

Who Has Time For Finance During a Disaster?

Presented by Mike Martinet, MS, CEM

Real World Public Assistance Issues:

- Large Transit Agency “Materials Summary Record”, P.W. Submission
- ICS-214: Documentation Or No Documentation?

Public Assistance Appeals Database Files: (Available at FEMA.gov)

- Legal Responsibility, Harris County, TX
- Direct Administrative Costs / Management Costs, Memorial Hermann Hospital
- Untimely Appeal - Blue Bonnet Electric Co-Op
- Untimely Appeal - Groves, TX
- Damage As A Direct Result of the Disaster - Indiana Dept of Natural Resources
- Legal Responsibility / Immediate Threat / Public Interest - Sumter Landing Community Development District,
- Procurement and Contracting Requirements - Village Center Community Development District,
- Direct Result of Disaster / Reasonable Costs - Archdiocese of New Orleans,
- Environmental and Historic Preservation Compliance - Kershaw County, SC
- Time Limitations / Extensions – Request for Public Assistance - North Miami Beach Medical Center
- Change in Scope of Work - Improved Project, Columbia, SC

DHS-OIG Audits: (Available at <https://www.oig.dhs.gov/reports/audits-inspections-and-evaluations>)

- FEMA Should Recover \$216.2 Million Awarded to the Recovery School District in Louisiana for Hurricane Katrina, (OIG-20-63)
- Pre-Disaster Debris Removal Contracts in Florida, (OIG-20-44)
- Inadequate Management and Oversight Jeopardized \$187.3 Million in FEMA Grant Funds Expended by Joplin Schools, Missouri, (OIG-20-41)
- FEMA Should Recover \$5.57 Million in Grant Funds Awarded to Frasier Meadows Manor, Inc., Boulder, Colorado, (OIG-20-17)

DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY
MATERIALS SUMMARY RECORD

PAGE 1 OF 15

O.M.B. No. 1660-0017
Expires December 31, 2011

PA ID NO.		PROJECT NO.		DISASTER	
CATEGORY		PERIOD COVERING			

DESCRIPTION OF WORK PERFORMED

- DISINFECTION OF PUBLIC FACILITIES / DISINFECTION AND CLEANING OF TRAIN CARS /
REPAIR AND MAINTENANCE OF TRAIN CARS AND OTHER DISTRICT FACILITIES / CONSTRUCTION AND/OR IMPROVEMENTS,
TRACK WORK, STRUCTURES / SUPPORT OF MECHANICAL, VOLTAGE AND FIRE SYSTEMS / LOGISTICS OPERATIONS / LAW ENFORCEMENT
/ DISTRICT ADMINISTRATION

VENDOR	DESCRIPTION	QUAN.	UNIT PRICE	TOTAL PRICE	DATE PURCHASED	DATE USED	INFO FROM (CHECK ONE)	
							INVOICE	STOCK
WAXIE SANITARY SUPPLY (PO 33682)	DISINFECTING / SANITIZING TABS	96	150.00	15,732.00	03/11/2020	MAR 15 '20 JUNE 5 '20	✓	
WAXIE SANITARY SUPPLY (PO 33682)	PURTRBS DISINFECTING TABS	486	14.83	23,802.71	03/11/2020	MAR 15 '20 JUNE 5 '20	✓	
RANDIK PAPER CO. (PO 34011)	GENERIC BLEACH	204	2.57	561.43	04/03/2020	03/15-6/5/20	✓	
CENTRAL SANITARY SUPPLY (PO 34008)	GENERIC BLEACH	200	2.30	504.85	04/03/2020	3/15-6/5/20	✓	
THOMAS SCIENTIFIC LLC (PO 34129)	SANITIZING WIPES (KIMTECH)	504	11.06	6089.86	04/14/2020	3/15-6/5/20	✓	
THOMAS SCIENTIFIC LLC (PO 34129)	SANITIZING WIPES (CLOROX)	504	4.92	2709.94	04/14/2020	3/15-6/5/20	✓	
CONSUMER NET SVCS (PO 34485)	ANTISEPTIC TOWELETT	700	8.80	6729.80	05/13/2020	3/15-6/5/20	✓	
CENTRAL SANITARY SUPPLY (PO 34245)	KN 95 MASKS	20,000	4.09	89,775.00	04/21/2020	3/15-6/5/20	✓	

GRAND TOTAL

145,906.09

I CERTIFY THAT THE INFORMATION WAS OBTAINED FROM PAYROLL RECORDS, INVOICES, OR OTHER DOCUMENTS THAT ARE AVAILABLE FOR AUDIT.

TITLE

Director of Procurement

DATE

6/17/2020

DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY
MATERIALS SUMMARY RECORD

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O.M.B. No. 1660-0017
Expires December 31, 2011

[REDACTED]		PA ID NO.	PROJECT NO.	DISASTER
LOCATION/SITE [REDACTED]		CATEGORY		PERIOD COVERING

DESCRIPTION OF WORK PERFORMED - **DISINFECTION OF PUBLIC FACILITIES / DISINFECTION AND CLEANING OF TRAIN CARS / REPAIR AND MAINTENANCE OF TRAIN CARS AND OTHER DISTRICT FACILITIES / CONSTRUCTION AND/OR IMPROVEMENTS, TRACK WORK, STRUCTURES / SUPPORT OF MECHANICAL, VOLTAGE AND FIRE SYSTEMS / LOGISTICS OPERATIONS / LAW ENFORCEMENT / DISTRICT ADMINISTRATION**

VENDOR	DESCRIPTION	QUAN.	UNIT PRICE	TOTAL PRICE	DATE PURCHASED	DATE USED	INFO FROM (CHECK ONE)	
							INVOICE	STOCK
MALLOY SAFETY & SUPPLY (PO 33964)	FACE MASKS	40	12.10	528.78	03/31/2020	3/15-6/5/20	✓	
MSC INDUSTRIAL SUPPLY (PO 33973)	NITRILE GLOVES (L)	250	5.69	1561.19	04/01/2020	3/15-6/5/20	✓	
COLE HARDWARE (PO 33976)	HAND SPRAYER	1100	1.59	1910.78	04/01/2020	3/15-6/5/20	✓	
SURTEC INC. (PO 33977)	NEUTRA-TEC CERMICIDAL	300	68.40	22418.10	04/01/2020	3/15-6/5/20	✓	
SURTEC INC. (PO 33977)	TEC-CIDE DISINFECTANT	100	68.64	7498.92	04/01/2020	3/15-6/5/20	✓	
MSC INDUSTRIAL SUPPLY (PO 33978)	DISPOSABLE NITRILE GLOVES (S)	140	10.68	1640.98	04/01/2020	3/15-6/5/20	✓	
RS HUGHES CO. (PO 34004)	ALCOHOL	100	17.54	1916.25	04/02/2020	3/15-6/5/20	✓	
GRANGER (PO 34012)	DISPOSABLE WHITE COVERALL (JXL)	1000	11.39	12443.58	04/03/2020	3/15-6/5/20	✓	
COLE HARDWARE (PO 34026)	LYSOL DISINFECTANT SPRAY	2000	7.99	17458.15	04/06/2020	3/15-6/5/20	✓	
CONSUMER NET SVCS (PO 34028)	LYSOL DISINFECTANT SPRAY	2000	8.95	19555.75	04/06/2020	3/15-6/5/20	✓	

GRAND TOTAL

86,932.48

I CERTIFY THAT THE INFORMATION WAS OBTAINED FROM PAYROLL RECORDS, INVOICES, OR OTHER DOCUMENTS THAT ARE AVAILABLE FOR AUDIT.

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DATE

6/17/2020

DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY
MATERIALS SUMMARY RECORD

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O.M.B. No. 1660-0017
Expires December 31, 2011

LOCATION/SITE	PA ID NO.	PROJECT NO.	DISASTER
CATEGORY		PERIOD COVERING	

DESCRIPTION OF WORK PERFORMED - DISINFECTION OF PUBLIC FACILITIES / DISINFECTION AND CLEANING OF TRAIN CARS / REPAIR AND MAINTENANCE OF TRAIN CARS AND OTHER DISTRICT FACILITIES / CONSTRUCTION AND/OIL IMPROVEMENTS, TRACK WORK, STRUCTURES / SUPPORT OF MECHANICAL, VOLTAGE AND FIRE SYSTEMS / LOGISTICS OPERATIONS / LAW ENFORCEMENT / DISTRICT ADMINISTRATION

VENDOR	DESCRIPTION	QUAN.	UNIT PRICE	TOTAL PRICE	DATE PURCHASED	DATE USED	INFO FROM (CHECK ONE) INVOICE STOCK
WINZER (NO PO - CREDIT CARD PURCHASE)	SURGICAL MASKS	600	86.00	51600.00	04/17/2020	3/15-4/5/20	✓
CONSUMER NET SVCS (PO 34625)	FACE MASKS	24	29.99	789.94	05/27/2020	3/15-4/5/20	✓
BROADLINE COMPONENTS (PO 34627)	FACE MASKS	760	34.50	28776.45	05/27/2020	3/15-4/5/20	✓
ECOLINK (NO PO - CREDIT CARD PURCHASE)	ALCOHOL	8	1595.00	15601.16	04/02/2020	3/15-4/5/20	✓
PATTSMASTER (NO PO - CREDIT CARD PURCHASE)	KN95 MASKS	20	106.79	2403.52	04/15/2020	3/15-4/5/20	✓
PATTSMASTER (NO PO - CREDIT CARD PURCHASE)	KN95 MASKS	20	106.79	2403.52	04/15/2020	3/15-4/5/20	✓
PATTSMASTER (NO PO - CREDIT CARD PURCHASE)	KN95 MASKS	20	106.79	2403.52	04/16/2020	3/15-4/5/20	✓
ULINE (NO PO - CREDIT CARD PURCHASE)	ALCOHOL STORAGE CONTAINER	1	1770.00	2090.27	04/08/2020	3/15-4/5/20	✓
GRAND TOTAL				106,068.38			

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DATE

6/17/2020

DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY
MATERIALS SUMMARY RECORD

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O.M.B. No. 1660-0017
Expires December 31, 2011

LOCATION/SITE [REDACTED]	PAID NO. [REDACTED]	PROJECT NO. [REDACTED]	DISASTER [REDACTED]
CATEGORY [REDACTED]		PERIOD COVERING [REDACTED]	

DESCRIPTION OF WORK PERFORMED - DISINFECTION OF PUBLIC FACILITIES / DISINFECTION AND CLEANING OF TRAIN CARS / REPAIR AND MAINTENANCE OF TRAIN CARS AND OTHER DISTRICT FACILITIES / CONSTRUCTION AND/OR IMPROVEMENTS, TRACK WORK, STRUCTURES / SUPPORT OF MECHANICAL, VOLTAGE AND FIRE SYSTEMS / LOGISTICS OPERATIONS / LAW ENFORCEMENT / DISTRICT ADMINISTRATION

	VENDOR	DESCRIPTION	QUAN.	UNIT PRICE	TOTAL PRICE	DATE PURCHASED	DATE USED	INFO FROM (CHECK ONE)	
								INVOICE	STOCK
1	PATLMASTER (NO PO - CREDIT CARD PURCHASE)	KN 95 MASKS	20	106.79	2403.52	04/07/2020	3/15-6/5/20	✓	
2	PATLMASTER (NO PO - CREDIT CARD PURCHASE)	KN 95 MASKS	20	106.79	2403.52	04/20/2020	3/15-6/5/20	✓	
	OMEGA (NO PO - CREDIT CARD PURCHASE)	HAND SANITIZER	4	498.00	2176.26	04/17/2020	3/15-6/5/20	✓	
	OMEGA (NO PO - CREDIT CARD PURCHASE)	HAND SANITIZER	4	488.00	2132.56	04/15/2020	3/15-6/5/20	✓	
X	ECOLINK (NO PO - CREDIT CARD PURCHASE)	ALCOHOL	1	1595.00	2146.76	04/02/2020	3/15-6/5/20	✓	
7	PATLMASTER (NO PO - CREDIT CARD PURCHASE)	KN 95 MASKS	20	106.79	2403.52	04/20/2020	3/15-6/5/20	✓	
	SAVAGE & COOKE (NO PO - CREDIT CARD PURCHASE)	HAND SANITIZER	50	38.40	2080.80	05/12/2020	3/15-6/5/20	✓	
9	PATLMASTER (NO PO - CREDIT CARD PURCHASE)	KN 95 MASKS	20	106.79	2403.52	04/27/2020	3/15-6/5/20	✓	

GRAND TOTAL

18,150.46

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TITLE

Director of Procurement

DATE

6/17/2020

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LOCATION/SITE [REDACTED]

CATEGORY

PERIOD COVERING

DESCRIPTION OF WORK PERFORMED

DESCRIPTION OF WORK PERFORMED - DISINFECTION OF PUBLIC FACILITIES / DISINFECTION AND CLEANING OF TRAIN CARS / REPAIR AND MAINTENANCE OF TRAIN CARS AND OTHER DISTRICT FACILITIES / CONSTRUCTION AND/OR IMPROVEMENTS, TRACK WORK, STRUCTURES / SUPPORT OF MECHANICAL, VOLTAGE AND FIRE SYSTEMS / LOGISTICS OPERATIONS / LAW ENFORCEMENT / DISTRICT ADMINISTRATION

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~~TITLE~~

DATE _____

FEMA Form 90-124, FEB 09

Materials Average Costing Worksheet (PUR-5)

City of :			
Item:	N-95 Masks	Average cost per unit	\$10.91
Used for:	Covid-19 protection	Disaster Number	FEMA DR-1234

[illegible]

48,000 @\$4.10 each average

8,515@\$49.56 average

1. Incident Name:		2. Operational Period: Date From:		Date To:
		Time From:		Time To:
3. Name:		4. ICS Position:	5. Home Agency (and Unit):	
6. Resources Assigned:				
Name	ICS Position		Home Agency (and Unit)	
7. Activity Log:				
Date/Time	Notable Activities			
8. Prepared by: Name: _____ Position/Title: _____ Signature: _____				
ICS 214, Page 1		Date/Time: _____		

City of _____ - Activity Log (ICS 214 - Modified) (LEM-2)

1. Incident Name: Camp Fire (DR-4407)		2. Operational Period:	
		Date From: Time From:	Date To: Time To:
3. Name:		4. ICS Position/Job Function:	5. Home Agency (and Unit):
6. Resources Assigned: (Team Members)			
Name	ICS Position/Job Function		Overtime Hours
7. Activity Log:			
Start-Stop Time	Location/Address	Disaster Related Problems	Corrective Actions Taken
Vehicle or equipment used: Unit or I.D. # _____ Miles driven _____ AND hours used _____			
Vehicle operator name:		Vehicle type or specification	
Government vehicle: <input type="checkbox"/> Rented vehicle <input type="checkbox"/> Personal vehicle <input type="checkbox"/>			
8. Prepared by: Name: _____ Position/Title: _____ Signature: _____			
		Date: _____	

General Guidelines for Form ICS-214 - Modified

1. Form should only include disaster related events - make sure to specify that activities listed are related to the disaster and not to other routine job assignments.
2. Document if a vehicle is used for these activities. Be sure to include the vehicle number; the name of the vehicle driver; the hours the vehicle was used; AND the mileage it was driven.
3. Make sure to use the current form ICS-214 (modified) – Do Not use a standard ICS-214 form. The standard ICS-214 form does not capture enough information for disaster cost recovery purposes.
4. Make sure to sign and date the form.
5. Make sure all fields are filled out including the date from, date to, and time in, time out. Also make sure time information is accurate and matches time listed with activities on the form. Hours charged must match each individual's time card.
6. We must specify how much time was spent on each separate activity.
7. We need to specify how much time was regular time and how much was overtime.
8. Be clear when blocks of time are for routine work activities are not related to the disaster response.
9. For instance, if performing EMS services, building inspection, pipe repair, or other services that "sound" like routine job activities, we need to specify what exactly was performed (attended to broken leg, laceration, etc.) and that it was disaster related, not for a routine work assignment
10. If making a safety inspection or performing supervisory duties clarify that the work performed is a safety inspection, or supervisory duties related to the disaster response activities. DO NOT use the term "damage assessment," unless you are estimating the cost of disaster caused damage.
11. DO NOT use acronyms. When auditors and others review the forms, information must be crystal clear that the problems and response activities are disaster related and not routine work activities.
12. DO NOT use this form if you are part of a field crew and are using equipment, (other than a car or truck for transportation only) and materials. Use the **Disaster Field Crew – Incident Work Report**.

Developed by Mike Martinet at the MartinetGroup.com

Legal Responsibility

W. Nim Kidd
Chief, Texas Division of Emergency Management
Vice Chancellor – The Texas A&M University System
1033 LaPosada Drive, Suite 370
Austin, Texas 78752

Re: Second Appeal – Harris (County), PA ID: 201-99201-00, FEMA-4332-DR-TX,
Grants Manager Project (GMP) 47596 – Legal Responsibility

Dear Chief Kidd:

This is in response to a letter from your office dated June 2, 2020, which transmitted the referenced second appeal on behalf of Harris County (Applicant). The Applicant is appealing the U.S. Department of Homeland Security's Federal Emergency Management Agency's (FEMA) denial of Public Assistance (PA) associated with the contents of the Bear Creek Park Community Center (Facility), which is located on land leased from the U.S. Army Corps of Engineers (USACE).

As explained in the enclosed analysis, the language in the Applicant's lease agreement with the USACE provided the Applicant notice that the Facility was at risk for flooding and that the Federal Government would not be responsible for any damages that may occur as a result. With such notice, the Applicant assumed the risk, thus, FEMA will not provide PA funding for the Facility's contents. Therefore, this appeal is denied.

Please inform the Applicant of my decision. This determination is the final decision on this matter pursuant to 44 C.F.R. § 206.206, Appeals.

Sincerely,
Keith Turi
Assistant Administrator
Recovery Directorate

Enclosure

cc: George A. Robinson
Regional Administrator
FEMA Region VI

MEM Notes:

- 1) *This is one of twenty-one appeals with very similar circumstances, i.e. facilities on land leased from the Federal government.*

Direct Administrative Costs and Management Costs

W. Nim Kidd, MPA, CEM
Chief, Texas Division of Emergency Management
Vice Chancellor – The Texas A&M University System
1033 La Posada Drive, Suite 370
Austin, Texas 78752

Re: Second Appeal – Memorial Hermann Hospital System, PA ID 000-UADR-00, FEMA-1791-DR-TX, Project Worksheet (PW) 11529 – Direct Administrative Costs and Management Costs – Appeals

Dear Chief Kidd:

This is in response to a letter from your office dated June 15, 2020, which transmitted the referenced second appeal on behalf of Memorial Hermann Hospital System (Applicant). The Applicant is appealing the U.S. Department of Homeland Security's Federal Emergency Management Agency's (FEMA) denial of \$850.00 in Public Assistance funding and requests 5 percent of the value of its project amount.

As explained in the enclosed analysis, the Applicant's documentation to support its direct administrative costs (DAC) does not include costs that are accounted for directly to PW 11529, but rather are indirect costs which are ineligible for reimbursement as DAC. Therefore, the appeal is denied.

Please inform the Applicant of my decision. This determination is the final decision on this matter pursuant to 44 C.F.R. § 206.206, Appeals.

Sincerely,
Keith Turi
Assistant Administrator
Recovery Directorate

Enclosure

cc: George A. Robinson
Regional Administrator
FEMA Region VI

2020 Untimely Appeal - Blue Bonnet Electric Co-op

W. Nim Kidd
Chief, Texas Division of Emergency Management
Vice Chancellor – The Texas A&M University System
1033 LaPosada Drive, Suite 370
Austin, Texas 78752

Re: Second Appeal – Bluebonnet Electric Cooperative, Inc., PA ID: 000-UJ7K3-00,
FEMA-4029-DR-TX, Project Worksheet (PW) 614 – Appeals

Dear Chief Kidd:

This is in response to a letter from your office dated July 9, 2020, which transmitted the referenced second appeal on behalf of Bluebonnet Electric Cooperative, Inc. (Applicant). The Applicant is appealing the U.S. Department of Homeland Security's Federal Emergency Management Agency's (FEMA) denial of \$191,284.67 in costs pertaining to debris removal.

Section 423(a) of the Stafford Act provides that any decision regarding eligibility for assistance may be appealed within 60 days after the date on which the applicant is notified of the award or denial of assistance. Implementing this provision, Title 44 of the Code of Federal Regulations, section 206.206(c), requires that Applicants must file appeals within 60 days after receipt of a notice of the action that is being appealed.

According to the administrative record, the Applicant received notice of FEMA's deobligation and the Applicant's rights to appeal from the Texas Division of Emergency Management (Grantee) in a letter dated February 8, 2019; which the Grantee confirmed was received by the Applicant on February 13, 2019. However, the Applicant did not submit its first appeal until July 26, 2019. This was after the 60-day timeframe required by FEMA's regulations, making the first appeal untimely. Therefore, this appeal is denied.

Please inform the Applicant of my decision. This determination is the final decision on this matter pursuant to 44 C.F.R. § 206.206, Appeals.

Sincerely,
Keith Turi
Assistant Administrator
Recovery Directorate

cc: George A. Robinson
Regional Administrator
FEMA Region VI

Untimely Appeal

W. Nim Kidd
Chief, Texas Division of Emergency Management
Vice Chancellor – The Texas A&M University System
1033 La Posada Drive, Suite 370
Austin, Texas 78752

Re: Second Appeal – Groves, PA ID: 245-31328-00, FEMA-1791-DR-TX, Project Worksheet (PW) 1046 –

Dear Chief Kidd:

This is in response to a letter from your office dated April 14, 2020, which transmitted the referenced second appeal on behalf of Groves (Applicant). The Applicant is appealing the U.S. Department of Homeland Security's Federal Emergency Management Agency's (FEMA) denial of funding in the amount of \$170,118.31 for debris removal.

Section 423(a) of the Stafford Act provides that any decision regarding eligibility for assistance may be appealed within 60 days after the date on which the applicant is notified of the award or denial of assistance. Implementing this provision, Title 44 of the Code of Federal Regulations, Section 206.206(c), requires that applicants must file appeals within 60 days after receipt of a notice of the action that is being appealed.

According to the administrative record, the Applicant does not dispute that it received notification of FEMA's May 31, 2011 closeout determination. However, it did not submit its first appeal until January 16, 2020, nearly 9 years later. This was after the 60-day timeframe required by FEMA's regulations, making the Applicant's first appeal untimely. For this reason, I am denying this appeal.

Please inform the Applicant of my decision. This determination is the final decision on this matter pursuant to 44 C.F.R. § 206.206, Appeals.

Sincerely,
Keith Turi
Assistant Administrator
Recovery Directorate

cc: George A. Robinson
Regional Administrator
FEMA Region VI

Damage As A Direct Result of the Disaster

Stephen Cox
Executive Director
Indiana Department of Homeland Security
302 West Washington Street, Room W-046
Indianapolis, IN 46204

Re: Second Appeal – Indiana Department of Natural Resources, PA ID:
000-U0841-00, FEMA-4363-DR-IN, Damage Inventory 233392 – Result of
Declared Incident

Dear Mr. Cox:

This is in response to a letter from your office dated May 28, 2020, which transmitted the referenced second appeal on behalf of the Indiana Department of Natural Resources (Applicant). The Applicant is appealing the U.S. Department of Homeland Security's Federal Emergency Management Agency's (FEMA) denial of Public Assistance funding for debris removal from Area 2 of the Kankakee Fish and Wildlife Area (FWA).

As explained in the enclosed analysis, I have determined that the Applicant has not demonstrated that debris removal from Area 2 of the Kankakee FWA was required as a direct result of the disaster. Therefore, this appeal is denied.

Please inform the Applicant of my decision. This determination is the final decision on this matter pursuant to 44 C.F.R. § 206.206, Appeals.

Sincerely,
Traci L. Brasher
Acting Director
Public Assistance Division

cc: Kevin M. Sligh
Acting Regional Administrator
FEMA Region V

MEM Notes:

- 1) *Applicant could not prove that the debris (sand) was not there before the flooding*
- 2) *The sand debris did not pose a threat to improved property.*

Legal Responsibility – Immediate Threat – Public Interest

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

Re: Second Appeal – Sumter Landing Community Development District, PA ID:
119-UAOIO-00, FEMA-4337-DR-FL, Grants Manager Projects (GMP) 26222 and
26244 – Legal Responsibility – Immediate Threat – Public Interest

Dear Mr. Moskowitz:

This is in response to your letter dated December 19, 2019, which transmitted the referenced second appeal on behalf of Sumter Landing Community Development District (Applicant). The Applicant is appealing the U.S. Department of Homeland Security's Federal Emergency Management Agency's (FEMA) denial of funding in the amount of \$95,740.99 in costs for debris removal and emergency work.

As explained in the enclosed analysis, the Applicant, a community development district, is not eligible for Public Assistance funding because its facilities are not accessible to the general public and it is not legally responsible for the roads associated with its debris removal claims. Additionally, the Applicant has not established its work to repair its water control system was necessary to eliminate an immediate threat. Therefore, the appeal is denied.

Please inform the Applicant of my decision. This determination is the final decision on this matter pursuant to 44 C.F.R. § 206.206, Appeals.

Sincerely,
Traci L. Brasher
Acting Director
Public Assistance Division

Enclosure

cc: Gracia Szczech
Regional Administrator
FEMA Region IV

Procurement and Contracting Requirements – Project Documentation and Closeout –
Public Interest

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

Re: Second Appeal – Village Center Community Development District, PA ID:
000-UCCM7-00, FEMA-4337-DR-FL, Grants Manager Projects 26119, 26195,
26197, and 26199 –Procurement and Contracting Requirements – Project
Documentation and Closeout – Public Interest

Dear Mr. Moskowitz:

This is in response to a letter from your office dated March 13, 2020, which transmitted the referenced second appeal on behalf of the Village Center Community Development District (Applicant). The Applicant is appealing the U.S. Department of Homeland Security's Federal Emergency Management Agency's (FEMA) denial of funding in the amount of \$252,211.29 for debris removal activities.

As explained in the enclosed analysis, I have determined that the Applicant failed to demonstrate its eligibility for Public Assistance funding that as a Community Development District it is accessible to the general public. Additionally, the debris removal work is ineligible because it was not documented in accordance with FEMA policy and because the Applicant did not comply with federal procurement regulations. Therefore, this appeal is denied.

Please inform the Applicant of my decision. This determination is the final decision on this matter pursuant to 44 C.F.R. § 206.206, Appeals.

Sincerely,
Traci L. Brasher
Acting Director
Public Assistance Division

Enclosure

cc: Gracia Szczech
Regional Administrator
FEMA Region IV

Summary Paragraph:

In 2005, Hurricane Katrina damaged St. Martin's Manor, an assisted living facility (Facility) owned by the Archdiocese of New Orleans (Applicant). FEMA prepared Project Worksheet (PW) 11695 to replace the Facility.

The Applicant opted to repair the damage and FEMA capped the project at the replacement or the repair cost, whichever is lower.

The Applicant properly procured a contractor and entered in an adjustable fixed-price contract. Per 44 C.F.R. § 13.36(i)(2) (2004), the Applicant's contract included a termination for convenience clause that, if exercised, required the Applicant to pay reasonable overhead and profits to the contractor on the value of the contract's uncompleted work.

When the contract was running over time, the Applicant terminated the contract for convenience. The contractor made demands, including its overhead costs, and the Applicant entered into a settlement with the contractor and recorded \$918,894.00 as overhead costs.

FEMA determined that the costs were not incurred as a result of the disaster, nor associated with eligible work, and were instead the result of the Applicant's decision to terminate for convenience.

The Applicant appealed, claiming, among other things, that FEMA incorrectly determined the costs were not directly related to the disaster damages because the costs were incurred pursuant to the terms of a contract for eligible work; failed to acknowledge the work contracted for was eligible; was aware of the issues with the contractor and did not tell the Applicant that costs to terminate for convenience were ineligible; and, did not take into account the costs were reasonable and the least cost alternative.

The Region VI Regional Administrator found that the claimed costs are not directly tied to the performance of eligible work required as a direct result of the disaster and denied the appeal.

On second appeal, the Applicant maintains its previous claims and states that FEMA failed to acknowledge that the contract was for eligible work to repair damage directly caused by Hurricane Katrina and the cost associated with that work was reasonable, therefore eligible.

Authorities and Second Appeals:

- Stafford Act § 406
- 44 C.F.R. §§ 206.223(a); 13.22(a)(1); 13.36(i)(2)
- PA Guide (1999), at 23, 33-34.
- OMB Circular A-122

Headnotes

Pursuant to 44 C.F.R. § 206.223(a), an eligible item of work must be required as a direct result of the disaster.

FEMA reimburses costs that can be directly tied to the performance of eligible work. The Applicant's costs of contractor overheads costs were incurred as a result of the Applicant deciding to exercise a Federally mandated procurement clause within an industry standard American Institute of Architects' (AIA) contract for eligible work. The Applicant's costs of overhead costs are allowable costs under 44 C.F.R. § 13.22.

Conclusion

The Applicant's work is required as a result of the disaster and therefore eligible.

The Applicant's costs of contractor overheads costs are allowable costs under 44 C.F.R. § 13.22 and incurred as a result of the Applicant prudently deciding to exercise a federally mandated procurement clause within an industry standard American Institute of Architects contract for eligible work.

Environmental and Historic Preservation Compliance

Kim Stenson, Director
South Carolina Emergency Management Division
2779 Fish Hatchery Road
West Columbia, South Carolina, 29172

Re: Second Appeal – Kershaw (County), PA ID: 055-99055-00, FEMA-4241-DR-SC,
Project Worksheet (PW) 803 – Environmental and Historic Preservation Compliance

Dear Mr. Stenson:

This is in response to a letter from your office dated February 21, 2020, which transmitted the referenced second appeal on behalf of Kershaw County (Applicant). The Applicant is appealing the U.S. Department of Homeland Security's Federal Emergency Management Agency's (FEMA) denial of \$1,315,744.93 in Public Assistance (PA) funding.

As explained in the enclosed analysis, I have determined the cited code meets the regulatory criteria for allowable codes and standards upgrades, however, the Applicant did not afford FEMA the opportunity to comply with the National Environmental Policy Act, prior to beginning work. The documentation provided by the Applicant does not allow FEMA to determine that the project complies with environmental and historical preservation statutes, regulations, Executive Orders and policies. Therefore, the appeal is denied.

Please inform the Applicant of my decision. This determination is the final decision on this matter pursuant to 44 C.F.R. § 206.206, Appeals.

Sincerely,
Traci L. Brasher
Acting Director
Public Assistance Division

Enclosure

cc: Gracia Szczech
Regional Administrator
FEMA Region IV

MEM Notes:

- 1) *Applicable Codes and "Standards must: (1) apply to the type of repair or restoration required (standards may be different for new construction and repair work); (2) be appropriate to the pre-disaster use of the facility; (3) be found reasonable, in*

writing, and formally adopted and implemented by the State or local government on or before the disaster declaration date, or be a legal Federal requirement applicable to the type of restoration; (4) apply uniformly to all similar types of facilities within the jurisdiction of the owner of the facility; and, (5) for any standard in effect at the time of a disaster, it must have been enforced during the time it was in effect. All five prongs must be met in order to be eligible for Public Assistance (PA) funding.”

- 2) *“The Applicant commenced construction without giving FEMA an opportunity to review the work for EHP compliance, and did not provide independently submitted EHP reviews for consideration. The available documentation does not allow FEMA to determine that the project complies with EHP laws, regulations, and EOs.”*

Time Limitations / Extensions – Request for Public Assistance

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

Re: Second Appeal –North Miami Beach Medical Center, FEMA-4337-DR-FL,
Time Limitations/Extensions – Request for Public Assistance

Dear Mr. Moskowitz:

This is in response to a letter from your office dated April 30, 2020 which transmitted the referenced second appeal on behalf of North Miami Medical Center (Applicant). The Applicant is appealing the U.S. Department of Homeland Security's Federal Emergency Management Agency's denial of its Request for Public Assistance (RPA).

As explained in the enclosed analysis, the Applicant did not demonstrate its delay in submitting its RPA is an extenuating circumstance beyond its or the Grantee's control to warrant extending the deadline for the RPA. Therefore, this appeal is denied.

Please inform the Applicant of my decision. This determination is the final decision on this matter pursuant to 44 C.F.R. § 206.206, Appeals.

Sincerely,
Traci Brasher
Acting Director
Public Assistance Branch

Enclosure

cc: Gracia B. Szczech
Regional Administrator
FEMA Region IV

MEM Notes:

"Hurricane Irma, which made landfall in Florida on September 10, 2017, damaged North Miami Beach Medical Center's (Applicant) medical vehicle and its contents. The Applicant submitted a request for Individual Assistance (IA) on October 4, 2017. FEMA denied the Applicant's IA request on May 27, 2018, stating the vehicle and its contents did not fit the criteria for IA eligibility as it was not a primary residence."

On May 30, 2018, the Applicant responded to FEMA's denial of IA contending it is a Private Nonprofit (PNP) organization not a residence.

On January 22, 2019, the Applicant sent a letter to the Governor of Florida requesting assistance and who directed the Applicant to the Florida Division of Emergency Management (Grantee).

On February 15, 2019, the Applicant submitted its Request for Public Assistance (RPA), which was transmitted to FEMA on February 22, 2019 along with the Grantee's request to extend the deadline for submission of the RPA.

The FEMA Region IV Regional Administrator (RA) denied the extension request.

In its first appeal, the Applicant argued it was a PNP and the IA request had been completed by a FEMA representative.

The Grantee concurred and, also contended the IA request had been misdirected by FEMA. On January 13, 2020, the RA denied the first appeal, determining that the Applicant did not demonstrate extenuating circumstances existed that justified a late submission of the RPA nearly eight months after its receipt of the May 2018 IA denial letter. In its second appeal, the Applicant reiterates its argument from its first appeal."

Change in Scope of Work – Improved Project

Mr. Kim Stenson
Director
South Carolina Emergency Management Division
2779 Fish Hatchery Road
West Columbia, South Carolina 29172

Re: Second Appeal – Columbia, PA: ID 079-16000-00, FEMA-4241-DR-SC,
Project Worksheet (PW) 873 – Change in Scope of Work – Improved Project –
Codes and Standards

Dear Mr. Stenson:

This is in response to a letter from your office dated November 22, 2019, which transmitted the referenced second appeal on behalf of City of Columbia (Applicant). The Applicant is appealing the U.S. Department of Homeland Security's Federal Emergency Management Agency's (FEMA) denial of funding in the amount of \$161,620.00 for additional costs associated with the repair of a water line and scour hole at Metro Lane.

As explained in the enclosed analysis, the Applicant made improvements to the Metro Lane water line by relocating the water line to a new location without prior approval from FEMA. As a result, FEMA was not provided the opportunity to conduct required environmental and historical preservation reviews prior to project construction and completion. In addition, the Applicant has not demonstrated that the installation of additional fire hydrants or valves was required by an eligible code or standard. Therefore, this appeal is denied.

Please inform the Applicant of my decision. This determination is the final decision on this matter pursuant to 44 C.F.R. § 206.206, Appeals.

Sincerely,
Traci L. Brasher
Acting Director
Public Assistance Division

Enclosure

cc: Gracia Szczech
Regional Administrator
FEMA Region IV

**FEMA Should Recover
\$216.2 Million Awarded to
the Recovery School District
in Louisiana for
Hurricane Katrina**





OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

September 15, 2020

MEMORANDUM FOR: The Honorable Peter T. Gaynor
Administrator
Federal Emergency Management Agency

FROM: *Joseph V. Cuffari*
Joseph V. Cuffari, Ph.D.
Inspector General

SUBJECT: *FEMA Should Recover \$216.2 Million Awarded to the
Recovery School District in Louisiana for Hurricane
Katrina*

Attached is our final report, *FEMA Should Recover \$216.2 Million Awarded to the Recovery School District in Louisiana for Hurricane Katrina*. We incorporated the formal comments provided by your office.

The report contains eight recommendations aimed at improving the disaster grant management of the Recovery School District, Louisiana. Your office concurred with six of the eight recommendations. Based on information provided in your response to the draft report, we consider recommendations 2, 3, 5, and 6 resolved and open with an estimated completion date of May 31, 2021. Recommendations 4 and 7 are resolved and open with an estimated completion date of November 30, 2020. For recommendations 2 through 7, please submit a formal closeout letter once the recommendations have been fully implemented or by your target completion dates. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions and of the disposition of any monetary amounts.

Recommendations 1 and 8 are unresolved and open. As prescribed by the Department of Homeland Security Directive 077-01, *Follow-up and Resolutions for the Office of Inspector General Report Recommendations*, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) target completion date, and (2) corrective action plans for recommendations 1 and 8. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendations. Please send your response or closure request to OIGAuditsFollowup@oig.dhs.gov.



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Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the final report on our website for public dissemination.

Please call me with any questions or your staff may contact Sondra McCauley, Assistant Inspector General for Audits, at (202) 981-6000.



DHS OIG HIGHLIGHTS

FEMA Should Recover \$216.2 Million Awarded to the Recovery School District in Louisiana for Hurricane Katrina

September 15, 2020

Why We Did This Audit

We conducted this audit to determine whether RSD accounted for and expended funds according to Federal regulations. As of October 2016, RSD had received a \$1.5 billion Public Assistance grant from Louisiana, a FEMA grantee, for damages from Hurricane Katrina. We examined \$1.3 billion granted for a consolidated project as part of the total amount awarded.

What We Recommend

FEMA should deobligate \$216.2 million in ineligible funding and reclassify 35 damaged facilities from replacement-eligible to repair-eligible, and deobligate the differences in funding.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

In some instances, the Recovery School District in Louisiana (RSD) accounted for and expended portions of the \$1.3 billion in Public Assistance grant funds we reviewed according to Federal regulations. However, the Federal Emergency Management Agency (FEMA) improperly awarded \$216.2 million to repair or replace more than 292 Orleans Parish school facilities in RSD. Specifically:

- FEMA used a cost estimate rather than actual costs to determine how much to award RSD for schools that were already completed, thus improperly awarding \$156.6 million to RSD.
- FEMA duplicated benefits by not reducing the amount of the award by \$57 million to account for other Federal grant funds RSD received.
- FEMA improperly awarded \$2.6 million to replace portable school buildings that were not RSD's legal responsibility at the time of the hurricane.

The improper awards occurred primarily because FEMA did not follow Federal regulations and its own guidance for awarding Federal funds. For example, FEMA did not follow its own guidance to base grant awards for completed work on actual costs. Additionally, FEMA assessed damages to 35 facilities 19 to 59 months after the disaster and, therefore, failed to ensure the damages were a direct result of the hurricane. Due to the improper awards and delayed damage assessment, FEMA provided millions of ineligible funds to RSD, placing those Federal funds at risk of fraud, waste, and abuse.

FEMA Response

FEMA concurred with recommendations 2 through 7, which are resolved and open, but did not concur with recommendations 1 and 8, which are unresolved and open. We have included a copy of FEMA's comments in their entirety in appendix B.



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Abbreviations

CDBG	Community Development Block Grant
CEF	Cost Estimating Format
CFR	Code of Federal Regulations
ECD	estimated completion date
EMMIE	Emergency Management Mission Integrated Environment
FEMA	Federal Emergency Management Agency
HUD	Housing and Urban Development
NEMIS	National Emergency Management Information System
OIG	Office of Inspector General
OPSB	Orleans Parish School Board
RSD	Recovery School District
SRIA	<i>Sandy Recovery Improvement Act</i>



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Background

The Recovery School District (RSD) is a statewide school district administered by the Louisiana Department of Education that intervenes in the management of chronically low-performing schools in Louisiana. Because of Orleans Parish public schools' poor performance, the Louisiana Legislature turned the majority of its schools over to RSD.

In August 2005, high winds, driving rains, and flooding resulting from Hurricane Katrina damaged hundreds of Orleans Parish schools and equipment, as shown in figures 1 and 2. On August 29, 2005, the President signed a major disaster declaration (DR-1603-LA) to provide Louisiana and local government with Federal assistance to recover from damages.



Figure 1: School buses under water in New Orleans
Source: The Patriot Post, August 2015



Figure 2: Damage to Joseph A. Hardin Elementary School
Source: NOLA.com Times Picayune, April 2015

In 2008, RSD and the Orleans Parish School Board (OPSB) jointly developed the New Orleans Schools Facilities Master Plan (Master Plan) to rebuild school



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facilities damaged by Hurricane Katrina. The Master Plan, consisting of a six-phase construction plan beginning with Quick Start Program schools,¹ served as a guide for rebuilding and renovating New Orleans public schools.

To accomplish the Master Plan, RSD applied the *Consolidated Appropriations Act, 2008*,² which allows local educational agencies in Louisiana affected by Hurricane Katrina special exceptions to Federal requirements. The Federal Emergency Management Agency (FEMA) awarded \$1.5 billion, which constituted 100 percent funding for debris removal, emergency protective measures, and permanent work for the schools. FEMA allowed RSD to consolidate 255 projects into one project, Alternate Project 19166,³ for which it received a grant totaling \$1.3 billion. Funding for Alternate Project 19166 comprised 87 percent of the total \$1.5 billion Public Assistance award RSD had received as of October 27, 2016, from the Louisiana Governor's Office of Homeland Security and Emergency Preparedness (Louisiana), a FEMA grantee, for damages resulting from Hurricane Katrina. The remaining \$200 million (13 percent) of the \$1.5 billion funded other RSD projects not consolidated under Alternate Project 19166.

We reviewed the \$1.3 billion in funding for Alternate Project 19166. Table 1 shows the gross and net award amounts before and after reductions for insurance and other reductions for Alternate Project 19166.

Table 1. Gross and Net Award Amounts for Alternate Project 19166

	Gross Award Amount	Insurance Reductions	Other Reductions⁴	Net Award Amount
Audit Scope	\$1,335,004,950	\$(134,803,681)	\$(43,040,436)	\$1,157,160,833

Source: FEMA and RSD records

As of October 2016, RSD had not completed work on Alternate Project 19166 and, therefore, had not submitted a final claim to Louisiana for its expenditures. We conducted our audit to determine whether RSD accounted for and expended funds according to Federal regulations. We focused our audit on the \$1.3 billion granted for the consolidated Alternate Project 19166.

¹ Quick Start Program School Plans called for reconstruction of six campuses across New Orleans to house students as quickly as possible after the disaster, but only four schools were completed.

² *Consolidated Appropriations Act, 2008*, Pub. L. No. 110-161, § 552.

³ Alternate Project 19166 was a Single Settlement Request pursuant to Section 552 of the *Consolidated Appropriations Act, 2008*, to repair and reconstruct numerous facilities damaged by Hurricane Katrina in the New Orleans Public School educational system.

⁴ Other Reductions is an adjustment made in Version 4 of Alternate Project 19166, which served to correct the Architect and Engineering fee calculation as applied to eligible repair or replacement cost associated with Quick Start Program schools.



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Results of Audit

In some instances, RSD accounted for and expended portions of the \$1.3 billion in Public Assistance grant funds we reviewed according to Federal regulations. However, FEMA improperly awarded \$216.2 million to repair or replace more than 292 Orleans Parish school facilities in RSD. Specifically:

- FEMA used a cost estimate rather than actual costs to determine how much to award RSD for schools that were already completed, thus improperly awarding \$156.6 million to RSD.
- FEMA duplicated benefits by not reducing the amount of the award by \$57 million to account for other Federal grant funds RSD received.
- FEMA improperly awarded \$2.6 million to replace portable school buildings that were not RSD's legal responsibility at the time of the hurricane.

The improper awards occurred primarily because FEMA did not follow Federal regulations and its own guidance for awarding Federal funds. For example, FEMA did not follow its own guidance to base grant awards for completed work on actual costs. Additionally, FEMA assessed damages to 35 facilities 19 to 59 months after the disaster and, therefore, failed to ensure the damages were a direct result of the hurricane. Due to the improper awards and delayed damage assessment, FEMA awarded millions of ineligible funds to RSD, placing Federal funds at risk of fraud, waste, and abuse.

FEMA Did Not Comply with Federal Regulations and FEMA Guidelines for Awarding the Public Assistance Grant

The Code of Federal Regulations (CFR) establishes policies and procedures for determining the eligibility of applicants, work, and cost associated with public assistance under the *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (Stafford Act).⁵ FEMA policies clarify and provide direction for implementing the CFR. According to FEMA policy, cost directly tied to the performance of eligible work must be reasonable and necessary and cannot duplicate cost that is another Federal agency's responsibility. In addition, eligible applicants must be legally responsible for damaged facilities at the time of the disaster, and work must be required as a direct result of the declared disaster. FEMA did not follow Federal regulations and its own guidance to ensure it awarded funds to RSD for costs necessary to accomplish the work to

⁵ 44 CFR pt. 206, subpt. H.



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rebuild and replace schools. We identified deficiencies in four areas: ensuring actual costs are used for completed work, avoiding duplication of benefits, ensuring Federal funding eligibility, and providing delayed and recurring damage assessments.

FEMA Did Not Properly Use Actual Costs to Award Funding for Completed Facilities

According to FEMA guidance:

- a cost must be necessary and reasonable to accomplish the disaster recovery work;
- reasonable cost can be established through average cost for similar work in the area;
- a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost;⁶ and
- grant amounts are based on actual costs if the subgrantee has completed the work at the time of the request for public assistance.⁷

Although FEMA possessed actual costs calculated from construction of the Quick Start schools, it accepted RSD's estimated cost of \$268 per square foot when awarding funds to Alternate Project 19166 for completed work.

To determine the reasonableness of RSD's request for \$268 per square foot for repairs and replacements, FEMA officials said they performed a series of analyses using local, regional, and national data. However, FEMA improperly used the \$268 to award funding for the already completed Quick Start schools construction. Since FEMA did not properly award this funding, about \$156.6 million in costs were unreasonable, and therefore ineligible.

Table 2 summarizes four key issues we identified related to FEMA's analyses of the \$268 per square foot request from RSD. We discuss each issue in detail after the table, as well as how these issues contributed to ineligible funding for the Quick Start schools.

⁶ FEMA's *Public Assistance Guide*, FEMA 322, October 1999, pages 33 and 34.

⁷ FEMA's *Public Assistance Policy Digest*, FEMA 321, October 2001, page 22.



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Table 2. Results of FEMA's Analyses and OIG Findings

FEMA Analyses	Costs Resulting from FEMA Analyses	FEMA Awarded Cost	OIG Finding
	<i>Average cost per square foot</i>		
17 Facility Comparison	\$269	\$268	FEMA's cost analysis included data from improperly competed contracts, which can increase the cost per square foot
FEMA Regional Comparison	\$96 to \$267		FEMA used improperly competed contracts for facilities in its analysis
Cost Estimating Format (CEF) ⁸ Comparison	\$208		FEMA used the CEF average of \$208 only to determine repair/replace decisions, then increased the cost to \$268 to award grant funding
2009 Annual School Construction Report Comparison	\$160		FEMA awarded funds at \$268 although the regional average was 40 percent less

Source: Office of Inspector General (OIG) analysis of FEMA records

FEMA's Analyses Did Not Account for Issues Related to Improper Procurement

First, FEMA selected, reviewed, and compared school construction costs across 17 other school facilities in the New Orleans Metropolitan area (post-Hurricane Katrina) against RSD's requested cost. FEMA used the following criteria to choose the 17 comparable facilities to determine cost reasonableness:

- codes and standards
- educational requirements
- elevation requirements
- mix of elementary, middle, and high schools
- size
- environmental conditions
- foundation requirements and construction materials and methods
- location in urban environments and storage and staging constraints
- proper procurement

FEMA compared the 17 facilities to calculate the average construction cost. In addition to using the aforementioned criteria, FEMA reviewed contract costs using bid amounts and square footage for buildings to determine an average rate per square foot. FEMA's comparison yielded an average rate of \$269 per

⁸ FEMA uses the CEF to develop a cost estimate for large projects, and as the basis for obligating funds.



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square foot for construction cost. However, FEMA did not properly support this analysis. For example, 3 of the 17 facilities FEMA selected had procurement issues related to improperly competed contracts, which means FEMA had no reasonable assurance the associated costs were reasonable.⁹ In particular, improperly competed contracts can increase cost per square foot, thereby increasing overall costs. FEMA's analysis resulted in costs ranging from \$155 to \$463 per square foot, with one of the improperly procured facilities priced at \$463 per square foot. Thus, the comparison skewed the estimated rate.

Second, FEMA completed a regional comparison analysis using its own data. However, as with the previous analysis, it did not always verify the projects it compared had properly competed contracts. FEMA said it researched construction cost data for K-12 school facilities replaced in FEMA Regions IV and VI in the previous 10 years. Using project worksheets and CEFs from the National Emergency Management Information System (NEMIS) and the Emergency Management Mission Integrated Environment (EMMIE),¹⁰ FEMA identified 38 school replacement projects with construction cost ranging from an estimated \$96 to \$267 per square foot. FEMA used this comparison to substantiate the reasonableness of RSD's \$268 per square foot cost request, but failed to take into account improperly procured contracts, about which we previously reported.¹¹ Because these contracts were improperly procured, FEMA has no assurance the estimates used are reasonable.

FEMA Exceeded Its Initial CEF Cost Estimate When Determining the Cost to Replace Facilities

FEMA contended it used the CEF to determine a reasonable cost per square foot. However, our analysis of FEMA's initial CEF cost estimate demonstrated that, when determining the cost to replace the 143 Orleans Parish facilities, FEMA exceeded its initial average CEF cost of \$208 per square foot. Specifically, FEMA only used the estimate of \$208 to determine whether facilities were eligible for replacement rather than repair. FEMA then used the greater estimate of \$268 per square foot to determine the actual funding

⁹ *FEMA Public Assistance Grant Funds Awarded to Saint Mary's Academy, New Orleans, Louisiana* (DD-11-15), August 5, 2011; and *FEMA Should Disallow \$82.4 Million of Improper Contracting Costs Awarded to Holy Cross School, New Orleans, Louisiana* (OIG-15-65-D), April 14, 2015.

¹⁰ FEMA's NEMIS and EMMIE are integrated data management systems consisting of a collection of distributed disaster data and workflow databases permitting the comprehensive information retrieval.

¹¹ *Hurricane Katrina Activities for Jackson County School District* (DA-09-02), November 20, 2008; *FEMA Public Assistance Grant Funds Awarded to Long Beach School District, Long Beach, Mississippi* (DA-12-02), December 1, 2011; and *FEMA Should Recover \$5.3 Million of the \$52.1 Million of Public Assistance Grant Funds Awarded to the Bay St. Louis Waveland School District in Mississippi – Hurricane Katrina* (OIG-14-44-D), February 25, 2014.



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amount to award to replace the facilities. Using the different cost estimates resulted in FEMA awarding significantly more funding to replace the 143 facilities than it initially estimated.

Further, according to the CFR, a facility is considered repairable when disaster damages do not exceed 50 percent of the cost of replacing the facility to its pre-disaster condition and it is feasible to repair the facility so that it can perform its function as well as it did immediately prior to the disaster.¹² Had FEMA used the greater estimated cost of \$268 per square foot when determining which facilities to replace rather than repair, the facilities would not have met the required 50 percent threshold for replacement.

For example, using the CEF cost estimate of \$208 for Project 15969 (Little Wood Elementary School), FEMA estimated a repair cost of \$49,112 and a replacement cost of \$82,717, resulting in a repair to replacement ratio of about 59 percent. Because the cost to repair was more than 50 percent of the cost to replace the facility, FEMA officials decided to replace the facility. In contrast, when FEMA consolidated the construction projects under Alternate Project 19166, it increased the replacement cost for Little Wood Elementary School to \$443,262 (calculated using \$268 per square foot, per RSD's request) without re-evaluating the repair or replacement decision. Accordingly, the repair cost decreased to 11.1 percent, well short of the 50 percent threshold. If FEMA had correctly used the CEF to determine the reasonableness of RSD's request, it would have captured the average CEF estimated cost of \$208 per square foot.

FEMA Awarded RSD Its Requested Amount Although the Construction Cost Was Greater than the Regional Average

FEMA chose to award funds to RSD for its requested cost even though it was greater than the regional average. FEMA reviewed the *School Planning and Management 2009 Annual School Construction Report* to determine a reasonable construction cost per square foot for schools within its 12 Regions across the United States. The average construction cost per square foot for all schools (elementary, middle, and high) in Region 9 (Arkansas, Louisiana, Oklahoma, and Texas) did not exceed \$160, which was 40 percent less than the \$268 cost per square foot awarded. RSD acknowledged its requested cost was high, but justified it by citing factors specific to RSD, such as multi-story buildings and foundations to accommodate specific ground conditions.

¹² 44 CFR 206.226(f)(1).



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FEMA's Use of Estimated Cost Resulted in Ineligible Funding

Because RSD had already completed the Quick Start schools at the time of the request for public assistance, FEMA should have based the Alternate Project 19166 award amount on the actual costs. However, FEMA did not leverage the actual costs data it had readily available from the four recently completed RSD schools and awarded about \$156.6 million to Quick Start schools for unreasonable, and therefore ineligible, funding.

FEMA allowed RSD to combine 105 project worksheets to form Alternate Project 18597, Quick Start Schools, and awarded \$177 million in funding. RSD built the four schools to house students as quickly as possible after the disaster. Later, RSD requested FEMA transfer the scope of work from Alternate Project 18597 to Alternate Project 19166. Prior to its request, RSD completed three of the four schools, and nearly completed the fourth school, for a total of \$145.7 million. According to the RSD Superintendent's Report, the four schools and completion dates were:

- Langston Hughes Elementary, August 11, 2009 (Phase 1) and November 10, 2010 (Phase 2)
- Andrew Wilson Elementary, October 11, 2009
- Lake Area High, December 28, 2009
- Landry High School, June 30, 2010

FEMA awarded funds for Alternate Project 19166 in September 2010. However, when FEMA transferred the scope of work from Alternate Project 18597 to 19166, it increased the funding from \$177 million to \$376.7 million based on the \$268 per square foot cost provided by RSD. This resulted in increasing the award by about \$156.6 million.¹³ Therefore, we are questioning \$156.6 million.

Duplication of FEMA and Department of Housing and Urban Development Funding Resulted in Awarding Ineligible Benefits

Section 312 of the Stafford Act outlines general prohibitions for any entity to receive financial assistance for any loss for which assistance has already been provided. Publication 322, *FEMA Public Assistance Guide*,¹⁴ reiterates these

¹³ We did not use the actual costs of \$145.7 million to compute ineligible funding because Project 18597 is an alternate project. The applicant is entitled to the \$177 million award approved by FEMA regardless of actual costs to complete the project.

¹⁴ According to *Public Assistance Guide*, FEMA 322, dated October 1999, page 34, if an applicant can obtain assistance for a project from a source other than FEMA, then FEMA cannot provide funds for that project. The Stafford Act prohibits such a duplication of benefits.



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prohibitions from the Stafford Act. According to the guide, whenever an applicant receives funding from another source for similar or identical work, FEMA must reduce the eligible cost or deobligate funding to avoid a duplication of benefits.

FEMA did not properly reduce Alternate Project 19166 by \$57 million for duplicate Community Development Block Grant (CDBG) funds the Department of Housing and Urban Development (HUD) had previously awarded to RSD to complete schools. Specifically, HUD awarded \$110.1 million to RSD for 29 school sites between 2007 and 2014. A comparison of the CDBG applications and FEMA Alternate Project 19166 documentation showed RSD requested funding for similar repairs for 19 of the 29 sites. For those 19 sites, FEMA awarded funds for Alternate Project 19166 in September 2010 after HUD had already awarded \$57 million between 2007 and 2009 for similar purposes. Table 3 lists the duplicate CDBG awards by school and amount.

Table 3. List of Identified Duplicate CDBG Awards

School	Awarded CDBG Funds	Disbursed CDBG Funds
Charles T. Colton Junior High	\$ 4,203,947	\$ 3,567,563
Gentilly Terrace Elementary	2,647,553	1,909,918
McDonogh 42 Elementary	1,430,520	1,322,241
NOCCA/Live Oak Middle	1,906,090	1,906,090
Lafayette Elementary	1,556,618	1,556,618
Douglass High School	6,030,084	5,688,818
John Dibert Elementary	918,241	787,343
Sylvanie Williams Elementary	896,091	471,165
Sarah T. Reed Senior High	3,787,699	3,758,580
Rabouin Career Magnet	767,843	346,051
Crossman Elementary	2,779,024	1,537,521
Village de L'est Elementary School	1,561,293	1,494,287
Harney Elementary	782,306	782,306
Dr. Charles R. Drew Elementary	2,775,749	2,526,725
Thurgood Marshall Middle School	7,488,618	7,488,618
Live Oak Elementary (2)	1,344,783	1,272,447
Martin Luther King Elementary School	3,884,721	1,642,362
William J. Guste Elementary	11,205,678	11,195,600
Walter L. Cohen Senior High	1,034,541	1,032,631
Total	\$57,001,399	\$50,286,884

Source: OIG analysis of FEMA and Louisiana.gov records



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FEMA officials were aware of the CDBG funding when they awarded funds for Alternate Project 19166. Although they accepted responsibility to ensure public assistance applicants did not receive duplicate benefits, FEMA officials also contended that HUD was actually responsible for ensuring there was no duplication of benefits between FEMA and HUD. This would not have been possible because HUD had approved funding first. Specifically, HUD's approval for the 19 schools occurred between 2007 and 2009 — before approval of Alternate Project 19166 in September 2010. As a result, HUD was not in a position to prevent the duplication of benefits. For the 19 schools in question, as of April 2017, HUD has already disbursed \$50.3 million, or 88 percent, of the \$57 million. We question \$57 million for ineligible duplicate benefits RSD received from HUD CDBG funding. As a separate issue, we identified another \$27.5 million in FEMA awards that potentially duplicated CDBG funds. Of the total 29 sites, 7 CDBG applications valued at \$27.5 million did not contain detailed descriptions of work. Therefore, we were unable to determine whether FEMA awarded funds for the same repairs covered by CDBG funds and whether duplicate benefits were provided. The remaining 3 applications for the 29 sites did not duplicate the scope of Alternate Project 19166.

Both of the issues occurred because FEMA did not follow established procedures for awarding Federal funds.

FEMA's Funding of Portable Buildings Not Owned by RSD Resulted in Ineligible Funding

To be eligible for financial assistance, an item must be the legal responsibility of an eligible applicant.¹⁵ Ownership is generally sufficient to establish responsibility.¹⁶ Further, according to Federal regulations, grant funds are only for allowable costs.¹⁷

To support Alternate Project 19166, FEMA awarded \$2.6 million for eight portable school buildings leased, but not owned, by RSD. Upon our request, FEMA could not provide proof of ownership for a number of portable units. Specifically, when approving Alternate Project 19166, FEMA officials could not account for eight leased portable school buildings included in RSD's request, costing \$321,703 each, totaling \$2.6 million. RSD originally stated the units were not included in the project worksheet. When shown contrary evidence, RSD recanted its initial statement and claimed the units were the legal responsibility of the OPSB. However, neither OPSB nor RSD were the legal

¹⁵ 44 CFR 206.223(a)(3).

¹⁶ FEMA's *Public Assistance Guide*, FEMA 322, October 1999, page 25.

¹⁷ 44 CFR 13.22(a).



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owners of the units. Figure 3 shows the timeline for the portable school buildings from lease inception to award of Alternate Project 19166.

Figure 3. Timeline of Portable School Buildings from Lease to Award



Source: OIG analysis of FEMA and RSD records

OPSB entered into an equipment lease for the eight portable units in October 1999. According to the lease terms, OPSB was responsible for paying the insurance premiums but the leasing company would receive any proceeds from the insurance policy for damages, such as those caused by Hurricane Katrina.

In October 2005, a representative of the leasing company stated the leasing company owned the units, and the units were a total loss due to wind and wind-driven rain caused by Hurricane Katrina. In December 2005, the leasing company retained legal counsel after extensive efforts to resolve its damage claim with OPSB. The leasing company requested \$397,737 for damages to the leased units, and filed a lawsuit in the United States District Court for the Eastern District of Louisiana against the insurance company to recover those damages and other relief. In January 2007, the leasing company settled the lawsuit for \$439,288. As a result, the units' estimated replacement cost should not have been included in Alternate Project 19166. FEMA agreed with our determination that the eight portable buildings in question were ineligible for FEMA funds, based on the terms and conditions of the lease agreement. FEMA also agreed to deobligate the associated \$2.6 million.

Further, during our review of legal responsibility for the 8 portable school buildings, we identified 84 additional portable buildings included in Project 19166 valued at \$35.2 million. Upon asking for proof of ownership for the 84 portable units, neither FEMA nor RSD could provide evidence verifying ownership or legal responsibility. In response to our request, FEMA officials stated, "typically FEMA establishes ownership or legal responsibility by collecting and reviewing titles, deeds, bill of sales, leases (where applicable), and insurance policies." However, to verify ownership, FEMA relied solely on OPSB's insurance policy Schedule of Reported Values, which proved to be unreliable.



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Delayed and Recurring Damage Assessments Led to Increased Cost

According to Federal regulations, FEMA will restore an eligible facility to its pre-disaster design through either repair or replacement of the facility,¹⁸ but damages must be the direct result of a disaster to be eligible for FEMA financial assistance.¹⁹ FEMA conducted initial damage assessments of 35 school facilities in April 2006 (about 8 months after Hurricane Katrina), which was reasonable given the disastrous conditions. However, FEMA performed multiple reassessments of the 35 facilities for years after the initial assessments. Of the 35 facilities:

- Six underwent subsequent assessments that deemed them eligible for replacement between 30 and 50 months after the initial assessments of repair.
- Twenty-six underwent subsequent assessments that deemed them eligible for replacement between 13 and 28 months after the initial assessments for repair.
- Three underwent subsequent assessments that deemed them eligible for replacement between 10 and 12 months after the initial assessments for repair.

If a disaster-damaged facility remains unrepaired and exposed to weather and potential vandalism for an extended duration, it is likely the facility will deteriorate further. FEMA officials acknowledged this in documents pertaining to Livingston Middle School, stating, “Despite applicant’s prudent measures to protect their facility, but due to the catastrophic nature of the event, lack of resources, and a shortage of contractors, these measures fell short and left the building in a state of continuing decline.” In another example, even during its initial April 2006 damage assessment of the Annex Building at Little Woods Elementary School, conditions had already deteriorated. Mold was prevalent throughout the facility due to high humidity, moisture, and lack of ventilation. After the initial April 2006 assessment, FEMA concluded the construction cost to repair the Annex Building was 46 percent of the construction cost to replace it. However, nearly 2 years later, in February 2008, FEMA concluded the construction cost to repair the Annex Building had increased to 78 percent of the replacement cost, resulting in replacement eligibility. As a result, eligible funding increased from \$635,611 to \$2,248,739, a 254 percent increase.

¹⁸ 44 CFR 206.226(f)(1) – A facility is considered repairable when disaster damages do not exceed 50 percent of the cost of replacing a facility to its pre-disaster condition.

¹⁹ 44 CFR 206.223(a)(1) – To be eligible for financial assistance, an item of work must be required as the result of the major disaster event.



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FEMA performed multiple reassessments of all 35 facilities, ultimately resulting in their replacements instead of less costly repairs. In particular, eight of these facilities were reassessed two or more times. In accordance with FEMA policy²⁰ and the CFR,²¹ the eight facilities were initially deemed eligible for repair because the cost of repairing them did not reach the 50 percent threshold for replacement. However, at the request of RSD, FEMA conducted several subsequent reassessments and finally determined the facilities should be replaced. Reaching the 50 percent threshold entitles an applicant to substantially more funding based on the full replacement cost of a facility. The final assessments resulting in FEMA's replacement decisions ranged from 1 to 4 years after initial assessments. The decisions to replace instead of repair the facilities increased awards by \$34.6 million.

For example, FEMA performed its initial damage assessment of Project 15174, Florence Chester Elementary School Classrooms, in May 2006. The result of the assessment estimated the repair cost at \$296,700. A second assessment in February 2008, nearly 2 years later, increased the repair cost to \$1,047,034, or 19 percent of replacement cost. Finally, in April 2009 — 3 years after the initial assessment — FEMA performed its final assessment. At that time, FEMA determined the repair cost was 51 percent of replacement cost, which meant the facility was eligible for replacement, costing \$8,193,710. The decision to replace instead of repair the facility resulted in a 2,662 percent increase in cost from the initial to the final assessment. Table 4 lists sites that received multiple assessments, which resulted in increased awards.

²⁰ FEMA Policy 9524.4, September 24, 1998 - Construction cost refers to only those costs allowed in the numerator (repair cost) and denominator (replacement cost) of the 50 Percent Rule calculation. The construction cost to repair a facility is the cost of repairing disaster damage and does not include demolition of the entire facility (demolition essential to the repair only of the damaged elements may be included), design associated with upgrades, site work, applicable project management cost, contents, or hazard mitigation measures. The construction cost to replace a facility is the cost of replacing a facility based on its pre-disaster design and in accordance with applicable codes and standards. It does not include demolition, site work, applicable project management cost, contents, or hazard mitigation measures.

²¹ 44 CFR 206.226(f)(1).



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Table 4. Effect of Recurring Assessments on Repair versus Replace Decisions

Project Worksheet	Date of Assessment	Percentage Damage	Restoration Cost per CEF	Initial/Final Assessment Difference
13085 Lake Area Middle School Gym	July 2006	No percent given	\$ 200,623	
	September 2007	13%	334,146	
	December 2007	31%	817,328	
	July 2010	54%	\$1,608,231	\$ 1,407,608
12433 Carver Complex High School Gym	June 2006	44%	\$1,583,986	
	March 2007	42%	2,374,717	
	August 2007	53%	\$8,484,139	\$ 6,900,153
13469 Bradley Elementary School – Building A	July 2006	42%	\$1,991,994	
	November 2006	44%	2,682,599	
	August 2007	53%	\$8,068,804	\$ 6,076,810
14783 Florence Chester Elementary School Cafeteria	October 2006	No percent given	\$ 91,109	
	February 2008	27%	591,752	
	April 2009	59%	\$2,397,834	\$ 2,306,725
15174 Florence Chester Elementary School Classrooms	May 2006	No percent given	\$296,700	
	February 2008	19%	1,047,034	
	April 2009	51%	\$8,193,710	\$ 7,897,010
12141 Gregory High School – Building C	May 2006	No percent given	\$ 684,053	
	February 2008	31%	2,250,247	
	July 2009	48%	3,355,008	
	August 2010	55%	\$8,066,930	\$ 7,382,877
12948 Barbra Jordan Library	June 2006	No percent given	\$ 114,520	
	February 2008	17%	444,062	
	June 2009	71%	\$1,090,690	\$ 976,170
13286 Livingston Middle School – Building B	July 2006	41%	\$567,481	
	February 2008	40%	\$1,013,718	
	May 2009	54%	\$2,256,356	\$ 1,688,875
Total Difference				\$34,636,228

Source: OIG analysis of project worksheet data on LouisianaPA.com

FEMA's recurring assessments for repair or replacement eligibility cast uncertainty over whether these 35 facilities were classified correctly since they were exposed to the elements and vandalism for as long as 5 years after the disaster occurred. As a result, FEMA cannot confirm Hurricane Katrina was the direct cause of damages discovered during the assessments and should review the 35 facilities and reclassify their eligibility for repair or replacement



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as appropriate. Additionally, FEMA should deobligate funds, as appropriate, based on the difference between the replacement and repair costs to prevent potential fraud, waste, and abuse of Federal funds.

Recommendations

Recommendation 1: We recommend the Regional Administrator, Federal Emergency Management Agency Region VI, deobligate \$156.6 million from Alternate Project 19166 for ineligible funds it awarded for completed Quick Start schools and follow established Federal regulations and Federal Emergency Management Agency guidelines for obligating funds.

Recommendation 2: We recommend the Regional Administrator, Federal Emergency Management Agency Region VI, deobligate \$57 million from Alternate Project 19166 for ineligible duplicated benefits the Recovery School District received from Community Development Block Grant funds and follow established Federal regulations and Federal Emergency Management Agency guidelines for preventing duplication of funds.

Recommendation 3: We recommend the Regional Administrator, Federal Emergency Management Agency Region VI, examine the seven Community Development Block Grant applications valued at \$27.5 million, which failed to detail the scope of work to ensure no duplication exists.

Recommendation 4: We recommend the Regional Administrator, Federal Emergency Management Agency Region VI, deobligate \$2.6 million from Alternate Project 19166, as agreed, for ineligible cost for portable school buildings, which were not the legal responsibility of the Recovery School District.

Recommendation 5: We recommend the Regional Administrator, Federal Emergency Management Agency Region VI, collect and review titles, deeds, bills of sale, or leases to verify ownership and eligibility of the remaining 84 portable units valued at \$35.2 million, and deobligate funds accordingly.

Recommendation 6: We recommend the Regional Administrator, Federal Emergency Management Agency Region VI, validate an applicant's ownership and legal responsibility for work items to avoid awarding ineligible funding.

Recommendation 7: We recommend the Regional Administrator, Federal Emergency Management Agency Region VI, to implement policies and procedures to specify a reasonable timeframe to assess damages comprehensively.



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Recommendation 8: We recommend the Regional Administrator, Federal Emergency Management Agency Region VI, re-evaluate documented proof of assessments for the 35 identified projects; reclassify them, as appropriate, to repair-eligible; and deobligate the cost difference as appropriate.

Management Comments and OIG Analysis

FEMA provided its written response to the report on July 7, 2020. FEMA concurred with recommendations 2 through 7, but did not concur with recommendations 1 and 8. We received technical comments on the draft report, including information FEMA did not provide during the course of the audit, and revised the report as appropriate. This included revising the recommended amount of deobligation in recommendation 1. As a reminder, it is important for the auditee to provide accurate and complete information during the course of the audit to ensure balanced reporting of all facts. Appendix B contains FEMA's management comments in their entirety. We consider recommendations 2, 3, 5, and 6 resolved and open with an estimated completion date of May 31, 2021. Recommendations 4 and 7 are resolved and open with an estimated completion date of November 30, 2020. We consider recommendations 1 and 8 unresolved and open. A summary of FEMA's responses and our analysis follows.

FEMA Comments to Recommendation #1: FEMA did not concur with the recommendation, stating the FEMA Region VI Administrator affirmed the cost per square foot (SF) and the application of the 50 Percent Rule are reasonable. FEMA's management response details the steps taken to affirm costs in support of the application of the 50 Percent Rule.

In summary, FEMA validated the \$267.67 per SF construction cost, using: (1) competitive low bids for four RSD Quick Start Schools, (2) FEMA's analysis of 16 local contracts/17 facilities for unit cost information, and (3) regional and national historical unit cost information provided by School Planning and Management Magazine's "2009 Annual School Construction Report," published in February 2009.

In order to reevaluate the 50 Percent Rule after applying the updated \$267.67 per square foot to each facility, FEMA would need to reevaluate cost eligibility and the 50 Percent Rule for each of the 143 facilities. Although this action would change the eligibility determinations for some facilities from replacement-eligible to repair-eligible, FEMA believed doing so requires changing the history and the context of the intent under Section 552 of the Omnibus Bill.



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The Omnibus Bill did not include provisions for a retroactive analysis of critical eligibility determinations. As Section 552 of the Omnibus Bill eventually became the foundation for Section 1102 of the *Sandy Recovery Improvement Act* (SRIA) of 2013 (Public Law 113-2), signed by the President on January 29, 2013, FEMA references SRIA to further clarify the intent of Section 552 of the Omnibus Bill.

Section 1102 of SRIA revised the Stafford Act by creating a new Section 428, which allowed FEMA to implement certain provisions as a pilot program until the regulations could be changed. The goals of FEMA's SRIA Public Assistance Alternate Procedures are to: (1) reduce costs to the Federal Government, (2) increase flexibility in the administration of assistance, (3) expedite the delivery of recovery funds, and (4) provide financial incentives for timely and cost-effective completion of Public Assistance funded projects. FEMA requested that OIG consider this recommendation resolved and closed.

OIG Analysis of FEMA's Response: We partially agree with FEMA's comments and actions taken. Therefore, this recommendation is unresolved and open. We agree FEMA properly validated the \$267.67 square footage cost used for the uncompleted work. However, we disagree FEMA can use the \$267.67 to determine obligated costs for the completed Quick Start schools.

FEMA properly validated the \$267.67 square footage cost used for the uncompleted work. In its management response, FEMA provided additional evidence concerning the total square footage of 581,804 for the completed Quick Start schools. We agree the \$265.92 and \$250.41 per square foot are within 10 percent of the RSD-requested \$267.67 and can be used as an estimate to obligate funding for uncompleted construction. As such, we no longer question \$117.4 million in costs for uncompleted work.²²

However, FEMA's own policies do not authorize use of the estimated \$267.67 for the completed Quick Start schools. Initially, the finding and recommendation addressed both completed (Quick Start schools) and uncompleted construction. The version of the CEF guide cited by FEMA in its comments states, to qualify for CEF consideration, a project must be less than 50 percent complete, or take 4 or more months to be 90 percent complete. If a large project does not meet this standard, FEMA should use actual costs to award funding.²³ Finally, FEMA Public Assistance Policy Digest 321 states

²² FEMA obligated \$178.7 million for uncompleted work. However, in that amount, FEMA included \$61.3 million for the already completed Quick Start schools. Since we are not questioning uncompleted work due to FEMA's additional evidence, the \$61.3 million should be included in the questioned costs for the completed Quick Start schools.

²³ The same approach applies under the version of the CEF guide in place when FEMA approved Alternative Project 19166, which states that, to qualify for CEF consideration, a project must be less than 90 percent complete.



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grant amounts are based on actual costs if the subgrantee completes the work at the time of the request for public assistance. Prior to RSD's \$267.67 square footage request, it completed three of the four schools, and nearly completed the fourth school. FEMA also validated the completions in its official comments, stating that prior to obligation of Alternate Project 19166 in 2010, FEMA used the estimated final costs and square footage for the four RSD Quick Start schools in Orleans Parish as one factor for its evaluation.

Based on the additional evidence FEMA provided with its management response, we revised recommendation 1. Specifically, we reduced the recommended deobligation by \$117.4 million to reflect FEMA's proper validation of the \$267.67 square footage cost used for the uncompleted work. However, we continue to recommend FEMA deobligate \$156.6 million from Project 19166, which is the increase in completed work funding for the Quick Start schools when FEMA transferred the scope of work from Alternate Project 18597 to 19166.

When FEMA provides a response with an estimated completion date, evidence of actions taken to address why funding for completed work was increased \$156.6 million, and its actions to deobligate that funding, we will reconsider the recommendation for resolution and closure.

FEMA Comments to Recommendation #2: FEMA concurred with the recommendation. The FEMA Region VI Administrator will examine the 19 Community Development Block Grant (CDBG) projects and will take corrective measures for any FEMA-funded scope of work duplicated by CDBG funding to prevent a duplication of benefits. Estimated Completion Date (ECD): May 31, 2021.

OIG Analysis of FEMA's Response: FEMA's actions are responsive to the intent of the recommendation. This recommendation will remain resolved and open with a target completion date of May 31, 2021.

FEMA Comments to Recommendation #3: FEMA concurred with the recommendation. The FEMA Region VI Administrator will examine the seven CDBG projects. FEMA will take corrective measures for any FEMA-funded scope of work duplicated by CDBG funding to prevent a duplication of benefits. ECD: May 31, 2021.

OIG Analysis of FEMA's Response: FEMA's actions are responsive to the intent of the recommendation. This recommendation will remain resolved and open with a target completion date of May 31, 2021.

FEMA Comments to Recommendation #4: FEMA concurred with the recommendation. The FEMA Region VI Administrator will review



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documentation for the eight portable school buildings, including legal responsibility and insurance offset issues. FEMA will take corrective measures as needed. ECD: November 30, 2020.

OIG Analysis of FEMA's Response: FEMA's actions are responsive to the intent of the recommendation. This recommendation will remain resolved and open with a target completion date of November 30, 2020.

FEMA Comments to Recommendation #5: FEMA concurred with the recommendation. The FEMA Region VI Administrator will review available documentation to confirm the 84 portable units were the legal responsibility of New Orleans Public School System/RSD at the time of the declared disaster. If any portable units are determined not to have been the legal responsibility of the Orleans Parish School Board or Recovery School District, FEMA will de-obligate corresponding funding. ECD: May 31, 2021.

OIG Analysis of FEMA's Response: FEMA's actions are responsive to the intent of the recommendation. This recommendation will remain resolved and open with a target completion date of May 31, 2021.

FEMA Comments to Recommendation #6: FEMA concurred with the recommendation. The FEMA Region VI Administrator follows established Federal and state laws and regulations when validating an applicant's ownership and legal responsibility for work items. FEMA will institute a regional briefing to educate FEMA staff on ownership and legal responsibility validation. ECD: May 31, 2021.

OIG Analysis of FEMA's Response: FEMA's actions are responsive to the intent of the recommendation. This recommendation will remain resolved and open with a target completion date of May 31, 2021.

FEMA Comments to Recommendation #7: FEMA concurred with the recommendation. The FEMA Region VI Administrator will provide information on agency policy changes instituted since Hurricane Katrina in 2005. The updated policy will address the timeframe for an applicant to report damage to FEMA. ECD: November 30, 2020.

OIG Analysis of FEMA's Response: FEMA's actions are responsive to the intent of the recommendation. This recommendation will remain resolved and open with a target completion date of November 30, 2020.

FEMA Comments to Recommendation #8: FEMA did not concur with the recommendation. In summary, FEMA stated the FEMA Region VI Administrator affirms its eligibility determinations, which established the 35 facilities as replacement-eligible following a comprehensive assessment of each



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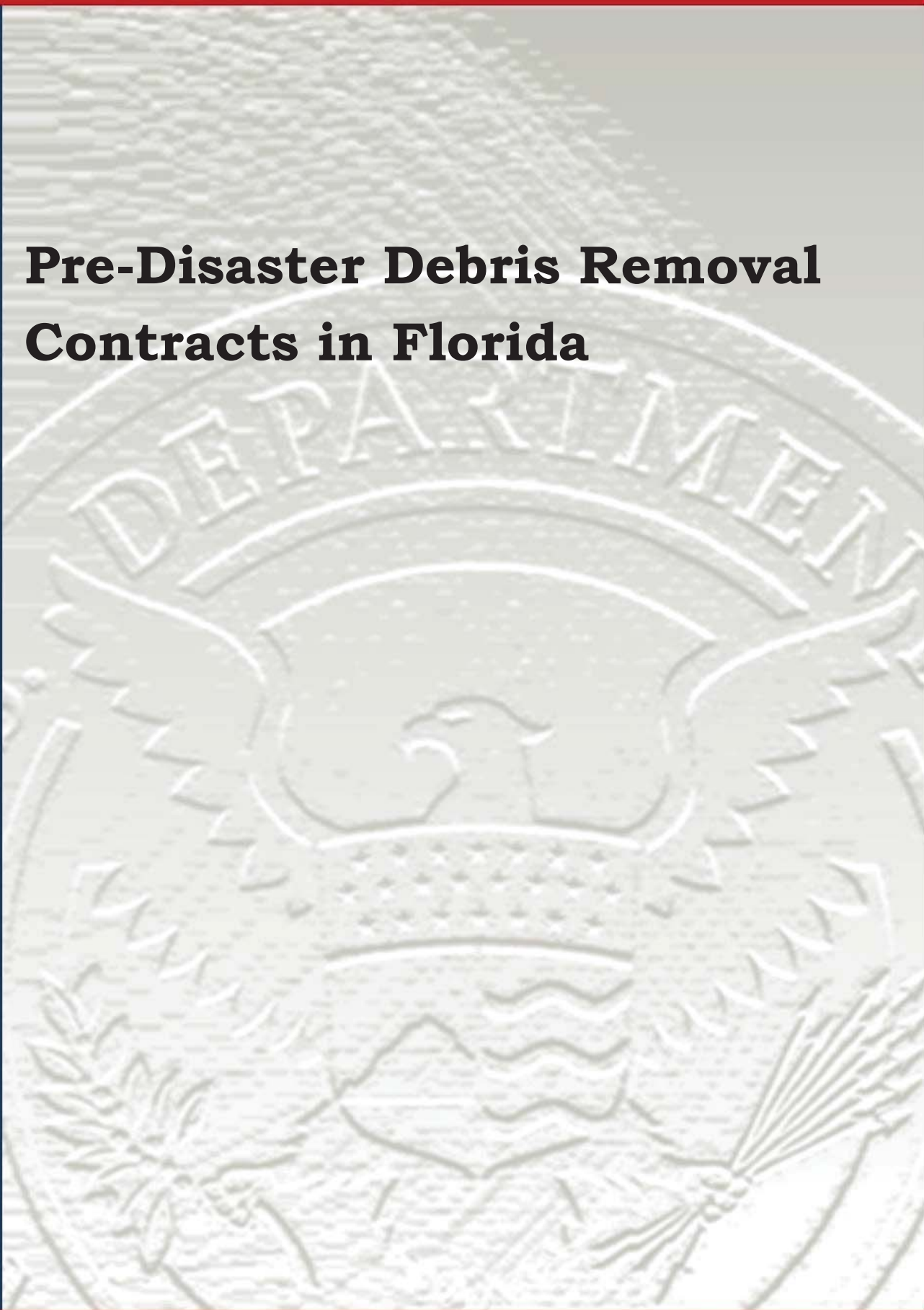
structure. Further, FEMA stated it is important to note that these 35 projects are included in the 143 brick and mortar replacement facilities discussed in the response to recommendation 1.

OIG Analysis of FEMA's Response: We disagree with FEMA's comments and actions taken as they do not address our concerns regarding the frequency, duration, and outcome of the damage assessments. Therefore, this recommendation is unresolved and open.

We agree the 35 projects are included in the 143 brick and mortar replacement facilities discussed in the response to recommendation 1. However, this point does not address our finding regarding repair versus replacement decisions. Furthermore, the letter issued by the City of New Orleans Chief Electrical Inspector on October 25, 2005, does not justify the repeated assessments by FEMA. At the time of the initial damage assessments, FEMA was aware that electrical equipment required replacement and should have included it in the initial repair/replacement decisions. Nevertheless, FEMA continued to reassess some buildings up to 5 years later. FEMA states that industry-trained inspectors conducted the field assessments, identified the damaged elements, and developed and refined the scope of work for each facility. Additionally, FEMA said it took every precaution to ensure it was only addressing eligible Katrina-related damage as time passed. However, these continued reassessments were vulnerable to loss of evidence due to deterioration and/or demolition of buildings left exposed to the elements. The passage of time FEMA allowed between assessments and from initial to final assessment as shown in Table 4 indicate FEMA did not take every precaution to ensure it only addressed eligible Katrina-related damages.

When FEMA provides a response that addresses our concerns regarding the frequency, duration, and outcome of the damage assessments along with an estimated completion date and evidence of actions taken, we will reconsider the recommendation for resolution and closure.

Pre-Disaster Debris Removal Contracts in Florida





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Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

August 11, 2020

MEMORANDUM FOR: The Honorable Peter T. Gaynor
Administrator
Federal Emergency Management Agency

FROM: Joseph V. Cuffari, Ph.D. **JOSEPH V. CUFFARI** Digitally signed by
Inspector General JOSEPH V CUFFARI
Date: 2020.08.07
18:20:35 -04'00'

SUBJECT: *Pre-Disaster Debris Removal Contracts in Florida*

For your information is our final report, *Pre-Disaster Debris Removal Contracts in Florida*. We are providing this report to make FEMA aware of our observations and other issues brought to our attention by several Florida counties, cities, and municipalities concerning pre-disaster debris removal contracts. This report contains no recommendations and, as such, we consider this review closed.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Sondra McCauley, Assistant Inspector General for Audits, at (202) 981-6000.

cc: Deputy Associate Administrator, Office of Response and Recovery, FEMA



DHS OIG HIGHLIGHTS

Pre-Disaster Debris Removal Contracts in Florida

August 11, 2020

Why We Did This Review

The Department of Homeland Security Office of Inspector General initiated a review of the response to Hurricane Irma. The objective was to assess the Federal Emergency Management Agency's (FEMA) and the State of Florida's response and recovery activities as a result of the major disaster declaration. During our review, we identified debris removal contract performance issues and concerns. This report discusses observations regarding the use of pre-disaster debris removal contracts in Florida following Hurricane Irma.

Recommendations

This report contains no recommendations.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

At least 50 Florida municipalities reported one or more contract performance issues with their pre-disaster debris removal contracts after Hurricane Irma made landfall in September 2017. Multiple factors, including a shortage of subcontractors and poor contracting practices, contributed to the costly delays. As a result, some locations in Florida experienced higher debris removal costs.

FEMA was generally unaware of which municipalities were experiencing debris removal contract issues in Florida. When localities reached out for assistance, FEMA did not have a method to track common issues. Without proper visibility, FEMA is unable to identify, assess, respond, and report on risks as they emerge during disaster recovery operations.

Finally, FEMA did not require proper documentation to support debris removal costs. This lapse in process occurred because FEMA provided insufficient training to FEMA officials responsible for reviewing public assistance projects. As a result, FEMA reimbursed \$14.1 million (\$11.8 million in Federal cost share) for debris removal costs for five projects that were not adequately documented, and approved \$20,989 in potentially ineligible costs. FEMA later provided supporting cost documentation, but as of July 2020, FEMA had not included the documentation in its systems of record. DHS OIG also has an ongoing audit of debris removal procurements in Monroe County, and will report on the extent to which FEMA ensured the procurements met Federal procurement requirements and FEMA guidelines, following Hurricane Irma.

FEMA Response

This report contains no recommendations, so we consider the report closed. Although not required, FEMA provided written comments, which we have included in Appendix B.



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Abbreviations

CFR	Code of Federal Regulations
CRC	Consolidated Resource Center
EMMIE	Emergency Management Mission Integrated Environment
FEMA	Federal Emergency Management Agency
JFO	Joint Field Office
OCC	Office of Chief Counsel
OIG	Office of Inspector General
PA	Public Assistance
PAAP	Public Assistance Alternative Procedures
PDAT	Procurement Disaster Assistance Team
U.S.C.	United States Code



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Background

When a disaster or emergency generates large amounts of debris, eligible recipients and subrecipients may request Public Assistance (PA) grant funding from the Federal Emergency Management Agency (FEMA) to offset expenses incurred for debris removal operations.¹ According to FEMA's *Public Assistance Program and Policy Guide*, FEMA is authorized to provide funding for debris removal activities eligible for reimbursement, including if the removal is in the public interest, based on whether the work:

- eliminates immediate threats to lives, public health, and safety;
- eliminates immediate threats of significant damage to improved public or private property;
- ensures economic recovery of the affected community to the benefit of the community at large; or
- mitigates risk to life and property by removing substantially damaged structures and associated structures.

Debris removal costs can be significant, averaging about one-third of total damage costs per hurricane.² Debris includes, but is not limited to, vegetative debris, construction and demolition debris, sand, mud, silt, gravel, rocks, boulders, and vehicle and vessel wreckage.

Hurricane Irma's Impact on Florida

On September 10, 2017, the President approved a Major Disaster Declaration (DR-4337-FL) when Hurricane Irma struck the State of Florida. FEMA approved the State of Florida for reimbursement of debris removal costs (Category A) for all 67 counties after Hurricane Irma.³ As of May 2019, 661 municipalities reported \$1.39 billion in estimated debris removal costs related to Hurricane Irma.

¹ Recipients can be states, territories, or tribal entities, while subrecipients are applicants, such as municipalities, that receive sub-awards from pass-through entities (recipients) to carry out part of a Federal program.

² Based on our analysis of FEMA PA Summary (S.5) Reports for DR 1539 FL, DR 1545 FL, DR 1551 FL, DR 1609 FL, DR 1792 LA, DR 4019 NC, and DR 4086 NJ.

³ To facilitate the processing of PA funding, FEMA separates Emergency Work (immediate threat) into two categories: (A) Debris removal and (B) Emergency protective measures.



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Figure 1 illustrates our observations of roadside debris 3 months after Hurricane Irma made landfall.



Figure 1: Roadside Debris

Source: DHS Office of Inspector General (OIG)

Federal Reimbursement of Debris Removal Costs

FEMA's *Public Assistance Program and Policy Guide* provides guidance to state and local entities for all PA programs, including debris removal. According to PA guidance, FEMA will reimburse state and local entities 75 percent of eligible debris removal costs from Federal funding. The remaining 25 percent is the non-Federal cost share, which is the responsibility of the state or local entity. In October 2017, the President authorized a 90 percent Federal cost share for debris removal for one period of 30 consecutive days, established by the State of Florida, after Hurricane Irma. After that initial period, state and local entities were reimbursed at FEMA's standard 75 percent Federal reimbursement rate.⁴

FEMA requires state and local entities seeking reimbursement to maintain source documentation supporting project costs such as records of debris removal, disposal operations, and eligible associated costs. This documentation serves as the basis for the project FEMA uses to review eligibility, assess reasonableness of costs, and ultimately authorize grant reimbursements to state and local entities.

⁴ On August 23, 2019, the President amended the Hurricane Irma disaster declarations of September 10, 2017, and October 2, 2017, to authorize a 90 percent Federal cost share for all categories of PA, including debris removal, except assistance previously approved at 100 percent.



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Federal and FEMA Procurement Guidance

According to FEMA's PA guidance, state, territorial, tribal, and local governments are encouraged to establish written procedures and guidance for managing debris in an expeditious, efficient, and environmentally sound manner. FEMA refers to these procedures as a debris management plan. Additionally, Federal law authorizes FEMA to provide an incentive to encourage local governments to submit a debris management plan with one or more prequalified debris removal contractors.⁵ A pre-qualified contractor is one that the municipality has evaluated and determined to be qualified to perform the work based on capabilities, such as technical and management skills, prior experience, past performance, and availability. Local governments generally do not have the resources to manage the amount of debris generated from a catastrophic disaster on their own and often rely on contractors to perform much of the debris removal activities. Pre-qualified contractors are not guaranteed contracts; the local government must still conduct full and open competition and must allow additional contractors to qualify during the solicitation period for post-disaster contracts.

In addition, some local governments may opt to negotiate one or more pre-disaster contracts before a disaster strikes. Based on the local government's procurement process, the best-qualified bid would be selected as the primary pre-disaster contract. FEMA defines a pre-disaster contract as a contract that the local government procures prior to the incident period, in anticipation of a disaster, with a scope of work that covers goods or services to support recovery efforts. In contrast, a post-disaster contract is a contract procured by the local government after the incident occurs. The local government must comply with Federal procurement standards for both pre-disaster and post-disaster contracts used to recover from a disaster.

⁵ Establishing pre-qualified debris removal contractors is a requirement for entities electing to participate in the Public Assistance Alternative Procedures (PAAP) pilot. 42 United States Code (U.S.C.) § 5189f(e)(2)(E); see also 42 U.S.C. § 5189f(a) and (b) (providing FEMA with the authority to establish public assistance alternative procedures). For more information on the PAAP pilot, see FEMA's *Public Assistance Alternative Procedures Pilot Program Guide for Debris Removal* (Version 5) (June 28, 2017).



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FEMA's Procurement Disaster Assistance Team

The Procurement Disaster Assistance Team's (PDAT) mission is to ensure that FEMA personnel and nonprofit, local, tribal, state, regional, and national emergency management personnel are familiar with the Federal procurement standards applicable to FEMA's PA disaster grants to facilitate compliance with these standards. FEMA created PDAT in response to our February 2014 report recommendations.⁶ Specifically, we found instances when FEMA personnel provided incomplete and, at times, inaccurate information to PA applicants regarding Federal procurement standards. We recommended FEMA provide training to Joint Field Office (JFO) PA and Office of Chief Counsel staff on Federal procurement standards.

The PDAT consists of nine attorneys who deploy directly to the field during the disaster recovery phase to provide real-time training, guidance, and reference materials to municipalities affected by a disaster.⁷ The PDAT may also provide training to deployed PA staff to help identify and remedy procurement issues that may arise when a municipality solicits and awards contracts. The PDAT does not approve debris removal rates for local governments, nor did it provide sample contracts after Hurricane Irma, as FEMA generally does not review or approve pre-disaster contracts.

Results of Review

At least 50 Florida municipalities reported one or more contract performance issues with their pre-disaster debris removal contracts after Hurricane Irma made landfall in September 2017. Multiple factors, including a shortage of subcontractors and poor contracting practices, contributed to the costly delays. As a result, some locations in Florida experienced higher debris removal costs.

FEMA was generally unaware of which municipalities were experiencing debris removal contract issues in Florida. When localities reached out for assistance, FEMA did not have a method to track common issues. Without proper visibility, FEMA is unable to identify, assess, respond to, and report on risks as they emerge during disaster recovery operations.

Finally, FEMA did not require proper documentation to support debris removal costs. This lapse in process occurred because FEMA provided insufficient

⁶ *FEMA's Dissemination of Procurement Advice Early in Disaster Response Periods*, OIG-14-46-D, February 28, 2014

⁷ The phases of emergency management include (1) mitigation, (2) preparedness, (3) response, and (4) recovery. The disaster recovery phase includes actions taken to return to a normal or improved operating condition following a disaster.



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training to FEMA officials responsible for reviewing PA projects. As a result, FEMA reimbursed \$14.1 million (\$11.8 million in Federal cost share) for debris removal costs for five projects that were not adequately documented, and approved \$20,989 in potentially ineligible costs. FEMA later provided supporting cost documentation, but as of July 2020, FEMA had not included the documentation in its systems of record.

Debris Removal Contract Performance Issues

At least 50 Florida municipalities reported one or more contract performance issues with their pre-disaster debris removal contracts after Hurricane Irma made landfall. Multiple factors, including a shortage of subcontractors and poor contracting practices, contributed to the costly delays. As a result, some locations in Florida experienced higher debris removal costs.

Types of Contract Issues Reported by Municipalities

Federal law authorizes FEMA to provide an incentive to encourage local governments to submit a debris management plan with one or more pre-qualified debris removal contractors. Local governments may also opt to negotiate one or more pre-disaster contracts.

In Florida, some local governments went beyond Federal guidelines and negotiated one or more pre-disaster debris removal contracts. However, these contracts did not perform as intended after Hurricane Irma. At least 50 Florida municipalities reported one or more performance issues with their pre-disaster debris removal contracts established prior to the hurricane. Issues included primary pre-disaster contracts not being honored in 22 of 50 municipalities, and additional pre-disaster contracts not being honored in 10 of these 22 municipalities. According to local officials, 43 of 50 municipalities also experienced performance deficiencies, such as time delays and contractors with a lack of, or limited, equipment and equipment operators. Additionally, for 19 of 50 municipalities, the pre-disaster contractor requested modifications to the pre-disaster negotiated rate.

Figure 2 illustrates the types of contract issues reported by municipalities. Appendix C, table 1, provides additional details by municipality about the performance issues.



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Figure 2. Debris Removal Contract Issues Reported



Source: DHS OIG analysis of information provided by Florida municipalities.

*The total number of issues listed is more than the number of municipalities because some municipalities expressed multiple issues.

These 50 municipalities established pre-disaster debris removal contracts in efforts to secure lower rates and have debris removal contractors readily available immediately after a disaster. However, in some instances, municipalities competing new contracts at higher post-disaster market rates drove up the cost for subcontractors. As a result, contractors reported they could not retain the subcontractors based on pre-disaster negotiated rates.

Some municipalities provided detailed accounts of their struggles to obtain and retain debris removal contractors immediately following Hurricane Irma.

- Municipality #34 reported it had two pre-disaster contracts for debris collection. Its primary pre-disaster contractor informed Municipality #34 in September 2017 it was unable to perform because it lacked resources, such as equipment or equipment operators, immediately after the disaster; Municipality #34 later canceled the contract. The other pre-disaster contractor provided services in September 2017, but also lacked sufficient equipment and operators. Consequently, the municipality executed post-disaster contracts to supplement its debris removal operation.
- Municipality #48 reported it executed five pre-disaster contracts, but none of the contractors could obtain the equipment or equipment operators necessary to fulfill the contract terms. In September 2017, two contractors indicated that their subcontractors were leaving in favor of higher paying post-disaster contracts after achieving minor progress in removing debris. As a result, the municipality modified the contracts to increase prices and retain the two subcontractors.
- Municipality #4 executed six pre-disaster debris removal contracts;



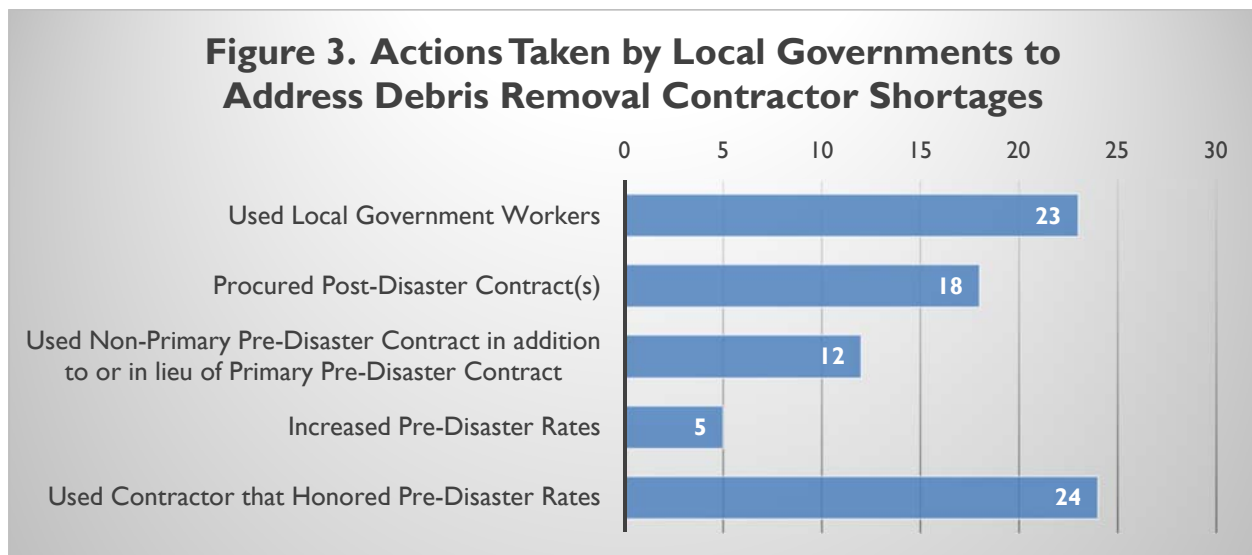
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however, its primary contractor was unresponsive to calls and the secondary contractor left 5 days after Hurricane Irma occurred. The contractor claimed the municipality did not have enough debris and that it preferred to deploy its resources elsewhere. The other four pre-disaster debris removal contractors could not find equipment and equipment operators to execute removal operations, and were ultimately unable to provide any services to the municipality. In October 2017, the municipality entered into a post-disaster contract to perform its debris removal.

Municipalities that reported performance issues with their pre-disaster debris removal contracts negotiated new contracts, modified existing pre-disaster contracts at higher rates, used local government workers to remove debris, or waited weeks for pre-disaster contractors to respond.

Figure 3 illustrates the actions taken by local governments to address debris removal contractor shortages. Appendix C, table 2, provides additional details of the actions taken by local governments to address this problem.



Source: DHS OIG analysis of information provided by local municipalities in Florida.

*Note: The total number of actions taken is more than 50, because some municipalities took one or more actions.

Some municipalities provided detailed accounts of actions taken to address debris removal contractor shortages following Hurricane Irma.

- Of the 50 municipalities that experienced contract-related performance issues, 23 municipalities told us they used local government workers for debris removal. In some instances, municipalities used local government workers because the pre-disaster contractors did not show up or provided insufficient resources. For instance, Municipality #11 told us



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that a week after the storm, its pre-disaster contractor communicated that it would be unable to provide trucks for at least 2 more weeks. The municipality decided to remove all storm-generated debris with its own forces.

- Eighteen municipalities negotiated new contracts, six at higher rates. For example, in October 2017, Municipality #13 issued three new debris removal contracts to replace its pre-disaster contractor, resulting in a cost increase of approximately \$13.44 per cubic yard to remove debris.
- Twelve municipalities used a pre-disaster contractor other than the primary when the primary pre-disaster contractor could not fully perform the necessary debris removal activities. For 9 of the 12 municipalities, using pre-disaster contractors other than the primary contractors increased debris removal costs. For example, Municipality #19 never received a response from its primary pre-disaster contractor, but its secondary pre-disaster contractor was able to assist with debris removal services at a rate of \$1.85 more per cubic yard.
- Five municipalities modified their pre-disaster contracts, resulting in increased rates of as much as \$8.00 more per cubic yard than the pre-disaster rates.
- For 24 municipalities, the pre-disaster contractors ultimately honored their pre-disaster contracts at the previously negotiated rates. Many of these contractors provided some services immediately after the disaster, but fully performed only after completing work in other municipalities that paid higher post-disaster rates.

Multiple Factors Contributed to Pre-Disaster Debris Removal Contract Issues

We found that a shortage of subcontractors and poorly defined or missing contract provisions may have contributed to the debris removal contract issues in Florida.

National Shortage of Subcontractors

Within a 3-week period in 2017, Hurricanes Harvey and Irma made landfall in Texas, Florida, and Georgia, causing widespread flooding and powerful winds. Soon after, Hurricane Maria affected Puerto Rico and the U.S. Virgin Islands. According to FEMA Office of Chief Counsel (OCC) officials, contractors in Florida said that these major storms occurring within weeks of each other caused a nationwide shortage of debris removal subcontractors and equipment, preventing them from honoring the pre-disaster contracts. One contractor also



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told OCC that it contacted or attempted to contact each of the subcontractors in its collective network, and sought referrals for outside subcontractors. However, the contractor claimed that the unprecedented volume and geographically disbursed demand for debris removal services exceeded the capacity of available subcontractor equipment or equipment operators. In addition, the contractor asserted that subcontractors had fled to jurisdictions that were paying higher rates, exacerbating the shortage of available assistance. Based on our discussions with FEMA officials at the JFO in Orlando and the Area Field Office in Miami, FEMA could not confirm or deny the contractor's statements because FEMA was not tracking subrecipient debris removal issues. Additionally, as we reported in our related September 2018 Management Alert, FEMA officials did not perform field monitoring of debris removal operations, which may have provided better visibility of these issues.⁸

Missing Contract Provisions and Poorly Defined Contract Terms

Missing provisions and poorly defined contract terms may have contributed to delays and contract disputes in Florida. Applicable Federal regulations require federally funded non-Federal entity contracts to include specific provisions to allow a municipality to opt out of a contract for cause or convenience.⁹

We reviewed 34 pre- and 9 post-disaster contracts (43 total) to determine whether any of them described consequences of breach of contract,¹⁰ and addressed contract termination for cause or convenience.¹¹ Appendix C, table 3, provides additional details on these 43 contracts. Of the 43 contracts we reviewed, 12 were missing provisions to terminate for cause or convenience. Without such provisions, a municipality has limited options when a contractor does not perform as expected.

We also reviewed the contracts to determine whether they stipulated milestones or timeframes for debris removal. Although not federally required, such milestones could help more clearly define terms for contract performance. In fact, prior FEMA guidance for debris management states that each contract should have a well-defined scope of work, specified costs, a basis of payment,

⁸ *Management Alert – Observations of FEMA's Debris Monitoring Efforts for Hurricane Irma*, OIG-18-85, September 2018

⁹ 2 Code of Federal Regulations (CFR) Pt. 200, App. II(B)

¹⁰ 2 CFR Pt. 200, App. II(A)

¹¹ 2 CFR Pt. 200, App. II(B)

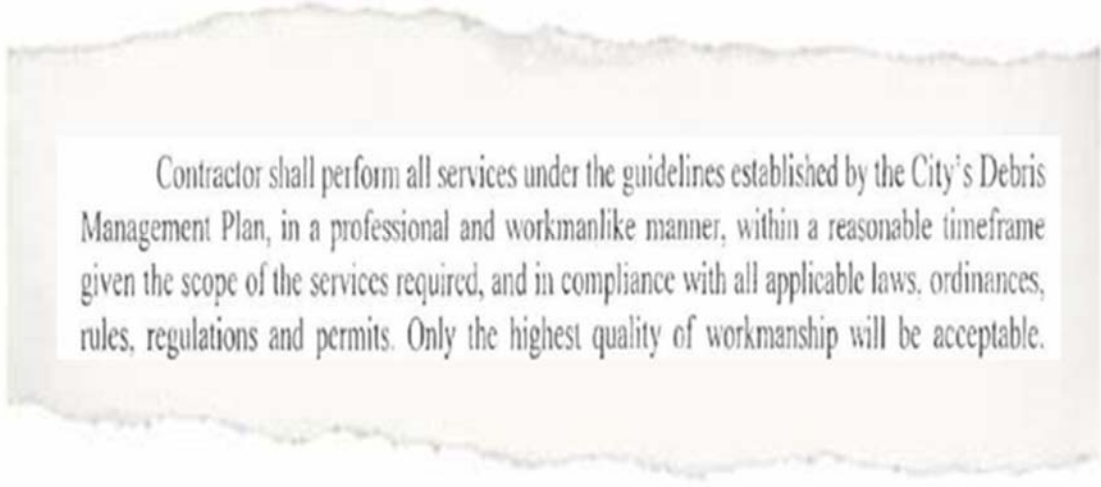


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and a performance schedule.^{12,13} We determined that 28 of the 43 contracts did not establish timeframes for completing debris removal. Additionally, 32 of the 43 contracts did not include specific performance milestones for debris collection, such as committing the contractor to collect a minimum amount of debris in a set number of calendar days.¹⁴ Figure 4 contains an excerpt regarding performance terms.

Figure 4: Excerpt from Municipality #22 Contract



Contractor shall perform all services under the guidelines established by the City's Debris Management Plan, in a professional and workmanlike manner, within a reasonable timeframe given the scope of the services required, and in compliance with all applicable laws, ordinances, rules, regulations and permits. Only the highest quality of workmanship will be acceptable.

Source: Contract between Municipality #22 and a debris removal contractor

In this contract, the term “reasonable timeframe” was not defined, leaving the contract terms open to interpretation. Furthermore, according to State officials, some contractors agreed to honor existing pre-disaster contracts after performing work for higher paying municipalities first. We asked State officials for a list of debris removal contractors that did not honor their pre-disaster contracts, but did not receive a reply by the end of our fieldwork in August 2019. Ultimately, affected municipalities waited with limited recourse for their pre-disaster contractors to fulfill their contract obligations.

¹² Debris Management Brochure, FEMA-329 (June 29, 2006)

¹³ Our report, *Management Alert Observations of FEMA's Debris Monitoring Efforts for Hurricane Irma* (OIG-18-85, September 2018), describes other instances where FEMA's *Public Assistance Program and Policy Guide* does not provide adequate guidance for disaster management after FEMA consolidated older, more detailed guides.

¹⁴ As of October 2018, only 6 of these 43 debris removal contracts had undergone FEMA review.



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Debris Removal Delays Increased Costs

Some municipalities experienced increased debris removal costs. Of the 50 municipalities within our scope, 13 experienced price increases when contractors did not honor their pre-disaster contracts and the municipalities instead used other contractors. Rate increases ranged from \$0.05 to \$16.94 per cubic yard of debris removed, or a .3 percent to 109.6 percent increase in cost. Appendix C, table 4, provides additional details on the per cubic yard rates charged. For example, Municipality #49 resorted to using its secondary pre-disaster contractor when its primary pre-disaster contractor did not perform duties as outlined in the contract. As a result, Municipality #49 experienced a cost increase of \$1.25 per cubic yard, or an additional \$563,586, to have debris removed.

FEMA Did Not Track the Extent of Debris Removal Issues in Florida

According to the *Post-Katrina Emergency Management Reform Act of 2006*, FEMA is responsible for providing state, territorial, tribal, and local governments with the Federal leadership necessary to prepare for, protect against, respond to, recover from, or mitigate against disasters.¹⁵ This responsibility includes supervising grant programs. Additionally, Office of Management and Budget Circular A-123 reminds Federal leaders and managers that they are responsible for implementing management practices that identify, assess, respond to, and report on risks. However, as we reported in September 2018, when FEMA issued its latest PA guide, it eliminated Federal and state monitoring responsibilities for debris removal operations originally established in FEMA's *2010 Public Assistance Debris Monitoring Guide*.¹⁶

FEMA officials were generally unaware of which municipalities were experiencing debris removal issues during the Hurricane Irma response and recovery phase. For example, according to the Hurricane Irma Federal Coordinating Official, FEMA had not identified debris removal contractor performance as an issue as of October 26, 2017, almost 7 weeks after the Federal disaster declaration and start of debris removal activities. This official agreed that tracking common issues across a disaster could be beneficial for making informed decisions.

¹⁵ 6 U.S.C. § 314(a)

¹⁶ *Management Alert Observations of FEMA's Debris Monitoring Efforts for Hurricane Irma*, OIG-18-85, September 2018



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While FEMA was responsive by providing guidance and information to municipalities when requested, it did not have a formal method to track and address common debris issues. For example, FEMA's PDAT received requests from 13 municipalities on debris contract-related topics, including 7 municipalities that requested FEMA perform a review of debris-related contracts and 6 municipalities that submitted various procurement related questions.¹⁷ In response, PDAT provided these municipalities with information, such as the proper use of modified pre-disaster and emergency contracts. For instance, PDAT officials provided us with a memo containing techniques for making a price modification to an existing contract; a frequently-asked-questions document regarding sole sourcing in exigency or emergency circumstances; and techniques for making fair and reasonable price determinations.¹⁸ However, FEMA officials did not proactively disseminate this PDAT guidance to all local governments in Florida. FEMA's decision to limit the dissemination of this guidance, its inability to track debris issues, and its decision to eliminate field monitoring adversely affected FEMA's ability to assist subrecipients with debris removal issues.

The PDAT also provided Federal procurement information to entities that attended its training sessions. We determined that 22 of the 50 municipalities with debris removal contract issues attended a PDAT training session between October and November 2017. However, FEMA JFO did not have any documentation of issues or concerns raised by these entities. FEMA officials in Florida were unaware of the extent to which the debris removal contract issues affected local governments and disseminated procurement guidance on a limited basis. In these circumstances, without proper visibility of municipality issues or concerns, FEMA was generally unable to effectively manage and identify, assess, respond to, and report on risks as they emerged during disaster recovery operations.

FEMA Obligated Funds without Supporting Documentation

According to Federal procurement regulations and FEMA's PA guide, all procurement transactions must be conducted in a manner providing full and open competition.¹⁹ Additionally, procurement regulations require that FEMA review supporting documentation to determine the eligible amount for which each large project can be reimbursed before approving eligible costs.²⁰ To

¹⁷ Of the municipalities included in this review, municipalities #31 and #45 requested PDAT assistance.

¹⁸ The FEMA Federal Coordinating Officer for Hurricane Harvey (DR-4332-TX) signed the memo *Debris Removal Contracts and Price Amendments FEMA-4332-DR-TX* on September 15, 2017. Appendix D contains a copy of the memo.

¹⁹ 2 CFR § 200.319(a)

²⁰ 44 CFR § 206.205(b)(2)



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ensure these requirements are met, FEMA's PA guide requires documentation substantiating that the work is eligible, and provides a list of information the municipality should submit to support costs claimed.

According to FEMA officials at the JFO, the program delivery manager is responsible for ensuring the municipality has uploaded all required documentation to FEMA's grants management system before routing a project to the Consolidated Resource Center (CRC). The CRC staff is responsible for reviewing the project to determine whether there is sufficient documentation to support work eligibility and that contracts were procured in accordance with Federal requirements in order to recommend reimbursement. The CRC then routes projects for final review and obligation by the JFO.

However, FEMA officials at the CRC and the JFO did not always follow these procedures for requiring proper documentation when reviewing debris removal projects for reimbursement. As of October 2018, 4 of the 50 municipalities in our review submitted 8 debris removal projects for reimbursement, totaling \$18,743,659 (\$15,645,306 Federal cost share). For 5 of the 8 projects, neither the FEMA Grants Manager nor the Emergency Management Mission Integrated Environment (EMMIE) systems contained documentation to support claimed costs.²¹ Specifically, FEMA's systems of record did not contain one or more of the following items for each of the five projects:

- invitations to bid;
- requests for proposal;
- bid tabulations and rankings;
- documented justifications for not using first ranked contractors;
- change orders;
- source documentation; or
- documented justifications for use of emergency or exigency contracts.

Nonetheless, FEMA officials approved costs and obligated \$14,095,875 (\$11,802,254 Federal cost share) for the five projects that may not have been procured properly and may have included ineligible costs. Appendix E, table 5, provides additional details on these costs.

²¹ EMMIE is the official system of record for grant administration and funding. The Grants Manager is a tool that complements EMMIE by automating and enhancing grant processing. Grants Manager is used by FEMA employees to assign and track action throughout PA project development, and to collect all PA project-related information and documents. The CRC Document Integrity Unit ensures all information and documentation in EMMIE matches the information and documentation in Grants Manager.



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Additionally, of the eight projects reviewed, we identified one instance when the CRC recommended for approval debris removal costs that were not supported by the executed contract. Specifically, Municipality #26 should have submitted a request for \$488,201 based on the applicable contract terms. However, it submitted a request for reimbursement of \$509,190. In this case, FEMA officials did not compare the claimed rate to the contract rate for accuracy and therefore approved \$20,989 in potentially ineligible costs. When asked about project review requirements, FEMA officials stated that, for large projects, they do not perform 100 percent validation and only review sampled costs. FEMA officials also were unable to show us their methodology for sample selection. During preparation of our report, we reached out to JFO officials and obtained missing documentation supporting the request for reimbursement. However, as of July 2020, FEMA had not yet included the documentation in EMMIE.

According to a FEMA JFO official, failure by the CRC and JFO staff to follow FEMA procedures occurred because FEMA did not provide sufficient training to its employees to identify missing documentation to support claimed costs or to ensure the claims were reviewed at all.

Because FEMA did not require documentation to support costs, it may have approved ineligible costs. In total, FEMA reimbursed \$14.1 million (\$11.8 million in Federal cost share) for debris removal costs for five projects that were not adequately documented. Additionally, FEMA officials approved \$20,989 in potentially ineligible costs. DHS OIG has an ongoing audit of debris removal procurements in Monroe County, Florida and will report on the results of the review.²² The objective of the review is to determine the extent to which FEMA ensured procurements for Monroe County debris removal operations met Federal procurement requirements and FEMA guidelines, following Hurricane Irma.

Management Comments and OIG Analysis

Because this report contains no recommendations, we consider it closed. Although not required, FEMA submitted a management response to the draft report, raising concerns regarding two of our observations. We have addressed those concerns below and included FEMA's written response in Appendix B.

FEMA Comment: The statement that "FEMA had not identified debris removal contractor performance as an issue as of October 26, 2017," is incorrect.

²² *Procurement of Debris Removal Services for Monroe County, FL, Following Hurricane Irma (18-127-AUD-FEMA)*



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OIG Analysis: We disagree with FEMA's assertion. According to Hurricane Irma JFO officials we interviewed from October 17-26, 2017, some applicants were experiencing debris removal issues. However, FEMA officials were unable to provide a comprehensive list of these applicants or their concerns. After numerous requests, FEMA's PDAT provided email correspondence regarding 13 municipalities that had reached out to FEMA PDAT with questions or concerns, as discussed in this report. During the course of the audit and at the exit conference, we asked FEMA to provide additional documentation to support its statements that it had monitored debris removal contractor performance issues related to Hurricane Irma. However, FEMA did not provide any additional evidence to support its statements. FEMA's lack of oversight and situational awareness prevented it from using the challenges experienced by local municipalities to inform its policy development, procurement, and cost review processes, as well as its coordination efforts with the State of Florida. Therefore, we stand by our statement.

FEMA Comment: In accordance with Federal regulations, PA grant program applicants are responsible for providing oversight of debris removal activities for which costs are claimed. Applicants must monitor these activities — including all contracted debris operations — to ensure work performed complies with applicable Federal requirements and claimed work and costs meet PA grant program eligibility criteria.

OIG Analysis: We disagree. Although the PA grant program requires applicants to monitor debris activity, FEMA is responsible for the overall performance of the PA program and the greater share of the costs. As FEMA stated in its response, FEMA staff are supposed to review and validate the documentation that applicants submit to FEMA to support their requests for funding. However, as we determined during this review, FEMA obligated \$14.1 million in costs (\$11.8 million in Federal cost share) for debris removal costs for five projects that were not adequately supported by documentation. FEMA's failure to track known procurement and debris removal issues, coupled with its failure to review and validate supporting documentation for debris costs, increases the risk that FEMA is reimbursing millions of dollars of ineligible costs.

**Inadequate Management
and Oversight Jeopardized
\$187.3 Million in FEMA
Grant Funds Expended by
Joplin Schools, Missouri**





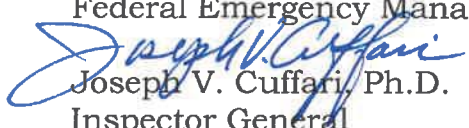
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Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

June 19, 2020

MEMORANDUM FOR: The Honorable Pete T. Gaynor
Administrator
Federal Emergency Management Agency

FROM: 
Joseph V. Cuffari, Ph.D.
Inspector General

SUBJECT: *Inadequate Management and Oversight Jeopardized
\$187.3 Million in FEMA Grant Funds Expended by
Joplin Schools, Missouri*

Attached for your information is our final report, *Inadequate Management and Oversight Jeopardized \$187.3 Million in FEMA Grant Funds Expended by Joplin Schools, Missouri*. We incorporated the formal comments provided by the Regional Administrator, Region VII.

The report contains nine recommendations aimed at improving the disaster grant management of Joplin Schools, Missouri. The Regional Administrator, Region VII, concurred with all nine recommendations. Based on information provided in the response to the draft report, we consider recommendations 1 to 4 and 8 closed, recommendations 5 to 7 resolved and open and recommendation 9 unresolved and open. For recommendations 5 to 7, a formal closeout letter should be submitted once the recommendations have been fully implemented or by your target completion date of June 1, 2020. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions and of the disposition of any monetary amounts.

As prescribed by the Department of Homeland Security Directive 077-01, *Follow-up and Resolutions for the Office of Inspector General Report Recommendations*, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) target completion date, and (2) corrective action plan for recommendation 9. Also please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until the Regional Administrator, Region VII, response is received and evaluated, recommendation 9 will be considered open and unresolved. The response or closure request should be sent to OIGAuditsFollowup@oig.dhs.gov.

Consistent with our responsibility under *the Inspector General Act*, we will provide copies of our report to congressional committees with oversight and



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appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Sondra McCauley, Assistant Inspector General, Office of Audits, at (202) 981-6000.

Attachment



DHS OIG HIGHLIGHTS

Inadequate Management and Oversight Jeopardized \$187.3 Million in FEMA Grant Funds Expended by Joplin Schools, Missouri

June 19, 2020

Why We Did This Audit

As of December 2017, Missouri had granted Joplin Schools \$152.7 million in FEMA Public Assistance Program grant funds for damages caused by a May 22, 2011 tornado. Joplin Schools claimed \$218.5 million in disaster-related costs, which is \$65.8 million more than the FEMA award. Our audit objective was to determine whether Joplin Schools accounted for and expended FEMA disaster grant funds according to Federal regulations and FEMA guidelines.

What We Recommend

We recommended FEMA improve its management and oversight of the grant process and not allow \$187.3 million in ineligible costs claimed by Joplin School District.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

Joplin Schools did not account for and expend \$187.3 million of \$218.5 million of the requested Federal share of grant funds according to Federal regulations and Federal Emergency Management Agency (FEMA) guidelines when it awarded 146 contracts for non-exigent work. Specifically, Joplin Schools:

- did not comply with Federal procurement regulations for contract provisions and affirmative steps in awarding construction contracts;
- did not comply with Federal procurement regulations in awarding its grant management contract; and
- claimed ineligible direct administrative costs related to its grant management contract.

This occurred because Joplin School officials were either unaware of or did not understand procurement regulations. Joplin School officials also disregarded Missouri's authority and relied heavily on the advice of their grant management contractor.

Improper management and oversight of the grant award further put the Federal funds at risk of fraud, waste, and abuse. Specifically, Joplin Schools did not comply with administrative requirements of its subgrant agreement. Missouri did not enforce program and administrative requirements or impose restrictions on Joplin Schools for noncompliance. Additionally, FEMA's oversight was limited and passive, and it did not hold Missouri accountable for effectively managing Joplin Schools' subgrant activities. As a result of these collective deficiencies, we questioned Joplin Schools' costs of \$187.3 million, which include ineligible direct administrative costs.

FEMA Response

FEMA concurred with all nine recommendations and completed actions to close recommendations 1 to 4 and 8. Recommendations 5 to 7 are resolved and open, with target completion dates of June 1, 2020. Recommendation 9 is considered unresolved and open. We have included a copy of FEMA's comments in their entirety in appendix B.



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Abbreviations

CFO	Chief Financial Officer
CFR	Code of Federal Regulations
DAC	direct administrative costs
FEMA	Federal Emergency Management Agency
GSA	General Services Administration
HGACBuy	Helping Governments Across the Country Buy
OIG	Office of Inspector General
PA	Public Assistance
SOP	standard operating procedures
U.S.C.	United States Code



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Background

On May 22, 2011, a slow moving, three-quarter-mile-wide EF-5 tornado struck Joplin, Missouri, with winds in excess of 200 miles per hour.¹ Joplin Schools served 7,793 students in a 69.9 square mile area in Jasper County, Missouri, at the time of the disaster. The school district operated multiple facilities, including 13 elementary schools, three middle schools, and a high school. The tornado devastated the city and claimed 161 lives, including students and a school faculty member. As shown in figure 1, the tornado destroyed multiple buildings, including Joplin High School, which had to be totally reconstructed. The tornado also extensively damaged several other school and district facilities.

Figure 1: Destroyed and Rebuilt Joplin High School



Source: Joplin Schools (Joplin, Missouri)

Four days after the disaster, to allow immediate efforts to rebuild, the Missouri Governor waived the requirement for state and local agencies to adhere to normal state procurement regulations. Joplin School officials said they used the Governor's waiver and the school board's policy for waiving competition requirements to procure goods and services in

¹ The Enhanced Fujita (EF) Scale is a measurement rating system for the intensity of tornadoes by type and severity of impact, ranging from EF-0 (weak) to EF-5 (violent). An EF-5 tornado has estimated wind speeds at over 200 miles per hour.



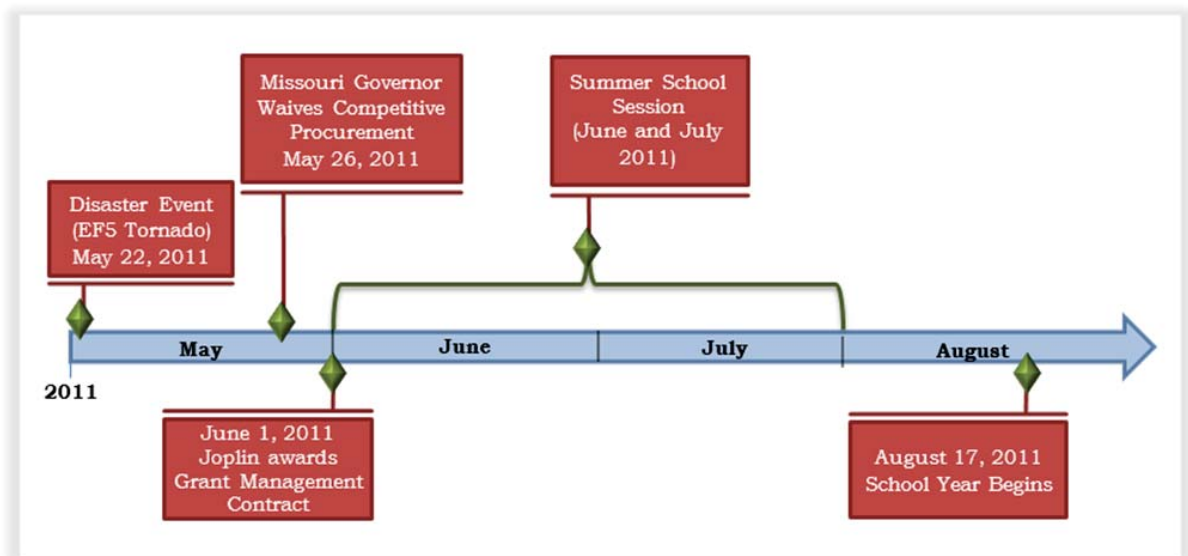
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emergencies. As a result, Joplin Schools hired a grant management contractor about 10 days after the tornado to assist with the disaster recovery process. In the summer of 2011, Joplin School officials said they secured temporary school facilities and transportation for 3,200 displaced students. When the school reopened in August 2011, the Federal Emergency Management Agency (FEMA) had not provided funding for the estimated damages and Joplin Schools was still negotiating its property insurance settlement.

The community's need to reopen schools was an exigent circumstance.² Accordingly, Joplin Schools' exigency period lasted from May 22, 2011, until August 17, 2011, the date Joplin Schools reopened schools. After the school year began, Joplin Schools' Chief Financial Officer (CFO) said normal competitive procurement procedures for disaster-related contracts had resumed. Figure 2 provides a timeline of events from May 2011 to August 2011 detailing the school district's actions to reopen the schools. For the next 3 years, Joplin School officials said they held the majority of classes and administrative services in temporary facilities and continued to replace and repair damaged facilities using contracted services.

Figure 2: Exigent Period to Reopen Joplin Schools



Source: Office of Inspector General (OIG) analysis of Joplin Schools' contract files

² According to FEMA guidance, exigent circumstances represent those actions required to protect lives and property at the immediate outset of an emergency event or the existence of a threat to public health, public safety, or other unique circumstances that warrant immediate action.



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We audited a FEMA Public Assistance (PA) Program grant of \$152.7 million that the Missouri State Emergency Management Agency (Missouri), a FEMA grantee, awarded to Joplin Schools for damages sustained from the EF-5 tornado. Although granted \$152.7 million, Joplin Schools claimed a gross amount of \$218.5 million in reported disaster-related costs to replace and repair buildings and equipment.³ Of the \$218.5 million that Joplin Schools claimed in costs, \$187.3 million represented non-exigent contract work. As shown in table 1, Joplin Schools' final insurance proceeds reduced the gross eligible award amount of \$152.7 million to a net eligible award of \$55.7 million.⁴ Seventy-five percent of the net eligible award of \$55.7 million was federally funded. By September 2014, Joplin Schools started classes in its improved and modernized school buildings. As of June 2016, Joplin Schools had submitted final claims to Missouri for all project costs.

Table 1: Claimed Disaster Expenses, Insurance Reduction, and Gross and Net Award Amounts, Joplin Schools, Missouri

Joplin Schools' Claimed Disaster Expenses (All Projects)	Gross Eligible Award	FEMA's Insurance Reduction	Net Eligible Award
\$218,458,382	\$152,680,718	\$96,982,746	\$55,697,972

Source: OIG analysis of FEMA project worksheets

Key personnel, such as the CFO of Joplin Schools, with direct knowledge of the disaster work left the school district before our audit work was completed. In March 2018, Joplin School officials notified us about a district-wide reorganization of management personnel and staff turnover. The reorganization and turnover mean that many of the current Joplin School officials were not involved in the actions and decisions described in this report.

³ The \$218.5 million Joplin claimed was \$65.8 million more than the gross eligible FEMA-awarded amount of \$152.7 million. Joplin later appealed FEMA's denials to increase its funding by \$67.2 million, which was greater than its actual cost overruns of \$65.8 million calculated at the time of our audit.

⁴ Our audit scope covered the review of disaster transactions during the period of May 22, 2011, through December 26, 2017, the cutoff date of the audit. After the cutoff date, as part of Joplin Schools' appeals process, FEMA continued to review Joplin Schools' insurance proceeds and cost overruns. Therefore, the current award amounts and insurance reduction may differ from the amounts shown in table 1.



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Results of Audit

Joplin Schools did not account for and expend \$187.3 million of \$218.5 million of the requested Federal share of grant funds according to Federal regulations and FEMA guidelines when it awarded 146 contracts for non-exigent work. Specifically, Joplin Schools:

- did not comply with Federal procurement regulations for contract provisions and affirmative steps in awarding construction contracts;
- did not comply with Federal procurement regulations in awarding its grant management contract; and
- claimed ineligible direct administrative costs (DAC) related to its grant management contract.

This occurred because Joplin School officials were either unaware of or did not understand procurement regulations. Joplin School officials also disregarded Missouri's authority and relied heavily on the advice of their grant management contractor.

Improper management and oversight of the grant award further put the Federal funds at risk of fraud, waste, and abuse. Specifically, Joplin Schools did not comply with administrative requirements of its subgrant agreement. Missouri did not enforce program and administrative requirements or impose restrictions on Joplin Schools for noncompliance. Additionally, FEMA's oversight was limited and passive, and it did not hold Missouri accountable for effectively managing Joplin Schools. As a result of these collective deficiencies, we questioned Joplin Schools' costs of \$187.3 million, which include ineligible DAC.

Joplin Schools Did Not Properly Account For and Expend FEMA Grant Funds

Joplin Schools did not always follow Federal procurement regulations when it awarded \$187.3 million in contracts for non-exigent disaster-related repairs and replacement. For its construction contracts, Joplin Schools did not include all required Federal contract provisions or take affirmative steps to ensure disadvantaged firms had opportunities to compete for the contracts. In awarding its grant management contract, Joplin Schools did not comply with all Federal procurement regulations. Specifically, in awarding the grant management contract, Joplin Schools did not comply with the requirement for full and open competition. Joplin Schools also did not include Federal contract provisions, ensure



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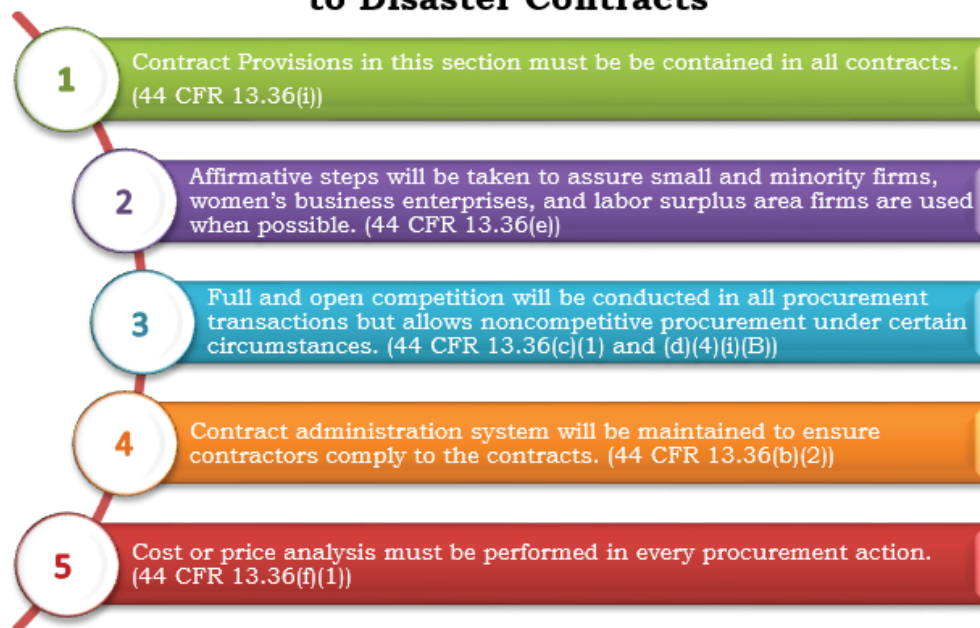
disadvantaged firms had opportunities to compete, monitor contract award terms and conditions, and complete a cost or price analysis.

This noncompliance occurred because Joplin School officials were either unaware of or did not understand Federal procurement regulations and because they relied heavily on incorrect guidance from the grant management contractor. Joplin School officials also did not follow FEMA's guidance on DAC. In particular, for the grant management contract, Joplin Schools claimed \$609,676 in DAC that was ineligible because it included costs for indirect activities, costs above contract rates, and costs based on unreasonable rates.

Joplin Schools Did Not Include Required Contract Provisions or Take Affirmative Steps in Awarding Construction Contracts

The Code of Federal Regulations (44 CFR 13.36) requires subgrantees, such as Joplin Schools, to adhere to the regulations shown in figure 3 when awarding disaster contracts.⁵

Figure 3: Federal Procurement Regulations Related to Disaster Contracts



Source: Federal Regulations at 44 CFR 13.36

⁵ Because of the disaster date, we did not use the 2014 disaster criteria and terminology found in 2 CFR 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. We primarily applied 44 CFR, effective October 2010, as the governing criteria to evaluate Joplin Schools' public assistance damages considered in this audit, as applicable.



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However, our review of judgmentally selected construction contracts showed that Joplin Schools did not include all required Federal contract provisions (the first regulation in figure 3, 44 CFR 13.36(i)) in any of its construction contracts. Instead, Joplin Schools' bid documents included the broad contract provision shown in figure 4 that contractors had to abide by all Federal requirements. This contract provision was not adequate because it did not reference the specific provisions cited by 44 CFR 13.36(i) and did not adequately document the rights and responsibilities of the parties involved. Using a contract provision such as shown in figure 4 increases the risk of misinterpretations and disputes.

Figure 4: Joplin Schools' Universal Construction-related Contract Provision

Each Contractor agrees to abide by all federal requirements, including Equal Employment Opportunity (Article 15.1), the Clean Air Act, the Federal Water Pollution Control Act and such other federal, state or local laws applicable to this project and to furnish any certification required by any federal, state or local government agency in connection with same.

Source: Joplin Schools' standard disaster-related bid documents

The noncompliance occurred, in part, because Joplin Schools did not fully understand what was required under Federal procurement regulations. According to the construction manager, the broad provision was standard language used in all of Joplin Schools' contracts.

Further, when awarding its construction-related contracts, Joplin Schools did not take affirmative steps to solicit disadvantaged firms, as required by 44 CFR 13.36(e). This occurred because Joplin Schools' officials said they were unaware of the requirement and did not recall receiving guidance from Missouri. Missouri officials acknowledged that they did not provide guidance to Joplin Schools, but claimed it was not needed because Joplin Schools did not have to take affirmative steps required by 44 CFR 13.36(e) until FEMA implemented 2 CFR 200. However, we disagree with Missouri's assertion that Joplin Schools was not required to comply because 44 CFR 13.36(e) was in effect at the time of the disaster. FEMA concurs with our position. Further, 2 CFR 200, when implemented in December 2014, did not introduce new procurement regulations, but instead consolidated and clarified various Office of Management and Budget circulars and Federal regulations.

Although Joplin Schools did not have steps in place to solicit disadvantaged firms, it inadvertently awarded contracts valued at



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\$33.5 million (15.6 percent of \$214.2 million in contracts) to disadvantaged firms. However, without deliberate action to solicit disadvantaged firms, FEMA has no assurance that small businesses, minority-owned firms, and women's business enterprises received sufficient opportunities to bid on federally funded work. During the audit, we verified that Joplin School officials updated Joplin Schools' procurement policies to include affirmative steps to solicit small and minority businesses and women's business enterprises when using Federal funds for future work.

Joplin Schools Did Not Comply with Required Federal Procurement Regulations when Awarding Its Grant Management Contract

In awarding its grant management contract immediately after the disaster, Joplin Schools did not comply with the five Federal procurement regulations shown in figure 3. During the exigent period, when Joplin Schools awarded the grant management contract, the Governor had waived requirements to follow normal state procurement standards. However, as detailed in the following paragraphs, Joplin Schools still needed to comply with Federal procurement regulations to receive Federal reimbursement.

Although Federal regulations [44 CFR 13.36(d)(4)(i)(B)] allow noncompetitive procurement in exigent situations, the grant management contract that Joplin Schools awarded was mostly for administrative support (e.g., compiling documents and attending meetings) and should have been subject to competition. Also, according to FEMA guidance, exigent circumstances represent those actions required to protect lives and property at the immediate outset of an emergency event or the existence of a threat to public health, public safety, or other unique circumstances that warrant immediate action. As such administrative support is not exigent; therefore, the work under the grant management contract was ineligible for reimbursement under exigent circumstances. Federal procurement regulations allow grantees and subgrantees to follow their own procurement standards as long as those standards conform to the Federal law and standards identified in 44 CFR 13.36. However, even Joplin Schools' own procurement standards required competition through sealed bids for all contracts above \$15,000.

Instead of ensuring full and open competition, as required, Joplin Schools continued to use the same improperly procured grant management contractor for almost 7 years after the disaster. Joplin Schools did so because it relied heavily on the contractor's guidance for



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re-awarding the grant management contract. The grant management contractor notified Joplin School officials in October 2011 that Joplin Schools was nearing the end of the time period that FEMA would find it reasonable for the school district to operate without a competitive procurement. Our interviews and document review further disclosed that the contractor misinformed Joplin Schools about ways to comply with full and open competition requirements after the exigent period ended. As shown in figure 5, the grant management contractor gave Joplin Schools three options that, according to the contractor, Joplin Schools could use to comply with Federal regulations for full and open competition while re-awarding the contract to itself. (See appendix D for the contractor's email outlining contracting options to Joplin Schools.)

Figure 5: Grant Management Contractor's Competition Recommendations



Source: OIG analysis of email from grant management contractor to Joplin Schools

* GSA is the Federal government's centralized purchasing agent. The GSA purchasing program offers products, services, and facilities to Federal agencies at discount pricing through Federal Supply Schedule contracts.

As shown in figure 5, according to the grant management contractor, the "fastest and easiest" mechanism to ensure re-award of the contract to itself was to use the shared services options provided through Helping Governments Across the Country Buy (HGACBuy).⁶ However, in following the contractor's guidance, Joplin Schools misused HGACBuy's shared services in two ways. First, Joplin School officials did not ensure they complied with Federal requirements, including full and open competition, when procuring the contract through HGACBuy.⁷ Second, Joplin Schools did not consider the other 10 pre-qualified contractors

⁶ HGACBuy is a department of the Houston-Galveston Area Council, a local government-contracting cooperative aimed at making the government procurement process more efficient by providing competitively priced contracts for goods and services to help its members achieve their purchasing goals. HGACBuy provides goods and services to local governments.

⁷ 44 CFR 13.36(b)(5)



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that were offering the same grant management service, when using HGACBuy. We made a similar determination in a prior audit, in which we concluded that using the shared services of the organization of which HGACBuy was a part, the Houston-Galveston Area Council, did not relieve grantees or subgrantees of the responsibility to fulfill requirements for full and open competition.⁸ In Joplin Schools' case, the contractor gave Joplin School officials inappropriate and biased information to steer them toward using a mechanism (HGACBuy) that the contractor claimed would meet Federal procurement requirements. This led to Joplin Schools re-awarding the contract to the same contractor.

For its grant management contract, Joplin Schools also did not comply with the other four Federal procurement regulations shown in figure 3. Joplin Schools did not include all federally required contract provisions. Joplin Schools also did not take sufficient steps to ensure disadvantaged firms had the opportunity to bid on the contract. Therefore, these types of disadvantaged business enterprises did not have an opportunity to bid on federally funded work. Joplin Schools also did not properly monitor the terms and conditions of the grant management contract award according to 44 CFR 13.36(b)(2). For example, Joplin School officials said they reviewed only a sample of the grant management contractor's invoices before authorizing payments, whereas it used a three-checkpoint review process for invoices from construction-related contractors. Joplin School officials said they used different procedures to monitor the grant management contractor because the contractor was onsite; therefore, we determined they did not take certain actions, such as validating time worked against work logs or invoiced amounts. Instead, they considered a sample review sufficient.

Although Federal regulations allow the use of shared services, Joplin Schools did not comply with the Federal procurement requirement to perform an independent cost or price analysis before it used HGACBuy to award the grant management contract. A cost or price analysis is required for all disaster procurements to determine whether vendor pricing for projects is fair and reasonable. Joplin School officials explained that, when re-awarding the contract, they considered the contractor's experience, qualifications, and services, along with Joplin Schools' immediate and future needs through project closeout. Officials also said they were concerned about the time and cost involved in changing vendors and possible disruptions to the recovery progress. Because Joplin Schools did not complete a cost or price analysis, it did

⁸ *FEMA Should Disallow \$1.5 Million in Grant Funds Awarded to Hays County, Texas*, OIG-17-77-D, issued June 22, 2017.



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not ensure the Federal government would pay fair and reasonable prices for the grant management service.

Joplin Schools Claimed Ineligible Direct Administrative Costs Related to the Grant Management Contract

According to Federal regulations and FEMA policy on DAC for disaster recovery projects:

- indirect costs may not be charged directly to a project or reimbursed separately (44 CFR 207.6(b));
- subgrantees are allowed to claim costs for eligible DAC activities, such as travel expenses, damage assessments, and development of scopes of work, that are specific to each project (FEMA Disaster Assistance Policy 9525.9, *Section 324 Management Costs and Direct Administrative Costs*, March 12, 2008); and
- costs must be necessary and reasonable to be allowable under Federal awards (2 CFR 225, Appendix A, Section C.1.a).

For the grant management contract, Joplin Schools claimed \$609,676 in DAC that was ineligible because it included costs for indirect activities, costs associated with rates for contractor work that were higher than the rates in the contract, and costs based on unreasonable rates. Table 2 shows Joplin Schools' DAC claims that were ineligible for the aforementioned reasons.

Table 2: Ineligible DAC Claimed by Joplin Schools Related to the Grant Management Contract

Projects*	Total Contractor DAC Claimed	Ineligible Costs			Total Questioned
		Costs for Indirect Activities	Costs for Rates Above Contract Rates	Costs Based on Unreasonable Rates	
Large Projects (23)	\$1,279,191	\$295,160	\$182,354	\$113,333	\$590,847
Small Projects (5)	27,292	5,566	11,377	1,886	18,829
Totals	\$1,306,483	\$300,726	\$193,731	\$115,219	\$609,676

Source: OIG analysis of FEMA project worksheets

*See appendix C for itemized list by project of ineligible DAC.

First, Joplin Schools claimed costs for indirect activities that were not related or billable to a specific project and thus could not be claimed as



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DAC, such as attending applicant briefings and FEMA kick-off meetings.⁹ In addition, Joplin Schools claimed DAC for activities related to multiple projects, which also made the costs ineligible. For instance, Joplin Schools claimed DAC for discussions that took place on the Joplin Schools high school grounds (Project 1336), but the discussions were actually about temporary fencing for multiple school properties. Therefore, the costs claimed were indirect costs. Joplin School officials said they held meetings to discuss multiple projects for efficiency, but they understood such administrative activities were eligible as DAC only if they were specific to a single project.

Second, Joplin Schools claimed costs the grant management contractor billed at rates exceeding contracted rates. For example, the grant management contractor billed \$168 per hour for a Public Assistance Coordinator whose contracted rate was \$134 per hour (\$34 more per hour). Joplin School officials said they reviewed the contracted DAC rates on a sample basis, which they believed was sufficient. However, such sampling did not enable Joplin Schools to detect excessive billed rates.

Third, Joplin Schools claimed unreasonable DAC based on contract rates that exceeded FEMA's capped rate. In June 2011, FEMA issued a memo to Missouri establishing a capped DAC rate of \$155 per hour, unless an applicant provided a cost analysis and justification for a higher hourly rate.¹⁰ In April 2013, during a second-level appeal process for another subgrantee, FEMA Headquarters upheld this capped rate.¹¹ Per Joplin Schools' CFO, Joplin Schools received FEMA's June 2011 memo early in the recovery process and used it to establish reasonable contract rates. However, the rates Joplin Schools claimed for a project manager under the grant management contract exceeded FEMA's capped DAC rate of \$155 per hour. Joplin School officials asserted that the project manager's rate of \$226 per hour was justified because of the complexity of the disaster, the extent of damages, and the project manager's knowledge and experience. Despite their assertion, Joplin School officials did not provide the required documentation to justify the rate,

⁹ FEMA's *Public Assistance Program Indirect and Direct Administrative Activity List*, an attachment to FEMA's Disaster Assistance Policy 9525.9 memo, September 8, 2009, provides a list of administrative activities that may be charged as indirect or direct administrative costs.

¹⁰ The June 23, 2011 memo to Missouri that capped the DAC hourly rate at \$155 also included a list of documentation required for FEMA to consider rates above the limit.

¹¹ On April 22, 2013, FEMA issued an appeal memo that denied additional DAC reimbursements for Cedar Rapids Community School District (FEMA-1763-DR-IA) applying \$155 per hour as a reasonable rate.



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and they submitted these costs for reimbursement, knowing FEMA would not approve the higher rate.

The ineligible DAC claims occurred because Joplin School officials did not properly monitor the terms and conditions of the grant management contract and did not follow FEMA's guidance on reasonable DAC rates. During closeout, Missouri officials identified issues related to ineligible costs for indirect activities and unreasonable DAC rates. They informed Joplin School officials that they should not include the costs in their reimbursement claim to FEMA. However, Joplin School officials insisted Missouri submit their entire DAC claim unaltered for FEMA's review.

Noncompliance Contributed to Ineffective Management and Oversight of the PA Program Grant Award

Joplin Schools, Missouri, and FEMA did not comply with program policies and administrative requirements of the PA Program to properly manage, monitor, and oversee the grant award. The lack of compliance further put Federal funds at risk of fraud, waste, and abuse.

Specifically, Joplin Schools did not comply with many of the program and administrative requirements of its subgrant agreement, such as reporting on project performance. As with its noncompliance with Federal regulations and FEMA guidelines, we attribute these issues, in part, to Joplin Schools disregarding Missouri's authority and instead relying heavily on the advice of its grant management contractor. Missouri, for its part, conceded its authority as the grant manager by not enforcing program and administrative plan requirements to ensure Joplin Schools adhered to Federal requirements and by not seeking enforcement remedies. Finally, FEMA Region VII took a limited and passive role in grant oversight and did not hold Missouri accountable for effectively managing its subgrantee Joplin Schools. Grant management contractors who provide guidance contrary to Federal regulations and FEMA policies can potentially jeopardize subgrantee funding and may limit FEMA's ability to reconcile obligations. Without effective oversight, FEMA cannot hold grantees and subgrantees accountable for complying with Federal regulations and FEMA policies.

Joplin Schools Did Not Properly Manage Its PA Program Grant Award

Federal regulations hold the subgrantee, Joplin Schools, accountable to Missouri for properly managing and expending PA Program grant funds. According to Federal regulations and FEMA policies, Joplin Schools, as a subgrantee, was required to submit supporting documentation to the



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grantee, Missouri, on the progress of its disaster recovery work.¹² Further, as a condition of grant award, Joplin Schools signed a subgrant agreement to comply with all program and administrative conditions of the FEMA grant, such as submitting quarterly program progress reports on the performance of all open and ongoing projects, requesting time extensions before existing completion dates expired, and submitting signed project completion certifications (P-4s) and closeout documents. According to Missouri officials, soon after the disaster, they provided program guidance to help Joplin Schools meet such requirements. They also said they attempted to provide guidance throughout the disaster recovery period. However, Joplin Schools disregarded this guidance. Instead, as noted earlier in this report, Joplin School officials chose to rely on their grant management contractor's conflicting advice.

Our document review showed that Joplin Schools did not fulfill its subgrantee responsibilities for managing the grant award. For example, Joplin Schools was supposed to submit to Missouri accurate and timely quarterly program progress reports on the performance of all large projects from October 2011 to June 2017. Our review of these documents showed that Joplin Schools submitted 13 of 24 required quarterly program progress reports. Joplin Schools submitted the 13 reports, on average, more than 2 months after the due dates, which was not useful for Missouri, or ultimately FEMA, to gauge project performance. Joplin School officials said they viewed submitting the reports as an administrative burden. They also said that the magnitude of the disaster recovery work made it challenging to submit the program progress reports on time. Finally, Joplin School officials said they did not believe that quarterly program progress reports were useful or important to their disaster recovery work.

In addition, although required by its subgrant agreement with Missouri, Joplin Schools continued to complete construction projects without getting Missouri's prior approval of time extensions. For example, for the seven rebuilding projects, (Projects 488, 575, 1336, 1438, 1684, 1799, and 1980) Joplin Schools retroactively requested multiple time extensions over a 4-year period. In fact, for project 1684, Joplin Schools submitted one request for a time extension 3 years after the first extension approval date because Joplin School officials claimed they experienced many unexpected weather delays and unforeseen events.

¹² 44 CFR 206.204 and 44 CFR 206.205 for project performance and payment of claims. The CFR (44 CFR 13.3) defines a subgrantee as a legal entity to which a subgrant is awarded and is accountable to the grantee for the use of the funds provided. The FEMA *Public Assistance Applicant Handbook* and the State Administrative Plan specify the supporting documentation requirements for subgrantees to submit to grantees.



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Finally, Joplin Schools delayed submitting required signed project completion certifications (P-4s) and closeout documents, based on the advice of its grant management contractor. We reviewed correspondence validating Missouri's extensive efforts to obtain updated and missing documents, such as closeout documents. Joplin School officials said the grant management contractor advised them that project completion certifications were not required at the time of the closeout project requests and that Federal regulations require the grantee, not the subgrantee, to submit project completion certifications "as soon as possible." We disagree with these assertions because Missouri could not realistically submit project completion data to FEMA within 90 days of project completion, as required, if Joplin Schools refused to submit necessary supporting documentation for the state's review.¹³ The conflicting guidance delayed project closeout and enabled the contractor to continue services for 7 years after the disaster. Moreover, by providing guidance contrary to Federal regulations and FEMA policies, the grant management contractor had the potential to jeopardize subgrantee funding and limit FEMA's ability to reconcile obligations.

Missouri Did Not Fulfill Its Grantee Responsibilities

Missouri, as the grantee, did not fulfill its responsibilities according to Federal regulations for proper grant management.¹⁴ Federal regulations and the FEMA-State agreement require grantees to provide technical assistance to subgrantees and manage and monitor subaward activities. Federal regulations allow Missouri, as the awarding agency, to take enforcement remedies to make Joplin Schools comply with program and administrative requirements.¹⁵ In addition, Missouri's State Administrative Plan establishes procedures that reflect Federal regulations and policies. Missouri was responsible for overall administration of these procedures to implement the PA Program.

Missouri did not effectively manage Joplin Schools, the subgrantee. Other than reviewing contract costs at project closeout, Missouri officials said they did not have a process to review subgrantee contracts and methodologies. Missouri officials asserted it is not possible to review

¹³ Under FEMA's *Standard Operating Procedure for PA Program Management and Grant Closeout* (SOP 9570.14), grantees such as Missouri are required to submit project completion data to FEMA within 90 days of project completion. Also 44 CFR 206.205(b).

¹⁴ Grantee responsibilities are detailed in 44 CFR 13.37(a)(2), 13.40(a) and 206.202(b)(1); subgrantee definitions are provided in 44 CFR 13.3 and responsibilities in 44 CFR 13.20(b).

¹⁵ See 44 CFR 13.43(a). Per 44 CFR 13.3, with respect to the subgrant, Missouri is the awarding agency.



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every Federal regulation with each applicant unless an applicant requests further guidance. Furthermore, they said they faced many challenges and opposition to offering guidance to Joplin Schools and in obtaining timely and sufficient information from the subgrantee. For example, as noted earlier, Joplin Schools followed its grant management contractor's advice when re-awarding the grant management contract, instead of seeking Missouri's guidance. Joplin Schools also insisted Missouri send its unaltered DAC claim to FEMA for reimbursement even though Missouri pointed out Joplin Schools' ineligible costs.

Ultimately, despite its efforts, Missouri was ineffective in enforcing program and administrative plan requirements and ensuring Joplin Schools adhered to Federal requirements. Missouri also did not seek enforcement remedies as allowed by Federal regulations.¹⁶ Such remedies include temporarily withholding cash payments pending correction of the deficiency, disallowing all or part of the cost of the noncompliant activity or action, or taking other legally available steps. According to officials in Missouri's Disaster Recovery Division, Missouri did not seek any remedies because local political pressures prevented them from enforcing restrictions with noncompliant subgrantees. The State Administrative Plan also did not address remedies for subgrantee noncompliance.

Missouri officials said FEMA was the "sole arbitrator of eligibility" and deferred eligibility decisions to FEMA, recognizing that subgrantees tend to make the same violations in subsequent disasters expecting FEMA to allow costs despite violations. In a September 2016 audit report, we disclosed that FEMA granted exceptions for subgrantee noncompliance with procurement rules more than 90 percent of the time.¹⁷ Regardless, we disagree with Missouri's comments about deferring eligibility determinations to FEMA. FEMA's PA Program requires close coordination among subgrantees, grantees, and FEMA. Active participation at all levels, throughout the life of a grant, is critical to the success of disaster recovery operations. If a grantee does not properly manage a grant award, neither the grantee nor FEMA can effectively gauge project performance and assess fiscal needs for the disaster.

¹⁶ 44 CFR 13.43(a)

¹⁷ We reported this issue in our report, *FEMA Can Do More to Improve Public Assistance Grantees' and Subgrantees' Compliance with Federal Procurement Rules*, OIG-16-126-D, issued on September 2, 2016.



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FEMA Did Not Properly Monitor and Oversee the PA Program Grant Award

As the Federal awarding agency, FEMA is ultimately responsible for monitoring the PA Program grants it awards and overseeing the grantee's use and management of Federal awards.¹⁸ However, FEMA did not hold Missouri accountable for ensuring proper management of Joplin Schools' subgrantee activities. Specifically, FEMA did not ensure that Missouri enforced its State Administrative Plan requirements, nor did it effectively use Missouri's quarterly progress reports to gauge project performance. Federal regulations require FEMA to obtain and review quarterly reports but provide FEMA limited guidance on how to implement this requirement.¹⁹ Although FEMA has oversight controls in place, some of the internal processes we reviewed — such as policies for quarterly progress reports, insurance allocation, and DAC — are weak and require improvement.

As part of oversight, FEMA relied heavily on Missouri's quarterly progress reports to gauge project and program performance and address noncompliance issues in a timely manner.²⁰ Yet, our review of the quarterly reports showed that FEMA received inaccurate reports from Missouri between 2011 and 2017. In 1 year, Missouri repeatedly submitted the same outdated progress information to FEMA because, according to Missouri officials, Joplin Schools would not provide them with updated project status information. Missouri officials also said they received limited and ineffective guidance from FEMA on how to compel Joplin Schools to provide updated project information. However, according to FEMA officials, it was Missouri's responsibility to verify that quarterly progress information is accurate and ensure subgrantees follow Federal regulations. FEMA officials also said they did not have written policies or procedures for reviewing quarterly progress reports and did not take any other action to obtain timely and correct project performance data. This approach to grant oversight is ineffective and increases the risk for noncompliance by grantees and subgrantees. Therefore, FEMA did not properly oversee and manage Missouri's and Joplin Schools' activities.

¹⁸ 31 United States Code (U.S.C.) § 7504(a)(1)

¹⁹ 44 CFR 206.204(f)

²⁰ 44 CFR 13.40(c) through (e)



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Furthermore, FEMA did not track, properly adjust, and timely allocate \$107 million of insurance proceeds to Joplin Schools' eligible disaster projects. FEMA over-allocated insurance proceeds on some projects and underestimated it on others. FEMA officials said they reviewed insurance on a project-by-project basis and do not apply actual insurance proceeds until project closeout, when total project costs are known. Joplin Schools finalized its insurance settlement and provided documents to FEMA and Missouri in July 2014. Project closeout started nearly a year later in May 2015. During our audit fieldwork, Joplin Schools appealed FEMA's decision on insurance allocation because of the over-application of insurance proceeds. At the time, FEMA did not have standard processes and policies in place to ensure insurance benefits were allocated correctly and timely. FEMA Headquarters gave us information explaining a new insurance review process, which streamlines insurance review from initial project development through approval. However, the new insurance process does not address issues with untimely and inaccurate application of insurance proceeds by regional office staff during the life of the project.

In addition, FEMA did not estimate and obligate Joplin Schools' DAC for almost 4 years after the disaster, even though it was aware Joplin Schools planned to claim DAC early in the recovery period. FEMA officials said they did not have clear guidance on what to do when subgrantees do not provide a DAC estimate at project formulation. Based on this audit and our prior work, we believe FEMA Headquarters not providing regional offices with clear guidance for estimating and obligating eligible DAC is a systemic issue.²¹ FEMA's decision to delay obligation of DAC until project closeout made it difficult to determine the precise status of Federal appropriations for the disaster for approximately 4 years.

The aforementioned issues related to allocating insurance proceeds and obligating DAC are outside the scope of this audit. We did not compare FEMA Region VII's insurance or DAC obligation processes with other FEMA regions' processes. Therefore, we did not question the costs or make recommendations about these issues in this report.

²¹ We previously reported about this issue in a prior report, *FEMA Should Disallow \$246,294 of \$3.0 Million in Public Assistance Grant Funds Awarded to Lincoln County, Missouri*, OIG-17-118-D, issued September 29, 2017.



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Improper Grant Management and Oversight Resulted in Questioned Costs

Improper grant management and oversight by all three entities is exemplified by Joplin Schools not following Federal procurement regulations and claiming ineligible DAC and by Missouri and FEMA not fulfilling their responsibilities. FEMA cannot be assured that all potential contractors had the opportunity to bid on contracts, including small businesses, minority-owned firms, and women's business enterprises. In addition, we are greatly concerned that the grant management contractor misled Joplin Schools by essentially steering the contract award to itself and circumventing the intent of full and open competition. As a result of these issues, FEMA has no assurance that Joplin Schools' contract costs are reasonable. Therefore, we question \$187.3 million for ineligible contracts (\$214.2 million total minus \$26.8 million in exigent work)²² awarded after exigent circumstances ended, as shown in table 3. Of the \$187.3 million questioned, \$115.4 million was obligated. Therefore, \$115.4 million is ineligible and \$72 million constitutes funds that could have been put to better use. (Table 4 in appendix C summarizes Claimed Contract Expenses, Questioned Costs, and Cost Avoidance.)

In addition, if FEMA allows or funds any part of the \$1.3 million in ineligible contract costs that we questioned because of procurement violations related to the grant management contract, then we will question \$609,676 for DAC (detailed previously in table 2). Of that amount, we will question \$587,494 as ineligible funding because it was obligated and \$22,182 as potential cost avoidance, or funds that could have been put to better use. (Table 5 in appendix C shows Ineligible Contractor DAC Claimed.)

²² For this audit, we did not question costs for disaster work under the exigent period.



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Table 3: Joplin Schools' Disaster Contracts for Construction and Grant Management

Contract and Scope of Work	Number of Contracts	Contract Claimed	Amount Questioned	Violations of Procurement Regulations 1-5*:				
				1	2	3	4	5
Construction Contracts								
Exigent Work								
Leases and Temporary Facilities	28	\$ 23,843,747	\$ -	X	X			
Debris Removal	4	287,304	-	X	X			
Emergency Repair Work	5	2,708,276	-	X	X			
Subtotal	37	\$ 26,839,327	\$ -					
Non-Exigent Work								
Architect & Engineering Work	12	\$ 12,073,391	\$ 12,073,391	X	X			
Construction Work	133	173,965,603	173,965,603	X	X			
Subtotal	145	\$ 186,038,994	\$ 186,038,994					
Non-Construction (Grant Management) Contract								
Grant Management	1	\$ 1,306,483	1,306,483	X	X	X	X	X
Subtotal	1	\$ 1,306,483	\$ 1,306,483					
Grand Total	183	\$ 214,184,804	\$ 187,345,477					

Source: OIG analysis of Joplin Schools' procurement records

*See Federal procurement regulations in figure 3.

Recommendations

Recommendation 1: We recommend the Regional Administrator, Federal Emergency Management Agency Region VII, disallow \$115,387,423 (\$86,540,567 Federal share) as ineligible contract costs, unless FEMA grants an exemption for all or part of these costs according to 44 CFR 13.6(c) and determines the costs are eligible and reasonable. (See, in appendix C, Table 4, Claimed Contract Expenses, Questioned Costs, and Cost Avoidance.)

Recommendation 2: We recommend the Regional Administrator, Federal Emergency Management Agency Region VII, deny and not fund \$71,958,054 (\$53,968,541 Federal share) as ineligible contract costs, unless FEMA grants an exemption for all or part of these costs according to 44 CFR 13.6(c) and determines the costs are eligible and reasonable. (See, in appendix C, Table 4, Claimed Contract Expenses, Questioned Costs, and Cost Avoidance.)

Recommendation 3: We recommend the Regional Administrator, Federal Emergency Management Agency Region VII, disallow \$587,494



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(\$440,621 Federal share) as ineligible Direct Administrative Costs claimed by Joplin Schools, unless FEMA determines that some or all of the costs we question in recommendation 1 are eligible and reasonable. In that case, FEMA should disallow \$587,494 of the \$1,306,483 as ineligible Direct Administrative Costs. (See, in appendix C, Table 5, Ineligible Contractor DAC Claimed.)

Recommendation 4: We recommend the Regional Administrator, Federal Emergency Management Agency Region VII, deny and not fund \$22,182 (\$16,637 Federal share) as ineligible Direct Administrative Costs claimed by Joplin Schools, unless FEMA determines that some or all of the costs we question in recommendation 2 are eligible and reasonable. If FEMA allows or funds any part of the \$1,306,483 in Direct Administrative Costs related to our improper procurement findings, then FEMA should not fund \$22,182 as ineligible Direct Administrative Costs. (See, in appendix C, Table 5, Ineligible Contractor DAC Claimed.)

Recommendation 5: We recommend the Regional Administrator, Federal Emergency Management Agency Region VII, instruct Missouri to implement policies and procedures to review subgrantee's disaster-related contracts before contract reimbursement and increase its monitoring efforts over noncompliant subgrantees to ensure compliance with Federal regulations and FEMA policies.

Recommendation 6: We recommend the Regional Administrator, Federal Emergency Management Agency Region VII, instruct Missouri to enforce and uphold the requirements of its State Administrative Plan and its subgrant agreement to ensure subgrantees adhere to program and administrative requirements.

Recommendation 7: We recommend the Regional Administrator, Federal Emergency Management Agency Region VII, instruct Missouri to establish and develop parameters and penalties in the State Administrative Plan and strengthen the subgrant agreement to address consequences for subgrantee noncompliance, according to 44 CFR 13.43(a).

Recommendation 8: We recommend the Regional Administrator, Federal Emergency Management Agency Region VII, increase and strengthen the oversight of Federal grants by proactively engaging with grantees to resolve issues, and providing clear communication of grantee's rights, role, and authority to hold subgrantees accountable for adherence to Federal regulations and improve management and guidance given to subgrantees.



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Recommendation 9: We recommend the Regional Administrator, Federal Emergency Management Agency Region VII, strengthen and improve program controls, policies, and procedures to help ensure it receives sufficient information through quarterly progress reports.

Management Comments and OIG Analysis

FEMA provided its written response to the report on February 28, 2020. FEMA concurred with all nine recommendations. We received technical comments on the draft report and revised the report as appropriate. Appendix B contains FEMA's management comments in their entirety. We consider recommendations 1 to 4 and 8 closed, recommendations 5 to 7 resolved and open, and recommendation 9 unresolved and open. The following is a summary of FEMA's responses and our analysis.

FEMA Response to Recommendations 1 to 4: FEMA concurred with the recommendations and completed closeout of all projects by March 2019. FEMA identified approximately \$56 million as the total eligible award amount, taking into consideration insurance reduction, final programmatic cost eligibility and reasonableness determinations, and all related decisions.

OIG Analysis of FEMA's Response: For recommendations 1 to 4, FEMA determined approximately \$56 million, the net obligated amount, was eligible for reimbursement. We reviewed the actions described in FEMA's response and project closeout documents and consider them sufficient to resolve and close the recommendations.

FEMA Comments to Recommendation #5: FEMA concurred with the recommendation. FEMA agreed to instruct Missouri to review its award oversight policies and procedures, including appropriate documentation prior to authorizing reimbursement, and increase its monitoring of noncompliant subgrantees. The estimated completion date is June 1, 2020.

OIG Analysis of FEMA's Response: Based on FEMA's response, we require evidence of its instructions to Missouri to implement policies and procedures on reviewing subgrantee's disaster-related contracts before reimbursement, and improve its monitoring of noncompliant subgrantees. This recommendation will remain resolved and open with a target completion date of June 1, 2020.

FEMA Comments to Recommendation #6: FEMA concurred with the recommendation. FEMA stated it will instruct Missouri to review its



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State Administrative Plan and subgrant agreement and develop a process to ensure subgrantees adhere to program and administrative requirements. The estimated completion date is June 1, 2020.

OIG Analysis of FEMA's Response: Based on FEMA's response, we require evidence of FEMA's instructions to Missouri to implement corrective actions to develop and strengthen requirements of its State Administrative plan and subgrant agreement. This recommendation will remain resolved and open, with a target completion date of June 1, 2020.

FEMA Comments to Recommendation #7: FEMA concurred with the recommendation. FEMA stated it will instruct Missouri to review its State Administrative Plan requirements and subgrant agreements to develop parameters and penalties for addressing consequences of subgrantee noncompliance. The estimated completion date is June 1, 2020.

OIG Analysis of FEMA's Response: Based on FEMA's response, we require evidence of the corrective actions FEMA described in its response. This recommendation is resolved and open, pending actions with a target completion date of June 1, 2020.

FEMA Comments to Recommendation #8: FEMA concurred with the recommendation. FEMA stated that it has taken significant steps to strengthen state, local, and tribal grant management capabilities. FEMA identified various actions taken to engage grantees and subgrantees and provide oversight.

OIG Analysis of FEMA's Response: The actions described in FEMA's response and supporting information were sufficient to resolve and close the recommendation. FEMA provided evidence of various training opportunities provided to recipients and subrecipients in 2019 to enhance overall grant management capabilities. FEMA also provided evidence of technical assistance site visits with state and tribal recipients applicable to Region VII. Lastly, FEMA tentatively plans to conduct follow-up training on public assistance program topics in calendar year 2020. Therefore, this recommendation is considered closed with no further action required.

FEMA Comments to Recommendation #9: FEMA concurred with the recommendation. FEMA identified the updates made to the quarterly progress reporting policy for the grantees and subgrantees in the current *Public Assistance Program and Policy Guide*. FEMA Region VII also



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conducted a review of the past 3 years and concluded that Missouri consistently submitted quarterly reports.

OIG Analysis of FEMA's Response: Although we acknowledge the updates made to the quarterly progress reporting policy in the existing *Public Assistance Program and Policy Guide*, we cannot determine how FEMA improved program controls, policies, and procedures to help ensure it receives sufficient information through quarterly reports. This recommendation will remain unresolved and open until FEMA provides additional information to resolve and close the recommendation, or a target date for completing its corrective actions.

**FEMA Should Recover
\$5.57 Million in Grant
Funds Awarded to Frasier
Meadows Manor, Inc.,
Boulder, Colorado**





DHS OIG HIGHLIGHTS

FEMA Should Recover \$5.57 Million in Grant Funds Awarded to Frasier Meadows Manor, Inc., Boulder, Colorado

February 27, 2020

Why We Did This Audit

Colorado awarded Frasier Meadows \$11.16 million from FEMA's Public Assistance Program to repair damage to a skilled nursing and assisted living facility, resulting from September 2013 storms and flooding. We conducted this audit to determine whether Frasier Meadows expended and accounted for grant funds according to Federal procurement regulations and FEMA guidelines.

What We Recommend

We recommend FEMA disallow \$5.57 million as ineligible contract costs and ensure Colorado improves its grant funds oversight.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov.

What We Found

The Colorado Department of Public Safety, Division of Homeland Security and Emergency Management (Colorado) did not effectively oversee its subrecipient, Frasier Meadows Manor, Inc., to ensure it was aware of and followed Federal procurement regulations and Federal Emergency Management Agency (FEMA) guidelines. In addition, FEMA should have ensured Colorado delivered assistance consistent with the FEMA-State Agreement and State Administrative Plan.

Frasier Meadows accounted for disaster-related costs on a project-by-project basis. However, it did not comply with Federal procurement regulations and FEMA guidelines when awarding \$10.08 million for 10 contracts. Specifically, Frasier Meadows did not ensure open and free competition to promote reasonable costs and fulfillment of FEMA requirements; ensure small businesses, minority-owned firms, and women's business enterprises had sufficient opportunities to bid on federally funded work; or perform a cost or price analysis for the 10 contracts. This noncompliance with procurement regulations led us to question the eligibility of \$5.57 million of the \$10.08 million Frasier Meadows expended for work under 10 contracts, excluding work undertaken when life and property were at risk.

As a result of our audit, Frasier Meadows updated its procurement policies and procedures. If implemented, these corrective actions should provide FEMA reasonable assurance Frasier Meadows will spend any future disaster-related funds according to Federal procurement regulations and FEMA guidelines.

FEMA Response

FEMA officials agreed with both recommendations. Appendix A includes FEMA's written response in its entirety. Prior to final issuance of this report, FEMA took action to resolve and close both recommendations.




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Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

February 27, 2020

MEMORANDUM FOR: Lee dePalo
Regional Administrator, Region VIII
Federal Emergency Management Agency

FROM: Sondra F. McCauley 
Assistant Inspector General for Audits

SUBJECT: *FEMA Should Recover \$5.57 Million in Grant Funds
Awarded to Frasier Meadows Manor, Inc., Boulder,
Colorado*

Attached is our final report, *FEMA Should Recover \$5.57 Million in Grant Funds Awarded to Frasier Meadows Manor, Inc., Boulder, Colorado*. We incorporated the formal comments provided by your office.

The report contains two recommendations. Your office concurred with both recommendations. Based on information provided in your responses to the draft report, we consider both recommendations resolved and closed. No further action is required.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the final report on our website for public dissemination.

Please call me with any questions, or your staff may contact Katherine Trimble, Deputy Assistant Inspector General for Audits, at (202) 981-6000.



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Background

The Colorado Department of Public Safety, Division of Homeland Security and Emergency Management (Colorado), a Federal Emergency Management Agency (FEMA) recipient, awarded Frasier Meadows Manor, Inc. (Frasier Meadows) \$11.16 million for damage resulting from severe storms, flooding, landslides, and mudslides that occurred in September 2013. Frasier Meadows, a private not-for-profit retirement community in Boulder, Colorado, offers residents independent and assisted living options, as well as skilled nursing care. From September 11 to 30, 2013, severe rainstorms caused flooding to Frasier Meadows' assisted living and healthcare facilities and its underground parking garage. The President declared a major disaster on September 14, 2013. Figure 1 shows flood damage to Frasier Meadows' underground garage.



Figure 1: Flood Damage to Frasier Meadows' Underground Garage

Source: Frasier Meadows Manor, Inc., Boulder, Colorado

The \$11.16 million award provided a 75 percent Federal funding cost share for debris removal, emergency protective measures, and permanent repairs to the damaged facilities.¹ A 75 percent Federal funding rate means FEMA will pay

¹ Cost share, also known as “non-Federal share,” or “match,” is the portion of the costs of a federally-assisted project or program not borne by the Federal Government (2 Code of Federal



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75 percent of the eligible costs while the subrecipient will be responsible for the remaining 25 percent.

The disaster caused damage to several insurable facilities. Frasier Meadows, as the grant subrecipient, received insurance proceeds of \$1.84 million for eligible facilities.² As of February 21, 2017, Frasier Meadows, with the exception of its hazard mitigation project, had completed disaster-related work for two projects (815 and 853).³ Table 1 provides information on the two projects and the award amounts.

Table 1: Gross and Net Awards for Frasier Meadows' Projects 815 and 853

Project Number	Gross Award Amount	Insurance Reductions	Net Award Amount
815 Pump & Extract Flood Water	\$ 135,391	(\$ 40,119)	\$ 95,272
853 Facility Repairs (capped) ⁴ Hazard Mitigation ⁵ Direct Administrative Costs Total Project Cost	\$ 7,443,716 3,563,578 12,505 <u>\$ 11,019,799</u>	 <u>(\$ 1,802,735)</u>	 <u>\$ 9,217,064</u>
Totals	<u>\$11,155,190</u>	<u>(\$1,842,854)</u>	<u>\$9,312,336</u>

Source: FEMA project worksheets and Office of Inspector General (OIG) analysis

Regulations (C.F.R.) § 215.23 (2013)). The Federal share is the percent paid by Federal funds (2 C.F.R. § 215.2(q)(2013)). We rely upon the 2013 C.F.R. provisions, unless otherwise indicated, because they were in effect at the time the disaster was declared. The Government issued new regulatory guidance on December 26, 2013. See 78 Fed. Reg. 78590 (Final Guidance) (Dec. 26, 2013), clarifying and streamlining existing regulations, which resulted in eliminating 2 C.F.R. Part 215. The clarifications, however, do not change the audit outcome or our related recommendations.

² To prevent duplication of benefits, FEMA is required to reduce the amount of the grant by any insurance proceeds the subrecipient anticipates or receives for the insured facility (*Robert T. Stafford Disaster Relief and Emergency Assistance Act* (Stafford Act) § 312, 42 United States Code (U.S.C.) § 5155; and FEMA 322, *Public Assistance Guide*, June 2007, p. 41).

³ On September 19, 2017, Frasier Meadows submitted a formal request to Colorado asking FEMA to deobligate its \$3.6 million hazard mitigation project.

⁴ On January 29, 2013, President Obama signed into law the *Sandy Recovery Improvement Act of 2013* (Pub. L. No. 113-2 (2013)), which amends Title IV of the Stafford Act (42 U.S.C. § 5121 et seq.) and, among other things, authorizes alternative procedures for FEMA's Public Assistance Program. For permanent repair work, the law allows FEMA to make awards based on fixed estimates whereby the amount reimbursed is capped at an agreed upon amount.

⁵ Hazard mitigation is any sustained action taken to reduce or eliminate long-term risk to people and property from natural hazards and their effects. See Stafford Act § 406(e), 42 U.S.C. § 5172(e)(1)(ii); see also 42 U.S.C. § 5170c, & 44 C.F.R. § 206.226(e).



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Results of Audit

Colorado and FEMA Grant Oversight Efforts Were Not Sufficient to Ensure Subrecipient Complied with Federal Requirements

Colorado did not effectively carry out its responsibilities to monitor Frasier Meadows, its subrecipient, to ensure it met Federal procurement guidelines and FEMA requirements. For its part, FEMA also did not hold Colorado accountable for effective grant management in accordance with Federal regulations, FEMA policies, and FEMA and state agreements.

Colorado Did Not Provide Effective Oversight for Its Subrecipient

As grant recipient, Colorado did not effectively monitor Frasier Meadows, its subrecipient.⁶ Nor did Colorado ensure Frasier Meadows' purchases complied with Federal procurement processes and procedures. The Code of Federal Regulations (C.F.R.) set out the legal requirements related to grant awards, which, in part, are designed to prevent and detect noncompliance in a grant management process. In accordance with Title 44 C.F.R. section 206.44(a), the Governor, acting for Colorado, and the FEMA Regional Administrator executed a FEMA-State Agreement on September 17, 2013, outlining the understandings, commitments, and conditions under which FEMA would provide Federal disaster assistance. In the FEMA-State Agreement, Colorado agreed to comply with the "requirements of laws and regulations found in the Stafford Act and 44 CFR" and "all applicable laws and regulations ... that govern standard grant management practices."⁷

Colorado also developed a State Administration Plan as required under Title 44 C.F.R. section 206.207 (2013) outlining the actions it would take to fulfill its duties, and further assured FEMA it would "comply with all applicable Federal statutes and regulations in effect during the periods for which it received grant funding."⁸ Generally, Title 2 C.F.R. section 215.51 (2013) required recipients to manage and monitor each "project, program, subaward, function or activity

⁶ Under FEMA-4145-DR-CO, Colorado was eligible to receive about \$11.9 million of Federal funding pursuant to Stafford Act section 324 to support its FEMA grant management activities for all subrecipients, including Frasier Meadows. Section 324 describes management costs as indirect costs, administrative expenses, and other expenses a recipient incurs in administering and managing FEMA Public Assistance grants that are not directly chargeable to a specific project. The rate for Major Disaster Declarations is 3.34 percent of the Federal share of assistance granted (44 CFR § 207.5(b)(4)(i)).

⁷ *FEMA-State Agreement*, September 17, 2013, pp. 6 and 8, respectively

⁸ *State of Colorado Public Assistance Program Administrative Plan for FEMA-4145-DR-CO Declared 09/14/2013*, p. 2



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supported by the award.”⁹ For its part, FEMA was to provide oversight of Colorado’s grant management activities.

For grant management to be effective, recipients must regularly monitor their subrecipients and conduct site visits to assess compliance with Federal requirements. However, Colorado did not assess Frasier Meadows’ ability to meet Federal procurement requirements, nor did it take proactive steps to ensure Frasier Meadows was aware of and complied with Federal procurement requirements.

Frasier Meadows submitted its request for FEMA Public Assistance funding on October 23, 2013, after Colorado had already held its applicants’ briefing meeting.¹⁰ Moreover, Colorado and Frasier Meadows did not discuss repair work until late January 2014 — after Frasier Meadows had procured contracts and began repair work. Federal regulations require Colorado to not only ensure potential applicants are aware of available public assistance but also provide them with technical advice and assistance.¹¹

In addition, Colorado agreed to monitor the progress and completion of the project and ensure all subrecipient purchases complied with “local, State of Colorado and applicable Federal procurement processes and procedures.”¹² However, we found no evidence of Colorado’s monitoring activities or outreach between October 23, 2013, and January 31, 2014, which should have occurred before Frasier Meadows awarded contracts for repair work. Consequently, Frasier Meadows would have been in a better position to comply with Federal regulations had these discussions occurred before its repair work began.

Frasier Meadows officials said they realized their contracts had been improperly awarded only after they attended Colorado’s June 19, 2014 Public Assistance Roadshow (i.e., a technical assistance conference held for eligible applicants). According to Frasier Meadows’ officials, they were unaware of the specific Federal procurement requirements, but ongoing communication with FEMA and Colorado officials during the preliminary damage assessment and project formation phases led them to believe they had properly awarded their disaster-related repair contracts. Shortly thereafter, Frasier Meadows officials contacted Colorado to discuss potential contracting issues and determine what

⁹ See 2 C.F.R. § 215.51(a) (2013).

¹⁰ The State conducts Applicants’ Briefings to inform prospective applicants of available assistance and eligibility requirements for obtaining Federal assistance under the declared event. Frasier Meadows officials did not attend this meeting because they mistakenly believed they were not eligible to receive Federal Public Assistance grant funding.

¹¹ 44 C.F.R. § 206.202(b)(1) and (3)

¹² State of Colorado Public Assistance Program Administrative Plan for FEMA – 4145 – DR- CO Declared 09/14/2013, pp. 16 and 17



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remedies might be available. On November 19, 2014, Colorado alerted FEMA of Frasier Meadows' procurement noncompliance issues.

In an effort to establish Frasier Meadows' repair costs were reasonable, Colorado sought approval of a plan for Frasier Meadows to obtain an independent estimate of its disaster-related repairs and to provide a narrative explaining why Frasier Meadows did not comply with Federal procurement regulations. FEMA rejected Colorado's plan, explaining a better approach would be to ask Frasier Meadows if it had historical costs for similar work, or to ask other applicants for costs associated with similar work and compare those costs to the work Frasier Meadows accomplished.

In several previous audit reports, the Department of Homeland Security OIG concluded Colorado did not properly manage or monitor its FEMA grants.¹³ As shown in these reports, Colorado did not comply in the past with the terms and conditions of its FEMA-State Agreements, and FEMA did not effectively ensure Colorado enforced the terms of either the FEMA-State Agreements or State Administrative Plans. For example, we reported in 2016 "Colorado should have done more as FEMA's grantee to ensure the City [of Evans, Colorado] was aware of and complied with Federal procurement standards."¹⁴ Consequently, we determined the City did not follow Federal procurement standards in awarding 22 contracts totaling \$3.6 million.¹⁵

Colorado's inadequate grant management led to Frasier Meadows' noncompliance with Federal procurement regulations. When grant recipients do not manage day-to-day operations, there is increased risk subrecipients will spend taxpayer money on unreasonable or ineligible costs and activities. In addition, subrecipients, such as Frasier Meadows, risk losing Federal funding.

FEMA Did Not Hold Colorado Accountable

FEMA, as the awarding agency, should have ensured Colorado delivered assistance to Frasier Meadows consistent with the FEMA-State Agreement and the State Administrative Plan. Specifically, the FEMA-State Agreement and

¹³ *Colorado Should Provide the City of Evans More Assistance in Managing FEMA Grant Funds*, OIG-16-78-D, May 3, 2016; *Lyons and Colorado Officials Should Continue to Improve Management of \$36 Million FEMA Grant*, OIG-16-67-D, April 20, 2016; *Longmont and Colorado Officials Should Continue to Improve Management of \$55.1 Million FEMA Grant*, OIG-16-21-D, January 21, 2016; *FEMA Should Disallow Over \$4 Million Awarded to Mountain View Electric Association, Colorado, for Improper Procurement Practices*, OIG-15-113-D, July 16, 2015; and *The City of Loveland, Colorado, Could Benefit from Additional Assistance in Managing its FEMA Public Assistance Grant Funding*, OIG-15-30-D, January 29, 2015

¹⁴ *Colorado Should Provide the City of Evans More Assistance in Managing FEMA Grant Funds*, OIG-16-78-D, May 3, 2016, p. 7

¹⁵ *Colorado Should Provide the City of Evans More Assistance in Managing FEMA Grant Funds*, OIG-16-78-D, May 3, 2016, p. 3



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Colorado's State Administrative Plan hold Colorado accountable to FEMA to comply with all applicable laws and regulations governing standard grant management practices, which include Colorado's responsibility to monitor project progress and ensure all subgrantee purchases comply with applicable "local, State of Colorado and applicable Federal procurement processes and procedures." Without adequate management and monitoring of grants and subgrants, FEMA is at increased risk of inefficient disaster recovery activities or paying ineligible costs.

Because FEMA addressed our earlier recommendation to instruct Colorado officials about their responsibilities for monitoring subgrant activities and administering and managing grants,¹⁶ we are not making a similar recommendation in this report. However, FEMA should direct Colorado to work with Frasier Meadows officials to ensure its updated Federal procurement policies and procedures will be implemented in the event of a future disaster.

Frasier Meadows Did Not Comply with Federal Procurement Regulations and FEMA Guidelines

Frasier Meadows did not comply with Federal procurement regulations and FEMA guidelines when awarding \$10.08 million for 10 contracts — \$8.1 million for non-exigent work and \$1.98 million for exigent work.¹⁷ Specifically, based on our review of contracts for repair, associated project files, and interviews we conducted, Frasier Meadows did not fulfill provisions of the C.F.R., which require in part that subrecipients —

- conduct procurement transactions in a manner providing open and free competition;
- take positive efforts to use small businesses, minority-owned firms, and women's business enterprises, whenever possible;
- perform (and document) some form of a cost or price analysis;
- maintain a contract administration system to (1) ensure contractor conformance with the terms, conditions, and specifications of the contract and to ensure adequate and timely follow-up of all purchases and (2) to evaluate contractor's performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract;
- include required provisions in all contracts;
- obtain bid guarantees and performance and payment bonds; and

¹⁶ *The City of Loveland, Colorado, Could Benefit from Additional Assistance in Managing its FEMA Public Assistance Grant Funding*, OIG-15-30-D, January 29, 2015, Recommendation 6.

¹⁷ Emergency/exigent circumstances are those that may include the existence of a threat to public health or public safety, or other unique circumstances that warrant immediate action. See 2 C.F.R. § 215.43 (2013); see also e.g., 44 C.F.R. § 13.36(d)(4)(i)(B).



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- confirm certain parties who are debarred, suspended, or otherwise excluded, are not participants or principals in contracts under Federal awards or subawards.¹⁸

Frasier Meadows also did not fully follow FEMA guidelines requiring contracts be of reasonable cost, generally competitively bid, and comply with Federal, State, and local procurement standards.¹⁹

Contracts Awarded without Open and Free Competition

Frasier Meadows awarded 10 contracts without open and free competition. Instead of soliciting competitive proposals, Frasier Meadows awarded contracts to vendors it had done business with in the past. Frasier Meadows selected the vendors because of their prior work experience, familiarity with Frasier Meadows' facilities, and contractor availability. Although these factors can be used to evaluate bids, to comply with Federal procurement requirements for open and free competition, requests for proposals must be publicized to an adequate number of sources.

Without open and free competition, FEMA has no assurance costs are reasonable. Open and free competition usually increases the number of bids received and thereby increases the opportunity to obtain reasonable pricing from the most qualified contractors. It also allows greater opportunity for small businesses, minority firms, and women's business enterprises to compete for federally funded work. Open and free competition also helps discourage and prevent favoritism, collusion, fraud, waste, and abuse.

Limited Opportunities for Small, Minority, and Women-Owned Businesses

Frasier Meadows did not make the required effort to use small businesses, minority-owned firms, and women's business enterprises whenever possible for any of the 10 contracts it awarded. The requirements include making information on forthcoming opportunities available and reserving timeframes to encourage and facilitate participation by disadvantaged firms; considering whether firms competing for larger contracts intend to subcontract with disadvantaged firms; and using the services and assistance, as appropriate, of organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce. Frasier

¹⁸ 2 C.F.R. §§ 215.43, 215.44(b), 215.45, 215.47, 215.48, 215.48(c), & 215.13 (2013). See also *Public Assistance Guide*, FEMA 322/June 2007, pp. 51–53, and *Public Assistance Applicant Handbook*, FEMA 323/March 2010, pp. 43–45.

¹⁹ *Public Assistance Guide*, FEMA 322/June 2007, p. 51. See also *FEMA Public Assistance Applicant Handbook*, FEMA 323/March 2010, pp. 43–45.



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Meadows' failure to follow these procurement requirements potentially limited opportunities for small, minority, and women-owned businesses.

Absence of Cost or Price Analysis

Frasier Meadows did not perform a cost or price analysis for any of the 10 contracts it awarded. Performing a cost or price analysis decreases the risk of unreasonable contract costs and misinterpretations or errors in pricing relative to contract scope of work. Frasier Meadows officials said they did not prepare cost or price analyses for any of their disaster-related work but instead relied on information they received from the individual contractors. Frasier Meadows officials did not provide support for how they used the contractors' cost estimates to assess the reasonableness of the bids. Without the required cost or price analysis, the risk of misinterpretations or errors in pricing relative to scope of work and contract disputes increased.

Inadequate Contract Administration System

Frasier Meadows did not maintain a contract administration system to ensure its contractors performed work in accordance with the terms, conditions, and specifications of their contracts. Although Frasier Meadows officials said they had a representative onsite, they could not provide documentation to support their monitoring of contractors' work. Lacking a contract administration system and supporting documentation, Frasier Meadows had no effective means of ensuring the contractors fulfilled contract specifications.

Absence of Required Contract Provisions

None of Frasier Meadows' 10 contracts contained required contract provisions. Federal regulations set forth specific provisions for contracts and subcontracts, including remedies and termination clauses, non-discrimination provisions, compliance with labor laws, bonding notifications, and debarring and suspension requirements. These provisions describe the rights and responsibilities of both parties. Without the provisions, the risk of misinterpretations and disputes increases.

Absence of Minimum Bonding Requirements

Frasier Meadows did not obtain the required bid guarantee or performance and payment bonds for 4 of the 10 contracts it awarded, totaling \$9,339,320. At a minimum, subrecipients are required to obtain bid guarantees equal to 5 percent of the bid price, and performance and payment bonds equal to 100 percent of the contract price. Bonds protect subrecipients in case of default by their contractor. Rather than obtain the required bonds, Frasier Meadows reviewed its contractors' financial statements to determine their credit



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worthiness. This alternative approach was not an effective way to guarantee contractor price or performance and did not meet the requirements of the C.F.R.²⁰

Insufficient Confirmation of Debarred or Suspended Contractors

Frasier Meadows did not determine whether its contractors were debarred, suspended, or otherwise excluded from participating in Federal assistance awards and subawards. To help protect the Government from doing business with individuals, companies, or recipients who pose a risk to the Federal Government, recipients of Federal funding are not permitted to award contracts to debarred contractors. Although Frasier Meadows did not do so, we verified that none of Frasier Meadows' contractors were debarred, suspended, or otherwise excluded from participating in Federal programs and activities.

Questioned Costs

As explained previously, Frasier Meadows' noncompliance with multiple Federal procurement regulations, led us to question \$5.57 million in contract costs. We do not question costs for work undertaken when lives and property are at risk²¹; therefore, we did not question \$1.98 million in disaster-related contract costs Frasier Meadows incurred for the cleanup, stabilization, and dehumidification of its assisted living and healthcare facilities. We did, however, question the remaining \$5.57 million (\$7.44 million of capped costs under the Public Assistance Alternative Procedure (PAAP) Pilot Program less \$1.87 million of exigent work) because Frasier Meadows improperly continued to use noncompetitively awarded contracts even after the exigent period. Table 2 shows these questioned costs in more detail.

²⁰ See 2 C.F.R. § 215.48(c)(1-4) (2013).

²¹ 2 C.F.R. § 215.43 (2013). See also 44 C.F.R. § 13.36(d)(4)(i)(B) (2013). On December 19, 2014, DHS replaced 44 C.F.R. Part 13 references in 2 C.F.R. Parts 200 and 3002 as applicable. See 80 Fed. Reg. 59549-50 (Final Rule) (Oct. 2, 2015).



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Table 2: Questioned Costs for 10 Contracts Due to Noncompliance

Contract Scope of Work	Gross Award Amount for Contract Work	Project 815	Project 853
Non-Exigent Work	\$ 8,104,737	\$ 0	\$8,104,737
Exigent Work ²²	1,979,556	103,448	1,876,108
Totals	<u>\$10,084,293</u>	<u>\$103,448</u>	<u>\$9,980,845</u>
Calculation of Questioned Costs:			
PAAP Capped Amount ²³ – Project 853			\$7,443,716
Less Exigent Work – Project 853			(1,876,108)
Total Questioned Costs			<u>\$5,567,608</u>

Source: Frasier Meadows procurement records and OIG analyses

As a result of our on-going audit, Frasier Meadows updated its procurement policies and procedures on June 14, 2017 to comply with Federal procurement standards. If Frasier Meadows implements its updated policies and procedures, FEMA should have reasonable assurance Frasier Meadows will spend any future disaster-related funds according to Federal procurement regulations.

Recommendations

Recommendation 1: We recommend the Regional Administrator, FEMA Region VIII, disallow \$5,567,608 (\$4,175,706 Federal share) for contracts that do not comply with Federal procurement standards, unless FEMA grants an exemption for all or part of the costs as Title 2 C.F.R. section 215.4 or its successor provision allows and determines the costs are reasonable.

Recommendation 2: We recommend the Regional Administrator, FEMA Region VIII, direct Colorado to work with Frasier Meadows officials to ensure Frasier Meadows implements its updated Federal procurement policies and procedures in the event of a future disaster.

²² Frasier Meadows did not competitively award \$1.98 million in clean-up and electrical contracts, but Federal regulations permit noncompetitive procurements during exigent circumstances.

²³ Because Frasier Meadows elected to participate in FEMA's PAAP Pilot Program for permanent work, the total amount FEMA can fund Frasier Meadows for repairs on its assisted living, healthcare, and parking garage facilities within Project 853 is capped at \$7.44 million. Accordingly, we calculated questioned costs using the capped amount.



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Management Comment and OIG Analysis

We discussed the results of our audit with FEMA, Colorado, and Frasier Meadows officials. FEMA also provided written comments in response to our draft report, and concurred with both recommendations. We included a copy of FEMA's management comments in their entirety in appendix A.

Subsequent to transmitting the written comments, FEMA took action to resolve and close both recommendations and provided additional information and supporting documentation.

FEMA Comments to Recommendation #1: FEMA concurred with our recommendation. During the closeout process, FEMA evaluated the contract costs we questioned. FEMA determined \$5,567,608 in requested contract costs were necessary and reasonable.

OIG Analysis of FEMA's Response: FEMA's corrective action to evaluate the questioned costs resolves and closes this recommendation. No further action is required.

FEMA Comments to Recommendation #2: FEMA concurred with the recommendation and in December 2019 directed Colorado to ensure Frasier Meadows implements its updated Federal procurement policies and procedures in the event of a future disaster.

OIG Analysis of FEMA's Response: FEMA's corrective action directing Colorado to ensure Frasier Meadows implements updated Federal procurement policies and procedures is sufficient to resolve and close the recommendation. No further action is required.

Objective, Scope, and Methodology

Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

We audited FEMA Public Assistance grant funds awarded to Frasier Meadows Manor, Inc., Public Assistance Identification Number 013-UL14W-00. Our audit objective was to determine whether Frasier Meadows accounted for and expended FEMA grant funds according to Federal procurement regulations and FEMA guidelines for FEMA Disaster Number 4145-DR-CO.

Colorado awarded Frasier Meadows \$11.16 million (\$9.31 million after reductions for the PAAP cap and insurance) for damages resulting from severe



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flooding occurring September 11–30, 2013. Our audit scope included two large projects totaling \$11.16 million, or 100 percent, of the total award amount (see appendix A, table 3). The award provided 75 percent FEMA funding for debris removal, emergency protective measures, and permanent work for two large projects.²⁴

We selected the projects in our scope from FEMA’s Emergency Management Mission Integrated Environment (EMMIE) computerized information system, and verified the payments and claimed costs were supported by source documents. We determined the data we used to support the audit findings, conclusions, and recommendations is reliable. We did not rely solely on information system data or other data we did not test against other systems or collaborate with other source documents. An evaluation of information systems and controls was not necessary to achieve the audit objective.

To accomplish our objective, we interviewed FEMA, Colorado, and Frasier Meadows officials; gained an understanding of Frasier Meadows’ method of accounting for disaster-related costs; reviewed Frasier Meadows’ procurement policies and procedures; judgmentally selected (generally based on dollar value) and reviewed project costs and 10 procurement transactions valued at \$10.08 million for the projects in our audit scope; reviewed applicable Federal regulations and FEMA guidelines; and performed other procedures considered necessary to accomplish our objective.

This audit is part of a body of public assistance grant audits conducted by our office to identify areas where the grantee or subgrantee may need additional technical assistance or monitoring to ensure compliance with Federal regulations and FEMA guidelines. Audit planning, risk assessment, and internal control assessment were limited to the extent necessary to address our audit objective. We conducted our review under the authority of the *Inspector General Act of 1978*, as amended, between February 2017 and February 2018, and followed generally accepted government auditing standards (GAGAS) with the exceptions noted previously. GAGAS requires we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objective. Unless stated otherwise in this report, to conduct this audit, we applied the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.

²⁴ Federal requirements in effect at the time of the disaster set the large project threshold at greater than \$67,500 [*Notice of Adjustment of Disaster Grant Amounts*, 77 Fed. Reg. 61423 (Oct. 9, 2012)].



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Office of Audits Major Contributors to this report are Paige Hamrick, Director (Ret); Brooke Bebow, Director; David B. Fox, Audit Manager; Rodney Johnson, Auditor-in-Charge; Douglas Denson, Auditor (Ret); Josh Welborn, Auditor; Evette Fontana, Auditor; Corneliu Buzesan and Kathy Hughes, Independent Reference Reviewers; and Deborah Mouton-Miller, Communications Analyst.



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Appendix A
FEMA Region VIII Comments to the Draft Report

U.S. Department of Homeland Security
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FEMA

R8-ORA

November 14, 2019

MEMORANDUM FOR: Katherine Trimble
Deputy Assistant Inspector General for Audits
Office of the Inspector General

FROM: Lee K. dePalo 
Regional Administrator

SUBJECT: Management Response to Draft Report: "FEMA Should Recover
\$5.57 Million in Grant Funds Awarded to Frasier Meadows, Inc.,
Boulder Colorado"
(Project No. G-17-015-EMO-FEMA)

Thank you for the opportunity to review and comment on this draft report. The Federal Emergency Management Agency (FEMA) appreciates the work of the Department of Homeland Security (DHS) Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

FEMA leadership is concerned the OIG took nearly three years after this audit was announced on December 22, 2016, to issue this report. Particularly concerning is the fact that the draft report was not released for management comment until 20 months after OIG's fieldwork was completed, with no explanation for the delay provided in the report. U.S. Government Accountability Office-promulgated Generally Accepted Government Auditing Standards state that reports must be timely to be of maximum use to report users.

However, FEMA is pleased to note OIG's recognition that Frasier Meadows updated its procurement policies and procedures on June 14, 2017, more than two years ago, to comply with Federal procurement standards. It is also important to note that during this time FEMA has worked extensively with the State of Colorado to hold it more accountable for effective grant management in accordance with Federal regulations, FEMA policies, and FEMA and state agreements.

FEMA concurs with the two recommendations in this draft report. Attached find our detailed response to each recommendation. FEMA previously submitted technical comments under a separate cover.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you in the future.

Attachments

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Attachment: DHS Management Response to Recommendations Contained in OIG Project No. 17-015 Draft Report

OIG recommended that the Regional Administrator, FEMA Region VIII:

Recommendation 1: Disallow \$5,567,608 (\$4,175,706 Federal share) for contracts that do not comply with Federal procurement standards, unless FEMA grants an exemption for all or part of the costs as Title 2 C.F.R. section 215.4 or its successor provision allows and determines the costs are reasonable.

Response: Concur. FEMA Region VIII has determined all obligated expenditures were both necessary and reasonable, as defined in Appendix A, Part C of Office of Management and Budget Circular A-87. Specifically, during the closeout process, FEMA evaluated all contract costs and compared them to local rates, historical costs, and RSMeans rates (Note: RSMeans is not an acronym; it is an estimating tool commonly used within the construction industry). FEMA's evaluation of the contract cost comparisons indicated the costs of \$5,567,608 (\$4,175,706 Federal share) to be reasonable under Title 2 C.F.R. section 215.4. Relevant documentation corroborating these actions was provided to the OIG under separate cover.

We request that the OIG consider this recommendation resolved and closed as implemented.

Recommendation 2: Direct Colorado to work with Frasier Meadows officials to ensure Frasier Meadows implements its updated Federal procurement policies and procedures in the event of a future disaster.

Response: Concur. FEMA Region VIII provided technical assistance to the State of Colorado to ensure Frasier Meadows updated and implements its procurement policies. The State sent successive compliance letters to Frasier Meadows that referenced ongoing guidance from FEMA representatives. These efforts culminated in Frasier Meadows adopting a new procurement policy in June 2017. The State continues to work with Frasier Meadows to ensure it properly implements the new policy. In addition, the State has published procurement-related guidance on its website available to all subrecipients. FEMA will continue reinforcing the importance of Frasier Meadows adhering to the new policy and, in the event of a future disaster, verify compliance.

We request that the OIG consider this recommendation resolved and closed as implemented.



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Appendix B Potential Monetary Benefits

Table 3: Projects Audited and Questioned Costs

Project Number	FEMA Category of Work*	Gross Award Amount	Net Award (after insurance reduction)	Questioned Cost (Finding B)
815	B	\$ 135,391	\$ 95,272	\$ 0
853	E	11,019,799	9,217,064	5,567,608
Totals		<u>\$11,155,190</u>	<u>\$9,312,336</u>	<u>\$5,567,608</u>

Source: FEMA project worksheets, Frasier Meadows records, and OIG analysis

* FEMA classifies disaster-related work by type: debris removal (Category A), emergency protective measures (Category B), and permanent work (Categories C through G).

Table 4: Summary of Potential Monetary Benefits

Rec No.	Type of Potential Monetary Benefit	Amount	Federal Share
1	Questioned Costs – Ineligible	\$ 5,567,608	\$ 4,175,706
	Questioned Costs - Unsupported	0	0
	Funds Put to Better Use (Cost Avoidance)	0	0
	Totals	<u>\$5,567,608</u>	<u>\$4,175,706</u>

Source: OIG analysis of report findings



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