified sources and historical record snowfall data from the NCEI.

Generally, the current event weather and snowfall information is included in a statement or report from the NWS describing the event.

FEMA only includes costs related to snow activities as part of the preliminary damage assessment data for counties or Tribal lands that meet the record or near-record criteria or qualify as contiguous counties.

Other categories of work, including Permanent Work, may be authorized for snowstorm or winter storm declarations as appropriate.

³⁹³ 44 CFR §206 Subpart B (206.31–48).

³⁹⁴ "Core County" means a county that has a record or near record snowfall with public assistance costs that exceed the annually established countywide per capita impact indicator and is designated for snow assistance under a major disaster declaration. "Contiguous County" means a county in the same State that shares a common border with a core county without geographic separation other than by a minor body of water, typically not exceeding one mile between the land areas of such counties.

APPENDIX I: MOLD REMEDIATION

Mold Remediation Methods

The following list describes common mold remediation methods.

| Method | Application |
|---|--|
| Wet Vacuum | <ul style="list-style-type: none"> • Use when materials are wet • Use where water has accumulated, such as on floors, carpets and hard surfaces • Do not use when sufficient liquid is not present |
| Damp Wipe | <ul style="list-style-type: none"> • Wipe or scrub non-porous (hard) surfaces with water and detergent • Follow instructions listed on the product label |
| High Efficiency Particulate (HEPA) Vacuum | <ul style="list-style-type: none"> • Final clean-up after thoroughly dry and contaminated materials are removed • Recommended for cleanup of dust outside of the remediation area • Properly seal HEPA filter • Personal protection equipment is highly recommended; filter and contents must be disposed of in well-sealed bags |
| Discard | <ul style="list-style-type: none"> • Use for building materials and furnishings that cannot be remediated • Seal contents in two bags using 6-mil polyethylene sheeting • Cover large items in polyethylene sheeting and seal with duct tape • Sealing materials must be within containment area to limit further contamination |

Summarized from Indoor Environments Division of the U.S. Environmental Protection Agency, "Mold Remediation in Schools and Commercial Buildings": http://www.epa.gov/mold/mold_remediation.html.

Application of Remediation Methods

The following list outlines typical mold remediation actions.

| Water Damaged Material | Action |
|-----------------------------------|---|
| Books and paper | <ul style="list-style-type: none"> • Non-valuable items – discard • Valuable/important – photocopy and discard originals • Invaluable items – freeze in frost-free freezer or meat locker, or freeze dry |
| Carpet and backing | <ul style="list-style-type: none"> • Wet vacuum • Reduce ambient humidity levels with dehumidifier • Accelerate drying process with fans |
| Ceiling tiles | <ul style="list-style-type: none"> • Discard and replace |
| Cellulose insulation | <ul style="list-style-type: none"> • Discard and replace |
| Concrete or cinder block surfaces | <ul style="list-style-type: none"> • Wet vacuum • Accelerate drying process with dehumidifiers, fans, and/or heaters |
| Fiberglass Insulation | <ul style="list-style-type: none"> • Discard and replace |

| Water Damaged Material | Action |
|---|--|
| Hard surfaces, porous floorings (linoleum, ceramic tile, vinyl) | <ul style="list-style-type: none"> • Vacuum or damp wipe with water and mild detergent • Scrubbing may be necessary • Allow to dry |
| Upholstered furniture | <ul style="list-style-type: none"> • Wet vacuum • Accelerate drying process with dehumidifiers, fans, and/or heaters |
| Wallboard (drywall and gypsum board) | <ul style="list-style-type: none"> • If obvious swelling and seams are not intact – discard • If no obvious swelling and seams are intact – may be dried in place • Ventilate wall cavity |
| Window drapes | <ul style="list-style-type: none"> • Launder or clean according to manufacturer's instructions |
| Wood surfaces | <ul style="list-style-type: none"> • Remove water with wet vacuum • Accelerate drying process with dehumidifiers, fans, and/or heaters • Wet paneling – discard and ventilate wall cavity |

Summarized from Indoor Environments Division of the U.S. Environmental Protection Agency, "Mold Remediation in Schools and Commercial Buildings": www.epa.gov/mold/table1.html.

APPENDIX J: COST-EFFECTIVE HAZARD MITIGATION MEASURES

FEMA considers the following mitigation measures to be cost-effective if the measures do not exceed 100 percent of the eligible repair cost (prior to any insurance reductions). The mitigation measures must meet all eligibility requirements described in [Chapter 2:VII.C: Hazard Mitigation](#). There may be instances where these measures are required by codes or standards. In such cases FEMA first evaluates whether the work is eligible as a code or standard upgrade (See [Chapter 2:VII.B](#)).

I. Drainage Structures:

A. Replace the structure with multiple structures or a larger structure. The Applicant may use existing State, Territorial, Tribal, or local drainage criteria for sizing replacement culverts. The Applicant must consider replacement structures with regard to a total drainage system and cannot upgrade structures without a watershed hydrology study with an emphasis on downstream effects and National Flood Insurance Program regulations.



Example

Adding a relief culvert located at the same crossing site as a damaged culvert and in the embankment above the flow line of the primary culvert or located upstream of the main culvert. A relief culvert provides an alternate route for the flow if the main culvert is over capacity or gets plugged, and prevents sedimentation through the high-flow scouring action.

B. For the purpose of erosion control, add properly designed entrance and exit structures, such as a headwall, wingwalls, flared aprons, or energy dissipation measures to increase efficiency and help to minimize scour and erosion. Depending on the severity of erosion, solutions for bank protection may include gabion baskets, rip rap, cast-in-place concrete, crushed stone or rock, grouted rip rap³⁹⁵, sheet-piling, geotextile fabric, or similar measures to control erosion. Alternatively, the use of vegetation or a combination of vegetation and construction materials such as live fascines, vegetated geogrids, live cribwalls, brushmattresses, root wads, or similar measures are eligible. The Applicant should consider using green infrastructure techniques such as bioswales, bioretention, rain gardens and similar techniques that may be used in public drainage systems.

C. Culverts:

1. Where the alignment of a culvert is inconsistent with existing water flow, realign the culvert vertically or horizontally or relocate the culvert to improve hydraulics and minimize erosion and scour. The Applicant must consider realignment of structures with regard to a total drainage system and cannot replace structures without a watershed hydrology study with an emphasis on downstream erosion effects.

³⁹⁵ Projects involving grouted rip rap may be subject to an environmental assessment and may not be allowable in all instances.

2. Extend the culvert discharge to mitigate erosion and scour by extending the discharge end beyond the toe of the embankment.
3. Install a debris barrier to prevent debris blockage or fins designed to orient floating debris for passage through the culvert.
4. Install a debris barrier riser to allow debris to float up with the rising floodwaters without blocking flow into the culvert.

II. Transportation Facilities:

A. Bridges:

1. Where traffic counts are low, replace with low-water crossings.
2. Install cables to restrain a bridge from being knocked off piers or abutments during floods or earthquakes.
3. Install girder and deck uplift tie-downs to prevent their displacement from the substructure.
4. Install Longitudinal Peaked Stone Toe Protection with nature planting, upstream of a failed abutment, to provide a stable floodplain bench for the protection of the abutment and the adjoining bridge approach. Consider other relevant Bio-engineering applications such as engineered logjams, log vanes or log bendway weir.

B. Marine Pier Ramps: If attached to decking, install open decking or floating decking with uplift-resistant tie-downs and fasteners.

C. Roadways and Railways: Where shoulders are susceptible to overflow from adjacent water courses, stabilize shoulders and embankments with geotextile fabric and revetments.

D. Roadways: Use geotextile drainage blankets between the pavement section and subbase to strengthen subgrade.

III. Mechanical, Electrical, Plumbing (MEP) Components

- A. Provide seismic bracing for electrical lines, conduit, piping, duct-work, water heaters, and other MEP equipment. Components can be wall mounted, floor mounted, or suspended.
- B. Roof-Mounted Equipment: Secure to roof top via a continuous load path, using tie-downs, straps, or other anchoring systems that will resist expected wind forces.
- C. Elevate or dry floodproof components or systems vulnerable to flood damage, including equipment controls, electrical panels; heating, ventilation, and air conditioning/machinery rooms; emergency generators; and fuel tanks. When wiring cannot be elevated, replace with equipment suitable for submerged applications.
- D. Install switches, circuit isolation and/or quick connect capability to facilitate rapid connection of backup power for any damaged or susceptible mechanical and electrical components.
- E. Install camlocks, transfer switches, and electrical panels to facilitate the connection of portable emergency generators.

IV. Pipes:

- A. Install pipe joint restraints, flexible piping at pipe/conduit connections, or replace pipes with more ductile material.
- B. Install continuous lining or encasement to prevent infiltration or structural collapse.
- C. Underground Pipes: Install shut-off valves so that damaged sections of pipe can be isolated.

V. Water/Wastewater:

- A. Pumps: If pumps and their attached motors are damaged by stormwater inundation, replace them with submersible or inline pumps as appropriate.
- B. Sewer Access Covers: Elevate to the hydraulic grade line. When elevation is not feasible or practicable, install devices to prevent infiltration into access holes such as cast iron watertight frames and covers.
- C. Well Systems: Seal exposed portions of well casing or raise the elevation of the well head to prevent infiltration of flood waters.
- D. Raw water intakes: Install buttressing to prevent damage from erosion, scour, and flood debris.

VI. Electric Power Systems:

- A. Provide looped distribution service or other redundancies in the electrical service to critical facilities, such as hospitals and fire stations.
- B. Install surge suppressors and lightning arrestors.
- C. Transformers:
 - 1. Elevate pad transformers above the Base Flood Elevation.
 - 2. Support pole-mounted transformers with multiple poles.
- D. Power Poles:
 - 1. Replace damaged poles with higher-rated poles (preferably two classes stronger) of the same or different material. When replacing poles with higher-rated poles, install guys and anchors to provide lateral support for poles supporting pole-mounted transformers, regulators, capacitor banks, reclosers, air-break switches, or other electrical distribution equipment.
 - 2. Remove large diameter lines.
 - 3. Add cross-bracing to H-frame poles to provide additional strength.
 - 4. Power Lines: Add guy-wires or additional support.

VII. Storage Tanks:

- A. Anchor or otherwise protect from movement by strengthening or stiffening base connections.
- B. Install self-initiating disconnects and shut-off valves between tanks and distribution lines to minimize damage and leaks.

VIII. Buildings and Structures:

- A. For small support buildings subject to uplift or rollover from high winds, securely anchor the buildings to foundations to prevent toppling or becoming missile hazards.
- B. Dry or wet floodproof buildings.
- C. Footings: Where spread footings have been undercut by scour, underpin footings.
- D. Siding: Replace with a stronger siding with stronger attachments to the wall sheathing and structure.
- E. Vents: Replace with water-resistant vents.
- F. Non-structural Building Components: Brace interior walls, partitions, parapets, anchor veneer or cladding, suspended light features, drop ceilings, soffits, and other non-structural elements that could collapse and cause injury or block safe exit of a building during an earthquake or high-wind event.
- G. Furnishings: Provide seismic ties, straps, or clips to secure replaced furniture, cabinets, computers, bookcases, and other furnishings.
- H. Roofs
 - 1. Install hurricane clips, fasteners, anchors, straps, and connectors that are compatible with the roof system and corrosion-resistant in coastal areas.
 - 2. Strengthen the high-wind pressure areas (e.g., corner zones, roof soffits, overhangs).
 - 3. Strengthen roof openings, such as hatches and skylights.
 - 4. Low Slope Roofs: Replace entire roof with a roof covering with a secondary membrane and a fully adhered roof covering, such as modified bitumen. Mechanically fastened insulation or membranes are not acceptable.
 - 5. Gable Roofs: Replace the gable-end framing with hipped roof framing to reduce wind forces (lower edge pressure; reduced projected wind area) and strengthen the roof framing.
 - 6. Gutters and Downspouts: Upgrade to direct water away from the structure to prevent interior or basement water damage.
- I. Doors and Windows:
 - 1. Upgrade the weather stripping to prevent water infiltration.
 - 2. Replace doors, door frames, hinges, and hardware with wind-resistant units.
 - 3. Strengthen windows.
 - 4. Replace glass with impact-resistant material.
 - 5. Install shutters on windows:
 - a. Of critical facilities, such as hospitals.
 - b. On the lower floors of non-critical facilities most likely to be struck by debris.
 - c. Of buildings with very high-value contents that can be damaged by water (such as libraries and document centers).
 - d. Of buildings where failure of roofing materials or other portions of nearby structures could create impact hazards.

IX. Signage: Replace sign panels and their supports with a stronger type of system of supports and panels. Consider using multiple support posts and stronger panels and fasteners.

APPENDIX K: WORK ELIGIBILITY CONSIDERATIONS BY TYPE OF FACILITY

| Work Eligibility Considerations: All Facilities | | |
|--|---|---|
| Pages | Topic | Applicability |
| Chapter 2:III | Facility Eligibility | All Permanent Work. |
| Chapter 2:IV | General Work Eligibility <ul style="list-style-type: none"> ○ Result of Declared Incident ○ Within Designated Area ○ Legal Responsibility | All work. |
| Chapter 2:V | Cost Eligibility | All work. |
| Chapter 2:VI | Emergency Work Eligibility | All Emergency Work. |
| Chapter 2:VI.A | Debris Removal Eligibility | All Debris Removal Work. |
| Chapter 1:II.C; Chapter 2:VI and VI.A; Chapter 2:VII, VII.B.4 and 7, and VII.G; Appendix A | Environmental and Historic Preservation (EHP) Compliance Considerations (including permit requirements) | All work (including ground disturbance for any staging areas, access roads, parking, landscaping, grading, or utilities). |
| Chapter 2:VII.B | Codes and Standards | Upgrades to pre-disaster design required by codes or standards. |
| Chapter 2:VII.C and Appendix J | Hazard Mitigation | Work to reduce or eliminate similar damage to the facility from a future incident. |
| Chapter 2:III.E and VII.D | Replacement | When cost to repair disaster-related damage exceeds 50% of cost to replace facility. |
| Chapter 2:VII.E | Permanent Relocation | Destroyed facilities. |
| Chapter 2:VII.B.5 and VII.F | Floodplain Considerations | All Permanent Work in or impacting the floodplain |
| Chapter 2:VI.B.21 and VII.H.6 | Landslides and Slope Stabilization | Facilities damaged due to a landslide or slope instability triggered by the incident. |
| Chapter 2:VI.B.17 | Temporary Relocation | Certain essential community services provided in public and PNP facilities. |

Work Eligibility Considerations: Roads and Bridges

Road (including surface, base, shoulders, roadside ditches, guardrails, lighting, signage, sidewalks, etc.), drainage structure (culvert, low-water crossing), bridge (including but not limited to decking, pavement, piers, girders, abutments, slope protection, approaches, guardrails, lighting, signage, sidewalks)

EHP laws, regulations, and EOs that commonly apply: NEPA; NHPA, ESA, CWA, CAA, EOs 11988 and 11990; projects involving work in waterways generally require Section 404 permits – permits issued by the USACE as required by the CWA.

| Pages | Category | Eligible Work (including, but not limited to): | Ineligible Work and Costs | Other Considerations |
|--|----------|--|--|--|
| Chapter 2:VI.A | A | Debris removal and disposal to eliminate an immediate threat | | Must distinguish between incident-related debris versus debris generated by other recent events. |
| Chapter 2:VI.B.6 | B | Emergency access <ul style="list-style-type: none"> ○ Debris clearance or temporary repairs to restore access. | <ul style="list-style-type: none"> ○ Removal of debris from a privately owned access facility UNLESS no other access point exists and damage or debris impedes emergency access. ○ Emergency repairs to privately owned roads UNLESS no other access point exists, damage impedes emergency access, and repair eliminates temporary housing needs. | |
| Chapter 2:VI.B.20 | B | Temporary emergency repairs to address an immediate threat | <ul style="list-style-type: none"> ○ Temporary repair of Federal aid roads. | |
| Chapter 2:III.E V.R.1 and 2, and VII.H.1 | C | Restoration: Permanent repair or replacement | <ul style="list-style-type: none"> ○ Loss of useful service life. ○ Loss of toll revenue. ○ Construction of additional lanes even if required by a code or standard, except when code requires changing a one lane bridge to two lanes. ○ Normal maintenance. ○ Restoration of Federal aid roads. | <ul style="list-style-type: none"> ○ Must distinguish between minor incident-related damage and damage related to age of the road, traffic flow, and frequent rain events. ○ Need date of construction for culvert and any nearby structures that may be altered or affected by the project. ○ Hydrologic and hydraulic studies to evaluate upstream and downstream impacts are necessary if replacing culvert with larger culvert. |

Work Eligibility Considerations: Water Control Facilities

Dam or reservoir, irrigation and water conveyance (canal, pipeline, lateral, pump station, siphon), aqueducts, drainage channels, sediment and debris basins, stormwater retention and detention basins, coastal shoreline protection facilities (seawall, revetment), flood control work (levee, floodwall, flood control channel, dam, or basin, and other structure primarily used for flood control), navigational waterways, and shipping channels

EHP laws, regulations, and EOs that commonly apply: NEPA; NHPA, ESA, CWA, EOs 11988 and 11990; projects involving work in waterways generally require Section 404 permits – permits issued by the USACE as required by the CWA.

| Pages | Category | Eligible Work (including, but not limited to): | Ineligible Work and Costs | Other Considerations |
|--------------------|----------|---|---|--|
| Chapter 2:VI.A.4.b | A | <p>Debris removal and disposal (from natural feature or engineered facility) to eliminate an immediate threat</p> <ul style="list-style-type: none"> ○ For navigable waterways, debris removal eligibility is limited to a max depth of 2 feet below the low tide draft of the largest vessel that utilized the waterway prior to the incident. ○ For non-navigable waterways, debris removal is only eligible to the extent that it is necessary to eliminate an immediate threat if the debris: <ul style="list-style-type: none"> - Obstructs, or could obstruct, intake structures; - Could cause damage to structures; or - Is causing, or could cause, flooding to property during the occurrence of a 5-year flood. | <ul style="list-style-type: none"> ○ Removal of debris to eliminate a threat of flooding to agricultural land. ○ Random surveys to look for debris. ○ Debris removal from flood control works that are under the specific authority of NRCS. | <ul style="list-style-type: none"> ○ Must distinguish between incident-related debris versus pre-existing debris and debris generated by other incidents. ○ Cannot duplicate funding provided by another Federal agency (e.g., USACE or NRCS). |

Work Eligibility Considerations: Water Control Facilities

Dam or reservoir, irrigation and water conveyance (canal, pipeline, lateral, pump station, siphon), aqueducts, drainage channels, sediment and debris basins, stormwater retention and detention basins, coastal shoreline protection facilities (seawall, revetment), flood control work (levee, floodwall, flood control channel, dam, or basin, and other structure primarily used for flood control), navigational waterways, and shipping channels

EHP laws, regulations, and EOs that commonly apply: NEPA; NHPA, ESA, CWA, EOs 11988 and 11990; projects involving work in waterways generally require Section 404 permits – permits issued by the USACE as required by the CWA.

| | | | | |
|------------------------------|----------|---|---|--|
| Chapter 2:VI.B.4 and 20 | B | <p>Flood-fighting (on natural feature or engineered facility) or emergency, temporary repairs (engineered and maintained facility only) to address an immediate threat</p> <ul style="list-style-type: none"> ○ The repair of deliberate breaches or removal of flood-fighting measures is eligible as part of the Category B emergency protective measure project. | <ul style="list-style-type: none"> ○ Emergency protective measures to reduce the threat of flooding to agricultural land. ○ Temporary emergency repair of flood control works that are under the authority of USACE or NRCS. ○ Flood-fighting measures on a flood control work that is under the authority of the NRCS. ○ Permanently increasing height or capacity of a flood control work. ○ De-watering of flooded areas primarily for the purpose of drying land. ○ Emergency repair of a secondary levee riverward of a primary levee. ○ Temporary, emergency repairs of flood control works under the authority of NRCS and USACE and of federally constructed coastal shoreline protective features under the authority of USACE. | <ul style="list-style-type: none"> ○ USACE can conduct flood fighting activities. USACE cannot reimburse Applicants for flood fighting efforts. |
| Chapter 2:VII.H.2(a) and (b) | D | <p>Debris and silt removal required to restore capacity (engineered and maintained facilities only)</p> <ul style="list-style-type: none"> ○ Eligible, but only if the Applicant provides documentation to establish the pre-disaster capacity of the facility AND that the facility was actively used and maintained with a regular clearance schedule. | <ul style="list-style-type: none"> ○ Restoration of flood control works under the authority of USACE or NRCS. | |

Work Eligibility Considerations: Water Control Facilities

Dam or reservoir, irrigation and water conveyance (canal, pipeline, lateral, pump station, siphon), aqueducts, drainage channels, sediment and debris basins, stormwater retention and detention basins, coastal shoreline protection facilities (seawall, revetment), flood control work (levee, floodwall, flood control channel, dam, or basin, and other structure primarily used for flood control), navigational waterways, and shipping channels

EHP laws, regulations, and EOs that commonly apply: NEPA; NHPA, ESA, CWA, EOs 11988 and 11990; projects involving work in waterways generally require Section 404 permits – permits issued by the USACE as required by the CWA.

| | | | | |
|------------------------------------|----------|---|---|--|
| Chapter 2:II.D, III.C, and VII.H.2 | D | <p>Restoration: Permanent Repair or Replacement</p> <ul style="list-style-type: none"> ○ PNP irrigation facilities are only eligible if they provide water for essential services of a governmental nature to the general public for fire suppression, generating and supplying electricity, and drinking water supply. | <ul style="list-style-type: none"> ○ Restoration of natural channels, lakes, and shorelines—that is, any feature that is not improved and maintained. ○ Restoration of private non-profit irrigation systems that provide water for agricultural purposes. ○ Restoration of federally constructed coastal shoreline protective features. ○ Restoration of flood control works under the authority of USACE or NRCS. | |
|------------------------------------|----------|---|---|--|

Work Eligibility Considerations: Buildings, Vehicles, and Equipment

EHP laws, regulations, and EOs that commonly apply: NEPA, NHPA, CAA, ESA and EOs 11988 and 11990

| Pages | Category | Eligible Work (including, but not limited to): | Ineligible Work and Costs | Other Considerations |
|----------------------|----------|---|--|--|
| 5Chapter 2:VI.B | B | Extracting water and removing mud and silt from interior to address immediate threat of additional damage or for access for assessment. | <ul style="list-style-type: none"> ○ Conducted on private property UNLESS FEMA approves the work because: <ul style="list-style-type: none"> - The immediate threat is widespread, such that it is a threat to the health and safety of the general public; - The Applicant has legal authority to perform the work; and - The Applicant obtained rights-of-entry and agreements to indemnify and hold harmless the Federal Government. | |
| Chapter 2:VII.H.3(a) | E | Extracting water and removing mud, silt, or debris from interior in conjunction with repairs. | | |
| Chapter 2:VI.B.22 | B | Mold remediation to address immediate threat of additional damage <ul style="list-style-type: none"> ○ Post-remediation sampling to confirm remediation is complete. | <ul style="list-style-type: none"> ○ Mold remediation required as a result of poor facility maintenance or failure to take protective measures in a reasonable amount of time following event. | <ul style="list-style-type: none"> ○ Pre-remediation mold sampling is only eligible when sampling reveals presence of mold. |
| Chapter 2:VII.H.3(a) | E | Mold remediation when conducted in conjunction with restoring the facility <ul style="list-style-type: none"> ○ Post-remediation sampling to confirm remediation is complete. | <ul style="list-style-type: none"> ○ Mold remediation required as a result of poor facility maintenance or failure to take protective measures in a reasonable amount of time following event. | <ul style="list-style-type: none"> ○ Pre-remediation mold sampling is only eligible when sampling reveals presence of mold. |

Work Eligibility Considerations: Buildings, Vehicles, and Equipment

EHP laws, regulations, and EOs that commonly apply: NEPA, NHPA, CAA, ESA and EOs 11988 and 11990

| | | | | |
|-------------------------|----------|--|---|---|
| Chapter 2:VI.B and B.20 | B | Emergency protective measures to address an immediate threat <ul style="list-style-type: none"> ○ Buttressing, bracing, or shoring. ○ Barricading and safety fencing. ○ Flood protection, such as sandbagging. ○ Temporary emergency repairs. | | |
| Chapter 2:VI.B.16 | B | Demolition to address an immediate threat <ul style="list-style-type: none"> ○ Demolition of private structures may be eligible when collapse is imminent and an immediate threat exists to the general public subject to additional requirements. | <ul style="list-style-type: none"> ○ Removal of slabs or foundations that do not present a health or safety hazard. ○ Removal or covering concrete pads and driveways. ○ Exception to both – Structures in a buyout program funded by FEMA through the HMGP. | <ul style="list-style-type: none"> ○ If securing a damaged building to prevent access is sufficient to alleviate the threat to public safety, demolition may not be necessary or eligible. |
| Chapter 2:VII.D.3 | E | Demolition when replacing a facility <ul style="list-style-type: none"> ○ Including removal and disposal of associated debris. | | |
| Chapter 2:VI.B.14 | B | Safety inspections <ul style="list-style-type: none"> ○ To establish whether a building is safe for entry, occupancy, and lawful use, as well as posting appropriate placards. ○ Eligible for both public and private buildings. | <ul style="list-style-type: none"> ○ Inspections associated with: <ul style="list-style-type: none"> ▪ A determination of Substantial Damage under the community’s floodplain management ordinance. ▪ A determination of whether the building needs to be elevated or relocated. ▪ For ensuring repairs are completed in accordance with building codes and standards. | |

Work Eligibility Considerations: Buildings, Vehicles, and Equipment

EHP laws, regulations, and EOs that commonly apply: NEPA, NHPA, CAA, ESA and EOs 11988 and 11990

| | | | | |
|---|----------|---|---|--|
| Chapter 2:V.O, VII.H.3(a), and Appendix C | E | <p>Post-earthquake inspection and evaluation of welded steel moment frames in buildings</p> <ul style="list-style-type: none"> ○ To determine the level of disaster-related damage requiring repair. | <ul style="list-style-type: none"> ○ Preliminary assessment to determine which buildings are likely to have sustained damage to welded steel moment frame connections. ○ Detailed analytical or experimental studies. ○ Inspection that does not yield earthquake-related connection damage. | |
| Chapter 2:V.R.3, VII.B.6 and H.3(a) and (b) | E | <p>Restoration – Permanent repair or replacement</p> <ul style="list-style-type: none"> ○ Repair or replacement of buildings ○ Repair or replacement of building components, vehicles or equipment with items similar in age, condition, and capacity. | <ul style="list-style-type: none"> ○ Tax assessments. ○ Additional capacity necessary due to increased population or use, even if required by code. ○ ADA upgrades related to a violation that the Applicant was notified of prior to the incident. | <ul style="list-style-type: none"> ○ Need date of construction. ○ Check National Register of Historic Places or a State historic register. ○ Identify whether the building is located in the 100-year floodplain (500-year for critical actions). ○ FEMA provides assistance for Public Housing Authority facilities, unless Congress appropriates funds to HUD for emergency capital needs for specific PHA facilities. ○ Must consider the age of the building, roof, and building systems; evidence of regular maintenance; severity and impacts of incident when distinguishing between incident-related damage and pre-existing damage. ○ Comply with federally required minimum codes and standards when repairing or replacing building. ○ |

Work Eligibility Considerations: Contents

Furnishings, equipment, consumable supplies, files, records, research-related contents, animals, irreplaceable collections and individual objects, library books, and publications.

| Pages | Category | Eligible Work (including, but not limited to): | Ineligible Work and Costs | Other Considerations |
|-----------------------------|----------|--|--|--|
| Chapter 2:VI.B and VI.B.17. | B | <p>Address an immediate threat</p> <ul style="list-style-type: none"> ○ Removal and storage of contents to prevent additional damage | | |
| Chapter 2:VII.H.3 | E | <p>Restoration – Permanent repair or replacement</p> <ul style="list-style-type: none"> ○ Replacement of destroyed contents with items similar in age, condition, and capacity. ○ Recovering and stabilizing records. ○ Stabilization of irreplaceable collections and individual objects is eligible. ○ Re-shelving, cataloging, and other work incidental to the replacement of library books and publications. | <ul style="list-style-type: none"> ○ Replacing used items with new items, unless a used replacement item is not reasonably available. ○ Establishing new information databases. ○ Manually re-entering data into new computers ○ Scanning re-established hardcopy files into computers to create digital files. ○ Deciphering photocopies of damaged hard copies. ○ Research-related contents and animal replacement, if a comparable item/animal is not available for purchase at a reasonable cost. ○ Replacement of rare books, collections, or objects. | <ul style="list-style-type: none"> ○ Applicants may replace contents with different items used for the same general purpose. Eligible funding is capped at the estimated cost for equivalent items. |

Work Eligibility Considerations: Utilities

Water storage, treatment plants, and delivery systems; power generation, transmission, and distribution facilities, including, but not limited to, natural gas systems, wind turbines, generators, substations, and power lines; sewage collection systems and treatment plants; communication systems

EHP laws, regulations, and EOs that commonly apply: NEPA, NHPA, ESA, CAA, CWA, and EOs 11988 and 11990

| Pages | Category | Eligible Work (including, but not limited to): | Ineligible Work and Costs | Other Considerations |
|---|----------|--|--|--|
| Chapter 2:V.G.2, and R.1, VI.B, and B.6, 13, 17, and 20 | B | <p>Emergency protective measures to address an immediate threat</p> <ul style="list-style-type: none"> ○ Buttressing, bracing, or shoring. ○ Barricading and safety fencing. ○ Flood protection, such as sandbagging. ○ Temporary, emergency repairs. ○ Residential electrical meter repair | <ul style="list-style-type: none"> ○ Revenue lost due to shutdown of a utility. ○ Increased operating costs, such as increased costs for obtaining an alternative source of power because of the shutdown of a power generation plant. | <ul style="list-style-type: none"> ○ If repairs conducted under emergency circumstances restore the pre-disaster design and function of the facility, the repairs are not eligible as Category B, but are eligible as Category F. ○ Rural electric cooperatives, municipal utilities, and public power districts commonly use time and equipment contracts (similar to time-and-materials contracts) for power distribution system repairs. Costs under these contracts are subject to certain criteria. |
| Chapter 2:V.H, and VII.H.4 | F | <p>Restoration</p> <ul style="list-style-type: none"> ○ Permanent repair or replacement of any component of system, including buildings, structures, or systems, even if not contiguous. ○ Electrical conductor replacement subject to specific criteria. ○ Inspection or assessment of damaged components of a system. ○ Inspection or assessment of an inaccessible structure or component of a system may be eligible, but only when there is evidence of damage, such as when sunken ground appears above a water pipeline. | <ul style="list-style-type: none"> ○ General post-disaster surveys, inspections, and assessments, such as video inspection of sewer lines. | <ul style="list-style-type: none"> ○ Limited ROW clearance required to access a damaged facility may be eligible. |

Work Eligibility Considerations: Parks, Recreation, and Other

EHP laws, regulations, and EOs that commonly apply: NEPA, NHPA, CZMA, CBRA, ESA, CWA, and EOs 11988 and 11990

| Pages | Category | Eligible Work (including, but not limited to): | Ineligible Work and Costs | Other Considerations |
|-------------------------|----------|--|--|----------------------|
| Chapter 2:VI.B and B.20 | B | <p>Emergency protective measures to address an immediate threat</p> <ul style="list-style-type: none"> ○ Buttressing, bracing, or shoring. ○ Barricading and safety fencing. ○ Flood protection, such as sandbagging. ○ Temporary, emergency repairs. | | |
| Chapter 2:VII.H.5 | G | <p>Restoration – Permanent repair or replacement</p> <ul style="list-style-type: none"> ○ Restoration of engineered beaches is subject to specific eligibility criteria. | <ul style="list-style-type: none"> ○ Restoration of federally constructed beaches or shoreline protection facilities. ○ Restoration of PNP parks and recreational facilities, including supporting facilities such as roads, buildings, and utilities. ○ Restoration of natural, unimproved features. ○ Replacement of dead trees, shrubs, and other vegetation (unless necessary for slope stabilization, erosion control, minimizing sediment runoff, or restoring the function of the facility). ○ Replacement of destroyed crops; cosmetic or aesthetic vegetation. | |



FEMA

CONTRACT PROVISIONS TEMPLATE

FEMA Office of Chief Counsel

Procurement Disaster Assistance Team



INTRODUCTION

Required Contract Clauses

If a non-Federal entity (state or non-state) wants to use federal funds to pay or reimburse their expenses for equipment or services under a contract, that contract must contain the applicable clauses described in [Appendix II to the Uniform Rules](#) (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards) under 2 C.F.R. § 200.326. In addition, there are certain contract clauses which are required or recommended by FEMA.

This document outlines the federally required contract provisions in addition to FEMA-recommended provisions.

- For some of the required clauses, sample language or references to find sample language are provided.
- Sample language for certain required clauses (remedies, termination for cause and convenience, changes) is not provided since these must be drafted in accordance with the non-Federal entity's applicable local laws and procedures.
- For the clauses which require that exact language be included, the required language is provided. Those clauses are specifically identified below.

Please note that the non-Federal entity alone is responsible for ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II.





FEMA

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Tools: Contract Provisions Quick Reference Guide

Table 1. Key

| KEY | |
|--|--------------------------|
| Required/Recommended Provision | <input type="checkbox"/> |
| Required/Recommended Provision and Required Exact Language | <input type="checkbox"/> |
| Not Required for PA Awards (Grants) | <input type="checkbox"/> |

Table 2. Required Contract Provisions

| | Required Provision | Contract Criteria | Sample Language? |
|-----|--|---|--|
| 1. | Legal/contractual/administrative remedies for breach of contract | > SAT (\$250k) | No. It is based on applicant's procedures. |
| 2. | Termination for cause or convenience | > \$10k | No. It is based on applicant's procedures. |
| 3. | Equal Employment Opportunity | Construction work | Yes. 41 CFR Part 60-1.4(b) |
| 4. | Davis Bacon Act | Construction work | Not applicable to PA grants |
| 5. | Copeland Anti-Kickback Act | Construction work > \$2,000 | Not applicable to PA grants |
| 6. | Contract Work Hours and Safety Standards Act | > \$100k + mechanics or laborers | Yes. 29 CFR 5.5(b) |
| 7. | Rights to inventions made under a contract or agreement | Funding agreement | Not applicable to PA grants |
| 8. | Clean Air Act and Federal Water Pollution Control Act | >\$150k | Yes |
| 9. | Debarment and Suspension | All | Yes |
| 10. | Byrd Anti-Lobbying Amendment | All (>\$100k: Certification) | Yes. Clause and certification |
| 11. | Procurement of Recovered Materials | Applicant is a state or political subdivision of a state. Work involves the use of materials. | Yes |
| 12. | Access to Records | All | Yes |





Table 3. Recommended Contract Provisions

| | Recommended Provision | Contract Criteria | Sample Language? |
|------------|--|--------------------------|---|
| 13. | Contract Changes or Modifications | All | No. It depends on nature of contract and end-item procured. |
| 14. | DHS Seal, Logo, and Flags | All | Yes |
| 15. | Compliance with Federal Law, Regulations and Executive Orders | All | Yes |
| 16. | No Obligation by Federal Government | All | Yes |
| 17. | Program Fraud and False or Fraudulent Statements or Related Acts | All | Yes |





1. REMEDIES.

- a. Standard. Contracts for more than the simplified acquisition threshold, currently set at \$250,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, ¶ A.
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

2. TERMINATION FOR CAUSE AND CONVENIENCE.

- a. Standard. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity, including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, ¶ B.
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

3. EQUAL EMPLOYMENT OPPORTUNITY. If applicable, exact language below in subsection 3.d is required.

- a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C.
- b. Key Definitions.
 - i. Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds





obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

- ii. Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.
- c. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.
- d. Required Language. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause.

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will





receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.





(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance,





guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

4. DAVIS-BACON ACT.

- a. Standard. All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction). See 2 C.F.R. Part 200, Appendix II, ¶ D. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- b. Applicability. The Davis-Bacon Act only applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**
- c. Requirements. If applicable, the non-federal entity must do the following.
 - i. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
 - ii. Additionally, pursuant 2 C.F.R. Part 200, Appendix II, ¶ D, contracts subject to the Davis-Bacon Act, must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be





prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.

- iii. Include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").

Suggested Language. The following provides a sample contract clause:

Compliance with the Davis-Bacon Act.

- a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- c. Additionally, contractors are required to pay wages not less than once a week.

5. COPELAND ANTI-KICKBACK ACT.

- a. Standard. Recipient and subrecipient contracts must include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").
- b. Applicability. This requirement applies to all contracts for construction or repair work above \$2,000 in situations where the Davis-Bacon Act also applies. **It does not apply to the FEMA Public Assistance Program.**





- c. Requirements. If applicable, the non-federal entity must include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). Each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA. Additionally, in accordance with the regulation, each contractor and subcontractor must furnish each week a statement with respect to the wages paid each of its employees engaged in work covered by the Copeland Anti-Kickback Act and the Davis Bacon Act during the preceding weekly payroll period. The report shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work.

Sample Language. The following provides a sample contract clause:

Compliance with the Copeland “Anti-Kickback” Act.

- a. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”





6. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.

- a. Standard. Where applicable (see 40 U.S.C. §§ 3701-3708), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.
- b. Applicability. This requirement applies to all FEMA contracts awarded by the non-federal entity in excess of \$100,000 under grant and cooperative agreement programs that involve the employment of mechanics or laborers. It is applicable to construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- c. Suggested Language. The regulation at 29 C.F.R. § 5.5(b) provides contract clause language concerning compliance with the Contract Work Hours and Safety Standards Act. FEMA suggests including the following contract clause:

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to





the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The **(write in the name of the Federal agency or the loan or grant recipient)** shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

7. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.

- a. **Standard.** If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.





- b. Applicability. This requirement applies to “*funding agreements*,” but it **does not apply to the Public Assistance**, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- c. Funding Agreements Definition. The regulation at 37 C.F.R. § 401.2(a) defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

8. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT.

- a. Standard. If applicable, contracts must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.
- b. Applicability. This requirement applies to contracts awarded by a non-federal entity of amounts in excess of \$150,000 under a federal grant.
- c. Suggested Language. The following provides a sample contract clause.

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the (**name of applicant entering into the contract**) and understands and





agrees that the (**name of the applicant entering into the contract**) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the (**name of the applicant entering into the contract**) and understands and agrees that the (**name of the applicant entering into the contract**) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

9. DEBARMENT AND SUSPENSION.

- a. Standard. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.
- c. Requirements.





- i. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ H; and 2 C.F.R. § 200.213. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530.
- ii. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipients.
- iii. Specifically, a covered transaction includes the following contracts for goods or services:
 1. The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
 2. The contract requires the approval of FEMA, regardless of amount.
 3. The contract is for federally-required audit services.
 4. A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.
- d. Suggested Language. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified.

Suspension and Debarment





FEMA

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by (**insert name of recipient/subrecipient/applicant**). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (**insert name of recipient/subrecipient/applicant**), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9. BYRD ANTI-LOBBYING AMENDMENT.

- a. **Standard.** Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. FEMA's regulation at 44 C.F.R. Part 18 implements the requirements of 31 U.S.C. § 1352 and provides, in Appendix A to Part 18, a copy of the certification that is required to be completed by each entity as described in 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Federal awarding agency.
- b. **Applicability.** This requirement applies to all FEMA grant and cooperative agreement programs. Contractors that apply or bid for a contract of \$100,000





or more under a federal grant must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ I; 31 U.S.C. § 1352; and 44 C.F.R. Part 18.

c. Suggested Language.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

d. Required Certification. If applicable, contractors must sign and submit to the non-federal entity the following certification.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.





FEMA

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date





10. PROCUREMENT OF RECOVERED MATERIALS.

- a. Standard. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. See 2 C.F.R. Part 200, Appendix II, ¶ J; and 2 C.F.R. § 200.322.
- b. Applicability. This requirement applies to all contracts awarded by a non-federal entity under FEMA grant and cooperative agreement programs.
- c. Requirements. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- d. Suggested Language.
 - (i) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - Competitively within a timeframe providing for compliance with the contract performance schedule;
 - Meeting contract performance requirements; or
 - At a reasonable price.
 - (ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
 - (iii) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”





Additional FEMA Requirements/Recommendations.

The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. FEMA, pursuant to this authority, requires and recommends the following:

REQUIRED PROVISIONS:

1. ACCESS TO RECORDS.

- a. Standard. All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. Recipients must give DHS/FEMA access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations *and* other applicable laws or program guidance. See DHS Standard Terms and Conditions: Version 8.1 (2018). Additionally, Section 1225 of the Disaster Recovery Reform Act of 2018 prohibits FEMA from providing reimbursement to any state, local, tribal, or territorial government, or private non-profit for activities made pursuant to a contract that purports to prohibit audits or internal reviews by the FEMA administrator or Comptroller General.
- b. Suggested Language.

Access to Records. The following access to records requirements apply to this contract:

(1) The Contractor agrees to provide (**insert name of state agency or local or Indian tribal government**), (**insert name of recipient**), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits,





examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the (**write in name of the non-federal entity**) and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

RECOMMENDED PROVISIONS:

2. CHANGES.

- a. **Standard.** To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.
- b. **Applicability.** FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

3. DHS SEAL, LOGO, AND FLAGS.

- a. **Standard.** Recipients must obtain permission prior to using the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials. See DHS Standard Terms and Conditions: Version 8.1 (2018).
- b. **Applicability.** FEMA recommends that all non-Federal entities place in their contracts a provision that a contractor shall not use the DHS seal(s), logos,





crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

c. Suggested Language.

“The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.”

4. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS.

a. Standard. The recipient and its contractors are required to comply with all Federal laws, regulations, and executive orders.

b. Applicability. FEMA recommends that all non-Federal entities place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable Federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

c. Suggested Language.

“This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

5. NO OBLIGATION BY FEDERAL GOVERNMENT.

a. Standard. FEMA is not a party to any transaction between the recipient and its contractor. FEMA is not subject to any obligations or liable to any party for any matter relating to the contract.

b. Applicability. FEMA recommends that the non-Federal entity include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

c. Suggested Language.

“The Federal Government is not a party to this contract and is not subject to





any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

6. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

a. Standard. Recipients must comply with the requirements of The False Claims Act (31 U.S.C. §§ 3729-3733) which prohibits the submission of false or fraudulent claims for payment to the federal government. See DHS Standard Terms and Conditions: Version 8.1 (2018); and 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

b. Suggested Language.

“The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.”





Top 10 Procurement under Grants Mistakes

1

Restricting **full & open** competition



2

Not performing detailed **price or cost analysis** for procurements above \$250,000



3

Engaging in a **sole-sourcing** procurement without documenting emergency or exigent situation



4

Continuing work under a sole-source contract **after the urgent need has ended**



5

Not making and documenting efforts to take **all "affirmative steps"**



6

Awarding a **"time-and-materials"** contract without a **ceiling price** and **documenting why no other contract type is suitable**



7

Not including the **required contract clauses**



8

Awarding a **"cost-plus-percentage-of-cost"** or **"percentage-of-construction-cost"** contract



9

Awarding a contract to **contractors that are suspended or debarred**



10

Not documenting **all steps of a procurement** to answer questions that could arise months or years later



Avoiding these
obstacles can speed up
your road to recovery