Chapter 6: Cost Eligibility

This chapter provides information relating to PA cost eligibility. Not all costs arising from the incident are eligible for reimbursement through the PA Program. To be eligible, costs must meet the criteria described in this chapter. Additionally, applicants must retain cost, financial, procurement information, real property and equipment records, programmatic records, supporting documents, and all other records that are considered pertinent to the grant, for a period of three years from the date the final expenditure of funds is documented. In the case of litigation, an audit, or any other claim that would cause action is started before the 3-year period expires, the records must be retained until a resolution is reached and final action taken.

I. Eligibility Requirements

Costs are the final component evaluated for eligibility, as shown in Figure 8. Cost Eligibility, this criteria applies to all costs claimed. Not all costs incurred as a result of the incident are eligible. To be eligible, costs must be:

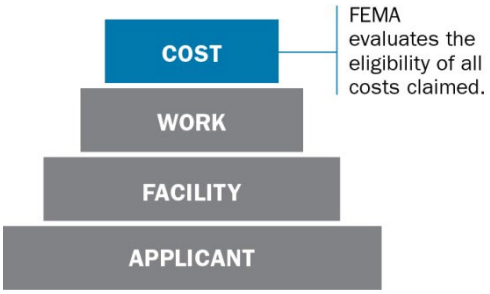


Figure 8. Cost Eligibility

- Directly tied to the performance of eligible work;
- Adequately documented, substantiated, or certified;[135]
- Reduced by all applicable credits, such as insurance proceeds and salvage values;[136]
- Authorized and not prohibited under federal or state, local, Tribal Nation, and territorial (SLTT) government laws or regulations;
- Consistent with the applicant's internal policies, regulations, and procedures that apply uniformly to both federal awards and other activities of the applicant; and,
- Necessary and reasonable to accomplish the work properly and efficiently.[137]

II. Reasonable Costs

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time an applicant makes the decision to incur the cost.[138]

For projects completed with contracted resources, FEMA conducts a reasonable cost analysis as described below if applicants submit cost claims based on non-competitive bids or contracts, time-and-materials contracts, or cost-plus-percentage-of-cost or percentage-of-construction contracts. For large projects, FEMA also conducts a reasonable cost analysis when the contract selection was noncompliant with the applicable procurement requirements, even though there may have been price competition. For projects completed

[135] 2 Code of Federal Regulations (C.F.R.) § 200.403(g).
[136] Stafford Act § 312; 42 United States Code (U.S.C.) § 5155; 2 C.F.R. § 200.406.
[137] 2 C.F.R. § 200.403.
[138] 2 C.F.R. § 200.404.

with an applicant's own resources (force account), FEMA only conducts a reasonable cost analysis for large projects.

A. Reasonable Cost Analysis

FEMA performs a preliminary review of an applicant's information and documentation to assess the complexity of the project and expertise required to complete a reasonable cost analysis. If specialized expertise is required, a subject matter expert with the appropriate specialized skills, knowledge, experience, or capability in the appropriate field, such as engineering, architecture, or cost estimating conducts the analysis.

FEMA determines reasonableness by evaluating whether:

- The cost is of a type generally recognized as ordinary and necessary for the type of facility or work.[139]
  - FEMA evaluates the skill level and level of effort necessary to complete the required activity. If the type of employee or skill level is not appropriate for the specific task, FEMA limits PA funding to a rate based on the appropriate employee type or skill level.
  - For complex projects that require staff with a higher level of technical proficiency and experience, FEMA determines PA funding appropriately. If the level of effort exceeds that necessary to complete a specific task, FEMA limits PA funding based on an appropriate level of effort.
- The cost is reasonable and necessary for the type of work being performed. FEMA determines whether the number of hours claimed are reasonable and necessary by evaluating:
  - The severity of the incident;
  - Whether the work was performed at a time when it was necessary to work extraordinary hours based on the circumstances of the incident;
  - The function of the employee for which the hours are claimed; and,
  - The number of consecutive hours the employee worked.
- The applicant participated in sound business practices and arm's length bargaining, ensuring parties to a transaction are independent of each other, without familial ties or shared interests and on equal footing without one party having control over the other.[140]
- The individuals concerned acted with prudence under the circumstances considering its responsibility to the applicant, its employees, its students or membership, the public, and the federal government.[141] If exigent or emergency circumstances existed, FEMA evaluates the period costs were incurred relative to the reasonable duration of the special circumstances.
- The applicant deviated from its established practices and policies.[142]
  - FEMA generally considers the applicant's own labor, equipment, and supply costs reasonable provided the costs are consistent with the entity's policies including, but not limited to, pay rates, labor policies, and cost schedules utilized during its normal operations.
- The applicant complied with procurement requirements (see Procurement and Contracting Requirements in this chapter). FEMA considers contract costs reasonable when the applicant adheres to

[139] 2 C.F.R. § 200.404(a).
[140] 2 C.F.R. § 200.404(b).
[141] 2 C.F.R. § 200.404(d).
[142] 2 C.F.R. § 200.404(e).

full and open competition under applicable federal procurement requirements, and the scope of services or work in the contract and level of effort is consistent with respect to the eligible scope of work (SOW).

- Cost or price analysis: The cost or price analysis is one component of documentation that FEMA reviews as part of its evaluation of reasonable costs. If the applicant does not submit a cost or price analysis, FEMA evaluates the elements that would have been part of such analysis.[143]
- Selection criteria: FEMA also evaluates whether the applicant selected the lowest responsible bidder based on the selection criteria to determine reasonableness. If the applicant selected a contractor with a higher bid than others, it must substantiate its selection based on the selection criteria set forth in its request for proposal (RFP).

- The cost is comparable to the current market price for similar goods or services in the same geographical area.[144]
  - FEMA makes its determination based on one or more of the following:
    - Historical documentation (previous contracts, invoices, or other documentation);
      - FEMA may compare costs to the applicant's historical costs for similar SOW or items. FEMA considers inflation and other factors, such as code or standard changes, availability of in-kind construction material, quantity, delivery schedules, and the economy. FEMA's Cost Estimating Format (CEF) employs a nationally recognized economic inflation factor;
    - Average costs in the area;
      - Weighted average unit pricing: FEMA may determine the average costs in the area using weighted average unit prices. These are comprised of the average costs of historical bid tabulations and related specifications from competitive bid pricing solicitations respective to the area and usually includes all factors required to bid public works projects, such as performance bonds, bid bonds, overhead and profit, and general conditions. The applicant or respective state, territorial, or regional agency, such as the state's department of transportation, may provide weighted average unit pricing and related specifications for FEMA's review.
      - Other applicants' project costs: FEMA may compare the costs with other applicants' projects, of similar SOW and similar circumstances, such as event impacts, magnitude, comparable shortages, market factors, and any other unique circumstances that may impact either of the costs.
    - Published unit costs from national cost estimating databases. When using this method, FEMA confirms that the cost publication is current and prepares the estimate using its CEF and the appropriate locality adjustment factor.
      - Industry cost estimating resources: When appropriate local data cannot be developed or obtained, FEMA uses industry standard construction cost estimating resources to prepare an estimate against which to evaluate reasonableness of the applicant's actual costs. These costing methods include, but may not be limited to, RS Means, BNi Costbooks, Marshall and Swift, and "Sweet's Unit Cost Guide", which are widely accepted in the industry and available for nationwide use.
      - Federal, state, or territorial unit costs: When industry standard construction cost estimating resources do not provide work items that are appropriate or applicable to the construction

[143] For more information, refer to: *FEMA's Procurement Disaster Assistance Team (PDAT) Field Manual*. Chapter 9: Scoping, Costing, and Final Reviews also provides information on how to conduct a cost or price analysis.
[144] 2 C.F.R. § 200.404(c).

activities required to complete the project, FEMA considers local cost data from other federal agencies (OFA) or state or territorial agencies responsible for construction of similar facilities in or near the locality.

- FEMA cost codes: FEMA maintains regional and national unit prices (cost codes). FEMA cost codes may be used when a cost is not found in other published unit costs or if the cost codes are otherwise more applicable than other published costs, such as for force account equipment.

- If FEMA finds the costs claimed are not reasonable, FEMA may disallow all or part of the costs associated with the project by adjusting eligible funding based on what costs (if any) are deemed reasonable.[145] When determining the reasonable amount, FEMA may use the least-cost alternative, the lowest bid received by the applicant, the pricing of another applicant's properly procured and selected contractor, or a FEMA-developed cost estimate based on industry standard cost estimating resources.

- The following factors or other extenuating circumstances existed and caused escalation in costs:
  - Shortages in equipment, materials, supplies, labor, or contractors: When escalating costs are due to shortages, FEMA considers whether the applicant's work continued beyond the period of shortages and whether there was an opportunity for the applicant to obtain more reasonable pricing.
  - Project-specific complexities: Complexities may include environmental or historic preservation compliance requirements, remote access or location, provision of a unique service with few providers, or elements requiring an extraordinary level of effort.
  - Economy of scale: FEMA considers the amount of work that may impact the unit price (for example, smaller projects may have higher rates and larger projects may have lower rates due to various efficiencies that are realized with larger projects. Additionally, when hauling is involved, such as with debris projects, some projects may have longer haul routes due to disposal site locations or detours for obstacles like road blockages).
  - Extraordinary labor costs: FEMA evaluates whether increased labor costs were required under the circumstances of the incident. FEMA looks at the severity of the incident, the magnitude and the difficulty of the work, the labor hours claimed for the employees performing the work, and the function of the employees performing the labor, against the circumstances of the incident to determine if all labor costs were necessary to complete the work and if the costs charged for the labor were reasonable.
  - Applicant's justification: When a reasonable cost analysis has been conducted and costs appear high for a project, FEMA reviews the applicant's justification to determine whether there are any additional factors that justify the higher cost as a reasonable amount.

III. Applicant (Force Account) Labor

FEMA refers to an applicant's personnel as "force account." FEMA reimburses force account labor based on actual hourly rates plus the cost of the employee's actual fringe benefits. FEMA calculates the fringe benefit cost based on a percentage of the hourly pay rate. Because certain items in a benefit package are not dependent on hours worked (e.g., health insurance), the percentage for overtime is usually different than the percentage for straight-time pay. Fringe benefits provided under established written policies may include:

- Holiday leave;

[145] 2 C.F.R. § 200.339.

- Accrued sick and vacation leave;
- Social security matching;
- Medicare matching;
- Unemployment insurance;
- Workers' compensation;
- Retirement;
- Health, life, and disability insurance; and,
- Administrative leave.

Terminology

Fringe benefits - A percentage of the actual wages that pays for employee benefits.

Applicants must submit the following to support claims for labor costs:

Table 10. Required Documentation and Information for Labor Costs

For Small Projects	For Large Projects[146]
▪ Itemized cost summary including actual or estimated costs: ○ Number of employees;[147] ○ Total budgeted hours; ○ Total unbudgeted hours; ○ Average straight-time pay rate with fringe benefits;[148] and, ○ Average overtime pay rates with fringe benefits.[149]	▪ Pay policy; ▪ Itemized cost summary including estimated costs, or actual costs for completed work, for each employee: ○ Name ○ Job title and function; ○ Type of employee (e.g., full-time exempt, full-time non-exempt, part-time, temporary); ○ Date and hours worked; ○ Pay rate and fringe benefit rate; ○ Description of work performed with daily logs/activity reports; ○ Timesheets; and, ○ Fringe benefit calculations.[150]

[146] FEMA utilizes an attribute-based sampling approach, following the *GAO Financial Audit Manual*, for verifying supporting documentation for PA projects; therefore, FEMA may select a representative sample rather than reviewing all documentation. For more information, refer to: *Public Assistance Sampling Procedure*.
[147] Estimates may be calculated based on actual or estimated total number of staff and total hours with average pay rates. Average rates may only be used for employees at similar pay grades and same category of employee (e.g., permanent full-time vs. part-time vs. temporary hire).
[148] Fringe benefits are calculated based on a percentage of the hourly pay rate.
[149] Fringe benefits are calculated based on a percentage of the hourly pay rate.
[150] Fringe benefits are calculated based on a percentage of the hourly pay rate.

A. Labor Policies

FEMA determines the eligibility of employee labor costs based on the applicant's pre-disaster written labor policy, provided the policy:

- Does not include a contingency clause that payment is subject to federal funding;
- Is applied uniformly regardless of a presidential declaration; and,
- Has set non-discretionary criteria for when the applicant activates various pay types.

If these requirements are not met, FEMA limits PA funding to the applicant's non-discretionary, uniformly applied pay rates. Labor cost eligibility is tied to the labor policy in effect prior to the start date of the incident period. "Pre-disaster" means "prior to the incident start date identified in the approved presidential disaster declaration" in the context of all PA Program authorities and guidance, not just labor policies.

B. Eligibility Criteria for Reimbursement of Employee Labor Costs

FEMA's criteria for reimbursing employee labor costs differ based on the category of work the employee performed, whether the employee's pay rate is straight time or overtime, and whether an applicant's employee labor costs are budgeted or unbudgeted. Note that costs associated with the salary and benefits of an employee on leave, regardless of the nature of the leave (e.g., sick leave) and regardless of whether the employee has leave to use, are ineligible. Administrative leave or similar labor costs incurred for employees sent home or told not to report due to emergency conditions are ineligible.

Terminology

Permanent (labor) - A full-time or part-time employee working on a permanent and ongoing basis, as set by an applicant's written labor or pay policy.

Full-time and **part-time** refer to the normal number of hours worked by an employee per pay period, as set by an applicant's [1] eligible pre-disaster written labor policy or [2] non-discretionary, uniformly applied pay rates.

Pay rates are set by an applicant's [1] eligible pre-disaster written labor policy or [2] non-discretionary, uniformly applied pay rates. **Exempt** employees are not subject to the overtime pay requirements set forth in the Fair Labor Standards Act. **Non-exempt** employees are subject to the overtime pay requirements set forth in the Fair Labor Standards Act.

For permanent work, categories C-G, straight-time and overtime pay are eligible for budgeted and unbudgeted employee labor costs.[151] For category I, straight-time pay is limited to extra hires, while overtime is eligible.[152]

[151] Stafford Act § 406(a)(2)(C); 42 U.S.C. § 5172; 44 C.F.R. § 206.228(a)(2)(i).
[152] Stafford Act § 406(a)(2)(c); 42 U.S.C. § 5172.

For emergency work, categories A-B, straight-time labor costs for budgeted employees are generally ineligible, while overtime labor costs are eligible.[153] However, straight time labor costs for budgeted employees are eligible pursuant to alternative procedures for debris removal, where the employee is performing eligible category A debris removal work.[154] For unbudgeted employees performing emergency work, costs for both straight-time and overtime labor hours are eligible.

Table 11. Emergency Work Labor Eligibility

Labor Classification	Type of Employee Hours	Eligible Overtime?	Eligible Straight-Time?
Budgeted Employee Hours (Debris Removal)	Permanent employee	Yes	Yes
Budgeted Employee Hours (Debris Removal)	Part-time or seasonal employee working during normal hours or season of employment	Yes	Yes
Budgeted Employee Hours (Emergency Protective Measures)	Permanent employee	Yes	No
Budgeted Employee Hours (Emergency Protective Measures)	Part-time or seasonal employee working during normal hours or season of employment	Yes	No
Unbudgeted Employee Hours (Debris & Emergency Protective Measures)	Reassigned employee funded from external source	Yes	Yes
Unbudgeted Employee Hours (Debris & Emergency Protective Measures)	Essential employee called back from furlough	Yes	Yes
Unbudgeted Employee Hours (Debris & Emergency Protective Measures)	Temporary employee hired to perform eligible work	Yes	Yes
Unbudgeted Employee Hours (Debris & Emergency Protective Measures)	Part-time or seasonal employee working outside normal hours or season of employment	Yes	Yes

1. REASSIGNED EMPLOYEES

Costs for employees reassigned to perform work that is not part of the employee's normal job functions are eligible. For example, a police officer may clear debris which FEMA provides PA funding based on the

[153] 44 C.F.R. § 206.228(a)(2)(iii)
[154] Stafford Act § 428(e)(2)(D); 42 U.S.C. § 5189f.

reassigned employee's normal pay rate, not the pay level appropriate to the work, because the applicant's incurred cost is the employee's normal pay rate.

2. REASSIGNED EMPLOYEES FUNDED FROM AN EXTERNAL SOURCE

Costs for straight-time hours of an employee funded from an external source (such as a grant from a federal agency or statutorily dedicated funds) are eligible if the employee is reassigned to perform eligible emergency work that the external source does not fund. FEMA must confirm that no duplication of benefits exists prior to approval.

3. BACKFILL EMPLOYEES

The applicant may need to temporarily replace an employee who is responding to the incident. If an employee is unable to perform normal duties due to performing eligible emergency work, certain costs associated with backfilling the employee are eligible, even though the backfilling employee is not performing eligible work. The eligibility of labor costs for a backfill employee is tied to an employee unable to perform normal duties because they are performing eligible emergency work, not because they are unable to work (e.g., on leave, furloughed).

Only costs for overtime hours worked by the backfill employee are eligible in the following scenarios:

- Backfill employee is budgeted; or
- Backfill employee is called in from scheduled leave.

Costs for straight-time hours worked by the backfill employee in the scenarios above are not eligible, even as a short-term increased operating expense.

If the backfill employee is not a budgeted employee, costs for straight-time hours worked by the backfill employee are eligible if the employee is a:

- Contracted or temporary employee; or
- Permanent employee called in on a normally scheduled day off (weekend or other off day).

Costs from backfilling labor are only eligible if:

- Costs are for a limited period of time based on the exigency of the circumstances; and,
- The applicant tracks and documents the additional costs.

4. ESSENTIAL EMPLOYEES CALLED BACK FROM FURLOUGH

Costs for straight-time hours of essential employees called back to work from a budget-related furlough due to the declared incident is eligible if the costs are not budgeted.

5. SUPERVISORS

Second-level supervisors and above (e.g., commissioners, mayors, department directors, police, and fire chiefs) are usually exempt from the overtime pay requirements set forth in the Fair Labor Standards Act.[155] Therefore, overtime costs related to these types of employees are ineligible, unless the applicant:

- Demonstrates that the employee was directly involved with a specific project;
- Normally charges that individual's time to specific projects regardless of federal funding; and,
- Incurs overtime costs for the employee in accordance with a labor policy that meets the criteria under Labor Policies in this chapter.

6. OTHER

FEMA may provide PA funding for extraordinary costs paid on an hourly basis (such as call-back pay, night-time and weekend differential pay, and hazardous duty pay) for essential employees to perform eligible emergency work if costs are paid in accordance with a pre-disaster written labor policy that meets the criteria above. All other PA Program eligibility requirements must be met.

FEMA considers bonuses and incentive pay to be discretionary rewards for an employee's performance rather than premium pay associated with and required for the actual hours worked. Bonuses and incentive pay are not eligible even when related to hazardous situations caused by the declared incident as those payments are not directly tied to and necessary for the performance of eligible work.

7. STANDBY TIME

FEMA provides PA funding for labor costs related to intermittent standby time for staff conducting eligible evacuation or sheltering, search and rescue, or emergency medical care. All of the following criteria must be met:

- Standby use and pay are consistent with the applicant's labor policy (or contractual obligation based on a labor agreement) and consistent with its practice in non-federally declared incidents OR a contract or union agreement that requires payment for standby time;
- The standby time occurred when it was necessary to have resources available to conduct the respective life-saving action;
- The number of hours and individuals were reasonable and necessary based on the number of resources required;
- The employee was conducting the respective life-saving action; and,
- All other labor cost eligibility criteria were met.

Examples of when FEMA may reimburse labor costs for standby time include, but are not limited to:

- When bus drivers are deployed to transport evacuees;
- When first responders are deployed for the purpose of evacuating or providing emergency medical care to survivors in order to save lives; and,

[155] For more information, refer to: U.S. Department of Labor Overtime Pay | dol.gov.

- When a contract or union agreement requires payment for standby time.

Additionally, the applicant may be required to pay firefighter costs from portal-to-portal, which may result in paying for 24-hour shifts with periods of rest. FEMA will reimburse costs based on such requirements. In these instances, FEMA limits its reimbursement to costs and timeframes that are reasonable and necessary, not to exceed 14 calendar days from the start of the incident period. The applicant must provide documentation to support the need for, and provision of, continuous support.

Standby time is separate and distinct from pre-positioning resources, which is addressed under Pre-Positioning Resources in Chapter 7.

IV. Applicant-Owned and Purchased Equipment

FEMA provides PA funding for the use of applicant-owned (force account) equipment, including permanently mounted generators, based on hourly equipment rates.[156] FEMA may provide PA funding based on mileage for vehicles, if the mileage is documented and less costly than hourly rates.

There are instances when applicants do not have sufficient equipment to effectively respond to an incident. If an applicant purchases equipment that it justifiably needs to respond effectively to the incident, FEMA provides PA funding for both the purchase price (subject to disposition requirements as specified under Disposition of Equipment and Supplies in this chapter) and either:

- The use of the equipment based on equipment rates; or
- The actual fuel and maintenance costs.

FEMA only applies equipment rates to the time an applicant is operating the equipment. Although costs associated with transporting equipment (e.g., labor and equipment costs used to transport equipment) to an eligible site are eligible, costs for standby time (time spent on hold or in reserve) are ineligible 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.

Applicants must submit the following to support claims for applicant-owned or purchased equipment costs:

[156] 44 C.F.R. § 206.228(a)(1).

Table 12. Required Documentation and Information for Applicant-Owned or Purchased Equipment Costs

Equipment Type	For Small Projects	For Large Projects[157]
Applicant-owned equipment	▪ Itemized cost summary of actual or estimated costs broken out by type of equipment: ○ Total usage hours; and, ○ Total cost.	▪ Itemized cost summary including actual costs, or estimated costs for completed work, broken out by type of equipment: ○ Type of equipment and attachments used, including year, make, model, size, capacity, horsepower, and wattage (as applicable); ○ Location(s) or site(s) used; ○ Equipment code (if using FEMA rates); ○ Schedule of rates, including rate components (if not using FEMA rates); and, ○ Operator name with date and hours used each day.
Purchased equipment	▪ Itemized cost summary including actual or estimated costs broken out by type of equipment: ○ Total cost.	▪ Itemized cost summary including actual or estimated costs broken out by type of equipment: ○ Invoices or receipts.

FEMA provides PA funding for force account equipment usage based on FEMA or SLTT equipment rates in accordance with the specific criteria noted below.

A. FEMA Rates

FEMA publishes equipment rates applicable on a national basis.[158] FEMA's rate schedule includes any item powered by fuel or attached to any item powered by fuel. FEMA develops equipment rates based on all costs associated with ownership and operation of equipment (except for operator labor). FEMA equipment rate components include depreciation, overhead, equipment overhaul (labor, parts, and supplies), maintenance (labor, parts, and supplies), lubrication, tires, ground engaging component (if applicable), and fuel. Because the rates include maintenance costs, a mechanic's labor costs to maintain applicant-owned equipment are ineligible. Similarly, because the rates include fuel costs, an applicant cannot claim fuel costs in addition to FEMA equipment rates.

B. State, Tribal Nation, or Territorial Rates

State, Tribal Nation, and territorial (STT) rates are established under STT guidelines for use in normal day-to-day operations. FEMA provides PA funding based on STT rates up to $75 per hour.[159] FEMA only provides PA

[157] FEMA utilizes an attribute-based sampling approach, following the *GAO Financial Audit Manual*, for verifying supporting documentation for PA projects; therefore, FEMA may select a representative sample rather than reviewing all documentation. For more information, refer to: *Public Assistance Sampling Procedure*.
[158] For more information, refer to: Schedule of Equipment Rates | fema.gov.
[159] 44 C.F.R. § 206.228(a)(1)(i).

funding for a rate above $75 per hour if the applicant demonstrates that each of the components of the rate is comparable to current market prices.[160]

C. Local Rates

Local rates are those developed under local government guidelines for use in normal day-to-day operations. FEMA generally provides PA funding for equipment usage based on the lower of either the local rate or the FEMA rate. However, if the local rate is lower, and the applicant certifies that the rate does not reflect all actual costs associated with operating the equipment, FEMA may provide PA funding based on the higher FEMA rate. FEMA may request that applicants provide documentation for the basis of its rate. Additionally, if the local rate is higher, applicants must document the basis for that rate and obtain approval from FEMA for the higher rate.[161]

If determining the lowest rate for each piece of equipment is overly burdensome because of the number of different types of equipment used, or if the applicant prefers, FEMA will reimburse all equipment use based on the lower of the two rate schedules, rather than based on a comparison of each individual rate. In these cases, the PA Division at FEMA Headquarters determines which schedule of rates is lower.

D. Equipment with No Established Rate

If applicants use equipment that has no established SLTT rate, FEMA reimburses that equipment based on the FEMA rate.[162] If FEMA does not have a rate established for the equipment, applicants may either submit a rate for approval or request that FEMA provide a rate. If an applicant submits a rate, it must include documentation demonstrating that each component of the rate is comparable to current market prices. The rate cannot be based on rental rates as such rates may include cost components, such as profit, that are above and beyond what is necessary to operate and maintain force account equipment.

E. Telecommunications Equipment Purchase

Applicants may not obligate or expend any FEMA awards, including any new, renewed, or extended purchase orders, contracts, subcontracts, or similar acquisitions on prohibited systems identified in the National Defense Authorization Act[163] to:

- Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services[164] as a substantial or essential component of any system, or as critical technology of any system;
- Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; or

[160] Ibid.
[161] 44 C.F.R. § 206.228(a)(1)(ii).
[162] 44 C.F.R. § 206.228(a)(1)(iii).
[163] 2 C.F.R. § 200.216.
[164] Entities added to this list will be incorporated into the excluded parties list in the System for Award Management | sam.gov. When a user conducts a search of the excluded parties list, a record will appear describing the nature of the exclusion for any entity identified as covered by this prohibition.

- Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.[165]

Applicants may use PA funding to purchase replacement equipment, systems, or services.



Terminology

Covered telecommunications equipment includes telecom or video surveillance equipment or services produced or provided by an entity reasonably believed to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

V. Rented or Leased Equipment

When applicants rent or lease equipment, FEMA provides PA funding based on the terms of the agreement. Rental and leasing costs are eligible if:

- The applicant performed an analysis of the cost of rented or leasing versus purchasing the equipment;[166] and,
- The total rental or leasing costs do not exceed the cost of purchasing and maintaining equipment during the life of the eligible project.

If the rental or 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 rented or leased the equipment.

If an applicant has a rent-to-own or 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, as described under Applicant-Owned and Purchased Equipment in this chapter. If the applicant completes the eligible work prior to obtaining ownership, FEMA provides PA funding based on the cost to rent or lease the equipment.

Applicants must submit the following to support claims for rented or leased equipment costs:

[165] Entities added to this list will be incorporated into the excluded parties list in the System for Award Management | sam.gov. When a user conducts a search of the excluded parties list, a record will appear describing the nature of the exclusion for any entity identified as covered by this prohibition.
[166] 2 C.F.R. § 200.318(d).

Table 13. Required Documentation and Information for Rented or Leased Equipment Costs

For Small Projects	For Large Projects[167]
▪ Itemized cost summary of actual or estimated costs for leased equipment: ○ Total usage days or hours; and, ○ Total cost.	▪ Itemized cost summary including actual costs, or estimated costs for completed work, broken out by type of equipment or each piece of leased equipment: ○ Type of equipment, including make, model, size, capacity, horsepower, and wattage (as applicable); ○ Location or site used; ○ Dates and hours used (required if lease agreement charges hourly rates); ○ Rates and total cost; ○ Vendor and invoice number; ○ Amount of fuel used (if not included in rental cost); ○ Lease agreement; and, ○ Invoices or receipts.

VI. Supplies

The cost of supplies, including materials, is eligible if:

- Purchased and justifiably needed to effectively respond to and/or recover from the incident; or
- Taken from the applicant's stock and used for the incident.

Applicants must track items taken from stock with inventory withdrawal and usage records.

FEMA provides PA funding for these items based on invoices, if available. If invoices are not available for items used from stock, FEMA provides PA funding based on the applicant's established method of pricing inventory.[168] If an applicant does not have an established method, FEMA provides PA funding based on historical data or prices from area vendors.

FEMA consults with the U.S. Department of Homeland Security Office of Inspector General Emergency Management Oversight Team in cases where it has difficulty determining a reasonable value.

Applicants must submit the following to support claims for materials and supplies costs:

[167] FEMA utilizes an attribute-based sampling approach, following the *GAO Financial Audit Manual*, for verifying supporting documentation for PA projects; therefore, FEMA may select a representative sample rather than reviewing all documentation. For more information, refer to: *Public Assistance Sampling Procedure*.
[168] 2 C.F.R. § 200.453(b).

Table 14. Required Documentation and Information for Materials and Supplies Costs

For Small Projects	For Large Projects[169]
▪ Itemized cost summary including actual or estimated costs for materials and supplies: ○ Type and quantity; and, ○ Total cost.	▪ Itemized cost summary including estimated costs, or actual costs for completed work, for materials and supplies: ○ From stock: – Cost documentation, such as original invoices or other historical cost records; – Inventory records; – Type of supplies and quantities used; and – Location used. ○ Purchased: – Receipts or invoices; – Quantities used; and, – Justification (required if supplies were not used).

VII. Disposition of Equipment and Supplies

This section 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 one year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by an applicant for financial statement purposes, or $10,000.[170] Tangible personal property that does not fall under this definition of equipment is a supply.[171]



Terminology

Acquisition cost - The net invoice price of equipment including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose it was acquired. Other charges such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with a recipient's regular accounting practices.

Personal property means property other than real property.

[169] FEMA utilizes an attribute-based sampling approach, following the *GAO Financial Audit Manual*, for verifying supporting documentation for PA projects; therefore, FEMA may select a representative sample rather than reviewing all documentation. For more information, refer to: *Public Assistance Sampling Procedure*.
[170] 2 C.F.R. § 200.1.
[171] Ibid.

A. Disposition of Purchased Equipment

In accordance with federal regulations, state and territorial government applicants dispose of equipment in accordance with state and territorial laws and procedures. Tribal Nations must use, manage, and dispose of equipment acquired under a federal award in accordance with tribal laws and procedures. If such laws and procedures do not exist, Tribal Nations must follow the guidance in 2 C.F.R. 200.313(c)-(e).[172] When allowable pursuant to its own laws and procedures, state, Tribal Nation, and territorial applicants may not be required to compensate FEMA for its share of the original purchase.

When equipment purchased with PA funding is no longer needed for response to or recovery from the incident, local governments, and private nonprofit (PNP) applicants may use the items for other federally funded programs or projects, provided the applicant informs FEMA.[173]

When an individual item of equipment is no longer needed for federally funded programs or projects, local governments, and PNP applicants must calculate the current fair market value of the individual item of equipment. Applicants must provide the current fair market value for items that have a current fair market value of $10,000 or more and compensate FEMA for its share of the original purchase, based on the cost share. FEMA applies the requirement by reducing funding by the applicable amount.[174] If the individual item of equipment has a current fair market value less than $10,000, FEMA does not reduce the eligible funding.[175]

B. Disposition of Purchased Supplies

When supplies are no longer needed for federally funded programs or projects, all applicants, including state and territorial government and Tribal Nation applicants, must calculate the current fair market value of any unused residual supplies (including materials) that FEMA funded for any of its projects and determine the aggregate total.

Applicants must provide the current fair market value if the aggregate total of unused residual supplies is greater than $10,000 and compensate FEMA for its share of the original purchase, based on the cost share. FEMA applies this requirement by reducing funding by the applicable amount.[176] If the aggregate total of unused residual supplies is less than $10,000, FEMA does not reduce the eligible funding.

Examples: Equipment vs. Supplies

- Examples of **equipment** include: durable medical equipment, hospital beds, ventilators, refrigerator trucks, coolers, freezers, and information technology systems (which are different than iPads/laptops).

[172] 2 C.F.R. § 200.313(b).
[173] 2 C.F.R. § 200.313(c).
[174] 2 C.F.R. § 200.313(e)(2).
[175] 2 C.F.R. § 200.313(e)(1).
[176] 2 C.F.R. § 200.314(a).

- Examples of **supplies** include: iPads/laptops, personal protective equipment (PPE), such as N95 and other filtering respirators, surgical masks, gloves, protective eyewear, face shields, protective clothing, sharps containers, and dry ice.

VIII. Disposition for Small Projects

For small projects, fair market value and the associated reduction are addressed during project formulation. To calculate depreciation of fair market value for equipment, the date used to determine when equipment is no longer needed is based on the work completion deadline. No reduction is taken for disposition of supplies for small projects because the quantity of supplies for which funding is eligible is an amount that is necessary and reasonable, and the estimate is based on the aggregate unused supplies not exceeding $10,000.

IX. Disposition of Real Property

If an applicant acquires or improves real property with PA funds, disposition and reporting requirements apply when acquired or improved real property is no longer needed for the originally authorized purpose.[177] Recipients and applicants must obtain specific disposition instructions from FEMA.[178]

X. Procurement and Contracting Requirements

FEMA provides PA funding for contract costs based on the terms of the contract or purchase agreement if an applicant meets federal procurement and contracting requirements. Federal procurement and contracting requirements for state and territorial government agencies and Tribal Nations are different than those for local government agencies and PNPs.

If an applicant does not comply with federal procurement requirements, FEMA applies an appropriate remedy in accordance with its authorities.[179] FEMA has determined an appropriate remedy under these circumstances is to either deny all costs associated with the contract or, if sufficient information is provided to substantiate a reasonable amount for the eligible work completed, FEMA only reimburses the portion of the costs it determines are reasonable and allowable based on all available information and documentation provided. For more information, please refer to Reasonable Cost Analysis in this chapter. In addition to monetary remedies, FEMA may also take non-monetary actions against the applicant as authorized by 2 C.F.R. §§ 200.208 and 200.339.

FEMA's Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules)[180] provides additional details regarding federal procurement and contracting requirements.

[177] 2 C.F.R. §§ 200.311 and 200.330.
[178] 2 C.F.R. § 200.311(d).
[179] 2 C.F.R. § 200.339.
[180] For more information, refer to: Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules).

A. Procurement and Contracting Requirements for State and Territorial Government and Tribal Nation Entities

Applicants must comply with federal procurement requirements as a condition of receiving PA funding for contract costs for eligible work.

1. PROCUREMENT

State and territorial government applicants,[181] as well as Tribal Nations, must comply with federal procurement procedures at 2 C.F.R. § 200.317, which include:

- Following the same policies and procedures they would use for procurements with non-federal funds; and,
- Complying with the Environmental Protection Agency (EPA) guidelines in 2 C.F.R. § 200.322, Procurement of recovered materials.

FEMA reviews state, Tribal Nation, or territorial procurement policies or procedures or requests that a state, Tribal Nation, or territorial attorney certify in writing whether the applicant complied with the state's, Tribal Nation's, or territory's procurement policies and procedures.

2. CONTRACTING

State and territorial government applicants, as well as Tribal Nations, must include required provisions detailed in 2 C.F.R. § 200.327 in all contracts awarded.[182] Some provisions are based on sound contracting practices while others are required by federal law, EOs, and regulations. Some provisions do not apply under the PA Program (e.g., Davis Bacon Act[183] and Rights to Inventions Clause) while others require verbatim language.

Required contract provisions include:

- Remedies Clause;
- Termination for Cause and Convenience;
- Equal Employment Opportunity;
- Contract Work Hours and Safety Standards Act;
- The Clean Air Act (CAA) and the Federal Water Pollution Control Act;
- Debarment and Suspension;
- Byrd Anti-Lobbying Amendment Clause;
- Byrd Anti-Lobbying Amendment Certification;
- Procurement of Recovered Materials;
- Prohibition on Contracting for Covered Telecommunications Equipment or Services; and,

[181] See Applicant Eligibility: State, Local, Tribal Nation, and Territorial Government Entities for a description of each type of applicant.
[182] 2 C.F.R. § 200.327.
[183] The Davis Bacon Act requires "prevailing wage" payment to contracted workers based on the local union wage scale defined by the U.S. Department of Labors. If the applicant incorporates prevailing wage rates as part of its normal practice for all contracts regardless of the funding source, then those rates are eligible.

- Domestic Preference for Procurements.

In addition to the required provisions, FEMA also recommends the following contract provisions be included in all contract awards:

- Changes Clause;
- Access to Records;
- Department of Homeland Security Seal, Logo, and Flags;
- Compliance with Federal Law, Regulations, and EOs Clauses;
- No Obligation by Federal Government;
- Program Fraud and False or Fraudulent Statements or Related Acts;
-
- Copyright; and,
- Providing Good, Safe Jobs to Workers.

The FEMA "Contract Provisions Guide"[184] provides the exact language for the provisions that require verbatim language and provides sample language for some of the other provisions.

Although time-and-material (T&M) contracts without a ceiling price and cost-plus-percentage-of-cost or percentage-of-construction contracts may be allowed by a state, Tribal Nation, or territorial government, their use carries high risk of noncompliance with the requirement that all costs be reasonable.[185]

B. Procurement and Contracting Requirements for Local Government Agencies and Private Nonprofit Organizations

Local governments and PNPs[186] must comply with:

- Their own documented procurement procedures;
- Applicable SLTT government laws and regulations; and,
- Applicable federal laws and regulations.[187]

If there is a conflict among these procurement rules and procedures, the local government or PNP must use the more restrictive requirement. Additionally, territorial governments should consult their legal counsel when a project involves a public building or public works facility as the Buy American Act may apply to the procurement process.

1. PRE-PROCUREMENT CONSIDERATIONS

FEMA encourages local governments and PNPs to:

[184] For more information, refer to: *FEMA Contract Provisions Guide*.
[185] 2 C.F.R. § 200.403(a).
[186] See Applicant Eligibility: State, Local, Tribal Nation, and Territorial Government Entities and Applicant Eligibility: Private Nonprofit Organizations in Chapter 3 for a description of which applicants are local governments or PNPs.
[187] 2 C.F.R. § 200.318(a).

- Establish or update written procurement procedures that reflect applicable SLTT laws and regulations;[188] and,
- Maintain required written standards of conduct covering conflicts of interest and governing the performance of employees who engage in the selection, award, and administration of contracts.[189]

Local governments and PNPs should also create a prequalified list of responsible contractors identified to possess the qualifications and technical abilities to satisfy the applicant's potential requirement.[190] Although not a contract, many entities have prequalified lists that serve as contract research.

A prequalified contractor is one that an applicant evaluated and determined to be qualified to perform the work based on capabilities, such as technical and management skills, prior experience, past performance, and availability. A prequalified contractor is not entitled to a "standby" contract. Applicants must still conduct full and open competition. The applicant cannot exclude potential bidders or offerors from qualifying during the solicitation period, even if they were not on the prequalified list.[191]

2. GENERAL FEDERAL PROCUREMENT REQUIREMENTS

Federal procurement requirements for local governments and PNPs are found at 2 C.F.R. § 200.318 through 200.327. The requirements include, but are not limited to:

- Providing full and open competition;[192]
  - Tribal Nation applicants may provide preference to Indian organizations or Indian-owned economic enterprises[193] if the applicant substantiates that it met the Indian Self-Determination and Education Act requirements.
- Conducting the following steps to ensure the use of small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms when possible:[194]
  - Place such organizations that are qualified on solicitation lists;
  - Ensure such organizations are solicited whenever they are potential sources;
  - Divide total requirements, when economically feasible, into smaller tasks or quantities;
  - Establish delivery schedules, where the requirement permits, encouraging its participation;
  - Use the services and assistance, as appropriate, of the U.S. Small Business Administration (SBA) and the Minority Business Development Agency of the Department of Commerce; and,
  - Require prime contractor to conduct the above steps if subcontracting.

[188] Ibid.
[189] 2 C.F.R. § 200.318(c)(1).
[190] 2 C.F.R. § 200.319(e).
[191] Ibid.
[192] 2 C.F.R. § 200.319(a).
[193] Per the Indian Financing Act of 1974, Pub. L. No. 93-262, § 2(e), 88 Stat 77 (codified as amended at 25 U.S.C. § 1452(f)), an Indian organization is the governing body of any federally-recognized Tribal Nation, or an entity established or recognized by the governing body. An Indian-owned economic enterprise is any commercial, industrial, or business activity established or organized by a member of a federally-recognized Tribal Nation for the purpose of profit, provided that such Indian ownership constitutes 51 percent or more of the enterprise.
[194] 2 C.F.R. § 200.321.

- Performing a cost or price analysis in connection with every procurement action above the simplified acquisition threshold,[195] including contract modifications;
  - Applicants must make independent estimates before receiving bids or proposals.[196]
- Evaluating and documenting the contractor's integrity, compliance with public policy, record of past performance, and financial and technical resources;[197]
- Ensuring that the contractor was not suspended or debarred;[198]
- Excluding contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals from competing for such procurements to ensure objective contractor performance and eliminate unfair competitive advantage;[199] and,
- Maintaining records to detail the history of the procurement including, but are not limited to:
  - Rationale for the method of procurement;
  - Selection of contract type;
  - Contractor selection or rejection; and,
  - The basis for the contract price.[200]



Terminology

Simplified acquisition threshold - The dollar amount below which a non-federal entity may purchase property or services using small purchase methods. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 C.F.R. Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this part, the simplified acquisition threshold is $250,000, but this threshold is periodically adjusted for inflation.

Micro-purchase: purchase of supplies or services where the total cost does not exceed the micro-purchase threshold set by the Federal Acquisition Regulation at 48 C.F.R. Subpart 2.1.

Simplified acquisitions procedure: relatively simple and informal procurement method for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold set by the Federal Acquisition Regulation at 48 C.F.R. Subpart 2.1.

Sealed bid: publicly solicited bid awarded via a firm fixed-price contract to the lowest responsive and responsible bidder.

Proposal: normally conducted with more than one source submitting an offer and generally used when conditions are not appropriate for the use of sealed bids.

---

[195] The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 C.F.R. § 2.101. The threshold is adjusted periodically for inflation.
[196] 2 C.F.R. § 200.324(a).
[197] 2 C.F.R. § 200.318(h).
[198] 2 C.F.R. § 200.214.
[199] 2 C.F.R. § 200.319(b).
[200] 2 C.F.R. § 200.318(i).

Noncompetitive procurement: solicitation of a proposal from only one source. See 2 C.F.R. § 200.320 for federal rules that apply to each individual method.

Procurement of real property: The purchase or lease of real property is a unique transaction that might not readily allow use of one of the competitive methods of procurement. If an applicant is unable to conduct a competitive procurement, it may use a noncompetitive method in accordance with the requirements in this section. The appropriate method will depend on the facts and circumstances of each procurement.

3. PROCUREMENT METHODS

Local governments, and PNPs must use one of the following procurement methods:[201]

- Micro-purchase;
- Small purchase procedure;
- Sealed bid (formal advertising);
- Competitive proposal; or,
- Noncompetitive proposal (sole-sourcing).

C. Noncompetitive Procurement

FEMA reimburses reasonable costs incurred under a contract procured through a noncompetitive proposal, also referred to as sole-source, only when one or more of the following circumstances apply:

- The item is only available from one source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (this exception to competitive procurement is only for work specifically related to the circumstance and only while the circumstances exist. Therefore, applicants need to immediately begin the process of competitively procuring similar goods and services and transition to a competitively procured contract as soon as the circumstances cease to exist);
- FEMA or the recipient expressly authorizes a noncompetitive proposal in response to a written request from the applicant; or,
- After solicitation of several sources, competition is determined inadequate.[202]

In instances where applicants submit cost claims based on noncompetitive bids or contracts, time-and-materials contracts, or cost-plus-percentage-of-cost or percentage-of-construction contracts, FEMA will review the project for reasonable cost and procurement and contracting compliance.

For large projects with costs based on noncompetitive procurement, applicants must identify which of the four circumstances listed above apply and provide all of the following information, documentation, and justification:

[201] 2 C.F.R. § 200.320.
[202] 2 C.F.R. § 200.320(f).

- A brief description of the product or service being procured, including the expected amount of the procurement;
- Explanation of why a noncompetitive procurement is necessary;
  - If there was a public exigency or emergency, the justification should explain the specific conditions and circumstances that clearly illustrate why competitive procurement 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.)
- Length of time the noncompetitive contract will be used for the defined SOW, and the impact on that SOW should the noncompetitively procured contract not be available for that amount of time (e.g., how long does the applicant anticipate the exigency or emergency circumstances to continue; how long it will take to identify requirements and award a contract that complies with all procurement requirements; or how long it would take another contractor to reach the same level of competence);
- The specific steps taken to determine that the applicant could not have used, or did not use, full and open competition for the SOW (e.g., research conducted to determine that there were limited qualified resources available that could meet the contract provisions);
- Any known conflicts of interest and any efforts that the applicant made to identify potential conflicts of interest before the noncompetitive procurement occurred (and if the applicant made no efforts, explain why); and,
- Any other justification that applies.

If FEMA determines that none of the allowable circumstances existed or did not preclude the applicant from adhering to competitive procurement requirements, FEMA will work with the recipient to identify remedies for non-compliance. However, if FEMA or the recipient determine that non-compliance cannot be remedied by imposing additional conditions, FEMA will disallow all or part of the associated costs.[203]

Examples: Exigent vs. Emergency Situations

- **Exigent Situation**: 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 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.
- **Emergency Situation**: 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 majority of the 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.

[203] 2 C.F.R. § 200.339.

1. CONTRACT TYPES

FEMA reimburses costs incurred by local governments and PNPs using three types of contract payment obligations: fixed price, cost-reimbursement, and, to a limited extent, T&M.[204]

Local governments, and PNPs must maintain oversight on all contracts to ensure contractors perform according to the conditions and specifications of the contract and any purchase orders.[205]

D. Time-and-Materials Contracts

Time-and-material (T&M) contracts do not provide incentives to the contractor for cost control or labor efficiency. Therefore, use of T&M contracts is only allowed if all of the following apply:

- No other contract type was suitable;
- The contract has a ceiling price that the contractor exceeds at its own risk; and,
- The applicant maintains a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.[206]

FEMA generally limits the use of T&M contracts to a reasonable timeframe based on the circumstances during which an applicant could not define a clear SOW. Therefore, applicants should define the SOW as soon as possible to enable procurement of a more acceptable type of contract.

Some entities, such as rural electrical cooperatives, provide the materials necessary to restore the facilities and refer to such contracts as time-and-equipment (T&E) contracts. The limitations and requirements that apply to T&M contracts also apply to T&E contracts.

1. COST-PLUS-PERCENTAGE-OF-COST OR PERCENTAGE-OF-CONSTRUCTION

In addition to limiting reimbursement to costs that can be determined to be reasonable, FEMA does not reimburse the increased cost associated with the percentage on a cost-plus-percentage-of-cost calculation or percentage-of-construction cost method.[207] This type of contract billing is prohibited as it does not provide incentive to contractors to control costs because the contractor's profit increases as the costs of performance increase. Instead, it provides a financial interest to the contractor to increase costs so that its profit increases. FEMA identifies these cost methods by determining whether:

- Payment is on a predetermined percentage rate;
- The predetermined percentage rate is applied to actual performance costs;
- The contractor's total payment amount is uncertain at the time of contracting; and,
- The contractor's payment increases commensurately with increased performance costs.

[204] For additional information on these contract types and other procurement requirements, refer to: Contracting with Federal Funds for Goods and Services Before, During and After Disasters | FEMA.gov
[205] 2 C.F.R. § 200.318(b).
[206] 2 C.F.R. § 200.318(j).
[207] 2 C.F.R. § 200.324(c).

2. ADDITIONAL CONTRACTING CONSIDERATIONS

i. Pre-Positioned Contracts

Some applicants have pre-positioned contracts, which are contracts awarded before an incident occurs for the potential performance of work. These contracts are also referred to as advance or standby contracts. FEMA reimburses reasonable costs under a pre-positioned contract if:

- It was originally procured in compliance with federal procurement requirements;
- The SOW was adequate to cover the work performed;
- The work performed was eligible; and
- The contract term covers time when work was performed.

ii. Cooperative Purchasing

A cooperative purchasing program is a cooperative arrangement for acquiring goods or services that involves aggregating the demand of two or more entities to obtain a more economical purchase.[208] Program membership may provide entities with access to lists of agreements or contracts for goods and services at pre-negotiated rates or prices. Typically, the member then purchases the goods or services by negotiating with participating vendors and placing purchase orders or entering into contracts based on the pre-negotiated rates or prices. FEMA advises against the use of cooperative purchasing programs due to frequent compliance issues with federal procurement requirements. FEMA provides tools to assist with Cooperative Purchasing Programs[209] and provides additional information to assist with compliance issues for procurements above the simplified acquisition threshold. Applicants must document and explain how its use of the program complied with all procurement requirements.

Piggyback contracting is a type of cooperative purchasing and occurs when one entity assigns the contractual rights it has in a contract to another entity. FEMA advises against the use of piggyback contracts. Piggyback contracts are usually not compliant with federal procurement requirements as the SOW pertains to the needs of a different entity.

E. Required Documentation and Information for Procurement and Contracting

Applicants must submit the following to support claims for contract costs:

[208] Cooperative purchasing programs are distinguishable from joint procurements. A joint procurement is a method of contracting in which two or more purchasers agree from the outset to use a single solicitation and enter into a single contract with a vendor for the delivery of goods or services. Joint procurements must still comply with federal procurement requirements. However, FEMA sees fewer compliance issues with joint procurements.
[209] For more information, refer to: Cooperative Purchasing Programs | fema.gov.

Table 15. Required Documentation and Information for Contract Costs

For Small Projects[210]	For Large Projects[211]
▪ Itemized cost summary including actual or estimated costs for each contractor: ○ Procurement method: – Competitive; or – Non-competitive; ○ Type of contract: – Fixed; – Time-and-materials; – Cost-plus-percentage or percentage of construction; or – Other; and, ○ Total contract award.	▪ Itemized cost summary including estimated costs, or actual costs for completed work, for each contractor: ○ Contractor name; ○ Dates worked; ○ Billing or invoice number; ○ Amount; and, ○ Description of work performed; ▪ Procurement documents, including: ○ Requests for proposals; ○ Bids; ○ Selection process; ○ Procurement policy; ○ Cost or price analysis; ○ Contracts and change orders; and, ○ Invoices; and, ▪ Documentation that substantiates a high degree of contractor oversight (required for T&M contracts), including: ○ Daily or weekly logs; or ○ Records of performance meetings.

XI. Mutual Aid

When an applicant does not have enough resources to respond to an incident, it may request resources from another agency, organization, or jurisdiction through a "mutual aid" agreement. FEMA refers to the entity requesting resources as the requesting entity. FEMA refers to the entity providing the requested resource as the assisting entity.

[210] All small projects must comply with procurement and contracting laws and regulations. In instances where applicants submit cost claims based on non-competitive bids or contracts, time and materials contracts, or cost-plus-percentage-of-cost or percentage-of-construction contracts, FEMA will review the project for reasonable cost and procurement and contracting compliance.
[211] FEMA utilizes an attribute-based sampling approach, following the *GAO Financial Audit Manual*, for verifying supporting documentation for PA projects; therefore, FEMA may select a representative sample rather than reviewing all documentation. For more information, refer to: *Public Assistance Sampling Procedure*.

Terminology

Requesting entity - An entity that requests mutual aid assistance from an assisting entity for work resulting from a declared fire, emergency, or major disaster within its legal jurisdiction.

Assisting entity - The entity providing mutual aid assistance to a requesting entity pursuant to a local or statewide mutual aid agreement.

FEMA provides PA funding to the requesting entity as it is legally responsible for the work. FEMA does not provide PA funding directly to the assisting entity. For the work to be eligible, the requesting entity must have requested the resources provided.

Some states have a statewide mutual aid agreement that designates the state as being responsible for reimbursing mutual aid costs. In these states, the assisting entity may request funding directly from the state, with prior consent of the requesting entity, in accordance with applicable state laws and procedures. If the requesting entity and the state approve the request and the state pays the assisting entity, FEMA provides PA funding to the state. The requesting entity may be responsible for reimbursing the state for any non-federal local cost share, depending on specific state requirements.

The requesting entity or state, if applicable, must provide a description of the services requested and received, along with documentation of associated costs (e.g., labor, equipment, supplies, or materials) to FEMA in support of a request for PA funding.

A. Post-Incident Agreements

When the requesting and assisting entities do not have a written agreement or, where such an agreement exists but is silent on reimbursement, they are not precluded from engaging in mutual aid activities eligible for reimbursement through PA. In such situations, these entities can enter into a verbal agreement to define the resources to be provided and to establish the terms, conditions, and costs of the assistance to be rendered. This allows flexibility in responding to the incident's specific needs.

The agreement should be consistent with past practices for mutual aid between the entities. For example, if the requesting entity does not normally reimburse an assisting entity for its costs, it should not agree to do so specifically for the declared incident.

Prior to funding, the verbal agreement, or agreement otherwise not defined in writing, must be codified in writing, and formally adopted by officials from both entities. This written record should outline the specifics of the agreement, including the resources requested/provided, the terms, conditions, and cost arrangements. Once the verbal agreement is documented and executed, it should be submitted with the project application in which the requesting entity is seeking reimbursement through FEMA. The requesting entity should submit documentation to support the costs claimed under the mutual aid agreement. The mutual aid documentation provided in this section is not exhaustive and therefore FEMA is clarifying that any documentation that provides details of services requested and received,

information about labor, equipment, and supplies may be used to support this requirement for eligibility. Some examples include letters, memos, written agreements, meeting minutes, emails, purchase orders, and invoices certifying to work and costs.

B. Eligibility

Mutual aid resources are eligible when used for emergency protective measures, emergency utility restoration (regardless of whether it is deemed category B or F), building code and floodplain management administration and enforcement, or grant management activities. Labor expenses for the assisting entity will be treated as contract labor, with regular time and overtime wages and certain benefits eligible, provided labor rates are reasonable. Costs to transport the assisting entity's equipment and personnel to the declared area are eligible.



Examples: Ineligible Work Performed by an Assisting Entity

Ineligible work performed by an assisting entity includes, but is not limited to:

- Preparing to deploy;
- Dispatch operations outside the receiving state, Tribal Nation, or territory;
- Training and exercises; and,
- Support for long-term recovery and mitigation operations.

The assisting entity's straight-time and overtime labor are eligible, including fringe benefits. When the requesting entity is an SLTT government and the assisting entity is another division within the same SLTT government, straight-time for budgeted employees of the assisting entity is ineligible.

If the assisting entity backfills deployed personnel, overtime for backfill personnel is eligible even if they are not performing eligible work. However, straight-time for backfill personnel is ineligible.

FEMA reimburses the use of equipment provided to a requesting entity based on either the terms of the agreement or equipment rates (detailed under Applicant-Owned and Purchased Equipment in this chapter). FEMA provides PA funding to repair damage to this equipment the same way as it provides PA funding to repair damage to applicant-owned equipment (detailed under Damage Caused During Performance of Emergency Work in Chapter 7).

C. Emergency Management Assistance Compact

The Emergency Management Assistance Compact (EMAC) is a national interstate mutual aid agreement that enables states and territories to share resources in response to an incident. Work performed outside the receiving state or territory that is associated with the operation of EMAC, including tracking of resources, is ineligible unless the work is associated with the receiving state's or territory's emergency operations for the incident. FEMA does not perform a reasonable cost analysis of work performed through EMAC, as long as the project followed established EMAC rules.

D. Required Documentation and Information for Mutual Aid

Applicants must submit the following to support claims for mutual aid costs:

Table 16. Required Documentation and Information for Mutual Aid Costs

Mutual Aid Type	For Small Projects	For Large Projects[212]
EMAC[213]	▪ The EMAC Resource Support Agreement signed by all parties (required at project obligation); ▪ "Interstate Reimbursement Summary" (R-1) form (required at project closeout); ▪ "Associated Intrastate Reimbursement Summary" (R-2) forms (required at project closeout); and, ▪ Proof of payment by the requesting entity to the assisting entity (required at project closeout).	▪ The EMAC Resource Support Agreement signed by all parties (required at project obligation); ▪ "Interstate Reimbursement Summary" (R-1) form (required at project closeout); ▪ "Associated Intrastate Reimbursement Summary" (R-2) forms (required at project closeout); and, ▪ Proof of payment by the requesting entity to the assisting entity (required at project closeout).
Non-EMAC	▪ Itemized cost summary including actual or estimated costs: ○ Services requested and received; and, ○ Total cost.	▪ Written agreement; ▪ Services requested and received; ▪ Itemized cost summary including actual costs for completed work. For each assisting entity: ○ Dates worked; ○ Entity name; ○ Description of work performed; and, ○ Total cost. ▪ Same information and documentation for labor, equipment, and supplies (as applicable); and, ▪ Invoices.

[212] FEMA utilizes an attribute-based sampling approach, following the *GAO Financial Audit Manual*, for verifying supporting documentation for PA projects; therefore, FEMA may select a representative sample rather than reviewing all documentation. For more information, refer to: *Public Assistance Sampling Procedure*.
[213] All forms referenced are contained within *the EMAC Operations Manual v.4.5, May 2023.*

XII. Prisoners

FEMA provides PA funding for prisoner labor costs based on the rate that the applicant normally pays prisoners. FEMA also provides PA funding for prisoner transportation to and from the worksite and extraordinary costs of security guards, food, and lodging.[214]

Applicants must submit the following to support claims for prison labor costs:

Table 17. Required Documentation and Information for Prison Labor Costs

For Small Projects	For Large Projects[215]
▪ Itemized cost summary including actual or estimated costs: ○ Number of individuals; ○ Pay rate; and, ○ Total cost.	▪ Prison's labor policy; ▪ Estimated hours and pay rate for work to be completed; ▪ Itemized cost summary including actual costs for completed work. For each individual: ○ Name and location worked; ○ Date and hours worked; and, ○ Pay rate; and, ▪ Description of work performed with daily logs/activity reports.

XIII. National Guard

The Governor may activate National Guard personnel to State Active Duty in response to an incident. Labor costs and per diem, if applicable, are eligible for State Active-Duty personnel performing eligible work. Both straight-time and overtime are eligible, including fringe benefits.

The U.S. Department of Defense funds National Guard personnel activated under Full-Time National Guard Duty (Title 32) or Active Duty (Title 10). Therefore, Title 32 and Title 10 personnel costs, and any other costs funded by the U.S. Department of Defense, such as training, are ineligible.

XIV. Direct Federal Assistance

When the impact of an incident is so severe that the SLTT governments lack the capability to perform or contract eligible emergency protective measures, recipients may request that the federal government provide this assistance directly.[216] FEMA may task another federal agency to perform or contract the work

[214] Stafford Act § 406(a)(2)(B); 42 U.S.C. § 5172.
[215] FEMA utilizes an attribute-based sampling approach, following the *GAO Financial Audit Manual*, for verifying supporting documentation for PA projects; therefore, FEMA may select a representative sample rather than reviewing all documentation. For more information, refer to: *Public Assistance Sampling Procedure*.
[216] 44 C.F.R. § 206.208(a).

provided it is an eligible activity under Chapter 7: Emergency Work Eligibility unless the work falls under the authority of another federal agency.[217] FEMA issues a "Mission Assignment" to task the work and refers to it as direct federal assistance (DFA).[218] DFA has the same cost-share provisions applicable to the declaration (as described under Federal Cost Share in Chapter 1).

XV. Increased Federal Cost Share for a Limited Timeframe

When the president authorizes an increased federal cost share for a limited timeframe, FEMA applies it to all eligible costs related to work performed through 11:59 p.m., in the time zone where the work took place, on the date of expiration. Therefore, the applicant needs to delineate costs for work performed prior to the deadline versus costs for work performed after the deadline. FEMA applies the increased federal cost share according to the following criteria:

- Employees: Costs for hours worked up to the date and time of expiration.
- Purchased material and equipment: Cost to purchase each item that the applicant needed and used to perform eligible work during the increased funding period. In this case, FEMA also applies the increased federal cost share to the usage cost up to the date and time of expiration.
- Leased equipment and facilities: Costs to lease each item up to the date and time of expiration. FEMA calculates the cost based on a proration of time. For example, if a facility is leased for six months based on a monthly rate and the period for the increased federal cost share expired 45 days from the start of the lease, FEMA applies the increased federal cost share to the cost to lease the facility for 45 days based on a proration of the monthly rate.
- Contract costs: Costs for work performed up to the date and time of expiration. If costs cannot be distinguished by date performed, FEMA prorates costs based on the percentage of work completed prior to the deadline versus the percentage of work remaining. However, applicants should work with contractors to delineate dates associated with work.

XVI. Donated Resources

Individuals and organizations often donate resources to assist with response activities. FEMA does not provide PA funding for the value of donated resources; the value of the resources is used only as an offset for the non-federal share of eligible work and costs. However, FEMA allows the applicant to use the value of donated resources (non-cash contributions of property or services)[219] related to eligible emergency protective measures and debris removal to offset the non-federal cost share of its eligible emergency protective measure and debris removal projects and DFA. FEMA also allows applicants to use the value of donated resources related to eligible work on a permanent work project to offset the non-federal cost share of that specific permanent work project. FEMA applies the offsets regardless of the cost share arrangements between a recipient and its subrecipients.

For emergency protective measures and debris removal specifically, if there is a time-limited 100 percent federal cost share period (see Increased Federal Cost Share for a Limited Timeframe in this chapter) and the

[217] 44 C.F.R. § 206.208(c)(2).
[218] 44 C.F.R. § 206.208(c)(1).
[219] 2 C.F.R. § 200.1.

applicant uses resources donated during this time period, it may use the value of those donated resources to offset the non-federal cost share incurred after the 100 percent federal cost share period expires. If the applicant uses resources from its stock that were donated during a previous incident or timeframe, it may use the value of those donated resources to offset its non-federal cost share if the applicant has not claimed the resources as an offset in a previous incident.

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

- The donated resource is from a third party (e.g. private entities or individuals, including individuals that are normally paid employees of the applicant or federal, state, Tribal Nation, or territorial government, but are volunteering as unpaid individuals and not on behalf of the employer);
- The donated resource is necessary and reasonable;[220]
- The applicant uses the resource in the performance of eligible work[221] and within the respective project's period of performance;[222] and,
- The applicant or volunteer organization tracks the resources and work performed, including description, specific locations, and hours.[223] The applicant must track the donated resources for permanent work to the specific project for which it is associated.

FEMA considers unpaid individuals who volunteer its labor to the applicant to be third-party even if they are officially members or employees of the applicant organization (e.g., volunteer fire fighters at a PNP volunteer fire department performing eligible emergency protective measures).

Resources donated to the applicant by an organization that would normally provide the same resources under its mission, such as the American Red Cross, are eligible as an offset if 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 its non-federal cost share.

The value of a donated resource is ineligible as an offset toward the non-federal cost share if the resource is:

- Donated by a federal agency;
- Donated by another federally funded source;
- Funded through a federal award;[224]
- Used as an offset to any other federal award;[225] or,
- Used for ineligible work.

[220] 2 C.F.R. § 200.306(b)(3).
[221] Applicants may not use the value of standby time as a donated resource as no work is being performed.
[222] 2 C.F.R. § 200.309. For emergency protective measures, the end of the period of performance is equal to the latest emergency protective measures project's period of performance.
[223] 2 C.F.R. §§ 200.434(d) and 306(b)(1).
[224] 2 C.F.R. § 200.306(b)(5).
[225] 2 C.F.R. § 200.306(b)(2).

Requesting donated resources from contractors during the solicitation phase of a procurement may violate federal procurement rules as it may be considered overly burdensome or restrictive of competition.[226] To remain compliant, applicants can do the following:

- Accept unsolicited donated resources from contractors;
- Maintain a list of donors; and,
- Ask contractors that are donating resources to work with other organizations.

If an applicant accepts donated resources from contractors, it must not do any of the following:

- Solicit donations in its requests for proposals or solicitations for bids;
- Directly solicit donations or requests for proposals from contractors who are actively bidding on its contracts;
- Grant an award to a contractor which has donated resources for the specific work covered by the contract;
- Show favoritism or give the appearance of showing favoritism to a contractor who has donated resources; and,
- Limit competition among contractors based on donated resources, especially for smaller contractors (including women or minority owned businesses) that might not be able to afford to donate resources.

A. Offset Amounts

FEMA applies values to donated resources as follows:

- Volunteer labor: The offset 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 that the applicant would otherwise compete for that type of work.[227]
- Equipment: The offset is based on equipment rates and must not exceed the fair rental value (if loaned) or the fair market value of equipment that is in similar age and condition at the time of donation (if donated with a transfer of title). See Applicant-Owned and Purchased Equipment in this chapter for information on equipment rates.[228]
- Supplies or materials: The offset is based on current commercial rates, which FEMA validates based on invoices from previous purchases or information available from vendors in the area. The amount must not exceed the fair market value at the time of donation.[229]
- Buildings or land: For buildings or land donated permanently (i.e., with a transfer of ownership), the offset is based on the fair market value at the time of donation as established by an independent appraisal and certified by the applicant.

[226] 2 C.F.R. § 200.319.
[227] 2 C.F.R. § 200.306(e) and (f).
[228] 2 C.F.R. § 200.306(g), (h), and (i).
[229] 2 C.F.R. § 200.306(g).

- Space: For building or land space donated for temporary use, the offset is based on the fair rental value of comparable privately-owned space in the same locality as established by an independent appraisal.[230]
- Logistical support: Reasonable logistical support for volunteers doing eligible work, such as donations warehousing and management related to eligible work, may be eligible either for funding (if the applicant provides the logistical support) or as a donated resource offset (if a third party provides the logistical support), subject to approval by FEMA.

FEMA applies the donated resource offset against the combined non-federal cost share for all the applicant's emergency protective measure and debris removal projects (category A and B) under the declared incident. The offset may not exceed the total out-of-pocket costs and is capped at the total non-federal cost share of these projects. FEMA prepares the category A and B donated resource project as a category B project separate from all other category A and B projects for the applicant's incurred costs. FEMA does not obligate the donated resource project until after it obligates all emergency protective measure and debris removal projects for the applicant.

For permanent work, FEMA applies the donated resource offset against the non-federal cost share of the specific permanent work project for which the resources were donated. The offset may not exceed the total out-of-pocket costs. FEMA caps the offset at the non-federal cost share of that specific permanent work project. The type and amount of resources donated must directly correlate to, and may not exceed, the type and amount approved in the SOW of the permanent work project (e.g., if the approved SOW includes replacement of 10 chairs and 15 chairs are donated, the donated resource offset is limited to 10 chairs). FEMA adjusts the Permanent Work project to capture any donated resource offsets related to the project upon receipt of the donated resource information and no later than closeout.

B. Required Documentation and Information for Donated Resources

Applicants must submit the following to support the offset value for donated resources:

Table 18. Required Documentation and Information for Offset Values for Donated Resources

Labor	Equipment	Supplies or Materials
▪ Sign-in sheet; and, ▪ For each individual: ○ Name; ○ Title and function (for professional services); ○ Date and hours worked; ○ Location; and, ○ Description of work performed.	▪ For each piece of equipment: ○ Name of donor; ○ Type of equipment, including make, model, size, capacity, horsepower, and wattage (as applicable); ○ Location or site used; and, ○ Dates and hours used.	▪ For each supply or material: ○ Name of donor; ○ Description and quantity; ○ Location used; and, ○ Documentation to validate claimed value, including invoices, or historical cost records.

[230] 2 C.F.R. § 200.306(i)(3).

XVII. Project Management and Design Services

FEMA provides PA funding for costs related to project management and design activities as part of the project. Project management includes activities performed to manage the actual project. These are activities that would be required regardless of whether the entity is receiving PA funding and differ from management costs, which are costs for activities related to the receipt and administration of PA funding.

Project management activities may include procurement actions, legal review of contracts, monitoring contractor work, construction oversight and inspections, environmental and historic preservation technical studies/surveys, permits, best management practices as recommended by regulatory agencies, and completing load tickets for debris operations. These activities are eligible provided they are tracked, documented, and directly related to a specific, eligible project.

Architectural, engineering, and design services for the approved SOWs, including PA hazard mitigation, are also eligible provided the services are reasonable. Some projects do not need these services or require only basic services, while others require specialized engineering and design.

When evaluating the eligibility of project management and design services, FEMA considers whether the project includes improvements that are ineligible for funding (costs for management and design services associated with improvements or other ineligible work are ineligible). Additional architectural and engineering services related to the improvements for Improved Projects are ineligible.

XVIII. Grant Management and Administration

FEMA provides contributions for management costs that a recipient or subrecipient incurs in administering and managing PA awards under a major disaster or emergency declaration. Eligible activities include any indirect cost, direct administrative cost, and other administrative expense associated with developing and managing eligible PA projects under a major disaster or emergency. For recipients, FEMA provides PA funding for management costs based on actual costs incurred up to 7 percent of the total award amount. For subrecipients, FEMA provides PA funding for management costs based on actual costs incurred up to 5 percent of a subrecipient's total award amount. Additional information is available in FEMA's interim policy.[231]



Terminology

Indirect cost - A cost incurred for a common or joint purpose benefiting more than one cost objective that is not readily assignable to the cost objectives specifically benefited.

In support of a claim for management costs, applicants must provide a summary of the work performed and costs claimed, including the number of employees, a list of equipment used and the equipment rates, total

[231] For more information, refer to: *PA Management Costs Interim Policy* (FEMA Recovery Policy FP 104-11-2) and *PA Management Costs Standard Operating Procedures*.

labor and equipment hours (or miles for vehicles) during the time frame, total labor and equipment costs, and general description of all tasks performed by individuals during the time frame. If FEMA has questions or concerns based on a review of the cost summary submitted, it may request additional documentation in support of an applicant's claim. All claims must be associated with eligible facilities, work, and costs.

XIX. Surveys to Assess or Locate Damage or Debris Impacts

Applicants are responsible for identifying locations of incident-related damage or debris impacts. Costs related to assessing overall impacts of an incident, locating damage or debris impacts, and conducting preliminary damages assessments (PDAs) are not eligible project costs. However, these costs are eligible as management costs if the costs meet the requirements discussed under Grant Management and Administration in this chapter.

If, during a survey after the declaration, an applicant identifies incident-related damage to a facility, the costs related to the inspection of that facility are eligible as management costs provided the facility is eligible.

Further detailed inspections of that damage to determine the extent of damage or quantity of debris and method of repair or removal, including professional evaluations, are eligible as part of the work to restore the facility or work to remove the debris. If an applicant performs a detailed inspection of a partially damaged system, eligible costs are based on the percentage of the system that was damaged. For example, if after inspecting 500 linear feet of sewer line, the applicant identified 100 linear feet of line damaged by the incident, only one-fifth of the inspection costs are eligible.

FEMA has specific eligibility criteria for inspecting earthquake damage to buildings constructed with welded steel-moment frames.[232]

XX. Duplication of Benefits

FEMA is legally prohibited from duplicating benefits from other sources. If applicants receive financial assistance from another program, from insurance, or from any other source for the same work that FEMA funded, FEMA reduces the eligible cost or deobligates funding to prevent a duplication of benefits.[233]

A. Insurance Proceeds

FEMA cannot provide PA funding that duplicates insurance proceeds.[234] Consequently, FEMA reduces eligible costs by the amount of:

- Actual insurance proceeds, if known;[235] or

[232] For more information, refer to: *Recommended Post Earthquake Evaluation and Repair Criteria for Welded Steel Moment-Frame Buildings* (FEMA-P-352).
[233] Stafford Act § 312; 42 U.S.C. § 5155; 2 C.F.R. § 200.406.
[234] Stafford Act § 312; 42 U.S.C. § 5155; 2 C.F.R. § 200.406.
[235] 44 C.F.R. §§ 206.252(c) and 253(a).

- Anticipated insurance proceeds based on the applicant's insurance policy if the amount of actual insurance proceeds is unknown. FEMA subsequently adjusts the eligible costs based on the actual amount of insurance proceeds that the applicant receives.

FEMA requires applicants to take reasonable efforts to pursue claims to recover insurance proceeds that it is entitled to receive from its insurer(s). FEMA limits funding if the insurance policy provides coverage that should be pursued. If an applicant expends costs to pursue its insurance claim, FEMA offsets the insurance reduction with the applicant's reasonable costs to pursue the claim if:

- The incurred cost resulted from pursuing insurance proceeds for FEMA-eligible work; and,
- The applicant can provide documentation to show that the incurred cost was attributed to pursuing more insurance proceeds than the initial settlement amount.

If applicants receive insurance proceeds for ineligible losses (e.g., business interruption), FEMA calculates a relative apportionment of insurance proceeds to determine the insurance reduction based on:

- The proceeds received per type of loss as specified by the insurance policy or settlement documentation;
- Policy limits for categories of loss as specified in the insurance policy; or
- The ratio of total eligible losses to total ineligible losses.

FEMA Recovery Policy (FP) 206-086-1, Public Assistance Policy on Insurance,[236] describes insurance reductions in detail.

Applicants must submit the following to support insurance proceeds:

Table 19. Required Documentation and Information for Insurance Proceeds

Type	Including (As Applicable)
Insurance Policies	▪ Property insurance; ▪ Auto insurance; ▪ Flood insurance; ▪ Wind insurance; and ▪ Self-insurance or self-insured retention.
Insurance Policy documentation	▪ Property policy declaration pages; ▪ Schedule of covered locations; ▪ Property policy forms and endorsements; ▪ Inland marine coverage section; and ▪ Equipment breakdown section.

[236] For more information, refer to: *Public Assistance Policy on Insurance* (FEMA Recovery Policy 206-086-1).

Type	Including (As Applicable)
Insurance Settlement Information (as soon as available)	▪ Final statement of loss; ▪ Adjuster's estimates; ▪ Settlement checks or documentation to support total insurance proceeds; ▪ Correspondence explaining the settlement amount and allocation; and, ▪ Letter of denial.

B. Non-Federal Grants and Cash Donations

Grants and cash donations from non-federal sources are subject to the following criteria based on whether the funds are provided toward a specific purpose and whether that specific purpose is otherwise eligible for PA funding.

- If the funds are designated for the same purpose as eligible work, the following apply:
  - The applicant may use the funds toward its non-federal cost share.
  - If the funds are not used toward the non-federal cost share, FEMA considers the donation or non-federal grant a duplication of benefits and reduces eligible costs by the duplicated amount.
  - If the funds exceed the amount of the non-federal cost share, FEMA reduces eligible costs by the excess amount.
- If the funds are designated for non-specific purposes, FEMA does not consider the funds a duplication of benefits. Applicants may use the funds toward their non-federal cost share. If the funds exceed the amount of the non-federal share, applicants can apply the excess amount toward ineligible work.
- If the funds are designated for a specific purpose that is ineligible, FEMA does not allow applicants to apply the funds toward their non-federal cost share.

C. Third-Party Liability

A third party is a private entity or individual that is not involved in the federal award, i.e., not the applicant or federal, state, Tribal Nation, or territorial government. When a third party causes damage or increases the cost of repair or cleanup and an applicant requests FEMA funding for the costs, FEMA requires the applicant to make reasonable efforts to pursue claims to recover costs it is entitled to receive from the third party.

If the costs recovered are not adequate despite the applicant's good faith effort, FEMA reduces eligible costs based on the recovered amount. If the applicant receives funds from the third party for eligible and ineligible work or losses, FEMA determines the offset amount based on:

- The proceeds received for eligible losses as specified by the settlement documentation; or
- The ratio of total eligible losses to total ineligible losses.

D. Other Federal Awards

If applicants receive funds from another federal agency for the same purpose as PA funding, it is a duplication of benefits. FEMA cannot duplicate funds provided by another federal agency.

XXI. Duplication of Funding Between FEMA Programs

FEMA provides assistance under other programs, such as its Individual Assistance (IA) programs and Hazard Mitigation Grant Program (HMGP), that could duplicate assistance that is available under the PA Program. FEMA must ensure it does not duplicate funds in areas where its programs have the same or similar eligible costs. Applicants must certify that no work or costs being claimed are covered by another funding source.

XXII. Interest on Loans

Applicants may need to obtain a loan to complete work. Financing costs for a loan are only eligible when they meet the conditions established in 2 C.F.R. § 200.449.

XXIII. Ineligible Costs

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 ineligible because the Stafford Act does not authorize FEMA to provide PA funding for these items.

A. Loss of Revenue

FEMA cannot provide PA funding for revenue lost due to the incident. The following are examples of when loss of revenue may occur because of an incident:

- Hospitals release noncritical patients to make room for survivors;
- Hospitals sustain damage that reduces pre-disaster existing capacity;
- Waiving toll fees on a toll road, even if for evacuation purposes;
- Waiving the normal fee for ferry service to encourage alternate transportation;
- Waiving tipping fees;
- A utility system is shut down; or
- Events are cancelled due to an entity using a venue for incident-related activities, such as sheltering.

B. Loss of Useful Service Life

FEMA cannot provide PA funding for the projected loss of useful service life of a facility. For example, if a road has been inundated by flood waters for an extended timeframe, 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. Similarly, FEMA cannot fund the value of the loss of landfill capacity due to incident-related debris.

C. Tax Assessments

SLTT governments may conduct tax assessments to re-assess real property values after an incident. Costs related to conducting these assessments are ineligible because the assessments are neither essential to addressing an immediate threat to life or improved property, nor connected with the permanent restoration of eligible facilities.

D. Increased Operating Costs

Increased costs related to operating a facility or providing a service due to an increased demand for the services the facility provides are generally ineligible, 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 are eligible if the costs meet the requirements discussed under Increased Operating Costs in Chapter 7. An example of a potentially eligible increased operating costs includes fuel for increased use of a pumping station. This limited allowance is separate from and does not include loss of revenue.