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Hurricane Season 2018: The Basics of FEMA's New Alternative Procedures for Direct Administrative Costs

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With the 2018 hurricane season already underway, entities that are eligible for federal assistance through FEMA should prepare by getting up to speed on policy changes including those regarding reimbursement of Direct Administrative Costs.

On October 25, 2017, FEMA published its recovery policy entitled "Public Assistance Alternative Procedures for Direct Administrative Costs," applicable to disasters declared on or after August 25, 2017. Direct Administrative Costs – or DAC – are the grant administrative costs that a recipient or subrecipient of Public Assistance funding tracks, charges, and accounts for directly to a specific eligible project in order to obtain reimbursement of those costs from FEMA. These include costs such as site inspections, developing the site-specific damage description, reviewing the Project Worksheet (PW) and other grant documents, and collecting, copying, filing, or submitting documentation to support the request for reimbursement, among others. Prior to issuance of the new policy, FEMA required that applicants document DAC for each individual project and claim actual cost as a line item element on the associated PW – a system that adds to the already daunting administrative burden often associated with the federal grant process. The new policy will allow applicants instead to consolidate DAC into one funding request and will reimburse eligible DAC costs based on a fixed estimate calculated using a percentage of the applicant's eligible emergency and permanent work projects.

Under FEMA's new DAC Alternative Procedures, when an applicant elects to participate in the program, FEMA will award as DAC four percent of full eligible project costs (calculated prior to reductions for insurance proceeds, cost share, etc.), plus one percent applied to the same full eligible cost if the project is closed out within 90 days of the end of the project period of performance. This DAC calculation is not included as an element of cost on each PW, but instead is included in one consolidated PW dedicated only to DAC (the "DAC PW").

The Alternative Procedures are designed to reduce the administrative burden of tracking and requesting DAC reimbursement and to incentivize timely closeout. Under these procedures, applicants are not required to track costs on a per project basis, but are still required to provide supporting documentation of the fixed cost estimate (i.e., payroll data, records of force account costs, contractor invoices). When an applicant's DAC award exceeds its actual costs, it may use the excess funds for eligible hazard mitigation activities or for activities that improve future Public Assistance Program operation, such as training and planning for future disaster response and recovery operations.

As a recipient or subrecipient prepares its PWs, it may submit them to be included in the DAC PW. However – importantly – the new policy limits the number of times a recipient or subrecipient may add to the DAC PW. In addition to the original Version 0, the DAC PW may have up to three new versions, each version providing an opportunity to increase the amount of funding based on newly submitted projects. Once Version Three is obligated, the DAC PW is locked and no additional projects may be submitted. Therefore, while applicants have discretion as to the timing of its DAC funding requests, great care must be taken not to exhaust the available versions too quickly.

As written, the DAC Recovery Policy indicates that the five percent DAC award will be calculated based on Version 0 of each PW:

FEMA will award DAC at five percent of the pre-award value for **each PW (Version 0)**, based on the full eligible dollar value of the PW prior to any applicable reductions for insurance proceeds, cost share, or other reductions.

The final version (not to exceed Version Three) of the DAC PW can be submitted once all emergency and permanent work **PW Version Zeros** have been signed and submitted.

The inclusion of only PW Version 0s in the DAC PW is somewhat counterintuitive, as Version 0s are often adjusted frequently to reflect more accurate scopes of work or unexpected costs. We expect FEMA to provide additional guidance on this feature of the DAC Recovery Policy as the Alternative Procedures are now being implemented for the first time since their adoption on PWs written for recent storms, e.g., Hurricanes Irma and Harvey. However, until (and unless) the policy is further clarified, an applicant must exercise caution when formulating scopes of work and agreeing to cost estimates early in the PW process. If subsequent versions of a PW increase the scope and costs of a project, it is currently unclear that those increases will be considered to support additional funding as part of the applicant's DAC PW.

Important considerations:

- To participate in this program, an applicant must sign a written agreement binding it to the DAC policy.
- Closeout must occur within **90 days** of the end of a project's period of performance or else the one percent closeout incentive will be deobligated.
- DAC PW Version Three can be submitted once all PW Version 0s have been signed and submitted but **must** occur within **two years** of the declaration date.
- Applicants must identify any excess funds realized on the final DAC PW and submit a request for the use of those funds to the Recipient and FEMA within **180 days** of the latest project period of performance.
- Once a PW is submitted for inclusion in the DAC PW, the DAC award is fixed with respect to that PW.
- Once DAC PW Version Three is submitted, there can be no more submissions to the consolidated DAC PW.