

PUBLIC ASSISTANCE ALTERNATIVE PROCEDURES PILOT PROGRAM



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 Stafford Act and authorizes alternative procedures for the Public Assistance (PA) Program for debris removal and 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 alternative procedures pilot. For additional information, refer to the *Public Assistance Alternative Procedures Pilot Program Guide* for both permanent work and debris removal.

GENERAL

1. Are Subgrantees required to participate in the alternative procedures?

No. Participation in the alternative procedures is voluntary.

2. How can a Subgrantee request participation in the alternative procedures?

The Subgrantee should notify the Grantee and FEMA that it wants to participate in the alternative procedures. This would typically take place at the Kick-Off meeting.

3. If a Subgrantee decides to participate in the alternative procedures, is it required that all of the Subgrantee's projects be processed according to these procedures?

No. The Subgrantee may elect to apply the procedures on a subgrant-by-subgrant basis.

4. Does the Federal cost share for the emergency or major disaster apply to alternative procedures projects?

Yes.

DEBRIS REMOVAL

5. When will FEMA implement the alternative procedures for debris removal?

The Sandy Recovery Improvement Act authorizes alternative procedures for debris removal. FEMA will implement alternative procedures for debris removal in the summer of 2013. Alternative procedures authorized by the Act for debris removal are:

- A sliding scale incentive for accelerated debris removal
- Retention of revenues from debris recycling
- Reimbursement of force account labor straight time
- An incentive for debris management planning
- Funding for debris removal based on fixed estimates.

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PERMANENT WORK

Subgrants Based on Fixed Estimates

6. Do the procedures for subgrants based on fixed estimates apply to both large and small projects?

No. The procedures for permanent work subgrants based on fixed estimates apply only to large projects.¹ Small projects will continue to be funded according to simplified procedures.

7. Can the procedures for subgrants based on fixed estimates be applied retroactively?

Yes. These procedures can be applied to subgrants funded under disasters declared prior to the effective date of the *Pilot Guide*. However, they can only be applied to permanent work subgrants for facilities where construction has not begun.

8. Is the development of cost estimates different for alternative procedures subgrants?

No. Just as under standard procedures, FEMA will prepare cost estimates using the Cost Estimating Format. Subgrantees may also prepare their own cost estimates and FEMA will also accept estimates in accordance with the *Pilot Guide*. FEMA will review and validate those estimates submitted by the Subgrantee.

9. Can a Subgrantee use a fixed estimate for an improved or alternate project?

Yes. The Subgrantee can request an improved or alternate project after agreeing to accept a fixed estimate. If the Subgrantee requests an alternate project, the elimination of the penalty for alternate projects applies.

10. After a Subgrantee accepts a subgrant on the basis of a fixed estimate, can it subsequently request additional funding from FEMA if the final cost exceeds the estimated subgrant?

No.

¹ A large project is a project with a total estimated cost that exceeds the monetary threshold established in section 422 of the Stafford Act and Title 44 of the Code of Federal Regulations (44 CFR) §206.203(c). For major disasters and emergencies declared in Fiscal Year 2013, the threshold is \$67,500.

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Use of Subgrantee-Provided Estimates

11. Will FEMA accept a Subgrantee's cost estimate?

FEMA will accept property conducted and certified cost estimates from Subgrantees that are prepared by professionally licensed engineers, mutually agreed upon by FEMA and the Subgrantee. FEMA will validate that the cost estimate reflects costs for completion of the eligible scope of work. FEMA will not accept a cost estimate that includes ineligible work.

12. What does FEMA consider to be a “mutually agreed upon” professionally licensed engineer?

FEMA will accept a Subgrantee'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. It is not necessary for FEMA and the Subgrantee to reach agreement prior to the preparation of the estimate.

13. What does FEMA consider to be a “properly conducted and certified” cost estimate?

The professional must certify that the estimate was prepared according to applicable standards of care for estimating construction costs.

14. Will FEMA reimburse a Subgrantee for the cost to prepare an estimate?

Yes, as follows:

- FEMA will provide funding for the preparation of the cost estimate in accordance with PA Program requirements. These costs are based on the actual costs for the design work or a percentage of the eligible cost for the restoration.²
- If the facility requires an engineering analysis before preparing the initial subgrant to determine the cause of damage or the methods of repair, FEMA may prepare a subgrant to fund this analysis.
- Direct Administrative Costs (DAC) may be used to capture the costs the Subgrantee incurs for site assessments, for preparing the disaster damage dimensions and description, and for preparing the scope of work for the grant. The cost of preparing the cost estimate for inclusion in the subgrant will also be captured as a DAC.

² Refer to Factor H in the CEF for information regarding this percentage.

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15. How will FEMA determine whether cost estimates should be directed to the Expert Panel for review?

FEMA will refer cost estimates to the Expert Panel at the request of the Subgrantee or Grantee. FEMA may also refer cost estimates to the Expert Panel at the Agency's direction. The cost threshold for referral (Federal share of \$5 million) will be based either on the Subgrantee's estimate or FEMA's. The cost estimate must reflect only eligible costs. If FEMA, the Grantee and the Subgrantee disagree over whether costs are eligible, this issue must be resolved before FEMA refers the cost estimate to the Expert Panel.

Consolidated Subgrants

16. Do the alternative procedures for consolidated subgrants apply to both large and small projects?

No. The alternative procedures for permanent work subgrants based on fixed estimates apply only to large projects.

17. What costs from the original subgrants are included in a consolidated subgrant?

The cost estimate for the consolidated subgrant is the aggregate of all of the eligible costs included in the original, single-facility subgrants. Costs for Section 406 hazard mitigation developed for the original facility may be included in the consolidated subgrant if they meet the requirements described in the *Pilot Guide*.

18. What are the considerations for identifying projects to include in a consolidated subgrant?

A consolidated subgrant gives a Subgrantee flexibility to apply funding across multiple facilities to best meet their recovery needs. This flexibility will also provide efficiencies in implementation of recovery assistance and support rapid recovery from the disaster. However, in instances where there are especially complex environmental, historic preservation or insurance issues, a Subgrantee may not wish to include that particular facility in a consolidated subgrant.

19. What flexibilities are allowed for under a consolidated subgrant?

A consolidated subgrant is similar to an improved project or an alternate project under standard procedures, however, it differs in that Subgrantees can complete all work and use excess funds if actual costs are less than the aggregate total of the consolidated fixed estimate. Subgrantees may share funding from the consolidated fixed subgrant to any of the facilities within the consolidated subgrant in order to meet its post-disaster recovery needs. The consolidated subgrant must meet all other PA Program requirements and must comply with other applicable Federal requirements, including EHP laws, regulations, and executive orders.

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20. What is the timeline for subgrant consolidation?

The Subgrantee must request consolidation of subgrants within 12 months of the declaration date.

Elimination of the Reduction for Alternate Projects

21. Is it necessary for a Subgrantee to request the alternative procedures (specifically, a subgrant based on fixed estimate) in order for the reduction in funding for an alternate project to be eliminated?

Yes. The elimination of the reduction in funding for alternate projects only applies in situations where the grant is based on a fixed estimate.

22. Does the elimination of the reduction apply to both public and private non-profit facilities?

Yes. The alternative procedure applies to eligible public and private non-profit facilities.

Use of Excess Funds

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

Yes. The Subgrantee may retain excess funds for the approved items articulated in the *Pilot Guide*. This includes certain hazard mitigation activities and activities that will improve PA Program operations during future disasters.

24. Does the Subgrantee need FEMA's approval prior to spending excess funds?

Yes. The Subgrantee must notify the Grantee in writing of its intent to use excess funds including the intended scope of work and project timeline. The Grantee and FEMA will review the request and process a subgrant for the provision of the excess funds to the Subgrantee.

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

The Subgrantee may use excess funds for hazard mitigation on facilities that are not damaged by the declared disaster. However, these facilities must be otherwise eligible for PA Program funding in subsequent disasters. The Subgrantee may not use excess funds for the repair, restoration, or replacement of facilities that are not damaged in the declared disaster.

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26. Can a Subgrantee use excess funds to cover the non-Federal share of other PA Program-funded subgrants?

No.

27. What are the time frames associated with use of excess funds?

The Subgrantee must provide the Grantee and FEMA a final accounting of the actual project costs and, if applicable, its intended use of the excess funds, within 90 days of the final reconciliation of the cost for completing the eligible scope of work. The Subgrantee must expend funds within the regulatory timeframes identified in 44 CFR §206.204 and be approved at the time the new subgrant for the excess funds is obligated. Extensions may be granted in accordance with the requirements of these regulations.

SPECIAL CONSIDERATIONS

28. Will subgrants based on fixed estimates include funds approved for Section 406 hazard mitigation?

Yes. Fixed estimates may include funding for approved Section 406 hazard mitigation proposals for the disaster-damaged facility.

29. If a Subgrantee consolidates subgrants that contain Section 406 hazard mitigation funding, can the mitigation funds be applied if the consolidated subgrant is in a different location from the original facility?

Yes, subject to the conditions that limit the inclusion of Section 406 hazard mitigation funds in consolidated subgrants. Specifically, a Subgrantee must demonstrate that the proposed work accomplishes the same or greater amount of risk reduction than the approved mitigation measure at the original facility or facilities.

30. How will insurance proceeds be applied to subgrants processed using the alternative procedures?

In calculating the fixed estimate for a subgrant, FEMA will reduce funding by the amount of anticipated insurance proceeds or actual insurance proceeds, if known. This reduction for insurance will not be revised once the fixed estimate subgrant is agreed to and obligated. The only exception is if a Subgrantee received a greater amount in insurance proceeds than what was originally reduced as part of calculating the fixed estimate. This is necessary in order to comply with Section 312 of the Stafford Act, which prohibits duplication of benefits.

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31. Will FEMA review alternative procedures subgrants for compliance with environmental and historic preservation (EHP) laws, regulations, and executive orders?

Yes. FEMA must ensure compliance with all applicable EHP requirements before approving subgrants and before Subgrantees initiate work on the projects.

32. For a consolidated subgrant, will FEMA perform EHP reviews for the original facilities? Or for the work that results from the consolidation?

Depending on the stage at which the subgrants are consolidated, FEMA may perform the EHP review on one or more of the original facilities. Regardless, FEMA must ensure that the consolidated subgrant complies with all applicable EHP requirements. Accordingly, FEMA will place conditions on the subgrant regarding notification of the specifics of the consolidated subgrant, as described in the *Pilot Guide*.

GRANTS MANAGEMENT, CLOSEOUT, AND APPEALS

33. If the Subgrantee accepts a subgrant on the basis of an estimate, will the Subgrantee receive the total Federal share of the subgrant immediately after FEMA approves and obligates the subgrant?

The Grantee is authorized to disburse the total Federal share of the subgrant funds to the Subgrantee after FEMA obligates funds. However, the Grantee may disburse the funds in accordance with their own requirements and procedures used for PA Program funding.

34. Can the Subgrantee deposit subgrant funds in an interest-bearing account?

No. If the Subgrantee deposits subgrant funds in an interest bearing account, the Subgrantee must promptly remit interest earned to FEMA.

35. Is the Subgrantee required to document how funds for alternative procedures subgrants were expended?

Yes. The Subgrantee must prepare and submit to the Grantee a final report that includes the specific items identified in the *Pilot Guide*.

36. Is the Subgrantee required to complete the scope of work documented in an alternative procedures subgrant?

Yes. The Subgrantee must complete the approved scope of work. If the Subgrantee does not complete the approved scope of work, FEMA may de-obligate the subgrant.

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37. What happens if a Subgrantee runs out of funding and does not complete the approved scope of work?

If a Subgrantee does not complete the approved scope of work, FEMA may de-obligate the subgrant.

38. Can a Subgrantee submit an appeal for an alternative procedures subgrant?

Yes. A Subgrantee may appeal any determination that FEMA makes during the subgrant approval and obligation process. However, the Subgrantee cannot appeal a fixed grant cost estimate once it has agreed to accept the estimate and FEMA obligates funding. If FEMA, the Grantee, and the Subgrantee disagree on the scope of work, eligibility, and/or cost estimate for a subgrant, this subgrant should not be considered for the alternative procedures. A Subgrantee may appeal changes that are made to an alternative procedures subgrant following an audit.