NEW ERA

Events under Covid-19

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Hazard Mitigation Grant Program Overview

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U.S. DEPARTMENT OF HOMELAND SECURITY

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What is Hazard Mitigation?

- **Hazard mitigation** is defined as any sustained action taken to reduce or eliminate long term risk to life and property from **natural hazard** events.
- This is an on-going process that occurs before, during, and after disasters and serves to break the cycle of damage in **hazard-prone** areas.

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Hazard Mitigation Grant Program (HMGP) Overview

- Goal:
  - To implement mitigation measures that reduce loss to life and property from future disasters
- Projects must implement long-term stand alone risk reduction strategies
- Creation of or updating current single jurisdiction or multi-jurisdiction Local Hazard Mitigation Plans (LHMP)

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Where does HMGP come from?

1. Major disaster declaration is first approved by the POTUS
2. Damages are assessed and valuated
3. As an *Enhanced State,* Cal OES will receive 20% of the total eligible damages to put towards HMGP projects
4. Funding is allocated to the State (Cal OES) by FEMA, then to local jurisdictions when projects are approved

Example:

Eligible Disaster Damages	= $100M	
HMGP Total Available	= $20M	(20%)
- Planning Project Category	= $1.4M	(7%)
- Initiative Project Category	= $1M	(5%)

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404 vs 406 Mitigation

- 404 and 406 refer to the applicable section of the Robert T. Stafford Act

- 406 Mitigation: Includes the repair, restoration, reconstruction, or replacement of public facilities damaged or destroyed by a major disaster and is funded through Public Assistance

- 404 Mitigation (HMGP): A competitive grant program focused on mitigating risks from future disasters through the implementation of long-term independent solutions to increase protection and/or capacity of existing fully functioning facilities

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Combining 404 & 406 Mitigation

- We encourage integrating 404 and 406 mitigation actions simultaneously to incorporate long term community resiliency

- 404 grant funding may be used in conjunction with 406 mitigation funds to bring an entire facility to a higher level of disaster resistance, when only portions of the facility were damaged by the current disaster event

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Cal OES HMA Priority List

(In Order of Importance)

1. Local Hazard Mitigation Plans (LHMP) updates that will expire within 24 months.
2. All other LHMP updates.
3. Shovel ready projects with a high level of design that can begin construction within 90 days of FEMA approval, in declared counties.
4. Shovel ready projects with a high level of design that can begin construction within 90 days of FEMA approval, in all other counties.
5. Whole community risk reduction/large critical infrastructure wildfire projects.
6. Whole community risk reduction/large critical infrastructure projects for other hazard types
7. Wildfire projects in DR-4558 declared counties
8. All hazard type projects in DR-4558 declared counties
9. Wildfire projects in any county
10. All hazard type projects in any county
11. Planning related activities
12. Five percent (5%) Initiative projects

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Fire Mitigation Project Types

Related to Before & After Effects of Wildfires

- Ignition-resistant construction
- Defensible space measures
- Hazardous fuels reduction
- Flood diversion and storage
- Replanting/reforestation
- Drainage improvements
- Soil stabilization
- Erosion control

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Post-Wildfire Mitigation

- Soil stabilization measures
- Erosion control
- Flood control and drainage improvements
- Storm water management
- Increase debris basin capacity
- Removal of standing burned trees
- Replacement of burned/contaminated water systems
- Installation of warning signs
- Noxious weed prevention

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Wildfire Mitigation

- Hazardous fuels reduction/vegetation management
  - Within two miles of improved property or critical infrastructure/facilities
- Defensible space
  - Public facilities and infrastructure
  - Private property defensible space programs
- Ignition resistant construction
  - Public facilities
  - Private property programs (eave vents, fire resistant roofing, fire resistant siding)

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Other Eligible Project Types

- Localized/Non-localized flood risk reduction
- Structural retrofitting of existing buildings
- Post-disaster code enforcement
- Floodplain/stream restoration
- Aquifer storage and recharge
- Flood diversion and storage
- Elevations and acquisitions
- Infrastructure retrofitting
- Critical facility generators
- Mitigation reconstruction
- Drainage improvements
- Green infrastructure
- Culvert upsizing
- Floodproofing
- Flood control

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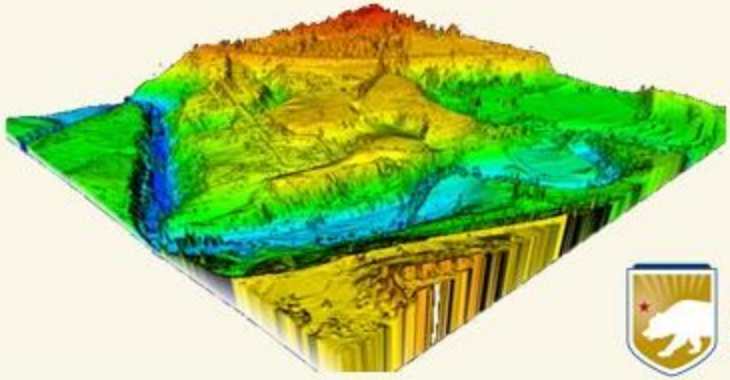
5% Initiative

- Project types that cannot be evaluated using traditional cost effectiveness methodologies
- 5% relates to the percentage of total HMGP funds made available for these project types
- Must be consistent with goals and objectives of State mitigation plans
- Must meet all HMGP eligibility requirements
- Benefit Cost Analysis (BCA) not required
  - **BUT a narrative of cost effectiveness is required**
- 5% Wildfire Examples: Early Warning Systems, LiDAR, Risk/Hazard Identification and Mapping



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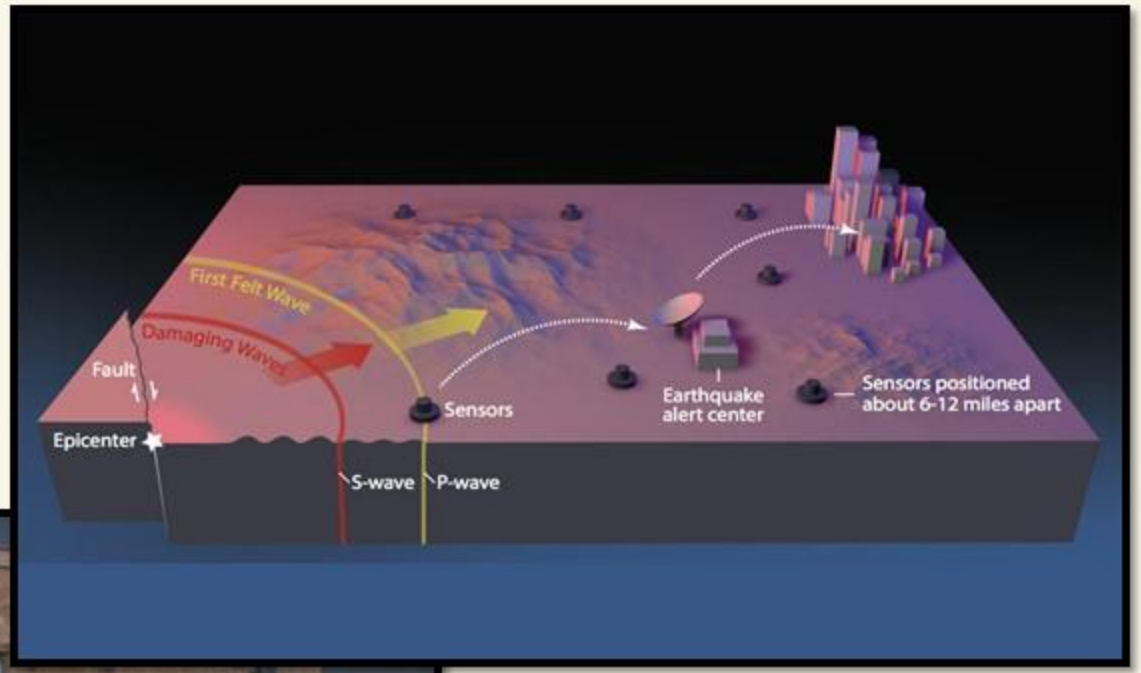
Most Common 5% Initiative Projects

Earthquake Early Warning System



Critical Facility Generators

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Ineligible Activities

- **Projects for which actual physical work has occurred prior to approval and obligation**
- Projects that do not implement a long term stand alone risk reduction strategy
- Projects contingent upon another project or action to be effective
- Projects that cannot be completed within 36 months
- Studies or investigations

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Ineligible Activities

- Emergency response activities or equipment (e.g. fire engines)
- Flood control projects related to the repair or replacement of dams and other flood-control structures
- Projects that address the operation, deferred/future maintenance, rehabilitation, restoration, or replacement of existing structures, facilities, or infrastructure, <u>without increasing the level of protection</u>

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Eligibility Requirements

- Eligible Subapplicants:
  - State Agencies
  - Local Governments: Counties, cities, towns, etc.
  - Special Districts
  - Federally Recognized Tribes
  - Private Nonprofit Organizations (PNPs)

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Eligibility Requirements

- MUST have a FEMA-approved and adopted Local Hazard Mitigation Plan (N/A to PNPs)
- 75% Federal Share / 25% Local Cost Share
  - Cal OES does not contribute to the local cost share requirement for HMGP
- 36 month Period of Performance (POP)
  - Begins once the project is approved by FEMA
- Obtain environmental clearances under California Environmental Quality Act (CEQA)
- **NO CONSTRUCTION PRIOR TO APPROVAL**

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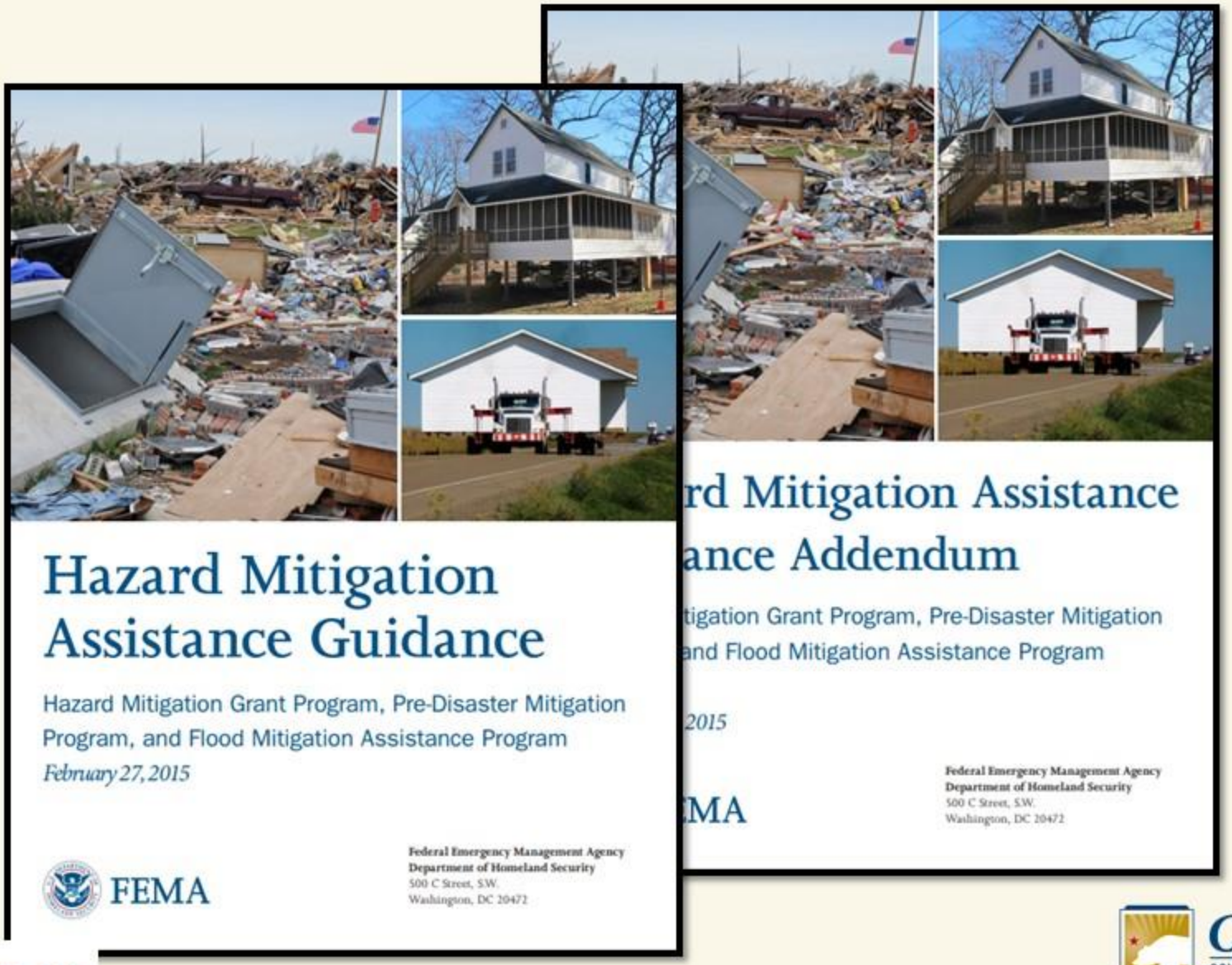
For more information…



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Funding Limitations

- **No funding limit for project subapplications**
- Funding limitations for planning subapplications:
  - Single Jurisdiction Local Hazard Mitigation Plans:
    - $150,000
  - Multi-Jurisdiction Local Hazard Mitigation Plans:
    - $250,000

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Notice of Interest (NOI)

- NOI period:
  - **September 28, 2020 to November 20, 2020**
- Funding available for:
  - All eligible project types
  - 5% Initiative
  - Plans
  - Planning-related projects
- Visit our website:
  - **Cal OES HMGP Website**

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Subapplication Development and Benefit-Cost Analysis Workshops

- Workshops offering training and assistance regarding HMGP subapplications and FEMA Benefit Cost Analysis (BCA) tool for jurisdictions with approved NOIs
- Dates, times, and locations to be determined
- Stay tuned for more information on our website

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Additional Funding Opportunities

- Available Fall 2021
- Building Resilient Infrastructure & Communities (BRIC) and Flood Mitigation Assistance (FMA)
- Annual appropriations from Congress
- Competitive nationwide
- Notice of Funding Opportunity (NOFO)
- All subapplications submitted online
- Visit our website for more information:
  - http://www.caloes.ca.gov/hmgp

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Questions?
Contact us at

HMA@CalOES.ca.gov

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FEMA Public Assistance Grant Program

Cal OES recommends applicants reference the FEMA Public Assistance Program and Policy Guide to assist in eligibility determinations:

FEMA Public Assistance Policy Guide V4

Cal OES recommends review of the FEMA Grants Portal Video Series:

FEMA's Grants Portal Video How To Series
FEMA's Grants Portal Login Page

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MAJOR DISASTER DECLARATION		
COST SHARE		
FEDERAL	STATE	LOCAL/SUBRECIPIENT
75% of eligible damages	*18.75% of Non-Federal Share*	*6.25% of Non-Federal Share*

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Terminology: Recipients, Subrecipients, and Applicants

FEMA uses the terms Recipient and Applicant in Quick Guides and other tools. In Grants Portal, Recipients are identified as Grantees and Applicants are identified as Subrecipients.

FEMA Quick Guides and Other Tools

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

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

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Grants Portal

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

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

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CDAA Cost Share

- Project Application Form (Cal OES 126) required for applicants to receive cost share
- State agencies, PNP organizations, and Tribal governments not eligible for cost share
- CDAA **cost** share automatically generated for approved FEMA projects
- State also cost shares with other non-FEMA federal disaster programs (i.e., NRCS, FHWA)
- CDAA does not provide a state application cost share less than $2,500

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The State/Grantee's Role

The State has the responsibility to...

- Serve as the official contact between subrecipients/applicants and FEMA. *Leaning toward State run events.*
- Educate subrecipients/applicants on the Public Assistance Program and other available assistance
- Provide technical support and assistance to subrecipients/applicants
- Collect data and prepare the damage description
- Collect cost data to prepare cost estimates (with FEMA)
- Disburse grant funds to subrecipients/applicants and initiate subrecipients collection actions when necessary
- Administer subrecipients/applicant subawards through project monitoring, inspection, review, and audits for compliance with federal regulations
- Conduct application closeouts. *New 90 day rule.*
- Facilitate Quarterly Reporting to FEMA

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The Subrecipent/Applicant's Role

- Provide Initial Damage Estimate (IDE)
- Assist with Preliminary Damage Assessment (PDA)
- Request assistance *work through Grants Portal*
- Thoroughly identify damaged sites and costs
- Provide documentation to FEMA and Cal OES for all projects
- Expend grant funds in accordance with grant requirements
- Be accountable to the State for federal funds
- Maintain clear and organized documentation
    - Provide Information for Quarterly Reports and for project closeout within 90 days of project completion.

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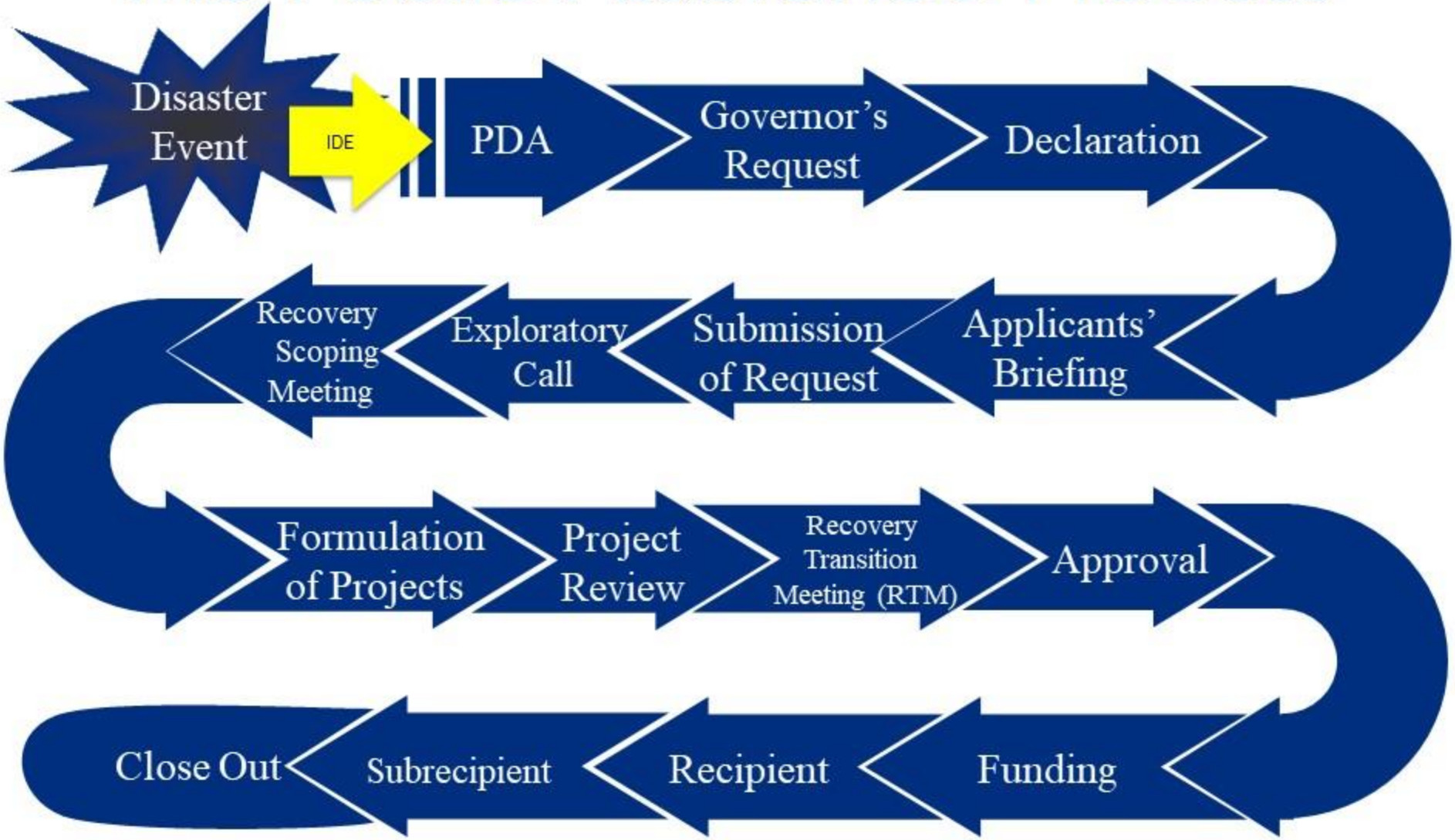
The Public Assistance Process



Request for Public Assistance

RPA Deadline:

No later than Friday MONTH, XX, 202X close of business.

For RPA Submissions:

For State Agencies, Counties, Cities, Local Public Authorities, School Districts, Special Districts established under State law: *Grants Portal Log In Page*

Email to request a Grants Portal account:

For Private Nonprofit and Tribal Governments:

DisasterRecovery@caloes.ca.gov

All Other Correspondence:

Mr. David Gillings, State Public Assistance Officer
Cal OES, Public Assistance Division
3650 Schriever Avenue
Mather, CA 95655
ATTN: FEMA-4558-DR-CA

Have Questions?

Call: (916) 845-8200

Email: DisasterRecovery@caloes.ca.gov

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Do you have a DUNS number?

Be prepared to have your Federal Tax ID Number as well

The Data Universal Number System (DUNS) is a unique nine digit identification number required by the Federal Government for all federal grant applicants. It must be provided on your Request for Public Assistance and be registered with SAM.gov.

D-U-N-S # assignment is a FREE service.

Go to: ***DUNS Number Request Page***

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Exploratory Call

As part of FEMA's new program delivery process, shortly after your RPA is approved, you will be contacted by a Program Delivery Manager who will be your Point of Contact and assist you in navigating the new Public Assistance Process.

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Recovery Scoping Meeting

(Formerly Known As: "Kick Off Meeting")

- ❑ Provides Eligibility Information
- ❑ Starts a 60-day clock to identify and report damages
- ❑ Opportunity for the applicant to discuss special needs
- ❑ Subrecipient/Applicant's key staff should attend
- ❑ Applicants should submit damage inventory indicating:
  - Damage Description(s)
  - Location
  - Estimated Costs
- ❑ Be prepared to discuss scope and nature of work and insurance documentation

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Recovery Scoping Meeting

(Formerly Known As: "Kick Off Meeting")

NEW: Costs for Projects with All Work Completed

In accordance with PAPPG V4, Page 185, "Once work on a project is 100% complete, the Applicant must submit documentation for the project within 90 days of the Recovery Scoping Meeting or within 90 days of the work completion date, whichever is later, regardless of whether the project has been obligated.

*FEMA makes its eligibility determination and processes the project based on the documentation received **within the 90-day deadline**. FEMA denies assistance for work and costs that are not supported with documentation by this deadline." Page 185 PAPPG V4.

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Eligible Subrecipients/Applicants

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Private Non-Profit (PNP) Subrecipients/Applicants

- Critical service providers
  (i.e., power, water, educational, medical)
- Non-critical service providers
  (i.e., museums, community centers, performing arts centers, Houses of Worship, food banks)
- PNPs have specific application requirements
  (FEMA requires information in addition to the RPA when applying for Federal Assistance)

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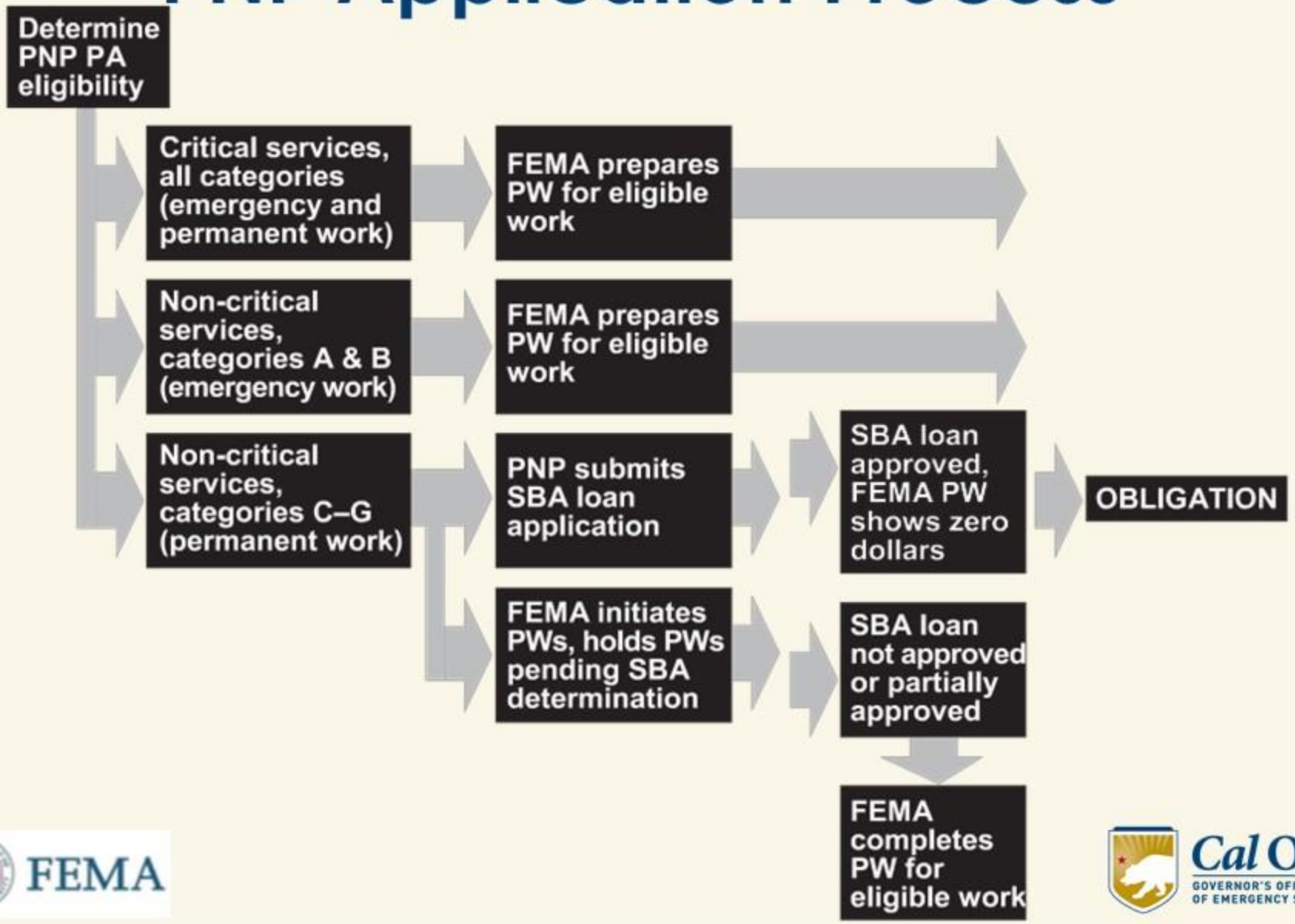
PNP Application Process



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PNP Application Requirements

Emergency Work:

All PNPs eligible for FEMA assistance must apply directly to FEMA through the State for emergency work activities.

Permanent Work:

Non-critical PNPs seeking FEMA assistance for permanent repairs must first apply to the U.S. Small Business Administration (SBA) for a loan for disaster repairs. Application for FEMA assistance should be made simultaneously.

Dependent on SBA Loan Application Outcomes:

If a PNP is declined for an SBA loan, the PNP may be eligible for FEMA Public Assistance.

- If the maximum loan does not fully cover damage eligible under the Public Assistance program, the PNP may be eligible for FEMA Public Assistance.
    - If PNP is approved for an SBA loan that fully covers disaster damage, then assistance from FEMA is not available.

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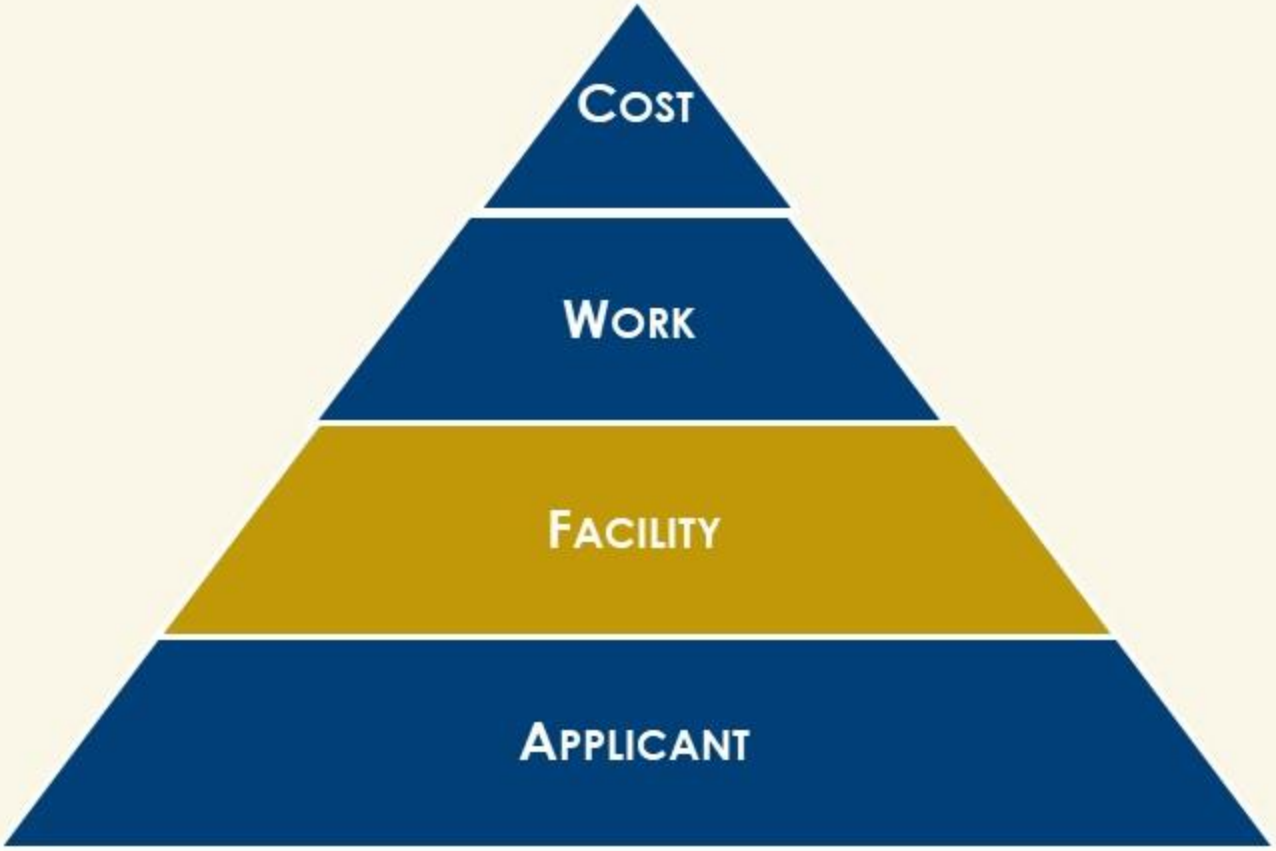
Recovery Pyramid: Facility



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Eligible Facilities

- Buildings, systems, equipment, or maintained natural features
- Legal responsibility of an eligible subrecipient/applicant
- Located in a designated disaster area
- Not under the authority of another federal agency
- In active use at the time of disaster

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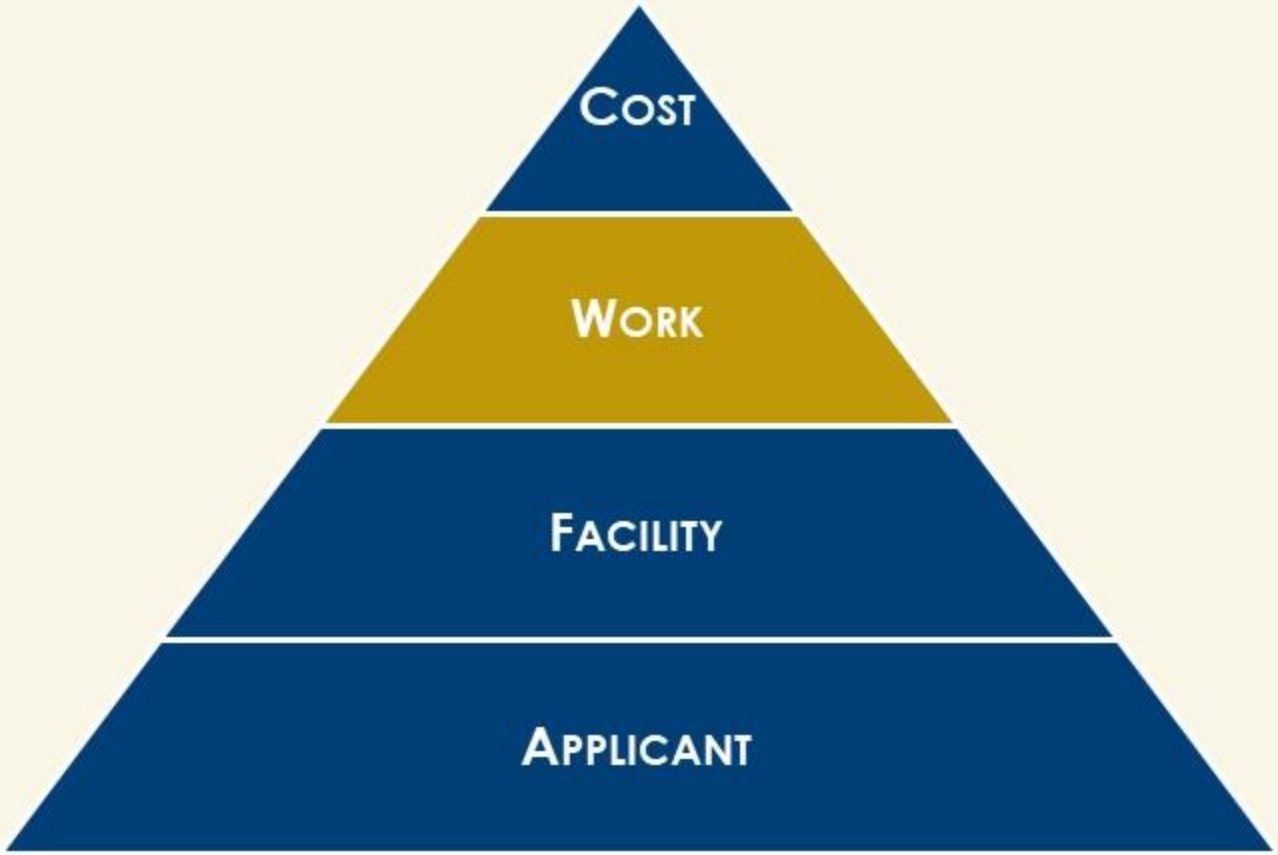
Recovery Pyramid: Work



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Eligible/Ineligible Work

Eligible:

- ❑ Direct result of a disaster
- ❑ Located in a designated disaster area
- ❑ Legal responsibility of an eligible applicant/subrecipient

Ineligible:

- ❑ Applicant/subrecipient negligence
- ❑ Deferred maintenance
- ❑ Pre-existing damage

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Categories of Work

CATEGORY A
DEBRIS REMOVAL

CATEGORY B
EMERGENCY PROTECTIVE MEASURES

CATEGORY C
ROADS & BRIDGE SYSTEMS

CATEGORY D
WATER CONTROL FACILITIES

CATEGORY E
BUILDINGS & EQUIPMENT

CATEGORY F
UTILITIES

CATEGORY G
PARKS, RECREATION & OTHER

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Categories A & B

A– Debris Removal	B– Emergency Protective Measures
• Eliminates immediate threats to lives, public health, and safety • Eliminates immediate threats of significant damage to improved public or private property • Ensures economic recovery of the community and provides a benefit to the community at large • Debris removal on private property is generally the responsibility of the property owner and may be covered by insurance	• Actions taken by a community before, during and after a disaster to save lives, protect public health and safety or eliminate immediate threat of significant damage to improved public and private property through cost effective measures

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Other Emergency Work Eligibility

Federal Highway Administration (FHWA) Debris Removal

- Removal of debris from improved public property and public rights-of-way, including Federal-aid roads, is eligible.

Mutual Aid: Law Enforcement

- The Law Enforcement Master Mutual Aid Plan does not provide for reimbursement costs between the requesting agency and responding agency.

Law Mutual Aid Agreement

Reimbursement for mutual aid may be provided if:

- A pre-event agreement exists between the requestor and responder specifying reimbursement
- A post event agreement is executed between the requestor and responder, within 30 days of the Applicants' Briefing, specifying reimbursement
- Agreements must not be contingent upon Federal or State disaster funding

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Non-Congregate Sheltering (NCS)

FEMA has approved NCS during a major disaster.

- FEMA will provide flexibility to applicants to take measures to safely conduct non-congregate sheltering activities through December 31, 2020 in the event of a Stafford Act declaration.
- **FEMA does not intend for PA- or FMAG-funded NCS to be the single solution for sheltering, but rather one of many forms of NCS sheltering assistance**.
- Must have Legal Responsibility.
- Pre-approval of NCS is not required.
- The Recipient must provide sufficient data and documentation to establish eligibility of the NCS sheltering activities, including the need for NCS resulting from the declared event, reasonableness, and costs. For a list of documentation requirements, refer to the PAPPG.
- FEMA will fund costs associated with necessary NCS activities which were incurred up to six days before the incident period begins and for up to 30 days after the incident period ends.
- Non-Congregate Sheltering during Emergency

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Categories C-G

Eligible Permanent Work

- Must repair, restore, or replace disaster-damaged facilities in accordance with regulations
- Must restore to pre-disaster design, capacity, and function in accordance with applicable codes and standards
- Must be required as a result of the disaster
- May include cost-effective hazard mitigation measures

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Special Considerations

Accessibility

Making facilities and paths of travel more accessible allows individuals with disabilities to maintain their independence.

Compliance with accessibility laws applies to all State/FEMA funded projects.

FACILITY CHANGES OR UPDATES THAT MAKE A BIG DIFFERENCE:

- Accessible entrance
- Accessible route to the altered area
- At least one accessible restroom
- Services: Parking, Alarms, Drinking Fountains and Sidewalks

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Special Considerations
Accessibility

PROJECTS THAT MAY BENEFIT FROM AN ACCESSIBILITY REVIEW:

- Schools
- Health and Medical Facilities
- Community Centers
- Houses of Worship
- Parks and Recreation Areas
- Housing Authorities
- Surfaces/Ramps
- Parking Lots
- Alternate or improved facilities
- All new construction
- Dual use facilities

(i.e. schools used for emergency shelters/public meetings)

FEMA PAPPG Pgs 120 and 151

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Other Permanent Work

Codes and Standards Upgrades

- ❑ Apply to the type of repair work required (damaged elements only)
- ❑ Be appropriate to pre-disaster use
- ❑ Be reasonable and formally adopted and implemented prior to the disaster declaration date
- ❑ Be applied uniformly to all similar facilities (public and private)
- ❑ Be enforced during the time it was in effect
- ❑ FEMA Consensus-Based Codes FP 104-009-11 V2 (007)

Donated Resources of a Specific Project Worksheet

- Donated labor
- Donated equipment
- Donated materials

Subrecipient/Applicant must document:

- Names; Dates; Hours worked
- Equipment/materials utilized
- Specific tasks completed and location of tasks

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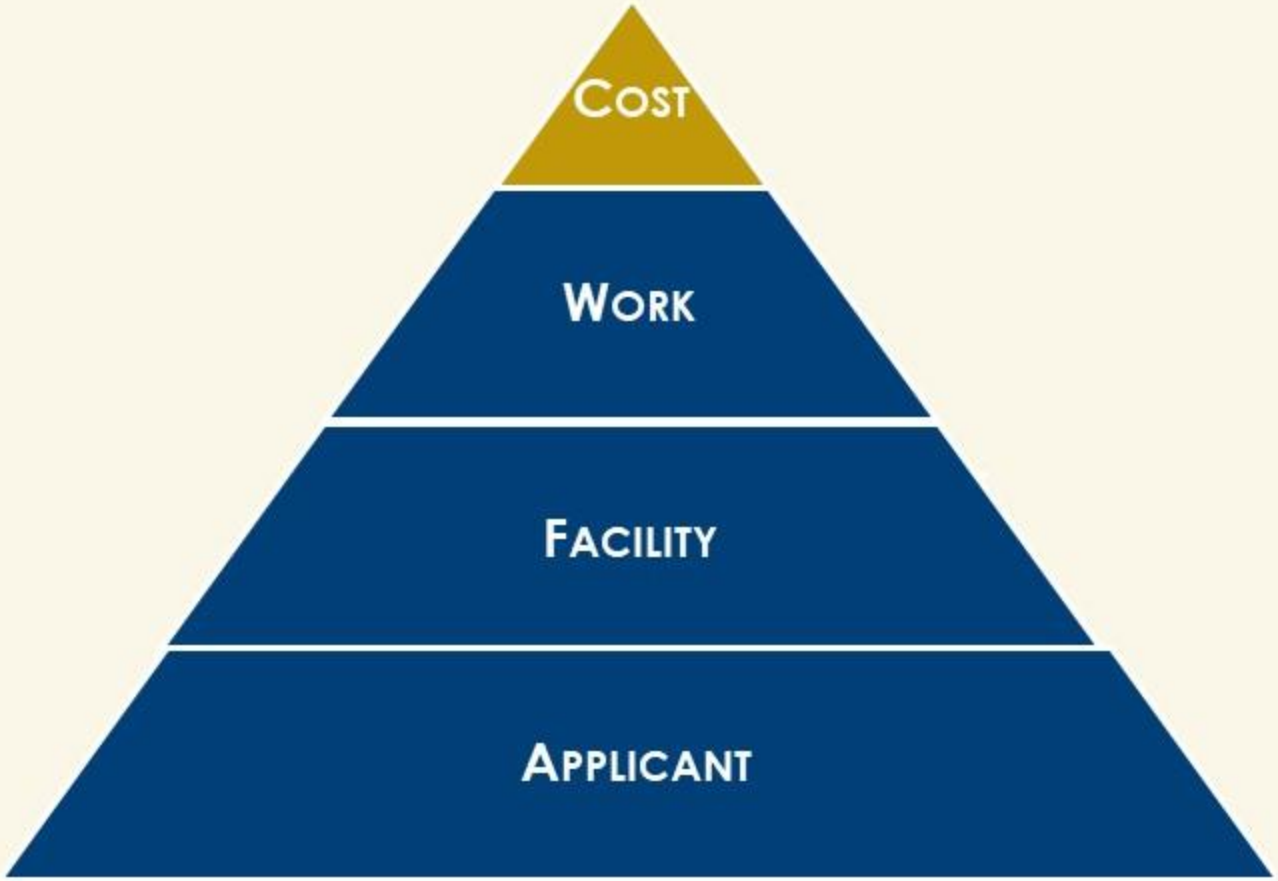
Recovery Pyramid: Cost



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Eligible Costs

- Reasonable and necessary
- Comply with applicable procurement standards
- Title 2, Code of Federal Regulations, Part 200
- Cannot duplicate funding from other Federal agencies (HHS, CDC, etc.) or insurance coverage (private insurance, Medicare, Medicaid, etc.)
- Not contingent upon state and/or federal funding

Labor (Force Account) Overtime
Contracts and Procurement
Material
Equipment (Force Account & Rental)

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Labor

Force Account

Work performed by employees of the subrecipient/applicant:

- ❑ For emergency work (Categories A and B)
  - typically only overtime is eligible
- ❑ For permanent work (Categories C through G)
  - regular and overtime are eligible

Extended Periods of Overtime

For permanent or reassigned employees performing eligible activities.

FEMA Public Assistance Program and Policy Guide

- **Section V. (A), pages 23-26 - Labor Emergency Work:**
  Example: 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; however, FEMA limits its reimbursement to that which is reasonable and necessary, not to exceed 14 calendar days from the start of the incident period.

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Material

- Cost of supplies
- Purchased
- Taken from stock
- Used during the performance of eligible work

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Equipment

Force Account	Rental
Costs of applicant owned equipment: ❑ Both regular time and overtime ❑ Rate types used (FEMA, state and local) ❑ When local rate is developed, reimbursement based on local rate or FEMA's rate, whichever is lower ❑ Standby time <u>not</u> eligible Rates include: ❑ Cost of operation (Operator costs covered under FA labor) ❑ Insurance and depreciation ❑ Maintenance and fuel	Subrecipients/Applicants must identify: ❑ What was done ❑ When ❑ Where ❑ How long ❑ What kind of equipment was used ❑ Charges per project

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Engineering/Design Services

- Necessary to complete eligible work
- Typically for large projects
- Use local typical percentage of costs or work with your PDMG

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Public Assistance Requirements for Contracts and Procurement

Sole-Source Procurement Under E&E

Situations that demand **immediate aid or action**

Emergency

Need to alleviate a threat to life, public health or safety, or improved property

Exigency

Need to avoid, prevent or alleviate serious harm or injury, financial or otherwise

If using sole sourcing due to emergency or exigency, you must:

Justify with **documentation**

Use only during the **period of actual** exigent or emergency circumstances

Transition to a competitive method **as soon as period ends**

★ FEMA Procurement under Emergency and Exigent Conditions Fact Sheet

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Use of Pre-Awarded/Pre-Existing Contracts during E&E

If the pre-awarded/pre-existing contract is not in compliance with the federal procurement requirements, it may still be possible to use the contract for the duration of the E&E

FEMA recommends that **non-state entities**:

- Review the requirements applicable during E&E and **take actions to modify pre-awarded or pre-existing** contracts where applicable
- **Justify the use of a sole-sourced contract** with suggested documentation

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Contracts and Procurement

Non-State Subrecipients

Following FEMA's Procurement Policy Is Important:

- 2 CFR section 200.110 provides that procurement standards set forth in 2 CFR section 200.317 to 200.326 apply to all FEMA awards issued on or after December 26, 2014.
- Office of the Inspector General (OIG) serves as independent office of the Department of Homeland Security (DHS) that oversees audit and investigative functions.
- OIG audit reports reveal significant issues representing millions of dollars of Federal funds.
- In FY 2016, OIG audited disaster recovery projects totaling $686 million and recommended FEMA disallow $155.6 million as ineligible and unsupported.

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Contracts and Procurement

Non-State Subrecipients

Mistakes that can result in the disallowance of project costs.

Do Not:

- Enter into contracts conditional on federal funding.
- Award contracts to disbarred or suspended contractors.
- Give preference to contractors based on geographic location.
- Award contracts to contractors that assisted in design requirements or plans for the project, or the advertisement.
- Award time and material contracts for work not related to an ongoing emergency or exigency situation, unless no other option exists.
  (Cancel existing time and materials contracts awarded during emergency as soon as threat has been mitigated, and rebid remaining work using a fixed price, or unit price contract.)
- Award cost plus percentage of cost contracts.
  FEMA will not reimburse for these contracts regardless of the circumstance.

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Contracts and Procurement

Non-State Subrecipients

General Requirements and Best Practices

- Document everything.
- Retain documents related to procurement.
- Include FEMA's required clauses and provisions in contracts.
- Consider breaking the project into smaller parts to allow better Disadvantaged Business Enterprise (DBE) participation.
  - Local Small Business Administration (SBA) office can help with DBE outreach.
- Avoid piggybacking projects off existing contracts.
- Document a Cost/Price analysis justifying reasonability of contract's price for work to be performed, and selection of the contractor.

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Contracts and Procurement

Non-State Subrecipients

Prequalified Lists Are Not Contracts

- Tools to aid in procurement of future requirements by allowing for review of prospective contractors qualifications.
- Not contracts.
- Solicitations may be submitted directly to contractors on pre-qualified lists; however, subrecipients must:
  - Advertise requirements for being added to the list
  - Allow additional interested contractors to submit their qualifications (if qualified, must allow submission of their bids)
- FEMA does not expect subrecipients to extend solicitation period to allow a contractor the opportunity to demonstrate that its product or services meet the pre-qualification requirements.

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Contracts and Procurement

Non-State Subrecipients

Contracts > *$250,000

- Must be advertised, and bid period must provide sufficient time for contractors to respond.
- Proposals must be solicited from adequate number of qualified sources.
- Minimum of two responsive/responsible contractors required.

If Other Factors Are To Be Considered In Addition To Price:

- Evaluation factors and their importance must be listed in advertisement.
- Price must be one of the evaluation factors listed unless for A&E services.
- Procedure for conducting evaluations must be documented beforehand.

***$250,000 = FEMA's Threshold. Your Procurement Policy May Be Lower.**

See pages V-9 through V-15 in FEMA's Procurement Guidance for the full list of requirements for sealed bidding and competitive proposals.

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Contracts and Procurement

Non-State Subrecipients

Special Circumstances

One or No Bids Received:

- FEMA considers competition "inadequate" when procurement standards followed and only one bid, or no bids were submitted.
- In these situations, find out why firms did not submit a bid. If reason was an overly restrictive specification/delivery requirement, time permitting, consider canceling solicitation, changing specification, and re-solicit for more bids.

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Contracts and Procurement

Non-State Subrecipients

Additional Resources

FEMA PDAT Guidance and Tools

- FEMA PDAT Procurement Guidance
- FEMA Procurement Checklist
- FEMA Cost/Price Analysis Guide
- FEMA Required Contract Clauses and Provisions
- FEMA Procurement Webinar Series

Please send any Procurement questions to:
PAProcurement@caloes.ca.gov

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Special Considerations

INSURANCE

HAZARD MITIGATION

HISTORIC PRESERVATION

ENVIRONMENTAL COMPLIANCE

FLOODPLAIN MANAGEMENT

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Environmental and Historic Preservation (EHP) Compliance

- California Environmental Quality Act (CEQA)
- National Environmental Policy Act (NEPA)

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Key Environmental Laws Considered under CEQA and NEPA

State

1. California Endangered Species Act (CDFW)
2. California Native American Historic Resource Protection Act (SHPO)

3a. Porter Cologne Water Quality Control Act (SWRCB, RWQCB)

3b. California Fish and Game Code (CDFW)

4. California Clean Air Act (CARB)
5. California Migratory Bird Treaty Act (CDFW)
6. Other State Laws
7. Executive Orders

Federal

1. Endangered Species Act (USFWS)
2. National Historic Preservation Act (SHPO)
3. Clean Water Act (USEPA, USACE)
4. Clean Air Act (USEPA)
5. Migratory Bird Treaty Act (USFWS)
6. Other Federal Laws
7. Executive Orders

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Important Points

1. *Only when EHP review is complete*, can project activities or construction begin;
2. *Sub-Applicants and Sub-Recipients are responsible* for all EHP permits;
3. *All applicable environmental laws must be addressed* in the EHP process *even if* a Statutory or a Categorical NEPA Exclusion (CATEX), or, a Statutory or a Categorical CEQA Exemption is obtained; and
4. *A change in a project scope will require the EHP process to restart* to address the modification which may delay project start.

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Environmental and Historic Preservation (EHP)

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CALIFORNIA INCIDENT DR-4558
FEDERAL EMERGENCY MANAGEMENT AGENCY
ENVIRONMENTAL CONSIDERATIONS GREENSHEET

Environmental and Historic Preservation and Disaster Recovery

As with all federal funding, certain environmental and historic preservation requirements must be fulfilled as you repair and rebuild your communities. This brochure is provided to help you better understand environmental factors that you must consider as you apply for FEMA funding.

The information and assistance described here will help avoid any environmental roadblocks or time delays.

The most important message is that we are available to help you with all environmental requirements. Contained here are facts, procedures, and contacts to help you through the process.

Please identify any potential environmental concerns or problems and discuss these with our environmental and historic preservation staff as soon as possible. This will help us address issues and expedite funding.

Our work is under the direction of FEMA Federal Coordinating Officer Willie Nunn. We also coordinate closely with the California Governor's office of Emergency Services (CalOES).

As the Region IX Regional Environmental Officer, I pledge to assist you in understanding and complying with all environmental requirements.

Please contact myself, the EHP Advisor, CalOES, or FEMA Public Assistance for any environmental or historic assistance.

Sincerely,

Alessandro Amaglio
Regional Environmental Officer
DR-4558

FEMA, Region IX
U.S. Department of Homeland Security
1111 Broadway, Suite 1200
Oakland, California 94607-4052
Cell: 510-610-1587

September 2020

Questions?

Patricia Nelson,
Environmental Officer,
Cal OES Recovery Directorate
916-823-1945
patricia.nelson@caloes.ca.gov

- **Technical Resources: Environmental Directory and Fact Sheets**

https://www.caloes.ca.gov/cal-oes-divisions/recovery/disaster-mitigation-technical-support/technical-assistance/environmental- historic

406 Hazard Mitigation

- Measures prevent repetitive damage
- Permanent work only
- FEMA may approve if cost is:
  - Up to 15% of eligible project cost
  - Can be up to 100% of eligible project cost if on FEMA's pre-approved list
  - If not on FEMA's pre-approved list, Appendix J (PAPPG), must be cost effective based upon acceptable cost/benefit analysis (BCA)

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Project Worksheet Preparation

- Prepared using estimated or actual costs for repairs
- Sent to Subrecipient/Applicant for concurrence
- Entered into the federal database and obligated by FEMA
- Cal OES processes and manages
- Subrecipient/Applicant notified of PW obligation and pending payments

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Small and Large Projects

Fiscal Year 2019/2020
Small project threshold is $3,300 to $131,100
Large project threshold is $131,101 and greater

Small Projects

- ❑ Any eligible work with aggregate costs below the threshold
- ❑ Funding is based on estimated costs, if actual costs are not available
- ❑ Paid automatically when obligated by FEMA
- ❑ Net Small Project Overrun (NSPO) appeal

Large Projects

- ❑ Any eligible work with aggregate costs over the threshold
- ❑ Payment(s) must be requested unless 100% complete during PW preparation
- ❑ Funding initially based on actual or estimated costs
- ❑ Final funding based on documented eligible actual costs

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FEMA PA Management Costs (Interim)

Management Costs are identified as indirect, direct, and other administrative labor costs related to developing eligible Public Assistance projects and receiving reimbursement. Activities may include, but are not limited to:

- ❑ Preliminary Damage Assessments
- ❑ Meetings regarding PA Program and overall PA damage claim
- ❑ Organizing PA damage sites into logical groups
- ❑ Preparing correspondence
- ❑ Site inspections
- ❑ Travel expenses
- ❑ Developing the detailed site-specific damage description
- ❑ Evaluating Section 406 hazard mitigation measures
- ❑ Preparing Small and Large Projects
- ❑ Collecting, copying, filing, or submitting documents to support a claim
- ❑ Reviewing Project Worksheets
- ❑ Requesting disbursement of PA funds
- ❑ Training

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FEMA PA Management Costs

- FEMA awards Management Costs **up to five percent** of actual eligible Public Assistance project costs, including the non-federal share, after insurance and any other deductions. Management Costs are **funded at 100 percent** federal share via Category Z PWs.
- Category B Donated Resources PWs are not included in the calculation, since not considered project awards.

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Statutory Timeline

Types of Work	Time From Declaration
Emergency Work	6 Months
Permanent Work	18 Months

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Time Extensions for Extenuating Circumstances

Time Extension requests must contain:

- ❑ Project Worksheet Number
- ❑ Category of Work
- ❑ Status or progress on permitting for project
- ❑ Anticipated completion date
- ❑ Percentage of work completed
- ❑ Construction schedule
- ❑ Reason for the delay (beyond control of subrecipient/applicant)
- ❑ Dates of previous time extension

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Project Formulation

Improved Projects

- Projects with improvements to the disaster-related scope of work
- May be requested for both small and large projects
- Permanent work projects only
- Must be approved by Cal OES and reviewed by FEMA **PRIOR** to construction
- Federal funding is capped at federal share of estimated costs of the original PW, or actual costs of the improved project, whichever is less

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Project Formulation

Alternate Project

- Occurs when subrecipient/applicant determines public welfare would not be best served by restoring the damaged facility.
- May be requested for both small and large permanent projects.
- As a result of the Disaster Recovery Reform Act, there is **no longer a 10% reduction**.
- Insurance must be obtained/maintained on:
  - Contents in an amount equal to the alternate project funding
  - Vehicles
  - Buildings

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Required Documents for Payment

Cal OES' Grants Processing Section is required to have the following forms on file for each event in order to process payments:

- ❑ Project Assurances for Federal Assistance (Cal OES 89)
- ❑ Designation of Applicant's Agent Resolution (Cal OES 130)

Questions? ***Please contact Cal OES' Grants Processing Section at (916) 845-8110***

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Project Account

- ❑ Segregate disaster related work from normal activities
- ❑ Actual costs and expenditures should be accumulated
  AS THEY OCCUR

<u>Record Retention Requirement</u>

- ❑ Keep all documentation
- ❑ Keep records for 3 years beyond the date referenced on Cal OES "audit waiver" letter
- ❑ Beware of routine destruction cycles

DETAILS, DETAILS, AND MORE DETAILS

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Quarterly Reports, Closeout, Appeals, and Audits

Quarterly Progress Reports

A tool for FEMA and the Cal OES to track the progress of open Large Projects on a quarterly basis

Project Reconciliation and Closeout

The purpose of closeout is for the Applicant and Cal OES to certify that all work has been completed

Appeals

Applicants may appeal any FEMA determination related to an application for, or the provision of, assistance under the PA Program.

Audits

Recipients and Subrecipients are subject to Federal and non-Federal audits.

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Documentation and Record Keeping

Stafford Act Section 705 - Imposes a three (3) year limit on FEMA's authority to recover payments made to State, Tribal, or local government Recipients and Subrecipients unless there is evidence of fraud

- The Applicant must maintain all original documentation supporting project costs claimed.
- The Recipient and the Applicant must keep all financial and program documentation for 3 years after the date identified in the Recipient's Audit Waiver Letter.
- Records are subject to audit by State auditors, FEMA, the U.S. Department of Homeland Security Office of Inspector General, and the U.S. Government Accountability Office.

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OIG Audits

The Office of the Inspector General (OIG), at the Department of Homeland Security (DHS), determines whether subrecipients can account for expended FEMA grant funding, per federal regulations and guidelines.

The OIG typically audits:

- ❑ **Costs related to the FEMA-approved scope of work**
- ❑ **Procurement procedures: Federal, State, and local requirements**
- ❑ **Contract costs**
- ❑ **Force Account Labor, Materials, and Equipment costs**
- ❑ **Insurance recovery costs/duplicative costs**
- ❑ **Other**

****Procurement Training Available, Web Search: "Procurement Disaster Assistance Team"***

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Payment Notification

- Cal OES' Grants Processing Section sends payment notification letters prior to issuing a State Warrant
- All funding disbursements are issued on State Warrants
- State Warrants are prepared and mailed by State Controller's Office
  Note: ACH (Automatic Clearing House) disbursements, and electronic fund transfers are not available

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Appeal and Arbitration Process

Any determination related to Federal Assistance may be appealed.

There are two opportunities for appeal (or possibly arbitrate in lieu of appeal):

- 1st Appeal to the FEMA Regional Administrator, Region IX
- 2nd Appeal to the FEMA Assistant Administrator, Disaster Assistance Directorate

The appeal must be submitted in writing to the State within 60 days of the notice/action being appealed.

- The State has 60 days from receipt of the appeal to forward it to FEMA has 90 days to render a decision

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Appeal and Arbitration Process

As amended in Section 1219 of the DRRA, to be eligible for Section 423 arbitration, a Public Assistance applicant's request must meet all three of the following conditions:

FEMA Arbitration Fact Sheet
CBCA Arbitration Fact Sheet

1. The dispute arises from a disaster declared after January 1, 2016;
2. The disputed amount exceeds $500,000 (or $100,000 if the applicant is in a "rural area," defined as having a population of less than 200,000 living outside an urbanized area; and
3. The applicant filed a first level appeal with FEMA pursuant to the time requirements in 44 CFR 206.206

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Appeal and Arbitration Process

Public Assistance Applicants who seek to challenge a FEMA first level appeal decision have two options, but also a deadline.

- Applicants must file an appeal or arbitration request within 60 days after receipt of the first appeal decision. If the applicant takes neither action, the first level appeal becomes the final agency determination.
- If the applicant does not receive a first level appeal decision within 180 days of submission, they may withdraw the first level appeal and request arbitration.
- The results of arbitration becomes the final determination.

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Final Claim Process

- Final inspection requirements
  - **All Projects must be closed within 90 days of completion**
  - Small Projects are closed in aggregate
    - Net Small Project Overrun (NSPO)
  - **Must be submitted within 60 days of the last small project's completion**
  - Adjustment(s) made for actual costs for large projects
  - Retention released
- Cal OES invoices Subrecipient/applicant for funds owed the State

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Sandy Recovery Improvement Act (2013)

Alternative Procedures Pilot Program

FEMA implemented the new alternative procedures as a pilot program, available to state tribal, local governments, and owners/operators of PNPs. Participation is voluntary.

Permanent Work

- Grants Based on Fixed Estimates
  - Applicant/Subrecipient responsible for costs above fixed estimates
  - Applicant/Subrecipient flexibility in use of funds within the fixed estimate
- Acceptance of Applicant/Subrecipient Cost Estimates
- Referral of Cost Estimates to "Expert Panel"
- Consolidated Project Worksheets
- Elimination of Alternate Project Penalty
- Use of Excess Funds

Debris Removal

All debris removal pilot features can be used individually or with any other pilot feature.

- Reimbursement for Straight Time Force Account Labor
- One-time Incentive for Debris Management Plan
  (Must be formally adopted and implemented prior to the disaster declaration date)

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Grants Portal - Organization

Manage Personnel

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Damage Inventory And Template

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Upload Documents

Essential Elements of Information (EEI)

Questions Answered and Unanswered

Document Upload

Add Comments

Sign Damage Inventory

Sign Project Damage Description and Dimension (DDD)

Create Your Own Scope Of Work & Cost For Work To Be Completed

Request For Information (RFI)

Sign Project Scope and Cost

Sign Recovery Transition Meeting (RTM)

Grants Portal Hotline for Assistance:

(866) 337-8448

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THANK YOU

Have Questions?

Call: (916) 845-8200

Email: DisasterRecovery@caloes.ca.gov

- *Robbie Larsen*
- *916-845-8162*
- *Robert.Larsen@caloes.ca.gov*

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