



FEMA

June 12, 2012

Kevin Davis, Director
Governor's Office of Homeland Security and
Emergency Preparedness
7667 Independence Blvd.
Baton Rouge, LA 70806

Dear Mr. Davis:

This letter is in response to one of the issues presented to the Federal Emergency Management Agency (FEMA) at the Public Assistance (PA) "Summit" meeting held at the request of the State of Louisiana (State) in Baton Rouge on October 18-19, 2011. As you know, since October 2011, there have been subsequent follow-on meetings between the State and FEMA as well as a status update letter provided to the State on April 23, 2012.

FEMA committed to providing Louisiana guidance on "the retroactive application of direct grant management costs¹ under the authority of section 324 of the Stafford Act, in addition to the sliding scale funds authorized by Section 406(f) of the Stafford Act" in a April 23, 2012 letter from then Regional Administrator, Tony Russell, to Kevin Davis, Louisiana Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP). The guidance requested included whether or not subgrantees must have documentation for the costs claimed, and what constitutes a "reasonable" amount for these costs.

FEMA must first determine whether additional management costs are eligible before addressing reasonableness and documentation requirements.

Analysis

As Hurricanes Katrina and Rita were declared before November 13, 2007, FEMA must apply 44 CFR 207.9 to reimburse any direct and indirect costs incurred to manage the PA program for those disasters.

The original intent of 44 CFR 207.9 limited subgrantee management costs to the sliding scale published in the regulation. The regulation explicitly states that no indirect management costs of a subgrantee are separately eligible from what was already provided under the sliding scale. However, under the heading, "Eligible Direct Costs," the regulation says that "[t]he grantee may provide funds to the subgrantee . . . based on the following percentages..." (emphasis added) The regulation does not explicitly state that no direct management costs of a subgrantee are separately eligible from what

¹ Throughout this letter, FEMA uses the term "management costs" to refer to all grant administrative and management costs. These are costs necessary to request, obtain and administer Federal disaster assistance.

was already provided under the sliding scale. As a result, the regulation provides FEMA some discretion to reimburse additional direct management costs that are in excess of what was provided under the sliding scale.

FEMA will use its discretion to apply this broad interpretation as a closeout incentive pursuant to Section 638(f) of the Post-Katrina Emergency Management Reform Act (PKEMRA).² Section 638(f) provides FEMA with the authority to establish Recovery Offices in the states directly affected by Hurricanes Katrina and Rita and directs the Administrator of FEMA to provide incentives for the timely closeout of PA projects under sections 406 and 407 of the [Stafford Act] for Hurricanes Katrina and Rita.

Guidance

To incentivize the closeout of Katrina and Rita projects FEMA authorizes direct grant management costs for Louisiana DR-1603, Mississippi DR-1604, Alabama DR-1605, Texas DR-1606, and Louisiana DR-1607 under the following conditions:

1. In addition to the sliding scale, subgrantees may claim up to 3% of their approved, eligible project costs.
2. Direct management costs charged to the sliding scale may not also be charged under this closeout incentive.
3. All costs must be for an eligible scope of work ("task"), adequately documented, reasonable, and clearly attributed to a specific project.
 - a. All costs must be for grant management costs eligible under Uniform Federal Grant regulations, FEMA regulation and policy. Costs incurred to provide documentation in support of direct management cost claims, or to establish tracking systems are not eligible for reimbursement.
 - b. The line item for the activity in the Project Worksheet must be for a clearly eligible task and show that something was produced, i.e. "Prepare for meeting" or "documentation requests" are unacceptable item descriptions, as they do not show the meeting itself was eligible or that the meeting or documentation was related to the project. The descriptions of tasks must be specific and clearly chargeable to an actual project.
 - c. If the records do not clearly attribute the cost to an eligible project, it will be treated as an indirect management cost limited to the sliding scale, even if the task itself is an eligible activity.
 - d. All costs must have adequate documentation. Undocumented costs are not eligible.
 - e. As provided in OMB Circular A-87 (see 2 CFR Part 225, Attachment A *General Principles for Determining Allowable Costs*), all costs must be reasonable. A cost is

² Public Law 109-295 (October 4, 2006).

reasonable if it does not exceed what would be incurred by a prudent person under the circumstances at the time the decision was made to incur the cost. In determining reasonableness, consideration shall be given to:

- i. Whether the cost is generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.
 - ii. The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.
 - iii. Market prices for comparable goods or services.
 - iv. Whether the individuals concerned acted with prudence in their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.
 - v. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.
4. In determining whether a cost is reasonable, FEMA will evaluate the level of effort associated with the task performed in relation to the total project cost. FEMA will also evaluate the skill level of employees, their chargeable rate, and the time spent completing certain tasks.
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5. FEMA will also apply the September 8, 2009 FEMA memorandum entitled, "*Disaster Assistance Policy DAP9525.9, Section 324 Management Costs and Direct Administrative Costs and Recovery Policy 9525.14, Grantee Administrative Costs,*" in determining whether a task or cost associated with that task is reasonable, or whether a cost is considered direct or indirect management costs. You can find the memorandum at the following link:
http://www.fema.gov/pdf/government/grant/pa/9525_9_pa_reasonable_costs_memo.pdf
6. FEMA will re-evaluate any management costs obligated before June 12, 2012 based on these guidelines and will adjust the funding accordingly.
7. Projects that, as of June 12, 2012, are subject to either an Arbitration Agreement, Settlement Agreement, Civilian Board of Contract Appeals (CBCA) Decision, or single settlement agreement pursuant to special legislation, that establishes either:
- a. Total costs that the grant cannot exceed; or
 - b. A date by which the project must be completed

will not be subject to a change in the level of funding (either a decrease or increase) regardless of whether the project is completed by August 29, 2013. Such projects are not eligible for this closeout incentive.

Deadlines

The closeout incentive will be considered on a project by project basis. To receive this incentive, projects must be complete and submitted for final project certification approval by August 29, 2013. All management costs for this disaster will expire on August 29, 2013 pursuant to 44 CFR 207.9(d). As provided in subparagraph (d)(3), grantees may submit a request for an extension to the period of availability. FEMA will not provide any extensions for this closeout incentive. Extensions will only be provided for the sliding scale.

The above exception reflects use of extraordinary authority to incentivize rapid closeout of PA projects thereby furthering the recovery efforts from Hurricanes Katrina and Rita. If you have any questions, please contact Bill Roche, PA Division Director at (202) 212-2340.

Sincerely,



Deborah Ingram
Assistant Administrator
Recovery Directorate

cc: Mark Riley, GOHSEP
Mark DeBosier, GOHSEP
Tony Robinson, FEMA-Region VI
Brad Kieserman, FEMA-HQ
Beth Zimmerman, FEMA-HQ
