



## APPLICABLE FEDERAL REGULATIONS & FEMA PUBLIC ASSISTANCE (PA) GUIDELINES

Many directives are available to you as a public assistance applicant. Some help in responding to and recovering from a disaster and others help in getting and managing federal funds. The most important is Title 44 of the Code of Federal Regulations (44 CFR), which contains policies and procedures for implementing the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act). These basic policies and procedures govern disaster relief operations. Title 44 CFR is available at the following website: <http://ecfr.gpoaccess.gov>

Pay particular attention to Part 13 (44 CFR 13) that sets forth administrative requirements for federal grants and sub-grants to state, local, and Indian tribal governments. Administrative requirements for federal grants and sub-grants to other types of applicants are located at 2 CFR Part 215. Also, pay particular attention to Part 206 of 44 CFR that sets forth the disaster assistance rules applicable to major disasters and emergencies declared by the President.

In addition to 44 CFR and 2 CFR, FEMA has several policy documents that will assist you in understanding all aspects of the Public Assistance Program. The website below will give you access to a number of FEMA resources including the following:

- FEMA 321, Public Assistance Policy Digest (January 2008)
- FEMA 322, Public Assistance Guide (June 2007)
- FEMA 323, Public Assistance Applicant Handbook (March 2010)
- FEMA 325, Public Assistance Debris Management Guide (July 2007)
- FEMA Disaster Assistance Policy (9500 series policy statements)

## UNDERSTANDING INSURANCE, POLICY INTERPRETATION AND CLAIMS ADJUDICATION

Understand your Insurance Policy and specific coverages often further identified by Endorsements &/or Supplemental Coverage Extensions to include but not necessarily limited to:

- Limits of Applicable Insurance
- Flood Coverage
- Deductible
- Extra Expense

FEMA & State Insurance Specialists will assume your policy language (unless written in Manuscript Form) is to be interpreted and adjudicated under the broad industry definition of an ISO Policy. This may or may not be your intent and should be given immediate attention as necessary to avoid unnecessary disputes (funding deobligations) and FEMA audit findings. Preparing a Policy Summary Draft clearly stating the intent of implied coverages and claim adjudication should be presented to FEMA/State Public Assistance Coordinators prior to Member engagement (eligible project/claim reviews).

## FREQUENT FEMA AUDIT FINDINGS (Examples)

### **Poor Project Accounting**

**Criteria:** Federal regulations (44 CFR 13.20 and 206.205) require each subgrantee to maintain a system that accounts for FEMA funds on a project-by-project basis. The system must disclose the financial results for all FEMA-funded activities accurately, currently, and completely. It must identify funds received and disbursed, and reference source documentation (i.e., canceled checks, invoices, payroll, time and attendance records, contracts, etc.).

**Example 1:** The subgrantee did not account separately for the costs of each project. The subgrantee had five distinct FEMA-funded projects but accounted for project expenditures under one cost center. As a result, the subgrantee's claim could not be verified by project.

**Example 2:** The subgrantee's journal of project expenditures did not contain references to payroll or daily activity reports that supported the payroll expenditures charged to the FEMA project. Therefore, expenditures for labor could not be systematically traced to supporting documents and the costs claimed could not be readily verified.

### **B. Unsupported Costs**

**Criteria:** Federal cost principles (2 CFR 220, 225, and 230) require that costs claimed under federal programs be adequately supported by source documentation.

**Example 1:** The subgrantee claimed \$150,000 for contract labor but had invoices and canceled checks to support only \$100,000. FEMA questioned the unsupported difference of \$50,000.

**Finding 2:** The subgrantee's claim included \$300,000 for force account labor. However, the subgrantee had time sheets and payroll registers to support only \$275,000. FEMA questioned the unsupported difference of \$25,000.

**Finding 3:** The subgrantee claimed \$1 million for materials withdrawn from its existing inventory to repair its electrical distribution system. The subgrantee had a listing of material items reportedly used for repairs and a listing of the value of such items. However, records reflecting the withdrawal of items from the inventory did not support the listing. Therefore, FEMA questioned the \$1 million claim.

### **C. Duplication of Benefits**

**Criteria:** Government laws and regulations (Stafford Act and 44 CFR 206.191) prohibit duplication of benefits. In other words, a subgrantee cannot receive disaster funding for activities covered by insurance benefits, other federal programs, or any other source.

**Example 1:** The subgrantee claimed and received \$200,000 to repair a fence, replace dirt, and construct a retaining wall at a baseball park facility. However, the subgrantee had insurance coverage that was never acknowledged to FEMA, and received \$220,000 from its insurance carrier for the same damages. Therefore, the OIG questioned the \$200,000 of FEMA funding received for damages covered by insurance.

**Example 2:** The subgrantee received \$100,000 of FEMA funds to repair its fire station. This amount and \$300,000 of anticipated insurance proceeds accounted for the \$400,000 needed for disaster-related repairs. However, the subgrantee had actual insurance recoveries of \$350,000. Therefore, the OIG questioned the \$50,000 of excess FEMA funding.

**Example 3:** Under a FEMA project, the subgrantee had losses of \$1 million that were fully covered by insurance. However, the subgrantee only pursued and received insurance recoveries of \$500,000. Therefore, the OIG questioned the \$500,000 of FEMA funding received for damages covered by insurance.

**Example 4:** The subgrantee claimed and received \$100,000 of FEMA funds for road repairs and to replace a chain link fence at a Head Start facility. However, the subgrantee also received funds from the U.S. Department of Housing and Urban Development and the U.S. Department of Health and Human Services to carry out the same activities. Therefore, the OIG questioned the \$100,000 of FEMA funds received for activities covered by other federal programs.

#### **D. Excessive Equipment Charges**

**Criteria:** Federal regulations (44 CFR 206.228) require that subgrantees use the FEMA schedule of equipment rates or their local rates, whichever are lower. Applicants that do not have local established rates must use the FEMA equipment rates when claiming costs under a FEMA project.

**Example 1:** The subgrantee claimed \$78,348 for the use of bucket trucks based on the FEMA rate of \$24 per hour (3,264.5 hours x \$24 per hour). However, the subgrantee's local equipment rate for bucket trucks was \$16 per hour, or \$8 less than the FEMA rate. Therefore, FEMA questioned \$26,116 (3,264.5 hours x \$8) of excess charges.

#### **E. Excessive Labor and Fringe Benefit Charges**

**Criteria:** According to federal cost principles (2 CFR 220, 225, and 230), allowable costs must be consistent with policies, regulations, and procedures that apply uniformly to both federal awards and other activities of the governmental unit. According to 44 CFR 206.228, straight or regular-time salaries and benefits of permanent employees engaged in emergency service work are not eligible for FEMA assistance.

**Example 1:** The subgrantee claimed \$50,000 claim for overtime fringe benefits based on a fringe benefit rate of 23.55%. However, the rate included the cost of worker's compensation, which is not applicable to overtime. The claim should have been based on a rate of 10%, which would have resulted in charges of \$20,000. Therefore, FEMA questioned \$30,000 received by the subgrantee for which it was not entitled.

**Example 2:** The subgrantee claimed \$10,000 for fringe benefits for personnel supplied by a temporary personnel agency. However, the subgrantee did not provide fringe benefits to the workers or pay the personnel agency for the costs claimed. Therefore, FEMA questioned the inappropriate charges of \$10,000.

**Example 3:** The subgrantee charged a debris-removal project \$250,000 for regular time (\$150,000) and overtime (\$100,000) labor costs of permanent employees. However, as a

general rule, the regular-time salaries and benefits of a subgrantee's permanent employees engaged in debris removal work are not eligible for FEMA assistance. Therefore, FEMA questioned the \$150,000 claimed for regular-time labor.

#### **F. Unrelated Project Charges**

**Criteria:** According to federal cost principles (2 CFR 220, 225, and 230), charges to federal grants must be necessary and reasonable to fulfill the objective of the grant program.

**Example 1:** The subgrantee's claim for repairs to its local electrical distribution system included charges of \$10,000 for meals provided to the subgrantee's vice presidents, car washes, and a VCR. FEMA questioned these costs because they were for activities that did not benefit the project.

**Example 2:** The subgrantee claimed and received \$500,000 under a FEMA project to repair Road XYZ. However, the subgrantee's claim included \$250,000 for heavy equipment and material charges for Road ABC. FEMA questioned the \$250,000 for Road ABC because the road was not included under the project's approved scope of work.

#### **G. Unapplied Credits**

**Criteria:** According to federal cost principles (2 CFR 220, 225, and 230), grants must be reduced by credits that offset or reduce expenses allocable to federal awards.

**Example 1:** FEMA awarded funds for repairs to the subgrantee's electrical distribution system. The subgrantee received \$15,000 of proceeds from the sale of scrap material related to the FEMA project. However, the subgrantee did not credit the FEMA project with the sale proceeds. Therefore, FEMA questioned \$15,000 of the subgrantee's final claim.

**Example 2:** The City received two credit discounts totaling \$7,000 under a FEMA project for early payments to a contractor. However, the City did not credit the FEMA project for the discounts. Therefore, FEMA questioned \$7,000 of costs under the project.

#### **H. Poor Contracting Practices**

**Criteria.** According to federal regulations (44 CFR 13.36), a subgrantee must comply with the following procurement standards:

- The subgrantee must maintain records in sufficient detail to reflect the significant history of the procurement, including the rationale for the method of procurement, the basis for the contractor selection, and the basis for the contract price;
- The subgrantee is prohibited from using time-and-material-type contracts unless a determination is made that no other contract is suitable, and provided that the contract includes a ceiling price that the contractor exceeds at its own risk; and
- The subgrantee is prohibited from using a cost-plus-percentage-of-cost contract arrangement.

**Examples:** The subgrantee entered into 3 contracts for renovating 19 vacant buildings to be used as temporary emergency shelters. However, the subgrantee did not document the basis for the contractor selection or the basis for the contract price. Further, although payments under the contracts were based on time and materials, the subgrantee did not determine the availability of other contractual arrangements with more suitable pricing terms and, contrary to regulation, did not establish a ceiling price under the contracts.

FEMA also noted that payments under the three contracts were on a cost-plus-percentage-of-cost basis. The contractors were reimbursed for time and materials and were also given an overhead and profit allowance of 25 % of actual costs. Under this type of contract, the greater the labor costs, the greater the overhead and profit. This payment arrangement is prohibited because there is a disincentive to reduce costs.

## LESSONS LEARNED TO COMPLY WITH FEMA PA GRANTS

### **Key Points To Avoid Potential Deobligations:**

1. Designate a person to coordinate the accumulation of records.
2. Establish a separate and distinct account for recording revenue and expenditures, and a separate account for each distinct FEMA project. DOCUMENT. DOCUMENT. DOCUMENT!
3. Ensure that the final claim made for each project is supported by amounts recorded in the accounting system. DOCUMENT!
4. Ensure that each expenditure is recorded in the accounting books and is referenced to supporting source documentation (checks, invoices, etc.) that can be readily retrieved.
5. Research insurance coverage and seek reimbursement for the maximum amount. Credit the appropriate FEMA project with that amount. Understanding the Insurance Policy and additional Endorsements is critical to avoid duplication of benefits and deobligations.
6. Check with your Federal Grant Program Coordinator about the availability of funding under other federal programs (i.e., Federal Highway, Housing and Urban Development, etc.) and ensure that the final project claim does not include costs that were funded or should be funded by another federal agency.
7. Ensure that materials taken from existing inventories for use under FEMA projects are documented by inventory withdrawal and usage records.
8. Do not charge the regular time salary of permanent employees or seasonal employees (whose salaries are contained in annual appropriations) to FEMA debris removal and emergency protective services projects.
9. Do not claim costs for items or activities for which you did not have a cash outlay.

10. Ensure that claims for overtime fringe benefits are based on cost items (i.e., F.I.C.A., worker's compensation, etc.) that accrue as a result of overtime. Items such as health benefits and leave are not eligible as overtime fringe benefits.

11. Ensure that expenditures claimed under the FEMA project are reasonable and necessary, are authorized under the scope of work, and directly benefit the project.

12. Ensure that you document pertinent actions for contracts awarded under FEMA projects, including the rationale for the method of procurement, the basis for contractor selection, and the basis for the contract price. Remember that federal regulations prohibit cost-plus-percentage-of cost contracts.

For an easy-to-read summary of FEMA's Public Assistance Program, go to:

<http://www.fema.gov/public-assistance-policy-and-guidance>