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IN THIS ISSUE

Disaster Recovery Today (DRT) Issue 4012, Proper Debris Management — Key to Disaster Recovery and FEMA Assistance, provided valuable guidance in understanding and managing debris removal operations — and the importance of having a debris management removal plan integrated into your overall recovery plan. Adopting these strategies could help maximize and retain the needed debris removal funding received from a presidentially declared event.

While the information in that article is still relevant in substance today, the FEMA Public Assistance (PA) Program policy and procedures have changed — affecting the responsibilities of eligible applicants and funding. In this issue, Skip Cerminaro, senior disaster recovery manager for Tidal Basin Group, highlights those changes and additional policy guidance pertaining to debris removal.

(Note: It's recommended that *Disaster Recovery Today* Issue 4012 first be read as a prerequisite to this article: <https://tidalbasingroup.com/publications/disaster-recovery-today/proper-debris-management/>).

Proper Debris Management II

Tracking Public Assistance Policy Changes and Their Effect on Debris Removal

By Skip Cerminaro

Recent Changes to the PA Program

The Public Assistance Program's policies and procedures are constantly assessed and updated to bring about more consistency in streamlining the recovery process. The Robert T. Stafford Act, signed into law November 23, 1988, amended the Disaster Relief Act of 1974 to provide federal assistance to state, tribal and local governments affected by a major disaster or emergency. Following Hurricane Sandy, the Sandy Recovery Improvement Act (SRIA) became law on January 29, 2013, amending the Stafford Act. The latter made improvements to streamline recovery procedures, increase applicant flexibility, save time and money — including administrative costs, and enhance communities' resilience against future disasters.

SRIA authorizes Alternative Procedures for the PA Program as identified in section 428 of the Stafford Act. It is these amendments and policy changes, and how they apply to debris management that are discussed in this article.

There were 17 provisions outlined in SRIA, most of which have been implemented as pilot programs. Guidance on the pilot program for debris removal was issued on June 28, 2013. This program is commonly referred to as the Debris Removal Program Alternative Procedures¹ or Public Alternative Procedures Pilot Program for Debris Removal. Details on how this program affects recipients² and sub-recipients³ are explained later in the article.



“The minimum requirements for debris removal work to be eligible did not change.”

On March 19, 2015 the FEMA Disaster Assistance Reform Act of 2015 (Bill H.R. 1471) was introduced to reauthorize the programs, policies and procedures of FEMA. The legislation was enacted to speed up and streamline recovery efforts, plus reduce costs. The act also provided reauthorization of FEMA to confirm accountability and Congressional oversight.⁴

Another significant change to the Public Assistance Program and how it is administered occurred when FEMA introduced the PA Redesign Playbook in June 2015. This new playbook utilizes Lean Management Principles⁵ whereby FEMA uses new processes and procedures in conjunction with new roles and responsibilities to administer the PA Program. As a result, much of the disaster-related information and documentation required for PA funding will be needed earlier in the process (see *Disaster Recovery Today* Issue 4018 – Be Ready for the Next Disaster and the Public Assistance Process for guidance on pro-active preparation; <https://tidalbasingroup.com/publications/disaster-recovery-today/be-ready-for-the-next-disaster-and-the-public-assistance-process/>).

In January 2016 FEMA issued the first edition of the Public Assistance Program and Policy Guide (PAPPG)⁶ FP 104-009/2 whereby they combined all PA policy and procedures into one guide effective for all disasters declared after January 1, 2016. Recently FEMA again revised the PAPPG effective for all declarations after April 1, 2017. It is anticipated that the guide will be updated annually.

Basic Eligibility Requirements

The minimum requirements for debris removal work to be eligible did not change. The work must be:

- A result of the declared disaster;
- Located within the designated area; and
- The legal responsibility of an eligible applicant.⁷

In addition to these minimum eligibility requirements, debris removal eligibility also requires the work to:

- Eliminate immediate threats to lives, public health and safety;
- Eliminate immediate threats of significant damage to improved public or private property;⁸
- Ensure economic recovery to the benefit of the community at large; or
- Mitigate risk to life by removing substantially damaged structures and associated structures and appurtenances as needed to convert property acquired using Hazard Mitigation Grant Program (HMGP) funds for uses compatible with open space, recreation or wetlands management practices. Such removal must be completed within two years of the declaration date unless extended by the FEMA Assistant Administrator for the Disaster Assistance Directorate.⁹

DRT Issue 4012 pointed out that debris removal from improved public property and public right-of-ways (ROWs) is eligible. It also noted that debris removal from



“Debris removal from non-navigable waterways, flood control works and natural waterways is eligible if the debris poses an immediate threat ...”

Federal Highway Administration (FHWA) federal-aid roads, unless approved by FEMA on a case-by-case basis, and United States Army Corps of Engineers (USACE) navigable waterways, is not eligible. Now, according to the FEMA PAPPG FP 104-009/2, debris removal from FHWA roads is eligible as is removal from navigable waterways of debris that obstructs the passage of vessels if the applicant has legal responsibility for the navigable waterway maintenance. Debris removal is eligible to a maximum depth of two feet below the low-tide draft of the largest vessel that navigates the waterway.¹⁰

Debris removal from non-navigable waterways, flood control works and

natural waterways is eligible if the debris poses an immediate threat such as:

- Obstructing or has the potential to obstruct an intake structure;
- Could damage structures such as bridges and culverts;
- Could cause flooding to improved public or private property in the occurrence of a five-year flood.¹¹

Waterways under the Natural Resources Conservation Service (NRCS) are eligible for debris removal if the previous criteria are met and the NRCS is not providing assistance under their Watershed Protection Program (EWP). Debris removal from flood control works that are under the specific authority of the NRCS is not eligible for PA funding, even if the NRCS is not providing assistance.¹²

Federal-Aid Highways (FHWA)

The FHWA Emergency Relief (ER) Program¹³ is intended to supplement states, counties, cities or other federal agencies when

appropriate to help with unusually high expenses resulting from extraordinary circumstances. State highway agencies may seek funding under the ER program. Local highway agencies may not deal directly with the FHWA. ER funds are not eligible for disaster-related debris removal that is eligible for FEMA funding when a presidential declaration is made for an emergency or major disaster.

According to the Guide to the Federal-Aid Highway Emergency Relief Program,¹⁴ federal-aid highways are all public roads not functionally classified as either local or rural minor collectors¹⁵ as established with state highway agencies. When the president declares an emergency or major disaster authorizing federal assistance under the FEMA Public Assistance Program for debris removal, FHWA ER funds are not eligible for debris removal operations. All debris removal activities on federal-aid roads will be considered for funding under the PA program and must adhere to applicable policy eligibility criteria to be funded.

Public Assistance Alternative Procedures (PAAP) Pilot Program for Debris Removal

SRIA amended the Stafford Act, including Section 428 which authorizes FEMA to make available four alternate procedures through a pilot program:

- An increased federal cost share to accelerate debris removal operations, sliding scale;
- The ability to retain recycling revenues;

“When the president declares an emergency or major disaster authorizing federal assistance under the FEMA Public Assistance Program for debris removal, FHWA ER funds are not eligible for debris removal operations.”

- Eligibility for Force Account Straight-Time labor; or
- The ability to receive a 2 percent incentive if there is a Debris Management Plan.

Details of the four procedures will be discussed later.

One or more of the procedures may be chosen by a sub-recipient. In order to participate, the recipient and FEMA must be notified within 60 days of the sub-recipient's Kickoff Meeting or before the time when the first sub-award (Project Worksheet) for any debris removal work is obligated — whichever comes first. This is accomplished by submitting a signed Public Assistance Alternate Procedures Pilot Program for Debris Acknowledgment form. One or more of the four procedures the sub-recipient chooses to participate in will be checked on the form. There is also a box to check if non-participation in the program is preferred.

The Alternate Procedures may be applied to both small and large projects.¹⁶ Participation may be rescinded by the sub-recipient for one or more of the procedures before any of the debris sub-awards are obligated — and written notification is provided to FEMA within 60 days of the Kickoff Meeting.

Procedures

Increased Federal Cost Share (Sliding Scale)

Typically, the minimum federal cost share for a declared major disaster is 75 percent.



“As an incentive to expedite the completion of debris removal work, FEMA provides incremental increases in the federal cost share contingent upon the period of time from the start of the incident period.”

Depending on the severity of a disaster, this cost share may be increased by authority of the president. As an incentive to expedite the completion of debris removal work, FEMA provides incremental increases in the federal cost share contingent upon the period of time from the **start of the incident period**. It does not apply to debris work completed by Direct Federal Assistance (DFA). Normally the period of performance for completion

of emergency work, including debris removal, is 180 days from the declaration date of the disaster. The following chart shows the incremental time frames and the associated federal cost share.

DAYS FROM THE START OF THE INCIDENT PERIOD	FEDERAL COST SHARE
Day 1 – 30	85%
Day 31 – 90	80%
Day 91 – 180	75%
Day 181 +	0%

“Normally FEMA will reduce the funding for eligible debris removal work by the amount of any money received from recycling the debris.”



For example, if all debris removal operations are completed 100 days from the incident period start date, the federal cost share for expenditures from day one to and including day 30 is 85 percent; day 31 to and including day 90 is 80 percent; and day 91 to and including day 100 is 75 percent.

FEMA may fund debris removal work after 180 days contingent upon their approval of a time extension. Time extensions must be submitted through the recipient. Normally the recipient may extend a time extension for debris removal up to six additional months but may not grant an extension under the Accelerated Debris Removal Alternative Procedure. Only FEMA may authorize an extension. Extensions may be granted only when unusual circumstances hinder the work. Delays due to weather or inability to obtain permitting in time are unlikely to be considered.

Direct Administrative Costs (DAC)¹⁷ incurred after the 180-day period are eligible but must be related to debris operations conducted within the 180-day period.

Retaining Recycling Revenues

Normally FEMA will reduce the funding for eligible debris removal work by the amount of any money received from recycling the debris. Under this Alternative Procedure the money may be kept by the sub-recipient if it is used to fund authorized purposes before the end of the period of performance to complete debris removal operations. The four approved purposes a sub-recipient may use their recycling funding for include:

- Meeting their non-federal cost share of their debris removal sub-award Public Assistance funding;
- Developing comprehensive disaster preparedness and assistance plans, programs and capabilities;
- Conducting activities to reduce the risk of future damage, hardships or suffering from a major disaster such as enhancing landfill-management sites or installing debris trash racks or silt fences, etc.;
- Improving future debris removal operations or planning.

Written notice of the recycling revenue received by the sub-recipient, including the date the debris operations were completed, quantities and types of debris that were recycled, and the cost of processing the recycled debris should be submitted within 30 days of the completion of the debris removal operation. Within 90 days of the period of performance deadline date the sub-recipient must also provide documentation on how the recycling revenue was used.

Force Account Straight-Time Labor Reimbursement

FEMA normally only reimburses eligible overtime hours for debris removal. With this new alternative, sub-recipients that utilize their own personnel for debris removal operations, whether it is full-time or additionally hired staff, may submit their straight-time as well as their overtime wages, including fringe benefits. FEMA will fund the appropriate federal cost share

pertaining to the sliding scale period the labor hours fall into, if the sliding scale procedure is chosen.

Debris Management Plan

FEMA will fund an additional 2 percent federal cost share for debris removal operations performed within 90 days of the incident period start date if the sub-recipient has a FEMA-approved Debris Management Plan (DMP). This is a one-time incentive that will not be available again to the sub-recipient throughout the pilot program.

The DMP must be implemented for the incident and contain one or more pre-qualified debris removal contractor(s) whose availability, prior experience, technical and management capabilities, past performance and other capabilities have been evaluated. Whatever qualifications a sub-recipient uses for their evaluation of the contractor(s), they should be identified in the DMP. Identifying a contractor as pre-qualified does not designate a “stand-by” contract with that contractor. If a sub-recipient does sign a stand-by contract with a pre-qualified debris removal contractor(s), FEMA would consider them pre-qualified when the contract is utilized contingent upon its compliance with 2 CFR 200 and is based on reasonable costs.¹⁸

The DMP should include at least the following 12 planning elements:

- Debris management overview
- Events and assumptions

- Debris collection and removal plan
- Temporary debris management sites and disposal locations
- Debris removal on private property
- Use and procurement of contracted services
- Use of force account labor
- Debris operations monitoring
- Health and safety requirements
- Environmental considerations and other regulatory requirements
- Public information
- Identify one or more pre-qualified debris and wreckage removal contractors (identifying does not create a stand-by contract)

Additional information about the Public Assistance Alternative Procedures (PAAP) Pilot Program for Debris Removal may be found at <https://www.fema.gov/alternative-procedures>.

Contract Procurement

All entities receiving funding through the Public Assistance Program for contracted eligible work must, at a minimum, comply with federal procurement standards. Written procurement procedures must also have been established prior to the declared disaster they may be involved in. Previously, 44 CFR § 13.36 contained the regulations concerning contract procurement and was used for guidance and compliance for the Public Assistance Program. 2 CFR 200 was adopted in its entirety on December 26, 2014 and now supersedes 44 CFR § 13.36 for all declarations after December 26, 2014. Part 13 has been removed from Title 44 of the Code of Regulations (CFR).¹⁹

2 CFR 200, UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS contains 521 sections and 12 appendices.²⁰ Local governments and sub-recipients should follow 2 CFR 200.317 – 326 if they have or plan to procure services that may be funded under the Public Assistance Program.

FEMA has created a procurement checklist for non-federal entities (NFEs) to aid them in complying with federal procurement requirements. The following are examples and not all inclusive of the questions:



Does the procurement comply with the state's own procurement laws, rules and procedures? §200.317 ☐ Yes ☒ No

Does the procurement comply with the NFE's own procurement laws, rules and procedures? §200.218(a) ☐ Yes ☒ No

Does the NFE have - §200.218(c): Any employee, officer or agent participating in the selection, award or administration of a contract supported by a federal award that has as actual or apparent conflict of interest? ☒ Yes ☐ No

(Note the red type, if checked, indicates non-compliance with federal requirements)

Failure to comply with these requirements may jeopardize eligible expenses under the Public Assistance Program. The entire checklist can be found at www.fema.gov/procurement-disaster-assistance-team.

Debris resulting from a disaster can be overwhelming and, most importantly, can hinder emergency access to the affected people — causing an immediate threat to their lives, health and safety. A community's first priority is to open blocked routes to allow first responders into the area. These first responders include search and rescue, medical, fire and utilities personnel and equipment.

When a community is devastated by enormous amounts of debris, local officials will call on all available resources both internal and from the commercial sector. These contractors' services may be procured through noncompetitive



proposals. This is a situation where a Time and Materials (T&M) contract may be used, but only for the immediate, reasonable response stage. T&M contracts are used when a scope of work or the amount of time needed to complete the work is not clearly discernible and must also include a "not to exceed" price.

Non-competitive contracts must be handled carefully. Procurement by non-competitive proposals is procurement through solicitation of a proposal from

"All entities receiving funding through the Public Assistance Program for contracted eligible work must, at a minimum, comply with federal procurement standards."

only one source and may be used only when one or more of the following circumstances apply:

- Item is only available from a single source;
- Federal awarding agency or pass-through entity expressly authorizes non-competitive proposals in response to a written request from the non-federal entity;

- After soliciting bids from a number of sources, competition is determined to be inadequate; or

- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.²¹ Note: The exigency or emergency timeframe usually lasts for a brief period. Once the routes are clear, usually by pushing the debris to the sides and some removal, the debris operation will evolve from a response mode to recovery. All emergency operations involving contractors should immediately cease and the recovery debris removal operation must be re-solicited under open competitive procurement procedures. Allowing the response contractors to continue with the recovery removal stage without undertaking the proper procurement procedures will jeopardize funding.

Conclusion

Emergency work, including debris removal operations, are usually the first response activities and the immediate focus of



“Whatever tracking system you may employ, it is imperative that it validates and verifies your activities so that you have the required documentation if the FEMA Public Assistance Program is activated ...”

attention when time is essential in abating the imminent threat to the lives, health and safety of those affected. While it is not an immediate priority to know whether the event you may be responding to will eventually evolve into a presidentially declared disaster, it is important to always document your activities. Whatever tracking system you may employ, it is imperative that it validates and verifies your activities so that you have the required documentation if the FEMA Public Assistance Program is activated and you need to submit your claims for reimbursement.



All your labor time, equipment usage — both rented and force account, material usage from stock or new purchases, detailed contract procurements information, activated mutual aid agreements, donated resources, etc., must be accurately documented. Utilizing the information and links in this article in conjunction with proper documentation of your activities will increase your eligible reimbursement and likelihood of retaining the much-needed funds.

“All your labor time, equipment usage – both rented and force account, material usage from stock or new purchases, detailed contract procurements information, activated mutual aid agreements, donated resources, etc., must be accurately documented.”

¹ FEMA SRIA Fact Sheet, March 2014.

² Recipient – A non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. Public Assistance Program and Policy Guide FP 104-009-2/April 2017.

³ Sub-recipient – A non-Federal entity that receives a sub-award from a pass-through entity to carry out part of a Federal program. It does not include an individual that is a beneficiary of such program. A Sub-recipient may also be a Recipient of other Federal awards directly from a Federal awarding agency. Public Assistance Program and Policy Guide FP 104-009-2/April 2017.

⁴ The FEMA Disaster Assistance Reform Act of 2015 — House Committee on Transportation & Infrastructure.

⁵ According to Wikipedia, Lean Management is an approach to running an organization that supports the concept of continuous improvement, a long-term approach to work that systematically seeks to achieve small, incremental changes in processes in order to improve efficiency and quality.

⁶ The PAPPG “clarified, and superseded language from PA Program publications and 9500 Series documents listed in Appendix L of that edition.”

⁷ T44 CFR § 206.223(a).

“Utilizing the information and links in this article in conjunction with proper documentation of your activities will increase your eligible reimbursement and likelihood of retaining the much-needed funds.”

⁸Improved property is any structure, facility, or item of equipment that was constructed, built, or manufactured. Land used for agricultural purposes is not improved property. 44 CFR § 206.221(d).

⁹44 CFR § 206.224(a).

¹⁰PAAPG FP 104-009-2/April 2017; p. 53.

¹¹Ibid.

¹²PAPPG FP 104-009-2/April 2017; p. 54.

¹³Statutory Reference: 23 U.S.C. 120(e) and 125, Sections 1107 and 1508 of MAP-21 (Public Law 112-1410; Sections 1112 and 1937 of the 2005 SFAETEA-LU (Public Law 109-59).

¹⁴A Guide to the Federal-aid Highway Emergency Relief Program; www.fhwa.dot.gov/specialfunding/er/guide.pdf.

¹⁵For nomenclature purposes, those roadways that provide a high level of mobility are called “Arterials;” those that provide a high level of accessibility are called “Locals;” and those that provide a more balanced blend of mobility and access are called “Collectors;” Highway Functional Classification Concepts, Criteria and Procedures, p. 6 https://www.fhwa.dot.gov/planning/processes/statewide/related/highway_functional_classifications/fcauab.pdf.

¹⁶For disasters declared post October 1, 2016, the small project minimum threshold is \$3,100 up to the large project threshold of \$123,100. New thresholds may be implemented for post October 1, 2017 declarations based on the annual Consumer Price Index (CPI) Adjustments.

¹⁷Direct Administrative Costs: are costs incurred by the Recipient or Sub-Recipient that can be identified separately and assigned to a specific project. Such costs can include staff’s time to conduct an initial inspection, prepare and submit a PW, collect and disseminate documentation, and make interim and final inspections of the project.

¹⁸Public Assistance Alternative Procedures Pilot Program for Debris Removal FAQs, June 28, 2015.

¹⁹Public Assistance Program Interim Guidance on 2 CFR Part 200, December 26, 2014.

²⁰<https://www.ecfr.gov/cgi-bin/text-idx?SID=6f8ac4543ccbb4052e901eb9d030ae5a&mc=true&node=pt2.1.200&rgn=div5>.

²¹2 CFR § 200.320(f).

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