Legal Basis for FEMA Reimbursement

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Local Government Budget Act

- Each political subdivision shall prepare a comprehensive budget
- Public hearing for political subdivisions with proposed expenditures of $500,000
Local Government Budget Act

- Amendment adopted in open meeting
  - Total revenue + projected revenue less than budgeted revenue by 5%
  - Actual + projected expenditures exceed budgeted expenditures by 5%
  - Change in operation

Public Bid Law

- Public Works Contract
  - "the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity" (R.S. 38:2211(A)(12))
- Contract for Purchase of Materials or Supplies
Public Works Contracts

- All public work exceeding $100,000, including labor and materials, shall be advertised and let by contract to lowest responsible bidder (R.S. 38:2212)

Materials and Supplies
R.S. 38:2212.1

- Less than $10,000
  - No bid requirement
- Between $10,000 and $19,999
  - Three phone or fax quotes
- $20,000 or greater
  - Advertise and let by contract
Exceptions to Public Bid Law

- Extreme Public Emergency
  - a catastrophic event which causes the loss of ability to obtain a quorum of the members necessary to certify the emergency prior to making the expenditure to acquire materials or supplies or to make repairs necessary for the protection of life, property, or continued function of the public entity (LSA R.S. 38:2211.A(6)(b))

- Emergency
  - an unforeseen mischance bringing with it destruction or injury of life or property or the imminent threat of such disruption or injury... where the mischance... will not admit of the delay incident to advertising as provided in this Part. (LSA R.S. 38:2211.A(6)(a))
Exceptions to Public Bid Law

- In either an emergency or an extreme emergency, the bid requirements do not apply.
- In emergency, the public entity must certify that an emergency exists and notice must be published in the official journal within 10 days.
- In extreme emergency, the Mayor of the City must declare that an extreme emergency exists. This declaration must be published in the official journal within 10 days or as soon as practicable.
- LSA-R.S. 38:2212.D.(1)

Exceptions to Public Bid Law

- Following documentation required for each contract:
  - Written determination and findings justifying the use of this authority,
  - Written confirmation of the accepted offer, if oral offers are obtained,
  - Description of the work to be performed,
  - Name and address of each offeror,
  - Performance times and terms of each offer, and
  - Reasons for rejection if the lowest quote was not accepted.
- LSA-R.S. 38:2212.D.(2)
Federal Law

- Statute
- Regulations
- Policies
- Disaster Specific Guidance

Statute: The Stafford Act
42 USC 5121, et seq.

- Authorizes the Public Assistance Program:
  - Gives FEMA authority to provide assistance.
  - Defines basic program criteria and eligibility.
  - Authorizes FEMA to publish regulations.
- Provisions cannot be changed by FEMA.
The Stafford Act

Important Sections:
- 402: Definitions (§ 5122)
- 311: Insurance (§ 5154)
- 312: Duplication of Benefits (§ 5155)
- 403: Essential Assistance (§ 5170b)
- 406: Repair, Restoration, and Replacement of Damaged Facilities (§ 5172)

Code of Federal Regulations Title 44

- Rules to implement statute
- Based on interpretation of statute
- Formal publication and comment process
- Have the same effect as law
- May be changed by FEMA
  - Procedures: 44 CFR, Part 13
- Public Assistance Program: 44 CFR Part 206
Policies

- Issued by FEMA Headquarters
- Apply laws/regulations to specific situations
- May be:
  - Subject-specific: Debris Removal
  - Disaster-specific: "Katrina"

Policies: Sources

- Public Assistance Officer:
  - Disaster-specific policies
  - Application of policies
- Public Assistance Guide
- Public Assistance Policy Digest
- Debris Management Guide
- FEMA Website
Disaster Specific Guidance

- Issued by FEMA
- Apply to a specific problem resulting from Hurricanes Katrina and/or Rita
- May not be used outside of the disaster for which it was issued
- FEMA website

General Program Eligibility

- COST
- WORK
- FACILITY
- APPLICANT
Public Applicants

- State governments/agencies
- Local governments:
  - Parishes
  - Cities, towns, villages, townships
  - Districts and regional authorities
- Indian tribal/Alaska native governments

Eligible Private Nonprofit Entities

- PNPs must:
  - Be tax-exempt according to IRS 501(c)(3)
  - Operate as nonprofit under State law
- Facilities must:
  - Provide services open to the general public
    - Exceptions to the requirement
  - Be used primarily for eligible purpose (50%)
    - Space/time
    - Ownership
Eligible Private Nonprofit Entities (Cont'd)

- Educational /Medical
- Fire/Emergency
- Utilities
- Custodial care
- Other essential government services

Facility

- Definitions:
  - Any building, works, system, or equipment
  - Any improved and maintained natural feature

- Examples:
  - Roads, bridges, and culverts
  - Drainage and irrigation channels
  - Schools, city halls, and other buildings
  - Water, power, and sanitary systems
  - Airports
  - Parks
**Additional Considerations**

- Active use at time of disaster
- Pre-disaster function
- Facilities under construction:
  - Responsibility of contractor: not eligible
  - Work accepted by applicant: eligible
- Facilities scheduled for replacements:
  - With Federal funds: not eligible
  - Under contract: not eligible

**FEMA IS THE LAST RESORT**

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**Work**

- General Eligibility Criteria:
  - Direct result of disaster
  - Located in disaster area
  - Legal responsibility of an eligible applicant
Codes and Standards

- Codes and Standards must:
  - Apply to the repair work
  - Be appropriate to pre-disaster use
  - Be formally adopted
  - Apply uniformly to all such facilities
  - Be enforced

Repair vs. Replacement

- Repair: Damages to not exceed 50% of replacement cost to pre-disaster condition
- Replacement: Based on pre-disaster design to include codes/standards
- Eligible costs limited to less expensive
Relocation

- Must be approved by Regional Director
- Must be cost-effective, including:
  - Site acquisition
  - New construction
  - Attendee facilities (rooms, utilities)
  - Demolition of old facility

Ineligible Work

- Work caused by applicant negligence
- Maintenance
- Pre-existing damage
Cost

- To be eligible, costs must:
  - Be reasonable and necessary
  - Comply with standards for procurement
  - Exclude credits
    - Insurance
    - Salvage
    - Some cash donations
**Force Account Labor**

- Actual costs incurred by the applicant for its employees
- Includes:
  - Wages
  - Paid or creditted fringe benefits
  - Regular time, premium time, and overtime
  - Emergency v. Permanent Work
  - Pre-disaster written policy
  - Highly paid personnel
  - Reassigned employees
  - Temporarily employed
  - Volunteer labor

**Force Account Equipment**

- Applicant-owned equipment: hourly rate
- Rate includes:
  - Cost of operation
  - Insurance and depreciation
  - Maintenance
- Rate does not include operator labor
Force Account Equipment Rates

- Types:
  - FEMA schedule of equipment rates
  - State approved rates
  - Locally developed rates
- Local rates used if lower than FEMA's
- Must obtain approval to use higher rates

Force Account Materials

- Must be used for eligible work
- Reimbursement based on:
  - Purchase price
  - Quantities taken from applicant's stock
- Donated materials: not eligible
Contracts

- Eligible if:
  - Reasonable for the work completed
  - Procured
  - Contractor is not debarred or suspended

Contracts (Cont'd)

- Federal Procurement Methods (44 CFR 13.36):
  - Small purchase procedures
    - Less than $100,000
    - Place quotes from adequate number of qualified sources
    - Document
Contracts (Cont'd)

- Sealed Bids (formal advertising)
  - Preferred method for construction contracts
  - Requirements (CFR)
  - If not used, document which reason applicable (CFR)

Contracts (Cont'd)

- Competitive proposals
  - Requirements (CFR)
  - Qualifications-based procurement of architectural/engineering professional services
Contracts (Cont'd)

- Non-competitive proposals
  - Sole source
  - Public urgency will not permit delay of competitive procurement
  - Authorized under procedures of the awarding agency
  - Competition is inadequate

Contracts (Cont'd)

- Acceptable Types:
  - Lump Sum
  - Unit Price
  - Cost Plus Fixed Fee
  - Time and Materials with:
    - Monitoring
    - Cost ceiling

- Unacceptable Types:
  - Cost plus percentage of cost
  - Contingency (FEMA reimbursable)
Administrative Allowance: Applicant

- Cost of working with FEMA, State:
  - Requesting, obtaining, administering, assistance
  - Percentage of PA funds
- No documentation submitted to FEMA but is allowable
- Indirect costs not allowed

Supporting Documents are Important

- Project Workbook
- Improves Process
- Applicable Regulations
- Project Officer's Report
Categories of Work

- Types of work:
  - Emergency work
  - Permanent work

Emergency Work Categories (A & B)

Category A: Debris Removal
- Must be necessary to:
  - Eliminate threat to lives, safety
  - Eliminate threat to improved property
  - Ensure economic recovery to community
- Public property:
  - Roads
    - To open for emergency access
    - Eligibility restricted on Federal-aid routes
    - Natural streams: must pose threat
    - Natural open space: not eligible
Emergency Work Categories

Category A: Debris Removal (Cont'd)
- Private Property
  - Not eligible, unless:
    - necessary to remove health/safety hazard
    - owner has moved debris to right-of-way
  - Routine garbage pick-up: not eligible

Emergency Work Categories

Category B: Emergency Protective Measures
- Necessary to eliminate threat
  - To lives, public health, safety
  - Of additional damage to improved property
- Police, fire, and rescue response
- Emergency access
- Emergency communications
- Snow removal
Emergency Work Categories

Category B: Emergency Protective Measures (Cont’d)
- Temporary levees, sandbagging, and pumping
- Health and safety measures
- Emergency and temporary repairs

Permanent Work Categories (C & D)

Category C: Roads and Bridges
- Eligible features include:
  - Road shoulders
  - Bridges
  - Culverts
  - Associated drainage facilities
- Maintenance items are not eligible
Permanent Work Categories

Category C: Roads & Bridges (Cont'd)
- Federal-aid roads:
  - Major/minor arterials, collectors
  - Fall under authority of FHWA
  - Permanent repairs are not eligible
  - Includes all facilities within right-of-way

Permanent Work Categories

Category D: Water Control Facilities
- Typical facilities include:
  - Dams and reservoirs
  - Drainage and irrigation channels/facilities
  - Levees
  - Shore facilities other than beaches
Permanent Work Categories

Category D: Water Control Facilities (Cont'd)

- Flood Control Works (FGWs):
  - Provide protection from floods
  - Include levees, dams, flood channels
  - Fall under authority of USACE or NRCS
  - Permanent repairs are not eligible
  - Emergency work may be eligible

Permanent Work Categories

Category E: Buildings and Equipment

- Typical facilities include:
  - Schools, administrative centers, and other buildings
  - Building contents and systems
  - Equipment
  - Vehicles
- Additional eligible items:
  - Removal of mud, silt, debris
  - Cleaning and painting
  - Demolition
  - Supplies and inventory
  - Library books and publications
Permanent Work Categories

Category E: Buildings and Equipment
(Cont'd)
- Pay close attention to:
  - Insurance
  - Floodplain management
  - Codes and standards
  - Depreciation of vehicles and equipment

Permanent Work Categories

Category F: Utilities
- Typical facilities include:
  - Water treatment and delivery
  - Power generation and distribution
  - Sewage collection and treatment
- Damage Assessment:
  - Owner's responsibility
  - Eligible if damage is discovered
- Not eligible:
  - Lost revenue
  - Increased operating expenses
Permanent Work Categories

Category G: Parks, Recreational, and Other

- Typical facilities include:
  - Parks
  - Public recreational facilities
    - pools
    - ball fields
    - playgrounds
  - Public cemeteries
  - Improved and maintained beaches

Permanent Work Categories

Category G: Parks, Recreational and Other (Cont'd)

- Not eligible:
  - Trees and other plantings, regardless of purpose
  - Natural beaches
  - PNP recreational facilities