

## Federal Emergency Management Agency, DHS

## § 80.3

awarded under the same grant. All costs for which funding is requested must have been included in the original application's cost estimate.

(d) For all cost overruns that exceed the amount approved under the grant, and which require additional Federal funds, the State POC shall submit a written request with a recommendation, including a justification for the additional funding to the Regional Administrator for a determination. If approved, the Regional Administrator shall increase the grant through an amendment to the original award document.

(e) At the time of closeout, FEMA will recapture any funds provided to a State or a community under these programs if the applicant has not provided the appropriate matching funds, the approved project has not been completed within the timeframes specified in the grant agreement, or the completed project does not meet the criteria specified in this part.

### PART 80—PROPERTY ACQUISITION AND RELOCATION FOR OPEN SPACE

#### Subpart A—General

Sec.

80.1 Purpose and scope.

80.3 Definitions.

80.5 Roles and responsibilities.

#### Subpart B—Requirements Prior to Award

80.7 General.

80.9 Eligible and ineligible costs.

80.11 Project eligibility.

80.13 Application information.

#### Subpart C—Post-Award Requirements

80.15 General.

80.17 Project implementation.

80.19 Land use and oversight.

#### Subpart D—After the Grant Requirements

80.21 Closeout requirements.

AUTHORITY: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p.

412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

SOURCE: 72 FR 61743, Oct. 31, 2007, unless otherwise noted.

#### Subpart A—General

##### § 80.1 Purpose and scope.

This part provides guidance on the administration of FEMA mitigation assistance for projects to acquire property for open space purposes under all FEMA hazard mitigation assistance programs. It provides information on the eligibility and procedures for implementing projects for acquisition and relocation of at-risk properties from the hazard area to maintain the property for open space purposes. This part applies to property acquisition for open space project awards made under any FEMA hazard mitigation assistance program. This part supplements general program requirements of the funding grant program and must be read in conjunction with the relevant program regulations and guidance available at <http://www.fema.gov>. This part, with the exception of § 80.19 Land use and oversight, applies to projects for which the funding program application period opens or for which funding is made available pursuant to a major disaster declared on or after December 3, 2007. Prior to that date, applicable program regulations and guidance in effect for the funding program (available at <http://www.fema.gov>) shall apply. Section 80.19 Land use and oversight apply as of December 3, 2007 to all FEMA funded acquisitions for the purpose of open space.

##### § 80.3 Definitions.

(a) Except as noted in this part, the definitions applicable to the funding program apply to implementation of this part. In addition, for purposes of this part:

(b) *Applicant* is the State or Indian tribal government applying to FEMA for a grant, and which will be accountable for the use of the funds.

(c) *Grantee* means the State or Indian tribal government to which FEMA awards a grant and which is accountable for the use of the funds provided. The grantee is the entire legal entity, even if only a particular component of

## § 80.5

## 44 CFR Ch. I (10–1–10 Edition)

the entity is designated in the grant award document.

(d) *Market Value* is generally defined as the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the valuation, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the valuation.

(e) *National of the United States* means a person within the meaning of the term as defined in the Immigration and Nationality Act, 8 U.S.C. section 1101(a)(22).

(f) *Purchase offer* is the initial value assigned to the property, which is later adjusted by applicable additions and deductions, resulting in a final offer amount to a property owner.

(g) *Qualified alien* means a person within the meaning of the term as defined at 8 U.S.C. 1641.

(h) “Qualified conservation organization” means a qualified organization with a conservation purpose pursuant to 26 CFR 1.170A–14 and applicable implementing regulations, that is such an organization at the time it acquires the property interest and that was such an organization at the time of the major disaster declaration, or for at least 2 years prior to the opening of the grant application period.

(i) *Subapplicant* means the entity that submits an application for FEMA mitigation assistance to the State or Indian tribal applicant/grantee. With respect to open space acquisition projects under the Hazard Mitigation Grant Program (HMGP), this term has the same meaning as given to the term “applicant” in part 206, subpart N of this chapter. Upon grant award, the subapplicant is referred to as the subgrantee.

(j) *Subgrant* means an award of financial assistance made under a grantee to an eligible subgrantee.

(k) *Subgrantee* means the State agency, community, or Indian tribal government or other legal entity to which a subgrant is awarded and which is ac-

countable to the grantee for the use of the funds provided.

(l) *Administrator* means the head of the Federal Emergency Management Agency, or his/her designated representative.

(m) *Regional Administrator* means the head of a Federal Emergency Management Agency regional office, or his/her designated representative.

[72 FR 61743, Oct. 31, 2007, as amended at 74 FR 47481, Sept. 16, 2009]

### § 80.5 Roles and responsibilities.

The roles and responsibilities of FEMA, the State, the subapplicant/subgrantee, and participating property owners in the particular context of mitigation projects for the purpose of creating open space include the activities in this section. These are in addition to grants management roles and responsibilities identified in regulations and guidance of the program funding the project (available at <http://www.fema.gov>) and other responsibilities specified in this part.

(a) *Federal roles and responsibilities.* Oversee property acquisition activities undertaken under FEMA mitigation grant programs, including:

(1) Providing technical assistance to the applicant/grantee to assist in implementing project activities in compliance with this part;

(2) Reviewing applications for eligibility and compliance with this part;

(3) Reviewing proposals for subsequent transfer of a property interest and approving appropriate transferees;

(4) Making determinations on the compatibility of proposed uses with the open space purpose, in accordance with § 80.19;

(5) Complying with applicable Federal statutory, regulatory, and Executive Order requirements related to environmental and historic preservation compliance, including reviewing and supplementing, if necessary, environmental analyses conducted by the State and subgrantee in accordance with part 10 of this chapter;

(6) Providing no Federal disaster assistance, flood insurance claims payments, or other FEMA assistance with respect to the property or any open-space related improvements, after the property interest transfers; and