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Recovery Ready: Finance's Crucial Role in Disaster Recovery and Reporting

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May 10, 2017

Orlando, FL



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Welcome/Introductions – Your Presenters

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Welcome/Introductions – Your Presenters

- Darryl Cox
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- 10 Years Experience in FEMA Public Assistance
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Introductions – About DSI

- Founded by Joe Myers, former EM Director for the states of North Carolina and Florida
- Full service provider of Emergency Management and Homeland Security planning, training, exercising, and management services
- Professional staff of former federal, state, and local disaster management officials with 100s of years of experience responding to and recovering from 100s of declared disasters
- DSI is the nation's leading firm for the processing of Direct Administrative Costs (DAC) processing over \$22 million in reimbursable expenses using our self-developed DAC processing platform
- Successfully managed over \$1 billion in PA projects on behalf of state, county, and city agencies
- Based in Tallahassee, Florida
- www.dsideas.com



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Introductions – About You

- Name
- Agency
- Disaster Role
- Disaster Experience





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Agenda

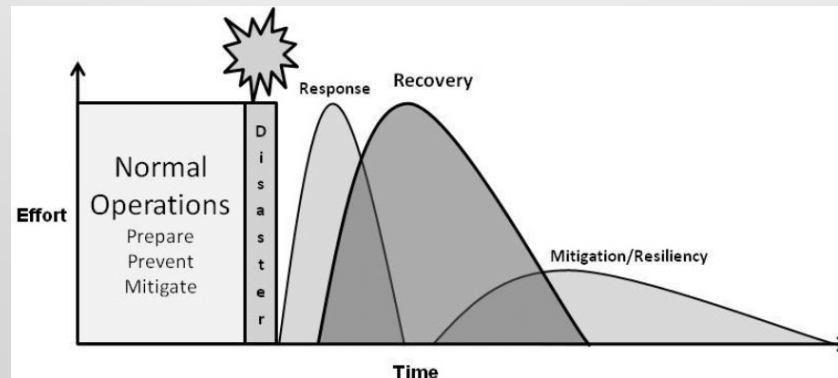


- Introductions
- Opening Thoughts
- FEMA PA Refresher
- Current Issues within the Program
- Conclusions



Opening Thoughts

- Recovery is quickly surpassing all other phases of disaster management as the most critical measure of government capabilities
- Having a plan is a good start, but active adaptation is necessary for success
- Speed is the top metric, but recovery program complexity breeds delays and misconceptions





Opening Thoughts

- Recovering from disasters is one of the most basic human functions
- Finance Office is the first and last defense in the recovery process
 - Positioned well to help drive institutional change
 - FEMA is your frenemy
- What does it mean to be Recovery Ready?
 - Not another plan
 - Adaptation is critical
 - Practice, practice, practice



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Recovery Ready Process

- **Examine--*Research and analyze current processes & procedures.***
- **Engineer--*Design refinements and changes for seamless integration.***
- **Execute--*Implement changes to make the community Recovery Ready.***
- **Excel--*New processes will help ensure maximum recovery support!***



Keys to a Successful Recovery

- Understand the program
 - Monitor policy and lessons learned
- Maintain leadership and organizational momentum gained from the Response Phase
 - Recovery is often a chaotic period where the organization must balance recovery priorities with day-to-day priorities
- Document, document, document
 - Should be easy for governments, but is often a pitfall
 - Are you documenting the right info at the right time?



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DHS OIG Cracking Down

- Subgrantees and grantees have difficulty adhering to federal procurement standards, a material failure to comply with the terms and conditions of the grant that puts their funding at risk
- DHS OIG audits in Fiscal Year 2013 resulted in 30 recommendations related to grantee and subgrantee failures to adhere to the federal procurements standards
- Total amount questioned in these reports:
\$130,245,816



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In the News

- FEMA gets a new Administrator
- Comments received from the public for PA Program Disaster Deductible
- President's budget proposes cuts to pre-disaster mitigation/preparedness grant programs
- Bill introduced to increase small project threshold
- State about to roll-out new reimbursement process for large projects



But First... A Little Background

- Federal disaster relief activity began in 1803
 - Debt relief to residents of the town of Portsmouth, NH after a fire
- Disaster relief legislation and management continued to be fragmented until the creation of FEMA in 1979
- Robert T. Stafford Act passed in 1988 (DRA 1974)
 - Establishing the Public Assistance Grant Program
- Current federal recovery landscape continues to be fragmented
 - In the wake of Hurricane Sandy, 19 agencies were allocated funds, through appropriations, to implement more than 60 post-disaster recovery programs



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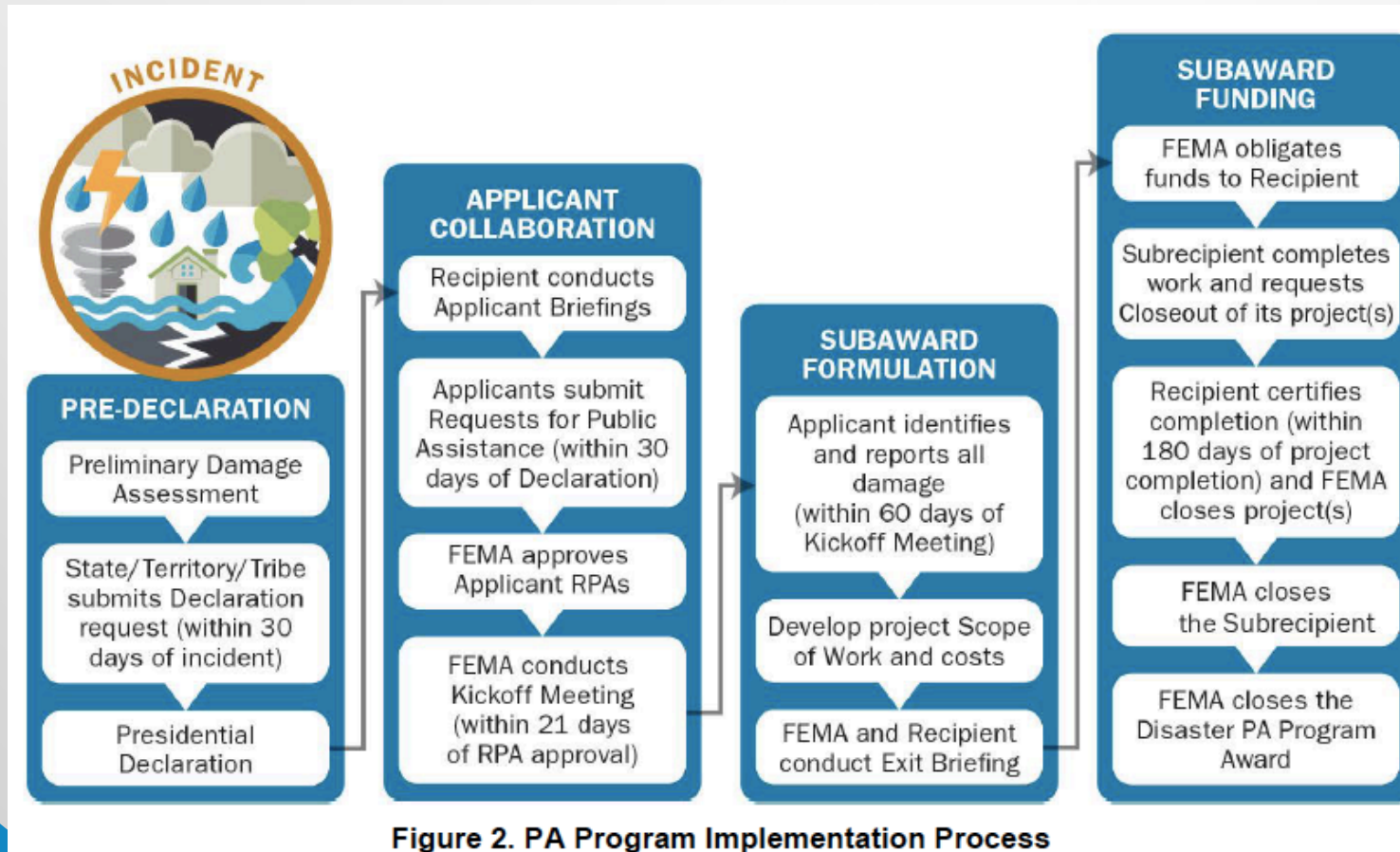


FEMA's Public Assistance Program

- FEMA's principal means for assisting jurisdictions that are overwhelmed by the costs of repairing, restoring, and replacing public facilities damaged by disasters
- \$4.6 billion in grants distributed annually
 - 65% for permanent work
- Triggered by a major disaster or emergency declaration from the President
- Authorizes a minimum of 75% cost share



FEMA PA Implementation Process





Time Limits

- Applying for a Public Assistance Grant

Applicant must submit a Request for Public Assistance within **30 days** of the designation of the declared disaster area.

- Formulating small projects

If the sub-recipient writes their own projects they must submit formulated small projects within **60 days** of the Kick-off meeting for 20% validation.

- Appeals

Any determination related to Federal assistance may be appealed. The appeal must be submitted to the grantee within **60 days** of receipt of notice of the action which is being appealed.



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Small Projects versus Large Projects

Public Assistance projects are processed as either small or large projects. If the project cost is less than the annually updated cost threshold amount (\$123,100) the project is processed as a small project. If the project cost equals or exceeds the threshold the project is processed as a large project.

Small Projects

Federal cost share is paid upon project approval.

Funding is based on an initial cost estimate.

Large Projects

Federal cost share is paid as work is accomplished.

Final assistance is based upon actual costs or an estimate using the Cost Estimating Format.



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Projects

Time limits for project completion begin on the disaster declaration date.

- Emergency work must be completed within – 6 months
- Permanent work must be completed within – 18 months

For extenuating circumstances or project requirements beyond the applicant's control, the Grantee may extend the emergency work deadline an additional 6 months and the permanent work deadline an additional 30 months on a project by project basis.

FEMA may also extend the time limits when sufficient justification is submitted.



Process after Obligation

May Include:

- Interim Inspections
 - Scope of Work Changes
 - Quarterly Reports
 - Appeals
 - Final Inspection
 - Project Closeout
 - Audits
- Some Scope changes may include:
 - Alternate project
 - Improved project
 - Relocation request
 - Construction Change Orders
 - Material change
 - etc.

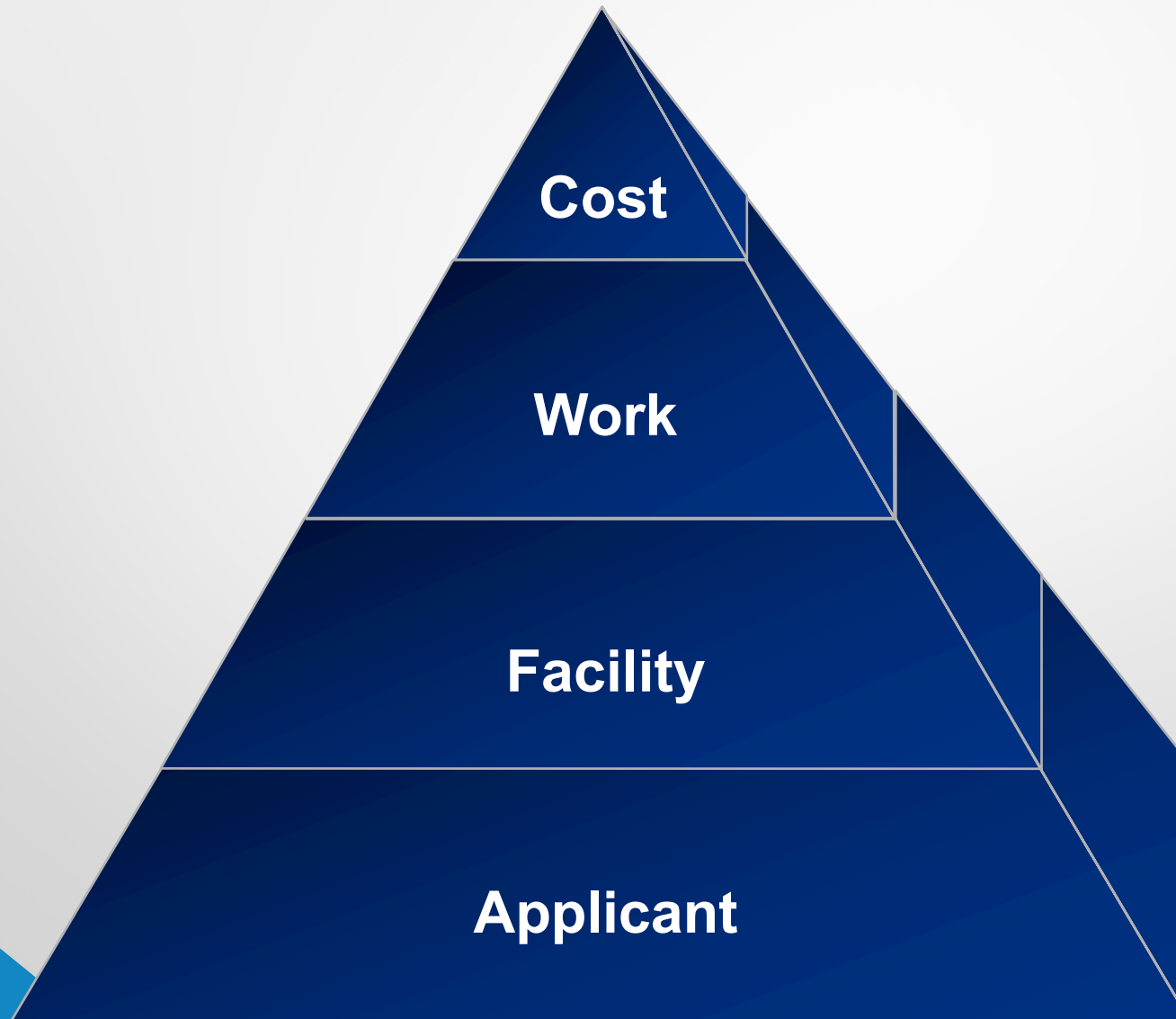


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What is Eligible?





What is Eligible?

To be eligible, the facility must:

- Be the legal responsibility of an eligible applicant
- Have been in active use at the time of the disaster
- Be damaged as a result of the declared disaster
- Be located in the designated disaster area

To be eligible, the work must:

- Be disaster related
- Be located in the designated disaster area
- Be the applicant's responsibility
- Not be fundable by another federal agency



Cost Eligibility

To be eligible for reimbursement, costs must:

- Be reasonable and necessary to accomplish eligible work
- Comply with federal, state, and local laws and regulations
- Include deductions of insurance proceeds, salvage value, and purchase discounts.



Eligible Work Categories

Description	Category	Type of Work
Temporary/Emergency Work: work performed to reduce or eliminate an immediate threat to life, protect health and safety, and to protect improved property that is threatened in a significant way as a result of the disaster.	A	Debris Removal
	B	Emergency Protective Measures
Permanent Work: work required to restore a damaged facility, through repair or restoration, to its pre-disaster design, function, and capacity in accordance with applicable codes or standards.	C	Roads and Bridges
	D	Water Control Facilities
	E	Buildings and Equipment
	F	Utilities
	G	Parks, Recreational, and Other



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Emergency Work

Category A – Debris Removal



Debris removal is eligible when:

- It eliminates an immediate threat to life, health, and safety
- It eliminates an immediate threat of significant damage to improved property
- It ensures economic recovery of the community and provides a benefit for the community-at-large



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CATEGORY B EMERGENCY PROTECTIVE MEASURES

Measures taken before, during, and after a disaster to eliminate/reduce an immediate threat to life, public health, or safety, or to eliminate/reduce an immediate threat of significant damage.





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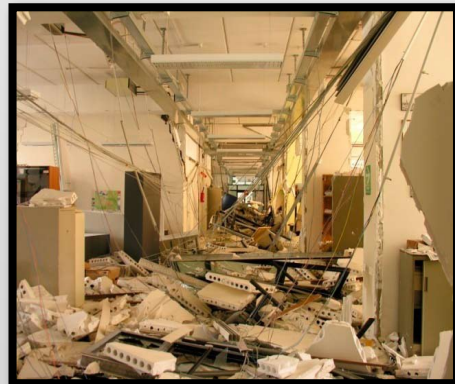


Permanent Work

Work Categories C - G

Eligible permanent work:

- Must repair, restore or replace disaster-damaged facilities in accordance with regulations
- Must restore to pre-disaster design, capacity and function in accordance with applicable codes and standards
- Must be required as a result of the disaster
- May include cost effective hazard mitigation measures

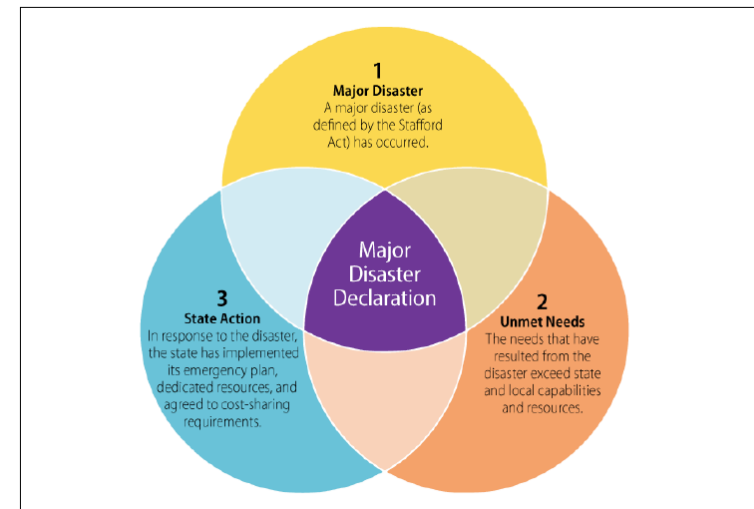




FEMA's Public Assistance Program

- 6 Criteria for decision
 - Estimated cost of assistance
 - Localized impacts
 - Insurance coverage
 - Hazard mitigation
 - Recent multiple disasters
 - Other federal programs
- Declaration 80% likely when damage exceeds PCI (\$1.42)

Figure 1. Major Disaster Declaration Criteria
Definition, Unmet Need, and State Action



Source: Based on CRS analysis of Sections 102(2) and 401 of the Stafford Act.



Damage Assessment is Critical

- Usually conducted in the days immediately following a hazard impact
 - Process is chaotic and predominantly focused on Individual Assistance criteria
- Where project formulation begins
- Organization-wide data collection and communication
 - Complete picture of operations, repairs, and pending restoration
 - Requires PA Work literacy



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PUBLIC ASSISTANCE DAMAGE ASSESSMENT OBSERVATION



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Eligible Work Categories

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PA-PDA OBSERVATION WHAT DO YOU SEE?



Categories B Emergency Protective Measures

Category C Roads and Bridges

Category F Utilities



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PA-PDA OBSERVATION WHAT DO YOU SEE?



- Category A Debris
- Category B Emergency Protective Measures
- Category C Roads and Bridges
- Category D Water Control Facilities
- Category E Buildings and Equipment
- Category F Utilities



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PA-PDA OBSERVATION WHAT DO YOU SEE?



Category B Emergency
Protective Measures
Category C Roads and
Bridges
Category F Utilities



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PA-PDA OBSERVATION WHAT DO YOU SEE?



Category B Emergency
Protective Measures
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PA-PDA OBSERVATION WHAT DO YOU SEE?



Category A Debris Removal
Category B Emergency
Protective Measures
Category C Roads and Bridges
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PA-PDA OBSERVATION WHAT DO YOU SEE?



Category A Debris Removal
Category B Emergency
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PA-PDA OBSERVATION WHAT DO YOU SEE?



Category A Debris Removal
Category B Emergency Protective
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Category D Water Control Facilities
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PA-PDA OBSERVATION WHAT DO YOU SEE?



Category A Debris Removal
Category B Emergency
Protective Measures
Category F Utilities
Category E Buildings and
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PA-PDA OBSERVATION WHAT DO YOU SEE?



- Category A Debris Removal
- Category B Emergency Protective Measures
- Category C Roads and Bridges
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PA-PDA OBSERVATION WHAT DO YOU SEE?



Category A Debris Removal
Category B Emergency
Protective Measures
Category C Roads and Bridges
Category F Utilities
Category E Buildings and
Equipment



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PA-PDA OBSERVATION WHAT DO YOU SEE?



Category B Emergency Protective Measures
FHWA Road and Bridge



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Top Issues Affecting Eligibility



1. Socioeconomic objectives in contracting
2. Non-competitive procurements
3. Cost analysis
4. Contract format/administration
5. Labor/equipment use documentation
6. Private property operations
7. Waterway debris removal
8. Direct Administrative Costs
9. Donated resources
10. Insurance requirements



Socioeconomic Objectives

- A non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible (2 C.F.R. Part 200.321). However, minority and women's business set asides are strictly prohibited.
- 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.



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Socioeconomic Objectives

- **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.
- **Women's/Minority Business Enterprise.** A business enterprise that is: (a) at least 51 percent owned by one or more women/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 women/minority group members; and (b) whose management and daily operations are controlled by one or more women/minority group members.
- **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 civilian unemployment rate for all states" during that same period.



Socioeconomic Objectives

- The affirmative steps must include at least the following six (6) steps:
 - Placing qualified small and minority businesses and women's business enterprises on solicitation lists,
 - Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources,
 - Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises,
 - Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises
 - Using 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
 - Requiring the prime contractor, if subcontracts are to be let, to take the five previous, affirmative steps



Local Databases May not be Adequate

- **FEMA Should Recover \$1.8 Million of \$5.5 Million in Public Assistance Grant Funds Awarded to Columbia County, Florida, for Tropical Storm Debby Damages (OIG-17-06)**
 - “[Columbia County] said they determined in their subsequent research that there was only one contractor with a small business designation and there were no women- or minority-owned businesses in the county that were registered to do the contracted work performed. Despite the County’s assertions, we maintain our position that the County should have taken the required affirmative action steps to provide interested disadvantaged firms, local or otherwise, the opportunity to bid for the disaster recovery work.”



Socioeconomic Objectives

- Resources
 - DMS Office of Supplier Diversity
 - Small Business Administration
 - Minority Business Development Agency
- Documents
 - Disadvantaged business solicitation policy
 - Proof of solicitation
 - Contract provision in prime contract
 - Memo of record of solicitation development



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Noncompetitive Procurements

- 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)
- 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.



Noncompetitive Procurements

- Procedures
 - The NFE must adequately document its justification for the sole source contract in light of the requirement for full and open competition
 - The NFE must negotiate profit as a separate element of the price (2 C.F.R. § 200.323(b))
 - The NFE must submit proposed procurement documents to either FEMA or the pass-through entity as directed
- Where there is sufficient justification for noncompetitive procurement FEMA will waive requirement for affirmative steps



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Noncompetitive Procurements

- Eligible reasons
 - Sole source
 - Unique capability
 - Duplication of costs
 - Patents or restricted data rights
 - Public exigency/emergency
 - Pre-authorized by FEMA or Pass-through entity
 - Inadequate competition





Exigency vs Emergency

- FEMA defines an “exigency” as something that is necessary in a particular situation that requires or demands immediate aid or action. In these cases, the NFE would be seriously injured unless it performed the procurement in a noncompetitive manner.
- FEMA defines an “emergency” as an unexpected and unusually dangerous situation that calls for immediate action or an urgent need for assistance or relief.



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Noncompetitive Procurements

The County's procurement procedures require it to competitively bid contracts of \$50,000 or more. However, the County awarded two disaster-related bridge construction contracts totaling \$458,150 without full and open competition. Instead of soliciting competitive proposals, the County waived its bidding requirements through various resolutions that cited Texas law as an exception. Regardless, as a condition of the grant, the County must comply with Federal regulations for all procurement transactions. (OIG-17-57-D)



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Noncompetitive Procurement Best Practices

- Ensure agency policies and procedures are similar and followed
- When possible have the legislative body or chief executive declare/approve emergency/exigency
 - Local state of emergency is not enough; need specific case by case details
 - FEMA is requiring statements from public health officials
- Have a clearly defined end date for services
 - If not, the DHS OIG will decide when the exigency/emergency ended



Cost Analysis

- A NFE must perform a cost or price analysis in connection with every procurement action in excess of the simplified acquisition threshold (\$150,000), including contract modifications. 2 C.F.R. § 200.323(a).
- The NFE must make independent estimates before receiving bids or proposals



Price Analysis vs Cost Analysis

- A price analysis is the examination and evaluation of a proposed price without evaluating its separate cost elements and proposed profit.
- 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



Techniques

- Comparing proposed prices received in response to the solicitation
- Comparing prior (historical) proposed prices and contract prices with current proposed prices for the same or similar goods or services
- Comparing offers with competitively published catalog prices, published market prices, or similar indices
- Comparing proposed prices with independently developed price estimates prepared by, or on the behalf of the NFE
- Comparing proposed prices with prices for the same or similar items obtained through market research
- Prices set by Law or Regulation



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Resources

- FEMA Pricing Guide for Subrecipients Under the Uniform Rules
- Procurement Disaster Assistance Team Field Manual and Supplement



Contract Format/Administration

- 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)
- 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)



Standards of Conduct

- 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)
 - Conflict of interest
 - Gifts
- No local vendor preference
- Contractors must be excluded from competing for contracts in which they helped develop solicitation materials, SOW, specifications, etc...



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Contract Formats to Watch

- A NFE must document its rationale for selecting the contract type it used (fixed price, cost reimbursement, or time and materials)
- Cost plus percentage of cost
 - Strictly prohibited
- Time and materials
 - Allowable but time period must be strictly defined
 - If not defined, DHS OIG recommends disallowing costs incurred after the first 70 hours
- Joint procurements



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Contract Provisions

- Appendix II to 2 CFR 200
- Termination for convenience and cause clauses
- Equal Employment Opportunity
- Davis-Bacon Act*
- Copeland Anti-Kickback Act*
- Contract Work Hours and Safety Standards Act
- Clean Air Act and Federal Pollution Control Act
- Debarment and Suspension
- Byrd Anti-Lobbying Amendment
- Procurement of recovered materials



Contract 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
- Rationale for procurement method
- Rationale for selection of contract type
- Rationale for selection/rejection of contractor
- Cost/price analysis
- Sources solicited
- Copies of published notices
- Copy of the solicitation, all addenda, and all amendments
- Notice of award
- Record of protests, disputes, and claims
- Notice to proceed



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Local Procurement Standards Practices to Avoid

- Unreasonable qualification requirements
- Requiring unnecessary experience and bonding
- Noncompetitive pricing practices between firms
- Noncompetitive awards to consultants on retainer
- Organizational conflicts of interest
- Specifying a “brand name” product only instead of allowing an “equal” product
- Any arbitrary action in the procurement process



Labor Eligibility Criteria

- 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.
- For **Emergency Work**, only overtime labor is eligible for budgeted employees. For unbudgeted employees performing Emergency Work, both straight-time and overtime labor are eligible.



Emergency Work Labor Eligibility

- **Budgeted Employees :**
 - Permanent employee (Overtime only)
 - Seasonal employee working during normal season of employment (Overtime only)
- **Unbudgeted Employees : (overtime and straight)**
 - 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



Reassigned Employees

- The sub-recipient 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 sub-recipient'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 sub-recipient 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.
- FEMA also provides PA funding for straight-time if the backfill employee is:
 - 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 employees and are not directly involved in the performance of a specific project. Therefore, they are not eligible for overtime, unless the sub-recipient:
 - 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 its labor policy.



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ENGINEERING DOCS

Needed to support engineering costs:

- Hourly supported time sheets and activity
- Contract and supporting documentation
- Invoices and canceled checks





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 previously discussed.
- 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 sub-recipient'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



Stand by Time (cont.)

- 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
 - The stand-by time occurred when it was necessary to have resources available to save lives and protect health and safety
- For instance, the sub-recipient 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.



Force Account and Purchased Equipment

- FEMA provides PA funding for the use of sub-recipient owned equipment (force account equipment), including permanently mounted generators, based on hourly rates.
- There are instances when an sub-recipient does not have sufficient equipment to effectively respond to an incident. If the sub-recipient 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.



Equipment (cont.)

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



FEMA Rates

- FEMA publishes equipment rates applicable on a national basis. 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 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 sub-recipient-owned equipment are not eligible.



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 sub-recipient must document the basis for that rate and obtain approval from FEMA for the higher rate.
- 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 sub-recipient 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.



Leased Equipment (Important)

- When the sub-recipient leases equipment, FEMA provides PA funding based on the terms of the lease. Leasing costs are eligible if:
 - The sub-recipient performed an analysis of the cost of leasing versus purchasing the equipment; 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 sub-recipient acted with prudence under the circumstances at the time it leased the equipment.
- If the sub-recipient 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 sub-recipient 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.



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 sub-recipient's stock and used for the incident.
- The sub-recipient 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 sub-recipient's established method of pricing inventory. If the sub-recipient does not have an established method, FEMA provides PA funding based on historical data or prices from area vendors.
- 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.



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Prisoners

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



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REPORT WHAT YOU SPENT

- A spreadsheet is needed for **Force Account** expenses.
- Some applicants have expensive software programs that do not tie the labor and equipment together. This is not acceptable.
- On the next slide is a spreadsheet that works and is accepted by FEMA.



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FORCE ACCOUNT EQUIPMENT AND LABOR

Example FA Best spreadsheet [Shared] [Compatibility Mode] - Microsoft Excel non-commercial use

1	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
2	DATE	Location	Description of work	Operator	Reg Hrs	LABOR RATE	BENEFIT RATE	TOTAL	Health Ins	OT Hrs	LABOR OT RATE	BENEFIT RATE	TOTAL	Cost Code	Equipm descriptio	Hrs	RATE	TOTAL	MATERIALS CODE	Amt	RATE	TOTAL	TOTAL
3	#####	Rum Rd	Surveying	Ann H. Lassiter	8	10.24	0.3235	108.42		3	15.36	0.17500	54.14					0.00					0.00
4	5/5/2010	EOC	Emergency call line	Angela Gomes	6	16.02	0.3263	127.48		5	16.02	0.17500	94.12					0.00					0.00
5	#####	Rum Rd	Grading	Yan Henson	4	37.53	0.3625	204.54					0.00	8332	Grader	4	80.00	320.00		37.00	3.80	140.60	
6	#####			Thomas Haddock	10.15	21.23	0.0765	231.97					0.00					0.00					0.00
7								0.00					0.00					0.00					0.00
8								0.00					0.00					0.00					0.00
9								0.00					0.00					0.00					0.00
10								0.00					0.00					0.00					0.00
11								0.00					0.00					0.00					0.00
12								0.00					0.00					0.00					0.00
13								0.00					0.00					0.00					0.00
14								0.00					0.00					0.00					0.00
15								0.00					0.00					0.00					0.00
16	To see comments go to review and click on show all comments												0.00					0.00					0.00
17								0.00					0.00					0.00					0.00
18								0.00					0.00					0.00					0.00
19								0.00					0.00					0.00					0.00
20								0.00					0.00					0.00					0.00
21								0.00					0.00					0.00					0.00
22								0.00					0.00					0.00					0.00
23								0.00					0.00					0.00					0.00
24								0.00					0.00					0.00					0.00
25								0.00					0.00					0.00					0.00
26								0.00					0.00					0.00					0.00
27								0.00					0.00					0.00					0.00
28								0.00					0.00					0.00					0.00
29								0.00					0.00					0.00					0.00
30								0.00					0.00					0.00					0.00

Ready | FA | 82% | 3:38 PM



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BACKUP FOR FA EXPENSE SUMMARY

- Time sheets
 - Daily work tickets
 - Inventory
 - Material tickets
 - Invoices
- Proof of payment





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FORCE ACCOUNT MATERIAL

Dirt, rock, sandbags, transformers, wire, etc.

Backup documentation needed for closeout:

- Warehouse report
- Daily work sheets from employee who used material
- Invoices and canceled checks to show material was stocked and paid for.
- Sign out sheet for utility warehoused items
- Time sheets must reflect employee was at work and capable of removing items.

Scale tickets to back up invoices for road material



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DAILY WORK ACTIVITY SPREADSHEET

2 Daily work sheet - Microsoft Excel non-commercial use

File Home Insert Page Layout Formulas Data Review View

Clipboard Font Alignment Number Styles Cells Editing

Calibri 11 Wrap Text General \$ % Conditional Formatting Format as Table Cell Styles Insert Delete Format AutoSum Fill Clear Sort & Filter Find & Select

Begin	End	Activity	Location to	From	Material	Loads	Activity list*
#####	#####	Hauled fill	Tree Line Rd	Farhev Pit	Fill Dirt		Haul Dirt/Fill
#####	#####	Worked at yard					Haul rock
							Haul Rip rap
							Haul Culvert
							Install culvert
							Grade
							Clean Ditches
							Haul Spoil
							Fill potholes
							Haul cold mix
							Haul Milled material
							Spread material
							Grad all ditches
							Excavate
							Haul Debris
							Remove Trees
							Grub

U17

County/City: White County
 Department: Roads and Bridges
 DATE: 8/23/2011 Equipment Number/Type: 704/1995 Int Dump
 EMPLOYEE Name/Nun: Billy Puclett 323/Debris Trailer 700/Clamshell
 Supervisor: Rich Little

OFFICE ONLY

Hours	Disaster	8.5
	Regular	1.5
	Overtime	

APPROVED BY: _____
 Supervisor: _____



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Private Property Operations

- As long as there are private unpaved roads in this state there will always be pressure on local governments to perform emergency work on private property
- FEMA allows under restrictive circumstances
- Local government must make a written request
 - Justification for public interest in performing the work
 - Statement from Public Health Officer
 - Documentation of legal authority
 - Indemnification from property owner (Local/FEMA)



Private Property Operations BMP

- Involve FEMA as soon as possible
- Legal Authority
 - Chapter 252.38(3)(a)1, FL Statutes; AGO 2012-33
- Do not allow public need determination to be made too far away from the legislative body
- Indemnification must indemnify both county and FEMA
- State likely will not reimburse for their 12.5%



Alternate Procedures for Debris

- The sub-recipient may elect to participate in one or more of the following Alternative Procedures for debris removal:
 - 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 plan with pre-qualified debris removal contractors before the start of the incident period



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 the table below. 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.
 - Federal Cost Share
 - 1–30 Days.....85%
 - 31–90 Days.....80%
 - 91–180 Days.....75%
 - 181+ Days.....0%
- (unless FEMA approves a time extension)



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Accelerated Debris Removal Participation

- To participate in the Accelerated Debris Removal Procedure, the sub-recipient 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.



Debris Management Plan

- One-Time 2 Percent Increased Federal Cost Share Incentive for a FEMA-Accepted Debris Management Plan
- FEMA encourages Sub-recipients 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 sub-recipient has both a FEMA-accepted DMP and pre-qualified debris removal contractors before the start of the incident period, the sub-recipient 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 sub-recipient must implement the DMP for that incident. FEMA will only provide this incentive toward one incident for each sub-recipient during the Alternative Procedures Pilot Program for Debris Removal.



Recycling Revenue

- One of the alternative procedures authorizes the sub-recipient to retain revenue received through Recycling Revenue
- In the Standard Program the sub-recipient cannot retain revenue; FEMA reduces PA funding by the amount of revenue received.
- In the Alternative Procedures the sub-recipient may retain the revenue if used for an approved purpose.
 - To offset the non-Federal cost share of the sub-recipient'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.



Waterway Operations

- Work must be necessary to eliminate immediate threat to life, public health and safety, or improved property
 - Document evidence
- Debris must be generated by the incident and located within 2 feet below the low-tide draft
- Permits and EHP review must be conducted by USACE, USEPA, FDEP
- Include routine maintenance plan and documents



Direct Admin Costs (DAC)

- Direct administrative costs include costs that can be tracked, charged, and accounted for directly to a specific project, such as staff time to complete field inspection and preparation of a PW. Direct costs are limited to actual reasonable costs incurred for a specific project. Such costs will be considered project costs.
- If a project is completed when the PW is prepared, actual direct administrative costs (labor, equipment, or other expenses) will be included in the PW for the sub-recipient. The summary of the actual costs will be attached to the PW.
- If a project is not completed when the PW is prepared, an estimate of direct administrative costs that can be separately identified to the project will be included in the PW. An estimate of direct administrative costs, such as labor and equipment costs and other expenses, will be attached to the PW. These estimated costs cannot be based on a percentage of project costs.
- Direct administrative costs are cost-shared at the prevailing cost-share rate for the declaration. They are cost-shared because they are part of a specific project.



Direct Admin Costs (DAC) (cont.)

- Documentation needed:
 - Daily log with PW number when work requires
 - Time sheets and payroll register
 - Activity (must be directly related to only one specific project)
- On your activity sheet, be sure to list the work followed by a PW number as there may be many PWs worked on through the day.



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Donated Resources

- 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:
 - From a third party
 - Resource used 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



Donated Resources

- 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.
- Donated Equipment
 - The offset for donated equipment is based 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.
- 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.



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Special Considerations

Insurance

- Actual or anticipated insurance proceeds will be deducted from the eligible project costs for facilities that are insured.
- All applicants are required to obtain and maintain insurance coverage on all insurable facilities, as a condition of Public Assistance funding.
- For flood damaged facilities located within a Special Flood Hazard Area that are not covered by flood insurance, Federal assistance will be reduced by the maximum flood insurance proceeds that would have been payable had the facility been insured.



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Insurance Funding

- FEMA expects the insurance carrier to pay all policy coverage – period.
- Audit pitfalls can occur when this does not happen.
- If you settle for less than policy limits – you may pick up the difference. It is your responsibility to go after your insurance company, even if they are pools.
- At closeout, you will have a deduction in funding if you have not done due diligence in exhausting your insurance limits.



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FEMA Appeals

FEMA appeals are a critical part of the Public Assistance recovery process as they ensure that FEMA follows their own rules and policies when allocating funds. Once FEMA makes a decision adverse to your jurisdiction, they should issue a Determination Memo that will set forth their position. You will have 60 days from your notice of that decision [or from a deobligation notice] to file an appeal.



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FEMA Appeals

Your appeals are forwarded to the State who then has 60 days to file them with FEMA. These FEMA appeals are quite specialized, yet very few attorneys have the knowledge and experience in the FEMA recovery paradigm to develop them effectively – both substantively or financially. For that reason, many jurisdictions forego FEMA appeals as they figure their legal costs may outweigh whatever is to be gained from FEMA.

While that approach may have been acceptable when the State was in the field supporting the locals and challenging FEMA, the new FDEM paradigm which eliminates on-site support for locals and allows FEMA to primarily drive the recovery process, will almost surely lead to decreased FEMA funding and a greater need for appeals.



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FEMA Appeals

Given these changes, DSI's attorney, a former General Counsel of FDEM, has decided to focus his efforts on a disaster law practice. He has drafted well over a hundred FEMA appeals, has excellent credentials and will be completing all appeals on what appears to be an extremely reasonable fixed fee basis. Even for those of you will full-time County Attorneys, it would likely behoove you to retain his services given his familiarity with the subject matter and the efficiency with which he can complete these appeals. Give him a call or shoot him an email.

Tony Ettore

Disaster Law and Consulting, LLC

www.disasterlawconsulting.com [up and running by May 15th]

850-933-2137

disasterappeals@aol.com



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In Conclusion

- Start keeping information on your damages immediately.
- Daily activity sheets are vital to proving what labor and equipment to charge to a particular project.
- Spreadsheets will be used to track your involvement.
- Procurement policies, personnel policies, and insurance policies should be reviewed with managers frequently to prevent mistakes that may cause defunding.
- Failure to follow your agency's policies and FEMA's can cause defunding.



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Any Questions??

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