

PUBLICATION

FEMA Denies Public Assistance to County Government for Contact Tracing, Social Distancing, and Teleworking to Prevent the Spread of COVID-19

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In a recent Second Appeal decision, the Federal Emergency Management Agency (FEMA) denied Scott County, Iowa's (the County) claims for Public Assistance (PA). From March 11-August 20, 2020, the County purchased contract services and equipment to support its contract tracing program and implement social distancing protocols in its facilities. The County requested FEMA PA funding for contract services including information technology support, security, maintenance, and licensing and elevator key card installation. Additionally, the County requested PA funding for computer and communications hardware such as printers, webcams, microphones, adapters and phones.

FEMA initially determined that all of the County's purchases of contract services and equipment were not emergency protective measures taken in response to COVID-19. Instead, FEMA determined that the purchases were "ineligible increased operating costs...directly related to performing the same work that the Applicant would have performed prior to the COVID-19 pandemic."

The County appealed FEMA's initial determination on two grounds. First, the County noted that the purchases were "extraordinary steps [that] were needed to ensure continuity of government" during the pandemic. The County also refuted FEMA's initial determination that all of the work supported by the purchases would have been performed regardless of the pandemic. Specifically, the County Health Department was responsible for the local contract tracing program designed to prevent the spread of COVID-19.

Since all of the County's purchases at issue were made before September 15, 2020, FEMA evaluated the eligibility of the County's claims for PA under FEMA's earliest eligibility policy for COVID-19 emergency protective measures, which was in effect from January 20 – September 15, 2020.¹ In relevant part, that policy provides for the eligibility of costs incurred for the following purposes:

Management, control, and reduction of immediate threats to public health and safety:

- Emergency Operation Center costs
- Training specific to the declared event
- Disinfection of eligible public facilities
- Technical assistance to state, tribal, territorial or local governments on emergency management and control of immediate threats to public health and safety.²

In response to the County's appeal, FEMA determined that the County's "facility upgrades" and "general telework measures" served the purpose of supporting regular administrative functions rather than reducing the immediate threat of COVID-19. This indicates that it will be important for future applicants for COVID-19 PA to emphasize how their claims are tied to reducing the immediate threat of COVID-19 rather than performing ordinary administrative duties.

FEMA also clarified that costs incurred for contract tracing will be ineligible for PA regardless of when the costs were incurred. In June 2020, FEMA issued a policy on the PA eligibility of activities which could also be

supported by other federal agencies.³ That policy provided that the U.S. Department of Health and Human Services and Treasury Department are the "most appropriate" sources of funding for contract tracing costs.⁴ In the Scott County Second Appeal decision, FEMA provides definitively that "the PA program is not the appropriate source of funding for COVID-19 contract tracing."⁵ Thus, it appears that FEMA has established a general rule that costs incurred for contact tracing programs are ineligible for PA.

¹ Second Appeal Analysis, *Scott County, FEMA-4483-DR-IA* (October 20, 2021) (citing Fact Sheet, *Coronavirus (COVID-19) Pandemic: Eligible Emergency Protective Measures*, at 1-2 (March 19, 2020)).

² *Id.*

³ FEMA Fact Sheet, *Coronavirus Disease 2019 (COVID-19) Public Health Emergency: Coordinating Public Assistance and Other Sources of Federal Funding* (June 2020).

⁴ *Id.* at 1.

⁵ Second Appeal Analysis, *Scott County, FEMA-4483-DR-IA* (October 20, 2021).