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Comments regarding FEMA proposes changes to HMA programs--comments due 27 Oct 2020
From the ASFPM Flood Mitigation Committee

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1. Regarding 77.7 (b) Pre-award costs. FEMA may fund eligible pre-award costs related to developing the application or sub-application at its discretion and as funds are available. Recipients and subrecipients may be reimbursed for eligible pre-award costs for activities directly related to the development of the project or planning proposal. These costs can only be incurred during the open application period for the FMA program. Our concern is that pre-award costs would not be eligible for items requested during the RFI process. For example, historic structures have to have elevation plans approved by a local board, which may require additional engineering work, plans, etc. Because of this, states may not advise a sub-applicant to make these expenses during the application process, but rather to wait until the application had at least moved forward for further review. However, with the language above, the concern is that those pre-award costs would not be eligible after the application period has closed, even if they were included in the budget. (This has been an issue all along.)

2. Regarding 77.6(c), eligible activities which include planning and project activities. Under projects there is specific mention of localized flood reduction projects, stating: “Non-localized flood risk reduction projects such as dikes, levees, floodwalls, seawalls, groins, jetties, dams and large-scale waterway channelization projects are not eligible;”

Over recent years, the NOFO has included additional projects beyond those listed in the revised language, including community mitigation projects. Community mitigation projects are large infrastructure projects that could be considered “non-localized flood risk reduction projects”. These project types can now be funded (and are encouraged) under BRIC. Does this indicate that FEMA is trying to move these larger projects away from FMA? Additionally, the NOFO has included Advanced Assistance (now called Project Scoping this year) and this project type is also not listed in the revised language. Perhaps this is because BW-12 does not list these specific activities; it may not be a negative factor that they’re not listed in the revised language--we just wanted to note the discrepancy.

3. Regarding 80.19 (2) FEMA, its representatives, and assignees may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to 1 or more of the following: (i) Withholding FEMA mitigation awards or assistance from the State and subrecipient; and current holder of the property interest.

This section is in reference to enforcement actions if violations are found after project completion. Withholding awards or assistance from the State seems a bit extreme for a community violation, and should be confined to just the community with the violation, not the state. This is not a new practice, and has been done before—the State (Applicant) is responsible for managing the Sub-recipient grant, thereby involving the State in the punitive action…

4. Privacy Act data.
The application process requires the community to know which properties in the application are repetitive loss or severe repetitive loss properties. Additionally, section 201.6 (4)(c)(2) mentions that plans created after 2008 must include NFIP insured structures and repetitive loss structures. However, due to the current restrictions that FEMA has placed on privacy data, states and communities cannot access this information. The current ISAA agreement that FEMA has created to allow access to this data has provisions that many states and local communities cannot legally agree to. The FMA program is meant to target and mitigate repetitively flooded structures. Without access to the data, it is very challenging to make this determination. We understand that FEMA is working to resolve this issue, and hope that future grant application periods will not suffer due to lack of required data.