

PUBLICATION

2024 Hurricane Season: Top Ten Tips

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July 03, 2024

We are one month into the 2024 Atlantic Hurricane Season and already have our first named storm, with significant impacts across some portions of the Gulf States. We have seen a Governor declared emergency in Texas and a President declared emergency in Florida. On Monday, July 1, Hurricane Beryl became the Atlantic Basin's earliest Category 5 hurricane on record, as it passed over the Windward Islands and continued to track toward the Yucatan Peninsula (and beyond). Recovery from these events can be challenging, especially when there are concurrent events. The Federal Emergency Management Agency (FEMA) is a critical partner in preparing for, responding to, and recovering from these events for eligible FEMA Program applicants, but its programs can be complex. It is critical that emergency work is done as quickly as possible; however, applicants may be taking considerable risks if they make program errors or move forward too quickly without following the proper steps. This alert shares some tips to help support compliance with FEMA's primary post-event funding mechanism, the Public Assistance Program.

This season is particularly concerning as it has been well covered in the media that FEMA could run out of readily available disaster aid during the height of this hurricane season. However, it is important for applicants to know that even if the Disaster Relief Fund becomes insufficient, it is a revolving fund, and applicants will be reimbursed when the fund is replenished *IF* their costs are otherwise compliant.

Are You Eligible?

First, it's important to determine if you are eligible. State, Tribal, and Local Governments are all eligible applicants. However, only certain Private Non-Profit (PNP) organizations are eligible. To be eligible for FEMA Public Assistance, a PNP must have a ruling letter from the IRS (dated pre-event) that grants tax exemption under 501(c), (d), or (e), or documentation from the state confirming the organization is a non-revenue producing non-profit entity organized and doing business under state law. Furthermore, for a PNP to be eligible, it must provide a "critical" service under FEMA's rules such as education, utility, emergency, or medical, or provide a "noncritical, but essential social service to the general public," such as operation of a House of Worship, community center, or other social service facility.

In case of doubt, PNPs should always apply for assistance by submitting a Request for Public Assistance (RPA) by using the process applicable to the specific event (which can include submission through the applicable recipient or filing through [FEMA's Grants Portal platform](#).) The deadline for submitting an RPA is generally strictly enforced and applicants should get in contact with their state emergency management agency immediately after an event.

Top Ten Tips

1. **Document, Document, Document.** There is never too much documentation for FEMA. Take pictures of your damage, find photos of your facility before the storm, pull maintenance records, and keep a daily journal during recovery of who you talked to and why you do the things you are doing. If you get donations or volunteers to help clean out the damage, keep a record of all details (who, what, when, where, why). All of this will be critical to receiving the maximum amount of funding possible.

2. **Insurance.** First, FEMA requires you to make commercially reasonable efforts to obtain all available proceeds from your insurance carriers. Ensure that you do everything you can to get your maximum benefit (and keep the documentation to prove it). FEMA will reimburse costs associated with obtaining the maximum settlement. Second, try to get your ultimate insurance settlement to have as much detail as possible. FEMA deducts insurance proceeds from FEMA awards (to prevent a duplication of benefits); however, some things that your insurance may pay as part of your policy, such as business interruption, are not FEMA-eligible. Thus, if your settlement clearly delineates such an ineligible line item, FEMA will not deduct that amount from the final FEMA award.

3. **Get Help.** FEMA reimburses applicants for the assistance they receive to understand and correctly use the Public Assistance Program (called Management Costs.) Basically, FEMA provides applicants with an allocation of up to five percent of their ultimate project costs in ADDITION to their awards in order to help applicants receive and use their awards appropriately. It's a use-or-lose situation, so it's wise to seek help to support your award and mitigate risks that FEMA may deny or retroactively de-obligate funding.

4. **Procurement.** During an emergency, FEMA is less strict on procurement rules; however, that does not mean anything goes. There are a couple of things that FEMA will not generally bend on, especially for local government and PNP's. First, make sure all of your contracts are in writing and include the required federal terms and provisions, provided [here](#). Having a fill-in-the-blank, compliant emergency contract in the hands of everyone in your organization authorized to contract is highly recommended. If your organization signs contracts without the required federal clauses, get back in touch with the vendor as soon as possible and add the clauses as an addendum. It is never too late to request a contract addendum. Second, do NOT use cost-plus-percentage-of-cost fee structures. Look at pricing sheets from vendors and ask them to change any percentage terms into flat rates or another acceptable fee structure. Third, if time allows, do your best to at least get a couple of quotes for significant costs. Fourth, emergency procurement is limited to your circumstances – do not rely on the state or federal blanket emergency declaration. The sooner you can move to full, or at least partial, competitive procurement, the better. Remember, even for emergency work, the costs must be reasonable!

5. **Cost Reasonableness.** Even if you pay for something, FEMA may only reimburse what it determines as "reasonable." Applicants should constantly work to ensure they are paying reasonable rates – multiple quotes help with this. Remember, if an applicant does not demonstrate it is paying reasonable costs, FEMA will.

6. **Avoid Conflicts of Interest.** Do not hire your relatives, your own company, or a company that may appear to have a conflict of interest with your entity.

7. **Do Your Own Damage Assessment Now.** It may take FEMA months before they are able to do in-person site assessments. By that time, you may have already remediated much of the damage. Detailed damage information is the foundation of your FEMA funding. FEMA is now able to accept applicant-provided damage information and documentation, which may expedite the process while capturing all damage data in a timely manner. **Note:** The latest updated version of the FEMA Public Assistance Program and Policy Guide (still under Public Comment) suggests FEMA is shifting responsibility to the applicant for documenting damage assessments.

8. **Document Meetings, Advice, and Approvals.** When there are large events, FEMA operates at an "all hands" level, utilizing the assistance of many contractors, staff from other regions, and even staff from other agencies as support for the immense work needed to address immediate response and recovery operations. When things begin to equalize, these additional staff resources return home, and long-term staff take over. However, even the long-term staff tend to roll off or get called to handle different events. It is common to have numerous assigned FEMA representatives over the life of a Public Assistance claim. You will also meet many

supervisors, task force leads, branch directors, officers, and analysts – make sure to keep records of everyone involved in your claims as well as any guidance, approvals, or directions you receive. If this information is given verbally, send a follow-up confirmation email with meeting minutes to all attendees so you have a record for your files. These records can be very helpful later!

9. **Know Your Resources**. There is so much information available for applicants that it can be overwhelming. In addition to the FEMA Contract Provisions Guide, we recommend starting with these documents as part of your toolbox:

- [FEMA Public Assistance Program and Policy Guide \(PAPPG\), Version 4](#) (Note: Version 5 is still under Public Comment and not currently applicable);
- [FEMA Procurement Disaster Assistance Team \(PDAT\) Field Manual](#);
- FEMA Fact Sheet – [Procurement Under Grants: Under Exigent or Emergency Circumstances](#); and
- Remember, specific guidance may be issued related to the disaster. Ensure that you have all available information before making recovery decisions.

10. **Do Not Take NO for an Answer**. Between insurance companies, contractors, and FEMA, recovery can be overwhelming. Sometimes, even when FEMA has the best intentions, wrongful denials can occur. Your recovery is important, so always double-check with either your retained grant manager or the state recipient to see if your denial may be an error. Sometimes, FEMA may just simply be missing a document. FEMA has an appeals process for a reason, and many applicants use it with great success. However, if you receive a denial notice from FEMA, note that the sixty (60) day deadline is strictly enforced, and extensions are not granted. If you do not file an appeal in time, FEMA's denial is final and there is no other recourse.

For more information on this or other recovery matters, please contact [Wendy Huff Ellard](#), [Danielle M. Aymond](#), [Jordan Corbitt](#), or any member of Baker Donelson's [Disaster Recovery and Government Services Team](#).