Navigating Disaster Recovery: Mitigation, Procurement, and other Considerations.
President Donald J. Trump Approves Major Disaster Declaration for Indiana

Release date: May 5, 2018

Release Number: HQ-18-046

WASHINGTON – The Federal Emergency Management Agency (FEMA) announced today that federal disaster assistance has been made available to the state of Indiana to supplement state, tribal and local recovery efforts in the areas affected by severe storms and flooding from February 14 to March 4, 2018.

The President’s action makes federal funding available to affected individuals in Carroll, Clark, Elkhart, Floyd, Harrison, Jefferson, Lake, Marshall, and St. Joseph counties. Assistance can include grants for temporary housing and home repairs, low-cost loans to cover uninsured property losses, and other programs to help individuals and business owners recover from the effects of the disaster.
• Indiana Severe Storms And Flooding (DR-4363)
  – 2/14/2018 to 3/4/2018
• Indiana Severe Winter Storm and Snowstorm (DR-4173)
  – 1/5/2014 to 1/9/2014
• Indiana Severe Storms, Straight-line Winds, and Tornadoes (DR-4058)
  – 2/29/2012 to 3/3/2012
• Indiana Severe Storms, Tornadoes, Straight-Line Winds, and Flooding (DR-1997)
  – 4/19/2011 to 6/6/2011
• Indiana Severe Storms, Tornadoes, and Flooding (DR-1832)
• Indiana Severe Winter Storm (DR-1828)
  – 1/26/2009 to 1/28/2009
• Indiana Severe Storms and Flooding (DR-1795)
  – 9/12/2008 to 10/06/2008
• Indiana Severe Storms and Flooding (DR-1766)
  – 5/30/2008 to 6/27/2008
• Indiana Severe Storms and Flooding (DR-1740)
  – 1/07/2008 to 3/14/2008
• Indiana Severe Storms and Flooding (DR-1732)
• Indiana Snow (EM-3274)
  – 2/12/2007 to 2/14/2007
• Indiana Severe Storms and Flooding (DR-1662)
  – 9/12/2006 to 9/14/2006

https://www.fema.gov/disasters
Where Do Hoosiers/Americans Stand with Regard to Disaster Preparedness?
Most People Are Not Prepared

• The U.S. has a large insurance gap.
• According to FEMA, citing data from global reinsurer Swiss Re, $30/$55 billion of the annual total estimated natural catastrophe losses in the U.S. will be uninsured losses total more than $30 billion.
  – This means that more than half of these losses won’t be covered by insurance.
• For flood insurance specifically, the insurance gap is even worse.

https://www.fema.gov/blog/2018-10-16/financial-preparedness-pays
Indiana Severe Storms, Tornadoes, and Flooding – FEMA-1832-DR

Declared April 22, 2009


Summary of Damage Assessment Information Used in Determining Whether to Declare a Major Disaster

Individual Assistance

- Total Number of Residences Impacted: 1,185
  - Destroyed - 48
  - Major Damage - 385
  - Minor Damage - 209
  - Affected - 543
  - Percentage of insured residences: (12%)
  - Percentage of low-income households: (15%)
  - Percentage of elderly households: -
  - Total Individual Assistance cost estimate: $14,997,877

Public Assistance - (Not requested)

<table>
<thead>
<tr>
<th>Individual Assistance - Dollars Approved</th>
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</thead>
<tbody>
<tr>
<td>$2,961,606.39</td>
</tr>
<tr>
<td>Total Individual &amp; Households Program (IHP) - Dollars Approved*</td>
</tr>
<tr>
<td>$2,685,781.90</td>
</tr>
<tr>
<td>Total Housing Assistance (HA) - Dollars Approved*</td>
</tr>
<tr>
<td>$275,824.49</td>
</tr>
<tr>
<td>Total Other Needs Assistance (ONA) - Dollars Approved*</td>
</tr>
<tr>
<td>977</td>
</tr>
<tr>
<td>Total Individual Assistance (IA) - Applications Approved*</td>
</tr>
</tbody>
</table>
Indiana Severe Storms, Tornadoes, Straight-Line Winds, and Flooding (DR-1997)

• Incident Period: April 19, 2011 - June 06, 2011
• Major Disaster Declaration declared on June 23, 2011

Total Public Assistance cost estimate: $16,809,922
Most People Are Not Prepared

• The State and federal agencies may provide assistance to those without insurance, but the available programs were never intended to replace insurance coverage.

• For individuals, the average disaster payment is only a few thousand dollars.

• Few understand the limited scope of assistance programs.

https://www.fema.gov/blog/2018-10-16/financial-preparedness-pays
The Homeless

• Existing programs targeted to special needs populations will likely not be sufficient to address large scale post-emergency needs.

• Post-disaster programs run by federal agencies, voluntary agencies, the Red Cross, and state and local governments are not set up to provide housing or services for people who were homeless prior to the disaster.

• As of January 2018, Indiana had an estimated 5,258 experiencing homelessness on any given day, as reported by Continuums of Care to the U.S. Department of Housing and Urban Development (HUD).
  – Estimated 17,863 public school students over the course of the year.
General Background for Disaster Relief
Disaster Recovery: Key Agencies

• Federal Emergency Management Agency (FEMA)
• Indiana Department of Homeland Security (IDHS)
• U.S. Department of Housing and Urban Development (HUD)
• U.S. Small Business Association (SBA)
• U.S. Department of Labor
• U.S. Army Corps of Engineers (Corps)
The Stafford Act

• The Disaster Relief Act of 1974 attempted to streamline and better guarantee Federal involvement in disaster relief.
• In 1979, the Federal Emergency Management Agency (FEMA) was given all disaster related responsibilities by executive order.
• In 1988, The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) was passed, amending the Disaster Relief Act of 1974.
• Oct. 5, 2018, President Trump signed the Disaster Recovery Reform Act of 2018 into law as part of the Federal Aviation Administration Reauthorization Act of 2018. These reforms acknowledge the shared responsibility of disaster response and recovery, aim to reduce the complexity of FEMA and build the nation’s capacity for the next catastrophic event.
The Stafford Act and FEMA

How is disaster relief delivered and administered?

• State, territories, or federally recognized tribes must ask for help first.

• The process starts with a request from a state governor that the president declare an “emergency” or a “major disaster” in the affected state. 42 U.S.C. § 5191 (emergency), 42 USC §5170 (major disaster)

• The request “shall be based on a finding that the [emergency/disaster] is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary.” Id.

• The president has total discretion to deny a request.
Stafford Act and FEMA (cont.)

• If the President declares a disaster, FEMA:
  – Coordinates with state and local government to determine need.
  – Enters into agreements with affected state(s) that govern the terms of the to-be-provided assistance, and
  – Coordinates administration of relief by Federal, state, local, and private parties (which may include directing other Federal agencies to help).

• The Federal share of assistance generally will not exceed 75% of eligible costs.
Stafford Act and FEMA (cont.)

• The Federal disaster declaration will establish:
  – Federal cost share
  – Type of incident
  – Incident period
  – Designated areas
  – Type of assistance
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Stafford Act and FEMA (cont.)

• There are two types of disaster declarations provided by the Stafford Act. Both types allow the President to provide federal disaster assistance:
  – **Emergency Declaration**: typically for smaller emergencies in which the total disaster recovery cost does not exceed $5 million. Public Assistance and Individual Assistance is available.
  – **Major Disaster Declaration**: typically declared for larger emergencies such as hurricanes, tornados, earthquakes, etc. This type of declaration provides a large variation of federal assistance programs for both individuals and public infrastructure. Hazard Mitigation Grant Program is also available.
Funding Sources for Disaster Recovery
Federal Disaster Recovery Funding

- **FEMA Individual Assistance:** FEMA provides grant money and direct services to individuals affected by a presidentially declared disaster.
  - Must demonstrate that recovery from the disaster falls outside the ability of the state.

- **FEMA Public Assistance:** Helps reimburse local, county and state governments, and certain private, non-profit organizations in counties declared a disaster by the president.
Indiana Severe Storms and Flooding (DR-4363)

FEMA-4363-DR, Indiana Disaster Declaration as of 06/05/2018

Designated Counties
- No Designation
- Individual Assistance
- Public Assistance
- Individual Assistance and Public Assistance

**Individual Assistance - Dollars Approved**
- $3,860,229.15
  - Total Individual & Households Program (IHP) - Dollars Approved*

**Public Assistance - Dollars Approved**
- $8,459,502.68
  - Total Public Assistance Grants (PA) - Dollars Obligated†

<table>
<thead>
<tr>
<th><strong>Total Housing Assistance (HA) - Dollars Approved</strong></th>
<th><strong>Emergency Work (Categories A-B) - Dollars Obligated†</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>$3,424,849.46</strong></td>
<td><strong>$2,244,627.71</strong></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Total Other Needs Assistance (ONA) - Dollars Approved</strong></th>
</tr>
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<tr>
<td><strong>$435,379.69</strong></td>
</tr>
</tbody>
</table>

**Total Individual Assistance (IA) - Applications Approved**
- 1,164 **(Average $3,316.35/person)**
Indiana Severe Winter Storm and Snowstorm (DR-4173)

- Incident Period: January 05, 2014 - January 09, 2014
- 49 counties impacted; initial aid request denied
- Public Assistance - Dollars Approved
  - $9,571,816.89
- Total Public Assistance Grants (PA) - Dollars Obligated
  - Yes
- No individual assistance dollars approved
The Stafford Act – Hazard Mitigation

- **Pre-Disaster Hazard Mitigation** *(42 U.S.C. §5133)*
  - Uses a special fund for these pre-disaster efforts—the “national Pre-disaster Mitigation Fund”
  - Eligible project might include retrofitting public buildings against hurricane-force winds or seismic damage, acquiring and relocating properties out of a flood plain, and elevating structures in a flood plain.

- **Post-Disaster Hazard Mitigation** *(42 U.S.C. §§ 5170c, 5172(c)(1)(B)(iii))*
  - The Federal government can contribute up to 75% of the cost of hazard mitigation measures determined to be cost-effective and substantially reduce the risk of future damage, hardship, loss, or suffering in any area affected by a major disaster.
Federal Disaster Recovery Funding

• **U.S. SBA Loans:** provides low-interest economic disaster injury loans to businesses and private nonprofit organizations, as well as loans for damage to property owned by homeowners, renters, businesses and private nonprofit organizations.
  - For damage not fully covered by insurance or addressed by another service.
  - Typically, a county must have qualifying losses or be next to a qualified county.
  - Eligible homes must be the primary residence for the homeowner.
U.S. Dept. of Housing and Urban Development (HUD):

- Section 203(h) Mortgage Insurance for Disaster Victims
- Section 203(k) Rehabilitation Mortgage Insurance offers options for both home buyers and homeowners
- Entitlement Funding for Housing and Community Development
  - Community Development Block Grants (CBDG) Disaster Recovery Assistance (Stafford Act requirements apply)
  - Emergency Solutions Grants Program (ESG)
  - The HOME Program
Other Federal Programs

• **U.S. Dept. of Health and Human Services:** provides supplemental funds to support disaster response and recovery under its Social Services Block Grant Program (SSBG)

• **U.S. Dept. of Agriculture:** Food and Nutrition Service (USDA FNS) administers the Disaster Supplemental Nutrition Assistance Program (D-SNAP) that gives food assistance to low-income households with food loss or damage caused by a natural disaster.
  
  – The President must declare Individual Assistance for the disaster area and your state must request FNS approval to operate D-SNAP.

• **Dept. of Labor:** Disaster Unemployment Assistance (DUA) program provides temporary benefits to people who, due to a major disaster, lost or had their employment or self-employment interrupted.
State Disaster Recovery Funding

- **State Disaster Relief Fund (IC 10-14-4-5; IC 10-14-4-13):** Indiana has a funded State Disaster Relief Fund that provides assistance to individuals and local governments that were not eligible for federal disaster loans, but met the state’s criteria for disaster relief.
  - For citizens, the fund is activated at the same time as U.S. SBA loans, and can provide up to $5,000 per qualifying property.
  - This funding is not available if a FEMA Individual Assistance declaration is received.
Keys to Getting and Keeping Disaster Relief Funds
Stafford Act, Grant Rules, and Contracting

• Compliance with grant rules is critical for:
  – States and local governments that spend FEMA disaster and hazard mitigation funds through the award of contracts; and
  – Contractors who receive such funds (they become subject to 2 C.F.R. 200 et. seq.)

• Both public and private entities are subject to audit and investigation. E.g., 42 U.S.C. § 5161.
  – Noncompliance can result in:
    • Disallowance of costs;
    • False Claims Act liability;
    • Civil and criminal penalties, e.g., 42 U.S.C. § 5157
**FEMA Aid and Procurement**

- Procurement must be done in a manner that provides full and open competition.
- State recipients must follow the same policies and procedures used for procurements from its non-Federal funds. 2 C.F.R. § 200.317.
  - A state should ensure that every purchase order/contract includes clauses required by section 2 C.F.R. 200.326 and Appendix II to Part 200.
- All other non-Federal entities, including sub-recipients of a state, must follow the General Procurement Standards 2 C.F.R. §§ 200.318-.326.

*Note: Both states and non-Federal entities must include contract clauses that address the subjects set fort in 2 C.F.R. § 200.326 and Appendix II to Part 200.*
FEMA Aid and Procurement

2 C.F.R. § 200.318 (important provisions)

(c)(1)—The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts.

• Emphasis on no PCIs, no gifts/gratuities

(h)—The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.

• Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
FEMA Aid and Procurement

2 C.F.R. § 200.318 (important provisions)

(i)—The non-Federal entity must maintain records sufficient to detail the history of procurement.

• These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
FEMA Aid and Procurement

2 C.F.R. § 200.318 (important provisions)

(k)—The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements.

• These issues include, but are not limited to, source evaluation, protests, disputes, and claims.

• These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts.
FEMA Aid and Procurement

• Procurement by noncompetitive proposals is allowable in the following circumstances:
  – Only available from one source;
  – Exigency/emergency will not permit a delay;
  – FEMA or State expressly approves; or
  – After solicitation of several sources, competition deemed inadequate.

• But see Small Purchase and Micro-Purchase procedures (2 C.F.R. § 200.320(b))
FEMA Aid and Procurement

Limitation on use of "exigency."

- Non-Federal Entities (NFEs) may be tempted to use the "exigency" exception during initial post-declaration recovery/restoration period.
- Works for a period of time, but FEMA will later decide when the "exigency" ended, and thus when the requirement for "Full and Open" competition kicks in.
  - This suggests that NFEs should take a conservative strategy — conducting full competitions ASAP after emergency recovery
Preparing for Disasters

• Have established procurement policies/procedures that have controls in place
• Establish standard policies to procure all services in a FEMA compliant manner if an emergency.
  – Determine the services necessary during an emergency
  – Select the proper type of contract and procurement method for each service being procured
  – Develop independent cost estimates to determine cost reasonableness
• Maintain records to detail the history of a procurement action.
## Preparing for Disasters

<table>
<thead>
<tr>
<th>Contract Type</th>
<th>Rules and Considerations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lump Sum (also known as firm-fixed price) or Unit Price</td>
<td>A fixed price or unit priced contract provides for a firm price that remains irrespective of the contractor's actual cost of performing the scope of work. The risk of performing the work, at the fixed or unit price, is borne by the contractor. These types of contracts may include an economic price adjustment and incentives.</td>
</tr>
<tr>
<td>Cost Reimbursable</td>
<td>These contracts provide for certain incurred costs and provide for the reimbursement of the contractor for its reasonable, allocable, actual, and allowable costs. With an agreed-upon fee. Often challenging in emergency circumstances because there is limited control over spend. Not preferred; however, can be used if fee arrangement is not tied to cost.</td>
</tr>
<tr>
<td>Time and Materials</td>
<td>A time and materials type contract is a contract whose cost is the sum of the actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Can be used for a reasonable amount of time when: (1) no other contract type is suitable; and (2) the contract includes a ceiling that the contractor exceeds at its own risk. Entities must also maintain a high degree of oversight.</td>
</tr>
<tr>
<td>Cost plus Percentage of Cost</td>
<td>The use of cost plus percentage of cost and cost plus a percentage of construction cost methods of contracting are prohibited. Expressly prohibited contract type and should not be used.</td>
</tr>
</tbody>
</table>
Thank You

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