

Public Assistance Alternative Procedures Pilot Program Guide for Debris Removal (Version 6.1)

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FEMA

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PART I. OVERVIEW

On January 29, 2013, President Obama signed into law the Sandy Recovery Improvement Act of 2013 (P.L. 113-2). This law amends Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) (Stafford Act). Specifically, the law adds section 428, which authorizes alternative procedures for the Public Assistance Program under sections 403(a)(3)(A), 406, 407 and 502(a)(5) of the Stafford Act. It also authorizes the Federal Emergency Management Agency (FEMA) to implement the alternative procedures through a pilot program. The pilot program for the alternative procedures that pertain to debris removal is available through June 28, 2019. FEMA will analyze data documented throughout the pilot to assess the procedures' effectiveness at furthering the goals outlined in the Sandy Recovery Improvement Act (SRIA). Based on the assessment, FEMA may elect to discontinue the program, extend the pilot for an additional performance period, or issue regulations that would institute the program changes authorized by the law.

The law identifies the following goals for these procedures:

- Reducing the costs to the Federal Government of providing Public Assistance.
- Increasing flexibility in the administration of such assistance.
- Expediting the provision of assistance to a state, tribal or local government, or nonprofit owner or operator of a private nonprofit facility.
- Providing financial incentives and disincentives for timely and cost-effective completion of projects with such assistance.

Public Assistance Program Features Included in the Alternative Procedures

The alternative procedures authorized under the law pertain to debris removal (emergency work) and repair, restoration, and replacement of disaster-damaged public and private nonprofit facilities (permanent work). This guide outlines the alternative procedures for debris removal only.

Alternative Procedures for Debris Removal

For debris removal, the law allows for, and FEMA is currently piloting:

- Reimbursing base and overtime wages for the employees of state, tribal or local governments, or owners or operators of private nonprofit facilities performing or administering debris and wreckage removal; and

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- Providing incentives to a state or tribal or local government to have a debris management plan accepted¹ by the FEMA Administrator and have pre-qualified one or more debris and wreckage removal contractors before the start of the declaration's incident period.

The law also authorizes FEMA to make awards for debris removal on the basis of fixed estimates, and to allow subrecipients to use excess funds from those awards for approved purposes. FEMA is not implementing these procedures as part of this pilot. FEMA continues to work to improve debris estimating methodologies and will consider implementing these procedures in the future. Additionally the law authorizes procedures using a sliding scale for determining the Federal share for debris and wreckage removal based on the time it takes to complete removal; and use of program income from recycled debris without offset to the grant amount. However, at this time FEMA is discontinuing use of the two procedures associated with these authorities. FEMA's analysis of debris pilot data demonstrates that both the Sliding Scale and Recycling Revenues procedures, as currently designed, are not furthering the intended goals of SRIA. Specifically, the Sliding Scale has not resulted in more timely or cost effective completion of debris removal operations and less than one percent of applicants have participated in the Recycling Revenue procedure.

FEMA will continue to assess these provisions and consider different approaches to implementation that may further the goals of SRIA. FEMA may include new versions of these procedures or any new pilot procedures in future versions of this guide.

A. Applicability

In accordance with the law, state, tribal, and local governments, and the owners and operators of certain private nonprofit facilities may participate in the alternative procedures during the pilot performance period.² Participation in the pilot program and use of the alternative procedures for debris removal is voluntary. If subrecipients use any of the alternative procedures, they must sign an acknowledgement regarding these procedures, which FEMA will attach to the Subaward Application (Project Worksheet).

The alternative procedures for the debris removal pilot program are available to any applicant, upon request, for any major disaster or emergency declared on or after June 28, 2013, and until the end of the pilot program period. For incidents declared between June 28, 2013, and June 27, 2014, the alternative procedures contained in this document are for large projects only

¹ FEMA will review debris management plans as described in the Debris Management Plan Job Aid.

² See "FEMA: Public Assistance Interim Program Guidance on 2 C.F.R. Part 200," which applies to all major disasters and emergencies declared on or after December 26, 2014. "Recipient" is a "state or Indian tribal government that receives a Federal award directly from FEMA to carry out an activity under the PA Program." "Subrecipient" is a "non-Federal entity that receives a subaward from a pass-through entity [e.g., a state or Indian tribal government that provides a subaward to a subrecipient] to carry out an activity under the PA program."

with the exception of reimbursement for straight time force account labor which can be applied to both small and large projects.³ (See **Debris Removal Straight Time Force Account Labor** section.) For disasters and emergencies declared on or after June 28, 2014, all of the debris removal alternative procedures can be applied to both small and large projects. Small projects, will be processed using the Simplified Procedures authorized by Section 422 of the Stafford Act.

This version is in effect for incidents declared on or after June 28, 2018. For incidents declared prior to that date, please see the version of the Alternative Procedures Guide for Debris Removal applicable on the date of the declaration. Major changes between the PA Alternative Procedures Guide for Debris Removal Version 5, published on June 28, 2017, and this guide (Version 6.1) are as follows:

- Discontinue use of the Increased Federal Cost Share (Sliding Scale) procedure;
- Discontinue use of Recycling Revenue procedure; and
- Applicants no longer need to utilize the acknowledgement form when they choose not to participate in the pilot program.
- Remove the exception to the appeals regulation which is unnecessary with the discontinued use of the Sliding Scale procedure.

B. Compliance with Applicable Laws, Regulations, and Policies

The law authorizes FEMA to carry out the alternative procedures via this guidance as a pilot program. Accordingly, FEMA has developed this document to provide the framework for implementing the alternative procedures as a pilot program and to establish acceptable requirements.

Subrecipients participating in this pilot program must abide by the elements of this guidance document for applicable components of the Public Assistance Program; and FEMA will approve projects to which the alternative procedures apply in accordance with this document. However, all other statutory, regulatory and policy requirements of the Public Assistance Program apply and are not affected by the alternative procedures. The alternative procedures also do not affect requirements for compliance with other federal requirements, including environmental and historic preservation (EHP) laws, regulations, and executive orders.

C. Purpose of this Guidance Document

This document provides guidance to FEMA, recipients, and subrecipients for implementing the alternative procedures for the debris removal pilot program. This guidance document pertains only to procedures authorized under the law. FEMA, recipients, and subrecipients will

³ A Large Project is a project with a total estimated cost that exceeds the monetary threshold established in section 422 of the Stafford Act and 44 CFR §206.203(c). For major disasters and emergencies declared after October 1, 2017, the threshold is \$125,500. This threshold will be adjusted annually for inflation. A small project is any project with a value less than the large project threshold.

implement all other aspects of the Public Assistance Program in accordance with standard procedures. It describes the scope and limitations of the alternative procedures; describes changes to the aspects of the Public Assistance Program to which these procedures apply; identifies responsibilities for certain activities; and, identifies timelines for key actions and decisions.

As described previously, FEMA is implementing the alternative procedures initially through a pilot program. The pilot will allow FEMA to gather meaningful information on the effectiveness of the alternative procedures, to establish controls for the proper use of federal funds, and to inform a potential future proposed rulemaking.

PART II. ALTERNATIVE PROCEDURES FOR DEBRIS REMOVAL

These procedures contain provisions intended to increase the effectiveness of debris removal operations and reduce federal administrative costs. Subrecipients may elect to use one or both of the procedures for their debris removal projects. Utilizing both debris removal alternative procedures is not required for any given debris removal project in order to receive the incentive for the other provision. These alternative procedures are addressed in greater detail in the following sections.

A. Requesting Alternative Procedures for Debris Removal

Upon the declaration of a major disaster or emergency by the President authorizing FEMA to provide debris removal assistance, FEMA will provide eligible Public Assistance subrecipients the opportunity to participate in the alternative procedures for the debris removal pilot program. Subrecipients must notify FEMA of their intent to participate in the alternative procedures by signing and submitting the *Public Assistance Alternative Procedures Pilot Program for Debris Acknowledgement* (Appendix A) before obligation of their first subaward for debris removal.

B. Straight Time Force Account Labor

When subrecipients use their own labor forces to perform all or part of debris removal operations, FEMA will reimburse, at the appropriate cost share level, the base and overtime wages for existing employees and hiring of additional staff. This alternative procedure can be used with the Debris Management Plan procedure or independently.

C. Debris Management Plans

A subrecipient with a FEMA-accepted debris management plan at the time of an event can increase the effectiveness of its debris management operations.

When the subrecipient has a FEMA-accepted debris management plan before the date of the declared incident period, FEMA will provide a one-time incentive of a two (2) percent cost share adjustment applied to debris removal work completed within 90 days. This one-time incentive will not be available to the same subrecipient again during the course of the pilot. This procedure can be used with any of the other pilot procedures or independently. FEMA will review plans submitted through the recipient. Plans should include all of the following ten elements:

- Debris management overview
- Incidents and assumptions
- Debris collection and removal plan

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- Debris removal from private property
 - Public information
 - Health and safety requirements
 - Environmental considerations and other regulatory requirements
 - Temporary debris management sites and disposal locations
 - Force account or contracted resources and procurement
 - Monitoring of debris operations

Please see FEMA's *Public Assistance Program and Policy Guide* at <https://www.fema.gov/public-assistance-policy-and-guidance> for more information Debris Management Plans.

The legislation also requires a subrecipient to have at least one (1) or more pre-qualified debris removal contractors.⁴ Any debris contract award must comply with federal procurement requirements, as outlined in 2 CFR Part 200. Federal procurement compliance may have more stringent requirements than state or local requirements.

In addition, the content of the plans will vary and depend highly on state and local ordinances and zoning, as well as the location of critical infrastructure, emergency services, disposal locations, and other localized factors. FEMA will review the plans to ensure that subrecipients have considered the ten elements previously listed. FEMA review or acceptance of the plan does not mean it is approving any operational component of the plan and does not commit the Federal Government to funding any aspect of the plan.

⁴ A pre-qualified contractor is one that has been identified and evaluated by a local government and has been determined to be capable to perform debris removal work (e.g., capabilities, bonding, insurance, availability). Identification of these qualifications should be done in conjunction with the drafting of a debris management plan, which should include specific contract requirements and explain how contractor qualifications are established. Identifying a pre-qualified contractor does not create a "stand-by" contract.

PART III. FEDERAL AWARDS MANAGEMENT REQUIREMENTS

The process for monitoring and closing projects is streamlined under the alternative procedures. The federal awards management requirements are outlined in the sections that follow.

A. Federal Awards Management Activities

For projects funded under the alternative procedures, major activities conducted during the Federal Awards Management phase are as follows:

- The subrecipient must complete work within established regulatory time frames and request time extensions as applicable;
- The subrecipient must submit quarterly progress reports to the recipient for large projects in which the work is not completed and financially reconciled, pursuant to 44 CFR §206.204(f) *Progress reports*;
- The recipient will provide funds to the subrecipient in accordance with federal and state requirements;
- The recipient will ensure that subrecipients understand and adhere to federal procurement requirements as well as other requirements of 2 CFR Part 200. The recipient will ensure that subrecipients comply with EHP requirements, notify FEMA of any work that requires EHP compliance reviews, and provide necessary documentation to conduct EHP reviews;
- The subrecipient must not deposit subaward funds in an interest-bearing account. If that occurs, the subrecipient must remit any interest earned to FEMA; and
- The subrecipient will submit to the recipient a final report of project costs. This report will be used to track and monitor the success of the pilot. The final report should include the following components as documented on the Project Worksheet (FEMA Form 90-91):
 - Total actual costs to complete the subaward
 - Actual quantities of debris removed
 - Time frames for full removal of debris
 - Compliance with federal procurement requirements
 - Documentation of compliance with all subaward conditions
 - Compliance with EHP conditions

B. Subaward Closure

Alternative procedures subawards are closed when the approved scope of work is completed, and the subrecipient provides the recipient an accounting of the subaward in accordance with the

requirements detailed in subsection A – Federal Awards Management Activities. The recipient will provide the accounting of project costs to FEMA and will request the project be closed.

C. Audits and Compliance Reviews

The Office of Inspector General may audit any subrecipient and/or subaward. FEMA also can conduct compliance reviews of awards and subawards. For alternative procedures subawards, a compliance audit will review subawards and costs to ensure that the subrecipient complied with the guidelines contained within this document and other applicable requirements. Any corrective actions the Agency takes as a result of these audits or compliance reviews may be appealed in accordance with 44 CFR §206.206.

PART IV. REPORTING AND PERFORMANCE MEASURES

FEMA will review and evaluate the alternative procedures pilot program to determine if the pilot met the objectives of the Sandy Recovery Improvement Act. FEMA will assess if the pilot achieved the objectives for the alternative procedures outlined in the law, namely:

- Reducing the costs to the Federal Government of providing Public Assistance.
- Increasing flexibility in the administration of such assistance.
- Expediting the provision of assistance to a state, tribal or local government, or nonprofit owner or operator of a private nonprofit facility.
- Providing financial incentives and disincentives for timely and cost-effective completion of projects with such assistance.

FEMA will continue conducting program performance analysis and make further adjustments to the pilot as necessary to achieve furthering the intended goals of SRIA. If the pilot is determined to be effective, the data will be used to inform the development of future proposed rulemaking.

APPENDIX - A

Public Assistance Alternative Procedures Pilot Program for Debris Removal Acknowledgement

In accordance with the Sandy Recovery Improvement Act of 2013, the Federal Emergency Management Agency (FEMA) is implementing alternative procedures for the Public Assistance (PA) Program through a pilot program.

As a representative of the subrecipient, we elect to participate in the following:

- ☐ One-time incentive for a FEMA-accepted debris management plan and identification of at least one pre-qualified contractor
 - ☐ Reimbursement of straight time force account labor costs for debris removal
1. The pilot is voluntary and the subrecipient must apply the selected alternative procedures to all of its debris removal subawards.
 2. The subrecipient acknowledges that FEMA may request joint quantity evaluations and details regarding subrecipient operations necessary to assess the pilot program procedures.
 3. All contracts must comply with local, state, and federal requirements for procurement, including provisions of 2 CFR Part 200.
 4. The subrecipient must comply with all federal, state and local environmental and historic preservation laws, regulations, and ordinances.
 5. The Office of Inspector General may audit any subrecipient and/or subaward.

Signature of Subrecipient's Authorized Representative

Date

Printed Name and Title

Subrecipient Name

PA ID Number