



Ensuring a safe and secure homeland for all North Dakotans

North Dakota Department of Emergency Services



State Disaster Recovery (SDR) Program Administrative Plan

October 1, 2015

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Purpose

A State Disaster Recovery (SDR) program was introduced and passed in North Dakota House Bill 1112 during the 2015 Legislative Session. The bill amended and reenacted North Dakota Century Code (NDCC) 37-17.1-22, subsection 1 of 37-17.1-23 and 37-17.1-27 relating to the funding of state disaster or emergency response and recovery. At its core, the SDR program is intended to provide disaster recovery funding to local political subdivisions for public infrastructure when local resources are exhausted and federal disaster recovery funding has been denied.

SDR program language and processes will duplicate the Federal Emergency Management Agency (FEMA) Public Assistance (PA) grant program whenever possible. However, NDDDES intends to administer the program in a fashion that allows greater flexibility than FEMA's PA program.

This document contains the policies and procedures that will be used by the State of North Dakota, and administered by the North Dakota Department of Emergency Services (NDDDES), to request, obtain, and administer grants for the SDR program. The plan identifies key staff positions and prescribes the administrative procedures for delivery within a gubernatorial declaration of a disaster or an emergency.

Definitions

Alternate Project: A subgrantee may determine that the public welfare would not be best served by restoring a damaged facility or its function to the pre-disaster design. In this event, the subgrantee may use the SDR grant for permanent restoration on that facility for other purposes. Projects other than the damaged facility on which the subgrantee spends eligible funds are referred to as alternate projects. The subgrantee must obtain approval for an alternate project from the State prior to construction.

Applicant: A local government that receives a grant award and is accountable to NDDDES for the use of the funds provided. Also referred to as a subgrantee and/or subrecipient.

Applicant Briefing: Meetings conducted by a representative of the State for all potential applicants for disaster assistance programs. The briefing occurs after an emergency or disaster has been declared and addresses application procedures, administrative requirements, funding, and program eligibility criteria.

Improved Project: When performing restoration work on a damaged facility, a subgrantee may decide to use the opportunity to make improvements to the facility. Projects that incorporate such improvements are called improved projects. The improved facility must have the same function and at least the equivalent capacity as that of the pre-disaster facility. The subgrantee must obtain approval for an improved project from the State prior to construction.

PAO (State): The State Public Assistance Officer (SPAO) is the State official specifically responsible for administering the SDR program during disaster operations. As the program manager, the SPAO: 1.) Advises the Disaster Recovery Chief and Division of Homeland Security Director on all SDR program

matters, manages the operation of the SDR staff and any coordination between State and local agencies. 2.) Ensures that the SDR program is operating in compliance with all laws, regulations, and policies.

Permanent Work: Restorative work performed on damaged facilities through repairs or replacement, to pre-disaster design and current applicable standards. Equivalent to FEMA PA Categories C through G. Under the PA program, Category C (Roads and Bridges), Category D (Water Control Facilities), Category E (Buildings and Equipment), Category F (Utilities), and Category G (Parks, Recreational Facilities, and Other Items), are referred to as Permanent Work.

Project Worksheet: Form used to document the scope of work and cost estimate for a project. Also referred to as a PW.

Special Considerations: Issues that involve insurance, floodplain management, hazard mitigation, historic preservation, and environmental reviews as they relate to funding.

Subgrantee: A local government that receives a grant award and is accountable to NDDES for the use of the funds provided. Also referred to as an applicant and/or subrecipient.

Subrecipient: A local government that receives a grant award and is accountable to NDDES for the use of the funds provided. Also referred to as an applicant and/or subgrantee.

Authorities and References

- ND Disaster Act of 1985 and amendments, NDCC 37-17.1; Specifically NDCC 37-17.1-22 which reads in its entirety:

Whenever the governor declares a state of disaster or emergency in accordance with section 37-17.1-05, or when the governor enters into an agreement with the federal government following a disaster or emergency declared by the president of the United States, the director of the division of homeland security shall determine and record the costs of the state and local response and recovery operations in accordance with an agreement with the federal government, in accordance with procedures established by the governor in the case of a state-declared disaster or emergency, and in accordance with procedures established by the state emergency response plan. If the event has met the Stafford Act minimum for a presidential disaster declaration and for which the request is denied, the governor shall make application to the state emergency commission **for a grant of funds in an amount equal to the response and recovery costs of the state and fifty percent of the public infrastructure recovery costs above statutorily maintained emergency funds for counties that exceeds twice the individual county federal declaration eligibility threshold, limited to a maximum amount available per disaster of one million dollars and a maximum amount available per biennium of three million dollars.** Immediately following the response or recovery operations, or prior thereto if determined necessary by the governor, the governor shall make application to the state emergency commission for a grant of funds in an amount equal to the response and recovery costs of the state. Notwithstanding

other provisions of chapter 54-16, it must be conclusively presumed upon receipt by the emergency commission of such application from the governor that a disaster or emergency exists, and the commission immediately shall grant and direct the transfer to the department of the governor's designated representative of an amount equal to that certified in such application by the governor. (Effective after June 30, 2017)

- Authorizing Executive Order
- ND Disaster Recovery Mission Area Operations Plan (MAOP)

Organization and Responsibilities

NDCC designates NDDES as the state agency responsible for managing and administering the SDR program. The organizational structure will be flexible with staffing levels based on the need and severity of the disaster. The State Public Assistance Officer (SPA) and an account technician will be the minimum positions required to administer the grants. Existing public assistance specialists from NDDES will be utilized extensively for problem areas specific to the disaster, as well as assisting State Public Assistance Coordinators (SPACs), and state project officers (SPOs) with project formulation and closeouts. Existing account technician staff will process grants utilizing NDDES's grant management software. SPAC and SPO positions may be contractors obtained by NDDES. In addition to the above mentioned staff, staffing may include employees of other state departments and agencies, on an as-needed basis. Recruitment announcements will be made should additional emergency hiring of temporary employees become necessary.

Pre-SDR Program Enactment Activities

Preliminary Damage Assessment (PDA)

When a major disaster or emergency occurs or is imminent, activities will be undertaken to prepare for possible program implementation. The PDA is conducted once the state determines that the recovery effort may be beyond state and local capability. State officials will request, in writing, that the FEMA Regional office conduct a joint PDA with state and local officials in the areas defined by the state. After the PDA teams have documented the damage, and the state has analyzed the damages, the governor will determine whether or not to request federal assistance.

FEMA Headquarters uses PDA documents to make a recommendation to the President on whether Federal disaster assistance under the Stafford Act is acceptable. When the President declares a major disaster, the PDA documentation serves as the starting point for deciding the amount of funds needed for public assistance.

Presidential Declaration Request

State Government

If the governor determines federal assistance is needed, NDDES will prepare a request letter to the president (through the FEMA VIII Regional Administrator) for a presidential declaration. The basis for the declaration request will be a finding that:

- The situation is of such severity and magnitude, that effective response is beyond the capabilities of the State of North Dakota and affected local governments, and

- Federal assistance, under the Stafford Act, as amended, is necessary to supplement the efforts and available resources of the state, local governments, disaster relief organizations, and compensation by insurance for disaster related losses.

In addition to the above findings, the completed request shall include:

- Confirmation the governor has taken appropriate actions under state law and directed the execution of the State Emergency Operations Plan (SEOP).
- An estimate of the amount and severity of damages and losses stating the impact of the disaster on the public and private sector.
- Information describing the nature and amount of state and local resources that have been, or will be, committed to alleviate the results of the disaster, stating specifically those activities for which no federal funding will be requested.
- Preliminary estimates of the types and amount of supplementary federal disaster assistance needed under the Stafford Act, (i.e., disaster unemployment assistance).
- Certification by the governor, state, and local government that obligations and expenditures for the current disaster will comply with all applicable cost-sharing requirements of PL 93-288, as amended, or constitute the expenditures of a reasonable amount of funds for alleviating the damage, loss, hardship, or suffering resulting from such disaster. The cost-sharing provision of the legislation will satisfy the commitment requirements.
- An incident period (date-to-date or date and continuing).
- A list type of disaster (flood, tornado, etc.). Sentence structure should begin as follows: “Damages caused by severe weather, to include.....etc.”

The preliminary estimates provided by the governor as enclosures to the request will be based on the dollar estimate by the joint federal/state PDA survey team. FEMA will not accept a request which does not address all of the criteria above.

FEMA Region VIII staff will promptly advise the FEMA headquarters staff of the situation and provide available information.

Federal Government

When the governor’s request for a declaration is received at FEMA Region VIII, the regional administrator will provide written acknowledgment of the governor’s request.

Based on information obtained by the joint FEMA/state preliminary damage assessments of the affected areas, and consultations with state and federal officials, the regional administrator, FEMA Region VIII, will prepare a summary of the preliminary damage assessment finding. The data will be analyzed and submitted with a recommendation for the request to the under-secretary of Homeland Security for Emergency Preparedness and Response, through the associate director. Based on all available information, the undersecretary of Homeland Security for Emergency Preparedness and Response will forward a recommendation with the request to the President of the United States.

The governor’s request for a major disaster declaration may result in either a presidential declaration of a major disaster or an emergency, or may be denied. In any case, the governor or his/her designee will be promptly notified by the FEMA administrator or

his/her designee, an emergency or a major disaster has been declared, or the governor's request has been denied.

If the request is denied, the state has thirty (30) days from the date of the letter denying the request to submit an appeal to FEMA national headquarters (through the regional administrator). The appeal to FEMA must provide new information not previously available and will support the initial request.

Upon verification of denial of the presidential declaration the governor shall make application to the state emergency commission for a grant of funds in an amount equal to the response and recovery costs of the state and fifty percent of the public infrastructure recovery costs above statutorily maintained emergency funds for counties that exceeds twice the individual county federal declaration eligibility threshold, thereby enacting the SDR program.

Eligibility

Local political subdivisions, i.e. Counties (and townships under the umbrella of the County) and Cities, may be eligible for funding if the following criteria are met:

- The County has declared a local disaster or emergency.
- The Governor has declared a State disaster or emergency.
- The State disaster or emergency meets the Stafford Act Threshold for a Presidential disaster declaration.
- The Governor has requested a federal Presidential disaster declaration.
- The President has denied the Governor's request for a disaster declaration.
- The County exceeds 200% of the County cost threshold for eligibility for inclusion in a Presidential disaster declaration, as per 44 CFR § 206.48.

If the criteria above are met, local political subdivisions must:

- Certify to NDDDES the balance in their emergency fund at the time the disaster occurred.
- Sign the "SDR Subgrant Agreement" (See "SDR Subgrant Agreement" section below for further details).

Upon completion of the requirements above, local political subdivisions would be eligible for emergency funding grants in the follow amount:

- Fifty (50) percent cost share for public infrastructure damages above statutorily maintained emergency funds for the political subdivision.

Example

A spring flooding event occurs in the Missouri River Basin causing overland and riverine flood damages to public infrastructure in five (5) Counties, one of which is Morton County.

Facts:

- The Morton County Commission has declared a local disaster.
- The Governor has declared a State disaster.

- The PDA estimates \$3.5 million dollars of total public infrastructure damages in the five counties, thereby meeting the State's Stafford Act Threshold for a Presidential disaster declaration of \$1 million.
- The Governor has requested a federal Presidential disaster declaration.
- The President has denied the Governor's request for a disaster declaration.
- The PDA estimates \$1 million dollars of total public infrastructure damages in Morton County, thereby meeting the criteria of exceeding 200% of the County cost threshold for eligibility for inclusion in a Presidential disaster declaration, as per 44 CFR § 206.48 (Threshold of \$98,071 X 200% = **\$196,142**)
- The public infrastructure damages in Morton County break down in the following manner:
 - Morton County – unincorporated territory – \$850,000
 - Mandan – Incorporated City in Morton County – \$150,000
- The statutorily maintained emergency funds for the each political subdivision break down in the following manner:
 - Morton County – \$500,000
 - Mandan – \$75,000

Funding:

Based on the facts above, the political subdivisions would receive funding in the following amounts:

- Morton County – **\$175,000** (\$850,000 - \$500,000 = **\$350,000 X 50%**)
- Mandan – **\$37,500** (\$150,000 - \$75,000 = **\$75,000 X 50%**)

Limitations

SDR funding is limited to \$1 million per event and \$3 million per biennium.

Post-SDR Program Enactment Activities

Determine Logistical Needs

The program will require personnel and technological support (i.e. computer hardware and software, GPS units, digital cameras, laptops) to assist with program management and administrative activities.

Staff Assignment

Typical program staff assignments will include the following: SPAO, SPAC(s), SPO(s), and account technicians.

Public Notification

The state will notify potential applicants of the availability of the SDR program through written and verbal mediums. NDDDES will coordinate with county emergency managers and local officials in the declared area to identify and notify potential applicants of the applicant briefing dates, times, and locations.

Conduct Applicant Briefing

NDDDES SDR staff will organize and conduct briefings for potential applicants. The purpose of the applicant briefing is the opportunity for the state to:

- Get acquainted with key local officials.
- Promote early identification of potential applicants and identify applicant agents.
- Provide local officials the “applicant agent packet” which contains program information and hand-out materials to aid in the management of the program.

NDDDES will select locations, times and dates of the briefings. Depending of the size of the disaster impact area, more than one applicant briefing may be required. The briefings will be conducted as close to the affected area as possible to eliminate unreasonable travel for key officials. NDDDES will attempt to conduct all applicant briefings within thirty (30) days of a presidential disaster declaration denial, however, logistical considerations may affect actual schedules.

NDDDES will notify potential applicants by telephone, e-mail, facsimiles, and public notice of where and when the applicant briefings will be conducted. During the briefing the applicant will receive an “applicant briefing packet” which will contain:

- Overview of the SDR program
- SDR Fact Sheet detailing cost share requirements, incident period, disaster type, declared areas, and important deadlines
- Paper copy of the applicant’s briefing slides
- Request for SDR program – Application
- Schedule of equipment rates

Topics that will be discussed during the applicant briefing:

- Applicants’ eligibility
- Cost eligibility
- Work eligibility
- Facility eligibility
- Timelines
- Contracting and Procurement
- Insurances
- Historical and environmental issues
- Special consideration projects
- Record keeping and record retention
- Any other concern the applicant may have

A sign in sheet will be used to document the attendance at these briefings. The state PIO will be available to provide news information to the media and answer questions before and after the briefing.

Request for SDR Program - Application

If possible, Request for SDR program forms will be completed by potential applicants and submitted to the State at the applicant briefing. NDDDES personnel will make arrangements to provide forms to, and retrieve completed request forms from, applicants not represented at the briefings.

Applications must be submitted to the SPAO within thirty (30) days following the Applicant Briefing. Late applications may be considered only in cases where extenuating circumstances prohibit timely submission to the State.

SDR Program Subgrant Agreement

NDDDES requires all applicants sign an agreement titled, "State Disaster Recovery Program Subgrant Agreement" This agreement articulates the roles and responsibilities of the State and the applicant as it relates to the SDR program.

Project Worksheets

Project worksheets are obligated through the State Grant Management Software by NDDDES. The applicant is then notified electronically that the PW is available for review/download.

Projects

Project funding is based on estimated costs, if actual costs are not yet available. Projects and project costs (estimated or actual) must be identified within sixty (60) days following the Applicant Briefing. Payment is made on the basis of the initial approved project amount, whether estimated or actual.

While proceeding with the project, the Applicant must ensure that grant funds are used only for eligible work. When reviewing final costs, the State cannot provide funds for costs that are outside the scope of work approved by NDDDES. The Applicant should contact the State if changes to the scope of work are foreseen or identified during performance of the work.

Improved Projects

When performing permanent restoration work on a damaged facility, an applicant may decide to use the opportunity to make improvements to the facility while still restoring its pre-disaster function and at least its pre-disaster capacity.

Any project that results in a significant change from the pre-disaster configuration (that is; different location, footprint, function, or size) must be reviewed by NDDDES and approval shall be contingent upon applicant compliance with any and all permitting and clearance regulations. Funds to construct the improved project may be combined with a grant from other state or federal agencies.

Alternate Projects

Occasionally an applicant may determine the public welfare would not be best served by restoring a damaged facility or its function to the pre-disaster design. This usually occurs when a facility was being used in a capacity not consistent with its original design or when the service provided by the facility is no longer needed.

Alternate projects are eligible for the estimated costs associated with repairing the damaged facility to its pre-disaster design, or the actual costs of completing the alternate project, whichever is less.

Alternate project funding may not be used for any facility located in the regulatory floodway or any uninsured facility located in the 100-year floodplain.

Environmental and Historical

Applicants are responsible for obtaining all necessary local, state, and federal environmental and historical permits and consultations. Failure to comply with local, state, and federal laws, regulations and rules may jeopardize current and future funding opportunities for the facility.

Period of Performance

Project completion deadlines are set from the date of the presidential disaster declaration denial. The completion deadline is:

Permanent Work (Category C – G).....24 months

Time Extension

The State may extend these deadlines based on extenuating circumstances or unusual project requirements beyond the applicant's control. However, gross funding extensions require legislative approval, therefore, cannot be guaranteed.

Funding

As stated in the "Limitations" section above, SDR funding is limited to \$1 million per event and \$3 million per biennium. In cases where eligible SDR projects exceed the limitations, funding will be prorated and paid at a reduced percentage.

Financial Management

NDDDES will expend and account for the SDR program funding in accordance with state laws and procedures for expending and accounting for the state's own funds. In addition, NDDDES's financial management systems, including records documenting compliance with state statutes and regulations will be sufficient for the tracing of funds to a level of expenditures adequate to establish that such funds have been used in accordance with the SDR program rules.

NDDDES establishes separate account organization numbers for federal and state disaster funds. These funds are accounted for by payment vouchers prepared and maintained by NDDDES and financial records are maintained by the NDDDES Finance Officer.

Payment Policies and Procedures

Payment of funds will not be made to a subgrantee until NDDDES has received from that subgrantee a properly completed copy of each of the following application documents:

1. Certification of Emergency Fund Balance
2. Request for SDR program – Application
3. State Disaster Recovery Program Subgrant Agreement

Following the receipt of these forms, the NDDDES Finance Officer or designated alternate will issue a payment authorization for any funding that is eligible to be paid to the subgrantee, as it becomes available. Authorization for payment of funds will include documentation to substantiate the amount of the authorization. The authorization

documents will then be submitted to the NDDDES Finance Office for processing through the state accounting system.

The Finance Officer will review the authorization documents, and prepare a State of North Dakota payment request for the approved amount. The payment request will be reviewed and signed based on terms set forth by State of North Dakota administrative policy. The payment request will then be submitted to the State Accounting Office for issuance of a state warrant, or an electronic fund transfer, payable to the subgrantee. Payments to subgrantees shall be made using a state warrant, or an Electronic Fund Transfer (EFT), in accordance with the "Preferred Payment Method" noted by the subgrantee.

NDDDES will review the payment documentation for accuracy, and send the warrant, IDB, or EFT documentation to the designated subgrantee. This documentation shall be accompanied by documentation that includes details specific to each payment.

Recovery of Funds

If an overpayment of funds occurs, no additional payments of funds will be authorized for the subgrantee until the overpaid funds have been recouped.

If an overpayment of funds occurs, the overpaid funds may be transferred to offset all or part of the balance of any unpaid funds owed on other projects of the same subgrantee. To recoup funds from a subgrantee, the SPAO prepares and sends a reimbursement request letter to the subgrantee, identifying the source and amount of the overpayment and detailing the procedures for the repayment of funds.

If, due to overpayment, de-obligation of funds, or any similar reason a subgrantee has received payment beyond what was obligated and is delinquent in repaying those funds, the state may withhold all funds, grants-in-aid, tax shares, and other similar moneys due the subgrantee from the state until the subgrantee repays the state government, as allowed in NDCC 54-44-13. This process would be initiated only when all other methods of recoupment have failed.

Project Compliance Reviews

Compliance reviews are designed to verify the applicant is accomplishing the original scope of work, and applying the required applicant cost share as required by NDCC 37-17.1-22. Applicants must prove with receipts, invoices, contracts, force account records or other documentation that they have completed work as approved by NDDDES.

The compliance review has four phases and they are as follows:

1. The applicant agent will be notified by letter that NDDDES intends to conduct monitoring on the applicant. Subsequently, a member of the NDDDES monitoring team will contact the applicant agent by telephone to schedule a time for monitoring that is mutually agreeable and no later than 30 days from the date of the letter. It is expected that the applicant will have all relevant paperwork, including but not limited to invoices, payroll records, force account equipment logs, and cancelled checks available for review at the time of the monitoring.

2. NDDDES will review Project Worksheets selected on a site by site basis. If the applicant spends less than the amount approved by NDDDES, funding will not be reduced to match actual costs. It is assumed that cost under runs on individual sites or projects will be used to offset cost over runs on other sites or projects. However, in many instances such as Project Worksheets for road repair, material quantities are written into the Project Worksheet. NDDDES views these material quantity estimates as an integral element of the scope of work. A 15% material variance per site will be deemed acceptable. If a variance results in a cost under run, the excess funds related to the 15% variance may be used to offset cost over runs on other sites or projects. Any variance exceeding 15% will result in a de-obligation of funds.
3. A summary of monitoring findings will be mailed to the applicant. If it is found that program expenditures are not documented, cannot be supported, or the scope of work was not satisfied, the applicant will be informed by letter, and will be given 60 days to provide additional documentation and/or support. No additional information will be accepted after 60 days from the date of the letter, and there is no mechanism to appeal the results of the monitoring effort.
4. A letter and an invoice will then be prepared and sent to the applicant. The applicant will be given 30 days from the date of the letter to return funds.

Procurement

When procuring property and services using SDR program funding, applicants must comply with state law as well as their own internal policies and procedures. All procurement transactions must be conducted in a manner providing full and open competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals will be excluded from competing for such procurements.

Insurance Requirements

NDDDES will deduct any and all insurance proceeds for a project that the applicant may receive from their insurance company. NDDDES will work to identify and validate insurance requirements associated with projects as part of the process to certify to that all projects have been completed within the terms of the approved scopes of work and associated project conditions.

Records Retention

Financial records, supporting documents, statistical records, and all other records pertinent to the SDR award must be retained as required by State law, specifically NDCC 54-46.