

FEMA Workshop:

Obtaining FEMA Funding in the event of a catastrophic loss

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Agenda

- I. Examples of OIG Audits of FEMA Funds**
- II. The FEMA Process**
- III. Procurement Requirements**
- IV. Overlap of Insurance and FEMA**
- V. Hazard Mitigation Funding**
- VI. FEMA Appeal Process and Litigation**

I. Examples of OIG Audits of FEMA Funds

Applicants are frequently asked to give back FEMA funding:

- Tulane University - \$46.2 million
- Columbus Regional Hospital – \$10.9 million
- Ochsner Health Care – \$11.7 million
- East Jefferson General Hospital - \$2.3 million

II. The FEMA Process

The Stafford Act

- Named after U.S. Senator Robert T. Stafford
- Designed to bring an orderly and systemic means of federal natural disaster assistance for state and local governments in carrying out their responsibilities to aid citizens.

II. The FEMA Process

Types of Assistance Available

- Public Assistance
- Individual Assistance
- Hazard Mitigation Grant Program

II. The FEMA Process

When are FEMA funds available?

- Catastrophic loss occurs.
- Governor of State requests President to declare disaster.
- President declares disaster, making FEMA funds available.

II. The FEMA Process

Who is eligible for FEMA funding?

- Public Entities (State and Local)
- PNP Facilities that are not required to be open to the general public (educational, utility, medical)
- PNP Facilities that must be opened to the general public (museums, zoos, libraries, etc.)

PNP Facilities potentially eligible for permanent work assistance that provide “non-critical services” must first apply for a disaster loan from the Small Business Administration before applying to FEMA.

II. The FEMA Process

- President declares disaster
- Applicant's Briefing
- Request for Public Assistance (Pre-Application)
- Kick-Off Meeting
- Provide Required Documentation
- Begin Project Formulation
- Consider Immediate Need Assessment
- Capture Force Account Labor
- Capture Force Account Equipment
- Provide documentation of Procurement Procedures
- Review Insurance with FEMA Insurance Liaison
- Final Inspection
- Final Audit

II. The FEMA Process

Required documents include:

- Tax Certificate - 501 (c), (d) or (e)
- Insurance Policy
- Evidence of Environment/Historical Structures

II. The FEMA Process

Project Formulation includes:

- Establish Categories of Work
- Identify Small Projects and Large Project
- Identify Alternate Projects
- Prepare Project Worksheets

II. The FEMA Process

Categories of Work:

- **A** – Debris Removal
- **B** – Emergency Protective Measures
- **C** – Road and Bridges
- **D** – Water Control Facilities
- **E** – Buildings and Equipment
- **F** – Utilities
- **G** – Parks and Recreation
- **H** – Fire Management

II. The FEMA Process

Small Projects:

- Less than \$68,500 (increases periodically)
- Based on Estimated Costs
- The State will review a sample of PWs

Large Projects:

- More than \$68,500
- Based on Actual Costs
- Project Worksheet initially based on estimates

II. The FEMA Process

Documentation:

- Determine how to assign PWs
- Take photographs of damage
- Document solicitations for bids
- Establish scope of work with FEMA
- Maintain a FEMA file by PW containing bids, invoices, disbursement, permits, etc.
- Maintain documentation for 3 years after final certification of last project

II. The FEMA Process

Force Account Labor:

- Emergency Work - only overtime is recoverable.
- Permanent Work – Regular and OT is recoverable
- Capture Fringe Benefits (using FEMA form)

Force Account Equipment:

- Maintain listing of equipment used
- Can recover based on FEMA allowed rates

II. The FEMA Process

Improved Project:

If an applicant desires to make improvements to a damaged facility that exceeds restoring to pre-disaster design, State approval must be obtained.

II. The FEMA Process

Alternate Project:

In applicant prefers to use funds for a different project, an alternate project option may be considered.

Funding will equal 90% of the Federal estimate of the eligible disaster-related repairs.

II. The FEMA Process

Management Costs:

- FEMA provides reimbursement for Grantee and Sub-Grantee to manage FEMA recovery
- Established rate of 3.34% of total obligated amount
- State (as Grantee) determines split
- Also covers direct administrative costs
- Must be properly documented and charged to a specific PW

II. The FEMA Process

Key Deadlines

- To identify all projects - 60 days from the date of the kick-off meeting
- Request for Public Assistance - 30 days
- Emergency Work Completion - 6 months from declaration date
- Permanent Work - 18 months from declaration date

III. Procurement Requirements

- Avoid “Cost-Plus” Contracts
- Prefer Time and Material
- Open bids to show open competition
- Show efforts to use minority owned firms
- Exigent Period – different
- Demonstrate that costs are reasonable
- Was Profit and Overhead reasonable?

III. Procurement Requirements

Extract from OIG Report of Tulane

“The primary contractor allowed two general contractors to add an additional 21 percent markup on the subcontractors they used... Thus, Tulane paid markups of 46.4 percent (1.21 time 1.21 equals 1.46) to manage the subcontractors who were performing the actual work.”

“The primary contractor allowed some of the subcontractors to apply extremely excessive markups. For example, one subcontractor marked up costs for fuel and freight by 30 percent and 15 percent, respectively, and the primary contractor then marked up the same costs an additional 21 percent.”

IV. Overlap of Insurance and FEMA

- FEMA only covers Property Damage, not Business Interruption
- What if Applicant has a “Combined Deductible” or a “Combined Limit”?
- What if there are other overlaps between the coverages?

IV. Overlap of Insurance and FEMA

- Duplication of Benefits
- Potential implications for settlements with carriers
 - Valuation issues
 - Coverage issues

IV. Overlap of Insurance and FEMA

Obtain and Maintain Requirements

- Once FEMA makes a payment, it requires applicant to “obtain and maintain” insurance in the event of future losses
- Can request a certification as to “reasonable availability” through state insurance regulators
 - Blanket coverage, pooling arrangement, etc.
 - Amount and Types

IV. Overlap of Insurance and FEMA

Obtain and Maintain Requirements

- FEMA is able to waive requirements upon certification
- Once you obtain a certification, have to maintain at least that amount going forward (or obtain a new certification)

IV. Overlap of Insurance and FEMA

Obtain and Maintain Requirements

- Some states have provided metrics that guide the determination
 - Louisiana: percentage of operating budget for various different types of entities (post secondary education - .17%; health care - .26%; local government - .33%)
 - What if you're medical school?

IV. Overlap of Insurance and FEMA

Obtain and Maintain Requirements

- Also subject to OIG Audit
- Possible consequences of non-compliance:
 - De-obligation of funds
 - Ineligibility for future events

V. Hazard Mitigation Funding

Section 404

- Administered by the State
- No cost-benefit analysis required
- Based on percentage of state wide losses
- State prioritizes based on needs assessment

Section 406

- Administered by FEMA
- Typically easier to obtain
- Applicant must show “cost-benefit”

V. Hazard Mitigation Funding

Our Lady of Lourdes – Upstate New York

- June 2006 flood - \$20 million in damage
- FEMA funded a \$7 million Flood Wall



VI. FEMA Appeal Process and Litigation

- First level appeal is to the FEMA Regional Administrator.
- Second level appeal is to FEMA Headquarters.
- File within 60 days of receipt of a notice of the action that is being appealed
- Provide justification to support the appeal.

VI. FEMA Appeal Process and Litigation

Columbus Regional Hospital v. FEMA

- \$167 million loss - flooding in Indiana in June 2008.
- FEMA challenged CRH's allocation of insurance proceeds and claimed that CRH was looking for a duplication of benefits.

VI. FEMA Appeal Process and Litigation

State of Hawaii v. FEMA

- Hurricane Iniki - 1992
- FEMA challenged the State's insurance settlement