The League of California Cities and County Engineers Association of California Public Works Office Institute (PWOI)

Public Contracting Requirements: Emergency Preparedness & Federal State Reimbursement | March 24, 2022

FEMA

Disaster Recovery

Return individuals and communities to normal function with minimal suffering and disruption of services

Individual Assistance
Public Assistance
Hazard Mitigation
Public Assistance

- Federal assistance to state or local governments and eligible non-profit organizations
- Emergency protective measures and debris removal
- Repair, restoration or reconstruction of disaster-damaged public facilities and infrastructure

PA Timelines & Deadlines

- Within 30 DAYS of declaration, Applicants must submit a Request for Public Assistance to FEMA.
- Within 60 DAYS of Recovery Scoping Meeting, the Applicant is required to identify and report all of its disaster-related damages and activities.
- Within 60 DAYS of any determination, an Applicant may appeal.
- Applicants participate in the Recovery Transition Meeting and should maintain all relevant documentation for at least THREE YEARS post closeout.
- Debris Removal and any Emergency Work must be completed within SIX MONTHS of Declaration.
- Permanent Work must be completed within 18 MONTHS of Declaration.

Incident Occurs

Recovery Scoping Meeting

Disaster Declared

Determination issued

+1 year
PA Application Deadlines

A Request for Public Assistance must be submitted to FEMA through the Recipient, within 30 days of the designation of the declared disaster.

The Applicant to identify and report all disaster-related damage, emergency work activities, and debris quantities to FEMA within 60 days of the Recovery Scoping Meeting.

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

Time Limitations for Completion of Work (from Date of Disaster Declaration)

<table>
<thead>
<tr>
<th>Type of Work</th>
<th>Completion Deadlines</th>
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</thead>
<tbody>
<tr>
<td>Debris Removal</td>
<td>6 months</td>
</tr>
<tr>
<td>Emergency Work</td>
<td>6 months</td>
</tr>
<tr>
<td>Permanent Work</td>
<td>18 months</td>
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</tbody>
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Procurement

Contracts

- Applicants must comply with Federal procurement standards at 2 CFR Part 200 as a condition of receiving PA funding for contract costs for eligible work.
- State and Territorial government applicants must follow the same policies and procedures they would use for procurement with non-Federal funds.
- Non-State Applicants (Tribal and local governments and PNP) must use their own documented procurement procedures that reflect applicable State, Territorial, Tribal, and local government laws and regulations and meet the minimum criteria of 2 CFR Part 200.

Procurement

- FEMA reimburses costs incurred using three types of contract payment obligations: fixed-price, cost-reimbursement, and, to a limited extent, time and materials (T&M).
- The Applicant must include required provisions from 2 CFR Part 200 in all contracts awarded and maintain oversight to ensure contractors perform according to the conditions and specifications of the contract and any purchase orders.
- Generally, FEMA does not recommend applicants pursue T&M contracts.
Top Procurement Issues

1. Restricting Full & Open Competition
2. Not Performing a Detailed Price or Cost Analysis for Procurements
3. Improperly Engaging in Sole-Sourcing (Non-competitive) Procurement
4. Continuing Work under Sole-Source Contract After the Urgent Need Has Ended
5. Not Making and Documenting Efforts to Take All Socioeconomic “Affirmative” Steps
7. Not Including the Required Contract Clauses
8. Awarding a Prohibited “Cost-plus-percentage-of-cost” or “Percentage-of-construction-cost” Contract
9. Awarding a Contract to Contractors that were Suspended or Debarred
10. Not Properly Documenting All Steps of the Procurement

Documentation

• The Applicant must maintain all source documentation supporting project costs.
• To facilitate closeout and audits, the Applicant should file all documentation pertaining to each project with the corresponding Project worksheet as the permanent record of the project.
• Records are subject to audit by State auditors, FEMA, the U.S. Department of Homeland Security Office of Inspector General, and the U.S. Government Accountability Office.

TIP: Proper documentation is invaluable to support future claims, particularly those involving hazard mitigation.
Environmental & Historical Preservation

• FEMA must review each PA project to ensure the work complies with applicable Federal EHP laws, regulations and executive orders.
• The type, level, and length of EHP review will depend on the scope of work and the potential to impact sensitive environmental, historic or cultural resources.
• EHP may put conditions on a grant to avoid potential impacts to sensitive resources. It is the Applicant’s responsibility to comply with these conditions.

Insurance

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

The Recipient and the Applicant must keep all financial and program documentation for 3 years after the date of the Recipient’s final Financial Status Report (FSR). All records are subject to audit by the Federal government.

During the Recovery Transition Meeting, FEMA will work with the Applicant to:
- Ensure all claimed damage is sufficiently and accurately documented
- Discuss record retention requirements
- Discuss questions or concerns

Disaster Financial Management

- **Good news**... there are many government and private sector/nonprofit resources and programs that aid jurisdictions to respond and recover.
- **But...**
  - Navigating the various eligibility requirements and applications process – many of which change frequently – is challenging.
  - Improper financial management and program operations often lead to audits, deobligation of funding, or other legal repercussions.

### Example Issues
- Incomplete Paperwork
- Missing documentation
- Misunderstanding of eligibility
- Misunderstanding of program rules
- Improper management of funds
- Inability to apply for and manage grants

### Example Impacts
- Delayed funding
- Delayed cost reimbursement
- Audits requiring payback of funds
- Inability to access critical funding streams
Tools Available

• Procurement Rules Online

• FEMA Public Assistance Program and Policy Guide (PAPPG)
  https://www.fema.gov/

• System for Award Management
  www.sam.gov

• Procurement Disaster Assistance Team
  www.fema.gov/procurement-disaster-assistance-team