



Public Assistance Applicant Handbook

June 2008

FOREWORD

This handbook provides Pennsylvania specific guidance to assist applicants in recovering eligible expenses incurred following a Major or Emergency Declaration of disaster where the Public Assistance (PA) Grant Program has been authorized by The President.

Because this handbook is not exhaustive and because the laws, policy and regulations covering this grant program are subject to change, applicants should confer with PEMA Public Assistance Grant Program Project Officers during their decision making process.

The State and Federal forms that must be prepared and submitted by the applicant in order to participate in this reimbursement grant program are not included with the handbook because those forms are subject to frequent change. If an applicant would like to review and download a copy of the current version they can go to the PEMA web site (www.pema.state.pa.us) and then access the Public Assistance Forms section under the Forms Library Tab.

The Commonwealth's Program Manager and Project Officers are available for consultation by calling 1-800-635-9692. Please direct written suggestions regarding improvements to this publication to:

Pennsylvania Emergency Management Agency
Attn: Public Assistance Officer
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Harrisburg, PA 17110-9364



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SECTION 1

PUBLIC ASSISTANCE PROGRAM

Glossary of Terms

Applicant: A State or local government entity. Private non-profit organizations or institutions which own or operate a private non-profit facility as described in Section 15 of this handbook. Applicants that are successful in obtaining assistance are formally identified as a “Sub-grantee” under PEMA, the “Grantee”.

Applicant’s Agent: The Applicant’s Agent is the person who is duly appointed by the governing body (Applicant) to act on its behalf in all matters relating to Public Assistance Grants. The appointment and certification of the Applicant’s Agent must be documented using a PEMA-DAP-2, Designation of Agent form.

CFR: Code of Federal Regulations. Title 44, CFR, Part 206, provides the rules for implementing the Program.

Eligible Facility: Any publicly or private non-profit owned building, works, system, or equipment (built or manufactured), or certain improved and maintained natural features.

Eligible Work: For work to be eligible it must be required as a *direct result* of the declared major disaster or emergency, be located within the *designated disaster area*, and be the *legal responsibility* of an eligible applicant at the time of the disaster.

Emergency Work: Work which must be performed to reduce or eliminate an immediate threat to life, protect public health and safety, and to protect improved property that is threatened in a significant way as a result of the disaster.

FEMA: Federal Emergency Management Agency.

Force Account: Costs incurred for the use of the applicant’s own equipment, labor force, and materials while performing disaster related work.

Grantee: The Pennsylvania Emergency Management Agency (PEMA) is the grantee for the Commonwealth of Pennsylvania. The grantee is accountable for the use of the funds provided by FEMA and is responsible for disbursing those funds to the sub-grantee (applicant).

Kickoff Meeting: This meeting is the first step in establishing a partnership among the applicant, PEMA, and FEMA and is designed to focus on the formulation of projects to meet the specific needs of the applicant. The meeting focuses on the eligibility and documentation requirements that are most pertinent to the applicant and establishes some key deadlines:

- Damaged facilities and emergency work must be identified and reported within 60 days of the kickoff meeting.
- All requests for alternate projects must be made within 12 months of the kickoff meeting.

Local Government: Defined as a county, municipality, city, town, township, borough, village, local public authority (including any public housing agency under the United States Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a non-profit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

OMB: The Office of Management and Budget is the Federal agency responsible for financial management and procurement policy and publishes guidance in OMB Circulars.

PEMA: Pennsylvania Emergency Management Agency

Permanent Work: Work which is required to restore a damaged facility, through repair or replacement, to its pre-disaster design, function, and capacity in accordance with applicable codes and standards.

Private Non-profit (PNP): "...any non-governmental agency or entity that currently has: (i) An effective ruling letter from the U.S. Internal Revenue Service granting tax exemption under section 501 (c), (d) or (e) of the Internal Revenue Code of 1954; or (ii) Satisfactory evidence from the State that the organization or entity is a non-profit one organized or doing business under State law." [44 CFR 206.2 (a)(19)]

"...any corporation, trust, association, cooperative or other organization which (1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (2) Is not organized primarily for profit; and (3) Uses its net proceeds to maintain, improve, and/or expand its operations [OMB Circular A-133 1.k]."

PNP organizations/facilities are further discussed in Section 15.

Project: A logical method of grouping work required as a result of the declared event. The applicant, working with the PEMA/FEMA coordinators, is responsible for assessing disaster-related needs and assisting in the development of projects to address those needs.

Project Worksheet (PW): The PW (FEMA Form 90-91) is used by the PEMA/FEMA coordinator to develop projects and is the basis for program funding. It is the primary form used to document the location, damage description and dimensions, scope of work, and cost estimate for each project.

Public Assistance: Supplementary Federal and State assistance provided to State and local governments or certain private non-profit organizations other than assistance for the direct benefit of individuals and families.

Public Assistance Coordination (PAC) Crew Leader: The PAC is a customer service manager who works with the applicant to resolve disaster-related needs and ensure that the applicant's projects are processed as efficiently and expeditiously as possible. Each applicant will be assigned to a State (PEMA) PAC who will serve as the applicant's liaison with the FEMA PAC from project formulation through closeout.

Request for Public Assistance (RPA): The RPA (FEMA Form 90-49) is the form used to apply for disaster assistance. It serves as the official notification to PEMA/FEMA of an applicant's intent to apply for Public Assistance. PEMA/FEMA use the information provided on the RPA to determine if an applicant is eligible for public assistance.

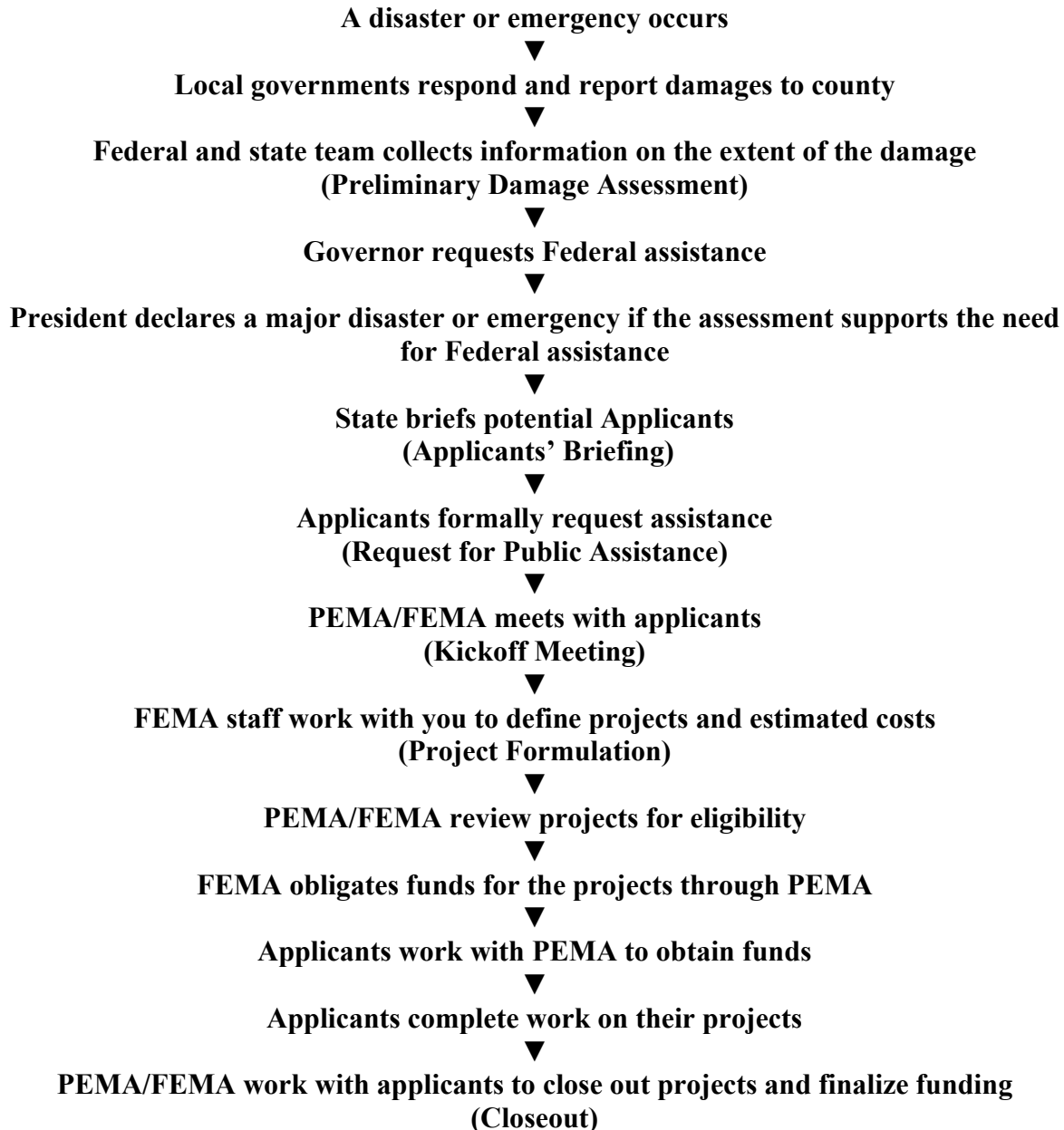
Scope of Work: The portion of the PW describing the eligible work necessary to repair the damage or replace the facility. Any changes in the approved scope of work must be approved by FEMA.

Stafford Act: The Robert T. Stafford Disaster Relief and Emergency Assistance Act is the public law which authorizes the President to provide Federal assistance to supplement State, Tribal and local efforts.

Sub-grantee: See Applicant.

Program Overview

Under a Presidential declaration of a major disaster or emergency, where the Program has been approved, Public Assistance Grants will be made available through FEMA for which the Commonwealth (PEMA) is the grantee. All applicants eligible for Public Assistance Grants would be considered sub-grantees. PEMA has the authority, under the federal declaration and state statutes, to act on the behalf of all recipients under the federal program. The following is a likely sequence of events:



When an event occurs in Pennsylvania for which County Damage Reports indicate the recovery effort may be beyond the State and local capabilities, PEMA will request that FEMA conduct a joint (FEMA/PEMA/Local) Preliminary Damage Assessment (PDA). The information gathered during the PDA will be the basis for the Governor, and subsequently the President, to declare a disaster in the state or portions thereof. Therefore,

it is very important that you begin to track and document expenses and damages at the onset of the incident/event and report them to your County Emergency Management Coordinator. The contact information for your County is available under the County EMA Coordinators tab on the PEMA Web Site Home Page, www.pema.state.pa.us. If you don't report your damages to your county, you won't get visited and assessed by PEMA and FEMA during the PDA, and you could become the reason your county doesn't get a disaster declaration. The following steps should be taken to facilitate the conduct of the PDA:

- Make a list of damages and costs
- Mark a jurisdictional map with damage sites
- Start a folder for each site to document damages and costs
- Provide non-returnable photos
- Describe impact on essential facilities
- Provide population, insurance and budget data
- Lead the team to the worst site(s)

PEMA, in cooperation with FEMA, will conduct Applicant's Briefings in counties declared for the event, at which time potential eligible applicants will be asked to submit a Request for Public Assistance (RPA). The RPA (FEMA Form 90-49) must be submitted within thirty (30) days from the date of the declaration and can be completed and submitted at the applicant's briefing, faxed to PEMA/BORM at 717-651-2150, or mailed to:

PEMA
Attn: BORM/Public Assistance
2605 Interstate Dr.
Harrisburg, PA 17110

PEMA/FEMA will review your RPA and determine if you are an eligible applicant. Eligibility and grants are awarded based on four criteria:

↑ELIGIBLE COST↑
↑ELIGIBLE WORK↑
↑ELIGIBLE FACILITY↑
↑ELIGIBLE APPLICANT↑

Eligible Applicants have the responsibility to collect and document all information pertinent to their eligible facilities, eligible work and eligible costs for damaged sites within their jurisdiction. This information will be used in the project formulation process to develop Project Worksheets (PW).



SECTION 2

PROJECT FORMULATION

General

Project formulation is the process of documenting the eligible facility, the eligible work and the eligible costs for damages resulting from the declared event.

Eligible applicants are responsible for identifying all damages and are expected to assist in the formulation of their projects.

Kickoff Meeting

A “Kickoff Meeting” will be scheduled between the Applicant and PEMA/FEMA at the Applicant’s Briefing. PEMA/FEMA will explain the different ways of formulating projects so that you can decide what works best. The Kickoff Meeting starts:

- The 60 day window within which any additional or undiscovered damages which were not reported at the kickoff meeting must be identified and reported to PEMA
- The 12 month window for requesting an alternate project (see pg 10)

A Kickoff Meeting Checklist (PEMA-DAP-3) can be found on our PEMA web site and will be distributed at the applicants briefing.

Exit Briefing

When damage surveys in all categories of work are completed and all PWs have been written for eligible work, the Applicant’s Agent will meet with the PEMA/FEMA coordinators to review the status of each project. At this time the description of damages, scope of work to repair the damages and eligible costs reflected on the PW must be carefully reviewed to ensure the information is accurate and adequate.

Eligible Work

FEMA has divided disaster-related work into the broad categories of *Emergency* and *Permanent* work. Emergency and Permanent work is further divided into seven defined categories as follows:

Emergency Work:

Category A - Debris Removal is the clearance, removal, and/or disposal of items such as downed trees, woody debris, sand, mud, silt, gravel, damaged building components and contents, wreckage produced during the conduct of emergency work, and other disaster-related wreckage. Removal of debris on public property that is required to allow continued safe operation of governmental functions or to alleviate an immediate threat is generally eligible. Debris removal from private property is usually the responsibility of the individual property owner aided by insurance settlements; however, in certain circumstances debris moved from private property to the public right-of-way may be eligible. Be sure to

document who, what, where, when, how and why of debris removal activities. The PEMA/FEMA PAC can advise you on what debris removal may be eligible. For debris removal to be eligible, the work must be necessary to:

- Eliminate an immediate threat to lives or public health and safety
- Eliminate immediate threats of significant damage to improved public or private property when the measures are cost effective
- Ensure the economic recovery of the affected community to the benefit of the community-at-large
- Mitigate the risk to life and property by removing substantially damaged structures as needed to convert property acquired using FEMA hazard mitigation program funds to uses compatible with open space, recreation, and wetland management practices

Category B - Emergency Protective Measures are actions taken by the community (almost always government agencies) before, during, and after a disaster to save lives, protect public health and safety, and prevent damage to improved public and private property. Examples of measures that may be eligible include:

- Warning of risks and hazards
- Search and rescue
- Emergency evacuations
- Emergency mass care
- Rescue, evacuation, transportation, care, shelter, and essential needs for humans affected by the event.
- Construction of emergency protective measures to protect lives or improved property, such as temporary levees, sandbagging and boarding windows
- Security in the disaster area
- Provision of food, water and other essential items at central distribution points
- Temporary generators for facilities that provide health and safety services
- Rescue, care, shelter, and essential needs for household pets and service animals if claimed by a eligible applicant
- Temporary facilities for schools and essential community services
- Emergency operations centers to coordinate and direct the response to a disaster
- Inspections necessary to determine whether damaged structures pose an immediate threat to public health or safety
- Demolition and removal of damaged structures that pose an immediate threat to public health and safety as defined by established municipal codes
- Temporary restoration of access roads and bridges

Permanent Work:

Category C - Roads and Bridges – Roads (paved, gravel, and dirt) are eligible for permanent repair or replacement, unless they are Federal-Aid roads which are supported by the Federal Highways Administration (FHWA). Eligible work includes repair to surfaces, bases, shoulders, ditches, culverts, low water crossings, and other features, such as guide rails. Repairs necessary as the result of normal deterioration, such as alligator cracking or rotted timbers, are considered pre-disaster damage and not eligible. Eligible work for bridges includes decking and pavement, piers, girders, abutments, slope protection, and approaches.

Category D - Water Control Facilities – Permanent repairs are not eligible for flood control works and federally-funded shore protective devices since the primary authority for the restoration of those facilities is with the US Army Corps of Engineers and the Natural Resources and Conservation Service. FEMA can help with permanent repairs for other water control facilities, such as those that were built for channel alignment, recreation, navigation, land reclamation, maintenance of fish and wildlife habitat, interior drainage, irrigation, and erosion prevention.



Category E - Buildings and Equipment – Buildings, structural components, interior systems (e.g., electrical and mechanical systems), building contents, vehicles, and equipment are eligible for repair or replacement. Replacement of pre-disaster quantities of consumable supplies and inventory, the replacement of library books and publications, and the stabilization (but not re-creation from original sources) of damaged files are also eligible. Removal of mud, silt, or other accumulated debris is eligible work if necessary to restore the building. See the Insurance considerations in Section 3.

Category F - Utilities – The repair or restoration of utilities is also eligible. Utilities include:

- Water treatment plants and delivery systems
- Power generation and distribution facilities, including natural gas systems, wind turbines, generators, substations, and power lines
- Sewage collection systems and treatment plants
- Communications

The applicant is responsible for determining the extent of damage to utility systems. General surveys to look for damage are not eligible, but if you discover damage, the inspection of the damaged section is eligible. Any increased operating expenses resulting from the disaster or lost revenue are not eligible; however, the cost of establishing temporary emergency utility services in the event of a shut-down may be eligible as emergency work.

Category G - Parks, Recreational Areas, and Other Facilities – Publicly-owned facilities in this category are generally eligible. They include:

- Playground and picnic equipment
- Swimming pools, golf courses, and tennis courts
- Piers
- Some beaches (you will need to work with your FEMA Project Specialist to determine if yours meet the criteria for assistance)
- Mass transit facilities, such as rail systems
- Facilities that do not fit in Categories C-F, such as fish hatcheries
- Supporting facilities (e.g., roads, buildings, and utilities) that are located in parks and recreational areas, subject to the eligibility criteria for Categories C, D, E, and F

Natural features, such as the banks of streams, are not facilities and are not eligible for repair. In addition, the replacement of trees, shrubs, and other ground cover is not eligible for any facility in any category of work. This means that replacement of grass and sod (including for recreational and sports areas) generally is not eligible for the Public Assistance Program. The one exception is grass or sod required as part of another measure to stabilize a slope and minimize erosion.

Recreational areas owned by PNP organizations are not eligible for assistance.

Project Worksheet (PW)

FEMA prepares the PW during project formulation and it contains the following information:

- Applicant identification information and disaster number
- Facility location
- Pre-disaster description of the facility and damage description, including the cause and dimensions of damage
- The scope of eligible work necessary to perform emergency work or repair the damage required to return the facility to its pre-disaster design, function and capacity
- Estimated or actual costs necessary to complete the work
- Special considerations associated with the project, such as any insurance, hazard mitigation, environmental and historical issues.

As the PW is the basis for funding, it is the applicant's responsibility to collect and maintain documentation to support the PW development process. Applicants should review each PW to ensure the accuracy of the damage description and the adequacy of the approved scope of work.

Small and Large Projects

To facilitate the review, approval and funding, projects are divided into a category of being a small or large project which is based on a monetary threshold established by the Stafford Act. Small projects are those with a total estimated cost below the threshold, and large projects are those with a total estimated cost at or above the threshold. The threshold is adjusted each fiscal year to account for inflation and will be announced at the Applicants Briefing. Projects are categorized as large or small based on the eligible damage cost of the approved PW, and revisions/new versions could cause a PW to change to large or small. Funding methods for small and large projects differ as follows:

- Small project funding payment is made on the basis of the initial approved amount, whether estimated or actual.
- Due to the complexity and nature of most large projects, work typically is not complete at the time of FEMA approval; therefore, most large projects are initially approved based on estimated costs. Large project funding is based on documented actual costs. As the project proceeds, applicants may request funds from PEMA to meet expenses that have been incurred. When accumulated expenses exceed \$10,000, applicants may submit a Request for Reimbursement Form, PEMA-DAP-9, along with applicable invoices, contracts, etc. When all work associated with the project is complete, the PEMA PAC performs a reconciliation of actual costs and transmits the information to FEMA for final funding adjustments.

Improved Project

An improved project is a project, large or small, where the applicant chooses to make additional improvements to a facility while still restoring its pre-disaster function and at least, its pre-disaster capacity. Funding for such projects is limited to the costs that would be associated with repairing or replacing the damaged facility to its pre-disaster design, or to the actual cost of completing the improved project, whichever is less. The applicant must obtain written approval from PEMA for an improved project prior to the start of construction. Any significant change from the pre-disaster location, footprint, function or size of the facility must also be approved by FEMA to ensure completion of the appropriate environmental and/or historic preservation review. The process requires the submission of a Request for Improved Project Form, PEMA-DAP-14.

Alternate Project

An alternate project is any permanent restoration project, large or small, where the applicant chooses not to repair or replace the damaged facility. In general, alternate project funding may be used to repair or expand other selected public facilities, to construct new facilities, to demolish the original structure, to purchase equipment, to cover Section 406(d) insurance reductions on a facility eligible under the PA Program, or to fund cost-effective hazard mitigation activities, as long as the purpose is to meet a need for governmental services and functions in the disaster area. The alternate project must serve the same general area as was being served by the originally funded project. The original facility must be rendered safe and secure, sold, or demolished. Alternate project federal share funding is reduced to 90% for government applicants and 75% for PNP applicants of the

approved eligible amount or the federal share of the actual cost of the alternate project. All requests for alternate projects must be made within 12 months of the kickoff meeting and approved by PEMA/FEMA prior to the start of construction to ensure that the proposed project represents an appropriate use of funds and complies with applicable environmental and historic preservation laws. Contact your PEMA PAC for the details when considering an alternate project.



Special Considerations

While formulating your projects, the PEMA/FEMA PACs will complete a FEMA Form 90-120, Special Considerations Questions to verify that the implications of insurance issues and hazard mitigation measures have been considered, and Federal laws and regulations pertaining to historic preservation and environmental issues are being complied with. An explanation of what must be considered is discussed in succeeding sections covering the following topics:

- Insurance, Section 3
- Hazard Mitigation, Section 4
- Historic Preservation, Section 5
- Environmental Compliance, Section 6

SECTION 3

INSURANCE CONSIDERATIONS

General

Insurance is an important consideration of the Public Assistance Program and comes into play in two respects.

- FEMA cannot provide disaster assistance (for either emergency work or permanent work) if damages or losses are covered by insurance. Consequently, applicants must file claims with their carrier as soon as possible after the disaster.
- FEMA may require an applicant to obtain and maintain insurance on insurable facilities which have been repaired or replaced with FEMA funding.

Insurance Reductions

FEMA must reduce all project grants for insured property by the amount of actual insurance proceeds received or by the amount of proceeds that can be reasonably anticipated from a review of the insurance policy. By taking this reduction, FEMA eliminates the potential for duplication of benefits for the same loss. This applies to both general property insurance and flood insurance. Insurance often covers buildings, contents of buildings, vehicles, equipment, debris removal, demolition, cleanup, snow removal, temporary facilities, code and standard upgrades, operating costs and other losses. Reductions apply to both emergency work and permanent work under the Public Assistance Program.

For general property insurance (a term FEMA uses to describe all perils except for flood), FEMA will apply a reduction based on the statement of loss to reduce the eligible amount of funding by the amount of the actual insurance proceeds received. However, if the insurance proceeds are unknown or do not appear to agree with the policy coverage description, a FEMA Insurance Specialist will review your insurance policy with your PW to determine a dollar amount. The anticipated proceeds are then deducted from the original eligible amount of disaster damage.

For flood damages, the reduction of eligible costs is based on whether or not the damage is located within a Special Flood Hazard Area (SFHA) as defined by the National Flood Insurance Program (NFIP). If the facility is outside the SFHA, the reduction is the actual or anticipated insurance proceeds. If the facility is within the SFHA and has no or insufficient flood insurance, eligible costs will be reduced by the lesser of:

- The value of the facility, or
- The maximum amount of insurance proceeds that would have been payable had the facility been covered through NFIP coverage.

Project grants are not eligible for funding if the required insurance is not obtained and maintained for the facility for the same peril.

Required Documentation

Applicants must submit copies of the insurance policy with all data, declarations, endorsements, exclusions, schedules and other attachments or amendments to the PEMA/FEMA PAC. Any settlement documentation including copies of the claim, proof of loss, statement of loss, and any other documentation describing the covered items and insurance proceeds available for those items, must also be submitted. This documentation will be used to determine the level of project funding. Insurance reductions will be made prior to project approval and noted in the General Comments section of the PW.

Apportionment

If the insurance policy covers both insured eligible and insured ineligible damages, such as both property and business income losses, without specifying limits for each type of loss, FEMA will apportion the anticipated recovery based on the ratio of insured eligible damages to insured ineligible damages.

Perils

The type of peril (e.g., flood, wind, fire, hail, etc.) that caused the disaster damage will be identified in the PW. Insurance coverage often excludes certain perils and may only cover certain damaged items within a project. In addition, a single facility may have been damaged by multiple perils, such as wind and flood damage during a hurricane, and the insurance may only cover some of the perils. Damages from wind and flood will be separated on the PW, as they are assessed very differently for insurance purposes.

Past Damages

Applicants must report whether the facility has ever received disaster assistance from FEMA. If any required insurance coverage for the same peril was not obtained or maintained, FEMA will not provide assistance for the facility.

Frequent Claims

Uninsured losses that might be eligible for FEMA assistance include:

- Reasonable deductible in your first claimed FEMA assistance if the cost accrued to you
- Non-recoverable depreciation (that is, the differences between FEMA eligible costs and final loss valuations used by insurers)
- Costs in excess of insurance policy limits, including sub-limits for certain perils (such as flood or earthquake)

Obtaining and Maintaining Insurance

Insurance can be purchased for a variety of properties. Generally, buildings, contents of buildings, vehicles, and equipment are insurable. If any other specific type of insurance is reasonably available, adequate, and necessary to insure your facility, you may be required to obtain and maintain that insurance coverage.

If assistance was received for flooding, applicants are required to obtain flood insurance even if the facility is located outside the floodplain.

Applicants must obtain insurance for the full amount of FEMA assistance (including Section 406 hazard mitigation assistance), even if the amount is over the NFIP limit. If the amount of assistance is over the NFIP limit, applicants will need to obtain commercial insurance in at least the amount of the eligible damage to protect against future loss to such property from the same peril for the life of the facility. The required insurance coverage must be obtained, or letter of commitment accepted by the State, prior to the release of any Federal funds.



Insurance is not required if the estimate for the repair of disaster-related damage is less than \$5,000. Insurance is also not required on temporary facilities.

Premiums are not eligible for reimbursement.

When a FEMA-funded temporary facility is damaged in a non-federally declared event, FEMA will not repair or replace it.

What to do

- Contact the insurance carrier, file a claim, and pursue payments.
- Discuss insurance coverage with the PEMA/FEMA PAC or FEMA Insurance Specialist, and provide them with insurance documents and statements of loss. If the damaged facility is rented, a copy of the lease or rental agreement will be required.
- Identify all past disaster damages and claims for Federal assistance, and discuss them with the PEMA/FEMA PAC.
- Ensure damages and scope of work is adequately described in the PW, even if a portion will be covered by insurance. This will allow for a future adjustment of eligible costs if there is a change in your insurance settlement.
- Keep the PEMA/FEMA PAC informed of any problems.
- Obtain and maintain insurance on FEMA funded damages as required and document the fact using a PEMA-DAP-21, Insurance Commitment Form. Obtain insurance coverage as soon as possible and submit a copy of the DAP-21 to your PAC.

SECTION 4

HAZARD MITIGATION

General

If a facility is eligible for permanent repair or replacement, it may also be eligible for additional cost-shared assistance under Section 406 of the Stafford Act for cost-effective measures that will prevent future similar damage. These measures are called hazard mitigation. Hazard mitigation measures for your project may be proposed by you or the PEMA/FEMA PAC. While the basic funding will return your facilities to their pre-disaster design, hazard mitigation measures will improve on the pre-disaster design. (Upgrades required to meet applicable codes and standards are part of your basic eligible restoration work, not hazard mitigation measures.)

Hazard mitigation opportunities usually present themselves at sites where damages are repetitive and simple measures will solve the problem. A hazard mitigation proposal is a written description and cost estimate of what it will take to repair the damage in such a way as to prevent it from happening again. The proposal is submitted with the PW and describes in detail the additional work and cost associated with the mitigation measure. Hazard mitigation measures must meet one of the following tests of cost-effectiveness:

- Cost no more than 15 percent of the total eligible cost of eligible repair work for the damaged facility
- Cost no more than 100 percent of the total eligible cost of eligible repair work and be on the list of FEMA-approved mitigation measures
- Have an acceptable benefit-cost ratio

Because mitigation measures can be technically complex and must be thoroughly evaluated for feasibility, you may want to ask the PEMA/FEMA PAC for technical assistance in identifying hazard mitigation measures or in preparing a proposal. Since hazard mitigation will often change the pre-disaster design of the facility and will require consideration of environmental and historic preservation issues, the PAC may also obtain assistance from Technical Specialists in those areas.

If approved (i.e., good engineering design, cost-effective, eligible, technically feasible, and compliant with environmental and historic preservation rules, etc.), the additional work will be addressed in a separate paragraph within the scope of work section of the PW and the costs will be included in the overall funding of your project.

Some Things You Need to Know

If your hazard mitigation proposal is approved by FEMA, you are required to complete the work while completing the repair documented on the PW. If you do not complete the mitigation measure as approved, you will jeopardize funding for the entire project.

When appropriate, mitigation measures become part of the work covered by the insurance requirement.

No measure may increase risks or cause adverse effects to the facility or to other property. For example, if the mitigation dealt with drainage issues, an important concern would be the effect the mitigation measure would have downstream.

If a replacement facility is involved, alternate and improved projects are not eligible for Section 406 hazard mitigation funding. Mitigation funding that might have been approved for an original location does not transfer to a new location for an improved project that involves combining facilities.

Hazard mitigation measures apply only to the damaged elements of a facility or system. For example:

- If flooding inundates a sanitary sewer and blocks manholes with sediment, cost-effective mitigation to prevent the blockage of the damaged manholes in a future disaster may be considered.
- Upsizing the capacity of a destroyed culvert pipe by one size.
- If five columns (of a building with twenty columns) were damaged in an earthquake, reinforcing those five damaged columns might be a cost-effective hazard mitigation measure.
- If wind blew out some of the windows in a building, providing shutters for those windows only (not all windows) could be a cost-effective mitigation measure.
- If a wing of a building was damaged, mitigation measures would apply only to that wing, not the whole building.

Undamaged facilities are not eligible for Section 406 hazard mitigation funding. However, they may be eligible for hazard mitigation funding under Section 404. Section 404 funding is managed by the State and does not fall under the jurisdiction of the PA Program. Examples of 404 mitigation are the buying out or elevation of a structure in the flood plain. Questions regarding the Section 404 hazard mitigation program should be directed to the PEMA Hazard Mitigation Officer.

What to do

Look for ways to prevent damages from happening again.

Identify sites that are subject to repetitive damage and recommend remedies to the PAC.

Applicants should request assistance from the PAC in evaluating every project for hazard mitigation opportunities.

Remember that cost-benefit documentation is required for each mitigation proposal; therefore, maintain historic records to support repetitive damage.

SECTION 5

HISTORIC PRESERVATION

General

FEMA is required to comply with applicable Federal historic preservation laws and regulations, including the National Historic Preservation Act (NHPA).

Section 106 of the NHPA requires that FEMA consider the direct or indirect effect of projects it funds on historic properties. Historic properties include pre-historic and historic districts, sites, buildings, structures, and objects listed on, or eligible for inclusion on, the National Register of Historic Places (NRHP). Historic properties also include those of traditional religious and cultural importance to an Indian tribe that meet the NRHP criteria. Facilities can generally be considered historic when they are 50 years of age or older. However, historic properties are not limited to buildings or well-known historic sites. Facilities as diverse as bridges, roads, industrial plants, landscapes, and areas once inhabited by prehistoric populations may be considered historic properties.

Many PA projects have the potential to affect historic properties. These projects include:

- Repair, restoration, mitigation, or demolition of historic buildings, structures, or objects
- Repair, restoration, mitigation, and demolition projects in pre-historic and historic districts
- Improved, alternate, mitigation, or relocation projects affecting undisturbed areas that may contain pre-historic or historic sites

FEMA must ensure the following steps are accomplished before approving funding:

- Determination of the Area of Potential Effects
- Identification of historic properties
- Evaluation of the effects of the proposed projects on historic properties
- Resolution of adverse effects on historic properties
- Consultation with the State Historic Preservation Office (SHPO) or Tribal Historic Preservation Office (THPO) and other interested parties

In some cases, FEMA may establish a programmatic agreement with the Advisory Council on Historic Preservation (ACHP) and the SHPO or the THPO at the beginning of the disaster recovery process to address projects potentially falling within the scope of the NHPA and to expedite the Section 106 compliance process. In other cases, FEMA may have already established a programmatic agreement with the ACHP and SHPO or THPO that applies to current and future disasters. The PEMA/FEMA PAC and historic Technical Specialist will guide applicants through the historic preservation requirements.

What to do

Identify historic preservation issues related to projects.

Be prepared to submit the following for inclusion with the PW:

- Site plans, drawings, or sketches
- Design/construction plans or drawings
- Record of contact with regulatory agencies and other interested parties (e.g., the local historic society)
- Copies of existing permits and permit applications
- Information on the age of the facility, especially whether a facility or area is on the NRHP
- Dates of construction and modification of the facility
- Photographs of the damaged facility and surrounding area
- Photographs of any historic markers or plaques

Failure to comply with historic preservation requirements will jeopardize FEMA funding of the project.



SECTION 6

ENVIRONMENTAL COMPLIANCE

General

FEMA must comply with applicable Federal environmental laws and their implementing regulations and Executive Orders (EO). The Federal environmental laws that most often relate to FEMA-funded projects include the Clean Water Act, the Clean Air Act, the Coastal Barriers Resources Act, the Coastal Zone Management Act, the Resources Recovery and Conservation Act, the Endangered Species Act (ESA), and the National Environmental Policy Act (NEPA). Three EOs most frequently encountered in FEMA projects address: floodplain management (EO 11988), wetland protection (EO 11990), and environmental justice (EO 12898). While all projects must comply with these laws and EOs, the location and nature of the project determines whether or not a law is relevant. Some of these laws have exclusions or allow for expedited consultations for certain types of work. FEMA will apply these mechanisms to obtain clearance for projects where appropriate. Pennsylvania and FEMA have established procedures to expedite compliance of projects that do not fall under the exceptions. Early identification of factors that affect compliance is the key to expedited review and approval.

NEPA requires that Federal agencies include environmental planning in their decision making process, as well as mission objective, cost, and technological issues. FEMA complies with this requirement by evaluating the potential environmental impacts of a proposed project. NEPA also requires Federal agencies to ensure appropriate public involvement.

Over 75 percent of projects funded by the PA Program are either emergency activities or projects to repair facilities to their pre-disaster design. These types of actions are statutorily excluded from the NEPA review process. If the damaged facility is proposed to be upgraded or improved or if mitigation is being added, FEMA must conduct and document the NEPA review. Generally, FEMA must complete this NEPA review before the project is initiated, otherwise funding may be jeopardized. Regardless of the level of review required by NEPA, other relevant environmental laws and EOs must be addressed.

Special consideration should be given to compliance with the ESA. Unlike NEPA, emergency actions are not exempt from ESA. FEMA must consult with the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) to determine affects to protected species and their habitats, even for emergency actions. However, there are provisions in the ESA for emergency consultation. Any action which has the potential of affecting threatened or endangered species or their habitats requires notification to PEMA/FEMA and the appropriate regulatory agency (USFWS or NMFS) prior to beginning work. Written notification is required. Please contact your PEMA PAC for assistance. If USFWS or NMFS is not notified of the emergency action and it potentially affects protected species or their habitats, FEMA cannot fund the project. After the emergency, FEMA can conclude the consultation process with USFWS or NMFS.

If your project is near or affects a stream, a wetland, or other body of water, requires the temporary or permanent destruction of an area of natural vegetation, or is in or near a

special resource area, like a wildlife refuge, forest, or park, an environmental compliance review will likely be required. The PEMA/FEMA PAC will request assistance from an environmental Technical Specialist.

What to do

The applicant must identify any Special Considerations related to each project.

The PEMA/FEMA PAC's will complete the Special Considerations Questions form for each PW, using the following:

- Site plans, drawings or sketches
- Design/construction plans or drawings
- Hydrological study or analysis
- Location and site maps
- Flood Insurance Rate Maps
- Record of contact with regulatory agencies
- Copies of existing permits and permit applications
- Photographs of the damaged facility and surrounding area

Projects with Special Considerations issues must be submitted as soon as possible. FEMA must complete the review for environmental compliance prior to initiation of the project work. A "Yes" response to any of the Special Considerations Questions is an indication that a more detailed review for compliance with environmental requirements might be triggered.

Keep a copy of the Special Considerations Questions form with the other documentation on the project to show that regulatory issues were considered.

Describe any proposed changes to the pre-disaster design of the facility and any proposed improved project, alternate project, relocation, hazard mitigation measure, or upgrade to applicable codes and standards.

Applicants are responsible for complying with all applicable environmental laws regardless of the funding source. Examples of other environmental laws include the Clean Water Act (Sections 401, 402, and 404), the Clean Air Act (New Source Review), state endangered species acts, and local noise ordinances. As a condition of funding, PEMA/FEMA requires that all applicants obtain all applicable permits and document compliance with all applicable environmental laws.

Local, State, or Federal regulations may have permit exemptions. Contact the appropriate permitting agencies about any exemptions and expedited permit processes that may be applicable. FEMA may withdraw funding from a project that does not obtain the appropriate permits or comply with applicable environmental laws, regulations, and EOs.

SECTION 7

PROJECT DOCUMENTATION

General

Documentation is the process of establishing and maintaining accurate records of events and expenditures related to eligible disaster recovery work. The information required for documentation basically describes the “who, what, where, when, why and how much” for each item of disaster recovery work. When disaster strikes, communities will utilize financial and human resources on such things as search and rescue, mass evacuations, demolition of damaged buildings, debris removal, reconstruction of damaged facilities, and other tasks to permanently restore the community. To ensure that work performed both before and after a disaster declaration is well documented, the applicant will:

- Designate an Applicant’s Agent to coordinate the accumulation of all project related records. Designation must be documented on the Designation of Agent Resolution form (PEMA-DAP-2). A change in agent requires a new PEMA-DAP-2.
- Designate that the Agent will sign the Public Assistance Application/Agreement (PEMA-DAP-1) and the Certification Regarding Restrictions on Lobbying form (PEMA-DAP-4), and will be the legal primary point of contact on all PA grant matters.
- Establish a file for each project where work has been or will be performed. For projects that include more than one physical site, records showing specific costs and scopes of work should be maintained by site to expedite insurance and other special considerations reviews.
- Maintain accurate disbursement and accounting records to document the work performed and the costs incurred.

Accounting system

There are many ways to maintain records. Applicants may utilize an automated or manual system to capture expenditures. What is important is that it captures the necessary information, including supporting documentation, and is readily available and in a usable format, so that:

- All eligible project costs are claimed
- The PAC has the information necessary to develop and validate disaster projects
- Documentation will be ready for any State or Federal audits, other Federal program reviews, or Special Considerations compliance reviews

Supporting Documents

All of the following records may not be applicable to every project, but everything that does pertain to a project should be maintained in a file with the corresponding PW for a period of three years from final applicant closeout:

- Completed Special Considerations Form
- Detailed discussion of the damage and what is required to restore the site
- Photographs of damage, work underway, work completed
- Lists of damaged and destroyed equipment
- Force account labor cost summaries, backed up by detailed work schedules, time sheets and benefit costs
- Force account equipment and supporting usage records
- Force account materials purchase and usage records
- Contracts, vendor purchase orders, invoices, and payments
- Summary of Costs form (PEMA-DAP-8)
- Explanation of how the contract was executed and the procurement method used; if price was not competitively determined, an explanation of how the price was determined
- Authorizations to perform the work by the person with appropriate authority, such as a department head, legislative authority (council/supervisors), or an executive authority (mayor/city manager/county administrator)
- Correspondence with PEMA and FEMA
- Insurance information/settlements and policies
- Appeals information, including engineering documents and explanations
- Police, fire, and medical response dispatch logs
- PEMA-DAP-7, Volunteer Fire Company Activity Worksheet
- Environmental and historic alternatives and hazard mitigation opportunities considered for all projects including improved or alternate projects
- PEMA-DAP-22, Right of Entry/Hold-Harmless Agreement if a project requires access through or encroachment onto private property.
- Records of donated goods and services

Audit Considerations

The following tests and questions are usually included in an audit of Federal and State disaster funds:

1. Were applicable Federal, State, and local requirements met?
2. Were costs accurately claimed or reported? The auditor will take the summarized costs and trace them to the supporting schedules and the source documents. The site files are very important to support the cost summaries and the costs claimed.
3. Were costs claimed or reported adequately supported? It is important to have individual labor, equipment, and materials records for those costs being charged to the PW. It is also important that the attributes are not ambiguous. Attributes may include:
 - Date and hours worked
 - Work location
 - Fringe benefit rate
 - Type of work performed
 - Regular and overtime labor rates
 - Equipment rate
 - Equipment operator
 - Equipment description
 - Date of materials purchases/usage
4. Were costs allowable and eligible?
5. Were costs necessary and reasonable?
6. Were alternate and improved projects, changes in the approved scope of work and time extensions properly approved?
7. Some frequent problems auditors find when reviewing costs include:
 - Failure to adequately describe the actual work performed. The records must clearly state what work was performed.
 - Failure to distinguish between disaster-related work and normal/routine work.
 - Failure to provide a clear audit trail from the cost summaries to the supporting records.
 - Failure to segregate ineligible work from eligible work. Failure to segregate ineligible work may result in otherwise eligible costs being disallowed.

SECTION 8

FORCE ACCOUNT LABOR

General

Force account labor rates include actual wages paid plus fringe benefits paid or credited to the applicant's personnel. Different criteria apply to labor rates for different kinds of employees and work. The applicant's pre-disaster written policies and labor contracts will be used in determining eligible costs which are reasonable and consistent.

Many times during a disaster, employees are reassigned to perform tasks that are not part of their normal jobs. The labor cost for the reassigned employee is eligible as long as the employee is performing eligible work. It may be necessary to backfill the positions with extra hired personnel, in which case the additional cost would be eligible.

For permanent work categories, both regular time and overtime are eligible for all employees. Overtime may be credited in actual wages or in compensatory time off.

For emergency work, only overtime labor is eligible for:

- Permanent employees
- Seasonal employees used during the season of employment
- Reassigned employees, including those assigned to backfill a position

Both regular time and overtime labor are eligible for non-budgeted employees assigned specifically to perform emergency work, including:

- Temporary employees and seasonal employees hired out of season
- Extra hire backfill employee
- Essential employees called back from administrative leave
- Permanent employees funded from an external source such as grants

Labor costs for employees sent home or told not to report due to emergency conditions are not eligible. Labor for both foremen and supervisors may be eligible for work forces engaged in disaster-related field activities to the extent that the time is associated with eligible work. Salaries of commissioners, mayors, department directors, police and fire chiefs, and other administrators are usually not eligible. Labor costs for volunteers are not eligible.

It is important to segregate straight time and overtime costs, then to distinctly identify each element of that cost. It is very important that employee time be supported by time sheets that show who was doing what, where, when, and for how long. If your existing time sheet does not contain all this information, it is acceptable to include additional information on:

- Supplementary time sheets
- Road crew supervisor diaries
- Police and fire crew logs and dispatch reports
- PEMA DAP-5/5A Forms

Fringe Benefits

Eligible labor costs include actual wages paid plus a percentage of the cost of the employee benefits. Such benefits can include holiday leave, accrued vacation leave, sick leave, social security matching, Medicare, unemployment insurance, workers' compensation, retirement-regular, retirement-special risk, health insurance, life and disability insurance, administrative leave, and compensatory leave. Because certain items in a benefit package are not dependent on hours worked, and/or not applicable to overtime hours, the fringe benefit rate will be different for regular and overtime hours. The overtime fringe benefit rate is usually significantly lower.

Fringe benefit rate calculations, as a percentage of employee's base wage, should be documented using PEMA-DAP-16 Form or equivalent format and retained with project supporting documentation. The following steps may be helpful in calculating the percentage of fringe benefits paid on an employee's salary:

- Assuming the normal year consists of 2080 hours (52 weeks x 5 workdays/week x 8 hours/day). This makes no allowance for holidays and vacations.
- Determine the employee's basic hourly pay rate (annual salary/2080 hours).
- Fringe benefit percentage for vacation time: Divide the number of hours of annual vacation time provided to the employee (assuming 2 weeks) by 2080 (80 hours/2080=3.85%).
- Fringe benefit percentage for paid holidays: Divide the number of hours of paid holiday hours by 2080 (assuming 8 days would be 64 hours /2080=3.07%).
- Retirement pay: Because this measure varies widely, use only the percentage of salary matched by the employer.
- Social Security, Worker's Compensation and Unemployment Insurance: All are established percentages for which calculations should not be necessary.
- Insurances: This benefit may vary by employee.

Audit Considerations

The following tests and questions are usually included in an audit of federal and state disaster funds:

1. Were payroll and personnel controls adequate according to the independent audit report?
2. Were labor costs summarized by PW?
3. Were labor costs derived from or reconciled to the existing payroll system?
4. Were labor costs based upon actual rates and time worked?
5. Were labor rate components clearly identified (pay rates, fringe benefits)?
6. Were payroll registers available to verify pay period, position, and salary?
7. Were time sheets maintained?
 - Were they prepared by the employee?
 - Were they approved by the supervisor?
 - Did they clearly distinguish between regular and overtime hours?
 - Did they clearly identify the type and location of work performed?



The most frequent problems auditors find when reviewing force account labor costs is that applicants fail to adequately document and support fringe benefit rates and components.

SECTION 9

FORCE ACCOUNT EQUIPMENT

General

Ownership and operating costs for applicant owned equipment and costs associated with rented equipment used to perform eligible work are both eligible for reimbursement. Costs for use of automobiles and pick-up trucks may be reimbursed on the basis of mileage if less costly than hourly rates. All other types of equipment costs are reimbursed using an hourly rate. Stand-by time for equipment is not eligible. However, if equipment is used intermittently for more than half of the normally scheduled working hours for a given day, use for the entire day may be claimed if adequate documentation is submitted. Equipment that is used for less than half of the normally scheduled working day is reimbursable only for the hours used.

All equipment costs must have records showing who was operating the equipment, for what, where, when and for how long. The PEMA DAP-5 and DAP-5a forms will be particularly helpful in summarizing force account costs for equipment use.

Equipment Rates

Reimbursable equipment rates include operation (including fuel), insurance, depreciation, and maintenance; however, they do not include the labor of the operator.

FEMA recognizes three types of equipment rates described as follows:

- **FEMA Rates.** FEMA publishes a schedule of equipment rates that is applicable on a national basis. If a piece of equipment used by an applicant is not on the FEMA schedule, documentation to justify the requested rate must be submitted thru PEMA to FEMA for approval. If an entity has established rates for use in its normal day-to-day operations, the criteria listed below under State and local rates apply. If an entity does not have established rates, FEMA rates will be used.
- **State Rates.** An applicant may claim reasonable rates that were developed using State guidelines up to \$75 per hour. Rates over \$75 per hour must be approved by FEMA on a case-by-case basis. A State guideline would be an equipment cost methodology used by a State agency, such as PennDOT, to account for the costs of using its own equipment. Care must be taken before adopting a rate schedule to insure labor costs are not included in the calculations.
- **Local Rates.** Rates developed, or adopted, by a local government can be used. Where local rates have been established and used prior to the declared disaster, reimbursement will be based on the local rates or FEMA rates, whichever is lower. If the local rate is lower and the applicant certifies that the rates do not reflect all actual costs, the higher FEMA rates may be used; however, the applicant may be requested to provide documentation of the basis for the rates.

If the applicant wants to use a rate that exceeds the FEMA rate, the basis for that rate must be justified and submitted thru PEMA to FEMA for approval.

It is acceptable to have a time sheet that identifies both labor hours and the equipment used. Any entry where equipment usage hours exceed labor hours will be carefully evaluated. Normally equipment use hours will not exceed labor hours. An exception might be where multiple pumps or generators are being operated and serviced by one individual.

Audit Considerations

The following tests and questions are usually included in an audit of federal and state disaster funds:

1. Are equipment costs summarized by PW?
2. Are equipment costs directly traceable to a specific PW?
3. Was a list of owned equipment maintained?
4. Was an established equipment rate schedule used?
5. Were the rates reviewed and adjusted on a regular basis?
6. Were equipment usage records maintained?
 - Were they prepared and signed by the operators?
 - Were they approved by the operator's supervisor?
7. Did the equipment records indicate the following?
 - The operator
 - Type of work performed
 - Actual hours of operation
 - Location of work performed
8. Did the crew leader/foreman account for crew assigned equipment?

The most frequent problems auditors find when reviewing force account equipment costs include:

1. Failure to have crew rates properly supported by rate calculations.
2. Failure to cross reference on the time records and equipment logs which employee was assigned what equipment, and when the equipment was used. The auditor will be looking for standby time, which is not eligible.

SECTION 10

EQUIPMENT, SUPPLIES AND MATERIALS

General

For the purpose of this section, the following definitions apply:

- The term “equipment” means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.
- The term “supplies” means all tangible personal property other than equipment as described above.
- The term “materials” refers to items that are expendable or consumable in nature and tend to lose their identity when used or installed, such as aggregate dumped to repair a roadbed.



FEMA may assist in purchasing the needed equipment and supplies; however, you may be required to compensate FEMA for the fair market value of the cost of the equipment and supplies when the items are no longer needed for the eligible work. The current fair market value is the value of the equipment and supplies determined by selling them in a competitive market. Reimbursement considerations will be addressed during the project formulation and PW process.

Force Account Materials

These are supplies that are owned and in inventory to support normal operations. The cost to replace materials that are taken from stock to perform eligible work is reimbursable. It is important to maintain accurate inventory usage records and replenishment receipts. Records for each PW should identify the unit price from the vendor’s invoice, type and quantity of supply used, and where and when it was used.

Purchases

It may be more advantageous to purchase supplies and have them delivered to the eligible site where the work is being done. In that case the unit cost may vary from that of force account deliveries, due to transportation costs, and must be established based on the individual vendor invoices. The following considerations may apply:

- The work site, project and/or PW should be identified on the vendor invoice(s).
- Vendor invoices must reflect the quantity of material delivered to each disaster location, inventory, stockpile, and non-disaster work site.
- The Activity Worksheet for Outside Contractor/Vendor Invoices form (PEMA-DAP-6) should be used to track invoices.

Leased or Rented Equipment

Leasing or rental of equipment is an eligible method of obtaining use of equipment to perform eligible work as long as the costs are reasonable and the total cost does not exceed the purchase price of the equipment. The following considerations apply:

- Even though a long-term lease may cost as much as purchasing the same equipment, if the equipment is leased through the PA grant process, the applicant would be reimbursed for the costs associated with the lease. Should the applicant decide to purchase instead of lease the piece of equipment, they would be required to reimburse FEMA for the federal share of the fair market value of the purchased equipment.
- If there is a lease-purchase agreement on equipment, the applicant would be reimbursed at the FEMA equipment rates as if the equipment was applicant owned. If eligible work is completed prior to obtaining ownership through the contract, the applicant can request supplemental funding for the difference between the FEMA equipment rate and the higher lease cost that was incurred. When ownership is obtained through the lease-purchase contract, there is no requirement to compensate FEMA.
- Equipment rented to perform eligible work will be reimbursed based on the vendors invoice. The invoice should include the eligible work being done, where, when, how long, type of equipment, and applicable PW number.

Audit Considerations

The following tests and questions are usually included in an audit of Federal and State disaster funds:

1. Are force account materials costs summarized by PW?
2. Are inventory withdrawals directly traceable to a PW?
3. Were periodic inventories of materials in stock performed?
4. Was the method of computing unit prices clearly documented and supported over a period of time by consistency?
5. Were inventory records maintained by someone other than the inventory custodian?

6. Were purchases summarized by PW?
7. Were individual purchases directly traceable to a PW?
8. Were normal purchasing practices followed in acquiring disaster-related materials, supplies and services?
9. Are there written purchasing policies?
 - Did they cover emergency purchases?
 - Are they consistent with Federal, State, and municipal codes and laws?
10. Was competitive procurement used where required?
11. Were written justifications prepared for all large non-competitive procurements?
12. Were non-expendable equipment and supplies accounted for separately and was the salvage value determined and recorded?
13. Were rate quotes obtained for leased/rented equipment?
14. Did invoices and delivery tags for leased/rented equipment indicate the work location?

SECTION 11

PROCUREMENT AND CONTRACTING



Procurements

Procurement contracts are often the largest category of costs and, therefore, receive a lot of attention and scrutiny. Federal, State and local procurement requirements must be followed when procuring contracts. Contracted work must be necessary and reasonable. FEMA recognizes four methods of procurement:

- Small Purchase Procedures – This method requires several price quotes from different sources for purchases of services or supplies under \$100,000.
- Sealed Bids – Bids are publicly advertised and solicited, and the contract is awarded to the bidder whose proposal is the lowest in price. This is the preferred method for procuring construction contracts.
- Competitive Proposals – This method is similar to sealed bid procurement, but the contract is awarded on the basis of contractor qualifications instead of price. This method is often used for procuring architectural or engineering professional services.
- Non-Competitive Proposals (Sole Source) – This method, in which a proposal is received from only one source, should be used only when the award of a contract is not feasible under the other three methods and one of the following circumstances applies:
 - The item or service is only available from a single source
 - An emergency requirement will not permit delay for competition, that is, the contract will eliminate or reduce an immediate threat to life or public health and safety
 - FEMA authorizes a non-competitive proposal

- A number of sources were solicited; however, competition was inadequate

Contracts

Competitively bid contracts are used to summarize costs for work that you obtain from an outside source. FEMA provides reimbursement for three types of contracts:

- Lump sum – For work within a prescribed boundary with a clearly defined scope and a total price
- Unit price – For work done on an item-by-item basis with prices broken out per unit
- Cost Plus Fixed Fee – Either a lump sum or unit price contract with a fixed contractor fee added into the price

Time and materials contracts should be avoided, but FEMA may allow them when the work is necessary immediately after the disaster has occurred, will not last more than 70 hours, and a clear scope of work cannot be developed quickly enough. If time and materials contracts are used, the applicant must award the work competitively, monitor the work closely, and document contractor expenses carefully. A cost ceiling or “not-to-exceed” provision must be included in the contract. For example, time-and-material contracts for debris should be limited to a maximum of 70 hours of actual debris clearance work and should be used only after all available local, tribal, and State government equipment has been committed. These contracts should be terminated once the designated dollar ceiling or not-to-exceed number of hours is reached. They may be extended for a short period of time when absolutely necessary, for example, until Unit Price contracts have been prepared and executed. Cost plus a percentage of cost and “piggyback” (expanding a previously awarded contract) contracts are not eligible. In rare situations FEMA may separately evaluate and reimburse costs it finds fair and reasonable.

Audit Considerations

The following tests and questions are usually included in an audit of Federal and State disaster funds:

1. Were the facilities in use at time of disaster?
2. Were change order costs and time extensions properly applied for and approved?
3. Were performance and payment bonds obtained by the construction contractor on a timely basis?
4. Were contract costs summarized in the PW?
5. Were individual contracts directly traceable to a PW?
6. Were complete contract documentation files maintained and include:
 - Copies of contract
 - Change orders
 - Bidding information
 - Bond Information
 - Invoices and payments

7. Were normal contract practices followed?
8. Were there written contract policies?
9. Was competitive bidding/procurement used to select contractors when required or appropriate for the following:
 - Emergency work
 - Permanent work
10. Were there written justifications for non-competitively procured contracts?
11. Was the debarred contractor listing reviewed prior to selection?
12. Were formal contract agreements issued?
13. Were payment and performance bonds routinely required?
14. Were progress payments reviewed and approved by a person in charge and were they supported by invoices?

SECTION 12

TIME EXTENSIONS

Time Restrictions

Eligible work must be completed within timeframes established by regulation. These timelines begin on the declaration date of the major disaster or emergency. The timelines correspond to the type of work:

- Emergency Work = six months
- Permanent Work = 18 months

Time Extensions

An applicant may request additional time due to extenuating circumstances or unusual project requirements which are beyond their control. The PEMA PAC may be able to grant a time extension for your work as long as there is no change in the cost or scope of work.

For debris removal (Category A) and emergency protective measures (Category B), the State may grant up to an additional six months (for a total of 12 months) for the completion of the scope of work.

For permanent work (Categories C-G), the State may grant up to an additional 30 months (for a total of 48 months).

If detailed justification merits even more time, the FEMA Regional Administrator may approve it. Begin the process by contacting the PEMA PAC and submitting a Request for Time Extension Form, PEMA-DAP-15. Requests for time extensions must be submitted to PEMA for approval prior to the designated deadline.

Completing the approved scope of work within the approved time is important. FEMA can only reimburse costs incurred prior to the latest approved completion date for a particular project.

SECTION 13

PROJECT CHANGES AND APPEALS

Identifying Potential Changes

Changes are normally identified in one of two ways:

Within 60 days of receipt of the final obligated PW, the applicant must verify the description of damage, scope of work, and cost estimate for completeness and accuracy. The obligated PW should be compared to the copy received at the FEMA exit briefing. If discrepancies exist the applicant must contact the PEMA PAC and request a review of the PW.

While performing the work the applicant finds omissions of damages in the scope of work, or encounters unknown construction difficulties that will prevent the scope of work from being performed. These difficulties must also be reported to the PEMA PAC for PW review.

Cost and Scope of Work Changes

The applicant may find that work or costs are exceeding the approved project scope of work and cost estimates. Changes to the scope of work or cost estimate on the PW must be justified by the applicant and submitted to PEMA for forwarding to FEMA for consideration.

Project changes are generally not approved on the basis of a cost overrun on an individual small project unless the overrun is very substantial, or as a result of a gross error or omission in the scope of work.

In the event of a significant net cost overrun on small projects, the applicant may appeal for additional funding. However, in response to such a request the applicant must be prepared for a complete audit of all small project costs.

Appeals

The appeals process allows applicants to request reconsideration of any decisions made by FEMA. Typical appeals involve the following:

- The applicant is determined to be not eligible
- A facility, item of work, item of cost, or a project is determined not eligible
- Approved costs are less than the applicant believes are necessary to complete the work
- A requested time extension was not granted
- A portion of the cost claimed for the work is not eligible
- The applicant disagrees with the approved Scope of Work on the PW
- The applicant incurs a significant net small project overrun

The applicant must file an appeal with PEMA within 60 days of receipt of a notice of the action that is being appealed. Applicants must explain why the original determination is wrong, the amount of adjustment being requested and provide supporting documentation. Documentation must include relevant documents; for example, correspondence, contracts, bid specifications and tabs, insurance policies, etc.

SECTION 14

PROGRESS REPORTS/CLOSEOUT/AUDIT

Progress Reports

PEMA/FEMA expects applicants to actively manage their approved work, setting timelines and making sure they are met. Status reports are a critical part of disaster management. They ensure that PEMA/FEMA have up-to-date information on work progress and expenditures. Reporting requirements focus on large projects and are accomplished using the Quarterly Large Project Status Report, PEMA-DAP-11 form. The report is required to be submitted at the end of each calendar quarter. This report gives the applicant the opportunity to describe any circumstances that will impact the project such as delays, changes, cost overruns greater than 10% that could result in a change in project eligibility. Applicants should contact their PEMA PAC as soon as they encounter any of these issues.

Project Closeout

The purpose of closeout is to certify that the applicant has completed all eligible work within the approved timelines, all costs are documented and final payments made. The Project Completion and Request for Reimbursement Form, PEMA-DAP-12, is used to certify and document all project closeout costs. PEMA/FEMA reviews the DAP-12 and supporting documents to determine the final eligible cost for reimbursement.

Large projects are closed out individually on separate DAP-12s. PEMA/FEMA will review the submitted documents and may conduct a final inspection of the project site. Once the review is complete, FEMA determines the final eligible amount of the project.

Small projects are closed out when all of the applicant's small projects have been completed. Applicants will submit one DAP-12 listing all of their small projects. Should an applicant fail to complete any small project work, including mitigation, funds received for the work must be returned. If an applicant spends less than the approved amount, no reductions in eligible costs are made. If an applicant incurs costs greater than \$1,000 of the total eligible amount approved for all small projects, they may appeal for additional funding for the eligible work through PEMA. Small Project overruns consider the total cost of all small projects combined. Applicants should contact their PEMA PAC for guidance. If an applicant appeals for additional funding, all small projects will be audited.

Applicants must contact PEMA before closeout on any eligible cost overrun that will result in a small project being converted to a large project based on the current large project threshold.

Applicants should notify their PEMA PAC for guidance as they complete each large project and when all of your small projects have been completed. Applicants do not need to wait for the completion of their large project(s) to process the closeout of their small projects.

Audits

All projects are subject to audit by various State and Federal agencies. Failure to properly document all claimed expenses and/or not working within the approved scope of work may result in loss of funding.

Applicants are responsible for documenting all costs associated with their projects. Documentation for all project(s) must be accurate, complete, and up to date for closeout review.

Throughout the project life cycle, consider the probability of a program and/or financial audit. Inform PEMA at the onset of extenuating circumstances or unusual project requirements that are beyond applicant control.

Applicants must maintain all project documentation and financial records for three years from the date they are closed as an applicant for the disaster.

Office of Management and Budget Circulars (OMB Circ)

A non-exclusive list of regulations commonly applicable to DHS grants are listed below, including the guidance:

➤ Administrative Requirements

1. OMB Circular A-102, State and Local Governments (10/07/94, amended 08/28/07) (44 CFR Part 13)
2. OMB Circular A-110, Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (11/19/93, amended 09/30/99) (2 CFR Part 215)

➤ Cost Principles

1. OMB Circular A-87, State and Local Governments (05/10/04)
2. OMB Circular A-21, Educational Institutions (5/10/04)
3. OMB Circular A-122, Non-Profit Organizations (5/10/04)

➤ Audit Requirements

1. OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations (6/24/97, includes revisions published in the Federal Register 6/27/03)

SECTION 15

PRIVATE NONPROFIT ORGANIZATIONS

Eligible PNP Organizations/Facilities

PNP organizations that own or operate facilities that provide certain services of a governmental nature are eligible for assistance. Typically, these facilities must be open to the general public; however, some educational, utility, emergency, medical, and custodial care services are exempt from this requirement. Facilities falling under the categories of irrigation and other essential governmental services are not exempt from the requirement to be “open to the public”.

Generally, the following types of facilities are considered eligible:

- **Educational** – These are primary, secondary, and higher education facilities, including vocational facilities. Unless used primarily for religious purposes, eligibility extends to buildings, housing, and classrooms, plus related supplies, equipment, machinery, and utilities necessary for instructional, administrative, and support purposes.
- **Utility** – This includes buildings, structures, and systems, even if not contiguous, of energy, communication, water supply, sewage collection and treatment, or other similar public service facilities.
- **Emergency** – These include buildings, structures, equipment, or systems used to provide emergency services, such as fire protection, ambulances, and rescue, even if the facilities are not contiguous.
- **Medical** – These include hospitals, clinics, outpatient services, hospices, nursing homes, and rehabilitation centers that provide medical care. Eligible components include the administrative and support facilities essential to the operation of the facility, even if not contiguous.
- **Custodial care, including facilities for the aged and disabled** – These include those buildings, structures, or systems, including those essential for administration and support, that are used to provide institutional care for persons who do not require day-to-day medical care, but do require close supervision and some physical constraints on their daily activities for their protection.
- **Certain irrigation facilities** – These include irrigation facilities that provide water for essential services of a governmental nature. Eligible irrigation facilities include those that provide water for fire suppression, generating electricity, and drinking supply. Facilities that provide water for agricultural purposes are not eligible. For an irrigation facility element with mixed purposes, only damages related to the eligible purpose are eligible.
- **Other essential governmental services, including:**
 - Museums
 - Zoos
 - Performing arts facilities
 - Community arts centers
 - Community centers
 - Libraries

- Homeless shelters
- Senior citizen centers
- Rehabilitation facilities
- Shelter workshops
- Health and safety services of a governmental nature, such as low income housing, alcohol and drug treatment centers, facilities offering programs for battered spouses, facilities offering food programs for the needy, and daycare centers for children and those with special needs

An applicant may be eligible if the organization operates such a facility or service and also has:

- An effective ruling letter from the U.S. Internal Revenue Service granting tax exemption under Section 501(c), (d), or (e) of the Internal Revenue Code of 1954 as amended, or
- State certification that the organization is a non-revenue producing, nonprofit entity, organized or doing business under State law

Eligible Work for PNPs

All eligible PNP organizations may apply for reimbursement of costs associated with emergency work, such as Category A, debris removal, and Category B, emergency protective measures, relating to an eligible facility.

Only eligible PNP organizations providing critical services may apply for reimbursement of costs associated with permanent work, Categories C thru G. Critical services are defined as:

- **Power** – Generation, transmission, and electrical power distribution facilities
- **Water** – Treatment, transmission, and distribution facilities for a water company supplying municipal water (also, water provided by an irrigation company for potable, fire protection or electricity generation purposes)
- **Sewer and Storm water** – Collection, transmission, and treatment facilities
- **Communications** – Telecommunications transmission, switching, and distribution facilities
- **Education** – Primary, secondary, and higher education facilities (including vocational facilities)
- **Emergency Medical Care** – Hospitals, clinics, outpatient services, hospices, nursing homes, and rehabilitation centers that provide medical care
- **Fire Protection/Emergency Services** – Volunteer fire and rescue companies, including buildings and vehicles essential to providing emergency services and ambulance companies

Facilities with a mix of critical and non-critical services are eligible to apply under the critical designation.

Facilities that support PNP facilities providing critical services (e.g. administration buildings and parking garages) are not eligible for the critical designation.

Non-critical services are services other than those identified above.

Small Business Administration

Eligible PNP organizations/facilities providing non-critical services are required to apply to the Small Business Administration (SBA) for a low-interest loan for repair of permanent work category disaster damages. The loan process will generate one of the following outcomes:

- If declined for a loan, the PNP may be eligible for FEMA assistance.
- If the approved loan fully covers eligible damages no assistance is available from FEMA.
- If the approved loan does not fully cover all eligible damages the PNP may apply to FEMA for the difference.
- If the approved loan does not fully cover all eligible damages and the PNP opts not to accept it, the PNP may still apply to FEMA for the difference.

FEMA cannot take action on the RPA while the loan is pending with the SBA; however, all damages must be identified to FEMA immediately so that a PW can be prepared. Having the PW on file will allow FEMA to expedite assistance once the SBA renders its decision.

Some Things You Need to Know

Facilities with a mix of eligible and ineligible activities (e.g., a clinic that has a commercial pharmacy in the building) are eligible if over 50 percent of the space or time is used for eligible activities. Benefits will be pro-rated. If less than 50 percent of the space or time is used for eligible activities, the facility is not eligible at all.

Operating costs for providing services are not eligible, even if they are increased by the event. Labor, material, and equipment costs for providing assistance to disaster victims are also ineligible, even if the services are outside the organization's basic mission. If the applicant provides services under contract to a State agency or local government agency, the costs may be eligible if they are claimed by the agency or government. Some reasonable short-term additional costs that are directly related to accomplishing specific approved emergency health and safety tasks as part of eligible emergency protective measures may be eligible if they can be documented and connected to a specific emergency task (e.g., increased utility costs for a permanently-mounted generator at a hospital).

Homeowners' associations and gated communities that are not open to the general public are not eligible for assistance, except when:

- Debris removal from roadways is required to create an emergency path of travel, the work is performed or contracted by an eligible State agency or local government entity with legal authority and reimbursement is requested by the eligible local or State entity.

- The association meets the requirements of an eligible PNP which provides eligible critical services (i.e., educational, medical, custodial care, emergency, and utility [but not irrigation] facilities/services).

Community Development Districts (CDD) are special districts authorized under State law to finance, plan, establish, acquire, construct/reconstruct, extend/enlarge, equip, operate, and maintain systems, facilities, and basic infrastructure within their respective jurisdictions. To be eligible, the CDD must be established under State law, have legal responsibility for ownership, maintenance, and operation of an eligible facility, and be open to the general public. If access is restricted, a CDD is only eligible when:

- Debris removal from roadways is required to create an emergency path of travel, the work is performed or contracted by a State or local government entity with legal authority, and reimbursement is requested by the State or local entity. If the CDD was established for the purpose of road maintenance, the CDD may do the work and apply as an Applicant.
- Emergency protective measures required for repair of facilities for which the CDD was created. If it was created for water and sewer operations, the CDD may claim assistance for only those facilities. Other facilities of the CDD would be ineligible for both emergency and permanent work.

Some of the facilities that are not eligible for FEMA assistance include:

- Recreational facilities
- Job counseling or job training facilities
- Conference facilities
- Facilities for advocacy groups not directly providing health services
- Facilities for advocacy or lobbying
- Irrigation for agricultural purposes
- Roads owned and operated by a homeowners' association
- Parking facilities not directly supporting an eligible facility Facilities for religious service or education

What to do

- Identify damages
- Establish eligible PNP organization status by submitting a PEMA-DAP-24 Form and a FEMA Form 90-121 with the RPA
- Apply for FEMA assistance

Apply for a SBA loan if repairs are permanent work for a non-critical service