

Department of Homeland Security Office of Inspector General

**FEMA Should Review the Eligibility of \$523,007 of
\$5.4 Million in Public Assistance Grant Funds Awarded
to the Borough of Belmar, New Jersey, for Hurricane
Sandy Debris Removal Activities**



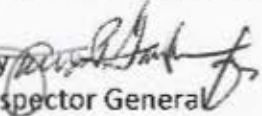


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Department of Homeland Security

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

APR 22 2014

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

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

SUBJECT: *FEMA Should Review the Eligibility of \$523,007 of \$5.4 Million in Public Assistance Grant Funds Awarded to the Borough of Belmar, New Jersey, for Hurricane Sandy Debris Removal Activities*
FEMA Disaster Number 4086-DR-NJ
Audit Report Number OIG-14-72-D

We audited Public Assistance grant funds awarded to the Borough of Belmar, New Jersey, (Borough) for debris removal activities (FIPS Code 025-04930-00). Our audit objective was to determine whether the Borough accounted for and expended Federal Emergency Management Agency (FEMA) grant funds according to Federal regulations and FEMA guidelines. We conducted this audit early in the Public Assistance process with the goals of (1) providing applicants an opportunity as soon as possible after the disaster event to locate documentation or corroborating evidence to support costs claimed for disaster damages, and (2) mitigating the affect of fraud, waste, and abuse of disaster assistance.

As of December 2, 2013, the cut-off date of our review, the Borough had received a Public Assistance award of \$20 million from the New Jersey Office of Emergency Management Agency (State), a FEMA grantee, for damages resulting from Hurricane Sandy, which made landfall on October 29, 2012. The award provided 90 percent funding for debris removal activities; emergency protective measures; repairs to roads and bridges; and repairs to buildings, equipment and other facilities. The award consisted of eight large and three small projects.¹

¹ Federal regulations in effect at the time of Hurricane Sandy set the large project threshold at \$67,500.



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We audited one large project (Project 150) for debris removal activities with an award totaling \$5.4 million. The audit covered the period from October 29, 2012, to December 2, 2013, during which the Borough received an advance payment of \$2.0 million from the State. At the time of our audit, the Borough had completed work under the project, but had not submitted any claims for reimbursement of project expenditures to the State. The Borough provided us with a list of debris removal expenditures (force account and contract) totaling approximately \$6.9 million that it planned to claim to the State under the award.² We used this list of expenditures to conduct the audit.

We conducted this performance audit between May 2013 and December 2013 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 in effect at the time of the disaster.

We judgmentally selected and reviewed project expenditures (generally based on dollar value) that the Borough provided; reviewed applicable documents that the Borough, State, and FEMA provided; interviewed Borough representatives, State, and FEMA officials; reviewed the Borough's procurement policies and procedures; reviewed applicable Federal regulations and FEMA guidelines; and performed other procedures considered necessary to accomplish our audit objective. We also notified the Recovery Accountability and Transparency Board of all contracts the subgrantee awarded under the grant to determine whether the contractors were debarred or whether there were any indications of other issues related to those contractors that would indicate fraud, waste, or abuse. We did not assess the adequacy of the Borough's internal controls applicable to its grant activities because it was not necessary to accomplish our audit objective. However, we gained an understanding of the Borough's method of accounting for disaster-related costs and its policies and procedures for administering activities provided for under the FEMA award.

BACKGROUND

Hurricane Sandy severely affected the Borough when it made landfall on October 29, 2012. The Borough received a \$5.4 million award in FEMA Public Assistance grant funds

² *Force account* refers to the Borough's personnel and equipment.



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for debris removal activities resulting from the disaster. In December 2012, the State authorized a \$2.0 million advance payment under Immediate Needs Funding to assist the Borough with cash flow challenges.

The Borough took full responsibility to manage and execute its debris removal operation using a combination of contractors and force account labor and equipment. The Borough initially awarded noncompetitive contracts to pump water from streets to allow for debris removal. It used local contractors and a State-approved contractor for the remainder of the debris removal activities. The Borough's debris removal operation involved hauling more than 12,000 tons of debris from rights of way, local streets, and public areas. According to Borough personnel, the Borough completed all debris removal work in February 2013.

RESULTS OF AUDIT

The Borough accounted for FEMA funds on a project-by-project basis as Federal regulations and FEMA guidelines require. However, we identified \$523,007 of debris removal costs that the Borough planned to claim under the FEMA award that either (1) did not comply with Federal procurement requirements, (2) were not eligible according to Federal regulations or FEMA guidelines, or (3) were not supported by adequate documentation.

Finding A: Contracting Procedures

The Borough did not comply with Federal procurement requirements when awarding two contracts totaling \$1,608,376. Federal procurement standards at 44 Code of Federal Regulations (CFR) 13.36 required the Borough, among other things, to perform the following activities:

- Conduct all procurement transactions in a manner providing full and open competition. Noncompetitive procurement is allowable under certain circumstances, one of which is when the public exigency or emergency will not permit a delay resulting from competitive solicitation. (44 CFR 13.36(c)(1) and 44 CFR 13.36(d)(4)(i)(B))
- Do not use prohibited cost-plus-a-percentage-of-cost and percentage-of-construction-cost methods of contracting. (44 CFR 13.36(f)(4))
- Perform a cost or price analysis in connection with every procurement action, including contract modifications, to determine the reasonableness of the



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proposed contract price. A cost analysis is performed when adequate price competition is lacking and for sole source procurements, unless price reasonableness can be established under certain conditions. (44 CFR 13.36(f)(1))

In addition, FEMA's *Public Assistance Guide* (FEMA 322, June 2007, pp. 51–53) specifies that contracts must be of reasonable cost, generally must be competitively bid, and must comply with Federal, State, and local procurement standards. FEMA may grant exceptions to Federal procurement requirements on a case-by-case basis and for subgrantees (44 CFR 13.6(c)).

The Borough awarded two noncompetitive, cost-plus-percentage-of-cost contracts for debris removal totaling \$1,608,376. The noncompetitive contracts largely included debris removal work the Borough completed under exigent circumstances. The emergency requirement to clear local streets, public areas, and rights of way justified the Borough's use of noncompetitive contracts. However, Federal regulations prohibit the cost-plus-percentage-of-cost methodology. Such contracts provide no incentive for contractors to control costs—the more contractors charge, the more profit they make. Under the contracts in question, the primary contractor added markups of 15 percent for overhead and 10 percent for profit on billings for its own employees, and 5 percent for overhead and profit on pass-through costs of its subcontractors.

Additionally, the Borough could not provide evidence that it conducted a cost or price analysis to determine the reasonableness of the contractors' proposed prices. A cost or price analysis decreases the likelihood of unreasonably high or low prices, contractor misinterpretations, and errors in pricing relative to the scope of work.

Because the contract work largely represented debris removal under exigent circumstances, we are not questioning the entire contract amounts. However, we do question the \$285,054 of costs claimed as markups because (1) Federal procurement regulations prohibit the cost-plus-percentage-of-cost methodology of contracting, and (2) FEMA has no assurance that the Borough paid a fair and reasonable price for the contract work.

Borough officials said that they were unaware that Federal procurement regulations prohibited cost-plus-percentage-of-cost contracts. They also said that the Borough took steps to ensure that the contractors' rates were reasonable by having them charge rates and fees in accordance with New Jersey Department of Transportation standards and FEMA equipment rates.



Finding B: Ineligible Force Account Labor Costs

The Borough's project expenditures included \$53,147 of ineligible force account labor costs. The ineligible expenditures included:

- \$12,781 of labor charges for emergency protective measures Borough employees undertook before the storm made landfall on October 29, 2012. These charges were ineligible because the project worksheet authorized debris removal activities only. However, FEMA authorized work classified as emergency protective measures under another FEMA project. Therefore, the Borough should submit these expenditures to the State for an eligibility determination under that project;
- \$15,015 of overtime labor for two salaried employees who were exempt from earning overtime pay; and
- \$25,351 of regular-time salaries and benefits beyond the allowable 30-day period. Normally, only force account overtime labor costs for debris removal work are eligible for reimbursement. However, FEMA Recovery Fact Sheet 9580.215 (*Hurricane Sandy: Debris Removal Force Account Labor Costs*, November 5, 2012) states that FEMA will reimburse the straight- or regular-time salaries and benefits of an applicant's permanently employed staff performing eligible debris-related work for a period not to exceed 30 consecutive calendar days. The applicant may choose one 30-day period of eligibility. According to the Borough's Director of Finance, the Borough chose October 29, 2012, through November 27, 2012, as its 30-day period. However, the Borough's claim included \$25,351 of regular-time labor costs for staff that performed debris removal activities from November 28 through November 30, 2012, which was outside the eligible period.

Borough officials agreed that the \$12,781 of labor charges are not applicable to debris removal work and that they will claim the costs under the Borough's project worksheet for emergency protective measures.

Finding C: Supporting Documentation

The Borough could not provide adequate documentation to support \$184,806 of project expenditures. Federal cost principles at 2 CFR Part 225, Appendix A, Section C.1.j., require grant recipients to adequately document costs under a Federal award. The unsupported expenditures included:



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- \$175,223 for contracted hourly debris monitors that the Borough could not support with time sheets and pay rates to validate costs billed; and
- \$9,583 of tipping fee charges that the Borough could not support with landfill tickets. The Borough claimed tipping fees for disposing 12,286 tons of debris at a landfill. However, the landfill tickets supported only 12,168 tons of debris, a difference of 118 tons, or \$9,583 (118 tons times \$81.21 per ton).

Borough officials said that the debris monitoring contractor filed for bankruptcy, and the new firm that purchased the business has not provided the Borough with access to certain records pertaining to the debris monitoring operation. The officials said that the Borough is in litigation on this matter.

RECOMMENDATIONS

We recommend that the Director, New Jersey Sandy Recovery Office:

Recommendation #1: Disallow \$285,054 (Federal share \$256,549) of ineligible contracting costs that did not comply with Federal procurement standards unless FEMA grants an exception for all or parts of the costs as provided for in 44 CFR 13.6(c) and if FEMA determines the costs are reasonable pursuant to Section 705(c)(1) of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (finding A).

Recommendation #2: Disallow \$53,147 (Federal share \$47,832) of ineligible force account labor costs unless the Borough provides evidence that the costs are eligible (finding B).

Recommendation #3: Disallow \$184,806 (Federal share \$166,325) of unsupported costs unless the Borough provides additional documentation to support the costs (finding C).



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DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed the results of our audit with Borough, State, and FEMA officials during our audit. We also provided a draft report in advance to these officials and discussed it at the exit conference held on December 3, 2013. We incorporated Borough officials' comments, where appropriate, into the body of this report.

Within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include the contact information for responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendations. Until we receive and evaluate your response, we will consider the recommendations open and unresolved.

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; Dennis Deely, Auditor-in-Charge; Barry Bruner, Auditor; and, Ashley Petaccio, Program Analyst.

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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