

Public Assistance
Alternative Procedures
Pilot Program
Guide for Permanent Work (Version 3)
March 29, 2016



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PART I. OVERVIEW

On January 29, 2013, President Obama signed into law the Sandy Recovery Improvement Act (SRIA) 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 (PA) 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 program will remain in place until FEMA promulgates and adopts revised regulations that reflect the program changes the law authorizes.

The law identifies these goals for the 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.

PA Program Features Included in the Alternative Procedures

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

Alternative Procedures for Permanent Work

For permanent work, the law:

- Allows for making awards for permanent work projects on the basis of fixed estimates to provide financial incentives and disincentives for the timely or cost-effective completion of work if the state, tribal, or local government, or owner or operator of the private nonprofit facility agrees to be responsible for actual costs that exceed the estimate.
- Provides an option for a state, tribal or local government, or owner or operator of the private nonprofit facility to receive an in-lieu contribution, without reduction, on the basis of estimates for repair, restoration, reconstruction, or replacement of a public facility and management expenses (i.e., eliminates the penalty for alternate projects under sections 406(c)(1)&(2) of the Stafford Act).
- Allows for consolidating, as determined by the Administrator, the facilities of a state, tribal or local government, or owner or operator of the private nonprofit facility as a single project based upon estimates adopted under the procedures.

- Allows for the Administrator to permit a recipient¹ or subrecipient to use all or part of the excess funds for cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster and other activities to improve future Public Assistance operations or planning.
- Requires the Administrator to make available an independent expert panel to validate the estimated eligible cost if requested by a subrecipient, and where the Administrator or the certified cost estimate prepared by the applicant's professionally licensed engineers has estimated an eligible Federal share for a project of at least \$5 million.
- Requires the Administrator, at a subrecipient's request, to consider properly-conducted and certified cost estimates prepared by professional licensed engineers (mutually agreed upon by the Administrator and the applicant).

A. Applicability

State, tribal, and local governments, and the owners and operators of certain private nonprofit facilities (subrecipients) may participate in the alternative procedures. Participation in the pilot program and use of the alternative procedures for specific subawards (or projects) is voluntary. If subrecipients use any alternative procedures, they will sign an acknowledgement form regarding these procedures. Additionally, once agreement on the cost of a fixed estimate subaward is accomplished the recipient and subrecipient will sign a fixed cost estimate subaward agreement letter. FEMA will attach these documents to the Subaward Application (also known as a Project Worksheet) for the subaward(s) in question. (Acknowledgement and fixed cost estimate subaward agreement documents are provided in the Appendices and are also located on the FEMA website at <http://www.fema.gov/alternative-procedures>.)

The permanent work pilot program is effective for any major disaster declared on or after May 20, 2013. FEMA may also approve subawards using the alternative procedures for major disasters declared before this date if construction has not begun.

The alternative procedures contained in this document are only for large projects. Large projects are those subawards where the total estimated cost of eligible work, reduced by any actual or anticipated insurance proceeds, meets or exceeds the large project threshold² that is applicable to the declared event.

The information contained herein is effective for all disasters declared on or after the date of publication of this guide. It also applies to any projects from prior disasters where the fixed estimate cost agreement has not been reached.

¹ The terms "recipient" and "subrecipient," "award," and "subaward" are used in place of the terminology of the "grantee," "subgrantee," "grant," and "subgrant," respectively. This language has been changed to comport with the definitions provided in 2 CFR Part 200.

² The Large Project Threshold is established in section 422 of the Stafford Act and 44 CFR §206.203(c). For major disasters and emergencies declared after October 1, 2015, the threshold is \$121,800. This threshold is adjusted annually for inflation.

B. Compliance with Applicable Laws, Regulations, and Policies

The law authorizes FEMA to waive notice of rulemaking procedures that would otherwise be required for the PA Program alternative procedures. Accordingly, FEMA has developed this document to provide the framework for implementing the permanent work alternative procedures as a pilot program and to establish acceptable requirements for those elements of existing regulations excepted by the provisions of the law. The guidance document addresses exceptions to regulations in 44 CFR §206.203(c)(1)³; §206.203(d)(2)(ii) and (iii)⁴; §206.204(e)⁵; §206.205(b); and §206.206⁶.

This document provides guidance for subrecipients seeking a subaward under the alternative procedures pilot program, and FEMA in approving alternative procedures subawards. However, except for the exceptions noted above, all other statutory and regulatory requirements, and policy guidance of the PA Program apply to the alternative procedures. All other Federal requirements, including environmental and historic preservation (EHP) laws, regulations, and executive orders also apply to alternative procedures subawards. EHP review must be completed prior to obligation of funds and start of construction.

C. Purpose of the Guidance Document

This document provides guidance to FEMA, recipients, and subrecipients for implementing the alternative procedures for permanent work. It describes the scope and limitations of the alternative procedures; describes changes to the aspects of the PA Program to which these procedures apply; identifies responsibilities for certain activities; and identifies timelines for key actions and decisions. It does not describe steps for all processes the alternative procedures affect. Where appropriate, FEMA may develop additional guidance and tools for implementation. FEMA may also revise this guidance to clarify or improve the procedures and address lessons learned.

The guidance document pertains only to procedures authorized under SRIA. FEMA, recipients, and subrecipients will implement all other aspects of the PA Program in accordance with standard procedures.

This pilot program allows FEMA to gather meaningful information on their effectiveness, establish controls for the proper use of Federal funds, and revise and improve procedures and guidance as the pilot proceeds. It also allows FEMA to collect data for evaluating the effectiveness of the alternative procedures until regulations are issued to implement the procedures permanently.

³ Page 5 of this guide.

⁴ Page 12 of this guide.

⁵ Page 6 of this guide.

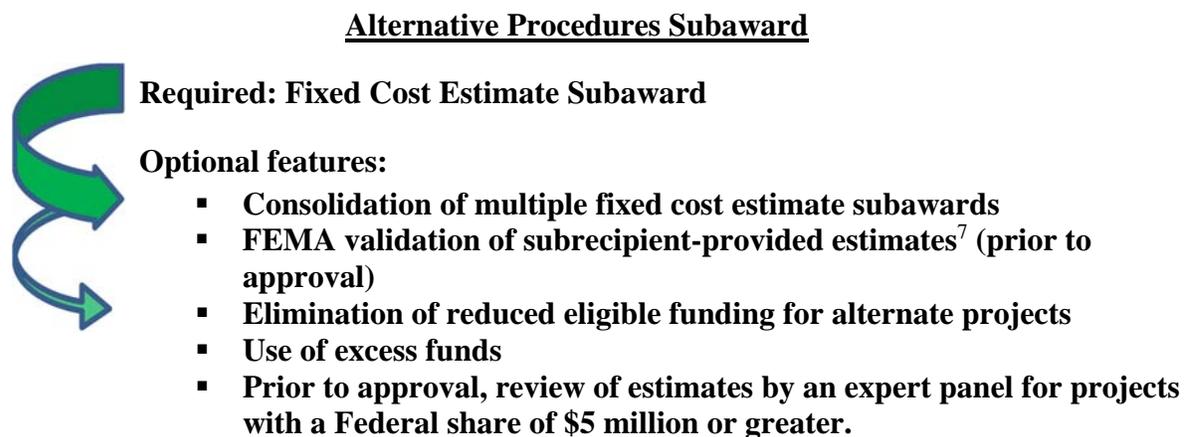
⁶ Page 17 of this guide.

PART II. PERMANENT WORK ALTERNATIVE PROCEDURES

This section describes the features of the alternative procedures authorized by the legislation for permanent work. These procedures contain elements that, when used together, give a subrecipient greater flexibility in using award funding for its recovery than the standard program provides. As noted in the **Overview**, participation in the pilot program is voluntary. A subrecipient may apply these alternative procedures to certain facilities and choose to have other work funded under PA's standard procedures.

To participate in the permanent work alternative procedures, a subrecipient must agree to a fixed estimate subaward – a subaward based on a capped funding amount – (exceptions noted) before having access to other alternative procedures identified below. FEMA requires the fixed estimate subaward feature to gain access to other alternative procedures to achieve the intent of SRIA: reducing the costs to the Federal Government of providing Public Assistance, increasing flexibility in administering such assistance, and expediting assistance. However, FEMA does not require all features of the alternative procedures be selected to participate in the pilot program. Figure 1 summarizes this concept.

Figure 1. Requirement for alternative procedures subaward and optional features.



Each permanent work alternative procedure is described below.

⁷ Before the enactment of PL 113-2, FEMA had the authority to accept subrecipient estimates and had done so when appropriate. Although FEMA will accept subrecipient estimates under the alternative procedures, it will continue to accept these estimates under the standard procedures.

A. Fixed Cost Estimate Subawards

To participate in any of the alternative procedures for permanent work, subrecipients must agree to a fixed cost estimate of the eligible work to repair, restore, or replace a disaster-damaged facility. FEMA will fund the large permanent work subawards on the basis of the fixed estimate, where construction has not yet started. This procedure varies from that described in 44 CFR §206.203(c)(1), which provides for funding the actual cost of completing the eligible scope of work. FEMA review for compliance with EHP laws, executive orders, and other regulations must be completed before funding is obligated.

Formulation and Management of Fixed Cost Estimate Subawards

FEMA, the recipient, and the subrecipient must first formulate the subaward based on eligible costs and disaster-damage to address the incident's impact on the subrecipient's facilities.

Formulation

- FEMA, the recipient, and subrecipient must agree on the disaster-damage dimensions, description, and the scope of work for the subaward prior to completing the cost estimate.
- FEMA's eligibility determinations and documentation of the scope of work must be completed in accordance with PA Program regulations, policy and guidance.
- If there is a dispute over the disaster-damage dimensions, description, and/or the scope of work, the subaward should not be considered for alternative procedures unless the dispute is resolved before the cost estimate is prepared.
- Once FEMA, the recipient, and subrecipient agree on the damage description, scope of work and cost estimate, FEMA will document the information in the subaward.
- As described in the **Overview** section, the subaward will include the subrecipient's acknowledgement of its participation in the pilot program and agreement with the fixed estimate. Acknowledgement and fixed estimate cost agreement is documented with an acknowledgement form and fixed cost agreement letter. Both documents are provided in the Appendix and are found on the FEMA website at <http://www.fema.gov/alternative-procedures>. For more complex projects a *Letter of Undertaking* (LOU) may be appropriate in order to capture more project-specific information. An LOU template can be made available upon request.
- Once FEMA, the recipient, and the subrecipient agree to the subaward fixed estimate, there will be no further adjustment to the fixed cost estimate, with the exception of insurance adjustments as described in the **Special Considerations Review** section.
- FEMA will conduct all applicable reviews of the subaward in accordance with standard procedures, including review for EHP compliance. If the subrecipient intends to use its fixed estimate(s) to pursue alternative or improved projects, EHP review typically does not occur until the final scope of work is determined.

- Cost estimates for the individual sites or facilities may include approved Section 406 hazard mitigation. Use of hazard mitigation funds is described in the **Special Considerations Review** section.

Fixed Cost Estimate Subawards

- Subawards based on fixed cost estimates could be similar to improved or alternate projects. A subrecipient has flexibility to repair or rebuild a facility as it deems necessary for its operations with no requirement to rebuild to pre-disaster design, capacity or function. While the amount of eligible funding is based on restoring a disaster-damaged facility to its pre-disaster function, design, capacity, and condition, a subrecipient is not constrained from using this funding to complete a project with a different function, design, or capacity. If a subrecipient wishes to use any of the funds towards an alternate project, it must notify FEMA when it determines how the funds will be used. The subrecipient may not request an alternate project after it completes the scope of work on a fixed estimate subaward and determines it has excess funds. The use of excess funds is limited to the purposes described in the **Use of Excess Funds** section.
- If the subrecipient requests an alternate project (which FEMA must approve), the subaward funding will not be reduced as normally required under the standard procedures pursuant to 406(c)(1)(A) and (c)(2)(A). (See **Elimination of the Reduction in Eligible Costs for Alternate Projects** section.)
- FEMA will ensure that Federal EHP compliance is satisfied for these subawards. EHP review for alternate projects must be completed before funds are obligated. Applicants are responsible for obtaining all local, State, and Federal permits related to project implementation.

The following scenario illustrates the concept.

A county road crosses a waterway and its adjacent floodplain, using five culverts. During the disaster, floodwaters overtop the road and damage the road crossings by washing out the culverts. FEMA prepares and approves a subaward with five site sheets to repair or replace each culvert crossing, including hazard mitigation measures to increase the size of the culverts. Subsequently, the subrecipient requests that the aggregate funding for the five crossings be used to replace the current configuration with one bridge.

Actual Costs

- If the actual costs are more than the approved fixed estimate for the subaward, FEMA will not approve additional funds.
- In this way, the procedure varies from the standard procedure outlined in 44 CFR §206.204(e), which allows a subrecipient to request additional funding from FEMA.
- If actual costs are less than the fixed amount, the subrecipient may use the excess funds for the purposes described in the **Use of Excess Funds** section.

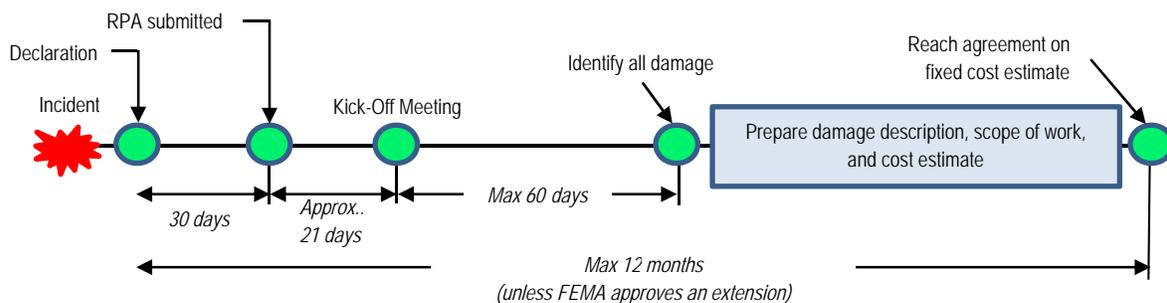
Timeframes for Reaching Agreement on Cost Estimates

The alternative procedures do not change the regulatory timeline for identifying disaster damage, nor do they change PA Program guidance for the timing of kickoff meetings. In order to expedite assistance to subrecipients, agreement on the cost of the fixed estimate subaward must be reached within 12 months of the declaration date for disasters declared on or after the date of issuance of this guidance. The subrecipient and recipient may request a time extension from FEMA on a project-by-project basis. The request must provide justification for the extension and demonstrate continuing progress on the project. Further, FEMA and the recipient may agree to extend the deadline for all permanent work projects in a specific major disaster (such as, major disasters that are complex or catastrophic). If FEMA, the recipient, and the subrecipient cannot agree on the cost estimate within the approved timeframe, the subaward will be processed using the standard procedures described in 44 CFR Subpart G – Public Assistance Project Administration.

For major disasters declared prior to May 20, 2013, previous guidance stated that agreement on a cost estimate must be complete by May 20, 2014. However, effective with the issuance of this guidance FEMA may provide an extension for projects where construction has not begun, on a case-by-case basis.

Figure 2 shows this timeline in the context of other timelines for the PA Program.

Figure 2. Timeline for preparing permanent work fixed cost estimate subawards.



Preparation of Cost Estimates

Either FEMA or the subrecipient may prepare estimates for fixed estimate subawards. For certain subawards, they may also be validated by an expert panel, as described below. FEMA will prepare estimates under the alternative procedures using the Cost Estimating Format (CEF) and the guidance provided in the *Cost Estimating Format for Large Projects Instructional Guide, Version 2.1* (September 2009), available at https://www.fema.gov/pdf/government/grant/pa/cef_instruct.pdf. Estimates prepared by subrecipients and validated by FEMA are addressed below.

Validation of Subrecipient-Provided Estimates

FEMA will consider subrecipient-prepared cost estimates that:

- Have been prepared by a professionally licensed engineer, mutually agreed upon by FEMA and the subrecipient.
- Are properly conducted and certified.
- Comply with regulations, policy, and guidance.

The subrecipient may request FEMA consider a cost estimate prepared for any large, permanent work subaward being funded under the alternative procedures.⁸ Although FEMA will accept and use an estimate prepared by a subrecipient as the basis for approving a subaward, FEMA is required to ensure that the estimate complies with PA Program requirements and guidance. Specifically, FEMA will ensure that the estimate does not contain items that are inconsistent with the damage description or approved scope of work to restore the facility.

The subrecipient may prepare the estimate using the CEF or a methodology and format consistent with the CEF's level of detail. The subrecipient may use a licensed professional engineer or other estimating professional to prepare the estimate. The professional will certify that it was prepared according to applicable standards of care for estimating construction costs.

FEMA will review the subrecipient's estimate for validation purposes. FEMA will not create a competing estimate. The review will be conducted according to procedures outlined in the *Public Assistance Alternative Procedures Pilot Program Validation of Subrecipient-Provided Cost Estimates Job Aid*, available at http://www.fema.gov/media-library-data/20130726-1917-25045-6498/paap_cost_estimate_validation_job_aid.pdf

Architecture/Engineering Fees

FEMA will provide funding for preparing the cost estimate in accordance with PA Program requirements. These costs can be based on the actual costs for the engineering and design work or a percentage of the eligible cost for the restoration.⁹ FEMA will not provide funding for subsequent planning and design costs for improved projects, alternate projects, or consolidated subawards.

If a facility requires an engineering analysis to determine the cause of damage or the methods of repair, FEMA may prepare an initial subaward to fund this analysis. It should describe the parameters of the analysis and, where applicable, include the development of a cost estimate for the prescribed report. FEMA will review the estimate and determine its appropriateness as the basis of initial funding as it may later be included in a fixed estimate subaward for the project.

⁸ FEMA also accepts subrecipient-provided estimates for subawards under standard procedures.

⁹ Refer to Factor H in the CEF for information regarding this percentage.

Direct Administrative Costs

Direct Administrative Costs (DAC) are costs the subrecipient incurs for site assessments, preparing the disaster-damage dimensions and description, and developing the scope of work for the subaward estimate. DAC is considered part of the overall estimate and the identified scope must adhere to criteria set forth in the *Public Assistance Program and Policy Guide* (FP 104-009-2/January 2016), available at http://www.fema.gov/media-library-data/1456167739485-75a028890345c6921d8d6ae473fbc8b3/PA_Program_and_Policy_Guide_2-21-2016_Fixes.pdf. No additional DAC will be considered at the subaward's closeout; therefore, estimated reasonable DAC must be identified and included in the fixed estimate at the time of acceptance.

Review of Estimates by an Expert Panel

Subrecipients may request a FEMA-funded,¹⁰ independent validation of estimates for permanent work projects with an estimated Federal share of at least \$5 million. As stated above, the law directs FEMA to make available an independent expert panel to review and validate cost estimates. Additionally, as a new requirement effective with the publication of this guidance document FEMA will direct all project estimates with an estimated Federal share of \$25 million or greater to the expert panel for cost validation review. This does not apply to projects where the fixed cost estimate agreement was reached prior to the date of publication of this guide. If individual projects within a consolidated subaward do not exceed \$25 million, those projects do not require expert panel review.

The scope of the panel's responsibilities is described below.

- FEMA will direct project estimates to the panel at the request of the subrecipient (through the recipient). FEMA also has the discretion to direct estimates to the panel for review.
- FEMA will direct all project estimates with a Federal share of \$25 million or greater to the panel for review.
- The panel will conduct its review before the subrecipient's acceptance and before FEMA's obligation of funds; it will not be used for appeals.
- The review will be limited to issues pertaining to the estimated cost; the panel will not make decisions related to the eligibility of damage or the eligible scope of work. However, it may make determinations with regard to incorporation of cost elements relating to project execution that could affect the scope of work.
- The panel may review cost documentation for completed work, if required.
- In cases where the estimated amount deemed appropriate by the expert panel is less than the subrecipient is willing to accept as a fixed estimate, the subrecipient may forgo alternative procedures and request that FEMA process the subaward using standard procedures. In these cases, FEMA will obligate the subaward based on the estimated

¹⁰ The expert panel will be fully funded by FEMA and does not require any non-Federal cost share.

amount determined by the expert panel and final funding will be based on actual costs in accordance with 44 CFR §206.205(b).

The expert panel will be composed of design, engineering, construction, cost-estimating, and industry professionals retained by a contractor or another agency with which FEMA has established an agreement for the panel's services. They will be independent of FEMA, the recipient, and the subrecipient.

B. Consolidation of Fixed Cost Estimate Subawards

A consolidated subaward is created when a subrecipient combines two or more fixed estimate subawards into a single subaward. This feature is intended to allow the subrecipient greater flexibility¹¹ to execute work across multiple facilities or sites in ways that support its post-disaster recovery needs. The consolidated subaward may restore the pre-disaster condition, function, and capacity of some or all of the separate sites or facilities contained within the consolidated subaward, or it may reflect a fundamentally different concept. Funding for the consolidated subaward is capped at the aggregate amount of the eligible costs for the formerly separate, individual fixed estimate subawards. FEMA will not obligate additional funds if the subrecipient's costs exceed the aggregate fixed amount. The subrecipient must notify FEMA of the subawards to be consolidated and the final scope of work to be completed under the consolidated subaward within 12 months of the declaration date. The subrecipient may request from FEMA an extension of up to six additional months. The request must provide the circumstances that justify the extension.

Although the consolidated subaward is similar to an improved project or an alternate project under standard procedures, it differs in that subrecipients can complete all work and use any excess funds (see **Use of Excess Funds** section) if actual costs are less than the aggregate total of the consolidated fixed estimate subawards. Subrecipients may also share funding across any of the facilities within the consolidated subaward in order to meet its post-disaster recovery needs. Nonetheless, the consolidated subaward must meet all other PA Program requirements and guidance, and comply with other applicable Federal requirements, including EHP laws, regulations, and executive orders.

The following scenarios illustrate the concept.

- The subrecipient operates a school campus adjacent to a river. During the disaster, the river floods four campus buildings. FEMA, the recipient, and subrecipient agree on the disaster-damage dimensions and scope of work. The subrecipient prepares scopes of work and cost estimates for the repair of each building, including flood-proofing measures to elevate structures as required by the community's floodplain management

¹¹ By "flexibility," FEMA allows discretion in how the subrecipient uses the funds; it does not imply flexibility on the part of the Agency or the recipient in administering the award or in compliance with applicable statutory or regulatory requirements.

ordinance. After validating these estimates, FEMA prepares and approves four subawards, one for each building, and the subrecipient accepts them as fixed estimate subawards. The subrecipient later decides that its interests would be best served by moving the school operations away from the river. The subrecipient plans to demolish the four buildings and consolidate all operations in a new building set back from the river on an expanded footprint at a higher elevation. As a result, the subrecipient requests that the aggregate amount of funding for the four subawards be consolidated under one single subaward.

- The subrecipient operates 10 facilities, which are damaged by an earthquake. FEMA prepares and approves 10 subawards for repair or replacement of each facility and the subrecipient accepts 10 fixed estimate subawards. The subrecipient determines that, the community would be best served by providing other facilities to meet community needs. Of the 10 facilities, the subrecipient proposes to demolish four facilities, restore six, open a new facility in a different location, and construct an administrative building and a community center. As a result, the subrecipient requests to consolidate the total amount of funding for all 10 fixed estimate subawards to a single subaward, to be applied to restoring six facilities and constructing two new facilities.

Scope and Limitations

Under the alternative procedures, consolidated subawards will be implemented in accordance with the following:

- The subrecipient may consolidate only permanent work subawards. The subrecipient may consolidate subawards from different categories of permanent work (such as, combining Category C and Category E subawards) or consolidate within the same category of work (such as, multiple school-campus sites/locations).
- The subrecipient may use consolidated funds for repair, restoration, or replacement of disaster-damaged facilities; construction of new facilities; repair or replacement of disaster-damaged equipment; or buying new equipment.
- The funds may also be used for measures that reduce future risk.
- The funds may not be used for facilities or equipment not otherwise eligible for PA Program funding. They also may not be used to meet the local cost share for other Federal awards; pay down debts; cover budget shortfalls; meet operating expenses; or conduct planning and design that go beyond the work related to the consolidated subaward(s), such as community-wide planning.
- The subrecipient may share consolidated funds among any of the facilities or sites that are part of the consolidated subaward.
- FEMA must ensure compliance with applicable EHP laws, regulations, and executive orders before funds are obligated and construction begins for the consolidated subaward. This process is described in the **Special Considerations Review** section.

- Once a subrecipient requests to consolidate multiple fixed estimate subawards, FEMA will prepare a new subaward documenting the consolidation of the fixed estimate subaward. It will include a fixed estimate that is based on the sum of the cost estimates for the component subawards. If the subrecipient has identified a new scope of work for the consolidated subaward for which it intends to use the funds, it should document the change in the scope of work so FEMA can include that information in the new subaward.
- Once the consolidated subaward has been obligated, the subrecipient may request (through the recipient) that other individual fixed estimate subawards be added to it. FEMA will prepare a version to the consolidated subaward adding the additional fixed estimate subaward and adjust the aggregate fixed estimate. These requests for consolidation must occur within 12 months of the declaration or the approved time extension. EHP review of the version to the consolidated subaward must be completed prior to obligation.
- In the interest of efficiency, in cases where a subrecipient may decide, prior to obligation, that a consolidated subaward is preferred, the consolidated subaward can be defined during project formulation (i.e., the facilities being consolidated do not need to be prepared separately, approved, and then consolidated). However, the basis of fixed funding is derived from the eligible scope of work to restore the original damaged facilities to their pre-disaster condition, not the anticipated scope of the proposed use of funds on the consolidated subaward.

Funding Limits for Consolidated Subawards

The limits of funding for any consolidated subaward are defined by the total fixed estimate subawards combined into the single consolidated subaward. It is possible that the fixed estimates for the consolidated subaward will include funding for approved section 406 hazard mitigation measures. Such funds may be retained at FEMA's discretion as described in the **Special Considerations Review** section.

C. Elimination of the Reduction in Eligible Costs for Alternate Projects

Under standard procedures, FEMA reduces the Federal share of eligible cost for alternate projects in accordance with the requirements of sections 406(c)(1) and 406(c)(2) of the Stafford Act. FEMA will not apply this reduction to subawards funded under the alternative procedures pilot program. This provision applies only to projects for which the subrecipient requests alternative procedures for a subaward based on a fixed estimate. Subawards approved and obligated under standard procedures are not eligible for elimination of the reduction in eligible costs for alternate projects. All alternate project scopes of work require FEMA's review and approval in accordance with PA Program requirements.

D. Use of Excess Funds

When the actual cost of the work under a subaward is less than the fixed estimate, the subrecipient may use the excess funds for PA Program-related purposes. The following are allowable uses:

- Hazard mitigation activities that will reduce the risk of damage in future disasters. The subrecipient may use the funds for hazard mitigation on facilities not damaged in the declared disaster. However, the mitigation must be applied to facilities that would otherwise be eligible for PA Program funding. The law also states that mitigation measures must be cost-effective; the subrecipient is responsible for documenting cost-effectiveness. The criteria outlined in *FEMA Policy 104-009-2 Public Assistance Program and Policy Guide* dated January 2016, may be used for this purpose.
- Activities that improve future PA Program permanent work operations, such as training and planning for future disaster recovery operations.

Unacceptable uses may include:

- Payment of debts
- Payment of the non-Federal share of PA Program subawards or other Federal awards
- Operating expenses
- Cost overruns on other PA Program subawards (that are not part of the consolidated subaward)
- Incorporation into the community's General Fund
- Restoring or replacing a facility not damaged in the declared disaster (hazard mitigation measures excepted)
- Restoring or replacing a facility that would otherwise not be eligible for PA Program funding

When the subrecipient has completed the scope of work associated with a fixed estimate subaward for less than the agreed upon cost estimate, it must certify final costs and submit a request to use excess funds, through the recipient, within 90 days of project completion for final reconciliation by FEMA. As part of this request, the subrecipient must also provide information for intended use of the excess funds, to include the scope of work and project timeline. FEMA will initiate closure of the original subaward and then prepare a new subaward to document the use of the eligible excess funds and conduct all required reviews prior to obligation. As appropriate, requirements to obtain-and-maintain insurance apply to work funded with excess funds.

E. Special Consideration Reviews

Each subaward processed using alternative procedures will be reviewed for special considerations, including EHP compliance, insurance, and hazard mitigation. The actions taken in these reviews for alternative procedures subawards are described below.

Environmental/Historic Preservation Compliance Review

Subrecipients must comply with applicable EHP laws, regulations, and executive orders when using alternative procedures. FEMA will conduct EHP compliance reviews prior to obligating funds and the start of construction. Construction includes all actions that have the potential to impact the environment and historic properties (including archaeological resources), and typically includes demolition and site preparation. Subrecipients are responsible for obtaining all necessary permits for project implementation.

FEMA will conduct additional EHP compliance reviews when fixed estimate subaward funds (either single or consolidated) are used under these procedures for changes in scope of work that involve a historic property listed on or eligible for listing on the National Register of Historic Places and/or where the changes do not substantially conform to the pre-disaster design, function, and location of the damaged facilities. The recipient will notify FEMA of the proposed work and FEMA will complete any additional EHP review. In some instances, no further EHP review will be required for certain actions.

When FEMA's review of proposed work indicates the need for an Environmental Assessment, Environmental Impact Statement, or remedial actions required by Environmental and Historic Preservation laws, regulations, and/or executive orders, the subrecipient is responsible for all costs associated with conducting these analyses and performing remedial measures necessary to satisfy EHP compliance requirements in accordance with 44 CFR Part 10 *Environmental Considerations* and, upon rescission of Part 10, *FEMA EHP Directive and Instruction Manual* (in conformance with *DHS Directive & Instruction Manual 023-01 (IM 023-01)*).

If the subrecipient does not comply with the conditions of the subaward, FEMA will deobligate the funding for the affected elements of the consolidated subaward, or the subaward as a whole, depending on the circumstances.

Insurance

FEMA will evaluate insurance coverage for an alternative procedures subaward to determine:

- Known actual insurance proceeds for the eligible work.
- The anticipated insurance proceeds for the eligible work based upon the coverage in place, if the actual proceeds are not known.

Insurance reductions will be based on actual or anticipated proceeds at the disaster-damaged facility. The fixed estimate for an individual or a consolidated subaward will maintain this reduction, even if the subrecipient does not perform the original scope of work. The overall agreed-upon fixed estimate will not be revised. The only exception is when actual insurance proceeds differ from the anticipated insurance proceeds. Specifically, if the Applicant's actual insurance proceeds exceed the amount of the reduction based on anticipated insurance proceeds, the Applicant will have to return to FEMA the difference between those amounts in order to avoid a duplication of benefits under Section 312 of the Stafford Act.

Conversely, if the Applicant's actual insurance proceeds are less than the amount of the anticipated insurance proceeds used to calculate the reduction and the Applicant demonstrates that it performed the due diligence required in pursuing all available insurance proceeds, FEMA will return to the Applicant the difference between those amounts. When analyzing the Applicant's insurance coverage and actual or anticipated insurance proceeds to determine the reduction as required by law, regulation, and policy, FEMA will calculate the reduction as accurately as possible based upon information available at the time of review.

Additionally, under Section 311(b) of the Stafford Act and 44 CFR §206.252(d), the Applicant is required to obtain and maintain flood insurance in the amount of eligible disaster assistance as a condition of receiving Federal assistance. This requirement is inclusive of areas both inside and outside of the Special Flood Hazard Area. For damage caused by disasters other than flood, under Section 311(b) of the Stafford Act and 44 CFR §206.253(b)(1), the Applicant is required to obtain and maintain such types and amounts of insurance as are reasonable and necessary to protect against future damage from the types of hazard that caused the major disaster.

Hazard Mitigation

Section 406 hazard mitigation funds are discretionary funds that can be added to project funding for the repair of disaster-damaged facilities and must prevent future damage similar to that caused by the declared event. Under standard procedures, 406 mitigation funds cannot be retained on alternate projects or improved projects that involve relocation or facility replacement at the same site. In an effort to promote greater flexibility in the use of funds after accepting a fixed estimate subaward and allow more resilient mitigation with the alternative procedures authorized under Section 428, FEMA may allow the retention of 406 mitigation funds on a case-by-case basis where prevention of future similar damage is proven to be of greater or equal benefit than that which would have been achieved with the approved mitigation scope of work in the originally approved repair subaward.

PART III. AWARDS MANAGEMENT REQUIREMENTS

The process for monitoring and closing subawards is streamlined under the alternative procedures. The sections below outline award/subaward management requirements.

A. Award Management Activities

For subawards funded under the alternative procedures, major activities conducted during the Award Management phase are as follows:

- The subrecipient must complete work within established regulatory timeframes and request time extensions as appropriate.
- The subrecipient must submit quarterly progress reports to the recipient for large projects in which the work is not completed and financially reconciled.
- The recipient will provide funds to the subrecipient in accordance with Federal and State requirements.
- Subawards under alternative procedures are also subject to Strategic Funds Management (SFM), as appropriate, as outlined in guidance for the SFM initiative.
- The recipient will ensure that subrecipients understand and adhere to Federal procurement requirements, as well as other requirements of 2 CFR Part 200¹².
- The recipient will ensure subrecipient compliance with EHP requirements, notify FEMA of work requiring 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 to FEMA any interest earned.
- The subrecipient will submit to the recipient a final report of project costs. Review of this report will not result in additional funding for fixed estimates under the pilot, nor a reduction in funding if the applicant elects to use excess funds for hazard mitigation or other activities to improve future Public Assistance operations.¹³ The final report should include the following components:
 - Actual work completed with fixed estimate award funds
 - Mitigation measures achieved, if applicable
 - Compliance with EHP conditions
 - Total actual costs to complete the project
 - Compliance with Federal procurement procedures
 - Actual insurance proceeds received by subrecipient

¹² 2 CFR Part 200, “Uniform Administrative Requirement, Cost Principles and Audit Requirements for Federal Awards”, supersedes FEMA regulation 44 CFR Part 13 and associated OMB Circulars and guidance. Effective for all awards authorized by the Stafford Act and made under declarations on or after December 26, 2014. The superseded OMB Circulars and guidance, including 44 CFR Part 13, will continue to apply to Federal awards made under declarations prior to December 26, 2014.

¹³ 44 CFR §206.205(b)

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 subawards in accordance with the previously stated requirements. The recipient will provide the accounting to FEMA and will request the subaward be closed. Based upon the outcome of the financial accounting, the subrecipient may request that any excess funds be included in a new subaward, for use within regulatory timeframes, unless a time-extension for using the excess funds is required and granted.

C. Appeals

For subawards funded using the alternative procedures, the subrecipient may submit an appeal, in accordance with 44 CFR §206.206, only for corrective actions resulting from compliance reviews such as an audit. Subrecipients may not bring appeals for additional costs related to the fixed estimate subaward.

D. Audits and Compliance Reviews

The Office of Inspector General will have the ability to 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 this document's guidelines and other applicable requirements. Any corrective actions FEMA takes as a result of these audits or compliance reviews may be appealed in accordance with 44 CFR §206.206.

Appendix A

Alternative Procedures Pilot Program for Permanent Work 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, our agency understands the following:

1. We plan to participate in the following elements:
 - Subawards based on fixed cost estimates, and as the subrecipient, accept responsibility for costs above the estimate
 - Consolidation of multiple fixed cost estimate subawards into a single subaward
 - FEMA validation of subrecipient-provided estimates
 - Elimination of reduced eligible funding for alternate projects
 - Use of excess funds
 - Review of estimates by an expert panel for projects with a Federal share of \$5 million or greater
2. The pilot is voluntary, and a subrecipient may participate in alternative procedures for one or more large project subawards.
3. If the subrecipient accepts a fixed estimate subaward as documented in the PW and separate agreement document, if applicable the subrecipient understands they are responsible for all costs greater than the fixed amount.
4. The subrecipient agrees to notify the recipient regarding the specific use of excess funds.
5. All contracts must comply with local, State, and Federal requirements for procurement, including provisions of 2 CFR Part 200.
6. The Office of Inspector General may audit any subrecipient and/or subaward.
7. EHP review must be completed for all subawards, including cases where new scopes of work would require EHP compliance, before funding is obligated and construction begins. Failure to comply with this requirement may lead to loss of Federal funding.
8. The subrecipient may submit appeals in accordance with 44 CFR§206.206. However, FEMA will not consider appeals solely for additional costs on fixed cost estimate subawards.

Signature of Subrecipient's Authorized Representative

Date

Printed Name and Title

Subrecipient Name

PA ID Number

Appendix B

FIXED COST ESTIMATE SUBAWARD AGREEMENT LETTER

Date: _____

To Address:

To FEMA:

As a Public Assistance (PA) Subrecipient _____
(PA ID _____), in accordance with Section 428 of the Robert T. Stafford
Disaster Relief and Emergency Assistance Act, we agree to accept a permanent work subaward
based on a fixed estimate in the amount of \$ _____ for subaward number
_____ (copy attached) under Disaster # _____. We accept responsibility
for all costs above the fixed estimate.

We understand that by participating in this pilot program we will be reimbursed for allowable
costs in accordance with 2 CFR Part 200, and the reimbursement will not exceed the fixed
estimate. We also understand that by agreeing to this fixed estimate, we will not receive
additional funding related to the facilities or sites included in the subaward. We also
acknowledge that failure to comply with the requirements of applicable laws and regulations
governing assistance provided by FEMA and the PA Alternative Procedures Pilot Program
Guidance (such as procurement and contracting; environmental and historic preservation
compliance; and audit and financial accountability) may lead to loss of federal funding.

Signature of Subrecipient's Authorized Representative

Date

Printed Name and Title

Signature of Recipient's Authorized Representative

Date

Printed Name and Title