COVID 19 & the FEMA Public Assistance Program

How to maximize your recovery

September 22, 2020
Today’s Presenters

JOHN P. KROPOG III
John Kropog brings over 14 years of experience in FEMA Program management, disaster recovery, grants management and project management. John serves multiple California Public Agencies for Safework in FEMA Covid 19 Grant reimbursement management currently. He planned and completed demolition operations in Louisiana following Hurricane Katrina, creating FEMA’s SOP and the Severe Weather Evacuation Plan for the BP Deepwater Horizon response and the evacuation of 375+ vessels and 1000+ personnel. He successfully secured $837 million in FEMA Hurricane Sandy funding for New York’s Nassau County and served in various FEMA recovery roles in the US Virgin Islands and Puerto Rico.

TODD M. COZOLINO, ESQ. LEED AP
Todd Michael Cozolino has served in capital construction and disaster recovery project and program management for over 25 years, including CDBG-DR programs, FEMA Sheltering and Temporary Electrical Power (STEP) programs, public housing, public education capital and operational programs, transportation and legal and compliance roles. He has extensive experience in construction claims management, capital mega-programs totaling in excess of $40 billion, and served Disaster Recovery clientele from New York State’s Office of Storm Recovery, Covid-19 Rental Relief Program, the U.S. Virgin Islands Territory VITEMA, and the Puerto Rico Disaster Recovery program. Todd holds a Masters in Construction Management from USC and J.D. from Loyola Law.
Today’s Presenters

KELSEY GORMLEY

Kelsey Gormley’s early career in public service was devoted to grant-writing and grant administration for several local municipalities in San Bernardino and Riverside County. She has worked with numerous Federal, State, County, and private funders to secure and manage more than $25 million in funding for various projects and programs spanning a wide variety of topics, including large transportation and public infrastructure improvements. In addition to her public agency experience, Mrs. Gormley also worked as an independent consultant specializing in helping new non-profit organizations conduct strategic planning sessions and identify potential sources of grant funding.
Purpose Questions

- What COVID-19 related response costs can we get reimbursed potentially from FEMA?

- What is that process like?

- What should we do to track and increase likelihood of reimbursement?

- What pitfalls and prohibitions should we avoid?
Statement of Purpose

We will provide executive level situational awareness regarding COVID-19 for:

- FEMA Public Assistance Cost Criteria for reimbursement eligibility
- The purpose, content and best practices in process to apply for reimbursement
- Guidance and considerations for service procurement, cost accounting, and documentation of past and ongoing impacts.
Why this matters to you

- Benefit your organization or clients by offsetting incurred costs
- Assist your clients in enduring COVID-19 Impacts
- Increase your ability to weather the storm of shut down and containment
Scale, Distribution, Histogram
COVID-19 Impact on Operations

- Internal Forces Redirected
- Outside Contracted Services
- Materials and Equipment Purchasing
- Constituency Support Measures
- Temporary Facilities and Modifications
Who needs to know about the FEMA Public Assistance process?

- Local and State government & Tribal officials
- Public and private K-12 schools
- Community Colleges, Public and Private Institutes of Higher Learning
- Public and Private Healthcare facilities
- Public Utilities and Logistics facilities (Ports, Water/ Wastewater; Electricity, etc.)
- Private business partners under contract with eligible agencies
Funding Resources to Combat COVID-19

FEMA’s Reimbursement Proportion is Typically 75%

Federal
- Coronavirus Relief Fund (CARES Act)
- Program Specific Streams
- FEMA Funds (75% reimbursed, match required)
- Direct Payments and Loans

State/Local Govt.
- Varies by State/Territory
- Special COVID funds (Ex. COVID Central Valley targeted funds)
- Additional targeted State appropriations (Ex. CDAA)

Private
- Disaster Recovery Funds
- Other in-kind volunteer efforts and donations
- Non-profits supporting COVID-19 relief (Ex. Kaiser Foundation, Blue Shield of CA Foundation; CA Health Care Foundation)

State Agencies
Local Government
Private/Non-Profit Service Delivery Organizations
Individual Residents & Businesses
FEMA - Cost Recovery

- **General FEMA Mission**
  - To reduce the loss of life and property and protect institutions from all hazards by leading and supporting the nation in a comprehensive, risk-based emergency management program of mitigation, preparedness, response, and recovery.

- **Public Assistance (PA) Program**
  - The FEMA Public Assistance Program provides aid in the wake of a major disaster to state and local governments, and to certain non-profits, to help communities in their recovery efforts.
The FEMA PA Process is a prescribed, gated process for funding of costs.
In order to receive FEMA Public Assistance funding, all four areas of the pyramid must meet FEMA’s eligibility criteria.
The following are classifications of FEMA PA eligible applicants:

- State and Territorial Governments
- Transportation Authorities
- Local Governments
- Public School Districts
- Special Districts (Water, Irrigation, Community Services, etc.)
- Private Nonprofit Organizations
  - Educational institutions
  - Medical facilities
  - Emergency services
  - Utilities
- Indian Tribal Governments
Eligible Facilities & Services

FEMA defines a facility as a building, works, system or equipment, built or manufactured, or an improved and maintained natural feature that is owned by an eligible applicant with legal responsibility.

Public Facilities

- Transportation, Aviation, Ports & Harbors, Intermodal
- Flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development
- Non-federal aid street, road or highway
- Other public building, structure or system including those used for educational, recreational or cultural purposes
- Parks

Private Nonprofit Facilities

- Educational
- Utility
- Emergency/ Medical
- Custodial care, including for the aged or disabled
- Other essential social-type services to the general public
The above chart represents the categories of eligible work under FEMA’s classifications of Emergency and Permanent work.
Work Eligibility Criteria

At a minimum, work must meet each of the following general criteria to be eligible for FEMA PA funding:

- Be required as a **result of** the declared incident
- Be located **within the designated area**, with the exception of sheltering and evacuation activities
- Be the **legal responsibility** of an eligible applicant
- Consistent with the applicant’s **internal policies**, regulations, and procedures that apply consistently to both federal awards and other activities of the applicant
Eligible Costs

In order for costs to be eligible for reimbursement (at the federal cost share of no less than 75%) for the disaster under FEMA’s PA Program, they must be:

- Directly tied to the performance of **eligible work**
- Properly **documented**
- **Necessary and reasonable** to accomplish the work properly and efficiently

The Applicant is responsible for providing documentation to demonstrate its claimed costs are reasonable if FEMA determines any of the costs to be unreasonable upon evaluation.
Emergency Protective Measures are eligible actions taken to protect life and improved public or private property in a cost-effective manner by an eligible applicant during a FEMA defined incident period for a declared disaster.

These scopes of work and their costs are captured under FEMA grants called Category B Subgrant Applications. Emergency Protective Measure costs fall classifications of force account or contract:

- **Internal Force Account Labor, Equipment and Materials**
- **External/ 3rd Party Services Contracted**

Work performed for the 2020 COVID-19 major declared disaster falls into the category of Emergency Protective Measures.
FEMA has issued guidance on eligible costs specific to the COVID-19 major disaster declaration. It elaborates and builds upon previously identified Emergency Protective Measure eligible costs. **COVID-19 specific eligible costs are identified below:**

- **Management, control and reduction of immediate threats to public health and safety:**
  - Emergency Operation Center costs
  - Training specific to the declared event
  - Disinfection of eligible public facilities
  - Technical assistance to State, Tribal, Territorial or local governments on emergency management and control of immediate threats to public health and safety

- **Emergency medical care:**
  - Non-deferrable medical treatment of infected persons in a shelter or temporary medical facility
  - Related medical facility services and supplies
  - Temporary medical facilities and/or enhanced medical/hospital capacity Use of specialized medical equipment
  - Medical waste disposal
  - Emergency medical transport
Real World Examples for COVID-19

• **Medical sheltering** (e.g. when existing facilities are reasonably forecasted to become overloaded and cannot accommodate needs)
  • in accordance with standards and/or guidance approved by HHS/CDC w/ social distancing
  • Subject to prior approval by FEMA - limited to reasonable
• **Pet sheltering and actions** related to household pets in accordance with CDC guideline.
• Purchase and **distribution of food, water, ice, medicine**, and other consumable supplies, to include personal protective equipment and hazardous material suits movement of supplies and persons.
• **Communications** of general health and safety information to the public.
• **Search, identification and rescue** to locate and recover members of the population requiring assistance.
• Reimbursement for state, tribe, territory and/or local government **force account overtime** costs.
FEMA Recently Issued Guidance in “FEMA Coronavirus (COVID—19) Pandemic: Work Eligible for Public Assistance: (Interim)” FEMA Policy FP104-004-19 issued September 1, 2020

- Qualified as “Interim” and “Subject to Modification”
  - Cost Eligibility may change in the future
  - Interim policy mid-disaster not-typical

- Primary Takeaways:
  - Applicant Choice as to Use of Multiple Funding Sources (e.g. CARES Act, State Funding, etc.)
    - FEMA Funding is NOT last resort – incur concurrently
  - “only when necessary to perform otherwise eligible emergency work” Interpretation Open
  - Assistance Available Only For...
FEMA may provide assistance only for the following emergency protective measures in response to COVID-19 declared events:

a. Medical care, in accordance with COVID-19 specific policy or subsequent updates

b. Purchase and distribution of food, in accordance with COVID-19 specific policy or subsequent updates.

c. Non-congregate medical sheltering, in accordance with COVID-19 specific policy or subsequent updates

d. Operation of Emergency Operations Centers to direct and coordinate resources and response activities for COVID-19 declarations

e. Communications to disseminate public information regarding health and safety measures and provide warnings about risks and hazards

f. Mass casualty management, including storage of human remains and mass mortuary services, as necessary to manage fatalities caused by COVID-19

g. Purchase and distribution of Personal Protective Equipment (PPE) that is directly related to the performance of otherwise eligible emergency work, or is provided to healthcare workers, patients with confirmed or suspected COVID-19 infection, and first responders

h. Funding for stockpiling a supply of eligible PPE is limited to a supply that is projected for up to 60 days from date of purchase

i. Funding for storing eligible PPE is limited to what is necessary to store a projected 60-day PPE supply
Federal regulations allow for noncompetitive procurements in an exigent and emergency situations

- **Exigency** - A need to avoid, prevent, or alleviate serious harm or injury and use of competitive procurement proposals would prevent the urgent action required to address the situation.

- **Emergency** – A threat to life, public health or safety or improved property that requires immediate action.

Exception is available only while the exigent or emergency circumstances exist.
SPECIAL PROCUREMENT AND COST CONSIDERATIONS

**Piggyback contracting** — A contracting procedure where a jurisdiction adopts or extends for their use a contract that was procured by another entity. FEMA does not favor “piggyback contracting,” as the variables associated with the contract scope-of-work and costs generally make this an option to be avoided. Not a settled matter.

**PREFERRED**
- **Lump sum** - work with a prescribed boundary with defined scope and a total price.
- **Unit price** – work done on an item-by-item basis at per unit cost.
- **Time & material** – work billed for labor, equipment, materials, and overhead at an hourly rate with Not to Exceed cap.

**DISALLOWED** – contractor fee increases or decreases in proportion to the reimbursable cost of the work.
- **Cost plus fixed fee**
- **Cost plus percentage of cost**
PUBLIC ASSISTANCE MANAGEMENT COSTS

PA Management costs are any of the following when associated with PA Program.

- Indirect administrative costs
- Direct administrative Costs
- Other administrative costs associated with a specific project

FEMA provides contributions based on actual management costs up to 5% of the total award amount for each subrecipient.
Cost Documentation Best Practices

The state can fund an applicant’s eligible disaster costs using expedited funding, which is an advance or reimbursement of expenditures based upon submission of expenditures incurred for completing eligible scopes of work and their supporting documentation.

Documentation can include, but is not limited to:

- Cost accounting of expenditures linked to scopes of work
- Cancelled checks
- Time and attendance records – Detailed Relevant Task Narrative
- Payroll registers
- Receipts
- Invoices and purchase orders
- Executed contracts and amendments
- Fringe benefit rate
Cost Documentation Best Practices

The following are a few of these methods to make receiving maximum reimbursement of disaster expenditures:

• **Do not comingle** FEMA Eligible costs with either FEMA ineligible funding / other federal funding sources.

• **Establish codes** to track both FEMA Eligible and FEMA Ineligible cost for work performed in response to declared event.

• **Establish Historical Baseline Cost vs. Actual Incurred Cost** for comparison.
# Administrative Cost Tracking – Cost Codes

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<tr>
<td>202</td>
<td>Immediate Needs</td>
<td>Activities to discuss the need for immediate funding and collect supporting documentation for one specific obligation.</td>
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<tr>
<td>204</td>
<td>Data Collection &amp; Dissemination</td>
<td>Activities to collect damage data, impact estimates and support documentation related to one specific obligation.</td>
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<tr>
<td>304</td>
<td>Special Considerations</td>
<td>Activities carried out to evaluate the impact of hazard mitigation measures, insurance coverage, historic preservation, environmental impact, and flood risk for one specific site or project.</td>
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<td>308</td>
<td>Financial Compliance</td>
<td>Activities to review or support the compliance of the obligation with Public.</td>
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## Project Cost Estimation & Documentation

Activities related to estimating/quantifying project costs, collecting supporting documentation, and calculating allowable fringe rates for one specific project.

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<td>306</td>
<td>Project Payment Requests</td>
<td>Activities related to developing, requesting, transmitting, and processing documents to request all or a portion of the allocated obligation award amount for one specific Project obligation.</td>
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### Project Payment Requests

- **309**: Alternate Site Project Request
  - Activities to assemble and support requests from FEMA and the grantee related to an alternate project request for one specific project.

### Cost Adjustments

- **305**: Preparing PW Versions for Cost Adjustments
  - Activities to support the development of a new version of the current project worksheet for the purpose of adjusting the project amount to actual costs for one specific project.

- **306**: Other Program Management/Close-out Activities
  - Activities related to the close-out process of one specific project worksheet.
Cost Documentation Best Practices

COST REASONABLENESS

• **High Demand** of Resources can cause price inflation
  • E.g. Modular Space, Handwashing Stations, fever scan
  • Document best efforts for competition, written price quotes and vendor feedback about inventory and demand

• **Lease vs. Purchase**
  • Lease or rent is preferred as it corresponds to duration of use to the event and impacts rather than assets
  • If break even is compelling – document

• **Facility Utilization** – other agency use
  • Fair market value, depreciation and repairs
  • Compounding Events – disasters, political, social
The risk of poor or absent documentation

Initial denial of eligibility
Without proper supporting documentation, costs can be determined to be ineligible and not reimbursed

Clawback of Granted Funds
Proper supporting documentation is needed to receive the “granted” funds after award. Without this documentation, the Grantee will not process payment requests to sub-grantee.

Procurement compliance issues are the most frequent grounds of audit failures and claw back efforts by FEMA
In Conclusion

- Reimbursement and Funding is available for COVID-19 related costs
- Specific criteria exists as to what FEMA will reimburse, following a detailed process
- Documentation of such incurred, eligible costs is critical to recovering and retaining funds
- Risks of rejection or claw-back of funds is real and ongoing well beyond payment
- Expertise is available and associated costs are recoverable
QUESTIONS?
FOR ADDITIONAL INFORMATION:

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