

Department of Homeland Security **Office of Inspector General**

New Jersey Complied with Applicable Federal and State Procurement Standards when Awarding Emergency Contracts for Hurricane Sandy Debris Removal Activities





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MEMORANDUM FOR: John Covell
Director
New Jersey Recovery Office
Federal Emergency Management Agency

FROM: John V. Kelly 
Assistant Inspector General
Office of Emergency Management Oversight

SUBJECT: *New Jersey Complied with Applicable Federal and State
Procurement Standards when Awarding Emergency Contracts for
Hurricane Sandy Debris Removal Activities*
FEMA Disaster Number 4086 DR-NJ
Audit Report Number OIG-14-45-D

We audited the State of New Jersey's (the State or New Jersey) procurement process for awarding emergency contracts for statewide debris removal activities under Hurricane Sandy, which occurred in October 2012 (FEMA Disaster Declaration No. 4086). As of November 2013, the Federal Emergency Management Agency (FEMA) had awarded over \$463 million in Public Assistance funding to cover Hurricane Sandy debris removal activities within New Jersey. The awards provided 90 percent FEMA funding for eligible debris cleanup costs.

Our audit objective was to determine (1) whether New Jersey complied with applicable Federal and State procurement standards in awarding emergency contracts for statewide Hurricane Sandy debris removal activities, and (2) whether a local municipality's use of the State's emergency contracts for work under a Public Assistance grant meets Federal procurement standards.

We conducted this performance audit between May 2013 and January 2014 pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that 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 that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objective. To conduct this audit, we applied the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.



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We reviewed applicable Federal and State procurement standards, FEMA guidelines, and State procurement policies and procedures; interviewed State and FEMA officials; and performed other procedures considered necessary to accomplish our audit objective. We did not assess the adequacy of the State's internal controls applicable to its procurement process because it was not necessary to accomplish our audit objective.

BACKGROUND

On October 27, 2012, as Hurricane Sandy approached the coast of New Jersey, the Governor of New Jersey issued an executive order declaring a state of emergency. Hurricane Sandy made landfall near Brigantine, New Jersey, on October 29, 2012, and caused historic devastation and substantial loss of life. The storm was the second largest Atlantic hurricane on record, with a diameter of tropical storm force winds spanning more than 900 miles. The storm affected one of the most densely populated areas in the northeastern United States, resulting in loss of life, major flooding, structural damage to real property, and loss of power throughout the region. The amount of debris generated throughout the State was unprecedented, leaving much of New Jersey inaccessible. On October 30, 2012, the President issued a major disaster declaration authorizing Federal funding to State and eligible local governments for debris removal and emergency protective measures, including direct Federal assistance for eight counties in New Jersey. The current Federal cost share for this disaster is 90 percent. Figures 1 and 2 show storm-generated debris.



Figure 1: Hurricane Sandy Debris along the Historic Boardwalk in Seaside Heights, New Jersey.

Source: FEMA



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Figure 2: Debris at Temporary Staging Site in Little Egg Harbor, New Jersey.
Source: Little Egg Harbor Township Department of Public Works.

RESULTS OF AUDIT

New Jersey complied with applicable Federal and State procurement standards when procuring emergency contracts for statewide debris removal and monitoring activities related to Hurricane Sandy. In addition, a local municipality's use of these contracts during the exigent period FEMA identified (November 4, 2012, to January 3, 2013) would meet State and Federal procurement standards.

New Jersey's Emergency Debris Removal Contracts

New Jersey complied with applicable Federal and State procurement standards when procuring emergency debris removal contracts for statewide debris removal related to Hurricane Sandy. Federal procurement regulations at 44 Code of Federal Regulations (CFR) 13.36 prescribe how states, as FEMA grantees, should procure property and services under a FEMA award. Specifically, 44 CFR 13.36(a) requires a State to: (1) follow the same policies and procedures it uses for procurements from its non-Federal funds, and (2) ensure that every purchase order or other contract includes any clauses that Federal statutes and executive orders and their implementing regulations require.

According to New Jersey procurement laws, the State must generally procure contracts for goods or services after public advertisement for bids (New Jersey Statute Annotated 52:34-6). However, the State may use noncompetitive procurement under exigent circumstances. New Jersey Statute Annotated 52:34-10(b) does not require advertisement for bids when "the public exigency requires the immediate delivery of the articles or performance of the service."



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Further, New Jersey Administrative Code 17:12-1A.2(c) waives the requirement for public advertising of contracts when a public exigency exists.

The Governor of New Jersey issued Executive Order 104 on October 27, 2012, declaring a state of emergency and activated State resources pursuant to New Jersey law. While the State had pre-storm debris removal contracts in place with four vendors, the contracts did not provide sufficient options to local entities given the extensive debris removal requirements. According to the State's Office of the Attorney General, virtually none of the 565 municipalities across the State had existing contracts in place for debris removal when Hurricane Sandy made landfall. While one option available to local entities was to procure their own emergency contracts on a municipality-by-municipality basis, given that the sheer volume of the debris would overwhelm the municipalities, the State determined that the situation required a state-level option to municipalities for immediate use.

According to State Attorney General officials, New Jersey reached out to other states that had suffered large magnitude storms, such as Hurricane Katrina, asking for suggestions regarding contractors they used for debris removal. The State became aware of a 2008 debris removal contract that the State of Connecticut competitively awarded to AshBritt Environmental (AshBritt), a Florida-based, national rapid-response disaster recovery and special environmental services contractor. New Jersey used this contract as a starting point and negotiated additional terms with AshBritt, including the right of the State to suspend work in addition to canceling the contract outright. AshBritt also agreed to comply with New Jersey's rigorous solid-waste transportation laws and solid-waste disposal requirements. The State secured these and other concessions at no additional cost to the already 4-year-old prices, and awarded a 6-month contract to AshBritt on October 31, 2012. The contract decision utilized a noncompetitive process allowed by New Jersey statutes during periods of public exigency. The State conducted a price analysis and determined that the contract prices were reasonable. This analysis included comparing AshBritt's prices to prices other states paid for debris removal services under preceding disasters, and reviewing prices FEMA paid under U.S. Army Corps of Engineers debris removal contracts. New Jersey made this contract available to local municipalities under its Cooperative Purchasing Program.¹

On May 13, 2013, FEMA notified the State that it had reviewed the State's procurement process and that it would reimburse all eligible program costs for work performed and invoiced under the noncompetitive AshBritt contract for a period of 60 days, or from November 4, 2012, to January 3, 2013. FEMA based its decision on the size of the storm, New Jersey's compliance with State law in entering into the sole source contract, the public exigency that existed

¹ New Jersey's Cooperative Purchasing Program, established by legislation, is the program through which the state extends specific state contracts to eligible local buying units. Cooperative purchasing is a collaborative effort to obtain benefits in pricing, product quality, and contract process efficiencies for public purchasing entities throughout the State of New Jersey.



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throughout the State after the storm, and the multiple steps the State required to award a competitively bid contract. FEMA acted within the authority that 44 CFR 13.36(c)(4) grants the agency.

New Jersey's Emergency Debris Monitoring Contracts

New Jersey complied with applicable Federal and State procurement standards when procuring emergency statewide contracts for debris monitoring services related to Hurricane Sandy. While the State had a pre-existing statewide debris-monitoring contract in place before the storm, the contract was limited in scope and did not meet all of the State's needs. Therefore, shortly after the storm, the State developed a specific Request for Quotation for debris monitoring and identified a list of vendors with experience in debris monitoring.

On November 1, 2012, New Jersey's Department of Environmental Protection sent the debris monitoring Request for Quotation to five vendors from the list of firms with experience in debris monitoring. The State subsequently received proposals from three vendors. A committee evaluated the three proposals based on technical capabilities and price and concluded that proposals from Arcadis U.S., Inc. and Science Applications International Corporation represented the most advantageous offers to the State, price and other factors considered. On November 2, 2012, and November 15, 2012, respectively, New Jersey awarded two 8-month debris-monitoring contracts to the two vendors. The State made these contracts available to local municipalities under its Cooperative Purchasing Program.

Local Municipality's (Subgrantee) Use of New Jersey's Emergency Debris Removal and Monitoring Contracts

A local municipality's use of New Jersey's emergency contracts for statewide debris removal and monitoring services related to Hurricane Sandy would meet State and Federal procurement standards if used for the 60-day exigent period FEMA identified (November 4, 2012, to January 3, 2013).

Federal procurement standards for FEMA subgrantees, specifically local governmental entities and non-profit organizations, differ from standards for States (as grantees). Under 44 CFR Part 13, FEMA subgrantees must use their own procurement procedures, which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards set forth in 44 CFR 13.36(b)–(i). These procurement standards require FEMA subgrantees, among other things, to conduct all procurement transactions in a manner providing full and open competition. The regulations also permit noncompetitive procurement in cases of "public exigency or emergency" (44 CFR 13.36(d)(4)(i)(B)). In addition, FEMA's *Public Assistance Guide* (FEMA 322, June 2007, p. 51) specifies that contracts for Public Assistance work "must be of reasonable cost, generally must be competitively bid, and must comply with Federal, State, and local procurement standards."



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Although considered “emergency work” under FEMA’s Public Assistance program, FEMA has determined that long-term debris removal lasting weeks or months generally requires competitive bidding to conform with Federal law and procurement standards set forth in 44 CFR 13.36. FEMA guidance states that an applicant may use a noncompetitive contract for short-term debris removal, but should competitively bid the contract as soon as possible.² FEMA may grant exceptions to Federal procurement standards on a case-by-case basis (44 CFR 13.6(c)).

In this particular case, FEMA determined that exigent circumstances warranted the State’s use of an emergency noncompetitive debris removal contract for a limited period. Specifically, on May 13, 2013, FEMA notified the State that it had reviewed the State’s procurement process and that it would reimburse all eligible program costs for work performed and invoiced under the noncompetitive AshBritt contract for a period of 60 days, or from November 4, 2012, to January 3, 2013. Although FEMA’s review of the State’s procurement process did not explicitly mention other debris removal and monitoring contracts that the State procured for Hurricane Sandy activities, we concluded that FEMA’s 60-day authorization would apply to all emergency statewide debris removal and monitoring contracts related to Hurricane Sandy activities. Therefore, a local municipality’s use of these emergency contracts for the 60-day authorized period would also comply with State and Federal procurement standards. However, a local municipality would need to use a competitive process to award contracts for debris removal activities outside the 60-day period to comply with FEMA guidelines and Federal procurement standards. Therefore, FEMA should review each local municipality’s debris removal contracting process and make a determination on the eligibility of costs on a case-by-case basis.

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed the results of our review with FEMA and State officials on February 5, 2014. FEMA and State officials concurred with the report. Because the audit did not identify issues requiring further action from FEMA, we consider this audit closed.

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

Major contributors to this report are David Kimble, Director; William Johnson, Audit Manager; John Schmidt, Auditor-in-Charge; and Kevin Donahue, Auditor.

² FEMA Disaster Assistance Fact Sheet 9580.4 – *Emergency Work Contracting*, October 2008.



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Please call me with any questions at (202) 254-4100, or your staff may contact David Kimble, Director, Eastern Regional Office, at (404) 832-6702.



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