



## COLUMBIA COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM REQUEST FORM

The Board of County Commissioners meets the 1st and 3rd Thursday of each month at 5:30 p.m. in the Columbia County School Board Administrative Complex Auditorium, 372 West Duval Street, Lake City, Florida 32055. All agenda items are due in the Board's office one week prior to the meeting date.

Today's Date: 4/9/2021 Meeting Date: 4/15/2021

Name: Shayne Morgan Department: Emergency Management

Division Manager's Signature:

A handwritten signature in blue ink, appearing to be "Shayne Morgan", is written over a light blue horizontal line.

### 1. Nature and purpose of agenda item:

FEMA decided to deobligate \$1,563,780 as a result of an Office of Inspector General Audit. The County and Florida Division of Emergency Management appealed the decision. FEMA denied the appeal. During Tropical Storm Debby, the County determined that it was more important to put the County back together for safety reasons and that any reimbursement from FEMA would be an additional benefit. Actions were taken to expedite recovery and FEMA approved the PA expenditures in the field at the time. When reviewed after the fact, FEMA decided to deobligate the \$1.5 million.

The County has 60 days from March 25 to file an appeal to this decision.

### 2. Recommended Motion/Action:

Seeking Board Direction

### 3. Fiscal impact on current budget.

This item has no effect on the current budget.



FEMA

March 25, 2021

Mr. Jared Moskowitz, Director  
Florida Division of Emergency Management  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

Mr. Shayne Morgan, Director  
Columbia County  
135 North East Hernando Avenue, Suite 203  
Lake City, Florida 32055

Reference: FEMA-4068-DR-FL  
Columbia County  
PA ID: 023-99023-00  
First Appeal, Project Worksheets 935, 999, 1044, 1057

Dear Mr. Moskowitz and Mr. Morgan:

This is in response to a letter from the Florida Division of Emergency Management (Grantee) dated August 24, 2019, which transmitted the referenced first appeal and supplement on behalf of Columbia County (Subgrantee). The Subgrantee is appealing the U.S. Department of Homeland Security's Federal Emergency Management Agency's (FEMA) decision to deobligate \$1,563,780.00 in Public Assistance (PA) funding as a result of the U.S. Department of Homeland Security, Office of the Inspector General (OIG) Audit, 17-06-D, associated with Project Worksheets (PW) 935, 999, 1044 and 1057. The appeal is denied as explained below and in the enclosed analysis.

As explained in the enclosed analysis, the Subgrantee received sufficient notification of the deobligations and FEMA appropriately reduced the awards in line with the OIG audit recommendations. In addition, section 705(a) does not bar recovery because FEMA completed the administrative action by deobligating funding for each project prior to the end of the applicable statute of limitations. Further, section 705(c) does not apply when procurement violations occur, as is the case here, because the purpose of the grant was not accomplished. Finally, the Subgrantee has not shown, with supporting documentation, that the undocumented costs incurred are eligible for reimbursement under the PA program. This letter constitutes the official notification of this determination to the Subgrantee.

The Subgrantee may appeal this determination to the Assistant Administrator, Recovery Directorate, at FEMA Headquarters pursuant to Title 44 of the Code of Federal Regulations (44 C.F.R.) § 206.206, *Appeals*. If the Subgrantee elects to file such a second appeal, the appeal must: 1) contain documented justification supporting the Subgrantee's position; 2) specify the monetary figure in dispute; and 3) cite the provisions in Federal law, regulation, or policy with which the Subgrantee believes the initial action was inconsistent. The Subgrantee must submit the appeal to the Grantee within 60 days of the Subgrantee's receipt of this letter. The Grantee's transmittal of that appeal, with recommendation, is required to be submitted to my office within

60 days of receipt of the Subgrantee's letter. My office will transmit the second appeal to FEMA headquarters.

If the Subgrantee elects to not submit a second appeal request within 60 days of the Subgrantee's receipt of this letter, this decision is the final agency determination on the matter, and the Subgrantee will no longer be able to appeal the matter.

If you have questions or need additional information, please contact Mr. Terry L. Quarles, CEM, Director, Recovery Division, at (770) 220-5300.

Sincerely,



Gracia B. Szczech  
Regional Administrator

Enclosures:

Appeal Analysis: FEMA-4068-DR-FL, *Columbia County*, PWs 935, 999, 1044 and 1057  
Administrative Record Index

**FIRST APPEAL ANALYSIS**  
**FEMA-4068-DR-FL**  
**Columbia County, PA ID: 023-99023-00**  
**Project Worksheets 935, 999, 1044, 1057**  
**Appeal Procedures, Project Documentation and Closeout, Procurement and Contracting**  
**Requirements, Allowable Costs and Reasonable Costs**

## **Background**

During the incident period of June 23, 2012 – July 26, 2012, the State of Florida experienced strong winds and heavy rain associated with Tropical Storm Debbie. The event was declared a disaster (FEMA-4068-DR-FL) on July 3, 2012.

The heavy rains and severe overland flooding directly impacted Columbia County (Subgrantee), damaging the surface, shoulder, base, ditches and culverts of many roads. Some roads were so severely damaged they were completely washing out. Additionally, the heavy winds and overland flooding downed trees and other vegetative debris and caused flood damage to structures resulting in construction and demolition (C&D) debris. The Subgrantee requested Public Assistance (PA) reimbursement for work performed to repair the roads and remove the debris. FEMA assessed the damage and prepared Project Worksheets (PW) 935, 999, 1044 and 1057<sup>1</sup> to document the debris removal and road repair associated with each of the four projects for a total award amount of \$1,616,035.00.

The Florida Division of Emergency Management (Grantee) submitted closeout requests to FEMA for PWs 935 & 1044 on September 2, 2014, and PWs 999 & 1057 on August 12, 2015. The Grantee submitted the final closeout request for the Subgrantee's last remaining project in FEMA-4068-DR-FL in the second quarter of 2019.<sup>2</sup>

Subsequently, The Office of Inspector General (OIG) audited the four projects and recommended FEMA disallow \$1,563,780.00 of ineligible costs and direct Florida to monitor the Subgrantee's compliance with Federal grant requirements on open projects.<sup>3</sup> The OIG stated that the Subgrantee did not comply with Federal procurement standards in awarding contracts for non-exigent work that included road repair and debris removal. Further, the OIG claims the Subgrantee did not adequately document costs claimed for road repair performed under the contracts. As a result, the OIG was unable to validate the accuracy and eligibility of the road repair costs.<sup>4</sup>

The OIG notified the Grantee via letter, dated February 3, 2016,<sup>5</sup> of its intent to audit the Subgrantee's projects. The OIG hosted an entrance conference attended by the Subgrantee on

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<sup>1</sup> Project Worksheets 935, 999, 1044 and 1057, Columbia County, Version 0 (Dec. 12, 2012).

<sup>2</sup> Project Worksheet 812.

<sup>3</sup> Office of Inspector General Report, OIG 17-06-D (Nov. 2, 2016) [hereinafter *OIG Report*].

<sup>4</sup> *Id.*

<sup>5</sup> Audit Notification Letter from Assistant Inspector General, Office of Inspector General, to Emergency Management Director, Columbia County (Feb. 3, 2016).

March 1, 2016, where it provided details of the audit objective and scope.<sup>6</sup> The OIG held an exit conference attended by the Subgrantee on September 15, 2016 to discuss the audit results with the Grantee, Subgrantee and FEMA.<sup>7</sup> The OIG provided a draft report to the Grantee, Subgrantee, and FEMA officials in advance of the exit conference.<sup>8</sup> FEMA acknowledged the OIG's audit recommendations in a written response on October 13, 2016 stating it would review the projects and procurement process and disallow any ineligible, unreasonable and/or unsupported costs.<sup>9</sup> The response indicated that FEMA expected to complete its review and implement any corrective actions necessary by December 9, 2016.<sup>10</sup>

FEMA reviewed the findings and issued a Request for Information (RFI) to the Subgrantee via email on July 9, 2018,<sup>11</sup> requesting documentation to resolve the issues identified in the OIG audit. The Subgrantee did not reply to FEMA's RFI. FEMA deobligated the funds on all four projects in the Emergency Management Mission Integration Environment (EMMIE) on September 18, 2018.<sup>12</sup> The Grantee notified the Subgrantee of the deobligation and provided appeal rights on April 29, 2019.

### *First Appeal*

The Subgrantee appealed FEMA's deobligation of funding on PWs 935, 999, 1044, and 1057 in a letter to the Grantee on June 27, 2019.<sup>13</sup> On appeal, the Subgrantee disputes FEMA's deobligation of \$1,563,780.00, and states it was handicapped in forming its appeal because FEMA did not provide proper notice per FEMA's Recovery Directorate Manual, *Public Assistance Program Appeal Procedures* by:

- not issuing a determination memorandum for each PW when it deobligated funding;
- failing to give the Subgrantee an opportunity to participate in a facilitated discussion; and
- not sharing information about its review of the OIG report with the Subgrantee.

Additionally, the Subgrantee states that FEMA is prohibited from deobligating any funding on the four projects by the Robert T. Stafford Disaster Relief and Emergency Assistance (Stafford) Act's section 705(a) Statute of Limitations. The Subgrantee argues that "for all four PWs at issue, FEMA did not initiate deobligation within the three year timeframe and all four deobligations were 'pending' at the time of the enactment of PL-115-254, Disaster Recovery and Reform Act (DRRA), as this was during the [Subgrantee's] statutory appellate time-frame."<sup>14</sup> The Subgrantee also stated that section 705(c) of the Stafford Act prohibited deobligation of the

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<sup>6</sup> *Id.*

<sup>7</sup> *OIG Report*, at 10.

<sup>8</sup> *Id.*

<sup>9</sup> *OIG Report*, at 10.

<sup>10</sup> *Id.*

<sup>11</sup> Request For Information email from Appeals Analyst, FEMA Region IV, to Emergency Management Director, Columbia County (July 9, 2018) [hereinafter *RFI Email*].

<sup>12</sup> Project Worksheets 935, 999, 1044 and 1057, Columbia County, Version 2 (Sept. 18, 2018).

<sup>13</sup> Subgrantee First Appeal Letter from County Manager, Columbia County and Special Council, Baker, Donelson, Caldwell, and Berkowitz, to Director, Florida Division of Emergency Management (FDEM) (June 27, 2019) [hereinafter *First Appeal*].

<sup>14</sup> *First Appeal*, at 5.

funds, as the payments were authorized by FEMA in an approved agreement, the costs were reasonable, and the purpose of the grant was accomplished. Finally, the Subgrantee submitted an explanation that it believes its procurement costs were both reasonable and eligible, further requesting that FEMA evaluate each cost separately rather than deobligating entire projects.

The Grantee forwarded the Subgrantee's appeal to FEMA by letter dated August 24, 2019, recommending that FEMA grant the appeal and restore the deobligated funds.<sup>15</sup>

## **Discussion**

### *Appeal Procedures*

The Stafford Act provides that a [subgrantee] may appeal any eligibility decision for assistance within 60 days after the date the [subgrantee] receives notice of the approval or denial of an award.<sup>16</sup> For each PW on appeal, the Grantee notified the Subgrantee of the deobligation in a letter on April 29, 2019 that contained both the P2 report and a copy of the most recent version of the PW. The letter included appeal rights and instructions on how to file an appeal.

Here, the Subgrantee claims that FEMA did not provide notice to the Grantee or Subgrantee when it deobligated funds from PWs 935, 999, 1044, and 1057. However, the Subgrantee acknowledges that on September 18, 2018, when FEMA issued a new version of all four PWs in EMMIE the system reported the new versioning to the Grantee, whose system (FloridaPA) then reflected the deobligation. The Grantee's system was designed to generate a notice of the deobligation to the Subgrantee and provide appeal rights, but the notice did not generate in its system as intended. When the Grantee discovered the error, it sent the Subgrantee notice on April 29, 2019. The Subgrantee was provided with notice of the deobligation and FEMA accepted its appeal as timely. Therefore, despite this error, the outcome of the appeal is not affected, and the error is considered harmless.

### *Project Documentation and Closeout*

#### *i. Stafford Act Section 705(a)*

Prior to October 2018, the Stafford Act § 705(a) states, no administrative action to recover any payment made to a State or local government for disaster or emergency assistance under this Act shall be initiated in any forum after the date that is three years after the date of transmission of the final expenditure report for the disaster or emergency.<sup>17</sup>

In October 2018, section 1216(c) of the DRRA amended the Stafford Act section 705(a) to broaden the applicability of the section's three-year statute of limitations. Now, section 705(a) bars FEMA from taking administrative action to recover funding from a subgrantee if more than three years have passed since "the date of transmission of the final expenditure report for project

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<sup>15</sup> Grantee First Appeal Letter from Director, FDEM to Regional Administrator, FEMA Region IV (Aug. 24, 2019).

<sup>16</sup> Robert T. Stafford Disaster Relief and Emergency Assistance (Stafford) Act § 423(a), 42 U.S.C. § 5189(a) (2013).

<sup>17</sup> Stafford Act § 705(a), 42 U.S.C. § 5205(a) (2013).

completion as certified by the grantee.”<sup>18</sup> The DRRRA also states that the amendments made to section 705 may not be construed to invalidate or otherwise affect any administration action completed before the date of enactment of the DRRRA.

The Subgrantee claims that section 705(a) applies because each PW at issue was submitted by the Grantee for closeout on September 2, 2014 (PWs 935 & 1044) and August 12, 2015 (PWs 999 & 1057), making the September 18, 2018 deobligations outside the three-year statute of limitations if calculated on a per project basis in accordance with the changes made to the DRRRA. In this case, the Subgrantee is applying the wrong version of the statute. Because the deobligations (i.e. – administrative action) were completed prior to the enactment of DRRRA, the prior statute applies.

As stated above, the statute of limitations start date for the three-year window is calculated using the date of transmission of the final expenditure report for the entire disaster, not the transmission dates of individual projects. The Grantee submitted the final closeout request for the Subgrantee’s last remaining project in FEMA-4068-DR-FL in the second quarter of 2019. FEMA issued an RFI to the Subgrantee on July 9, 2018, and completed the administrative action by deobligating funding for each project on September 18, 2018, prior to the enactment of DRRRA. Therefore, section 705(a) does not bar FEMA from taking administrative action to recover the funds.

ii. *Stafford Act Section 705(c)*

Section 705(c) of the Stafford Act bars FEMA from the recoupment of previously awarded funding if: 1) the payment was authorized by an approved agreement specifying the costs; 2) the costs were reasonable; and 3) the purpose of the grant was accomplished. FEMA issued FP-205-081-2, *Stafford Act Section 705, Disaster Grant Closeout Procedures*, to establish the criteria necessary to implement § 705. The first condition is met if the grantee has drawn down funds obligated for the completion of the approved scope of work (SOW) through SmartLink. For the second condition, costs are deemed reasonable if they meet the definition established by Title 2 of the Code of Federal Regulations Pt. 225, App. A, C.2. Finally, subgrantees must demonstrate they completed the SOW as described in the obligated PW to meet the third condition. If all three conditions of § 705(c) are met, FEMA is prohibited from recouping grant funds even if it later finds that it made an error in determining eligibility. Prior to determining whether Section 705(c) applies, FEMA will adjust and correct project funding based on properly supported actual costs for the approved and completed scope of work, duplications of benefits (e.g., insurance reductions), improperly duplicated costs documented on one or more PWs, math errors, scrivener’s errors, and accounting errors, as appropriate.<sup>19</sup>

Section 705(c) is not applicable when a violation of mandatory Federal procurement requirements occurs because the purpose of the grant is not accomplished in such instances. Here, the OIG audit found that the Subgrantee did not comply with Federal procurement standards for the four PWs on appeal, nor did the Subgrantee adequately document its costs for

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<sup>18</sup> See Stafford Act § 705(a), 42 U.S.C. § 5205(a), *as amended by* Disaster Recovery and Reform Act (DRRA) § 1216(c), Div. D of Pub. L. No. 115-254 § 1216(c) (2018).

<sup>19</sup> FP-205-081-2, *Stafford Act Section 705, Disaster Grant Closeout Procedures*, at 4 (Mar. 31, 2016).

completing the approved scope of work. Upon review of the OIG's findings, FEMA concurred and correctly deobligated the full amount from the PWs associated with improper and unsupported contract costs. Therefore, condition three is not met and § 705(c) is not applicable.

#### *Procurement and Contracting Requirements / Allowable Costs and Reasonable Costs*

If a project is determined to be eligible, then grant funds may only be used for allowable costs, in accordance with the Federal cost principles.<sup>20</sup> In addition to other requirements, allowable costs under Federal awards must be necessary and reasonable, be allocable to the federal award, and must be adequately documented.<sup>21</sup> As such, any contract, equipment and labor costs incurred are only eligible for PA funding if an applicant provides sufficient documentation to demonstrate that the costs were reasonable and necessary, allocable to the work approved by FEMA, and adequately documented.

In this instance, the Subgrantee failed to provide adequate support of its claim that the following items identified in the audit findings for PWs 935, 999, 1044, and 1057 are eligible for PA funding: (1) improper and unsupported contract costs, (2) unreasonable equipment costs, (3) small projects not completed, (4) ineligible labor costs, and (5) duplicate project costs. Following the issuance of the OIG's findings in report OIG 17-06-D in November 2016, FEMA requested that the Subgrantee provide additional documentation to demonstrate that its costs were attributable only to the completion of the eligible scope of work approved by FEMA in the PWs.<sup>22</sup> However, the Subgrantee did not respond to FEMA's request for information and FEMA deobligated the funds on all four projects on September 18, 2018. Further, with its first appeal, the Subgrantee did not provide the missing documentation to overcome the audit findings listed above. Because the Subgrantee did not provide adequate documentation as required to support all of its contract, equipment and labor costs, FEMA is unable to determine if all of the costs were allowable, allocable to the scope of work approved in the PWs or if those costs were reasonable and necessary. Therefore, the undocumented costs are not eligible for PA funds.

#### **Conclusion**

The Subgrantee received sufficient notice from the Grantee of the deobligations and FEMA appropriately reduced the awards in line with the OIG audit recommendations. Section 705(a) does not bar recovery because FEMA completed the administrative action by deobligating funding for each project prior to the end of the applicable statute of limitations. Additionally, section 705(c) does not preclude FEMA from recoupment of funds because the purpose of the grant is not accomplished when procurement violations occur. Finally, the Subgrantee has not shown, with supporting documentation, that the undocumented costs incurred are eligible for reimbursement under the PA program. Therefore, the appeal is denied.

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<sup>20</sup> 44 C.F.R. § 13.22.

<sup>21</sup> 2 C.F.R. Part 225, Appendix A, section (C)(1).

<sup>22</sup> *RFI Email*, at 1-2.



**ADMINISTRATIVE RECORD INDEX**  
FEMA-4068-DR-FL  
Columbia County, PA ID: 023-99023-00  
Project Worksheets 935, 999, 1044, 1057

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1	2	Multi (4)	8/24/2019	Letter	Grantee	FEMA	Transmittal & Recommendation Letter
2	27	Multi (4)	6/27/2019	Letter	Subgrantee	Grantee & FEMA	First Appeal Letter
3	1	PW 935	4/29/2019	Email	Grantee	Subgrantee	Attachment 1: PW 935 – 20 Roads, Cat C Obligated Version Notification & Appeal Rights
4	1	PW 999	4/29/2019	Email	Grantee	Subgrantee	Attachment 2: PW 999 – Debris, Cat A Obligated Version Notification & Appeal Rights
5	1	PW 1044	4/29/2019	Email	Grantee	Subgrantee	Attachment 3: PW 1044 – 20 Roads, Cat C Obligated Version Notification & Appeal Rights
6	1	PW 1057	4/29/2019	Email	Grantee	Subgrantee	Attachment 4: PW 1057 – All Remaining Roads, Cat C Obligated Version Notification & Appeal Rights
7	6	PW 935	9/2/2014	Letter & Report	Grantee	FEMA	Attachment 5: PW 935 Large Project Closeout Request & Final Expenditure Report

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8	7	PW 999	8/12/2015	Letter & Report	Grantee	FEMA	Attachment 6: PW 999 Large Project Closeout Request & Final Expenditure Report
9	6	PW 1044	9/2/2014	Letter & Report	Grantee	FEMA	Attachment 7: PW 1044 Large Project Closeout Request & Final Expenditure Report
10	8	PW 1057	8/12/2015	Letter & Report	Grantee	FEMA	Attachment 8: PW 1057 Large Project Closeout Request & Final Expenditure Report
11	2	Multi (4)	2/3/2016	Letter	OIG	Grantee	Attachment 9: OIG Audit Notification Letter to Grantee
12	21	Multi (4)	11/2/2016	Report	OIG	FEMA	Attachment 10: OIG Report
13	3	Multi (4)	6/16/2017	Letter	Grantee	FEMA	Attachment 11: Grantee Response to OIG Audit Report
14	13	PW 935	9/18/2018	Project Worksheet	N/A	N/A	Attachment 12: PW 935 (V2)
15	3	PW 999	9/18/2018	Project Worksheet	N/A	N/A	Attachment 13: PW 999 (V2)
16	12	PW 1044	9/18/2018	Project Worksheet	N/A	N/A	Attachment 14: PW 1044 (V2)
17	4	PW 1057	9/18/2018	Project Worksheet	N/A	N/A	Attachment 15: PW 1057 (V2)
18	1	PW 812	3/31/2019	Spreadsheet	N/A	N/A	Quarterly Report PW 812 (V1)

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19	2	Multi (4)	7/9/2018	Email	FEMA	Subgrantee	Request for Information
<b>End of Record</b>							