

DISASTER RECOVERY

Adjusters International Disaster Recovery Consulting — FEMA recovery issues for decision-makers and leaders **TODAY**

Develop a Rebuilding Plan



EDITOR'S NOTE

This issue of Disaster Recovery Today focuses on funding options and availability of funds to make repairs to damaged facilities. This step is the fifth in a nine-step process identified by Adjusters International to respond to a declared disaster.

Please use the attached reply card for free back issues or to provide us with any comments or suggestions for future issues.

—Sheila E. Salvatore, Editor

Knowing your program and funding options is vital to a successful recovery

By Jeff Shaw

In issue number four, we discussed eligible cost determination. Once an applicant, the state, and FEMA have determined which recovery costs are eligible, the next step is to prioritize projects to provide the most benefit to the applicant, and to determine what steps can be taken to minimize similar damages in a future event. In this

issue we will discuss your funding alternatives when it comes to developing a rebuilding plan. As an applicant, you have several options: you can replace the original facility, improve upon it, or direct the money toward another project. It all starts with a baseline valuation of the facility's damages. As we discussed in issue



2 (“Loss Measurement”) of *Disaster Recovery Today*, the foundation of any valuation or measurement in scope is based on two key valuation criteria: “as it was” and “as it has to be.”

As It Was

The basis for all FEMA reimbursement claims (regardless of whether insurance applies) is “as it was.” What was there immediately prior to the event provides the basis for evaluation. Ideally an applicant will have a set of plans, drawings, or at the very least photo-documentation that predates the triggering event. In addition, any maintenance records, documentation of changes that occurred after the original data was compiled, and other related data should be assembled for review.

It is recommended that an applicant not provide their original documents, but rather copies, and that they are aware that any documents provided could at a later date be subject to a FOIA (Freedom of Information Act) request made to FEMA. If such documents provide sensitive data, it is recommended that discussions commence immediately with

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FEMA so accommodations can be made. In some instances, FEMA has asked an applicant to stamp sensitive materials with “not subject to FOIA requests,” based on their internal policies and regulations.

As It Has To Be

Due to code compliance issues raised by requirements such as the ADA (Americans with Disabilities Act), floodplain management (Executive Order 11988), and the NFPA 101 Life Safety Code, among others, an applicant must also demonstrate “what has to be.” Under the FEMA public assistance program, additional funding is available to bring public facilities up to code. It’s important to note that only the portions of the facility affected by the event qualify for this additional reimbursement. What is allowable varies and is subject to FEMA scrutiny on the following basis:

Building codes and local standards may be used to allow the funding of a repair to a damaged facility as long

as specific criteria are met. Building codes and local standards must:

- ▶ *Apply to the type of repair or restoration required*
- ▶ *Be appropriate to the pre-disaster use*
- ▶ *Be in writing and formally adopted before project approval or be a legal federal or state requirement applicable*





to the type of restoration

- ▶ Apply uniformly to all similar types of facilities within the jurisdiction of owner of the facility
- ▶ Must have been in effect during the time the damage occurred

As We Want It To Be

Once these two elements — “as it was” and “as it has to be” — have been established, an applicant must then decide what “will” or “should” be done. As mentioned in previous issues, even if an applicant knows ahead of time that they are going to improve, drastically change, or not repair a facility, it is imperative to ensure that an accurate scope and cost estimate is developed for the “as it was” and “as it has to be” portions in order to establish a basis for eligible funding. The improvements that go beyond this basis are considered the responsibility of the applicant.

In most cases where changes are to take place, applicants will have their funding capped using the following logic: FEMA will pay to restore the facility to “as it was” condition, plus the amount necessary to make it “as it has to be,” and this total becomes the basis of eligible funding, or the “cap.”

When that number is determined to the applicant’s satisfaction, they can then decide to pursue the goal of “as we want it to be.”

Improved Projects

When performing restoration work on a damaged facility, applicants may decide to use the opportunity to make improvements. Projects that incorporate such improvements are called (oddly enough) Improved Projects. Applicants may

request improvements on small or large projects. The improved facility must have the same function and at least the equivalent capacity as that of the pre-disaster facility. Funding for these projects is limited to the federal share of the costs that would be associated with repairing or replacing the damaged facility to its pre-disaster design (the cap discussed above).

Applicants must obtain approval for an Improved Project from the state prior to construction. Furthermore, any Improved Project that results in a significant change from the pre-disaster configuration (that is, different location, footprint, function, or size) of the facility must also be approved by FEMA **prior to construction**. Prior to approval, FEMA will require completion of the appropriate environmental or historical reviews.

Alternate Projects

In some instances, applicants may determine that the public welfare

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will not be best served by restoring a damaged facility or its function to the pre-disaster design. In this event, they may request to use the public assistance grant for that facility for other purposes — Alternate Project(s). Applicants may request an Alternate Project in lieu of small or large projects, but only for permanent restoration projects. Funds for debris removal and emergency protective measures cannot be used for Alternate Projects.

Funds for Alternate Projects are limited to 90 percent of the federal share of the eligible costs (cap) that would have been associated with





repairing the damaged facility to its pre-disaster design or to the actual costs of completing the Alternate Project, whichever is less.

These funds cannot be used for operating costs or to meet the state or local share requirement on other public assistance projects or projects that utilize other federal grants, but may be used for capital projects such as facilities or equipment. Alternate Project funds may also be used for hazard mitigation projects, including construction of physical facilities, development of regulations, or other activities that would otherwise be eligible through the Hazard Mitigation Grant Program under Section 404 of the Stafford Act. Alternate Projects for eligible private non-profit (PNP) applicants must be for facilities that would be eligible for assistance under Section 406 of the Stafford Act.

All Alternate Projects must be approved by FEMA **prior to construction**. FEMA must ensure that the proposed project

represents an appropriate use of funds and complies with applicable environmental and historical preservation laws. Regardless of whether an applicant is leaning toward an Improved or Alternate Project, it is imperative to work closely with the state and FEMA to develop the proper project cap.

Section 406 Hazard Mitigation

Even when an applicant determines that a facility should be repaired to pre-existing design and capacity, there may be an opportunity to make improvements to the facility that reduce or eliminate the possibility of similar damages from a future event. For example, if a single

culvert has flooded out, hazard mitigation funding would allow that culvert to be converted into a double culvert to prevent future flooding. These sorts of improvements are provided for under Section 406 of the Robert T. Stafford Act and are further articulated in FEMA Policy 9526.1:

a. Section 406 provides discretionary authority to fund mitigation measures in conjunction with the repair of damaged facilities. The mitigation measures must be related to eligible disaster-related damages and must directly reduce the potential of future, similar disaster damages to the eligible facility. These opportunities usually present themselves during the repair/replacement efforts.

Alternate Project funds may also be used for hazard mitigation projects, including construction of physical facilities, development of regulations, or other activities that would otherwise be eligible through the Hazard Mitigation Grant Program . . .



b. While all parties must remain mindful of relative costs and benefits and prudent use of federal disaster funds, a calculation of benefits and costs, using the FEMA approved computer model, no longer is necessary for justification of Section 406 funds.

c. Mitigation measures must be determined to be cost-effective. Any one of the following means may be used to determine cost-effectiveness:

1. Measures may amount to up to 15% of the total eligible cost of the eligible repair work on a particular project.

2. Certain mitigation measures (see Appendix A) will be determined to be cost-effective, as long as the mitigation measure does not exceed the eligible cost of the eligible repair work on the project.
3. For measures that exceed the above costs, the Grantee or Subgrantee must demonstrate through an acceptable benefit/cost analysis that the measure is cost-effective.

d. **Proposed projects must be approved by FEMA prior to funding [emphasis added].** They will be evaluated for cost effectiveness, technical feasibility, and compliance with statutory, regulatory and executive order requirements. In addition, the evaluation must ensure that the mitigation measures do not negatively impact a facility's operation or risk from another hazard.

e. **Cost of meeting applicable codes/standards in accordance with 44 CFR 206.226 is distinct from mitigation funding [emphasis added].**

f. There may be no duplication in funding between Sections 404 and 406. Therefore, the Grantee and Subgrantee must be able to identify

specific hazard mitigation work that will be accomplished with funding through Section 406. Section 404 funding may not duplicate that work, although Section 404 may be additive and accomplished on Section 406 facilities. The appropriate split on a project between funds under Sections 404 and 406 is a FEMA decision.

Paragraph C.2 (above) references pre-approved mitigation measures that have been determined to be cost effective. Appendix A (www.fema.gov/government/grant/pa/9526_1.shtm) outlines a list including infrastructure systems such as drainage, bridges, sanitary and storm systems, treatment plants, potable water, and electric power distribution, among others, as well as some items related to buildings. This list is constantly being updated, and it is important for applicants to remain familiar with its contents.

Section 404 Hazard Mitigation

The previous paragraphs discussed measures to consider for facilities that were damaged during the triggering event. FEMA also allows for mitigation measures to unaffected facilities or programs through Section 404 of the Robert T. Stafford Act. It is





important to work with your local mitigation authority (normally a commission or counsel in charge of the local mitigation strategy) to ensure projects that will reduce or minimize damages from future disasters.

According to the FEMA 321 Policy Digest, “**Hazard Mitigation** is any sustained action taken to reduce or eliminate long-term risk to people and property from natural hazards and their effects.” Section 404 of the Stafford Act outlines the Hazard Mitigation Grant Program (HMGP), which is “available after disasters, but is not under the jurisdiction of the Public Assistance Program.”

Section 404 grant funds give states the opportunity to pursue mitigation measures that may have

been pending due to lack of means. The grant program was created to ensure that “the opportunity [for eligible applicants] to take critical mitigation measures to protect life and property from future disasters [would not be] lost during the recovery and reconstruction process following a disaster.” Eligible projects should fit within the state’s hazard mitigation plan and include “acquisition of hazard-prone property, retrofitting existing buildings and facilities, elevation of flood-prone structures, and infrastructure protection measures.”¹

Applicants are advised to work with their county’s mitigation officer or person in charge of the Local Mitigation Strategy (LMS). The LMS is a pre-approved list of projects for the community and

is ranked by the local mitigation committee. Since the 404 application process is somewhat onerous and the deadline for completion often falls during the first year of recovery, it is recommended that counties and applicants get a head start on this process by preparing complete packages (project narrative, scope of work, timeline, cost-benefit analysis, etc.) for at least their first ten LMS projects well before any disaster occurs. This is especially important because this is a competitive process open to every eligible applicant in the disaster area.

As you can see, during this stage of the process, an applicant has numerous opportunities — as well as decisions to make. Without close coordination with the state

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and FEMA, however, many of these opportunities can be lost. As discussed in the first issue of *Disaster Recovery Today*, it is important not only for applicants to control the inspection environment, but to also be part of all discussions and decisions regarding grant development. Remember, FEMA is not in the design/build business. They are there to lend assistance, but ultimately the final disposition of a project belongs to you.



In issue six of *Disaster Recovery Today*, we outline the steps that go into developing a funding approach.

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Jeff Shaw
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FEMA'S Changing Role

PROCESS² The PA Program is based on a partnership of FEMA, state and local officials. FEMA is committed to enhancing this partnership through improved communication, training and information exchange. The roles and responsibilities of FEMA, state and local governments and private nonprofit organizations are being more clearly defined and responsibilities more flexibly based on the capabilities of the state and local partners.

FEMA FEMA's role is changing from inspection and enforcement to customer service and assistance. In this role, FEMA will provide more information about the program in various media before the disaster strikes and more technical assistance in the development of damage descriptions and cost estimates after the disaster.

State The state's role as Grantee is largely unchanged from the existing program, and the state's financial responsibilities are the same. As Grantee, the state is still responsible for administering the federal grant. However, the redesigned PA Program does al-

low the state flexibility in meeting many of its other responsibilities. For example, there will no longer be a need for a federal-state-local team to inspect and prepare damage estimates for most small projects, since applicants may choose to do their own estimates. FEMA and state officials will meet soon after the declaration to develop a public assistance recovery strategy, which will address FEMA and state staffing plans. FEMA will continue to assist the state, in ways mutually agreed upon, in meeting its responsibilities.

Local The role of local governments and eligible private nonprofit organizations changes with their taking more control in meeting their own needs and managing the pace of their own recovery. Those applicants who can prepare scopes of work and cost estimates for small projects will be allowed to do so, subject to 20% validation by FEMA or the state. FEMA will continue to assist other applicants in preparing their damage descriptions and cost estimates.



² FEMA Public Assistance Program – Efficient, Effective, Consistent – Program Description – October 1, 1998



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