





FEMA

March 17, 2020

MEMORANDUM FOR: All States, Territories, Tribal Governments, Local Governments, and All Other Non-Federal Entities Receiving FEMA Financial Assistance

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SUBJECT: Procurement Under Grants Conducted Under Emergency or Exigent Circumstances for COVID-19

Subsequent to the President's March 13, 2020 Nationwide Emergency Declaration for Coronavirus Disease 2019 (COVID-19), the Department of Homeland Security's Federal Emergency Management Agency (FEMA) is issuing the attached Fact Sheet addressing procurements made during periods of exigent or emergency circumstances. FEMA recognizes that noncompetitive procurements may be necessary to save lives, to protect property and public health, and to ensure public safety, as well as to lessen or avert the threat of a catastrophe. The attached Fact Sheet provides answers and guidance surrounding the need for such measures.

Current Federal procurement standards (found at 2 C.F.R. § 200.320(f)(2)) allow non-state entities to noncompetitively procure contracts (i.e., sole-sourcing) under certain emergency or exigent circumstances. FEMA defines an emergency or exigent circumstances as unexpected and unusually dangerous situations requiring immediate action or an urgent need for assistance or relief. Emergencies typically involve a threat to life, public health or safety, improved property, or some other form of dangerous situation. Exigencies, on the other hand, typically involve an urgent need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise. Under both an emergency and exigency, using a competitive procurement process would prevent a non-state entity from taking immediate action required to address the situation. However, use of the emergency/exigency exception is only permissible during the actual emergency or exigent circumstances.

The President's unprecedented Nationwide Emergency Declaration, and the Secretary of Health and Human Services' (HHS) declaration of a Public Health Emergency for COVID-19 establish that exigent and emergency circumstances currently exist.

[For the duration of the Public Health Emergency](#), which began January 27, 2020 as determined by HHS, local governments, tribal governments, nonprofits, and other non-state entities may proceed with new and existing noncompetitively procured contracts in order to protect property and public health and safety, or to lessen or avert the threats created by emergency situations for 1) Emergency protective measures under FEMA's Public Assistance Program and 2) Use of FEMA non-disaster grant funds by non-state recipients and sub-recipients to respond to or address COVID-19.

Attachment:

(1) Fact Sheet: *Procurement Under Grants Conducted Under Exigent or Emergency Circumstances*



Procurement Under Grants Conducted Under Exigent or Emergency Circumstances

The Federal Emergency Management Agency (FEMA) provides financial assistance to states, territories, tribes, local governments, nonprofits, institutions of higher education, and other non-Federal entities. All FEMA grant programs are subject to the Federal procurement standards found at 2 C.F.R. §§ 200.317 – 200.326. Recognizing that FEMA’s recipients and subrecipients may face exigencies or emergencies when carrying out a FEMA award, this Fact Sheet provides key information to consider when utilizing contracted resources under exigent or emergency circumstances.

What Rules Apply to State Entities?

States are required to follow their own procurement procedures as well as the Federal requirements for procurement of recovered materials and inclusion of required contract provisions per 2 C.F.R. §§ 200.317, 200.322, and 200.326.

For purposes of the Federal procurement requirements, states are defined as the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Northern Mariana Islands, and any agency or instrumentality thereof except for local governments. Tribal governments are not considered to be states when applying Federal procurement standards required by 2 C.F.R. Part 200.

What Rules Apply to Non-State Entities?

For all other types of entities, referred to as “non-state entities” in this Fact Sheet, Federal regulations (2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) establish requirements for the exigency or emergency exception that permits the use of noncompetitive procurements, frequently referred to as “sole-source contracting.” This exception and associated procurement requirements are discussed further below. In general, it will be fact-specific and entity-specific as to when exigent or emergency circumstances necessitate the use of noncompetitive procurements. The answers to the frequently asked questions below provide additional guidance on the acceptable use of noncompetitive proposals under exigent or emergency circumstances, which is described in regulation at 2 C.F.R. § 200.320(f)(2).

It is essential that all non-state entities understand that both FEMA and the U.S. Department of Homeland Security’s Office of Inspector General (OIG) closely review procurement actions and contract selections, with a particular emphasis on noncompetitive procurement actions, to evaluate compliance with Federal requirements. ***Failure to follow Federal contracting and procurement requirements puts non-state entities at risk of not receiving reimbursement or not being able to use FEMA grant funds for otherwise eligible costs.***

What is the exigency or emergency exception?

Non-state entities must follow the procurement requirements found at 2 C.F.R. §§ 200.317 – 200.326. However, Federal regulations allow for noncompetitive procurements under certain circumstances, including when a non-state entity determines that immediate actions required to address the public exigency or emergency cannot be delayed by a competitive solicitation. This represents an exception to requirements for full and open competition. FEMA approval is not required for use of noncompetitive

procurements under the emergency or exigency exception; however, the non-state entity must document its justification for using noncompetitive procurements and must still comply with other procurement requirements and ensure that costs are reasonable.

When referring to procurement activity, FEMA defines both exigency and emergency as situations that demand immediate aid or action. The difference between the two is that:

- In the case of an **exigency**, there is a need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise, to the non-state entity, and use of competitive procurement proposals would prevent the urgent action required to address the situation. Thus, a noncompetitive procurement may be appropriate.
- In the case of an **emergency**, a threat to life, public health or safety, or improved property requires immediate action to alleviate the threat.

While emergency conditions generally are short-lived, exigent circumstances can exist for a period of weeks or months.

Exigency Example: A tornado impacts a city in June and causes widespread and catastrophic damage, including damage to a city school. The city wants to repair the school and have it ready for use by the beginning of the school year in September. The city estimates, based on past experience, that awarding a contract using a sealed bidding process would require at least 90 days, and the city’s engineer estimates that the repair work would last another 60 days. This would extend the project beyond the beginning of the school year. Rather than conducting a sealed bidding process, the city—in compliance with state and local law—wants to sole source with a contractor it has contracted with previously. The city can demonstrate that this constitutes an “exigent circumstance” because use of a sealed bidding process would cause an unacceptable delay and thus procurement by noncompetitive methods was necessary based on the particular situation.

Emergency Example #1 (Disaster Grants): Severe weather impacts a city and causes widespread and catastrophic damage, including loss of life, widespread flooding, loss of power, damage to public and private structures, and millions of cubic yards of debris across the city, leaving almost the entire jurisdiction inaccessible. The city needs to begin debris removal activities immediately to restore access to the community, support search and rescue operations, power restoration, and address health and safety concerns. Under these circumstances, the city may find it necessary to award noncompetitive contracts to address threats to life, property, and public health.

Emergency Example #2 (Non-Disaster Grants): The weather in a city has been below freezing for the past 2 weeks, causing a pipe in the city’s emergency operations center to burst and flood the first floor. This flood destroyed half of the city’s radios that its emergency workers use to communicate with police and fire personnel. The city documented and demonstrated that it needed to replace these radios right away to avert an immediate threat to life, safety, or property as the city needed a full supply of radios in order to respond to emergencies. Under these circumstances, the city may find it necessary to award noncompetitive contracts to address threats to life, property, and public health.

When does the exigency or emergency exception apply and for how long?

Use of the public exigency or emergency exception *is only permissible during the actual exigent or emergency circumstances*. Exigency or emergency circumstances will vary for each incident, making it difficult to determine in advance or assign a particular time frame when noncompetitive procurements may be warranted. Exigent or emergency circumstances may exist for two days, two weeks, two months, or even longer in some cases. Non-state entities must ensure that work performed under the noncompetitively procured contracts is specifically related to the exigent or emergency circumstance in

effect at the time of procurement. Importantly, because the exception to competitive procurement is available only while the exigent or emergency circumstances exist, non-state entities should, upon awarding a noncompetitive contract, immediately begin the process of competitively procuring similar goods and services in order to transition to the competitively procured contracts as soon as the exigent or emergency circumstances cease to exist.

FEMA may review a non-state entity's justification that exigent or emergency circumstances warrant an exception to competitive procurement. If the agency determines that exigent or emergency circumstances did not exist or did not preclude a non-state entity from adhering to competitive procurement requirements, FEMA may disallow all or part of the non-state entity's cost related to the contract or take other actions permitted by statute and regulation. (*See* 2 C.F.R. § 200.338).

What documentation is required to support the use of the exigency or emergency exception?

While FEMA approval is not required for a non-state entity to use noncompetitive procurement proposals under the emergency or exigency exception, non-state entities must document and provide justification for the use of the exigent or emergency exception. A list of elements that non-state entities may wish to include as part of their written justifications can be found at the end of this Fact Sheet. The justification must be included in the non-state entity's records for each FEMA award, subaward, or project.

Do any Federal procurement requirements apply if a non-state entity is sole-sourcing a contract under exigent or emergency circumstances?

Yes, non-state entities must comply with the following requirements even when exigent or emergency circumstances exist:

- Contracts must include the required contract clauses (2 C.F.R. § 200.326 & Appendix II) (also applicable to states).
- Contracts exceeding the Federal simplified acquisition threshold must include the Federal bonding requirements if the contract is for construction or facility improvement (2 C.F.R. § 200.325).
- Contracts must be awarded to a responsible contractor (2 C.F.R. § 200.318(h)).
- The non-state entity must complete a cost or price analysis to determine that the cost or price of the contract is fair and reasonable if the contract exceeds or is expected to exceed the Federal simplified acquisition threshold (2 C.F.R. § 200.323(a) and (b)).
- The use of cost-plus-percentage-of-cost contracting is prohibited (2 C.F.R. § 200.323(c)).
- Use of time and materials contracts must comply with 2 C.F.R. § 200.318(j).
- The non-state entity must follow documentation, oversight, and conflict of interest requirements among other general procurement requirements in 2 C.F.R. § 200.318. If a conflict of interest is unavoidable due to the exigent/emergency circumstances, the non-state entity must explain that in the procurement documentation.

What if the non-state entity wants to use a pre-awarded or pre-existing contract in an exigency or emergency and that contract does not comply with the Federal procurement requirements?

If a pre-awarded or pre-existing contract is not in compliance with the Federal procurement requirements (e.g., the contract was not fully and openly competed (*see* 2 C.F.R. §§ 200.319, 200.320), the six affirmative socioeconomic contracting steps were not completed (2 C.F.R. § 200.321), there is a conflict of interest involved (2 C.F.R. § 200.318)), it may still be possible to use the contract for the duration of the exigency or emergency. FEMA recommends that non-state entities review the list of procurement requirements above and take actions to modify pre-awarded or pre-existing contracts where applicable. In addition, non-state entities must prepare the appropriate documentation to justify the use

of a noncompetitively procured contract.

Can non-state entities use time and materials (T&M) contracts in an exigency or emergency?

Yes, but only under certain circumstances. FEMA advises against the use of T&M contracts and generally limits the use of these contracts to a short time period where the scope or duration of the work is unclear. T&M contracts do not incentivize contractors to control costs or maximize labor efficiency. FEMA may reimburse costs incurred under a T&M contract only if all of the following apply:

- No other contract was suitable;
- The contract has a ceiling price that the contractor exceeds at its own risk; and
- The non-state entity can demonstrate it provided a high degree of oversight to obtain reasonable assurance that the contractor used efficient methods and effective cost controls.

Can a non-state entity award cost-plus-a-percentage-of-cost contracts or contracts with a percentage-of construction-cost method in an exigency or emergency?

No. This prohibition applies to all work, regardless of the circumstances (2 C.F.R. § 200.323(d)).

Can non-state entities use *piggyback* contracts in an exigency or emergency?

Piggyback contracting occurs when one entity with an existing contract assigns some or all of its contractual rights to another entity that was not previously party to the contract. Generally, FEMA discourages piggyback contracts because the original contract pertains to the needs of the original entity with a specific scope of work for that entity. While there may be circumstances when piggybacking is permissible, in almost all instances, the scope of work would need to be changed to include the needs of a non-state entity, and changes to the scope of work are generally not permitted as there is not likely to be full and open competition for the expanded scope of work. However, during emergency and exigency circumstances, non-state entities may be able to piggyback another entity's contract and expand the scope of a contract for the period of the emergency or exigency circumstance.

Note that a non-state entity may choose to enter into a separate contract with the same contractor as another entity, using the same terms and conditions as in that other entity's contract, with only a change in the scope of work and the associated costs. However, this is sole-source contracting rather than piggyback contracting, and it must meet the requirements for noncompetitive procurement under exigency or emergency circumstances as described elsewhere in this Fact Sheet.

If a non-state entity is contemplating the use of piggyback contracting, it should contact its state or territory liaison, or the applicable FEMA Program Office to request FEMA assistance with contract review. For assistance with FEMA contact information, the entity should contact the Centralized Scheduling and Information Desk (CSID) help line at (800) 368-6498 or askcsid@fema.dhs.gov. CSID hours of operation are from 9 a.m. to 5 p.m. ET, Monday through Friday.

Can states use time and materials (T&M) or cost-plus-percentage-of-cost (CPPC) contracts in an exigency or emergency?

While the Federal procurement rules do not prohibit the use of T&M contracts and CPPC contracts by states, FEMA discourages states from using these contracts because they generally lack provisions that control costs and maximize efficiency in performing work. FEMA and the OIG closely scrutinize these types of contracts for cost reasonableness.

Although T&M contracts are discouraged, there may be instances where T&M contracts are appropriate in the short term for activities such as debris removal, emergency power restoration, or other immediate actions required to address emergency health and safety threats under a Public Assistance award. States

entering into T&M contracts are encouraged to include language in the contract that specifies a ceiling price and limits the duration of the contract to a short time period, thus providing the state time to develop a scope of work and transition to the more competitive procurement procedures.

As a reminder, 2 C.F.R. § 200.317 requires states to follow: (1) the same policies and procedures they use for procurements using non-Federal funds; (2) 2 C.F.R. § 200.322 (procurement of recovered materials); and (3) 2 C.F.R. § 200.326 (required contract provisions). These requirements apply regardless of whether exigency or emergency circumstances exist. States must ensure that they are also in compliance with the cost principles in 2 C.F.R. §§ 200.400 – 200.474, including ensuring that costs are reasonable, as defined in 2 C.F.R. § 200.404.

Additional Information and Resources

Non-state entities should consult as soon as possible with all appropriate parties, including their own legal counsel, to review their procurement policies, actions, and contracts and compare them to the Federal procurement requirements. Non-state entities also should contact their state or territory liaisons, or applicable FEMA Program Office to request assistance with any procurement activity concerns. For assistance with FEMA contact information, the entity should contact the Centralized Scheduling and Information Desk (CSID) help line at (800) 368-6498 or askcsid@fema.dhs.gov. CSID hours of operation are from 9 a.m. to 5 p.m. ET, Monday through Friday.

Detailed procurement and contracting information is available on the FEMA website at www.fema.gov/procurement-disaster-assistance-team. While the guidance available at that website is specifically applicable to FEMA's Public Assistance Program, it is a useful resource for FEMA's other grant programs as the procurement requirements in 2 C.F.R. Part 200 apply to all of FEMA's grant programs. The current Code of Federal Regulations referenced in this guidance can be accessed at www.eCFR.gov. The annual Code of Federal Regulations is available at <https://www.govinfo.gov/app/collection/cfr>, and the applicable regulations will be the ones in place at the time FEMA issued the declaration or made the award.

Suggested Elements for Noncompetitive Procurement Justification

1. Identify which of the four circumstances listed in 2 C.F.R. § 200.320(f) justify a noncompetitive procurement:
 - (1) The item is available only from a single source;
 - (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
 - (4) After solicitation of a number of sources, competition is determined inadequate.
2. Provide a brief description of the product or service being procured, including the expected amount of the procurement.
3. Explain why a noncompetitive procurement is necessary. If utilizing the exigency/emergency exception, the justification should explain the nature of the public exigency or emergency, including specific conditions and circumstances that clearly illustrate why procurement other than through noncompetitive proposals would cause unacceptable delay in addressing the public exigency or emergency. (Failure to plan for transition to competitive procurement cannot be the basis for continued use of noncompetitive procurement based on public exigency or emergency).
4. State how long the noncompetitively procured contract will be used for the defined scope of work and the impact on that scope of work should the noncompetitively procured contract not be available for that amount of time (e.g., how long do you anticipate the exigency or emergency circumstances will continue; how long will it take to identify your requirements and award a contract that complies with all procurement requirements; or how long would it take another contractor to reach the same level of competence).
5. Describe the specific steps taken to determine that full and open competition could not have been used, or was not used, for the scope of work (e.g., research conducted to determine that there were limited qualified resources available that could meet the contract provisions).
6. Describe any known conflicts of interest and any efforts that were made to identify possible conflicts of interest before the noncompetitive procurement occurred. If no efforts were made, explain why. If a conflict of interest is unavoidable, such as due to exigent/emergency circumstances, explain how it was unavoidable and any steps taken to address the impact of that conflict of interest.
7. Include any other information justifying the use of noncompetitive procurement in the specific instance.

NOTE: A separate justification is required for each instance of noncompetitive procurement.

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PUBLIC ASSISTANCE COVID-19 DISASTER DECLARATION INFORMATION BULLETIN #1 – 3/16/20

Good Afternoon: State, Local, & Tribal Emergency Managers:

The President of the United States declared a nationwide emergency according to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act on March 13, 2020, in support of COVID-19. The federal support is specific to Category B, Emergency Protective Measures. Health and Human Services remain the lead State and Federal agency for response to COVID19. FEMA and State DEM will support the coordination with our partners.

FEMA Safford/Disaster will provide a 75% percent Federal cost share, meaning that state, local, tribal partners must fund 25% of the approvable expenses. Examples of the category B expenses may include overtime expenses for activation of EOC operations, National Guard Cost, Law Enforcement, Fire Departments, or other measures necessary to protect public health and safety.

What are Emergency Protective Measures?

Emergency protective measures conducted before, during, and after an incident are eligible if the measures:

- Eliminate or lessen immediate threats to lives, public health, or safety; OR Eliminate or lessen immediate threats of significant additional damage to improved public or private property in a cost-effective manner.

FEMA may require certification by Federal, State, Territorial, Tribal, or local government officials that a threat exists, including:

- Identification and evaluation of the threat
- Recommendations of the work necessary to cope with the threat

Saving Lives and Protecting Public Health and Safety

The following is a list of emergency protective measures and costs that are eligible. These actions save lives or protect public health or safety. This list is not all-inclusive. Some of these actions are discussed in detail below (I removed some that do not apply to this situation)

- Transporting and pre-positioning equipment and other resources for response
- Emergency Operation Center (EOC)-related costs
- Emergency access
- Supplies and commodities
- Medical care and transport
- Evacuation and sheltering, including that provided by another State or Tribal government

- Safety inspections
- Security, such as barricades, fencing, or law enforcement
- Use or lease of temporary generators for facilities that provide essential community services
- Dissemination of information to the public to provide warnings and guidance about health and safety hazards using various strategies, such as flyers, public service announcements, or newspaper campaigns
- Mass mortuary services

There are several areas where costs are ineligible; it is critical to read and understand the FEMA Public Assistance Program and Policy Guide FP 104-009-2/April 2018, specifically Category B.

Examples of ineligible expenses are loss of revenue, loss of useful service life, tax assessments, overtime, and backfill are eligible, comp time, and standby time is not.

What do I need to do?

The Document, Document, and Document – Involve the fiscal section of your organization and provide them with these forms and documents today and throughout this crisis to ensure you are working together to collect the correct information.

Every jurisdiction must follow its own procurement rules or 2CFR, Part 200, whichever is stricter. A jurisdiction may use emergency procurements; however, you must have and follow an emergency contract process, policy, or law. If you do not have an emergency procurement policy, you must put something in place. Some jurisdictions may need to declare a county or tribal emergency in order to access their emergency procurement and other processes. If your policy requires an emergency declaration, please declare and submit it to our office.

Stafford Act, Public Assistance, or Disaster grant all may mean the same thing, but different terminology may be used to describe the funds. Typically this funding will not reimburse permanent equipment or structures. This is only for emergency protective measures and temporary solutions to work through COVID-19. This funding is the funding of last resort. If jurisdictions have insurance that may pay for this type of response, you must seek insurance reimbursement first.

We are providing you tools to track expenditures related to COVID-19. I highly encourage your jurisdiction to use these tools because FEMA grants are complicated, and we will require specific backup documentation for reimbursement.

Please review the Document attached for Public Assistance Record-Keeping in PDF and the spreadsheets to track Labor, Benefits, Contracts, Equipment Rentals, Forced Account Equipment (equipment that is owned by the jurisdiction but used in this disaster) and Contracts. Please note that if we have not provided a spreadsheet to track a specific cost, it may not be eligible.

Please keep in mind that any procurement that you make must be paid by the individual jurisdiction, must not be contingent on receiving federal funds, meaning that the jurisdiction would generally buy the item understanding that they may or may not be reimbursed by the State or Federal government.

Please read the attached Appendix 6 Public Assistance and Record-Keeping Documents:

- [Response and Recovery Guide for State, Local Governments, and Tribal Nations](#) (RRGLG)
- [RRGLG Benefits Calculation Worksheet](#)
- [RRGLG Work Completed to Date Cost Summary](#)
- [RRGLG Force Account Labor Record](#)
- [RRGLG Contract Work Record](#)
- [RRGLG Materials Record](#)
- [RRGLG Force Account Equipment Record](#)
- [RRGLG Rented Equipment Record](#)

You may contact the Disaster-Recovery@dps.state.nv.us; if you have questions, we will be sending out additional information as it becomes available.

DIRECT CONTACTS:		
Suz Coyote scoyote@dps.state.nv.us 775-745-6806	Kelli Anderson kanderson@dps.state.nv.us 775-220-1618	DEM Office 775-687-0300
FOR QUESTIONS, PLEASE CONTACT:		
Disaster Recovery	disaster-recovery@dps.state.nv.us	

Thank you!

PUBLIC ASSISTANCE COVID-19 REQUEST FOR PUBLIC ASSISTANCE (RPA) SUBMISSION BULLETIN #2 – 3/26/20

President Trump declared the FEMA-34443-EM-NV emergency declaration for Nevada on March 13, 2020, as a result of COVID-19 pandemic response that started January 20, 2020 and is continuing. FEMA has designated all counties in Nevada as eligible for funding under Public Assistance (PA) Program, Category B – Emergency Protective Measures.

If an eligible organization has or may have at least \$3,300 in eligible uninsured Category B – Emergency Protective Measure costs, the organization should submit a FEMA Request for Public Assistance (RPA) electronically through the [FEMA PA Grants Portal](#) as soon as possible.

All organizations interested in applying should follow the steps below to submit an RPA to NDEM:

The following types of organizations may be eligible for PA Category B funding include:

- State government – departments, agencies, boards, commissions, authorities, universities
- Local government – counties, townships, township road districts, cities, villages, school districts, levee/drainage districts, community college districts, special districts
- Private non-profit organizations – utility cooperatives, hospitals, schools, churches
- Native American tribes and tribal organizations

If your organization doesn't already have an account, create one on the [FEMA Grants Portal](#).

Complete the RPA form:

- Include both primary and alternate contact information. Each contact must have a separate email address. FEMA and NDEM will use the email address to communicate with each organization, so the email address provided is very important.
- There has been no Federal/State Joint Preliminary Damage Assessment at this time, so please check "NO" to that question.
- While there is no current deadline to submit an RPA, the sooner RPAs are received the quicker service will be provided.

For additional instruction, watch this [How-To Video on the Grants Portal RPA Submission](#).

Compiling documentation to support work and costs claimed:

- Organizations should compile documentation for any work and costs that may be eligible under Category B – Emergency Protective Measures. FEMA has provided a [COVID-19 Eligible Emergency Protective Measures Fact Sheet](#) that provides information on the eligible work and costs under this emergency declaration.
- The [FEMA PA Grants Portal](#) and Nevada’s ZoomGrants Portal will be used later to submit documentation to support an organization’s costs. Please remember that all costs must be supported with documentation (e.g. bills, invoices, receipts, labor records, equipment records, material records, procurement records).

FEMA has an independent study course available on using the PA Grants Portal (<https://grantee.fema.gov>). Organizations are strongly encouraged to review this course because they will be using the PA Grants Portal to communicate with FEMA and uploading documentation to support their costs. The FEMA independent study course for the PA Grants Portal is available online at <https://training.fema.gov/is/courseoverview.aspx?code=IS-1002>.

Procurement of services (contracting) is very important under PA, even under this type of emergency declaration. Non-compliance with federal and state procurement requirements can result in organizations losing their grant funding. The FEMA policy on Procurement Under Grants Conducted Under Exigent or Emergency Circumstances is available online at <https://www.fema.gov/media-library/assets/documents/186350>.

NDEM will conduct PA applicant’s briefings via webinars in the **coming** weeks to review the remaining application and programmatic requirements. The other PA application forms will be available and required through Zoom Grants that must be completed and submitted to NDEM. They do not have a specific submission deadline but must be completed and accepted by NDEM before we can make a payment to an organization. All Submission for this disaster will be completed in Zoom grants electronically.

These forms are as follows:

- NDEM PA Grant Recipient Award Agreement
- Federal and State Assurances for NDEM

The following items are typically problem areas when completing the PA Grant Agreement:

- Federal Employer Identification Number (FEIN). The FEIN is your organization’s tax identification number and can be obtained from the IRS [here](#).
- Data Universal Numbering System (DUNS) number. DUNS numbers can be obtained online at <http://fedgov.dnb.com/webform/> or by calling [866-705-5711](tel:866-705-5711).
- System for Award Management (SAM) registration expiration date. The SAM registration

expiration date can be obtained at www.SAM.gov. Please make sure the your organization's registration at www.SAM.gov is active. If your organization needs assistance with registering or updating your registration at www.SAM.gov, please contact the [Federal Service Desk](#) at or [866-606-8220](tel:866-606-8220).

- Fiscal year start date. The month and day that the organization's fiscal year starts.

Organizations should also download the [Public Assistance Policy Guide](#), which details the program requirements and process.

Additional information on the Public Assistance Program is available on FEMA's website [here](#). If an organization has any questions regarding the Public Assistance Program, please contact the NDEM Recovery Team at disaster-recovery@dps.state.nv.us.

DIRECT CONTACTS:		
Suz Coyote scoyote@dps.state.nv.us 775-745-6806	Kelli Anderson kanderson@dps.state.nv.us 775-220-1618	DEM Office 775-687-0300

FOR QUESTIONS, PLEASE CONTACT:	
Disaster Recovery	disaster-recovery@dps.state.nv.us

Thank you!

PUBLIC ASSISTANCE COVID-19 FEMA GRANTS PORTAL ACCOUNT REQUEST BULLETIN #3 – 3/26/20

Accounts for the FEMA Grants Portal available by invitation only. To receive an invitation from NDEM, please submit the following to disaster-recovery@dps.state.nv.us:

- Organization Name
- Organization Type
 - City or Township Government
 - County Government
 - Independent School District
 - Indian/Native American Tribal Government (Federally Recognized)
 - Indian/Native American Tribally Designated Organization
 - Nonprofit with 501c3 IRS Status
 - Nonprofit without 501c3 IRS Status
 - Public/Indian Housing Authority
 - Public/State Controlled Institution of Higher Education
 - Regional Government Organization
 - Special District Government
 - State Government
 - U.S. Territory or Possession
 - Other
- Contact First Name
- Contact Last Name
- Contact Email
- Contact Phone

Additional information on the Public Assistance Program is available on FEMA’s website [here](#). If an organization has any questions regarding the Public Assistance Program, please contact the NDEM Recovery Team at disaster-recovery@dps.state.nv.us.

DIRECT CONTACTS:		
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Thank you!

PUBLIC ASSISTANCE COVID-19 NON-CONGREGATE SHELTERING DELEGATION OF AUTHORITY BULLETIN #4 – 3/26/20

Under President Trump's March 13, 2020, national emergency declaration for the coronavirus (COVID-19) pandemic, FEMA's Regional Administrators have been delegated authority to approve requests for non-congregate sheltering for the duration of the Secretary of Health and Human Services' declaration of a Public Health Emergency for COVID-19.

In accordance with section 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, eligible emergency protective measures taken to respond to the COVID-19 emergency at the direction or guidance of state, local, tribal, and territorial public health officials may be reimbursed under Category B of FEMA's Public Assistance program.

FEMA recognizes that non-congregate sheltering may be necessary in this Public Health Emergency to save lives, to protect property and public health, and to ensure public safety, as well as to lessen or avert the threat of a catastrophe. States, tribes and territories should work with their regional administrators for approval of non-congregate sheltering and procure the necessary support services needed to meet the needs of the public health emergency. The following criteria must be considered before setting up non-congregate sheltering and support services:

- The non-congregate sheltering must be at the direction of and documented through an official order signed by a state, local, tribal, or territorial public health official.
- Any approval is limited to that which is reasonable and necessary to address the public health needs of the event and should not extend beyond the duration of the Public Health Emergency.
- Applicants must follow FEMA's Procurement Under Grants Conducted [Under Exigent or Emergency Circumstances](#) guidance and include a termination for convenience clause in their contracts
- Prior to approval, the applicant must provide an analysis of the implementation options that were considered and a justification for the option selected.
- The funding for non-congregate sheltering to meet the needs of the Public Health Emergency cannot be duplicated by another federal agency, including the U.S. Department of Health and Human Services or Centers for Disease Control and Prevention.
- Applicable Environmental and Historic Preservation laws, regulations, and executive orders apply and must be adhered to as a condition of assistance.

DIRECT CONTACTS:

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Kelli Anderson
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775-687-0300

FOR QUESTIONS, PLEASE CONTACT:

Disaster Recovery

disaster-recovery@dps.state.nv.us

Thank you!

PUBLIC ASSISTANCE COVID-19 EMERGENCY PROTECTIVE MEASURES PROCUREMENT BULLETIN #5 – 3/30/20

State of Nevada Division of Emergency Management

COVID-19 Emergency Protective Measures

Procurement Under Grants Conducted Under Exigent or Emergency Circumstances

Key Points

The President’s Nationwide Emergency Declaration for Coronavirus Disease 2019 (COVID-19) Public Health Emergency was declared on March 13, 2020.

“For the duration of the Public Health Emergency, which began January 27, 2020 as determined by the U.S. Health and Human Services, local governments, tribal governments, nonprofits, and other non-state entities may proceed with new and existing noncompetitively procured contracts in order to protect property and public health and safety, or to lessen or avert the threats created by emergency situations for

- 1) Emergency Protective Measures under FEMA’s Public Assistance Program and
- 2) Use of FEMA non-disaster grant funds by non-state recipients to respond to or address COVID-19.”

“The President’s unprecedented Nationwide Emergency Declaration, and the Secretary of Health and Human Services’ (HHS) declaration of a Public Health Emergency for COVID-19 establish that exigent and emergency circumstances currently exist.”

(FEMA Memorandum from Acting Administrator Office of Response and Recovery, David Bibo, March 17, 2020)


Local Procurement (including Tribal governments):

- 1) All contracts must be in writing.
- 2) Your local jurisdiction procurement policy must still be followed, which may include formal notifications, price or rate quotations and competitive formal bid requirements.
- 3) Any emergency procurement must follow the State NRS 332.112 (Emergency Contracts), including:
 - a. These contracts must be reported to the governing body at its next regularly scheduled meeting.
 - b. The governing body (i.e. Board of Commissioners) minutes is required documentation.
- 4) Contracts must include the required Federal contract clauses (2 C.F.R. § 200.326 & Appendix II) (refer to the FEMA – Contract Provisions Template, September 30, 2019 for guidance)
- 5) Follow Federal 2 CFR 200 Requirements for procuring under Exigent or Emergency Circumstances:
 - a. Allows jurisdictions to proceed with new and existing noncompetitively procured contracts in order to protect property and public health and safety, or to lessen or avert the threats created by emergency situations for
 - i. Emergency protective measures under FEMA’s Public Assistance Program and
 - ii. Use of FEMA non-disaster grant funds by non-state recipients and sub-recipients to respond to or address COVID-19.
 - b. Use of the emergency/exigency exception is only permissible during the actual emergency or exigent circumstances.

- c. To procure contracts/items non-competitively if the amount exceeds or is expected to exceed the simplified purchase threshold (currently \$250,000).
(2 C.F.R. § 200.323(a) and (b))
The jurisdiction must still comply with the other Federal 2CFR 200 requirements, including:
- (1) the contract must include the required contract clauses;
 - (2) the contract must include the Federal bonding requirements, if the contract is for construction or facility improvement;
 - (3) the non-state entity must award to a “responsible contractor;”
 - (4) the non-state entity must complete a cost or price analysis (FEMA requires 3 quotes, keep the documentation to provide when submitting for reimbursement); and
 - (5) the local jurisdictions cannot use a “cost-plus-percentage-of-cost contract” (refer to Section #7 on T&M and cost-plus-percentage-of-cost contract section)
- d. The allowance to sole source contracts in emergency/exigent circumstances:
- i. When it comes to reimbursement, the documentation that we will be asking for will include, but is not limited to:
 - a brief description of the product or service you procured,
 - an explanation of why was necessary to contract non-competitively, and
 - the impact to your community if you had not been able to use the non-competitively procured contract.

Procurement Thresholds Guidance – Nevada Local Government Purchasing NRS 332 vs. Federal 2 CFR 200 Requirements

Procurement Amount Thresholds	NRS 332 Requirements	Federal 2 CFR 200 Requirements
< \$10,000		Micro-Purchase Threshold: May be awarded without soliciting competitive quotations if the local jurisdiction considers the price to be reasonable.
\$25,000 - \$50,000	2 Price or Rate Quotations unless deemed an "Emergency Contract"	
Annual amounts > \$50,000 - \$100,000	2 Price or Rate Quotations and formal advertising is required unless deemed an "Emergency Contract"	
Annual amounts >\$100,000	Competitive Solicitation - Formal Bid and advertising required unless deemed an "Emergency Contract"	
\$10,000 - <\$250,000		Small Purchase Procedures: Price or rate quotations must be obtained from 3 qualified sources (FEMA determined the adequate number is 3)
\$250,000 and greater		See next page...

Procurement Amount Thresholds	NRS 332 Requirements	Federal 2 CFR 200 Requirements	Additional Federal 2 CFR 200 Requirements \$250,000 and greater
\$250,000 and greater		<p><u>ALL Procurements \$250,000 and greater:</u> Applicants must submit additional documentation for procurements in excess of the "Simplified Acquisition Threshold" including a "Cost Price Analysis."</p> <p style="text-align: center;">AND </p>	
			<p>1) Procurement by Sealed Bids (Formal Advertising):</p> <ul style="list-style-type: none"> - Bids are publicly solicited, and a firm fixed price contract is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price <p style="text-align: center;">OR</p>
			<p>2) Competitive Proposal:</p> <ul style="list-style-type: none"> - Conducted with more than one source submitting an offer and generally used when conditions are not appropriate for the use of sealed bids. - Refer to 2 CFR § 200.320 for guidance. - Documentation should include records of the sources who bid, what they bid, and the process to select the awardee <p style="text-align: center;">OR</p>
			<p>3) Noncompetitive Procurement Exemptions:</p> <p>This type of procurement may only be used when:</p> <ul style="list-style-type: none"> (a) Full and open competition is infeasible because: <ul style="list-style-type: none"> (i) The item is only available from a single source; (ii) It is a case of public exigency or emergency; (iii) Authorization is provided by the awarding agency; or (iiii) Competition is determined inadequate after solicitation of a number of sources; as well as (b) A Cost Analysis is performed to determine cost reasonableness

**** Effective June 20, 2018: Federal "Micro-Purchase Threshold" increased to \$10,000 & the "Simplified Acquisition Threshold" increased to \$250,000**

Note of Caution:

- 1) Failure to follow Federal contracting and procurement requirements puts local jurisdictions at risk of not receiving reimbursement or not being able to use FEMA grant funds for otherwise eligible costs.
- 2) Use of the public exigency or emergency exception is only permissible during the actual exigent or emergency circumstances.
- 3) Non-state entities should, upon awarding a noncompetitive contract, immediately begin the process of competitively procuring similar goods and services in order to transition to the competitively procured contracts as soon as the exigent or emergency circumstances cease to exist.
 - a. An exigency or emergency period will last often for a short time.
 - b. Once the emergency or exigency period ends, the contract must be re-solicited under full and open competition.
- 4) Engineering or Professional Services Contracts –
 - a. the Nevada Revised Statutes and Nevada Administrative Code has outlined exemptions for “Professional Services” (i.e. engineers, attorneys, etc.) in the procurement requirements.
 - b. Federal procurement requirements do not exempt Professional Services (i.e. engineering, accounting contracts) from following 2 CFR 200.
 - c. A contractor who fulfilled the requirement under emergency or exigent circumstances cannot compete for the new contract if that contractor helped the local jurisdiction develop or draft specifications, requirements, statements of work, or solicitation documents in support of the competitive procurement.
- 5) A contractor who fulfilled the requirement under emergency or exigent circumstances cannot compete for the new contract if that contractor helped the local jurisdiction develop or draft specifications, requirements, statements of work, or solicitation documents in support of the competitive procurement. This includes engineering contracts referred to as “professional services” in the Nevada Revised Statutes.
- 6) Piggyback Contracts

Piggyback contracting occurs when one entity with an existing contract assigns some or all its contractual rights to another entity that was not previously party to the contract.

 - Generally, FEMA discourages piggyback contracts because the original contract pertains to the needs of the original entity with a specific scope of work for that entity.
 - Recommend requesting assistance with contract review from the DEM Grants/Recovery Team before utilizing a “piggyback” type of contract,
- 7) Time and Materials (T&M) or Cost-Plus-Percentage-of-Cost (CPPC) Contracts.
 - a. Federal procurement rules do not prohibit the use of T&M contracts and CPPC contracts by states, FEMA discourages states from using these contracts because they generally lack provisions that control costs and maximize efficiency in performing work. FEMA and the Office of the Inspector General closely scrutinize these types of contracts for cost reasonableness.
 - b. Although T&M contracts are discouraged, there may be instances where T&M contracts are appropriate in the short term for activities such as debris removal, emergency power restoration, or other immediate actions required to address emergency health and safety threats under a Public Assistance award.
- 8) Local jurisdictions should contact the DEM Recovery/Grants Team or FEMA Region IX Program Office to request assistance with any procurement activity concerns.

References

Nevada Revised Statute

[NRS 332.112](#) Emergency contracts

1. For the purposes of this section, an “emergency” is one which:
 - (a) Results from the occurrence of a disaster, including, but not limited to, fire, flood, hurricane, riot, power outage or disease; or
 - (b) May lead to impairment of the health, safety or welfare of the public if not immediately attended to.
2. If the authorized representative, chief administrative officer or governing body of the local government determines that an emergency exists affecting the public health, safety or welfare, a contract or contracts necessary to contend with the emergency may be let without complying with the requirements of this chapter. If such emergency action was taken by the authorized representative or chief administrative officer, he or she shall **report it to the governing body at its next regularly scheduled meeting.**

Federal References:

FEMA – COVID-19 Memo: [Procurement Under Grants Conducted Under Emergency or Exigent Circumstances](#)

FEMA – COVID-19 Fact Sheet: [Procurements Under Grants During Periods of Exigent or Emergency Circumstances](#)

FEMA Procurement Resources: <https://www.fema.gov/procurement-disaster-assistance-team>

FEMA – [Contract Provisions Template](#), September 30, 2019

FEMA - [Procurement Guidance for Recipients and Subrecipients under 2 CFR Part 200 \(Uniform Rules\) Supplement to the Public Assistance Procurement Disaster Assistance Team \(PDAT\) Field Manual](#)

State Procurement (excluding Tribal governments)

- 1) Must follow NRS [333.130](#), [333.180](#) and NAC 333.114 State Purchasing policies.
- 2) The Administrator for NV Department of Administration must approve all emergency purchases.
 - a. It must be a threat to "the health, safety or welfare of the persons in this state occurs."
 - b. Obtain written authorization for an emergency purchase by sending an email to Administrator Kevin D. Doty at kddoty@admin.nv.gov.
 - c. If your agency makes a purchase to protect life without receiving prior authorization from the Administrator for the Department of Administration, send an email to Administration Doty at kddoty@admin.nv.gov on the next working day so he can give after-the-fact approval.
- 3) Must follow Federal 2 CFR § 200 requirements for procurement, regardless of emergency or exigency:
 - a. Must include Federally required contract provisions (refer to the FEMA PDAT Contract Provisions Template for guidance);
 - b. Procuring Recovered Materials –
Procure only items designated in guidelines of the Environmental Protection Agency (EPA) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000. (40 CFR § 247).
 - c. Must ensure the agency is following the cost principles in 2 CFR §§ 200.400 – 200.474, ensuring that costs are reasonable (2 CFR § 200.404).

Note of Caution:

4) Piggyback Contracts

Piggyback contracting occurs when one entity with an existing contract assigns some or all its contractual rights to another entity that was not previously party to the contract.

- Generally, FEMA discourages piggyback contracts because the original contract pertains to the needs of the original entity with a specific scope of work for that entity.
- Recommend consulting with DEM Grants/Recovery Team before you procure a "piggyback" type of contract.

5) Time and Materials (T&M) or Cost-Plus-Percentage-of-Cost (CPPC) Contracts.

- a. Federal procurement rules do not prohibit the use of T&M contracts and CPPC contracts by states, FEMA discourages states from using these contracts because they generally lack provisions that control costs and maximize efficiency in performing work. FEMA and the OIG closely scrutinize these types of contracts for cost reasonableness.
- b. Although T&M contracts are discouraged, there may be instances where T&M contracts are appropriate in the short term for activities such as debris removal, emergency power restoration, or other immediate actions required to address emergency health and safety threats under a Public Assistance award.
- c. States entering into T&M contracts are encouraged to include language in the contract that specifies a ceiling price and limits the duration of the contract to a short time period, thus providing the state time to develop a scope of work and transition to the more competitive procurement procedures.

- 6) Professional Services Contracts –
 - a. the Nevada Administrative Code has outlined competitive selection exemptions for “Professional Services” (engineers, architect, accountant, attorneys, expert witness) in the procurement requirements (NAC 333.150)
 - b. Federal procurement requirements do not exempt Professional Services (i.e. engineering contracts) from following 2 CFR 200.
 - c. A contractor who fulfilled the requirement under emergency or exigent circumstances cannot compete for the new contract if that contractor helped the local jurisdiction develop or draft specifications, requirements, statements of work, or solicitation documents in support of the competitive procurement.

References

Nevada Administrative Code Reference

NAC 333.114 Authorization for emergency purchases. (NRS 333.130, 333.180)

1. The Administrator will authorize an emergency purchase if an emergency, as that term is defined in [NRS 414.0345](#), or any other situation that the Administrator identifies as a threat to the health, safety or welfare of the persons in this state occurs and he or she determines that the emergency purchase is in the best interests of the State.
2. The Administrator may authorize an emergency purchase for any amount.
3. If the Administrator authorizes an emergency purchase, he or she will provide the using agency with written authorization for the emergency purchase, including, without limitation, a description of the justification for authorizing the emergency purchase. The Administrator will provide a separate written authorization for each order relating to the emergency purchase.

Federal References:

FEMA – [Procurement Standards for States under FEMA Public Assistance Awards FAQ](#)

FEMA – COVID-19 Memo: [Procurement Under Grants Conducted Under Emergency or Exigent Circumstances](#)

FEMA – COVID-19 Fact Sheet: [Procurements Under Grants During Periods of Exigent or Emergency Circumstances](#)

FEMA Procurement Resources: <https://www.fema.gov/procurement-disaster-assistance-team>

FEMA – [Contract Provisions Template](#), September 30, 2019

FEMA - [Procurement Guidance for Recipients and Subrecipients under 2 CFR Part 200 \(Uniform Rules\) Supplement to the Public Assistance Procurement Disaster Assistance Team \(PDAT\) Field Manual](#)

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FOR QUESTIONS, PLEASE CONTACT:

PUBLIC ASSISTANCE COVID-19 COMMON APPLICANT MISTAKES WHEN DOCUMENTING & TRACKING EMERGENCY PROTECTIVE MEASURES

BULLETIN #6 – 3/30/20

Here are some of the common mistakes applicants make when documenting and tracking their Emergency Protective Measures:

- Incomplete Timesheets
 - Ensure completeness and accuracy of all timesheets.
 - Timesheets should clearly document activities related to Emergency Protective Measures.
 - FEMA considers timesheets that only record time spent on the event, rather than full hours or pay periods, incomplete.
- Insufficient Call Logs
 - When providing a list of calls a department was requested to respond to during an incident it is important to differentiate between regular calls and those that are event related.
 - Call logs that lack description of actions or do not link actions to the event are considered insufficient. Ensure that call logs provide a detailed description of activities and connect the activities to the event.
- Absence of a Written Payroll Policy
 - Applicants must have a written payroll policy that identifies pay periods, overtime rules, and distinguishes between emergency activities and day-to-day operations.
 - Any union specific contracts or rules should be reflected in payroll policies.
- Inability to Tie Labor Hours to Equipment
 - Adopt documentation mechanisms that clearly tie labor hours to the use of equipment.
 - Information within these mechanisms should include:
 - Personnel who worked
 - Description of the activity each personnel conducted
 - Number of hours personnel worked on each activity
 - Equipment used for each activity
 - Description of which personnel used the equipment and for how long
- Inability to Document the Type of Work/Activity Conducted
 - Adopt documentation mechanisms that clearly outline the work and activity conducted that can be tied directly to the event.
 - Information within these mechanisms should include:
 - Personnel who worked

- Description of the activity each personnel conducted
- Number of hours each personnel worked on each activity
- Any material that was used in the activity
- Amount of material used in the activity

DIRECT CONTACTS:		
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FOR QUESTIONS, PLEASE CONTACT:	
Disaster Recovery	disaster-recovery@dps.state.nv.us

Thank you!

Thank you!

PUBLIC ASSISTANCE COVID-19 RECOMMENDED TRAINING BULLETIN #7 – 3/30/20

FEMA has rolled out training to support a new functionality within [Grants Portal](#), allowing applicants to create their own accounts and submit their Requests for Public Assistance (RPA). Below are links for video trainings:

- [Grants Portal – Add and Create Personnel](#)
- [Grants Portal – RPA Submission](#)

Since there may be applicants that are unfamiliar with the PA Program we encourage you to access the FEMA Emergency Management Institute (EMI) Independent Study (IS) courses below:

- [IS-1000: Public Assistance Program and Eligibility](#)
- [IS-1002: FEMA Grants Portal – Transparency at Every Step](#)
- [IS-1010: Emergency Protect Measures](#)

**You will need a FEMA Student ID to take the courses above. You can register for a FEMA SID [here](#).*

Please let us know if you have any questions, please contact the NDEM Recovery Team at disaster-recovery@dps.state.nv.us.

DIRECT CONTACTS:

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FOR QUESTIONS, PLEASE CONTACT:

Disaster Recovery	disaster-recovery@dps.state.nv.us
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Thank you!

PUBLIC ASSISTANCE COVID-19 GRANTS PORTAL APPLICANT QUICK GUIDE

BULLETIN #8 – 3/30/20

The following Quick Guide was released by FEMA to assist applicants in the Public Assistance process.

Grants Portal Account and Request for Public Assistance



FEMA

Public Assistance Applicant Quick Guide

This Quick Guide explains the steps an Applicant must take in creating a Public Assistance (PA) Grants Portal user accounts and submitting Requests for Public Assistance (RPA). RPAs submitted by the Applicant will follow standard review processes by the Recipient and FEMA. The Applicant will be able to view their RPA status in Grants Portal.

FEMA uses the term Recipient and Applicant throughout this document. In Grants Portal, Recipients are identified as Grantees and Applicant are identified as Subrecipients.

Methods for Account Setup and RPA Submission

Grants Portal currently allows for a variety of methods to set up accounts and submit RPAs. As identified, some options are only available to Applicants of COVID-19 Declarations that are not Private Non-Profit (PNP) Applicants or tribes.

For an Applicant without a Grants Portal Account:

- An Applicant can create an account and submit an RPA directly through Grants Portal (*COVID-19 Declarations only and not available to PNPs or tribes*)
- An Applicant can request an account from the Recipient
- An Applicant can request an invitation from the Recipient to create an account

For an Applicant with existing Grants Portal Accounts:

- An Applicant can submit an RPA directly through Grants Portal
- An Applicant can request an RPA is submitted by the Recipient on their behalf

Recipients

are states, tribes, or territories that receive and administer Public Assistance Federal awards

Applicants

are state, local, tribal, or territorial governments or private non-profit entities that submit requests for assistance under a Recipient's Federal

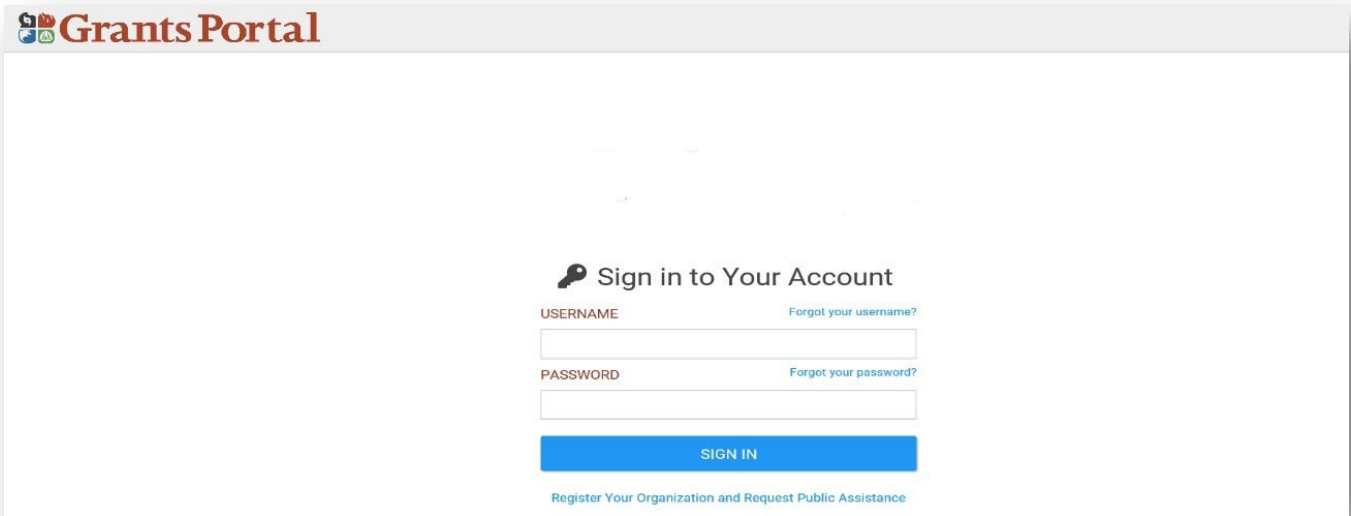
Grants Portal

is the system used by Recipients and Applicants to manage PA grant applications.

Actions for an Applicant without Existing Grants Portal Accounts

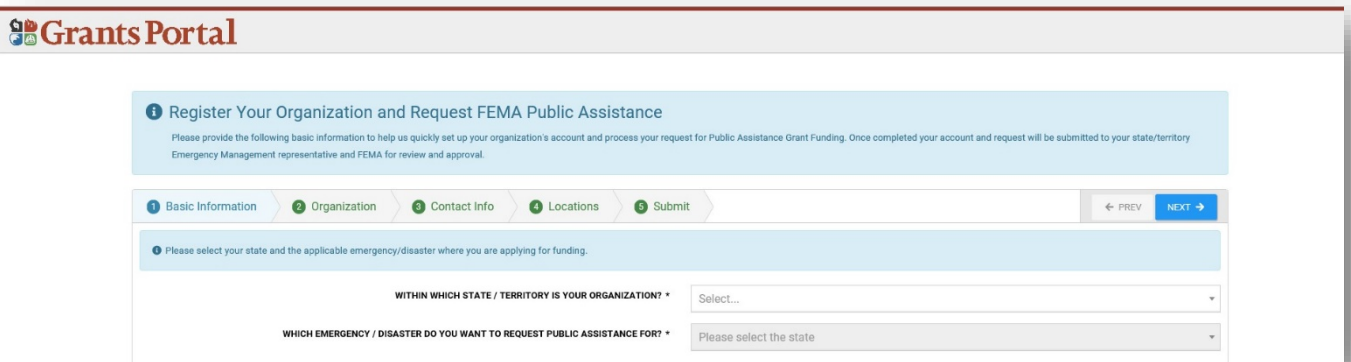
This section describes actions that can be taken by an Applicant who does not currently have account access to Grants Portal.

- To Create an Account and Submit an RPA via Grants Portal (COVID-19 Declarations only and not available to PNP's)
 - The Applicant goes to the Grants Portal home page at <https://grantee.fema.gov/> where they can click “Register your Organization and Request Public Assistance”



The screenshot shows the Grants Portal login interface. At the top left is the 'Grants Portal' logo. The main heading is 'Sign in to Your Account' with a key icon. Below this are two input fields: 'USERNAME' and 'PASSWORD'. Each field has a 'Forgot your [username/password]?' link to its right. A blue 'SIGN IN' button is positioned below the password field. At the bottom, there is a link that reads 'Register Your Organization and Request Public Assistance'.

- The Applicant is then prompted to fill in basic information about the organization, contact information, and location and then submits the form for Recipient review.



The screenshot displays the 'Register Your Organization and Request FEMA Public Assistance' form. A blue header bar contains the title and a sub-header: 'Please provide the following basic information to help us quickly set up your organization's account and process your request for Public Assistance Grant Funding. Once completed your account and request will be submitted to your state/territory Emergency Management representative and FEMA for review and approval.' Below the header is a progress bar with five steps: 1. Basic Information (active), 2. Organization, 3. Contact Info, 4. Locations, and 5. Submit. Navigation buttons for 'PREV' and 'NEXT' are on the right. The main content area has a blue instruction bar: 'Please select your state and the applicable emergency/disaster where you are applying for funding.' Two dropdown menus follow: 'WITHIN WHICH STATE / TERRITORY IS YOUR ORGANIZATION?' with a 'Select...' option, and 'WHICH EMERGENCY / DISASTER DO YOU WANT TO REQUEST PUBLIC ASSISTANCE FOR?' with a 'Please select the state' option.

- After the Applicant completes the account request and the Recipient and FEMA have approved the request, the Applicant receives a system-generated email with a username and temporary password to gain access to Grants Portal.
- The system will then prompt the Applicant to create a permanent password.

- Once the Applicant has access to Grants Portal, they can choose to follow the instructions below to either Submit an RPA Directly (in the system) or Submit an RPA through the Recipient:

- An Applicant can Request an Account from the Recipient:
 - A new Applicant may initiate the process by contacting their Local Emergency Management Department or State/Tribal/Territorial Emergency Management representative.
 - After contacting the Recipient, the Applicant will be asked to provide the following information:
 - ┆ Applicant Name
 - ┆ County
 - ┆ EIN Number and DUNS Number
 - ┆ Org Type
 - ┆ Primary/Alternate Contact (Name, Title, Phone, Email)
 - ┆ Physical/Mailing (Address, City, State, Zip)
 - After providing the requested information, the Recipient will create the account for the Applicant, and the Applicant will receive a system generated email with a username and temporary password.
 - The Applicant should follow the instructions provided via the email and use the provided username and temporary password to log into Grants Portal for the first time.
 - The system will then prompt the Applicant to create a permanent password. Once accepted the Applicant will be able to log into the system.
 - Once the Applicant has access to Grants Portal, they can choose to follow the instructions below to either Submit an RPA Directly (in the system) or Submit an RPA through the Recipient:

- An Applicant can Request an Invitation from the Recipient to Create an Account T
 - A new Applicant may initiate the process by contacting their Local Emergency Management Department or State/Tribal/Territorial Emergency Management representative and providing basic contact information.
 - The Recipient sends system-generated invitations by providing basic contact information about the Applicant's organization in the system.
 - The Applicant receives an email with a username, temporary password, and instructions for creating its account.
 - The Applicant will go to Grants Portal using the instructions provided via the email and enters the username and temporary password to log into Grants Portal for the first time.
 - The system prompts the Applicant to create a password. Once completed the Applicant will log into the system with their newly created password.
 - Once the Applicant has access to Grants Portal, they will be prompted to complete their Organizational Profile and account
 - The Applicant can choose to follow the instructions below to either Submit an RPA Directly (in the system) or Submit an RPA through the Recipient:

An Applicant with Existing Grants Portal Accounts

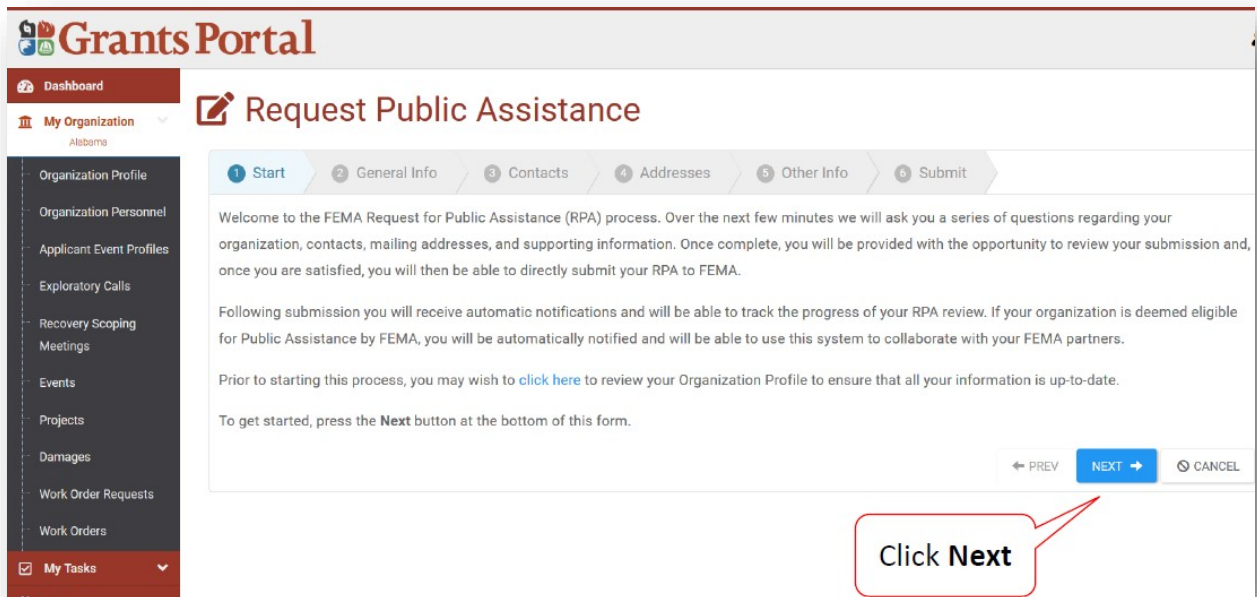
This section describes how an Applicant who already has Grants Portal accounts may submit RPAs: Directly through Grants Portal, or through the Recipient.

┌ An Applicant can Submit an RPA Directly through Grants Portal

- The Applicant logs into Grants Portal and selects “Click here to submit a RPA for your organization” on the Dashboard.



- Submit the form using the wizard, completing all required information



- When finished, click “Submit.”
- Once submitted, the RPA goes to the Recipient for review. The Applicant can view the status of their RPA in Grants Portal.

- Applicant can request an RPA is submitted by the Recipient on their behalf
 - The Applicant provides the Recipient with the following information:
 - Type of Organization
 - Primary/Alternate Contact (Name, Title, Phone, Email)
 - Physical/Mailing (Address, City, State, Zip)
 - Participated in PDA? (Y/N) (Not required for COVID-19 Declarations)
 - If Applicant is a PNP was the PNP questionnaire completed? (Y/N)
 - If the Applicant is a PNP enter Damaged Facility Information (Name, Location, Primary Purpose, Critical (Y/N), Facility Fee (Y/N), In Use (Y/N), Damaged (Y/N), Owned/Legally Responsibility of Applicant (Y/N), Insured (Y/N), Additional Comments)
 - This information populates the RPA template and the Recipient submits the RPA on behalf of the Applicant.
 - Once submitted, the RPA goes to the Recipient for review. The Applicant can view the status of their RPA in Grants Portal.

The *Applicant Quick Guide* series is a set of documents that explain the roles and responsibilities of Applicants in key steps in FEMA’s Public Assistance Program delivery process. Read more about Public Assistance Program delivery in the [Public Assistance Program and Policy Guide](#), and other resources available on [Grants Portal](#).

Please let us know if you have any questions, please contact the NDEM Recovery Team at disaster-recovery@dps.state.nv.us.

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Thank you!

PUBLIC ASSISTANCE COVID-19 EMERGENCY MEDICAL CARE BULLETIN #9 – 4/2/20

The following Fact Sheet was released by FEMA to assist applicants in the Public Assistance process.

The FEMA *COVID-19 Emergency Protective Measures Fact Sheet* included a list of eligible emergency medical care activities. This fact sheet provides additional guidance related to the eligibility of emergency medical care activities as an emergency protective measure under the Emergency Declaration and any Major Disaster Declaration authorizing Public Assistance (PA) for COVID-19.

General Eligibility Considerations for Emergency Medical Care

Under the President's March 13 emergency declaration, and subsequent major disaster declarations, state, local, tribal, and territorial (SLTT) government entities and certain private non-profit (PNP) organizations are eligible to apply for PA.

Eligible emergency protective measures taken to respond to the COVID-19 emergency at the direction or guidance of public health officials may be reimbursed under the PA program. On March 19, 2020, FEMA released the *COVID-19 Emergency Protective Measures Fact Sheet* which outlines the types of emergency protective measures that may be eligible under the PA program in accordance with the COVID-19 Emergency Declaration.

General eligibility considerations for emergency medical care activities apply to all claimed work and associated costs. They include Applicant, Facility, Work, and Cost eligibility to which all claims are subject under the PA program.

Applicant Eligibility

SLTT government entities are eligible to apply for PA. Certain PNP organizations are eligible to apply for PA, including those that own and/or operate medical care facilities.

Private for profit entities, including for profit hospitals, are not eligible for assistance from FEMA under PA. SLTT government entities may contract with for profit hospitals to carry out eligible emergency protective measures. FEMA will reimburse the eligible Applicant for the cost of eligible work, and the Applicant will then pay the private entity for the provision of services.

Facility Eligibility

For SLTT governments, evaluating facility eligibility is not necessary for most emergency work. PNPs are generally not eligible for reimbursement for emergency services because they are not legally responsible for providing those services.

PNPs that own or operate a medical or custodial care facility are eligible for:

- reimbursement of costs from FEMA related to patient evacuation when such an action is needed.
- in limited circumstances, reimbursement when essential components of a facility are urgently needed to save lives or protect health and safety, such as an emergency room of a PNP hospital.
- reimbursement of costs for emergency medical care, as outlined in the Eligible Emergency Medical Care Activities section.

Work Eligibility

Work must be necessary as a direct result of the emergency or major disaster (44 CFR §206.223(a)(1)).

Costs must be directly related to COVID-19 cases. For example, emergency medical care costs related to a non- COVID-19 illness or injury are not eligible.

Costs for personal protective equipment (PPE) for health care providers who are working in a hospital treating COVID-19 patients are eligible, as it is necessary to prevent further spread of the virus and protect health care workers and other patients.

Cost Eligibility

All assistance provided under PA is subject to standard program eligibility requirements, including reasonable cost, procurement, and duplication of benefits requirements.

Procurement requirements differ between state versus non-state entities and by normal versus emergency/exigent circumstances. Procurement requirements for the COVID-19 Declarations are:

- States and territorial governments are required to follow their own procurement procedures as well as the Federal requirements for procurement of recovered materials and inclusion of required contract provisions per 2 C.F.R. §§ 200.317, 200.322, and 200.326.
 - In accordance with the March 17, 2020, memorandum from David Bibo, Acting Associate Administrator for the Office of Response and Recovery, for the duration of the Public Health Emergency, as determined by the U.S. Department of Health and Human Services (HHS), local governments, tribal governments, nonprofits, and other non-state entities may proceed with new and existing non-competitively procured contracts.
 - SLTT governments may contract with medical providers, including private for-profit hospitals, to carry out any eligible activity described in the Eligible Emergency Medical Care Activities section below.
- The aforementioned memorandum and other information related to exigent and emergency circumstances procurement is available on the FEMA website at

FEMA cannot:

- Provide assistance under PA that is covered by another funding source.
- Duplicate assistance provided by HHS, including the Centers for Disease Control and Prevention (CDC), or other federal agencies.
 - This includes funding provided by the Public Health Emergency Preparedness Cooperative Agreement Program; the Public Health Crisis Response Cooperative Agreement; the Epidemiology and Laboratory Capacity for Prevention and Control of Emerging Infectious Diseases; and grants available from the HHS Office of the Assistant Secretary for Preparedness and Response.
- Provide PA funding for emergency medical care costs if they are covered by another source, including private insurance, Medicare, Medicaid, or a pre-existing private payment agreement.
 - The Applicant must be able to provide documentation verifying that insurance coverage or any other source of funding, including private insurance, Medicaid, or Medicare, has been pursued or does not exist for the costs associated with emergency medical care and emergency medical evacuations.
 - Each applicant will need to agree to the stipulation in the grant conditions of all FEMA awards that funding is not also being received from another funding source. FEMA is coordinating with HHS to share information about funding from each agency to assist in the prevention of duplication of benefits.

Other Considerations for Emergency Medical Care Eligibility

When the emergency medical delivery system within a declared area is destroyed, severely compromised, or overwhelmed, FEMA may fund extraordinary costs associated with operating emergency rooms and with providing temporary facilities for emergency medical care or expanding existing medical care capacity in response to the declared incident. Costs associated with emergency medical care should be customary for the emergency medical services provided. Other eligibility considerations specific to emergency medical care activities as an emergency protective measure under the COVID-19 Declarations are provided in this section.

Time Limitations for Completion of Work

- Emergency medical care costs are typically only eligible for up to 30 days from the declaration date unless extended by FEMA.
- Under the COVID-19 Declarations, eligible emergency medical care costs are eligible for the duration of the Public Health Emergency, as determined by HHS.

Public versus PNP Facility

- Emergency medical care is eligible as an emergency protective measure for public and PNP medical facilities, as long as the facility provides an emergency medical service necessary to save lives and/or protect public health and safety. In this case, emergency medical care related to COVID-19 cases is eligible as an emergency protective measure.

Emergency Medical Care versus Long-Term Medical Treatment

- Only emergency medical care that is necessary to save lives and/or protect public health and safety is eligible.

Long-term medical treatment is not eligible. This includes:

- Medical care costs incurred once a COVID-19 patient is admitted to a medical facility on an inpatient basis.
- Costs associated with follow-on treatment of COVID-19 patients beyond the duration of the Public Health Emergency, as determined by HHS.
- Administrative costs associated with the treatment of COVID-19 patients.

Eligible Emergency Medical Care Activities

Emergency medical care activities under the COVID-19 Declarations include, but are not limited to:

- Triage and medically necessary tests and diagnosis related to COVID-19 cases
- Emergency medical treatment of COVID-19 patients
- Prescription costs related to COVID-19 treatment
- Use or lease of specialized medical equipment necessary to respond to COVID-19 cases
- Purchase of PPE, durable medical equipment, and consumable medical supplies necessary to respond to COVID-19 cases (note that disposition requirements may apply)
- Medical waste disposal related to eligible emergency medical care
- Emergency medical transport related to COVID-19
- Temporary medical facilities and expanded medical care facility capacity for COVID-19 for facilities overwhelmed by COVID-19 cases and/or to quarantine patients infected or potentially infected by COVID-19.
 - Temporary facilities and expansions may be used to treat COVID-19 patients or non-COVID-19 patients, as appropriate.

Medical sheltering (e.g., when existing facilities are reasonably forecasted to become overloaded in

the near future and cannot accommodate needs)

- All sheltering must be conducted in accordance with standards and/or guidance approved by HHS/CDC and must be implemented in a manner that incorporates social distancing measures.
- Non-congregate medical sheltering may also be eligible, subject to prior approval by FEMA.
 - Examples include sheltering for those who test positive for COVID-19 who do not require hospitalization but need isolation (including those exiting from hospitals); those who have been exposed to COVID-19 who do not require hospitalization; and asymptomatic high-risk individuals needing social distancing as a precautionary measure, such as people over 65 or with certain underlying health conditions (respiratory, compromised immunities, chronic disease).
- Sheltering specific populations in non-congregate shelters should be determined by a public health official's direction or in accordance with the direction or guidance of health officials by the appropriate state or local entities. The request should specify the populations to be sheltered.

More Information

For more information, visit the following websites:

1. [Public Assistance Program and Policy Guide](#)

See PAPPG V3.1, Chapter 2:VI. Emergency Work Eligibility; Chapter 2:VI.B.9. Emergency Medical Care; and Chapter 2:VI.B.17. Temporary Relocation of Essential Services

2. [U.S. Department of Health and Human Services](#)

Centers for Disease Control and Prevention: [Coronavirus \(COVID-19\)](#)

[Centers for Medicare & Medicaid Services](#)

3. FEMA: www.fema.gov/coronavirus

Please let us know if you have any questions, please contact the NDEM Recovery Team at disaster-recovery@dps.state.nv.us.

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Thank you!

PUBLIC ASSISTANCE COVID-19 NON-CONGREGATE SHELTERING FAQ

BULLETIN #10 – 4/2/20

The following list of frequently asked questions regarding non-congregate sheltering was released by FEMA to assist applicants in the Public Assistance process.

Subsequent to President Trump’s March 13, 2020, Nationwide Emergency Declaration for Coronavirus 2019 (COVID-19), the U.S. Department of Homeland Security’s Federal Emergency Management Agency (FEMA) recognizes that non-congregate sheltering may be necessary in this Public Health Emergency to protect public health and save lives.

This document provides answers to frequently asked questions about non-congregate sheltering during the Secretary of Health and Human Services’ (HHS’) declaration of a Public Health Emergency for COVID-19.

1. What is the difference between medical sheltering, quarantine facilities, and non-congregate sheltering? Do alternative medical care facilities count as non-congregate shelters?

The term “medical sheltering” is meant to address the specific needs directly resulting from this Public Health Emergency. For purposes of eligibility under the COVID-19 declarations, FEMA will consider non-congregate sheltering for health and medical-related needs, such as isolation and quarantine resulting from the public health emergency. Alternate care sites and temporary hospitals are not considered non-congregate sheltering and such requests should be routed through the proper channels. Please refer to the [Emergency Medical Care for COVID-19 Fact Sheet](#).

2. Who is the target population for non-congregate sheltering?

Examples of target populations include those who test positive for COVID-19 who do not require hospitalization but need isolation (including those exiting from hospitals); those who have been exposed to COVID-19 who do not require hospitalization; and asymptomatic high-risk individuals needing social distancing as a precautionary measure, such as people over 65 or with certain underlying health conditions (respiratory, compromised immunities, chronic disease). Sheltering specific populations in non-congregate shelters should be determined by a public health official’s direction or in accordance with the direction or guidance of health officials by the appropriate state or local entities. The request should specify the populations to be sheltered. Non-congregate sheltering of healthcare workers and first responders who require isolation may be eligible when determined necessary by the appropriate state, local, tribal, or territorial public health officials and when assistance is not duplicated by another federal agency.

3. What forms of non-congregate sheltering will FEMA support?

Sheltering solutions should be determined by the Applicant requesting assistance, such as hotels, motels, dormitories, or other forms of non-congregate sheltering. The solutions should meet the criteria of non-congregate sheltering for the COVID-19 emergency, including what is necessary to protect public health and safety, be in accordance with guidance provided by appropriate health officials, and be reasonable and necessary to address the threat to public health and safety.

4. Must the Centers for Disease Control and Prevention (CDC) or state/local public health officials direct the use of non-congregate sheltering? Is it okay if another state/local official (e.g., emergency management office) directs the use?

The non-congregate sheltering must be at the direction of and documented through an official order signed by a state, local, tribal, or territorial public health official or be done in accordance with the direction or guidance of health officials by the appropriate state or local entities, in accordance with applicable state and local laws.

5. Does the non-congregate sheltering delegation apply to both emergency and major disaster declarations?

Yes, the delegation applies to all incidents declared as a result of COVID-19.

6. Can you provide a template for non-congregate sheltering requests?

Yes, there is a template request letter that the Applicant can use. In addition, Template Project Worksheets are currently being developed. Please contact your Regional point of contact for additional information concerning the template.

7. Can approval be state-wide? Could a FEMA Regional Administrator approve a state-wide strategy rather than individual requests?

Requests should be submitted based on the state and/or local public health orders, along with relevant public health guidance that recommends sheltering be conducted in the manner that is being requested for reimbursement and must meet the criteria of the guidance issued by FEMA for COVID-19. In instances where the state is issuing the public health order along with relevant public health guidance for non-congregate sheltering for the state, it is possible for FEMA to approve a state-wide request.

A state-wide non-congregate sheltering request should outline the state's non-congregate sheltering plan with options that will be utilized in the state by local governments. Upon pre-approval of non-

congregate sheltering, the state can be the sub-recipient, or a county/local government can be a sub-recipient.

Tracking mechanisms must be in place to provide data and documentation to establish the eligibility of costs for which the Applicant is requesting Public Assistance funding (including the need for non-congregate sheltering of each individual, length of stay, and costs). As with any activity, lack of support documentation may result in FEMA determining that some or all of the costs are ineligible.

8. Can a FEMA Regional Administrator approve non-congregate sheltering after it has already begun?

In limited circumstances where the nature of the emergency did not make a request feasible prior to beginning non-congregate sheltering, the Regional Administrator may approve non-congregate sheltering after it has already commenced.

9. Can a FEMA Regional Administrator allowed to delegate approval of non- congregate sheltering?

No, this delegation may not be re-delegated. The Regional Administrator should approve, partially approve, or deny the request in writing. This documentation should be uploaded to the project in FEMA Grants Manager.

10. What wrap-around services are eligible? For example, are food or mental health counseling eligible?

Eligible costs related to sheltering should be necessary based on the type of shelter, the specific needs of those sheltered, and determined necessary to protect public health and safety and in accordance with guidance provided by appropriate health officials. However, support services such as case management, mental health counseling, and others are not eligible.

11. How long can an individual to stay in non-congregate sheltering? How long can a non-congregate sheltering mission last?

The length of non-congregate sheltering depends on the needs in each area and will be in accordance with the guidance and direction from appropriate health officials. Sheltering eligibility for sheltering activities may not extend beyond the state or local public health order or the HHS Public Health Emergency for COVID-19.

Length of sheltering for individuals is based on health guidance and be limited to what is needed to address the immediate threat to public health and safety. The mission will depend on the level of community transmission in each area. Areas with high rates of community transmission, hospital admissions, and fatalities may need up to eight weeks. Reassessment at periodic intervals is necessary.

Regional Administrators should approve non-congregate sheltering in 30-day increments, or less if a

re-assessment determines there is no longer a public health need, but not to exceed the duration of the order of the state or local public health officer. The state or local will need to provide a re-assessment of the continuing need for emergency non-congregate sheltering from a state public health official, as well as a detailed justification for the continuing need for emergency non-congregate sheltering. The non-congregate sheltering for an individual should be in accordance with the guidance and direction from appropriate health officials.

12. How will we handle congregate and non-congregate sheltering missions for future disasters in areas impact by COVID-19?

Sheltering in future events will need to conform to current guidelines in place, including considerations for shelter operations in a pandemic environment. If there are additional costs incurred for such shelter operations, FEMA may reimburse those costs as eligible under the subsequent declaration requiring the shelter operations.

13. Can you provide additional clarity on avoiding duplication of benefits between FEMA and HHS?

FEMA cannot duplicate assistance provided by another Federal agency. In this case, HHS is providing funding for certain costs in response to the COVID-19 pandemic. Each Applicant will need to agree to the stipulation in the grant conditions of all FEMA awards that funding is not also being received from another funding source. FEMA is coordinating with HHS to share information about funding from each Agency to assist in the prevention of duplication of benefits.

References

For more information, visit the following websites:

1. [Public Assistance Program and Policy Guide](#)
2. [U.S. Department of Health and Human Services](#)

[Centers for Disease Control and Prevention](#)

[Coronavirus \(COVID-19\) \(CDC\)](#)

[Centers for Medicare & Medicaid Services](#)

Please let us know if you have any questions, please contact the NDEM Recovery Team at disaster-recovery@dps.state.nv.us.

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Thank you!

PUBLIC ASSISTANCE COVID-19 EQUIPMENT POLICIES

BULLETIN #11 – 4/2/20

1. Applicant (Force Account) Equipment and Purchased Equipment

FEMA provides PA funding for the use of Applicant-owned equipment (force account equipment), including permanently mounted generators, based on hourly rates. FEMA may provide PA funding based on mileage for vehicles, if the mileage is documented and is less costly than hourly rates.

There are instances when an Applicant does not have sufficient equipment to effectively respond to an incident. If the Applicant purchases equipment that it justifiably needs to respond effectively to the incident, FEMA provides PA funding both for the purchase price and either:

- The use of equipment based on equipment rates (without the ownership and depreciation components); or
- The actual fuel and maintenance costs.

FEMA only applies equipment rates to the time the Applicant is actually operating equipment. Although costs associated with mobilizing equipment to a project site are eligible, costs for standby time (time spent on hold or in reverse) are not eligible unless the equipment operator uses the equipment intermittently for more than half of the working hours for a given day. In this case the intermittent standby time is eligible.

FEMA provides PA funding for force account equipment usage based on FEMA, State, Territorial, Tribal, or local equipment rates in accordance specific criteria outlined in the Public Assistance Program and Policy Guide (PAPPG).

2. Rented/Leased Equipment

When the Applicant leases equipment, FEMA provides PA funding based on the terms of the lease. Leasing costs are eligible if:

- The Applicant performed an analysis of the cost of leasing versus purchasing the equipment; and
- The total leasing costs do not exceed the cost of purchasing and maintaining equipment during the life of the eligible project.

If the leasing costs exceed the cost of purchasing and maintaining the equipment, FEMA determines the amount of eligible costs based on an evaluation of the reasonableness of the costs claimed, including whether the Applicant acted with prudence under the circumstances at the time it leased the equipment.

If the Applicant has a lease-purchase agreement and obtains ownership during completion of eligible work, FEMA provides PA funding for the equipment use based on the hourly equipment rate.

If the Applicant has a lease-purchase agreement and completes the eligible work prior to obtaining ownership, FEMA provides PA funding based on the cost to lease the equipment.

3. Disposition of Purchased Equipment and Supplies

The following describes disposition requirements when purchased equipment or supplies (including materials) are no longer needed for federally funded projects.

In the context of disposition, equipment is any tangible personal property (including information technology systems) having a useful life of more than 1 year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the Applicant for financial statement purposes, or \$5,000. Tangibly personal property that does not fall under this definition is a supply. When the equipment or supplies purchased with PA funding are no longer needed for response to or recovery from the incident, the Applicant may use the items for other federally funded programs or projects, provided the Applicant informs FEMA.

4. Disposition of Purchased Equipment

In accordance with Federal regulations, State and Territorial government Applicants dispose of equipment in accordance with State or Territorial laws and procedures.

Tribal and local governments and PNPs must calculate the current fair market value of each individual item of equipment. The Applicant must provide the current fair market for any items that have a current fair market value of \$5,000 or more. FEMA reduces eligible funding by this amount.

If an individual item of equipment has a current fair market value less than \$5,000, FEMA does not reduce the eligible funding.

References:

- [FEMA Public Assistance Program and Policy Guide](#)

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Thank you!

PUBLIC ASSISTANCE COVID-19 PRIVATE NON-PROFIT ORGANIZATIONS BULLETIN #12 – 4/2/20

The following Fact Sheet was released by FEMA providing guidance on determining the eligibility of private non-profit (PNP) organization applicants.

All 50 states, the District of Columbia, five territories, and numerous tribes are working directly with FEMA under President Trump's March 13, 2020, nationwide emergency declaration for COVID-19. Under this emergency declaration, and subsequent major disaster declarations, certain private non-profit (PNP) organizations are eligible to apply for funding through FEMA's Public Assistance program. This fact sheet provides guidance for determining the eligibility of PNP applicants and work performed in accordance with the COVID-19 emergency and major disaster declarations.

PNP Applicant Eligibility

To be eligible for Public Assistance, a PNP applicant must show that it has:

- A ruling letter from the Internal Revenue Service granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954; or
- Documentation from the state substantiating that the non-revenue producing organization or entity is a nonprofit entity organized or doing business under state law.¹

Eligible PNPs must also own or operate an eligible facility.² For PNPs, an eligible facility is one that provides an eligible service, which includes education, utilities, emergency, medical, custodial care, and other essential social services.³

Private entities, including for profit hospitals or restaurants, are not eligible for assistance from FEMA under Public Assistance. However, state, local, tribal, and territorial government entities may contract with private entities to carry out eligible emergency protective measures. In these cases, FEMA will reimburse the eligible applicant for the cost of eligible work, and the applicant will then pay the private entity for the provision of services.

PNP Work Eligibility

In accordance with sections 403 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the "Stafford Act"), eligible emergency protective measures taken to respond to the COVID-19 emergency at the direction or guidance of public health officials may be eligible for reimbursement under category B of FEMA's Public Assistance program.⁴ Emergency work is that which is necessary to save lives or protect public health and safety. To be eligible, work must be the legal responsibility of an eligible applicant.⁵

Measures to protect life, public health, and safety are generally the responsibility of state, local, tribal, and

territorial governments. In some cases, a government entity may be legally responsible to provide services and enter into an agreement with a PNP to provide those services (e.g., sheltering or food distribution). In these cases, Public Assistance funding is provided to the legally responsible government entity, which then pays the PNP for the cost of providing those services under the agreement.⁶

In limited circumstances, essential components of a facility are urgently needed to save lives or protect health and safety, such as an emergency room of a PNP hospital. In these cases, PNPs that own or operate an eligible facility and perform eligible work, such as providing emergency, medical or custodial care services for which they are legally responsible in response to the COVID-19 incident, may be eligible for reimbursement of costs as a Public Assistance applicant.

For PNPs, operating costs (such as patient care and administrative activities) are generally not eligible even if the services are emergency services, unless the PNP performs an emergency service at the request of and certified by the legally responsible government entity. In such case, FEMA provides Public Assistance funding through that government entity as the eligible applicant.

More Information

Further information about PNP eligibility can be found in the “Public Assistance Program and Policy Guide,” FP 104- 009-2, dated April 2018.

For more information, visit the following websites:

1. [FEMA Public Assistance Program and Policy Guide](#)
2. [U.S. Department of Health and Human Services Centers for Disease Control and Prevention Centers for Medicare & Medicaid Services](#)

¹ 44 C.F.R. 206.221(f)

² 44 C.F.R. 206.222(b), 206.223(b)

³ Stafford Act, Section 102(11); 44 C.F.R. 206.221(e). For non-critical PNP facilities, services must be provided to the general public.

⁴ For more information on eligible emergency protective measures see *Fact Sheet: Coronavirus (COVID-19) Pandemic: Eligible Emergency Protective Measures* (March 19, 2020), and the *Public Assistance Program and Policy Guide*, FP 104-009-2, (April 2018). FEMA will not duplicate assistance provided by the U.S. Department of Health and Human Services (HHS), to include the Centers for Disease Control and Prevention (CDC), or other federal agencies.

⁵ 44 C.F.R. 206.223(a)(3)

⁶ *Public Assistance Program and Policy Guide*, FP 104-009-2, at pg. 60 (April 2018)

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Thank you!

PUBLIC ASSISTANCE COVID-19 LABOR POLICIES AND GUIDANCE

BULLETIN #13 – 4/6/20

1. Applicant (Force Account) Labor

An Applicant’s personnel is referred to as “force account”. FEMA reimburses force account labor based on actual hourly rates plus the cost of the employee’s fringe benefits.

2. Fringe Benefits

The fringe benefit cost is calculated based on a percentage of the hourly pay rate. Because certain items in a benefit package are not dependent on hours worked, the percentage for overtime is usually different than the percentage for straight-time.

Fringe benefits may include:

- Holiday leave
- Accrued vacation leave
- Sick leave
- Social security matching
- Medicare matching
- Unemployment insurance
- Workers compensation
- Retirement
- Health Insurance
- Life and disability insurance
- Administrative Leave

3. Eligibility Criteria

For Emergency Protective Measures (Category B) work, only overtime labor is eligible for budgeted employees. For unbudgeted employees both straight-time and overtime labor are eligible. Please use the following table for reference:

Budgeted Employees	Overtime	Straight-Time
Permanent employee	X	
Seasonal employee working during normal season of employment	X	

Unbudgeted Employees	Overtime	Straight-Time
Essential employee called back from administrative leave	X	X
Permanent employee funded from external source	X	X
Temporary employee hired to perform eligible work	X	X
Seasonal employee working outside normal season of employment	X	X

Reassigned Employees

Applicants may assign an employee to perform work that is not part of the employee’s normal job. FEMA provides Public Assistance funding based on the reassigned employee’s normal pay rate, not the pay level appropriate for the work, as the Applicant’s incurred cost is the employee’s normal pay rate.

Straight-time of a permanent employee funded from an external source (such as a grant from a Federal agency or statutorily dedicate fund) is eligible if the employee is reassigned to perform eligible Emergency Work that the external source does not fund. Confirmation that no duplication of funding exists will happen prior to approval.

Backfill Employees

Applicants may need to temporarily replace an employee who is responding to the incident. Overtime costs for the backfill employee are eligible even if the backfill employee is not performing eligible work as long as the employee that he/she is replacing is performing eligible Emergency Work.

Straight-time Public Assistance funding can be provided for the backfill employee if the employee is a:

- Contracted or temporary employee; or
- Permanent employee called in on a normally scheduled day off

If the employee is called in from scheduled leave, only overtime is eligible.

Supervisors

Second-level supervisors and above are usually exempt employees and are not directly involved in the performance of a specific project. They are not eligible for overtime, unless the Applicant:

- Demonstrates that the employee was directly involved with a specific project;
- Normally charges that individual’s time to a specific project regardless of Federal funding;
- and

- Incurs overtime costs for the employee in accordance with a labor policy that meets the criteria in the Public Assistance Program and Policy Guide (PAPPG).

Other

Extraordinary costs (such as call-back pay, night-time and weekend differential pay, and hazardous duty pay) for essential employees who are called back to duty during administrative leave to perform eligible Emergency Work are eligible if costs are paid in accordance with a labor policy that meets the criteria in the PAPPG.

Administrative leave or similar labor costs incurred for employees sent home or told not to report are not eligible.

Stand-by Time

FEMA provides funding for costs related to stand-by time incurred in preparation for and directly related to actions necessary to save lives and protect public health and safety. For it to be eligible stand-by time must be reasonable, necessary, and consistent with the Applicant’s practice in non-federally declared incidents.

FEMA will determine if stand-by time claimed is eligible based on whether:

- There is a contractual obligation to pay for stand-by time based on a labor agreement
- The stand-by time occurred when it was necessary to have resources available to save lives and protect health and safety

4. Eligible Emergency Work

Please refer to [Bulletin #1 – Disaster Declaration Information](#), as well as, [FEMA’s Eligible Emergency Protective Measures Fact Sheet for COVID-19](#) for additional information on eligible emergency work.

References:

- [FEMA Public Assistance Program and Policy Guide](#)

DIRECT CONTACTS:		
Suz Coyote scoyote@dps.state.nv.us 775-745-6806	Kelli Anderson kanderson@dps.state.nv.us 775-220-1618	DEM Office 775-687-0300

FOR QUESTIONS, PLEASE CONTACT:	
Disaster Recovery	disaster-recovery@dps.state.nv.us

PUBLIC ASSISTANCE COVID-19 PUBLIC ASSISTANCE PROCESS AND NEXT STEPS

BULLETIN #14 – 4/9/20

Step One: Create a FEMA Grants Portal Account

If you haven't done so already, please create an account through FEMA's Grants Portal website. Additional information on this process can be found on [Bulletin #8 – Grants Portal Applicant Quick Guide](#).

If you are a private non-profit (PNP), please submit a request with the following information to disaster-recovery@dps.state.nv.us:

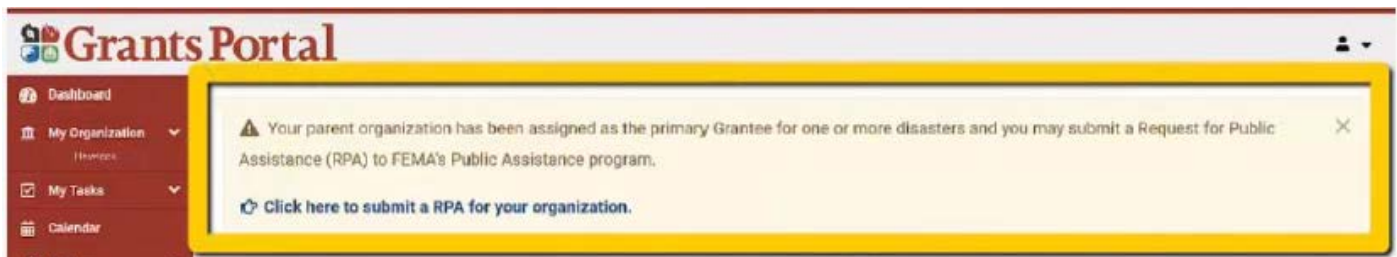
1. Organization Name
2. Organization Type
 - a. Nonprofit with 501c3 Status
 - b. Nonprofit without 501c3 Status
3. Contact First Name
4. Contact Last Name
5. Contact Email
6. Contact Phone

**PNPs should be prepared to go through an additional vetting process to ensure they are an eligible organization for Public Assistance Funding.*

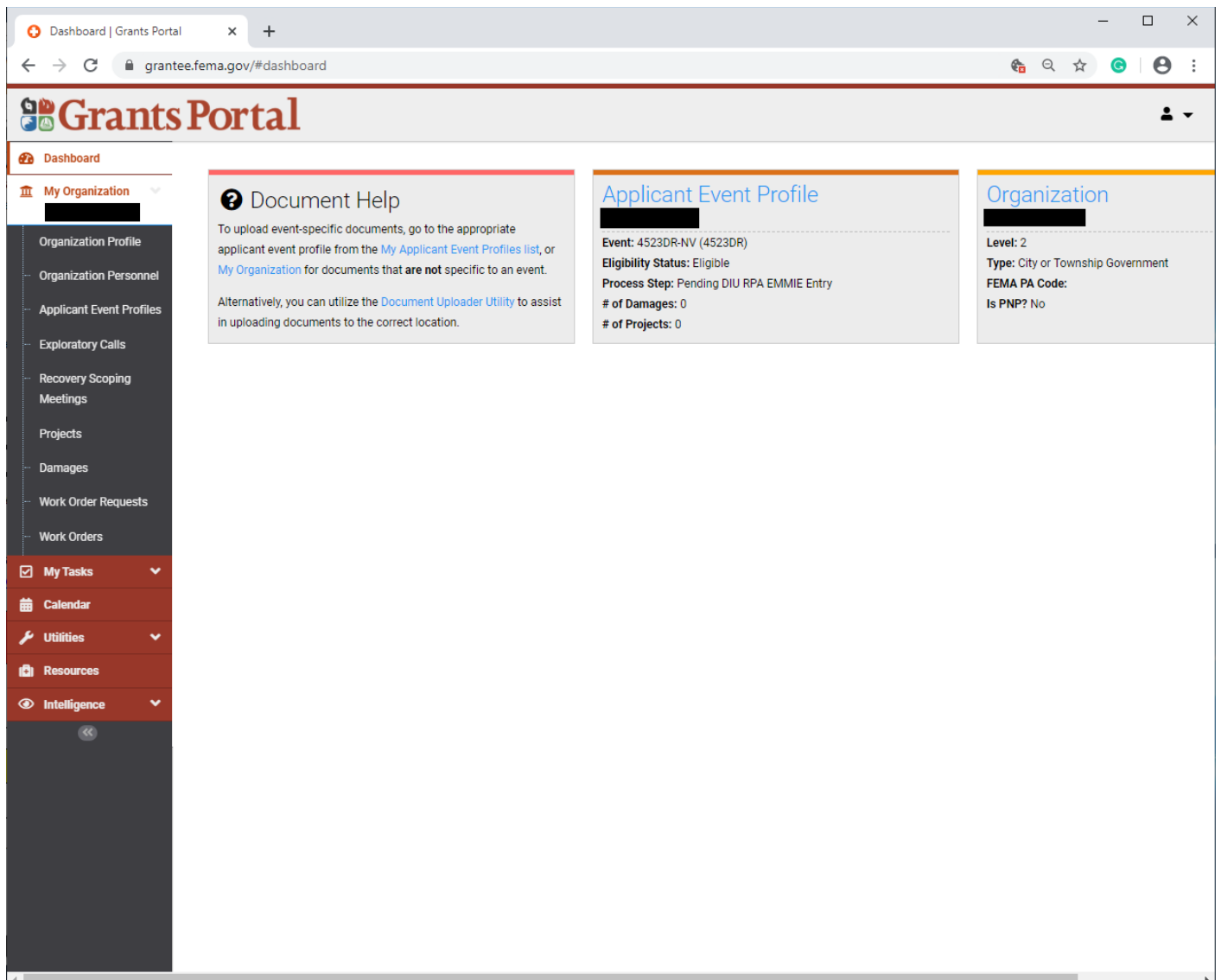
Step Two: Submit a Request for Public Assistance (RPA)

This may have been done directly through the system when a Grants Portal account was created. To verify, log into your Grants Portal account and go to your Dashboard.

If you have not submitted an RPA for DR-4523, at the top will be a yellow box at the top of your dashboard with a blue link that states, "Click here to submit a RPA for your organization." Click this link and follow the steps.



If you have submitted an RPA for DR-4523, from your Dashboard, click "My Organization". On this screen you should see the following and should have an "Applicant Event Profile" tile that shows which step your RPA is in:



Once your RPA is submitted it will be reviewed and approved by FEMA.

→ This is where we currently are. Most applicants are pending review and approval of their RPAs.

Following this approval, the next steps are as follows:

Step Three: Upload Information into Grants Portal

Once your RPA is reviewed and approved as eligible, you will be able to upload your information and documents into Grants Portal to support the development of your project worksheets. This information will be reviewed by FEMA and your projects worksheets will be developed.

Step Four: Complete an Application in DEM's ZoomGrants Portal

DEM will be utilizing a second portal for issuing subgrants and submission of Quarterly Financial Reports (QFRs) and Quarterly Progress Reports (QPRs). A special link to apply through this portal will be sent out once the FEMA Grants Portal process is complete. Additional training on this portal will be provided at that time.

Step Five: Submit QFRs/QPRs through ZoomGrants for Reimbursement

Once your subgrant is issued through ZoomGrants you will be able to submit QFRs/QPRs directly to DEM in order to be reimbursed.

More information and training on these last three steps will be provided as we move through the process. As always, please reach out to the DEM Recovery Team for any questions.

DIRECT CONTACTS:		
Suz Coyote <u>scoyote@dps.state.nv.us</u> 775-745-6806	Kelli Anderson <u>kanderson@dps.state.nv.us</u> 775-220-1618	DEM Office 775-687-0300

FOR QUESTIONS, PLEASE CONTACT:	
Disaster Recovery	disaster-recovery@dps.state.nv.us

PUBLIC ASSISTANCE COVID-19 FREQUENTLY ASKED QUESTIONS

BULLETIN #15 – 4/9/20

- 1. Do subrecipients submit one claim when the emergency is over or at some other interval? We have concerns that there will be other costs that arise that we did not anticipate after the original submission.**

We anticipate everyone having up to three project worksheets (PW) written. One for emergency costs, one for donated resources, and one for management costs. There will be multiple versions of these as the current incident period is open. The first version will reflect costs up to the point the PW is written, and subsequent versions will capture additional costs.

- 2. When does the period of reimbursement start?**

January 20, 2020.

- 3. Are items ordered before the emergency declaration that were not received until after the declaration eligible?**

If previously purchased items are used for the emergency, such as N-95 masks, that stock must be replaced in order to be eligible for reimbursement. If you keep a supply on hand for emergencies, it is reasonable and necessary to replace your stock of those supplies for the next emergency.

- 4. If the type of supplies used is disposable and used in the course of regular operations is there any type of documentation that will be needed to classify these purchases as eligible?**

Items used for regular operations are not eligible. Only supplies that are specifically for the response to the emergency are eligible and must be identifiable and coded to the disaster.

- 5. Are only overtime hours eligible or are additional hours eligible if an employee is scheduled to work less than 40 hours works additional hours that total 40 or less?**

Regular staff time is not eligible. Overtime clearly documented on timesheets specifically for the emergency is eligible. It can't just be coded to the emergency, the work that is being done must be outlined in their timesheet/ICS-214.

If you have a budgeted half-time employee that is working additional hours due to the emergency, this needs to be carefully documented on their timesheets. This will be eligible; however the documentation must clearly explain what they were working on that is different from their regular work.

- 6. Does everyone need to fill out an ICS-214 and do the ICS-214s need to have an original signature or can they be scanned with an electronic signature?**

ICS-214s and timesheets are the best way to track time. They should be signed, but if you have an

electronic signature process, we can accept that as well.

7. Should we use ICS-214s or the forms in the Response and Recovery Guide for Local Governments (RRGLG)?

The forms from the RRGLG are tracking tools. You should be using these tools and the ICS-214s.

8. How will the reimbursement process work? Will we need to apply through NDEM and are there instructions on this incident?

Please reference Bulletin #14 – Public Assistance Process and Next Steps that was recently released. If you need this bulletin sent to you, please send a request to disaster-recovery@dps.state.nv.us.

9. Should we be collecting all ICS-214s for the EOC – we are representing multiple areas? Each agency will be reimbursed for their staff, but should we collect the documentation anyway?

Please only collect for your staff as we need to ensure the documentation is not being submitted twice. It is important to be clear that EOC staff is being paid by their home agency.

10. We are working on obtaining quotes for portable disinfection equipment for use at county facilities to help control the immediate threat of infection at a cost of under \$5,000 per fogger. Is this eligible?

This is eligible. Please read the following bulletins/FEMA Fact Sheets for additional information on eligible costs and equipment policies:

- [Bulletin #1 – Disaster Declaration Information](#)
- [Bulletin #11 – Equipment Policies](#)
- [FEMA’s Eligible Emergency Protective Measures Fact Sheet for COVID-19](#)

Additionally, it is important to ensure that the facility doing the work is responsible for doing this work. For example, a Private Non-Profit (PNP) that decides they will be performing the work, but it is not something they are required to do, would not be eligible.

11. Is straight-time salary for employees that have been reassigned to the EOC reimbursable?

No. Please read the following bulletin for additional information on labor policies:

- [Bulletin #13 – Labor Policies and Guidance](#)

12. Do we need to request pre-approval for backfill employees?

No.

13. Is standby pay eligible?

Generally, no. However, for additional information on labor policies, please read the following bulletin:

- [Bulletin #13 – Labor Policies and Guidance](#)

14. Can electronic signature be used on timecards?

Yes.

15. Is comp-time eligible?

No as it is too difficult to track.

16. Are ventilator purchases eligible or only the costs associate with the ventilator use?

Durable medical equipment purchased by eligible applicants to perform eligible emergency protective measures may be eligible. The applicant must follow procurement policy and procedures. Please reference the following bulletins and FEMA Fact Sheets for additional information:

- [Bulletin #11 – Equipment Policies](#)
- [FEMA’s Eligible Emergency Protective Measures Fact Sheet for COVID-19](#)

17. Is the purchase of a cold body storage unit eligible if we are unable to rent one?

Purchasing body storage cooler(s) is potentially an eligible cost. However, if the refrigerated shipping container(s) are not ultimately used for the purpose for which they are being purchased, then the purchase of equipment will not be eligible. Additionally, the Fair Market Value (FMV) of the containers will need to be deducted from eligible funding per the standard disposition of purchased equipment requirements that apply per the Public Assistance Program and Policy Guide (PAPPG) and 2CFR.

You may also buy the equipment outright and bill out an hourly equipment overhead cost per FEMA Cost Codes. However, precise documentation is required.

18. Are all state agencies eligible to apply for funds? Any non-profits? Is there an outline or restrictions for what the funds may be used for?

Please read the bulletins and Fact Sheets that have been released by NDEM and FEMA. These resources can be found [here](#) under Bulletins and FEMA Fact Sheets.

19. What are examples of EOC costs? Could this include management staff assigned ICS duties working from home?

Please reference the following bulletin and FEMA Fact Sheet for examples of EOC costs. Yes, this

could include this staff if they are completing an ICS-214 and documenting their time.

- [Bulletin #1 – Disaster Declaration Information](#)
- [FEMA’s Eligible Emergency Protective Measures Fact Sheet for COVID-19](#)

20. Are purchases of hand sanitizer and/or wipes eligible?

Yes, if purchased by an eligible applicant.

21. Are the costs associated with school resource officers (SRCs) or existing security guard salaries that are continuing to be paid eligible?

SROs are not. However, for security guards that are at the schools specifically for COVID-19 emergency protective measures may be eligible.

22. Are private for-profit hospitals eligible for FEMA Public Assistance?

Private for-profit entities, including for profit hospitals, are not eligible for assistance from FEMA under PA. However, SLTT government entities may contract with for profit hospitals to carry out eligible emergency protective measures. FEMA will reimburse the eligible Applicant for the cost of eligible work, and the Applicant will then pay the private entity for the provision of services.

Additional Resources:

- [FEMA Public Assistance Program and Policy Guide](#)
- [NDEM Public Assistance Bulletins and FEMA Fact Sheets](#)

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PUBLIC ASSISTANCE COVID-19 CONTRACT PROVISIONS

BULLETIN #16 – 4/9/20

Please find attached FEMA’s Contract Provisions Template. This document outlines the federally required contract provisions that must be contained in all contracts in order to be reimbursable by the Public Assistance Program.

DIRECT CONTACTS:

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FOR QUESTIONS, PLEASE CONTACT:

Disaster Recovery	<u>disaster-recovery@dps.state.nv.us</u>
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FEMA

CONTRACT PROVISIONS TEMPLATE

FEMA Office of Chief Counsel

Procurement Disaster Assistance Team



INTRODUCTION

If a non-Federal entity (state or non-state) wants to use federal funds to pay or reimburse their expenses for equipment or services under a contract, that contract **must** contain the applicable clauses described in [Appendix II to the Uniform Rules](#) (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards) under 2 C.F.R. § 200.326. In addition, there are certain contract clauses which are recommended by FEMA.

This document outlines the federally required contract provisions in addition to FEMA-recommended provisions.

- For some of the required clauses, sample language or references to find sample language are provided.
- Sample language for certain required clauses (remedies, termination for cause and convenience, changes) is not provided since these must be drafted in accordance with the non-Federal entity's applicable local laws and procedures.
- For the clauses which require that exact language be included, the required language is provided. Those clauses are specifically identified below.

Please note that the non-Federal entity alone is responsible for ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II.





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Required Contract Provisions: Quick Reference Guide

KEY	
Required/Recommended Provision	<input type="checkbox"/>
Required/Recommended Provision and Required Exact Language	<input type="checkbox"/>
Not Required for PA Awards (Grants)	<input type="checkbox"/>

	Required Provision	Contract Criteria	Sample Language?
1.	Legal/contractual/administrative remedies for breach of contract	> Simplified Acquisition Threshold (\$250k)	No. It is based on applicant's procedures.
2.	Termination for cause or convenience	> \$10k	No. It is based on applicant's procedures.
3.	Equal Employment Opportunity	Construction work	Yes. 41 CFR Part 60-1.4(b)
4.	Davis Bacon Act	Construction work	Not applicable to PA grants
5.	Copeland Anti-Kickback Act	Construction work > \$2k	Not applicable to PA grants
6.	Contract Work Hours and Safety Standards Act	> \$100k + mechanics or laborers	Yes. 29 CFR 5.5(b)
7.	Rights to inventions made under a contract or agreement	Funding agreement	Not applicable to PA grants
8.	Clean Air Act and Federal Water Pollution Control Act	>\$150k	Yes
9.	Debarment and Suspension	All	Yes
10.	Byrd Anti-Lobbying Amendment	All (>\$100k: Certification)	Yes. Clause and certification
11.	Procurement of Recovered Materials	Applicant is a state or political subdivision of a state. Work involves the use of materials.	Yes





Recommended Contract Provisions: Quick Reference Guide

	Recommended Provision	Contract Criteria	Sample Language?
1.	Access to Records	All	Yes
2.	Contract Changes or Modifications	All	No. It depends on nature of contract and end-item procured.
3.	DHS Seal, Logo, and Flags	All	Yes
4.	Compliance with Federal Law, Regulations and Executive Orders	All	Yes
5.	No Obligation by Federal Government	All	Yes
6.	Program Fraud and False or Fraudulent Statements or Related Acts	All	Yes





REQUIRED CONTRACT PROVISIONS

1. REMEDIES

- a. Standard. Contracts for more than the simplified acquisition threshold, currently set at \$250,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II(A).
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

2. TERMINATION FOR CAUSE AND CONVENIENCE

- a. Standard. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity, including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II(B).
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

3. EQUAL EMPLOYMENT OPPORTUNITY

If applicable, exact language below in subsection 3.d is required.

- a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II(C).





b. Key Definitions.

- i. Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
- ii. Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

c. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

d. Required Language. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause.

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for





employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures





authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon





contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

4. DAVIS-BACON ACT

- a. **Standard.** All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction). See 2 C.F.R. Part 200, Appendix II(D). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- b. **Applicability.** The Davis-Bacon Act only applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It DOES NOT apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**
- c. **Requirements.** If applicable, the non-federal entity must do the following:
 - i. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
 - ii. Additionally, pursuant 2 C.F.R. Part 200, Appendix II(D), contracts subject to the Davis-Bacon Act, must also include a provision for compliance with





the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.

- iii. Include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”).

Suggested Language. The following provides a sample contract clause:

Compliance with the Davis-Bacon Act.

- a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- c. Additionally, contractors are required to pay wages not less than once a week.

5. COPELAND ANTI-KICKBACK ACT

- a. Standard. Recipient and subrecipient contracts must include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”).





- b. **Applicability.** This requirement applies to all contracts for construction or repair work above \$2,000 in situations where the Davis-Bacon Act also applies. **It DOES NOT apply to the FEMA Public Assistance Program.**

- c. **Requirements.** If applicable, the non-federal entity must include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). Each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA. Additionally, in accordance with the regulation, each contractor and subcontractor must furnish each week a statement with respect to the wages paid each of its employees engaged in work covered by the Copeland Anti-Kickback Act and the Davis Bacon Act during the preceding weekly payroll period. The report shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work.

Sample Language. The following provides a sample contract clause:

Compliance with the Copeland “Anti-Kickback” Act.

- a. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

- b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

- c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment





as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

6. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- a. **Standard.** Where applicable (see 40 U.S.C. §§ 3701-3708), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II(E). Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.
- b. **Applicability.** This requirement applies to all FEMA contracts awarded by the non-federal entity in excess of \$100,000 under grant and cooperative agreement programs that involve the employment of mechanics or laborers. It is applicable to construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- c. **Suggested Language.** The regulation at 29 C.F.R. § 5.5(b) provides contract clause language concerning compliance with the Contract Work Hours and Safety Standards Act. FEMA suggests including the following contract clause:

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.





(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The **(write in the name of the Federal agency or the loan or grant recipient)** shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

7. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

- a. Standard.** If the FEMA award meets the definition of “funding agreement” under 37C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under





Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II(F).

- b. **Applicability.** This requirement applies to “*funding agreements*,” but it **DOES NOT apply to the Public Assistance**, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- c. **Funding Agreements Definition.** The regulation at 37 C.F.R. § 401.2(a) defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

8. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

- a. **Standard.** If applicable, contracts must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II(G).
- b. **Applicability.** This requirement applies to contracts awarded by a non-federal entity of amounts in excess of \$150,000 under a federal grant.
- c. **Suggested Language.** The following provides a sample contract clause.

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as





amended, 42 U.S.C. § 7401 et seq.

2. The contractor agrees to report each violation to the (**name of applicant entering into the contract**) and understands and agrees that the (**name of the applicant entering into the contract**) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the (**name of the applicant entering into the contract**) and understands and agrees that the (**name of the applicant entering into the contract**) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

9. DEBARMENT AND SUSPENSION

- a. Standard. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).
- b. Applicability. This requirement applies to all FEMA grant and cooperative





agreement programs.

c. Requirements.

- i. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II(H); and 2 C.F.R. § 200.213. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530.
- ii. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipients.
- iii. Specifically, a covered transaction includes the following contracts for goods or services:
 1. The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
 2. The contract requires the approval of FEMA, regardless of amount.
 3. The contract is for federally-required audit services.
 4. A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.

d. Suggested Language. The following provides a debarment and suspension





clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified.

Suspension and Debarment

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by (**insert name of recipient/subrecipient/applicant**). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (**insert name of recipient/subrecipient/applicant**), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. BYRD ANTI-LOBBYING AMENDMENT

- a. **Standard.** Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. FEMA's regulation at 44 C.F.R. Part 18 implements the requirements of 31 U.S.C. § 1352 and provides, in Appendix A to Part 18, a copy of the certification that is required to be completed by each entity as described in 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any





Federal award. Such disclosures are forwarded from tier to tier up to the Federal awarding agency.

- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs. Contractors that apply or bid for a contract of \$100,000 or more under a federal grant must file the required certification. See 2 C.F.R. Part 200, Appendix II(I); 31 U.S.C. § 1352; and 44 C.F.R. Part 18.
- c. Suggested Language.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

- d. Required Certification. If applicable, contractors must sign and submit to the non-federal entity the following certification.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any





FEMA

Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date





11. PROCUREMENT OF RECOVERED MATERIALS

- a. Standard. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. See 2 C.F.R. Part 200, Appendix II(J); and 2 C.F.R. § 200.322.
- b. Applicability. This requirement applies to all contracts awarded by a non-federal entity under FEMA grant and cooperative agreement programs.
- c. Requirements. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- d. Suggested Language.
 - i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 1. Competitively within a timeframe providing for compliance with the contract performance schedule;
 2. Meeting contract performance requirements; or
 3. At a reasonable price.
 - ii. Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
 - iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”





RECOMMENDED CONTRACT PROVISIONS

The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. Although FEMA does not currently require additional provisions, **FEMA recommends** the following:

1. ACCESS TO RECORDS

- a. Standard. All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. Recipients must give DHS/FEMA access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations *and* other applicable laws or program guidance. See DHS Standard Terms and Conditions: Version 8.1 (2018). Additionally, Section 1225 of the Disaster Recovery Reform Act of 2018 prohibits FEMA from providing reimbursement to any state, local, tribal, or territorial government, or private non-profit for activities made pursuant to a contract that purports to prohibit audits or internal reviews by the FEMA administrator or Comptroller General.

- b. Suggested Language.

Access to Records. The following access to records requirements apply to this contract:

(1) The Contractor agrees to provide (**insert name of state agency or local or Indian tribal government**), (**insert name of recipient**), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the FEMA Administrator or





his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the (**write in name of the non-federal entity**) and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

2. CHANGES

- a. Standard. To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.
- b. Applicability. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

3. DHS SEAL, LOGO, AND FLAGS

- a. Standard. Recipients must obtain permission prior to using the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials. See DHS Standard Terms and Conditions: Version 8.1 (2018).
- b. Applicability. FEMA recommends that all non-Federal entities place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
- c. Suggested Language.

“The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.”





4. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

- a. Standard. The recipient and its contractors are required to comply with all Federal laws, regulations, and executive orders.
- b. Applicability. FEMA recommends that all non-Federal entities place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable Federal law, regulations, executive orders, and FEMA policies, procedures, and directives.
- c. Suggested Language.

“This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

5. NO OBLIGATION BY FEDERAL GOVERNMENT

- a. Standard. FEMA is not a party to any transaction between the recipient and its contractor. FEMA is not subject to any obligations or liable to any party for any matter relating to the contract.
- b. Applicability. FEMA recommends that the non-Federal entity include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- c. Suggested Language.

“The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

6. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- a. Standard. Recipients must comply with the requirements of The False Claims Act (31 U.S.C. §§ 3729-3733) which prohibits the submission of false or





fraudulent claims for payment to the federal government. See DHS Standard Terms and Conditions: Version 8.1 (2018); and 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

- b. Applicability. FEMA recommends that the non-Federal entity include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

- c. Suggested Language.

“The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.”



PUBLIC ASSISTANCE COVID-19 APPLICANT BRIEF

BULLETIN #17 – 4/9/20

The Nevada Division of Emergency Management has released a recorded Applicant Brief [here](#).

This Applicant Brief is an important part of the FEMA Public Assistance process and is meant for those that have submitted or plan to submit a Request for Public Assistance (RPA). The brief provides additional in-depth information on the Public Assistance process, including:

- DR-4523 and Public Assistance Overview
- Application Procedures and Eligible Applicants
- Project Funding
- Administrative Requirements
- Procurement Requirements
- General Eligibility Criteria
- Documentation Requirements
- Recordkeeping

This Applicant Brief, DEM Bulletins, FEMA Fact Sheets, and additional recovery resources can be found on the DEM Website at: <https://dem.nv.gov/COVID-19/home/>

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PUBLIC ASSISTANCE COVID-19 LINKS TO HELPFUL FEMA RESOURCES

BULLETIN #18 – 4/10/20

Below are links to FEMA resources that may be helpful through the Public Assistance process.

For information about FEMA's Public Assistance Program:

Public Assistance Program and Policy Guide (PAPPG) V3.1 2018 – <https://www.fema.gov/public-assistance-policy-and-guidance>

- Relevant topics include:

- Applicant eligibility:
 - See Chapter 2, Section II of the PAPPG
- Facility eligibility:
 - See Chapter 2, Section III of the PAPPG
- Cost eligibility:
 - See Chapter 2, Section V of the PAPPG
- Donated labor and equipment:
 - See page 35 of the PAPPG
 - See also Public Assistance Donated Resources Policy (June 25, 2018)
<https://www.fema.gov/media-library/assets/documents/136089>
- Private Non-Profit Organizations:
 - See pages 10 – 14 of the PAPPG
 - See also Coronavirus (COVID-19) Pandemic: Private Nonprofit Organizations fact sheet -
<https://www.fema.gov/news-release/2020/04/02/coronavirus-covid19-pandemic-private-nonprofit-organizations>

For information about Eligible Emergency Protective Measures during COVID-19:

<https://www.fema.gov/news-release/2020/03/19/coronavirus-covid-19-pandemic-eligible-emergency-protective-measures>

For information about reimbursement of Non-Congregate Sheltering costs:

<https://www.fema.gov/news-release/2020/03/31/coronavirus-covid-19-pandemic-non-congregate-sheltering>

For information about reimbursement of Emergency Medical Care costs:

<https://www.fema.gov/news-release/2020/03/31/coronavirus-covid-19-pandemic-emergency-medical-care>

For questions about Reasonable Costs:

Public Assistance Reasonable Cost Evaluation Job Aid (October 13, 2018) - <https://www.fema.gov/media-library/assets/documents/90743>

For information about Management Costs:

Public Assistance Management Costs Interim Policy (FP 104-11-2) (November 14, 2018) - <https://www.fema.gov/media-library/assets/documents/174133>

Public Assistance Fact Sheet - Management Costs (February 11, 2019) - <https://www.fema.gov/media-library/assets/documents/174133>

Public Assistance Management Costs SOP (February 11, 2019) - <https://www.fema.gov/media-library/assets/documents/174133>

For information about FEMA Assistance to Tribal Governments:

Coronavirus (COVID-19): FEMA Assistance for Tribal Governments Fact Sheet - <https://www.fema.gov/news-release/2020/03/26/coronavirus-covid-19-fema-assistance-tribal-governments>

Tribal Declarations Pilot Guidance - <https://www.fema.gov/tribal-declarations-pilot-guidance>

Tribal Declaration Process FAQ - <https://www.fema.gov/frequently-asked-questions-current-process-tribal-governments-request-presidential-declaration>

For information about applying for FEMA assistance using Grants Portal:

<https://www.fema.gov/news-release/2020/03/23/coronavirus-covid-19-pandemic-public-assistance-simplified-application>

For information regarding National Guard Title 32 Status:

<https://www.fema.gov/national-guard-title-32-status>

For general FEMA COVID-19 Updates:

<https://www.fema.gov/coronavirus>

Additional DEM Bulletins, FEMA Fact Sheets, and additional recovery resources can be found on the DEM Website at: <https://dem.nv.gov/COVID-19/home/>

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PUBLIC ASSISTANCE COVID-19 INELIGIBLE COSTS

BULLETIN #19 – 4/14/20

Please find below costs that are ineligible through the FEMA Public Assistance (PA) Program:

The Stafford Act authorizes FEMA to provide PA funding for specific work performed as a result of the incident. It does not authorize FEMA to provide PA funding for all losses or costs resulting from the incident. The following costs are not eligible because the Stafford Act does not authorize FEMA to provide PA funding for these items.

1. Loss of Revenue

Example of when a loss of revenue may occur as a result include:

- Hospitals release non-critical patients to make room for survivors
- Hospitals sustain damage that reduces the pre-existing capacity
- A utility system is shut down as a result of the incident
- Events are canceled as a result of an entity using a venue for incident-related activities, such as sheltering.

2. Loss of Useful Service Life

An example of this would be if a road has been inundated by floodwaters for an extended period of time, FEMA cannot provide PA funding for the value of the projected loss of useful life of the road due to the long-term effects the inundation might have on the road.

3. Tax Assessments

State, Territorial, Tribal, and local governments may conduct tax assessments to re-assess real property values after an incident. Costs related to conducting these assessments are not eligible because the assessments are neither essential to addressing an immediate threat to life.

4. Increased Operating Costs

Increased costs of operating a facility or providing a service are generally not eligible, even when directly related to the incident. However, short-term increased costs that are directly related to accomplishing specific emergency health and safety tasks as part of emergency protective measures may be eligible.

5. Certain Private Nonprofits (PNP)

To be eligible for PA funding, PNPs must meet specific criteria. PNPs that do not meet the following criteria are ineligible.

A PNP applicant must show that it has:

- A ruling letter for the Internal Revenue Service (IRS) granting tax exemption under sections 501(c), (d), or € of the IRS Code of 1954; or
- Documentation from the state substantiating that the non-revenue producing organization or entity is a nonprofit entity organized or doing business under state law.

Additionally, eligible PNPs must also own or operate an eligible facility that provides an eligible service. This includes education, utilities, emergency medical, custodial care, and other essential social services.

6. Unauthorized Non-Congregate Sheltering

For non-congregate sheltering to be eligible, it must meet specific criteria as outlined by FEMA. Additional information regarding non-congregate sheltering can be found in [Bulletin #4 – Non-Congregate Sheltering Delegation of Authority](#) and [Bulletin #10 – Non-Congregate Sheltering FAQ](#).

7. Assistance Covered by Another Source

FEMA cannot provide assistance under PA for anything that is covered by another funding source. This includes:

- Funding provided by HHS, including the Centers for Disease Control and Prevention (CDC).
- Provide PA funding for emergency medical costs if they are covered by another source, including private insurance, Medicare, Medicaid, or a pre-existing private payment agreement.

8. Certain Emergency Medical Care and Facilities

The following are not eligible under PA:

- Private for-profit entities, including for-profit hospitals, are not eligible for assistance under PA.
- Long-term medical treatment to include:
 - o Medical care costs incurred once a COVID-19 patient is admitted to a medical facility on an inpatient basis.
 - o Costs associated with follow-on treatment of COVID-19 patients beyond the duration of the Public Health Emergency.
 - o Administrative costs associated with the treatment of COVID-19 patients.

9. Noncompliant Procurement

All procurement must follow local, state, and federal procurement requirements. Additional information on these requirements can be found on [Bulletin #5 – Emergency Protective Measures Procurement](#), [FEMA Fact Sheet – Procurement Under Grants: Under Exigent or Emergency Circumstances](#), as well as on the DEM COVID-19 website linked below, under “Recovery Procurement.”

Additional information regarding ineligible PA funding costs is available in the [Public Assistance Program and Policy Guide](#), pages 41-42.

For a list of eligible costs under this program for this incident, please review FEMA's [COVID-19 Eligible Emergency Protective Measures Fact Sheet](#).

Additional DEM Bulletins, FEMA Fact Sheets, and additional recovery resources can be found on the DEM Website at: <https://dem.nv.gov/COVID-19/home/>

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PUBLIC ASSISTANCE COVID-19 DONATED RESOURCES

BULLETIN #20 – 4/14/20

Please read the following information regarding Donated Resources. While funding is not provided for these items, the value can be used to offset the non-Federal share required with the Public Assistance (PA) Program.

Individuals and organizations often donate resources (equipment, supplies, materials, or labor) to assist with response activities. FEMA does not provide PA funding for donated resources; however, the Applicant may use the value of donated resources to offset the non-Federal share of its eligible Emergency Work projects and Direct Federal Assistance (DFA).

The Applicant may apply the offset if all of the following conditions are met:

- The donated resource is from a third party (a private entity or individual that is not a paid employee of the Applicant or Federal, State, Territorial, or Tribal government);
- The Applicant uses the resource in the performance of eligible Emergency Work; and
- The Applicant or volunteer organization tracks the resources and work performed, including description, specific locations, and hours.

FEMA considers unpaid individuals who volunteer their labor to an Applicant to be the third party even if they are officially members or employees of the Applicant organization (e.g., volunteer firefighters at a PNP volunteer fire department).

Resources donated to the Applicant by an organization that would normally provide the same resources under its mission are eligible as an offset provided the organization is not federally funded. Additionally, if a mutual aid agreement provides for assistance at no cost to the Applicant, the Applicant may use the value of that assistance to offset the non-Federal cost share of its Emergency Work.

Resources donated by a Federal agency, funded through a Federal award, or from another federally funded source are not eligible as an offset to the non-Federal share. Additionally, when an Applicant uses donated resources for ineligible Emergency Work, or any Permanent Work (eligible or ineligible), the value of those resources is not eligible as an offset to the non-Federal share.

All projects approved under PA are subject to cost-sharing; therefore, FEMA applies the Federal cost-share to the total value of donated resources. FEMA does not apply the offset toward other State, Territorial, or Tribal government obligations, toward Permanent Work, or toward another Applicant's projects.

Offset Amounts

- Volunteer Labor: The offset for volunteer labor is based on the same straight-time hourly labor rate, and fringe benefits, as a similarly qualified person in the Applicant's organization who normally performs similar work. FEMA does not offset volunteer labor based on overtime or premium rates.

If the Applicant does not have employees performing similar work, FEMA credits the non-Federal share based on a rate consistent with those ordinarily performing the work in the same labor market.

- **Donated Equipment:** The offset for donated equipment is based on equipment rates.
- **Donated Supplies or Materials:** The offset for donated supplies or materials is based on current commercial rates, which FEMA validates based on invoices from previous purchases or information available from vendors in the area.
- **Logistical Support:** Reasonable logistical support for volunteers doing eligible work, such as donations warehousing and management related to eligible Emergency Work, may be eligible either for funding (if the Applicant provides the logistical support) or as a donations credit (if a third party provides the logistical support), subject to approval by FEMA.

Donated Resources projects will be prepared separately from the Emergency Work projects for the Applicant's incurred costs.

These costs should be tracked in the same manner as the eligible Emergency Worked costs. For more information on record keeping, please review [Bulletin #1 – Disaster Declaration Information](#) and [Bulletin #17 – Applicant Brief](#).

Additional DEM Bulletins, FEMA Fact Sheets, and additional recovery resources can be found on the DEM Website at <https://dem.nv.gov/COVID-19/home/>

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PUBLIC ASSISTANCE COVID-19 WEEKLY RECOVERY CALLS BULLETIN #21 – 4/16/20

The Division of Emergency Management will begin hosting weekly recovery calls.

The first call will take place on Friday, April 17th at 9am.

Teleconference Line: 877-402-9753

Access Code: 5109100

All subsequent calls will take place every Wednesday beginning April 22nd at 11am.

Teleconference Line: 877-402-9753

Access Code: 5109100

Additional DEM Bulletins, FEMA Fact Sheets, and additional recovery resources can be found on the DEM Website at <https://dem.nv.gov/COVID-19/home/>

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PUBLIC ASSISTANCE COVID-19 ELIGIBLE EMERGENCY PROTECTIVE MEASURES

BULLETIN #22 – 4/17/20

The following Fact Sheet was released by FEMA outlining the eligible emergency protective measures under the Public Assistance program for COVID-19 disaster declarations.

Consistent with the President’s national emergency declaration for the coronavirus (COVID-19) pandemic on March 13, 2020, FEMA urges officials to, without delay, take appropriate actions that are necessary to protect public health and safety pursuant to public health guidance and conditions and capabilities in their jurisdictions. FEMA provides the following guidance on the types of emergency protective measures that may be eligible under FEMA’s Public Assistance Program in accordance with the COVID-19 Emergency Declaration in order to ensure that resource constraints do not inhibit efforts to respond to this unprecedented disaster.

FEMA Public Assistance Program

In accordance with section 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the “Stafford Act”), eligible emergency protective measures taken to respond to the COVID-19 emergency at the direction or guidance of public health officials may be reimbursed under Category B of FEMA’s Public Assistance program. *FEMA will not duplicate assistance provided by the [U.S. Department of Health and Human Services](#) (HHS), to include the [Centers for Disease Control and Prevention](#) (CDC), or other federal agencies.*

State, territorial, tribal, and local government entities and certain private non-profit organizations are eligible to apply for [Public Assistance](#). FEMA assistance will be provided at a 75 percent federal cost share. This assistance will require execution of a FEMA-State/Tribal/Territory Agreement, as appropriate, and execution of an applicable emergency plan. Local governments and other eligible PA applicants will apply through their respective state, tribal or territorial jurisdictions.

Eligible Assistance

Under the COVID-19 Emergency Declaration described above, FEMA may provide assistance for emergency protective measures including, but not limited to, the following, if not funded by the HHS/CDC or other federal agency. *While some activities listed may be eligible for funding through HHS/CDC, final reimbursement determinations will be coordinated by HHS and FEMA. FEMA will not duplicate any assistance provided by HHS/CDC:*

- 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 (for treatment when existing facilities are reasonably forecasted to become overloaded in the near term and cannot accommodate the patient load or to quarantine potentially infected persons)
 - Use of specialized medical equipment
 - Medical waste disposal
 - Emergency medical transport
- Medical sheltering (e.g. when existing facilities are reasonably forecasted to become overloaded in the near future and cannot accommodate needs)
 - All sheltering must be conducted in accordance with standards and/or guidance approved by HHS/CDC and must be implemented in a manner that incorporates social distancing measures
 - Non-congregate medical sheltering is subject to prior approval by FEMA and is limited to that which is reasonable and necessary to address the public health needs of the event, is pursuant to the direction of appropriate public health officials and does not extend beyond the duration of the Public Health Emergency
- Household pet sheltering and containment actions related to household pets in accordance with CDC guidelines
- 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
- Security and law enforcement
- Communications of general health and safety information to the public
- Search 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

More Information

Further information about eligible emergency protective measures can be found in the [Public Assistance Program and Policy Guide](#), FP 104-009-2 (April 2018).

For more information, visit the following federal government websites:

- [Coronavirus \(COVID-19\) \(CDC\)](#)
- [Centers for Medicare & Medicaid Services](#)

Additional DEM Bulletins, FEMA Fact Sheets, and additional recovery resources can be found on the DEM Website at <https://dem.nv.gov/COVID-19/home/>

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