

ELIGIBILITY DETERMINATION MEMORANDUM

Smithville R-II School District

FEMA:4490-MO

PA-ID: 047-0146C-00

Applicant Type		<input type="checkbox"/> State Agency	<input type="checkbox"/> Local Government	<input type="checkbox"/> Tribe	<input checked="" type="checkbox"/> Private Nonprofit
Grants Manager: <i>Only fill out this section if the project is in Grants Manager.</i>			EMMIE: <i>Only fill out this section if the project worksheet is in EMMIE.</i>		
Project No.	155922	EMMIE Project Worksheet No.			
Version No.	0	Version No.			
Damage Inventory No.	408268	EMMIE Project Cost		\$ N/A	
		Total Amount Obligated		\$ N/A	
Project Title: Emergency Covid Grant Funding					
Project Size	<input checked="" type="checkbox"/> Large <input type="checkbox"/> Small <i>(Potentially subject to Net Small Project Overrun appeal)</i>		Category of Work	B – Emergency Protective Measures	
Issue(s):					
Amount at Issue	\$159,152.89	Eligibility Issue Type(s)	<input type="checkbox"/> Applicant Eligibility		
Amount Denied	\$132,637.13		<input type="checkbox"/> Facility Eligibility		
		<input checked="" type="checkbox"/> Work Eligibility			
		<input type="checkbox"/> Cost Eligibility			
Issue Keyword(s)	Increased Operating Costs, Emergency Protective Measures				

Project Description:

The coronavirus (COVID-19) pandemic resulted in a major disaster declaration (DR-4490-MO) on March 26, 2020 for the State of Missouri, during the incident period of January 20, 2020 and continuing. As a result of the COVID-19 pandemic, the Smithville R-II School district (Applicant) is requesting reimbursement under the Federal Emergency Management Agency (FEMA)’s Public Assistance (PA) program for the cost of a virtual teacher stipend, pay for temporary bus aids and the purchase of materials including virtual learning supplies, face shields, social distancing items, sneeze guards, portable desks, and other items.

This determination memo relates to the following items:

- Stipend for virtual learning for teachers, \$88,991.21;
- \$2,500 of the claimed \$5,950 for bus aides; and
- Material costs totaling: \$47,145.92 (See a listing of denied materials following the conclusion).

Issue:

Are teacher stipends for virtual learning, bus aides, and various materials eligible emergency protective measures?

Applicable Statutes, Regulations, and Policies in Effect as of the Declaration of the Emergency or Disaster:

- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act), 42 U.S.C. § 5121 et seq. (2019):

Stafford Act § 403(a)(3)(I)

- Title 44 of the Code of Federal Regulations (C.F.R.):

44 C.F.R. § 206.223(a)(1)

44 C.F.R. § 206.225(a)

- FEMA Policies:

Public Assistance Program and Policy Guide FP 104-009-2 (PAPPG) (Apr. 2018)
PAPPG, at 19, 23, 41-42, 60-61, and 63.

COVID-19 FEMA Fact Sheet, Coronavirus (COVID-19) Pandemic: Eligible Emergency Protective Measures, March 19, 2020.

Coronavirus (COVID-19) Pandemic: Work Eligible for Public Assistance (Interim), FEMA Policy FP 104-009-19.

Coronavirus (COVID-19) Pandemic: Medical Care Costs Eligible for Public Assistance FEMA Policy FP 104-010-04.

Analysis:

Stafford Act § 403(a)(3)(I) grants FEMA authority to provide assistance to state and local governments essential to meet immediate threats to life and property resulting from a disaster. Implementing this authority, 44 C.F.R. § 206.225(a) authorizes emergency protective measures necessary to eliminate or lessen immediate threats to life, public health, or safety, as well as threats of significant additional damage to improved property.

Under limited circumstances based on specific criteria, FEMA finds COVID-19 measures eligible for reimbursement when those measures are related to emergency actions to address an immediate threat to life, public health, or safety. Examples are, responders taking emergency actions to save the lives of COVID-19 infected or presumed infected individuals, or when measures must be taken to protect responders taking the emergency actions. The COVID-19

FEMA Fact Sheet and the PAPPG provide additional examples of emergency work that FEMA funds under the PA program, such as the purchase of supplies and commodities required to perform eligible EPMs.¹

The *Coronavirus (COVID-19) Pandemic: Work Eligible for Public Assistance (Interim)*, FEMA Policy FP 104-009-19, states that for work performed on or after September 15, 2020, the work must be related to COVID-19 response².

FEMA is authorized to provide PA funding for specific work required as a result of the incident³. FEMA is not authorized to provide PA funding for all losses or costs resulting from the incident, including increased operating costs of operating a facility or providing a service, which are generally not eligible even when directly related to the incident⁴. The Applicant may incur additional costs related to operating a facility as a result of the incident because of an increased demand for the services the facility provides. These additional costs are only eligible if:

- The services are specifically related to eligible emergency actions to save lives or protect public health and safety or improved property;
- The costs are for a limited period of time based on the exigency of the circumstances; and
- The Applicant tracks and documents the additional costs⁵.

FEMA is authorized to provide reimbursement to eligible applicants for costs relating to overtime and hazardous duty compensation for permanent employees of the State, tribal, or local government conducting emergency protective measures.⁶ FEMA determines the eligibility of overtime, premium pay, and compensatory time costs to be based on the Applicant's pre-disaster written labor policy, provided the policy does not include a contingency clause, is applied uniformly, and has set non-discretionary criteria. If these requirements are not met, FEMA limits PA funding to the Applicant's non-discretionary, uniformly applied pay rates.⁷

Here, the Applicant is requesting reimbursement for a \$125 per student stipend paid to teachers who performed virtual instruction. This stipend was enacted after the declared disaster and is therefore not eligible because it was not part of the applicant's pre-disaster written labor policy.

For the bus aides' costs, the cost for the work performed on or after September 15, 2020 is not eligible as cited in FEMA's COVID-19 specific policy, which requires that work be related to treatment of COVID-19 positive or presumed positive individuals. The work performed does not fit that criteria.

¹ PAPPG at 63; COVID-19 Fact Sheet

² COVID-19 Interim policy, at 2 - 3

³ 44 C.F.R. § 206.223(a)(1); PAPPG, at 19

⁴ PAPPG, at 41-42

⁵ PAPPG, at 60-61

⁶ Stafford Act, Section 403(d)(1)(B)

⁷ PAPPG, at 23

Finally, for the material costs purchased, the items relate to distance learning or purchasing furniture that are an increased operating cost associated with providing educational services in a COVID-19 environment and are not considered and eligible emergency protective measure. Not only are increased operating costs generally ineligible, but the Applicant did not establish that these costs were specifically related to eligible emergency actions to save lives or protect public health and safety or improved property. Therefore, the Applicant's request for reimbursement of funding for material costs and items related to distance learning is denied.

Eligibility Determination: Partially Approved Denied

The virtual learning stipend is ineligible for funding, the bus aide time and material costs are partially eligible as described above.

Notice of Right to Appeal:

The Applicant may appeal this determination to the Regional Administrator, pursuant to Title 44 of the Code of Federal Regulations § 206.206, Appeals. If the Applicant elects to file an appeal, the appeal must:

- 1) Contain documented justification supporting the applicant's position;**
- 2) Specify the monetary figure in dispute; and**
- 3) Cite the provisions in federal law, regulation, and/or policy with which the Applicant believes the initial action was inconsistent.**

The appeal must be submitted to the Recipient, [Name of Recipient], by the Applicant within 60 days of its receipt of this determination. The Recipient's transmittal of that appeal, with recommendation, is required to be submitted to our office within 60 days of the receipt of the Applicant's letter. If you have any questions, please contact **Karen Cassmeyer at Karen.Cassmeyer@sema.dps.mo.gov.**

Review:

Office of Chief Counsel Reviewer:

Signature: _____

Date: _____

Approval:

PA Management:

Signature: _____

Date: _____

Document Index:

Document Description	File Name
Applicant provided cost estimate	FEMA Grant COVID Expenses.xlsx
Spreadsheet with Costs for Supplemental Pay	COVID Virtual Teaching Supplemental Pay.xlsx
Labor Summary of Employees performing Bus Aide Work	PPE Bus Aide 2020.pdf
Bus Aide Sign in Sheets	Bus Aide Sign In Sheet Sept 2020.pdf

Listing of Denied Material Costs:

DATE	VENDOR	Type	ITEM	QTY	FEMA COST	Ineligible
8/26/2020	Amazon	Material	The Writing Strategies Book:Your Everything Guide	3	\$88.80	\$ 88.80
		Material	The Reading Strategies Book:Your Everything Guide	3	\$130.05	\$ 130.05
7/9/2020	<u>QEPBooks.com</u>	Material	Distance Learning Playbook, Grade K-12	6	\$152.32	\$ 152.32
9/8/20-1/15/21	Springfield Schools	Material	Launch Courses for Virtual Students	44	\$9,990.00	\$ 9,990.00
		Material	MIzzou Academy Courses for Virtual Students	8	\$2,499.00	\$ 2,499.00
7/13/2020	Amazon	Supply	10pack ECR4Kids Portable Lap Desks	10	\$1,949.90	\$ 1,949.90
7/21/2020	Amazon	Supply	E-Z UP Event Shelter 10'x10' Commerical Tent	1	\$248.00	\$ 248.00
8/4/20	Amazon	Supply	62 of commerical grade garment racks	62	\$5,115.00	\$ 5,115.00
7/29/20	Amazon	Supply	15 of 10-pack ECR4Kids Surf portable lap desk	150	\$3,518.82	\$ 3,518.82
8/4/20	Amazon	Supply	6 of 10-pack ECR4Kids Surf portable lap desk	60	\$1,187.94	\$ 1,187.94
8/18/20	Amazon	Supply	6 of outdoor sprots tents shelter pods	6	\$403.68	\$ 403.68
9/10/20	Demco	Supply	480 of 24"x44" portable desks; 260 of 32"x44" portable desks	740	\$21,862.41	\$21,862.41

Applicable Statutes, Regulations, and Policies in Effect as of the Declaration of the Emergency or Disaster:

- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act), 42 U.S.C. § 5121 et seq. (2019)

Stafford Act § 403(a)(3)(I)

(a) In General – Federal agencies may, on the direction of the President, provide assistance essential to meeting immediate threats to life and property resulting from a major disaster, as follows:

(3) Work and Services to Save Lives and Protect Property.

Performing on public or private lands or waters any work or services essential to saving lives and protecting and preserving property, and public health and safety.

(I) reduction of immediate threats to life, property, and public health and safety;

- Title 44 Code of Federal Regulations (C.F.R.) (2019)

44 C.F.R. § 206.223(a)(1)

(a) General. To be eligible for financial assistance, an item of work must:

(1) Be required as the result of the emergency or major disaster event;

44 CFR § 206.225(a)

(a) *General.*

(1) Emergency protective measures to save lives, to protect public health and safety, and to protect improved property are eligible.

(2) In determining whether emergency work is required, the Regional Administrator may require certification by local State, and/or Federal officials that a threat exists, including identification and evaluation of the threat and recommendations of the emergency work necessary to cope with the threat.

(3) In order to be eligible, emergency protective measures must:

(i) Eliminate or lessen immediate threats to live, public health or safety; or

(ii) Eliminate or lessen immediate threats of significant additional damage to improved public or private property through measures which are cost effective.

- Public Assistance Program and Policy Guide FP 104-009-2 (PAPPG) (Apr. 2018)

PAPPG, at 19

IV. General Work Eligibility, B. Minimum Work Eligibility Criteria

The Applicant is responsible for showing that work is required:

Due to an immediate threat resulting from the declared incident (for Emergency Work);

PAPPG, at 41-42

V. Cost Eligibility, R. Ineligible Costs, 4. Increased Operating Cost

The Stafford Act authorizes FEMA to provide PA funding for specific work performed as a result of the incident. It does not authorize FEMA to provide PA funding for all losses or costs resulting from the incident. The following costs are not eligible because the Stafford Act does not authorize FEMA to provide PA funding for these items.

Increased costs of operating a facility or providing a service are generally not eligible, even when directly related to the incident. However, short-term increased costs that are directly related to accomplishing specific emergency health and safety tasks as part of emergency protective measures may be eligible, as discussed in Chapter 2:VI.B.2.

PAPPG, at 60-61

VI. Emergency Work Eligibility, B. Emergency Protective Measures (Category B), 2. Expenses Related to Operating a Facility or Providing a Service

The Applicant may incur additional costs related to operating a facility as a result of the incident because of an increased demand for the services the facility provides.

These additional costs are only eligible if:

- The services are specifically related to eligible emergency actions to save lives or protect public health and safety or improved property;
- The costs are for a limited period of time based on the exigency of the circumstances; and
- The Applicant tracks and documents the additional costs.

PAPPG, at 62-64

VI. Emergency Work Eligibility, B. Emergency Protective Measures (Category B),

Emergency protective measures conducted before, during, and after an incident are eligible if the measures:

- Eliminate or lessen immediate threats to lives, public health, or safety; OR
- Eliminate or lessen immediate threats of significant additional damage to improved public or private property in a cost-effective manner

A. Applicant (Force Account) Labor

1. Labor Policies

FEMA determines the eligibility of overtime, premium pay, and compensatory time costs based on the Applicant's pre-disaster written labor policy, provided the policy:

- Does not include a contingency clause that payment is subject to Federal funding;
- Is applied uniformly regardless of a Presidential declaration; and
- Has set non-discretionary criteria for when the Applicant activates various pay types.

If these requirements are not met, FEMA limits PA funding to the Applicant's non-discretionary, uniformly applied pay rates.

COVID-19 FEMA Fact Sheet, Coronavirus (COVID-19) Pandemic: Eligible Emergency Protective Measures, March 19, 2020.

FEMA may provide assistance for emergency protective measures including, but not limited to, the following, if not funded by the HHS/CDC or other federal agency. While some activities listed may be eligible for funding through HHS/CDC, final reimbursement determinations will be coordinated by HHS and FEMA. FEMA will not duplicate any assistance provided by HHS/CDC):

- Management, control and reduction of immediate threats to public health and safety:
 - Emergency Operation Center costs
 - Training specific to the declared event
 - Disinfection of eligible public facilities
 - Technical assistance to state, tribal, territorial or local governments on emergency management and control of immediate threats to public health and safety
- Emergency medical care:
 - Non-deferrable medical treatment of infected persons in a shelter or temporary medical facility
 - Related medical facility services and supplies
 - Temporary medical facilities and/or enhanced medical/hospital capacity (for treatment when existing facilities are reasonably forecasted to become overloaded in the near term and cannot accommodate the patient load or to quarantine potentially infected persons)
 - Use of specialized medical equipment
 - Medical waste disposal
 - Emergency medical transport
- Medical sheltering (e.g. when existing facilities are reasonably forecasted to become overloaded in the near future and cannot accommodate needs)
 - All sheltering must be conducted in accordance with standards and/or guidance approved by HHS/CDC and must be implemented in a manner that incorporates social distancing measures

- Non-congregate medical sheltering is subject to prior approval by FEMA and is limited to that which is reasonable and necessary to address the public health needs of the event, is pursuant to the direction of appropriate public health officials and does not extend beyond the duration of the Public Health Emergency
- Household pet sheltering and containment actions related to household pets in accordance with CDC guidelines
- Purchase and distribution of food, water, ice, medicine, and other consumable supplies, to include personal protective equipment and hazardous material suits
- Movement of supplies and persons
- Security and law enforcement
- Communications of general health and safety information to the public
- Search and rescue to locate and recover members of the population requiring assistance
- Reimbursement for state, tribe, territory and/or local government force account overtime costs

Coronavirus (COVID-19) Pandemic: Work Eligible for Public Assistance (Interim) FEMA Policy FP 104-009-19

This policy applies to:

d. Work performed on or after September 15, 2020. Prior to this date, policies in place when the work was completed apply.

C. WORK ELIGIBILITY

2. All work must be required as a direct result of the emergency or major disaster in accordance with 44 C.F.R. § 206.223(a)(1).

3. Only work associated with the performance of emergency protective measures specifically listed in this policy is eligible for PA in COVID-19-declared events.