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Santa Barbara County

Procurement for Disaster Projects – Doing it Right!
Step by Step Manual



OVERVIEW OF DISASTER PROCLAMATIONS

Definition of Local Emergency: “The duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor’s warning of an earthquake or volcanic prediction, or an earthquake... or other conditions, other than conditions resulting from a labor controversy, which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat...” *Section 8558(c), Chapter 7 of Division 1 of Title 2 of the Government Code*

There are three levels of disaster proclamations: local, state and federal.

Local Emergency: A Local Emergency can be proclaimed when conditions of disaster or extreme peril (fire, flood, storm, epidemic, riot, drought, sudden/severe energy shortage, plant or animal infestation / disease, tsunami warnings, etc.) pose a risk to safety of persons/property that are likely to exceed resources/capability of the “proclaiming” political jurisdiction. Certain immunities, authority, extraordinary powers and financial relief are necessary component of effective response. A Local Emergency can be proclaimed when the Board of Supervisors is in session or not. If it is proclaimed when the Board is not in session then the Board of Supervisors must ratify it within seven (7) days. It must also be ratified every fourteen (14) days thereafter as long as the emergency conditions exist. A Local Emergency is a prerequisite to requesting a State or Presidential proclamation.

State of Emergency: The next level of emergency is a Governor’s proclaimed State of



Emergency when conditions exceed the capability of any single county, city and county, or city and require assistance from mutual aid region(s). A gubernatorial proclamation will provide certain immunities and privileges for state and local authorities responding to the emergency. The state proclamation authorizes the governor to expend emergency funds and use state resources, i.e., state agencies, National Guard, California Conservation Corps, etc. It also activates the California Disaster Assistance Act (CDAA). There are two types of state emergency proclamations as described below:

OES Director's Concurrence: The CDAA authorizes the Governor's Office of Emergency Services (OES) Director, at his/her discretion, to provide financial assistance to repair and restore damaged public facilities and infrastructure. State OES must receive the request from a local government within 10 days of an incident. Supporting information required includes: the Local Emergency Proclamation, Initial Damage Estimate (IDE) prepared in the Response Information Management System (RIMS), and a request from the City Mayor or County Administrative Officer/County Executive Officer, or County Board of Supervisors.

Governor's Proclamation of State Emergency: Provides the Governor with powers authorized by the Emergency Services Act and authorizes the OES Director to provide financial relief for emergency actions and restoration of public facilities and infrastructure. A state proclamation is a prerequisite for requesting a federal declaration of a major disaster or emergency. State OES must receive the request from a local government within 10 days of an incident. Supporting information required includes: the Local Emergency Proclamation, IDE prepared in RIMS, and a request from the County Executive Officer, his designee or the County Board of Supervisors.

Federal Emergency: The next level of emergency is a federal emergency proclaimed by the President. The Presidential federal proclamation authorizes the President to expend emergency funds and use federal resources, i.e., federal agencies, etc. It also activates the Federal Stafford Act and additional federal disaster regulations. There are two types of federal [proclamations](#) [that](#) are described below:

Presidential Declaration of an Emergency: The purpose of a Presidential Declaration of an Emergency is to support response activities of the federal, state and local government. A Presidential (federal) proclamation authorizes federal agencies to provide "essential" assistance including debris removal, temporary housing and the distribution of medicine, food, and other consumable supplies. It does not provide reimbursement for permanent restoration work and individual assistance. The Governor must request a federal proclamation on behalf of a local government within five (5) days after the need for federal emergency assistance is apparent. The supporting information required includes: all of the supporting information required for a State Emergency as described above and, a Governor's Proclamation- certification by the Governor that the effective response is beyond the capability of the state, confirmation that the Governor has executed the state's



emergency plan, information describing the state and local efforts, and identification of the specific type and extent of federal emergency assistance needed.

Presidential Declaration of a Major Disaster: The purpose of a Presidential Declaration of a Major Disaster is to support the response and recovery activities of the federal, state, and local government and disaster relief organizations. It also authorizes implementation of some or all federal recovery programs including public assistance, individual assistance and hazard mitigation. The Governor must request federal declaration of a major disaster within 30 days of incident. The supporting information required includes: all of the supporting information required above and, a Governor’s Proclamation, certification by the Governor that the effective response is beyond the capability of the state, confirmation that the Governor has executed the state’s emergency plan, and identification of the specific type and extent of federal aid required.

DISASTER ASSISTANCE

Once a federal proclamation has been issued, the affected entity becomes eligible to receive disaster assistance, primarily through the Federal Emergency Management Agency (FEMA).

Projects

In general, two types of disaster assistance projects are funded by FEMA:

Emergency work: This includes debris removal and action taken by applicants before, during, and after a disaster (up to six months after) to save lives, protect public health and safety, and to prevent damage to improved public and private property. *Emergency work does not include complete repair of the facility.* Categories of emergency work include:

- Category A – Debris Removal
- Category B – Emergency Protective Measures

Permanent work: This refers to any activity that must be performed to restore a damaged facility to its pre-disaster design and function– from making minor repairs to a complete replacement of the facility. *Any improvement or modification included in the repair is considered hazard mitigation by FEMA. It must be cost effective and approved by FEMA in advance – otherwise funding for the entire project is in jeopardy.* Permanent work categories include:

- Category C – Roads, bridges
- Category D – Water control facilities
- Category E – Buildings and Equipment
- Category F – Utilities



Category G – Parks, Recreation, other

Disaster Funding

A FEMA grant is a conditional obligation to provide federal funding for a specified project or *scope of work*. The fact that a project is obligated and a check for the money is sent to a subgrantee, does not define the end of the FEMA reimbursement process. Funding may be increased, reduced, or even deobligated – depending upon a number of factors, including the following:

- 1) Projects are reviewed for work eligibility – only work approved by FEMA is eligible for federal funding.
- 2) Actual costs are reviewed at project completion – the costs must be clearly identifiable as to work performed. The costs must be:
 - directly tied to the performance of eligible work,
 - reasonable and necessary to accomplish the work,
 - compliant with Federal, State, and local requirements for procurement, and
 - reduced by all applicable credits, refunds, rebates, and insurance proceeds.

Funding Pitfalls to Avoid

It is critical that federal guidelines be adhered to for all disaster related projects that are performed under a federally declared disaster. These requirements differ, depending upon whether the work is emergency or permanent work.

Major problems with FEMA grants occur when:

- 1) **County project “change orders” deviate from the approved scope of work.** This can make a project an “Alternate or Improved Project” or jeopardize the funding of the entire project without prior FEMA authorization. FEMA recognizes that “change orders” arise and that “change orders” are necessary to complete the scope of work in some cases. However, FEMA requires that the State be notified as soon as possible in writing so the State may transmit a letter of the State’s concurrence or non-concurrence to FEMA stating (1) why the change order was necessary (2) the new scope of work, including quantities and (3) cost summary.
- 2) **Failure to comply with federal environmental or historic laws.** This occurs when permanent repair is performed, prior to FEMA funding, without first reviewing compliance with National Environmental Protection Act (NEPA), National Historical Preservation Act (NHPA), and the Endangered Species Act. FEMA also approves any modification to the original facility design, “footprint,” or structure that is over 50 years old. FEMA considers any modification to the pre-disaster design as a potential environmental or historic issue.



- 3) **Insufficient documentation on contracted work and Force Account Work.** This occurs when contract work is performed without maintaining sufficient documentation to clearly match the costs claimed (invoice and vendors) to the specific work performed. All documentation for claimed costs must be maintained/stored for three years following final payment as required by the Federal Office of Management and Budget.

Final payment is defined as the last payment on the final project for the applicant on the disaster. For example, on any given disaster there are generally multiple projects for which FEMA funding is received. Some projects maybe completed within one year of the disaster and some within five years of the disaster. If this is the case, all records applicable to this disaster and applicant must be maintained for **eight years (5 years plus 3 years)**. FEMA’s retention period may exceed the County’s internal document retention policy and therefore takes precedence.

- 4) **Procurement violations.** This occurs when:
- a) Work over \$125,000 is not competitively awarded;
 - b) *Time and Materials* (T&M) contracts do not have a monetary limit or “cap”; and
 - c) Changes are made to the scope of contracted work without approved change-orders.

Problems with Mixing Emergency and Permanent Work

Combining emergency and permanent work into a single project is a problem. One phase of a project initially may be emergency work. However, if work is continued past a certain point, it may be considered a permanent repair. If care is not taken, such that costs can be separated into the emergency and permanent phases, the entire project may be lumped as permanent work and jeopardize funding.

1. Procurement practices that may be applicable for emergency work may not be applicable for permanent work. If care is taken (by assuring the contracted work is clearly defined and separable) a project can be divided into two projects (i.e., an emergency project and a permanent repair project). However, if the contract work is not properly defined, the entire scope of work may be forced into a single permanent repair project – where procurement requirements are more restrictive.

Example: A country road may be washing out due to flooding. In order to safeguard the road, a contractor may be dispatched to perform emergency repair as necessary to 1) keep further erosion from occurring and 2) make the road passable for emergency vehicles. Various types of work may be eligible under such conditions. However, as repair proceeds, a point is reached where the situation has become stabilized; any further work is considered permanent repair. Emergency repair could include dumping rock/gravel and placing of culvert piping at primary points of erosion to channel the water flow across or under an eroded roadway. Permanent repair would include bringing the road to final grade, paving A/C, installation of headwalls on the drains – i.e., restoring the road to full usable condition.

2. When undertaking such a project, proceeding directly from emergency work to permanent restoration may make sense. This is especially true in any of the following situations:



- Failure to complete the job would subject the facility to further damage;
- Continued use of the facility is critical and permanent repair is essential to use;
- Completing the work without further delay is clearly cost effective (such as when mobilization and demobilization cost are high in proportion to the cost to complete)

A word of caution – be sure to provide adequate justification prior to proceeding from emergency work to permanent restoration. It may be prudent to consult with the FEMA and/or State OES representative to obtain and document prior approval.

Issues with Contract Work

Whenever work is performed using contract forces, it is essential that certain procurement procedures be followed. *Time and Materials* (T&M) work agreements must contain the following:

- The scope of work must be clearly defined;
- T&M authorizations must have a monetary limit or “not to exceed” cap;
- T&M Contractors will have County Staff on site monitoring daily progress using logs;
- Any change in the authorized work scope or monetary amount must be approved in advance of performing the work by a department head. OES and FEMA must be immediately notified of any change to the approved scope of work or cost estimate. For change orders to be eligible, there must be a reasonable explanation that the added scope of work is reasonable and unavoidable.
- *For permanent work:* Contracts over \$30,000 (including change-orders) are subject to competitive award procedures.

Final Reconciliation

When a project is approved by FEMA, it is approved for a specific scope of work. After projects are completed, FEMA will review costs to see whether or not the costs are eligible for reimbursement. The County of Santa Barbara, as the subgrantee, provides actual cost data to FEMA representatives. Based upon that review, funding is adjusted to reflect final eligible costs. The factors that will be considered are:

- 1) The costs must be associated with performing the approved scope of work. As such, standard T&M invoices (which may only list labor, equipment, and materials) provide insufficient historic evidence to document the nature of a construction project after it is completed.
- 2) The work must be eligible as approved by FEMA in the initial project description and scope of work – improvements or modifications that are not included in the approved scope of work are not eligible. And, if such ineligible work is co-mingled with eligible work – the eligibility of all costs for the project are placed in jeopardy.
- 3) Proper procurement procedures must have been followed for contracted work – otherwise funding may be reduced, denied or deobligated.



DISASTER PROCUREMENT POLICY

The following step-by-step procedure outlines the process for contracting disaster related work regardless of the cost. The County Auditor will provide all County departments with a standard **Project Identification Disaster Number (PIDN)**. The **PIDN** will be used on all invoices, contracts, purchase orders, and any references to disaster recovery.

Example: “05STRM” is the Project Identification for the 2005 Storm Disaster. County Departments will need to create and use a rubber stamp identifying the disaster receipts, invoices, communication, contracts, and purchase orders with a Project Identification Disaster Number (PIDN). A “Disaster Recovery” rubber stamp will suffice using the (PIDN). An example is “DISASTER XYZ” the County Financial Information Network (FIN) will record all projects with the authorized number. If your department, for tracking purposes, cannot use PIDN, then you need to contact the County Auditor, and Disaster Recovery Manager to inform them what tracking numbering sequence your department is using.

1. Invoicing:

Before entering into a work agreement, T&M contractors will be instructed on proper invoicing procedures by your department representative, which (in addition to reflecting invoiced charges for labor, equipment, and materials) must reflect the actual work to be performed with a “not to exceed” clause. The invoices must:

- *Describe the locations* where work was performed
- *Describe the tasks or type of work performed* in that invoice
- *Quantify the amount of work performed*
- *Give a “not to exceed” estimated amount. An example “not to exceed \$15,000”. Fifteen thousand dollars cost for the additional “X” tons for asphalt.*
- *Change Orders are allowed, and can only be pre-authorized from the department representative. A **department representative is a Project Manager of that department or authorized representative identified by the Board of Supervisors by County Resolution.***

**Develop a standard reporting format.*

2. Is this emergency work?

If **NO**, contract according to the normal procurement processes when possible during the local emergency. If there is any doubt, please contact your Disaster Recovery Manager.

If **YES:**

- a) Verbal authorization to proceed may be given to an approved CLC contractor by a contracting official *only if followed by written/faxed authorization.* T&M contracts may be in excess of \$125,000 and that authorization will explain why the T&M work was necessary and who approved the T&M contract and the name of the county staff



monitoring the T&M job performance. T&M contracts are for the first fourteen (14) days of the declared disaster (incident period) and is considered an “Emergency Contract”. If after 14 days situations arises where a scope of work and a “not to exceed amount” cannot be accurately defined and the situation is a threat to the health and safety of the public as determined by the Board of Supervisors or their designee, then a time and material contract with a qualified CLC shall be used as allowed by 44 CFR 13.36(b)(10)(i)(ii).

The authorization must include:

- the location of the work;
- a concise description of the scope of work to be performed; and
- a monetary cap limit that is based on an estimate of the work.

Note: the *contracting county official* may be the engineer in charge, inspector on site, department designee or any designated subgrantee agent not affiliated with the contractor.

- b) The county department will keep a file of a copy of the written/faxed contract authorization by the contracting official for that particular location and project. The contracting official shall also provide a brief written explanation as to why the project is considered to be emergency work and include a projected timetable for the work to be completed. This documentation will be entered into a project specific file to be used to establish project eligibility with FEMA.

c) **Change-orders to Emergency Work**

If project costs increase to the point they will exceed the monetary cap limit, or the damage situation changes as to require a modification to the scope of work – the contracting official must issue a change order describing the change in the work authorization with the estimated cost summary. The contracting official will notify the Disaster Recovery Manager who will provide written notification to the State for State (OES) and FEMA’s approval.

d) **Emergency Work versus Permanent Repair**

The contracting official must monitor the progress on the project to assure the scope of what is considered emergency work is not exceeded. If continuation with work is to enter the realm of permanent repair – **STOP!** – and reassess the situation.

Consider the following factors in determining Emergency Work vs. Permanent Repair:

- a) Is it necessary to proceed directly from emergency work to permanent repair?
- b) Advise the Public Works Department Disaster Recovery Manager. Your “*List of Projects*” has been submitted to the State with specific “*Categories*” along with a Request for Federal Assistance. The “*List of Projects*” is very specific with a dollar estimate amount for all categories. If the dollar amounts in these categories significantly change,



the State needs to be notified. The State requests reimbursement from FEMA based on the categories. A list of Categories is provided in the *Glossary*.

- c) Define the scope of work required to complete permanent repairs:
 - Prepare a sketch (as appropriate);
 - Itemize the components of the work ;
 - Quantify the units of each component and use a unit cost to compute the cost for each item of work; and
 - Provide a total estimated cost for the project.

- d) Whenever possible, and especially if project cost may exceed \$125,000 *the work may* proceed with the below competitive award method, which may be comprised of the following (for which the contracting official must keep a diary/record):
 - Telephone invitations to qualified contractors/advertisement in newspaper (if time permits);
 - Photocopies of basic specifications for work;
 - Drive by tour of job site(s) with prospective bidders;
 - Providing a time period for contractors to prepare and submit bids (if urgent this could be 24 hours); and
 - All bids can be made subject to immediate commencement of work following award.

- e) If proceeding with a competitive award process is not reasonable, a written explanation is required. The contract awarded must clearly describe the authorized scope of work, provide a clear estimate for the work, and be based upon a set price.

- f) Assure change-orders are documented with clear justification (photos or other evidence that may help) to support the eligibility of the work.

Maintain copies of all the above within the project disaster files. Never destroy your disaster recovery project files. When your department has completed all work associated with the approved FEMA or State project/s, notify the Disaster Recovery Manager and County Auditor. Your files need to be secured until the Federal or State audit is complete.

Office of Inspector General Considerations:

The following “steps” are what the Office of the Inspector General wants to know.

Force Account (FA) Labor

1) Procedure Step: Eligible personnel costs



Audit Step: Determine if personnel or labor costs were for approved project activities and performed during the authorized period. Verify that the employees are not: Performing indirect work ([Administrative](#)), or a management level being paid for disaster work.

2) Procedure Step: Supported personnel costs

Audit Step: Determine if time and attendance records support personnel or labor costs, time distribution records and/or labor foreman activity logs.

3) Procedure Step: Actual payment

Audit Step: Determine that the personnel or labor costs were computed consistent with previous pay rates and were actually paid to the employees.

4) Procedure Step: Fringe benefit rate

Audit Step: Determine that fringe benefit costs claimed were consistent with the subgrantee's established personnel policies and procedures.

Force Account (FA) Equipment

1) Procedure Step: Approved project activities

Audit Step: Determine that equipment costs were for approved project activities and were adequately supported by equipment utilization records and/or foreman activity logs.

2) Procedure Step: Equipment hours

Audit Step: Determine that the equipment usage hours are supported, and verify that the equipment use hours do not exceed the operator's labor hours.

3) Procedure Step: Equipment rates

Audit Step: Determine that equipment rates for use of the subgrantee's own equipment did not exceed FEMA's established guidelines on eligible equipment rates.

Contracted Costs

1) Procedure Step: Contract/consultant for approved projects

Audit Step: Determine if the contract labor/consultant costs were for approved project activities and were supported by contracts, invoices and other payment records.

2) Procedure Step: Contract type

Audit Step: Determine the type of contract (lump sum, cost plus fixed fee, etc.) issued and determine whether the procurement was in accordance with local/State or Federal procurement standards.

3) Procedure Step: Contract costs reasonable



Audit Step: Determine if the costs are reasonable. If non-Invitation for Bid contract, determine if cost/price analysis was performed and review change orders to contract to assure changes are within scope of project.

4) Procedure Step: Contractor record review

Audit Step: If time and material or cost plus contract, a visit may be necessary to the contractor's office to review the contractor's records supporting the billings. (Use the same audit procedures as used in force account labor.) If the labor rates were loaded, a review of the cost elements included in the burden factor may be necessary.

5) Procedure Step: Equipment costs supported

Audit Step: Determine that equipment costs were for approved project activities and were adequately supported by vendor invoices as well as equipment utilization records and/or foreman activity logs.

6) Procedure Step: Equipment usage consistent

Audit Step: Determine that the equipment usage hours are supported; and verify that the equipment use hours do not exceed the operator's labor hours.

7) Procedure Step: Fair rental agreement obtained

Audit Step: Determine how the subgrantee obtained the equipment and if the subgrantee obtained a fair rental rate.

8) Procedure Step: Material purchases

Audit Step: Determine if the type and quantity purchased are consistent with the project. Review invoices to see if quantities were delivered to proper locations. Determine if rebates, discounts, or allowances were credited to costs claimed. Verify that any salvage values were credited to the DSRs.



Glossary

CDA – California Disaster Assistance Act
CLC – California Licensed Contractor
ESA – Endangered Species Act
FEMA – Federal Emergency Management Agency
IDE – Initial Damage Assessment
NEPA – National Environmental Protection Act
NHPA – National Historical Preservation Act
NOI – Notice of Interest
OES – Office of Emergency Services
OIG – Office of Inspector General
PDA – Preliminary Damage Assessment
PIDN – Project Identification Disaster Number issued by Auditor-Controller.
PW – Project Worksheet
RIMS – Response Information Management System
Subgrantee – County of Santa Barbara is FEMA’s subgrantee
T&M – Time and Materials

Category A – Debris Removal
Category B – Emergency Protective Measures
Category C – Roads, bridges
Category D – Water control facilities
Category E – Buildings and Equipment
Category F – Utilities
Category G – Parks, Recreation, other