

**FEMA-4339-DR-PR Public Assistance
Post-Fixed Cost Estimate Obligation for PREPA, PRASA, and PRDE
Course of Action (COA) Guide
11/18/2020**

Purpose

This document defines the procedures to develop individual Public Assistance (PA) projects to capture the recovery scope of works (SOWs) to be implemented by PREPA, PRASA, and PRDE using the single fixed-cost estimates funding authorized in the FEMA’s Accelerated Award Strategy (FAASt) projects. These documents will be revised in the next 90 days, together Recipient and FEMA.

- I. Workplan:** The SOW of the FAASt projects require the Subrecipients to submit a workplan to the Recipient and FEMA within 90 days of project obligation and provide an update to the Recipient and FEMA every 90 days thereafter. This document further describes this workplan requirement and what should be included in those workplans.
- II. Subrecipient SOW and Cost Estimate Submissions:** The SOW of the FAASt projects specifies, “In order to use funding authorized by this subaward for construction, the Subrecipient first must submit the proposed SOW (or recovery SOW) which must be reviewed by the Recipient and FEMA.” This document describes what Subrecipients should include in the proposed SOW and cost estimates.
 - A. Hazard Mitigation (HM) Measures and Environmental and Historic Preservation (EHP) Compliance Integration into the Recovery Scopes Development**
- III. Developing Projects in the Grants Manager (GM)/Grants Portal (GP):** This section describes the procedures, roles, and responsibilities for FEMA, Recipient, and the Subrecipients in the development and review of projects which capture the Subrecipient’s proposed SOWs.

I. Workplan

The workplan required in the SOW of the fixed cost-estimate projects is intended to capture the Subrecipient’s plan to submit SOW and cost estimates to COR3 and FEMA and is a “living document” that will be updated every 90 days. FEMA does not intend to approve or deny the plans; rather the work plans will be used to measure progress and to anticipate workload.

Although the Subrecipients must submit its initial workplan within 90 days of fixed cost estimate obligation, FEMA does not expect the Subrecipients to have a fully formulated plan for the use of the multi-billion dollars fixed-cost estimate projects in this initial workplan. Subrecipients should provide the best information that they have at the time which will progress as the Subrecipients determine their priorities and procurement timelines. Subrecipients will use *Part B* outline for the initial workplan submission. This outline may be adjusted in the future to capture more detailed information. Once each Subrecipient solidifies its recovery projects, it must outline them on the workplan and FEMA will create projects in GM based on anticipated submissions, which will allow tracking of pending actions. See *III. Developing Projects in the GM/GP* for more information.

FEMA’s Infrastructure Division Director, Directorate Chiefs and/or Public Assistance Group Supervisor will hold monthly progress meetings with COR3 and each Subrecipient to discuss the activities listed in the workplan. EHP and HM representatives will also participate in the meetings.

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II. Subrecipient SOW and Cost Estimate Submissions

Subrecipients must provide recovery project SOWs with the proposed construction work to be performed and may submit 406 hazard mitigation proposals (HMPs). This section describes information Subrecipients should provide in their submission to enable FEMA to promptly review programmatic requirements for the development of the new projects in GM.

The SOW defines the activities that will be performed using PA funding. As explained in the Background (Part A), the FAASSt projects do not capture such activities as it was agreed to capture them in subsequent projects to provide flexibility in the recovery solution. However, FAASSt fixed-cost estimates included the cost to restore facilities to pre-disaster design and function to locally-adopted codes and standards and/or to FEMA-approved industry standards, if applicable.

At project closeout, FEMA evaluates the SOW with the actual work performed to ensure Federal grant compliance, including compliance with locally-adopted codes and standards¹ and/or FEMA-approved industry standards² referenced in the SOW, and compliance with EHP conditions.

The Subrecipient submissions must provide the following information to FEMA:

1) *List of facilities*

The FAASSt project considered all eligible facilities which sustained damaged from Hurricane Maria. The SOWs or accompanying narratives submitted must list the specific facilities, their construction dates and location of each facility included.

2) *Work to be Performed*

Subrecipient must *describe* the proposed work and its *type*. Select one of the following types:

- Restores the facility/facilities to pre-disaster design and function to locally-adopted codes/standards (example: Puerto Rico Building Code) and/or FEMA-approved industry standards
- Restores the pre-disaster function of the facilities and incorporates improvements or changes to its pre-disaster design not required by codes or standards (Improved Project)

¹ Public Assistance Program and Policy Guide, FP 104-009-2 (April 2018) [hereinafter PAPPG], at p. 87 states “FEMA provides PA funding to restore facilities on the basis of pre-disaster design and function in conformity with current applicable codes, specifications, and standards”. The most common code, specification, and standard used in the development of the FAASSt project is the Puerto Rico Building Code.

² See FEMA Recovery Policy (RP) FP-104-009-5 Version 2, Implementing Section 20601 of the 2018 Bipartisan Budget Act through the Public Assistance Program, at p. 7 states “The Applicant must restore the facility or system to the approved industry standard, or to the extent that an applicant elects to undertake Alternate Projects under D.1, those facilities must be constructed to an approved industry standard. If the Applicant does not restore the facility or system to the approved industry standard, FEMA may de-obligate all or a portion of funding for the project that was provided on the basis of the BBA authorities.”

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- For improved project, the Subrecipient must obtain approval from the Recipient. The Recipient must approve the SOW, and once approved, notify FEMA.
- Does not restore the pre-disaster function of the damaged facility (Alternate Project)
 - For alternate project, the Subrecipient, through the Recipient, must obtain approval from FEMA.
 - BBA Policy D.1 “If the Applicant wishes to use these funds toward an Alternate Project, the Alternate Project must *still provide* a BBA-eligible critical service and must *be constructed* to an approved industry standard. FEMA will evaluate the proposed use for reasonableness to ensure funds are used in an appropriate manner based on the intent to improve the resiliency of the critical services defined in the BBA [policy].

- 3) *Specify Locally Adopted Codes/Standards and/or FEMA-Approved Industry Standards*
Subrecipient must *specify* the locally adopted codes/standards and/or FEMA-approved industry standards used and *describe* how they are incorporated into the restoration. FEMA will review the Subrecipient-provided SOW to ensure it includes the appropriate locally-adopted codes and standards and/or FEMA-approved industry standards.

For specific examples of how the locally adopted codes/standards and/or FEMA-approved industry standards must be listed and associated, please see methods of repair in the project documents for which code/standard and/or industry standard was used to develop the cost estimate for specific facilities.

For a list of FEMA-approved industry standards, see Consensus-Based Codes, Specifications and Standard for Public Assistance FEMA Recovery Policy FP-104-009-11 Version 2 and the Regional Administrator’s memorandums of additional industry standards for facilities under the 2018 Bipartisan Budget Act (BBA) for FEMA-4339-DR-PR.

- 4) *Cost Estimate*
Subrecipients should submit a cost estimate along with the recovery SOW. FEMA will review that the cost estimate aligns to the SOW and use it to determine 406 HM eligibility, if an HMP is submitted.

According to the Public Assistance Alternative Procedures (PAAP) for FEMA-4339-DR-PR, PA funding should be integrated into the broader whole community recovery planning process in coordination with the Recovery Support Functions (RSF), other Government of Puerto Rico and federal agencies as appropriate, the Recipient, and Subrecipients. If the Subrecipient plans to use multiple sources of funding, it must be notified to avoid confusion and/or duplication of benefits.

- 5) *406 HMP (not required)*

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Subrecipients should evaluate potential 406 mitigation opportunities according to *Public Assistance Program and Policy Guide* Section VII.C and submit proposals³ along with cost estimates.

As described on the Background (Part A), the FAASSt projects fix cost estimates were developed using statistical sampling and extrapolation without the need of developing a detailed DDD for each facility. Those facilities that were not included in the sample, and therefore, do not have detailed DDDs, will not require a detailed DDD unless the Subrecipient pursues HM funds for that facility; specifically relocations and wind-retrofit. In those cases, a detailed damage description, SOW for the repair to pre-disaster design, and a cost estimate for that SOW will be required. The information is required to validate technical feasibility and cost-effectiveness of the proposed HM measures.

For wind retrofit specifically, Subrecipients must submit Part D of the Wind Retrofit Memo Standard Operating Procedure.

For alternate and improved projects, if the project results in a reduction of risk to the function of a damaged facility, 406 mitigation costs may also be eligible. The amount of eligible 406 mitigation funding included in the HMP will be limited to that associated with the capacity of the pre-disaster design of the facility⁴.

Each project will be worked through the National Delivery Model. If the project submission does not include the items mentioned above, FEMA's review will be delayed and will likely require FEMA to submit formal Requests for Information to the Subrecipient through the GM/GP system.

FEMA recognizes that the Subrecipients will likely use a contracted architect and/or engineer to develop the recovery projects and anticipates that the submissions might include preliminary designs, including drawings and cost estimates. FEMA also recognizes that, generally, architects and/or engineers do not include or delineate the information needed to enable FEMA to complete programmatic reviews. Therefore, in those cases, Subrecipient must ensure to submit all the information described above and not limit the submission to a drawing set. Refer to *Part C - II. Recipient/Subrecipient Checklist for Submissions* as a guide to review completeness.

³ PAPPG at p. 98 states, "FEMA evaluates proposed mitigation measures for cost-effectiveness, technical feasibility, and compliance with EHP laws, regulations, and EOs. In addition, FEMA ensures that the mitigation does not negatively impact the facility's operation or surrounding areas, or create susceptibility to damage from another hazard."

⁴ Public Assistance Alternative Procedures (Section 428) Guide for Permanent Work FEMA-4339-DR-PR, February 10, 2020, at p.16

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**A. HM Measures and EHP Compliance Integration into the Recovery Scopes
Development**

The PDMG will be the FEMA main point of contact (POC) with the Subrecipient and will foster open and frequent communication between the Subrecipient, HM and EHP. FEMA POC will coordinate HM and EHP participation in all phases of the projects, including design process to support with identification of potential HM measures opportunities and environmental and historic preservation concerns.

A proactive approach will help the Subrecipient to claim additional funds for eligible 406 hazard mitigation measures and is critical for early identification of compliance issues and timely completion of EHP review at Phase 4. In order to effectively integrate HM and EHP into recovery scopes, they must be integrated early in the project development. Therefore, PA will coordinate with HM and EHP POCs to participate in the Subrecipient/PA technical meetings when recovery scopes are discussed. The purpose is to provide early visibility on SOWs which will allow to:

- Clearly understand the range of actions included in the SOW
- Support to identify (if desired) improvements that could potentially be eligible HM measures
- Identify the appropriate review strategy
- Gather additional data required for EHP review
- Advise the Subrecipient on potential impacts and minimization and avoidance measures that the Subrecipient may want to consider integrating into the SOW. Minimal changes to SOWs can avoid impacts that trigger consultation with resource agencies, elevate the required level of analysis under the National Environmental Policy Act (NEPA), or require lengthy and expensive mitigation measures under EHP laws (i.e., archaeological testing and data recovery, wetlands mitigation, and other environmental/historic preservation mitigation measures).

HM

In advance of the recovery SOW submittal, collaboration and coaching to the Subrecipient during the technical meetings is essential to help the Subrecipient identify/classify correctly the additional work as “improvements” (no additional funds) or “eligible HM measures” (additional 406 hazard mitigation funds).

Generally, additional work above minimum requirements of the *Codes/Standards and/or FEMA-Approved Industry Standards* will be part of an improved project without additional funds. However, some of the desired additional work may be eligible as HM measures if it meets the cost effectiveness criteria. Some examples are the following: wind retrofit, undergrounding cables, adding more items to the minimum required by codes and standards, elevating equipment or change of material for dry proofing.

EHP

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To expedite review, FAASt Grant Subrecipients must be prepared to be partners in compliance:

- Compliance Set-Asides: These island-wide undertakings have the potential to create impacts on a wide variety of resources such as archaeological sites, historic buildings, endangered and threatened species, critical habitats, waterways, wetlands, and coastal resources, and therefore will require compliance with a wide variety of environmental and historic preservation laws, policies, and executive orders.
 - Subrecipients must be prepared to provide required environmental and historic preservation compliance documentation in order to avoid delays in EHP review and/or to avoid noncompliance. Subrecipients must ensure they have sufficient funds set aside to meet these compliance requirements. Also, Subrecipients must plan ahead and have contracting capacity readily available to carry out costly and sometimes time consuming compliance activities, including the preparation of Biological Assessments for FEMA consultation with U.S. Fish and Wildlife Services; development of high level NEPA documentation (i.e., Environmental Assessments, Supplemental Environmental Assessments; or an Environmental Impact Statement); Clean Water Act Section 401 and 404 permit submittals through the U.S. Army Corps of Engineers; and actions required to achieve compliance with Section 106 of the National Historic Preservation Act (NHPA) (including archaeological survey and monitoring; building survey and recordation; data recovery and curation; and mitigation of adverse effects).
 - Subrecipients must coordinate with EHP throughout scope development as submittal of documentation by the Subrecipient may be required before EHP can move forward with their compliance review. This documentation may include (but is not limited to):
 - Archaeological Phase 1A (assessment of archaeological sensitivity) and Phase 1B archaeological testing
 - Information that will allow EHP to determine if Programmatic Environmental Assessments (PEAs) developed for the repair or reconstruction of utilities, structures and appurtenances; transportation structures (roads, bridges, and culverts); and education structures or facilities are applicable to the SOWs under review
 - Information that will allow EHP to determine if the Endangered Species Matrix, FEMA’s streamlining tool for the Endangered Species Act, and the Coastal Zone Management Act Federal Consistency Certification with the Puerto Rico Planning Board for Permanent Work can be utilized in place of consultation in areas where actions may impact habitat or species.
- Development of Project Specific Programmatic Agreement: FEMA will carry out Section 106 responsibilities under the NHPA for these undertakings through development of project-specific programmatic agreements (PSPAs) as described under Stipulation II.C.6.c of the *Programmatic Agreement among the Federal Emergency Management Agency, the Puerto Rico Historic Preservation Officer, and the Puerto Rico Central Office for Recovery, Reconstruction and Resiliency.*” A PSPA is developed when a large and

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complex project presents the expectation of numerous adverse effects on historic properties that cannot be identified in advance of project implementation. These PSPAs will lay out the specific strategies that will guide Section 106 compliance throughout the construction phase of the project. In order to support timely negotiation of these agreements, Subrecipients must:

- Develop and implement a public outreach plan to socialize their FAASSt grant project with the public in advance of the beginning of the Section 106 consultation process.
 - Identify a high-level point of contact who can make commitments on behalf of the Subrecipient and who will be a consistent and active participant in the consultation process.
 - Be able to support public information needs as required under Section 106 of the NHPA through utilization of the agency web platform.
- Track EHP compliance: In order to minimize the compliance challenges at project closeout, it is critical to track EHP compliance. During the meetings with the Subrecipient/Recipient, the FEMA (PA POC and EHP POC) must discuss the projects with specific EHP conditions and capture them on the meeting minutes to remain aware of and track these projects to ensure EHP compliance at closeout.

III. Developing Projects in the GM/GP

This section describes how the post-FAASSt obligation projects will be formulated and processed through the GM/GP system. These are steps in the GM/GP as of the date of publication. The specific steps may change given changes to the National Delivery Model and/or GM/GP.

1) *Projects creation*

Processing the recovery solution using individual projects, instead of amending the FAASSt projects, provides flexibility; enables multiple programmatic reviews simultaneously and helps the Recipient to manage the funds and to process individual disbursements requests for each FAASSt award.

Once each Subrecipient solidifies how they will submit recovery SOWs, the information must be included on the workplan and FEMA will create projects based on anticipated submittals.

Phase 2

- FEMA will add a new Damage Inventory (DI) for each project the Subrecipient plans to submit and create a new project. These projects may include multiple DIs for multiple SOWs, depending on the Subrecipient recovery project. Each new project title must include the prefix “FAASSt” for tracking purposes.
- Damage Description and Dimensions (DDD)
 - As described in the Background (Part A), the FAASSt project approach was to use statistical sampling and extrapolation to develop the fixed cost estimates without the need of developing a detailed DDD for all the disaster damage facility to agree on fixed cost estimate. However, the FAASSt project DDD codified all the damaged facilities with descriptions. Therefore, damages that may have been identified after the fixed

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cost estimates were developed will not be addressed in a future sub-grant nor will they be added to the FAASSt project.

- No detailed DDD will be in the new projects. The new projects' DDDs shall include the following language: "DDD for this facility codified in the [enter GM# of the obligated project]." To conform with the GM program, FEMA will need to create a Work Order (WO). The WO shall include the following language: "Disregard this WO notice. DDD for this facility codified in the [enter GM# of the obligated project]."
- FEMA will send DDD to Subrecipient for concurrence.
- FEMA will cancel the Essential Elements of Information (EEI) as no documents are required.
- PDMG answers the Development Guide Questions (DGQ) and routes project to "Pending Applicant SOW/cost submission"
 - The Subrecipient will have the project available to add the SOW and upload documents; refer to *Part C - II. Recipient/Subrecipient Checklist for Submissions*.
 - The Subrecipient will maintain close communication with FEMA and the Recipient to notify when the upload is completed. FEMA shall review the SOW and documents to ensure completeness and ensure programmatic requirements before the Subrecipient submits the project to the CRC. The PDMG will use the *Part C - I. FEMA PDMG Checklist for Submittal Review*.
 - For Improved Projects, before FEMA reviews, the Subrecipient must submit a request to the Recipient. The Recipient reviews the SOW and documents, approves the improve project and upload an approval notice letter to FEMA into GP.
 - For Alternate Projects, before FEMA reviews, the Subrecipient must submit a request through the Recipient. The Recipient reviews SOW and documents, then sends concurrence to FEMA by uploading a request letter into GP. FEMA reviews and attaches written determination for alternate project.
- Subrecipient submits SOW and cost estimate to CRC.

Phase 3

- CRC reviews cost estimate to ensure costs provided match the SOW provided.
 - The project will reference the original FCE and its gross costs will be \$0.
 - Enter the costs, then negate the cost in the cost line items.
 - CRC EHP pre-reviews the project for 'completeness' using CRC EHP checklist during CRC Peer Review.
- Mitigation reviews for 406 Mitigation eligibility, if applicable
 - FEMA Mitigation will evaluate the HMP SOW for technical feasibility, the level of protection, and the cost effectiveness of the HMP to determine eligibility.
 - If the proposed HMP is not eligible, FEMA will provide an alternate proposal and cost estimate.
 - If eligible 406 mitigation measures are included, the project then will include such costs.
- Insurance adds obtain and maintain requirement on the facility/facilities in the project.

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Phase 4

- EHP completes compliance review and documents this review (including conditions) in a Record of Environmental Consideration (REC).
- PDMG Project Review
- FEMA Final Review (LPN write up if 406 Mitigation is \$1M or more)
- Recipient Final Review
- Applicant Final Review

2) *Projects tracking*

The recovery solution SOW and 406 HMP will be codified using individual projects as described above. However, for tracking purpose FEMA will do a monthly report to capture the number of processed projects and the portion of funds they represent out of the total FAASSt obligations.

The first report will be prepared at the discretion of the Sector Public Assistance Group Supervisor (PAGS); not to exceed 1 year from the FAASSt project obligation. Subsequent reports will continue monthly.

The report should include the following information:

- As of *[Insert date of the data used for the report]* the Subrecipient had submitted and FEMA have processed *[Insert number of post-FAASSt individual projects at process step obligated]*. The projects total the amount of *[Insert amount of PA Funds]* which constitute *[Insert number]* percent of the FAASSt FCE. For 406 HM a total of *[Insert Amount]* have been obligated on individual projects. Below a detailed list of projects.”
 - The detailed project list will be download from GM, filtering by Process Steps “Applicant Signed Project” and “Obligated” and using “FAASSt” in the quick search and then modifying it on MS Excel. The download must include: Project Number, Category, Title, Process Step, Total 406 HMP Cost, Federal Share and Last Process Step Date. The report download must be modified to include headings, each column total amount and the percentage calculation.

Enclosure:

Part A – Background

Part B – Workplan Outline

Part C – Submissions Checklists