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Hurricane Season is Here – Are You Ready for FEMA Funding?

Authors: Michelle Faye Zaltsberg

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When a hurricane or other natural disaster hits, public and private non-profit entities often look to the Federal Emergency Management Association (FEMA) for financial assistance. But obtaining and keeping FEMA Public Assistance is not simple. With so many rules, regulations, and policies applicable to funding, applicants frequently find themselves fighting to justify eligibility of costs. We surveyed our team to identify the issues they've seen most frequently arise for Public Assistance applicants over the last year. We compiled their responses into the following three tips for obtaining and keeping FEMA reimbursements (we provided similar tips last year, available [here](#)):

- **Ensure you have performed and documented pre-disaster maintenance.** Recently, it seems FEMA is denying costs left and right because applicants cannot show that the damage was not pre-existing or was not the result of poor maintenance. Do your roads have cracks or potholes? FEMA may find those pre-existing defects caused the road to collapse, and not the unprecedented flooding. Does your roof have missing tiles? FEMA might say it was in disrepair before the Category 5 hurricane blew it right off. FEMA only provides funding to return facilities to their pre-disaster condition and only reimburses costs to repair damages resulting from a disaster. For these reasons, it is essential that applicants ensure they perform pre-disaster maintenance on their disaster-vulnerable facilities and document that maintenance. In some instances, e.g., for roads, FEMA will look to an applicant's maintenance budget and maintenance records to determine whether the pre-disaster condition contributed to the damage. A best practice is to have a maintenance plan and to make sure all required checks and repairs are completed consistent with that plan, and documented in detail, with before and after photographs.
- **Keep your damage descriptions and dimensions (DDD) updated.** Each FEMA-reimbursed project starts with identifying damages. FEMA requires that damages be documented in detail with measurements and quantities. This is called the "damage descriptions and dimensions" or "DDD." FEMA's position is that its site inspectors are not documenting damage independently, instead only including the damages identified by the applicant. An applicant's initial damage assessment of its facility is typically what ends up becoming the approved DDD for the project. FEMA program delivery managers (PDMGs) push applicants hard early in the disaster to get the DDDs completed, and then the DDDs are largely forgotten about until FEMA begins to evaluate whether the completed work corresponds to the DDD years later. With that in mind, applicants should continually document newly discovered damages to their facilities beyond the initial assessment. Contractors will often find additional hidden damages or determine that more work than was originally envisioned is necessary to repair the facility to pre-storm condition, especially in larger repair projects. The contractor and applicant then execute a change order to repair these new damages; however, these new damages are rarely captured in a revised DDD, and they certainly aren't included in the original DDD. When it comes time to obligate the project, FEMA may disallow that new work because it is not captured in the DDD. If applicants take the extra steps to continually document new damages that lead to change orders and insist that those new damages get incorporated into the DDDs, they will have fewer headaches come obligation.

- **Memorialize communications with FEMA.** We recommend that applicants document all meetings and discussions with FEMA. Capture any major advice, instructions, or approvals by sending an email to the most senior person with all others copied and ask that the FEMA representative reply confirming receipt and advise of any clarifications needed. This type of documentation may prove useful during dispute resolution and keeps a record of the basis for decisions that may be challenged long after the decisions were made (and decision-makers have moved on to other endeavors).

If you have any questions about this topic, please reach out to [Michelle F. Zaltsberg](#) or another member of Baker Donelson's [Disaster Recovery Team](#).