



**New York State Division of Homeland Security and
Emergency Services**

<http://www.dhSES.ny.gov/>

**PUBLIC ASSISTANCE PROGRAM
(Infrastructure Support Program)
HANDBOOK
of
POLICIES AND GUIDELINES
for
APPLICANTS**

**FEMA 4180 DR NY
Severe Storms and Flooding
Incident Period: May 13, 2014 – May 22, 2014
Declaration Date: July 8, 2014**

**Andrew M. Cuomo
Governor**

**Jerome M. Hauer
Commissioner**

**APPLICANT’S HANDBOOK POLICIES AND GUIDELINES
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**NYS DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES
FEDERAL EMERGENCY MANAGEMENT AGENCY
PUBLIC ASSISTANCE PROGRAM**

PROGRAM OVERVIEW

Infrastructure Support Program

The Federal Emergency Management Agency (FEMA) Public Assistance Program provides *supplemental reimbursement* for the repair or restoration of the infrastructures and facilities to pre-disaster condition after the declaration of a major disaster by the President. The New York State Office of Emergency Management (NYS DHSES) is responsible for the program management and administration within the State of New York.

The Public Assistance Program is voluntary. If all eligibility requirements are met and you wish to seek federal reimbursement, you must adhere to the program guidelines. If you choose not to participate, you will not be eligible for any public assistance grants under the Public Assistance Program; however, your decision not to participate in this Program does not preclude your eligibility from other federal programs.

Eligible applicants include State agencies, municipalities, Native American Tribal Organizations, and certain private non-profit organizations that provide essential services of a governmental nature to the general public.

Reimbursement is generally provided on a 75% Federal share, 25% non-Federal share.

In order for disaster expenditures to be considered as part of an eligible public assistance project, it must meet the following criteria:

1. The damage must be a direct result of an incident for which there is a Presidential declared disaster.
2. The damage must be within the federally designated disaster area.
3. The damage must have occurred within the designated disaster incident period.
4. Eligible damage at a designated work-site must total at least \$3,000.
5. The damaged infrastructure must be owned by and/or be the legal responsibility of an eligible applicant at the time of the incident.
6. The damage and work performed must not be eligible for reimbursement under the authority of another federal program.
7. Insurance proceeds are deducted from eligible cost.

The deadline for completion of emergency work (debris removal and emergency protective measures) is six (6) months from the date of the Presidential Disaster Declaration. The deadline for permanent work is eighteen (18) months from the Presidential Disaster Declaration. The State may extend the emergency work deadline for an additional six (6) months and permanent work deadline can be extended for an additional thirty (30) months with justification.

DISASTER FACT SHEET
NYS Division of Homeland Security and Emergency Services
State of New York

DISASTER NUMBER: FEMA 4180 DR NY
TYPE OF DISASTER: Severe Storms and Flooding
DATE OF DECLARATION: July 8, 2014
INCIDENT PERIOD: May 13, 2014 – May 22, 2014

TYPE OF ASSISTANCE AVAILABLE:

- ❖ **Public Assistance:** Assistance to State and local governments and certain private nonprofit organizations for the repair or replacement of disaster-damaged public facilities in:

**Allegany, Cattaraugus, Chautauqua, Delaware, Herkimer, Lewis, Livingston, Ontario, Otsego,
Steuben, Yates**

- ❖ **Hazard Mitigation Grant Program:** Assistance to State and local governments for actions taken to prevent or reduce long term risk to life and property from natural hazards. **All Counties in the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.**

NYS DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES ADDRESS:

**New York State DHSES
1220 Washington Avenue
Building 22, Suite 101
Albany, New York 12226-2251
Telephone: (518) 292-2200 Watch Center
Recovery Facsimile: (518) 322-4984
Recovery Section: (518) 292-2293
Website: <http://www.dhses.ny.gov/>**

Chief of Public Assistance: Christopher Holmes
Deputy Chief of Public Assistance: Walter VanDeLoo
Disaster Assistance Officer (DAO): James Casey
DAO Phone Number: 518-292-2392

Deadlines:

Applicant Submit RPA: August 8, 2014
Applicant Identification of Damage: 60 days from Kickoff Meeting
Emergency Work Completion: January 8, 2014 (6 months from declaration date)
Permanent Work Completion: January 8, 2015 (18 months from declaration date)

APPLICATION REQUIREMENTS & INSTRUCTIONS

The applicant is responsible for documenting, providing and maintaining ALL information pertaining to damage and claims.

DISASTER ASSISTANCE APPLICATION REQUIREMENTS

POTENTIAL APPLICANTS SHOULD SUBMIT THE FOLLOWING ITEMS BEFORE LEAVING THE BRIEFING:

1. A completed Request for Public Assistance (RPA) form

Can be obtained from FEMA Web Site:

<http://www.fema.gov/library/viewRecord.do?id=2690>

-or-

NYSDHSES Web Site:

<http://www.dhSES.ny.gov/oem/recovery/>

- 2. A completed Applicant Certification**
- 3. A completed Drug Free Workplace Certification**
- 4. Federal Tax ID Form**
- 5. DUNS Number Form (Dun and Bradstreet)**

***OTHER REQUIREMENTS NEEDED AS SOON AS POSSIBLE,
IN ORDER TO BE CONSIDERED FOR APPLICANT ELIGIBILITY***

Any authorized official of the governmental unit or organization can sign and submit the above documents.

I. PREPARATION OF DOCUMENTS FOR KICK-OFF MEETINGS, REIMBURSEMENTS, APPEALS, AUDITS, ACCOUNTING INSTRUCTIONS

A. DAMAGE ELIGIBILITY

In order for an expenditure to be eligible under the Public Assistance Program, all disaster related damages must meet the following criteria:

1. The damage must be a direct result of an incident for which there is a Presidential declared disaster.
2. The damage must be within the federally designated disaster area.
3. The damage must have occurred within the designated disaster incident period.
4. Eligible damage at a designated work-site must total at least \$3,000.
5. The damaged infrastructure must be owned by and/or be the legal responsibility of an eligible applicant at the time of the incident.
6. The damage and work performed must not be eligible for reimbursement under the authority of another federal program.
7. Insurance proceeds are deducted from eligible cost.

The applicant is responsible for documenting, providing, and maintaining all information pertaining to damage and claims.

B. INITIAL KICK-OFF MEETING - PROJECT IDENTIFICATION

The Public Assistance Program gives the applicant the opportunity for re-imbursement for the costs associated with the repair of the damages sustained by the incident, based on the applicant's identification of the damages. The development of the projects and their identification on a project worksheet is the basis for all reimbursement of recovery activities subsequent to a Presidential disaster declaration.

1. Kick-Off Meeting

The kick-off meeting is the initial meeting between FEMA, the State and the applicant to determine potential eligible projects within the applicant's jurisdiction. The FEMA Public Assistance Coordinator (PAC) and the NYS DHSES Disaster Assistance Representative (DAR) will meet with the applicant to provide detailed information, guidelines and assistance regarding the Public Assistance Program.

The PAC/DAR team will assist the applicant in preparing Project Worksheets (PW's) for small projects. All projects identified as "large projects" will be assigned a PAC/DAR team to work closely with the applicant in the preparation of the project scope of work and associated costs. The applicant has 60 days from the date of the kick-off meeting to identify all projects.

The kick-off meeting should include discussion regarding hazard mitigation which is any sustained action taken to reduce or eliminate long-term risk to people and property from natural hazards and their effects.

Projects which have been identified as technically complex in nature, such as the replacement of a school building or bridge, should be discussed with the PAC/DAR team at the kick-off meeting. It may be desirable to request funding for an architectural and/or engineering design study (or other specialized study) to be conducted. If such a study is funded, it must include one or all of the following:

- Provide documentation of specific codes and design standards adopted by the community prior to the incident which are included in the final recommendation.
- Provide at least three viable alternatives, with estimated costs.
- All alternatives should address their impacts on environmental, historical, floodplain, endangered species, and coastal zones and barriers.
- The impact on the areas upstream and downstream of the damages must be considered.
- All permits (federal, state, local) must be obtained.

The final design study must be forwarded to NYS DHSES for review and submission to FEMA for final scope of work approval. Funding for the project will be held by FEMA until their final determination on the scope of work.

2. Categories of Work

To facilitate the processing of Public Assistance Program grants, FEMA has divided disaster related work into seven Categories of Work. These categories are listed below.

Emergency Work

Category A: Debris Removal

Clearance of trees and woody debris; building wreckage; sand, mud, silt, and gravel; vehicles; and other disaster-related material deposited on public and, in very limited cases, private property

Category B: Emergency Protective Measures

Measures taken before, during, and after a disaster to save lives, protect public health and safety, and protect improved public and private property. FEMA may provide 100% for Category B costs for eligible applicants for a 10 day period for provision of either emergency electrical restoration to protect public life and safety (e.g. providing alternate power to hospitals, fire stations, police, etc.) or providing emergency mass transportation support

Permanent Work

Category C: Roads and Bridges

Repair of roads, bridges, and associated features, such as shoulders, ditches, culverts, lighting and signs

Category D: Water Control Facilities

Repair of irrigation systems, drainage channels, and pumping facilities. Repair of levees, dams, and flood control channels fall under Category D, but the eligibility of these facilities is restricted.

Category E: Buildings and Equipment

Repair or replacement of buildings, including their contents and systems; heavy equipment; and vehicles.

Category F: Utilities

Repair of water treatment and delivery systems; power generation facilities and distribution lines; and sewage collection and treatment facilities.

Category G: Parks, Recreational Facilities, and Other Items

Repair and restoration of parks, playgrounds, pools, cemeteries, and beaches. This category also is used for any work or facility that cannot be characterized adequately by Categories A-F

3. Special Considerations

The term “special considerations” is used to describe issues other than program eligibility that could affect the scope of work and funding for a project. These issues include insurance, hazard mitigation measures, and compliance with other federal laws and regulations, such as those pertaining to environmental protection and historic preservation.

The applicant has a critical role in identifying---and quickly resolving---special consideration issues based on their knowledge of the community; by considering the issues below before meeting with State-Federal staff, the applicant can speed the reimbursement process. As part of the PW writing, the PAC and DAR will discuss the following nine (9) special consideration questions for each project. Projects that have special considerations will be individually reviewed and the applicant will receive guidance and instructions based on the results of the special considerations review.

Insurance

Does the damaged facility or item of work have insurance and/or is it an insurable risk? (e.g., buildings, vehicles, etc.)

Floodplain

Is the damaged facility located within a floodplain or coastal high hazard area, or does it have an impact on a floodplain or wetland?

Coastal Barriers

Is the damaged facility or item of work located within or adjacent to a Coastal Barrier Resources System Unit or an Otherwise Protected Area?

Environmental Impact

Will the proposed facility repairs/reconstruction change the pre-disaster condition? (e.g., footprint, location, capacity, use or function)

Hazard Mitigation

Does the applicant have a hazard mitigation proposal or would the applicant like technical assistance for a hazard mitigation proposal?

Historic Preservation

Is the damaged facility on the National register of Historic Places or the state historic listing? Is it older than 50 years? Are there more, similar buildings near the site?

Historic properties may not be obvious to the casual observer, and may include districts, buildings, structures, objects, landscapes, archeological sites, and traditional cultural properties that are included in, or eligible for inclusion in, the National Registers of Historic Places. These are not just old buildings or well-known historic sites, but places important in local, State or national history. Facilities as diverse as bridges and water treatment plants may be considered historic.

Pristine or Natural Areas

Are there any pristine or undisturbed areas on, or near, the project site? Are there large tracts of forestland?

Hazardous Materials

Are there any hazardous materials at or adjacent to the damaged facility and/or item of work?

Controversy

Are there any other known environmental or controversial issues associated with the damaged facility and/or item of work?

It is always the responsibility of the applicant to obtain the necessary work permits prior to beginning any repair or reconstruction work. In New York State, agencies which could have a role in issuing the various permits include (but are not limited to) the following:

1. New York State Department of Environmental Conservation
2. Adirondack Park Agency
3. Catskill Park Agency
4. County Soil and Water Conservation Agencies
5. County Drainage Agencies
6. Utility Companies
7. US Army Corps of Engineers
8. US Environmental Protection Agency
9. New York State Office of Parks, Recreation, and Historic Preservation
10. Local building departments which could include considerations of Americans with Disabilities Act provisions
11. Endangered Species under the jurisdiction of the US Fish and Wildlife Service
12. Beaches – Coastal Zone Management under the New York State Department of State
13. County Health Departments

II. PROJECT MANAGEMENT AND FUNDING INSTRUCTIONS

A. REIMBURSEMENT AND PAYMENT PROCEDURES

Two different payment methods have been established for Public Assistance Program grants. The difference between the methods is dependent on whether a project is small or large. That determination is based on a cost threshold that changes annually. As of October 1st, 2013 the threshold amount is \$68,500. If the estimated cost of a project is equal to or exceeds this threshold, the project is processed as a large project. Effective February 26, 2014, FEMA has officially changed the large project threshold to \$120,000 and established \$3,000 as the minimum amount of damage required for an applicant to be eligible for PA funding.

1. Small Project (under \$120,000)

Small Projects are funded using an initial estimate of costs. An estimate is prepared either by FEMA or by the Applicant. The funding level for small projects is fixed, regardless of the final cost incurred by the Applicant. FEMA does not perform a final inspection of completed small projects; however, the State must certify that the Applicant completed the work in compliance with all applicable laws, regulations, and policies.

NYS DHSES will process for payment the **authorized Federal and State shares**.

Small projects are **not** usually eligible for cost overruns. **HOWEVER**, if a **major omission or error** in the scope of work is identified, the applicant can request this be corrected.

2. Small Project Validation

The intent of validation is to reduce the overall administrative costs associated with the Public Assistance Program and to get reimbursement funds into the applicants' hands quickly. Validation applies to all small projects (including emergency work, permanent work and small projects with special considerations) submitted to the PAC/DAR team.

During validation, a Specialist from FEMA or the State reviews a portion of the Applicant's small projects to confirm that the Applicant has developed accurate scopes of work and cost estimates and that the Applicant has sufficient documentation to support the project eligibility and cost. Normally, the review is limited to 20 percent of the Applicant's small projects; however, if problems are found, the sample size may be expanded.

It is imperative the applicant document all work submitted for reimbursement. In support of the PW, the applicant's method of estimating the costs to accomplish the eligible project and related costs must be documented. Additionally, any work accomplished by the applicant prior to preparation of the PW should be reflected as the actual costs incurred. The documentation, which is the basis for these actual costs, must be available during the review. Steps should be taken that all claimed expenses are for work completed as a result of the incident.

In addition to the required paper documentation, photographs of damages and work sites before the repair work begins, during repair or reconstruction, and as soon as the work is complete are an effective way to support the cost documentation for the repair efforts. Photographs accomplish three things:

1. Verify the extent of damages,
2. Verify that the work had been accomplished,
3. Provide documentation of the repaired condition in the event that a subsequent disaster was to destroy the facility or road once repaired, but prior to a final inspection.

For particularly vulnerable sites or facilities, an applicant may wish to take photographs annually to establish the pre-disaster condition. This makes it easier to prove damages occurred as a result of an event.

3. Large Projects (\$120,000 and over)

Reimbursements for Large Projects are based on the **actual documented costs incurred** in the completion of the approved scope of work using New York State Municipal Law for procurement practices. The steps for processing a large project are described below:

- A Project Worksheet is prepared by the PAC/DAR team. FEMA approves funding using the estimate and obligates the Federal share of the funds to the State.
- When the project is complete, the State determines the final cost of accomplishing the eligible work, often performing inspections or audits to do so. The State then submits a report on the completed project to FEMA, certifying that the Applicant's costs were incurred in the completion of eligible work.
- After reviewing the State's report, FEMA will consider adjusting the amount of the grant to reflect the actual cost of the eligible work.

While proceeding with the project, the Applicant must ensure that grant funds are used only for eligible work. Payment cannot be processed until work has been completed, documented and paid for.

The cost estimating methodology that is used in the development of large projects is called the **Cost Estimating Format (CEF)**. This allows for a better estimate of the total cost of large projects. The CEF is a forward-pricing model that allows FEMA to account for all possible costs associated with a construction project. FEMA uses experienced cost estimators and construction engineers to apply the CEF.

Cost Overruns:

Sometimes the actual costs incurred by the applicant during performance of the work exceed the approved estimated amount. This situation is known as a **Cost Overrun**. When this occurs the applicant must determine the reason for the cost overrun. Overruns are usually caused by one of the following:

- ***Variations in unit pricing:*** The unit prices used in the cost estimate may have been lower than those the applicant was actually charged.
- ***Change in the scope of work:*** While performing the work, the applicant may find that additional eligible work or changes in the prescribed work are necessary. If this occurs the applicant must notify the State immediately. Scope of work changes must be approved *prior* to initiating work.
- ***Delay in starting or completion times:*** Problems beyond the applicant's control may contribute to delays in starting or completing work.

The applicant should evaluate cost overruns on large projects. The applicant should notify NYS DHSES if the cost overrun exceeds the approved amount by 50%. If the additional costs are justified, the applicant can request additional funding. The applicant should contact the State to ensure that proper guidelines for documenting any additional costs are followed. When necessary the State will forward requests for additional funding to FEMA. Such requests must contain documentation to support that the additional costs were incurred during the performance of eligible work.

Small projects are handled differently. Cost overruns are not handled on a project-by-project basis; rather, the Applicant may request supplemental funding for a net cost overrun on all small projects by submitting an appeal through the State to FEMA. An appeal should be submitted only when the total costs for all small projects exceed the total cost approved for all small projects. The appeal must be submitted within 60 days of the completion of that Applicant's last small project. The appeal must include documentation of actual costs correlated to each line item in the scopes of work. This includes projects with under runs as well as those with overruns. An explanation of all cost and quantity differences with the approved scopes of work should be included.

4. Large Project Progress Payment Procedure

Applicants may request progress payments based upon documented expended costs. The applicant will need to provide supporting documentation such as, permits, contracts, proof of payments, and indicate what percent complete the project is. NYS DHSES will then audit the submitted documentation and after the review may grant a progress payment up to 50 % of the approved amount on the project worksheet.

5. Alternate Project

If a decision is made that the public welfare would not be best served to repair, restore or reconstruct a damaged facility to its pre-disaster condition, an alternate project can be requested.

NYS DHSES and FEMA must approve this option prior to construction. To obtain this approval, the applicant must submit to NYS DHSES the following: description of the proposed alternate project, a schedule of the proposed project, and projected cost of the proposed project. In the development of the alternate project, it is necessary to supply assurance of compliance with special requirements including, but not limited to, floodplain management, environmental assessment, hazard mitigation, protection of wetlands, and general hazard or flood insurance. NYS DHSES will provide technical assistance to the applicant in the development of the alternate project documents and forward the recommendation to FEMA.

The Federal funding for alternate projects for State and local government applicants is limited to 90% of the federal share of the costs that would be associated with repairing the damaged facility to its pre-disaster condition. (Funding for PNPs is limited to 75% of the federal share of those costs.) Possible alternate projects include:

- Repair or expansion of other public facilities.
- Construction of new public facilities.
- Purchase of capital equipment.
- Funding of hazard mitigation measures.

Funding may not be used for operating costs or to meet the non-federal cost share requirement on other public assistance projects or projects that utilize other federal grants.

This option must be requested within 12 months of applicant's Kickoff Meeting, must be approved prior to construction, and can only be used on permanent, restorative work.

6. Improved Project

The improved project funding option can be used for projects when damaged facilities are restored to the pre-disaster condition or function, but improvements are made at the time of restoration or repair. The applicant must request State approval for an improved project prior to beginning construction. NYS DHSES will advise the applicant of the determination and will forward approvals to FEMA.

Federal funding for these projects is limited to the federal share of the estimated costs that would be associated with repairing or restoring the facility to its pre-disaster condition. Funds to construct the improved project can be combined with a grant from another federal agency; however, federal grants cannot be used to meet the non-federal cost share associated with the grant.

This option must be approved prior to construction and can only be used on permanent, restorative work.

7. Direct Administrative Cost

Direct Administrative Costs are costs incurred by the applicant 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 Project Worksheet (PW), and make interim and final inspections of the project. These costs will be identified on each specific PW.

B. DOCUMENTATION REQUIREMENTS, INSTRUCTIONS AND ELIGIBILITY

DOCUMENT & MAINTAIN COPIES

Disaster reimbursement is based on verification of completed work and actual eligible cost. Therefore, proper documentation of costs and other records is an absolute requirement. It is not enough to complete the disaster work; the work must also be fully and accurately documented. Incomplete documentation could result in a municipality or organization not receiving reimbursement for which it might otherwise have been entitled.

The applicant is responsible for documenting, providing and managing all information pertaining to damages and claims.

1. Documentation Forms

Realizing that a single employee may work on more than one site in one day, and that different types of equipment and materials may be used at each site, report forms for labor, equipment, materials, and contracts, are attached (See Appendix). These forms are to assist the applicant in keeping track of the actual work performed at each work-site. Use the attached forms to summarize all labor, materials, equipment and contract information from the original documentation.

For example, materials/supplies are ordered for repairs to a building. If the order exceeds that required for the disaster repairs, you must subtract from the original purchase order or invoice the pertinent information (vendor, item, etc.) plus the exact amount needed for the disaster repair and enter this information onto the Materials Record form. The original purchase order/invoice is kept in the appropriate file as back up to verify the purchase.

If an applicant has the capability to generate automated summary reports, they are free to do so. Please keep in mind that whichever method is used, the same information must be provided when requested.

2. Insurance

Public Assistance Reimbursement is only available for uninsured losses. The applicant is responsible for providing the insurance policy prior to FEMA providing any funding. FEMA requires the applicant to obtain and maintain insurance on any insurable facility that receives funding from the Public Assistance Program. In the case of insurable facilities in a floodplain, the applicant must have flood insurance equivalent to that issued by the National Flood Insurance Program. If the facility is not insured FEMA will reduce the maximum amount of insurance

proceeds the Applicant would have received if the facility had been fully covered by an NFIP standard flood insurance policy.

The applicant must provide the following to the DAR/PAC team:

- Policies (general hazard and flood) currently in place,
- Deductible information,
- Proof of loss statement received from the insurance carrier identifying the equipment/building which have sustained damages.

The only reimbursable expense for insured damages is the deductible plus any eligible items over and above the insurance policy limits. For example, the insurance policy is for \$500 with a \$50 deductible. Damage received amounts to \$700. Assuming the applicant would receive the \$450 insurance claim, the project would be written for \$250 - the \$50 deductible and the \$200 not covered by insurance.

Claims with the insurance company MUST be filed before seeking FEMA assistance. FEMA is the funding source of last resort, not first.

Self-Insurance: FEMA does not recognize self-insurance for government entities below the state level.

3. Funds Received From Other Sources

The applicant is required to inform the PAC/DAR team of other sources of funding and the amounts utilized toward the repair or restoration of those damages being claimed. The amount received from other sources will be deducted from the project amount. Examples might include funding made available from another state or federal program or a capital project included in the jurisdiction's annual budget for that year.

If duplicate funding has occurred, for example School Aid, the applicant will be responsible for paying back the duplicate amount.

4. Labor Requirements

a. Force Account Labor Eligibility:

Force account work is defined as using your regularly employed personnel and applicant owned equipment to repair/restore disaster damages.

Federal regulation establishes the cost of straight-time salaries and benefits of force account labor (an applicant's own permanent employees) to be ineligible when performing emergency work (Categories A and B).

Only force account labor overtime costs are eligible when performing emergency work; all force account labor costs for permanent work (Categories C-G) are eligible.

NOTE: Records for straight-time employees on emergency work are still required to verify equipment usage.

Only direct additional expenses are eligible for emergency work. The basis for this federal policy is that costs associated with the applicant's regular employees performing emergency work would be incurred regardless of whether or not a disaster occurred.

NOTE: Superintendents, supervisors and foremen are generally **not** eligible for reimbursement. However, if the manager was a "**working**" supervisor (i.e., actually operating a piece of equipment, not delegating who does the work), the time is reimbursable. But you must document and show this! The payroll and equipment logs must also support each request.

b. Labor Documentation:

Each employee to be claimed must be identified by name and title. The summary of labor costs should include:

- Dates worked,
- Hours per day,
- Rate of pay (regular and/or overtime),
- Applicant fringe benefits rate, based on the total payroll for the applicant.

This information may be obtained from the individual daily time cards and supervisor's field notes. It is important to consolidate this information on the Labor Record form at least once a week, if not daily. This will enable the official responsible for disaster record keeping to show exactly who did what, when, where, and for how long on each job site.

c. Temporary Personnel/Extra Hires:

When a regular employee is sent to the field to perform disaster work, frequently a backup person fills in for them in their normal position. There are a few circumstances that affect the eligibility of the backup person:

- If a backup person (full-time or part-time) is an extra hire, the cost of this extra person represents an extra cost to the applicant. Regular salary and overtime pay of this employee is eligible.
- If the additional person is a regular employee from another department of the applicant who is working his/her normal shift, the following costs are eligible:
 - a. Overtime, and
 - b. Pay differential for work outside normal responsibilities if the pay differential is the written policy of the applicant prior to the disaster.
- If the additional person is a regular employee who is called in on his/her day off (and thereby works time in addition to the regular workweek), regular and overtime are eligible because there is an extra cost incurred by the applicant.
- If the additional person is called in from vacation, only overtime is eligible. There will be no extra cost because the vacation usually can be rescheduled.
- Seasonally employed personnel are budgeted costs and are considered permanently employed for the purpose of eligibility.
- Regular and overtime will be determined according to the applicant's written policies and labor union contracts in effect prior to the disaster.
- When an employee has been moved to perform disaster emergency work, an additional person who is hired to backfill for that employee to do non-emergency work is not eligible for reimbursement.
- The costs of salaries and benefits for individuals sent home or told not to report due to emergency conditions are not eligible for reimbursement.
- Costs of contractors hired to accomplish emergency work are eligible for reimbursement.

d. Overtime Pay:

Overtime pay must be in accordance with policies in use before the disaster. Overtime for disaster work is not eligible if you did not have a pre-existing overtime pay policy.

e. Donated Resources/Volunteer Work:

Donated resources used on eligible work that is essential to meeting immediate threats to life and property resulting from a major disaster may be credited toward the non-Federal share of the grant. Donated resources may include volunteer labor, donated equipment and donated materials.

Eligibility: Donated resources are eligible to offset the cost of the non-Federal share of eligible emergency work (Category A and B) costs if they meet the following criteria:

1. Donated resources must be documented by a local public official or a person designated by a local public official. Documentation must include a record of hours worked, the work location and a description of the work for each volunteer as well as equivalent information for equipment and materials.
2. Donated resources **must** apply to emergency work that is eligible under the Public Assistance Program. Examples include the following:
 - a. Removing eligible debris.
 - b. Filling and placing sandbags.
 - c. Donating equipment to raise or reinforce a levee.
 - d. Donating materials, such as rock or sand.
 - e. Search and rescue when part of an organized search and rescue operation
 - f. Professional safety inspections.
 - g. Mass food and shelter for victims, when not the mission of the organization.
3. Donated resources must be documented on the PW.

Value of Resources: The following instruction on the valuing of donated resources is based on 44CFR §13.24:

1. *Volunteer Labor:* The hourly rate placed on volunteer labor should be the same hourly pay rate (plus reasonable fringe benefits) ordinarily paid for similar work within the applicant's organization. If the applicant does not have employees performing similar work, the rate used should be consistent with those performing the work in the same labor market. To determine the value of volunteer labor, the labor rate should be multiplied by the total number of volunteer labor hours.
2. *Donated Equipment:* The value of the donated equipment is calculated by multiplying the applicable applicant rate for the piece of equipment (or FEMA's equipment rate) by the total number of hours that equipment piece was used.
3. *Donated Materials:* Only materials donated by third party entities are eligible for credit. To determine the value of donated materials, use the current commercial rate for such material based on previous purchases or information available from vendors. Materials donated from other federal agencies are not considered "donated" for this purpose.

f. Mutual Aid/Inter-Municipal Assistance Agreements:

If costs are incurred under a written/formal mutual aid or other agreement, the applicant must pay the salaries of the jurisdiction's employees who are providing assistance. FEMA has determined that these agreements serve the same purpose as extra hires and that they are eligible costs. **HOWEVER**, if the mutual aid is provided at no additional expense to the applicant, then these costs are not eligible. Reimbursement cannot be provided unless a cost has been incurred.

5. Equipment Requirements

a. Force Account Equipment Eligibility:

Force account equipment is the term used to identify the applicant's own equipment used in the repair of disaster damages. Eligibility guidelines for applicant-owned equipment allow *operating time only: down time cannot be included. Equipment not in actual use is considered standby and is not eligible for reimbursement.*

Also **NOT ELIGIBLE** are: new equipment purchases
repairs*
gasoline and diesel fuel*

*Repairs, maintenance and fuel costs are included in the FEMA Schedule of Equipment Rates as part of the established rate. Extraordinary repair costs may be eligible.

b. FEMA Schedule of Equipment Rates:

The FEMA Equipment Rate List can be used for applicant-owned equipment (see Appendix II). FEMA Schedule of Equipment Rates can also be found on the FEMA website: www.fema.gov/schedule-equipment-rates

FEMA will provide rates for any equipment not listed; the applicant will need to provide the make, model number and any other pertinent information that may help in establishing a rate.

c. Equipment Documentation:

Documentation for applicant-owned and rented equipment must show the following:

- Equipment description and operators name,
- Dates and total hours used,
- Cost per hour with total cost for each item and,
- Total cost of all equipment used.

Total equipment hours should be compared to appropriate personnel hours to ensure both are accurate. If a piece of equipment is used by being attached to another piece of equipment (for example, trailer hitched to a truck), this should be noted.

Equipment logs and records must identify each piece of equipment used for disaster-related work at each site. Ensure operator/dispatcher logs and other actual field records are accurately kept, copied and consolidated onto the Force Account Equipment or the Rented Equipment record forms.

d. Rental Equipment:

For rented equipment, the documentation must also show the date and amount paid, and the check number for evidence of payment. This agreement must specify who is responsible for all repairs to the equipment. A separate vendor invoice file should be established with copies of all rental agreements and invoices from equipment vendors. Also, a copy of the rental agreement must be maintained in the work site file (see Appendix).

6. Materials Requirements (rip-rap, plywood, sandbags, etc.)

The applicant must document all materials and supplies purchased or taken from stock and used on each job. Provide and attach invoices, receipts, purchase orders, paid vouchers, etc., showing the actual purchase and price of all materials used for disaster work. Use the Materials Record form to consolidate the information to one place (see Appendix).

a. Purchased Materials:

If special materials were purchased to perform disaster work, show the documentation citing that purchase. Specifically, documentation must show the vendor, quantity, description, unit price, total price, date used, and the date of purchase and check number.

b. Inventory Materials:

If materials were taken from stock, provide an invoice or voucher showing the last purchase of those items or stock, even if it was prior to the disaster. Some type of evidence of purchase is required for reimbursement for all materials used.

7. Contract Work Documentation & Eligibility

Contracts must be of reasonable cost, generally must be competitively bid, and must comply with Federal, State, and local procurement standards. Contract requirements for local governments are outlined in the NYS General Municipal Law.

a. Competitive, Fixed Price Contracts:

The preferred and most generally accepted means to assure contract work is undertaken at a reasonable cost is to follow competitive, fixed-price procurement procedures. Firm fix-price contracts provide for an established price to maximize incentive for the contractor to control costs and perform effectively.

Fixed-price contracts are achieved by competitive bidding that includes:

1. Developing specific contract work specifications,
2. Proper advertising,
3. Selecting of the lowest qualified bid.

The above three items must be maintained for validation and audit purposes.

Two or more proposals from responsible suppliers are needed to solicit the selection of the lowest qualified bid. **IF** the lowest bidder is not awarded the contract, a written statement or justification is required as part of the documentation explaining the reason for not taking the low bid. Place this statement in the appropriate project file. Single source quotes or proposals do not meet funding criteria.

For new contracts as well as contracts already in place, the applicant must document and maintain:

- The contract.
- The vendor invoice showing the charges and rates, applicable to disaster work.
- A copy of the bid advertisement.
- Justification for selection of other than a lowest bidder (if applicable).

b. Time and Materials Contract:

Time and materials contracts should be avoided, but may be allowed for work that is necessary immediately after the disaster has occurred when a clear scope of work cannot be developed. Generally, FEMA will accept time and materials contracts with a work duration of 70 hours immediately after a disaster. Applicants must carefully document contractor expenses, and a cost ceiling or “not to exceed” provision must be included in the contract. If a time and materials contract has been used, the Applicant should contact the State to ensure proper guidelines are followed.

c. Types of Contracts NOT ELIGIBLE are:

1. Cost plus or percentage of cost methods.
2. Contracts containing a provision which makes payment for eligible work contingent upon reimbursement.
3. Contracts with any contractor included on any FEMA debarment and suspension listing <http://www.labor.ny.gov/workerprotection/publicwork/PDFs/debarred.pdf>

d. Emergency Contracting Period:

An emergency contracting period usually occurs immediately following a disaster or incident AND is limited to a matter of days.

Waiving competitive procurement procedures for emergency situations or circumstances may only be accepted under limited conditions. That is, contracts necessitated by a public emergency arising as a direct result of the declared such as an accident or other unforeseen occurrence or condition affecting public buildings, public property or the life, health, safety or property of the inhabitants of a municipality may be awarded without competitive bid.

This emergency phase will vary depending on the disaster and the immediate threat to public health and safety. Justification must accompany all contracts not competitively bid. Contract requirements for local governments are outlined in the NYS General Municipal Law.

C. COMPLETION OF WORK

The deadline for completion of emergency work (debris removal and emergency protective measures) is six (6) months from the date of the Presidential Disaster Declaration. The deadline for permanent work is eighteen (18) months from the Presidential Disaster Declaration. The State may extend the emergency work deadline for an additional six (6) months and permanent work deadline can be extended for an additional thirty (30) months with justification.

1. Work/Time Extensions

Applicants must request an extension of deadlines PRIOR to assigned dates. **Requests for extensions must be submitted prior to the deadline to allow time for the request to be reviewed.** The requests are submitted in writing to NYS DHSES Public Assistance Section using the attached “Request for Time Extension Form”.

All requests for a time extension must include detailed justification for the request. The request must specify each project for which an extension is requested and detail the efforts being made to complete the work prior to the established deadlines.

If an applicant does not complete the work within the established deadline, and the applicant does not request and receive a time extension, reimbursement could be denied for any work completed after the established deadlines.

Applicants should not presume that their time extension requests will be approved; however, the disaster work must continue. Notification will be sent to the applicant advising them of the final determination regarding the request. An unfavorable response may be appealed with additional justification.

2. Quarterly Progress Reports

The Applicants are required to report to NYS DHSES on the status of all large projects that are not complete using the quarterly report progress form. This allows the NYS DHSES to obtain the information needed to comply with

FEMA requirements and provides the opportunity to identify possible problems being incurred by the applicants in their efforts to complete their projects.

REMEMBER all work must be completed within the existing time limitations. IF work cannot be completed within the existing time limitation, a time extension MUST be requested. If at any time problems are encountered or concerns exist, notify the NYS DHSES Public Assistance Section. Problems or concerns identified on the Quarterly Progress Report will be addressed.

Approved Project Notification Folder (Blue Book)

Upon receipt of the Approved Project Notification Folder, please review the package for the following information:

- Deadlines for the projects, if projects require a time extension a request should be submitted.
- Changes in the scope of work or discrepancies from the project as identified immediately following the disaster. If any discrepancies are discovered, notify NYS DHSES as soon as possible to avoid payment problems at the time of final inspection.
- Large Projects which were not 100% complete at the time the PW was prepared, must have a report submitted quarterly detailing the status of the projects.
- If a project is no longer under consideration, notify NYS DHSES of the need to withdraw the project from consideration.
- As projects are completed, the Project Listing (P.4 form) should be completed and returned to NYS DHSES Public Assistance Section.

Disapproved Project Notification (EMMIE Notification Letter)

Upon receipt of EMMIE Notification Letter, please review all documentation. Documentation may include a copy of denial notification and project worksheet. Receipt of this notification begins your sixty (60) day timeframe to appeal the project denial.

D. FINAL INSPECTIONS

Because federal payments are based on final inspections and audits, proper documentation of costs is an absolute requirement. The final inspection process will begin once NYS DHSES Public Assistance Section is notified by the applicant that all work has been completed and costs associated with the project have been incurred. A final inspection will be conducted on all large projects for which the work was not 100% complete at the time the PW was prepared.

Within thirty (30) days of completion of all work associated with a project (large or small projects), the applicant should notify NYS DHSES using the FEMA Project Listing (P.4) included in the Project Application Supplement of the project completion. This notification consists of completing the P.4 indicating the project cost and completion date. The applicant's authorized agent must sign the P.4 certification statement indicating the work was completed in accordance with Public Law 93-288, as required.

All correspondence should be addressed to the Public Assistance Section at NYS DHSES. **REMEMBER the burden of proof and the need to provide detailed justification is the applicant's responsibility.**

E. APPEALS

An applicant may request that NYS DHSES submit an appeal to FEMA for reconsideration of any determination (for example, funding amounts, eligibility determinations, etc.) that FEMA made related to federal assistance pertaining to the applicant. Some of the determinations which can be appealed include:

- An entity is not an eligible applicant.

- A facility or a specific project is not eligible.
- The approved eligible cost is less than what the applicant believes is necessary to complete the approved scope of work.
- Denial of a requested time extension.
- Denial of specific costs claimed for a project.

The applicant's written appeal request must be made within sixty (60) days of the date of receipt of FEMA's written notification including the receipt of the Project Worksheet (PW) and must include additional, detailed documentation and/or justification of the appeal. The information should be sent to NYS DHSES as soon as possible. It is the applicant's responsibility to prepare the appropriate appeal documentation and justification to be presented to FEMA for their review and consideration.

An applicant has two opportunities to appeal a FEMA decision. Both appeals are submitted to NYS DHSES NYS DHSES. Each appeal will be processed through NYS DHSES for review and comment before being referred to FEMA. Each appeal is based on documentation or information not previously known or provided to NYS DHSES or FEMA.

F. AUDIT REQUIREMENTS

Audit requirements will be accordance with OMB Circular A-133, as appropriate

1. A review of all large projects (and all small projects with significant cost overruns) will be conducted by the State once those projects are completed. Applicants receiving \$500,000 or more in Federal financial assistance in a fiscal year will be required to have an audit made in accordance with the Single Audit Act Amendments of 1996 – OMB A-133.
2. The Single Audit Act of 1984 (P.L. 98-502, as amended) requires any sub-recipient who receives a total of \$500,000 or more in Federal financial assistance from all sources during its fiscal year obtain either a single audit or a program specific audit for that fiscal year. If a sub-recipient receives less, they are exempt, however records must still be available for audit. Applicants will provide NYS DHSES a copy of the Single Audit. Any findings will be reviewed for necessary corrective action. Non-compliance with this requirement will lead to sanctions. Payments will be withheld pending compliance of the Single Audit (A-133) Report.

Failure to comply with these requirements may result in the suspension of your Federal Disaster Funds.