

PUBLIC ASSISTANCE ALTERNATIVE PROCEDURES PILOT PROGRAM – Permanent Work



FEMA

Frequently Asked Questions

On January 29, 2013, President Obama signed into law the Sandy Recovery Improvement Act of 2013 (P.L. 113-2). This law amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) (Stafford Act) through the addition of Section 428 and authorizes alternative procedures for the Public Assistance (PA) Program permanent work funding. The law also authorizes the Federal Emergency Management Agency (FEMA) to implement the alternative procedures through a pilot program.

This document provides answers to frequently asked questions regarding the PA Alternative Procedures Pilot Program for Permanent Work (Permanent Work Pilot). For additional information, refer to the *Public Assistance Alternative Procedures Pilot Program Guide for Permanent Work (Permanent Work Pilot Guide)*.

General

1. What are the alternative procedures for permanent work?

Section 428 authorized the following alternative procedures for permanent work subawards:

- Subawards Based on Fixed Estimates (required for participation)
 - FEMA Validation of Subrecipient-Provided Cost Estimates
 - Referral of Cost Estimates to an Expert Panel (subawards with a Federal share of \$5 million or greater)
 - Consolidation of Multiple Fixed Subawards into a Single Subaward
 - Elimination of the Alternate Project Penalty (for in-lieu contributions)
 - Use of Excess Funds for Allowable Activities

2. In which disasters can a subrecipient use the Permanent Work Pilot?

The Permanent Work Pilot was made available for any major disaster declared on or after May 20, 2013. Additionally, it is available on major disasters declared before May 20, 2013, if construction has not begun.

3. How is “construction has not begun” defined?

“Construction has not begun” is determined by the initiation of physical construction to repair or replace any of facilities within the subaward. It does not include planning, design, demolition or site work.

4. Does the Permanent Work Pilot only apply to large projects?

Yes. The Permanent Work Pilot applies only to large projects (subawards).

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5. Is it optional for a subrecipient to participate in the Permanent Work Pilot?

Yes. Participation in the Permanent Work Pilot is voluntary.

6. What are the deadlines for participation in the Permanent Work Pilot?

The deadlines to participate in the Permanent Work Pilot are as follows:

Permanent Work Pilot Procedure	Declaration on or after May 20, 2013	Declarations prior to May 20, 2013 construction not started
Agree to fixed subaward amount	9 months from date of declaration	February 20, 2014
Consolidate 2 or more fixed subawards into a single subaward	12 month from date of declaration	May 20, 2014

7. How can a subrecipient request participation in the Permanent Work Pilot?

The subrecipient should notify the Recipient and FEMA that it wants to participate in the Permanent Work Pilot. This would typically take place at the Kickoff Meeting. If the subrecipient decides to participate, the subrecipient will sign the *Public Assistance Alternative Procedures Pilot Program for Permanent Work Acknowledgement*.

8. Can a subrecipient elect to apply the Permanent Work Pilot to some of its subawards and not others?

Yes. The subrecipient may elect to apply the Permanent Work Pilot on a subaward-by-subaward basis.

9. How does a subrecipient designate the subawards for which it would like to apply the Permanent Work Pilot procedures?

The subrecipient signs the *Fixed Subaward Agreement Letter* for each subaward it elects to accept based on a fixed estimate. Once the subrecipient agrees to a fixed subaward, it cannot revert back to a subaward funded based on actual costs.

Subawards Based on Fixed Estimates

10. Can the fixed estimate include Direct Administrative Costs (DAC)?

Yes. If the Subrecipient wishes to claim DAC, it must be included in the fixed estimate. The estimated DAC must be reasonable based on the level of effort of the tasks identified.

11. Will FEMA adjust the fixed subaward if the subrecipient incurs additional costs due to Environmental Historic Preservation (EHP) requirements or unforeseen damages?

No. FEMA will not increase the costs on a fixed subaward.

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12. What flexibilities are provided to a subrecipient that agrees to a subaward based on a fixed estimate?

A fixed estimate subaward is similar to an improved or alternate project. While pre-disaster function, design, capacity and condition determine the amount of FEMA eligible funding, a Subrecipient is not constrained from using this funding to complete a project with a different function, design or capacity. Additionally, the Subrecipient can retain any excess funds if actual costs are less than the fixed amount provided it uses them for an approved purpose.

FEMA Validation of Subrecipient-Provided Estimates

13. What does FEMA require for a subrecipient to provide its own estimate?

- The estimate must directly correspond to the agreed upon detailed damage description and scope of work.
- FEMA will accept a subrecipient's cost estimate if it has been prepared by a licensed professional engineer or other estimating professional, such as a licensed architect or certified professional cost estimator.
- The professional must certify that the estimate was prepared according to applicable standards of care for estimating construction costs.
- The estimate must be based on unit costs and include sufficient information to conduct a review.
- The subrecipient should provide the estimate to FEMA at least 30 days prior to the nine (9)-month deadline.

14. If a subrecipient requests that the Expert Panel review an estimate, must the subrecipient accept the Expert Panel's amount as the fixed amount?

If a subrecipient signs the Permanent Work Pilot Acknowledgement with intent to participate in the Permanent Work Pilot, it may request any subaward with an estimate equal to or greater than \$5 million federal share be submitted to the Expert Panel for review. If the estimated amount deemed appropriate by the Expert Panel is less than the subrecipient is willing to accept for a fixed subaward, it may reverse its decision to apply the alternative procedures to that subaward. In these cases, FEMA will obligate the subaward based on the estimated amount determined by the Expert Panel and final funding will be based on actual costs in accordance with Title 44 CFR 206.205(b).

Consolidated Subawards

15. What additional flexibilities are provided to a subrecipient that chooses to consolidate subawards?

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A subrecipient may share funding from the consolidated fixed subaward to any of the facilities within the consolidated subaward.

16. What costs are included in a consolidated subaward?

The fixed amount for the consolidated subaward is the aggregate cost of the fixed subawards that are being consolidated.

17. Must the subrecipient consolidate all of the sites within each single fixed subaward?

Yes. If a subaward is consolidated, it must be consolidated in its entirety.

18. Can a subrecipient consolidate a completed project with an uncompleted project?

Yes. A Subrecipient may consolidate any fixed subaward regardless of the status of construction provided it is consolidated within the 12-month deadline.

Elimination of the Reduction for Alternate Projects

19. Does the elimination of the alternate project federal cost share reduction apply to both public and private non-profit facilities?

Yes. All of the alternative procedures apply to eligible public and private non-profit facilities.

20. Is it necessary for a subrecipient to obtain FEMA approval to use funds from a fixed subaward towards an alternate project?

Yes. If a subrecipient wishes to use funds from a fixed subaward towards an alternate project, it must notify FEMA in accordance with FEMA Policy 9525.13.

21. Can a subrecipient elect to apply the alternative procedures on an existing alternate project from a disaster declared prior to May 20, 2013?

Yes, if construction has not begun on the alternate project, the subrecipient may participate in the Permanent Work Pilot by signing the Permanent Work Pilot Acknowledgement and Fixed Subaward Agreement Letter and FEMA will eliminate the reduction in funding for that alternate project subaward.

Use of Excess Funds

22. If a subrecipient completes the approved scope of work for less than the approved subaward amount (i.e. experiences an underrun), can it keep the excess funds?

Yes. The subrecipient may retain excess funds for the approved purposes, as articulated in the *Permanent Work Pilot Guide*. These purposes include:

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- Cost effective hazard mitigation activities that will reduce the risk of future disaster damage to facilities not damaged in the declared disaster (provided they would otherwise be eligible for PA Program funding) and toward hazard mitigation activities on other fixed subawards.
- Activities that improve future PA Program permanent work operations, such as training and planning for future disaster recovery operations.

23. What does FEMA require when a subrecipient determines it has excess funds?

When a subrecipient completes the scope of work on a fixed subaward, it should provide an accounting of actual costs to FEMA, through the Recipient, within 90 days of completing the project to include its proposed scope of work tied to the excess funds and the project timeline. The Recipient and FEMA will review the request and process a new subaward to document approval of the proposed use of the excess funds and an appropriate timeline for completion.

24. Can a subrecipient use excess funds for work on facilities not damaged by the declared disaster?

Yes. The subrecipient may use excess funds for hazard mitigation on facilities that are not damaged by the declared disaster provided the facilities would be otherwise eligible for PA Program funding. However, the subrecipient may not use excess funds for the repair, restoration, or replacement of facilities that are not damaged in the declared disaster.

25. Can a subrecipient use excess funds to cover the non-Federal share of other PA Program-funded subawards?

No. Excess funds cannot be used to cover the non-Federal cost share for other PA Program-funded projects.

Special Considerations

26. Can a fixed estimate subaward include funds approved for Section 406 hazard mitigation even if the subrecipient chooses to restore the facility in a different location or implement a repair that is fundamentally different than the original scope of work?

Yes, FEMA may allow retention of approved Section 406 hazard mitigation funds on a case-by-case basis where prevention of future similar damage is proven to be of greater or equal benefit than that which would have been achieved with the approved mitigation scope of work in the fixed estimate.

27. How will insurance proceeds be applied to fixed estimate subawards?

28. Insurance reductions will be based on actual or anticipated proceeds at the disaster-damaged facility. The fixed estimate for individual or consolidated subgrants will maintain this reduction, even if the subrecipient does not perform the original scope of work. The

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overall agreed-upon fixed estimate will not be revised. The only exception will be when actual insurance proceeds differ from the anticipated insurance proceeds. Specifically, if the subrecipient's actual insurance proceeds exceed the amount of the reduction based on anticipated insurance proceeds, the subrecipient will have to return to FEMA the difference between those amounts in order to avoid a duplication of benefits as is required by Section 312 of the Stafford Act. Conversely, if the subrecipient's actual insurance proceeds are less than the amount of the anticipated insurance proceeds used to calculate the reduction and the subrecipient demonstrates that it performed the due diligence required in pursuing all available insurance proceeds, FEMA agrees to return to the subrecipient the difference between those amounts.

29. Would obtain-and-maintain requirements apply to facilities for which fixed subawards are used for something other than repairs to the original damaged facilities?

Yes. Obtain and maintain requirements apply the same way they are applied under the standard PA Program.

30. Will FEMA review alternative procedure subawards for compliance with EHP laws, regulations, and executive orders?

Yes. FEMA must ensure compliance with all applicable EHP requirements before approving subawards and before subrecipients initiate work on the projects. FEMA will conduct additional EHP compliance reviews when fixed subaward funds (either single or consolidated) are used for changes in scope of work that do not substantially conform to the existing design, function and location of the damaged facilities. The Recipient will notify FEMA of the proposed work and FEMA will determine whether additional EHP review must be conducted to ensure compliance before construction begins. In some instances, no further EHP review will be required for certain actions.

Federal Awards Management, Closeout and Appeals

31. Can the subrecipient deposit subaward funds in an interest-bearing account?

No. If the subrecipient deposits subaward funds in an interest bearing account, the subrecipient will promptly remit interest earned to FEMA.

32. Are Permanent Work Pilot subawards subject to Strategic Funds Management?

Yes. Permanent Work Pilot subawards are still subject to Strategic Funds Management.

33. Are recipients required to submit quarterly progress reports for Permanent Work Pilot subawards?

Yes. The requirement for quarterly reporting applies to Permanent Work Pilot subawards.