



Department of Homeland Security Office of Inspector General

**The State of New York's Management of
State Homeland Security Program and
Urban Areas Security Initiative Grants
Awarded During Fiscal Years
2006 through 2008**





**Homeland
Security**

JAN 13 2011

Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the department.

The attached report presents the results of the audit of the State of New York's management of State Homeland Security Program and Urban Areas Security Initiative grants awarded during Fiscal Years 2006 through 2008. We contracted with the independent public accounting firm Foxx & Company to perform the audit. The contract required that Foxx & Company perform its audit according to generally accepted government auditing standards. Foxx & Company's report identifies six reportable conditions where State management of the grant funds could be improved, resulting in 14 recommendations addressed to the Assistant Administrator, Grant Programs Directorate, Federal Emergency Management Agency. Foxx & Company also identified a best practice that should be considered for use by other jurisdictions. Foxx & Company is responsible for the attached auditor's report dated January 5, 2011, and the conclusions expressed in the report.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. We trust this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in blue ink that reads "Anne L. Richards".

Anne L. Richards
Assistant Inspector General for Audits



January 5, 2011

Ms. Anne L. Richards
Assistant Inspector General for Audits
Office of Inspector General
U.S. Department of Homeland Security
245 Murray Drive, S.W. Building 410
Washington, D.C. 20528

Dear Ms. Richards:

Foxx & Company performed an audit of the State of New York's management of the Department of Homeland Security's State Homeland Security Program and Urban Areas Security Initiative grants for Fiscal Years 2006 through 2008. The audit was performed in accordance with our Task Order No. TPD-FIG-BPA-07-0007, Call 0003 dated September 29, 2009. This report presents the results of the audit and includes recommendations to help improve the State's management of the audited State Homeland Security Program and Urban Areas Security Initiative grants.

Our audit was conducted in accordance with applicable *Government Auditing Standards*, 2007 revision. The audit was a performance audit as defined by Chapter 1 of the *Standards* and included a review and report on program activities with a compliance element. Although the audit report comments on costs claimed by the State, we did not perform a financial audit, the purpose of which would be to render an opinion on the State of New York's financial statements or the funds claimed in the Financial Status Reports submitted to the Department of Homeland Security.

We appreciate the opportunity to have conducted this audit. Should you have any questions, or if we can be of any further assistance, please call me at (513) 639-8843.

Sincerely,
Foxx & Company

Martin W. O'Neill
Partner

Table of Contents/Abbreviations

| | |
|---|----|
| Executive Summary | 1 |
| Background | 2 |
| Results of Audit | 6 |
| Measurable Goals and Objectives | 6 |
| Recommendations | 8 |
| Management Comments and Auditors' Analysis | 9 |
| Sustainability Plans for Long Term Support | 10 |
| Recommendation | 12 |
| Management Comments and Auditors' Analysis | 12 |
| Noncompliance with Procurement Regulations | 13 |
| Recommendations | 17 |
| Management Comments and Auditors' Analysis | 17 |
| Noncompliance with Grant Inventory Requirements | 18 |
| Recommendations | 21 |
| Management Comments and Auditors' Analysis | 21 |
| Untimely Expenditure of Grant Funds | 22 |
| Recommendation | 25 |
| Management Comments and Auditors' Analysis | 26 |
| Salary Claims Not Based on Actual Expenditures | 26 |
| Recommendations | 28 |
| Management Comments and Auditors' Analysis | 29 |

Appendices

| | |
|---|----|
| Appendix A: Purpose, Scope, and Methodology | 30 |
| Appendix B: Management Comments to the Draft Report | 33 |
| Appendix C: Organization Chart | 45 |
| Appendix D: Report Distribution | 46 |

Abbreviations

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|------|-------------------------------------|
| DHS | Department of Homeland Security |
| FEMA | Federal Emergency Management Agency |
| FY | Fiscal Year |
| OIG | Office of Inspector General |

OIG

*Department of Homeland Security
Office of Inspector General*

Executive Summary

Foxx & Company completed an audit of the State of New York's Management of State Homeland Security Program and Urban Areas Security Initiative grants awarded during Fiscal Years 2006 through 2008. The audit objectives were to determine whether the State distributed and spent Homeland Security Program funds strategically, effectively, and in compliance with laws, regulations, and guidance. The audit included a review of approximately \$565 million in State Homeland Security Program and Urban Areas Security Initiative grants awarded to the State of New York.

Generally, the State did an efficient and effective job of administering program requirements in accordance with grant guidance and regulations. The State's plans linked funding to all-hazard capabilities and to goals that were established based on risk assessments. Also, the State effectively monitored the grant programs.

However, some improvements are needed in the State's establishment of measurable goals and objectives, identification of long-term capability sustainment options, compliance with procurement and inventory requirements, and timeliness of expenditures. Additionally, the State needs to ensure that salary claims made by subgrantees are based on actual expenditures.

Our 14 recommendations call for the Federal Emergency Management Agency to require the State of New York to initiate improvements which, if implemented, should help strengthen program management, performance, and oversight. Federal Emergency Management Agency officials did not concur with recommendations 2, 3, and 4. In addition, State officials did not agree with recommendations 1, 2, 4, 5, 6, 13, and 14. The State officials' written response to the recommendations is included as Appendix B.

Background

The Homeland Security Grant Program is a federal assistance grant program administered by the U.S. Department of Homeland Security (DHS) Grant Programs Directorate within the Federal Emergency Management Agency (FEMA). The current Grant Programs Directorate, hereafter referred to as FEMA, began with the Office of Domestic Preparedness, which was transferred from the Department of Justice to DHS in March 2003. The Office of Domestic Preparedness was subsequently consolidated into the Office of State and Local Government Coordination and Preparedness which, in part, became the Office of Grants and Training, and which subsequently became part of FEMA.

Although the grant program was transferred to DHS, applicable Department of Justice grant regulations and legacy systems still were used as needed to administer the program. For example, through Fiscal Year (FY) 2008 the Office of Justice Programs' Grants Management System was used to receive grantee applications and to administer the award and reporting processes. Also, prior to the transfer, the State Administrative Agency entered payment data into the Office of Justice Programs' Phone Activated Paperless Request System, which was a drawdown payment system for grant funds. That payment system was replaced in April 2007 by FEMA's Payment and Reporting System. This system allows grantees to make payment requests and complete and transmit quarterly Financial Status Reports online.

Homeland Security Grant Program

The Homeland Security Grant Program provides federal funding to help state and local agencies enhance their capabilities to prevent, deter, respond to, and recover from terrorist attacks, major disasters, and other emergencies. The Homeland Security Grant Program encompasses several interrelated federal grant programs that together fund a range of preparedness activities, including planning, organization, equipment purchase, training, and exercises, as well as management and administration costs. Depending on the FY, the program included some or all of the following programs:

- **State Homeland Security Program** supports the implementation of State Homeland Security Strategies to address the identified planning, organization, equipment, training, and exercise needs to prevent, protect against, respond

to, and recover from acts of terrorism and other catastrophic events.

- **Urban Areas Security Initiative Program** funds address the unique planning, organization, equipment, training, and exercise needs of high-threat, high-density Urban Areas, and assists the areas in building an enhanced and sustainable capacity to prevent, protect against, respond to, and recover from acts of terrorism.
- **Law Enforcement Terrorism Prevention Program** provides resources to law enforcement and public safety communities (working with their private partners) to support critical terrorism prevention activities, including: establishing / enhancing fusion centers and collaborating with non-law enforcement partners, other government agencies, and the private sector.
- **Citizen Corps Program** mission is to bring community and government leaders together to coordinate the involvement of community members in emergency preparedness, planning, mitigation, response, and recovery.
- **Metropolitan Medical Response System Program** funds support designated jurisdictions to further enhance and sustain a regionally integrated, systematic mass casualty incident preparedness program that enables a response during the first crucial hours of an incident. The program prepares jurisdictions for response to all-hazards mass casualty incidents, including chemical, biological, radiological, nuclear, and explosives terrorism, epidemic disease outbreaks, natural disasters, and large-scale hazardous material incidents.

State Administrative Agency

The governors of each state appoint a State Administrative Agency to administer the Homeland Security Grant Program. The State Administrative Agency is responsible for managing the grant programs in accordance with established federal guidelines. The State Administrative Agency is also responsible for allocating funds to local, regional, and other state government agencies. In 2001, the Governor of New York created the Office of Public Security by Executive Order. This office was later codified in State legislation as the Office of Homeland Security. The Office of Homeland Security is the State Administrative Agency for the

Homeland Security Grant Program. The New York Office of Homeland Security administered all of the Homeland Security Grant Program grants included in our audit scope. The New York State Office of Homeland Security's organizational structure is depicted in Appendix C. In July 2010, the Office of Homeland Security was merged with the State Emergency Management Office and four other State organizations to become the Division of Homeland Security and Emergency Services.

The State of New York has five Urban Areas Security Initiative areas: New York City, Buffalo, Albany, Syracuse, and Rochester. The State's Office of Homeland Security, Homeland Security Strategy Work Group, is comprised of representatives of 15 State agencies. The Work Group guides the planning process for State Homeland Security Program grant funds. The Group meets monthly to assess progress on local and state initiatives. It is responsible for developing the State's Investment Justifications and the State Preparedness Reports. Each Urban Areas Security Initiative has its own group for planning, strategy development, identifying needs, and preparing Investment Justifications.

Grant Funding

FEMA awarded the State of New York approximately \$625 million in Homeland Security Grant Program funds during FYs 2006 through 2008. As part of this program, the State received \$565 million in State Homeland Security Program and Urban Areas Security Initiative grants. During that timeframe, the State Administrative Agency awarded funds to the following subgrantees which included counties, cities, State agencies, urban areas, and a Native American tribe:

- 2006: 73 subgrantees comprised of 56 counties, 9 cities, 6 State agencies, and 2 urban areas;
- 2007: 75 subgrantees comprised of 57 counties, 9 cities, 6 State agencies, 1 Native American tribe, and 2 urban areas; and
- 2008: 63 subgrantees comprised of 52 counties, 4 cities, 1 State agency, 1 village, and 5 urban areas;

Table 1 displays a breakdown of the State Homeland Security Program and Urban Areas Security Initiative grant funds by year. Some urban areas did not receive grant funds during each of the fiscal years.

Table 1

| New York Homeland Security Grant Program Awards Fiscal Years 2006 through 2008 | | | | |
|---|----------------|----------------|----------------|---------------|
| Funded Activity | FY 2006 | FY 2007 | FY 2008 | Total |
| State Homeland Security Program | \$27,460,000 | \$38,810,000 | \$76,500,000 | \$142,770,000 |
| Urban Areas Security Initiative | \$128,160,000 | \$139,560,000 | \$154,319,000 | \$422,039,000 |
| Law Enforcement Terrorism Prevention Program | \$26,010,000 | \$27,710,000 | Not Applicable | \$53,720,000 |
| Citizen Corps Program | \$882,000 | \$668,000 | \$665,000 | \$2,215,000 |
| Metropolitan Medical Response System Program | \$1,162,000 | \$1,291,000 | \$1,606,000 | \$4,059,000 |
| Total | \$183,674,000 | \$208,039,000 | \$233,090,000 | \$624,803,000 |

Scope of Audit

Foxx & Company completed an audit of the State of New York's management of DHS' State Homeland Security Program and Urban Areas Security Initiative grants awarded during FYs 2006 through FY 2008. The objectives of the audit were to determine whether the State distributed and spent Homeland Security Grant Program funds strategically, effectively, and in compliance with laws, regulations, and guidance. Nine researchable questions provided by the DHS Office of Inspector General (OIG) established the framework for the audit. The researchable questions were related to the State Administrative Agency's planning, management, and evaluations of grant activities. Appendix A provides additional details on the Purpose, Scope, and Methodology of this audit, including the nine researchable questions.

Results of Audit

State Grants Management Practices Were Generally Effective, But Required Some Improvements

Generally, the State did an efficient and effective job of administering program requirements in accordance with grant guidance and regulations. The State's plans linked funding to all-hazard capabilities and to goals that were established based on risk assessments. Also, the State effectively monitored the grant programs.

However, improvements were needed to enhance New York's management of the grants including:

- Develop measurable capability goals and objectives,
- Identify long-term capability sustainment options,
- Ensure compliance with procurement regulations and inventory requirements,
- Improve the timeliness of grant fund expenditures, and
- Ensure that salary claims of subgrantees are based on actual expenditures.

We have provided 14 recommendations that will enhance the effectiveness of the State's grants management and overall use of the grant funds to improve preparedness and response capabilities. In addition, the audit resulted in \$4.3 million in grant expenditures being questioned.

Measurable Goals and Objectives

For FYs 2006 through 2008 the State Office of Homeland Security could not demonstrate specific improvement and accomplishments based on its strategic goals and objectives because the State did not provide an adequate basis for measuring improvements in the State's preparedness and response capabilities. For FYs 2006 through FY 2008 the Agency had not developed measurable goals and objectives consistent with federal requirements. The State revised its goals and objectives for FY 2009 and State Office of Homeland Security officials believed that these revisions were improvements over the prior goals and objective. The revised goals and objectives, however, were also stated in a manner which made measuring progress difficult. To measure performance in achieving goals and objectives the Agency relied on information that estimated progress toward achieving goals and objectives. As a result, the State did not

provide specific documentation to demonstrate the effect that grant funds had on the capability of first responders.

Code of Federal Regulations Title 44 § 13.40, *Monitoring and reporting program performance*, requires that grantees monitor grant and subgrant supported activities to assure that performance goals are being achieved. In addition, Department of Homeland Security State and Urban Areas Homeland Security Strategy Guidance on Aligning Strategies with the National Preparedness Goal, dated July 22, 2005, states that an objective sets a tangible and measurable target level of performance over time against which actual achievement can be compared, including a goal expressed as a quantitative standard, value or rate. Therefore, an objective should be:

- Specific, detailed, particular, and focused — helping to identify what is to be achieved and accomplished;
- Measurable — quantifiable, providing a standard for comparison, and identifying a specific achievable result;
- Achievable — the objective is not beyond a state, region, jurisdiction, or locality's ability;
- Results-oriented — identifies a specific outcome; and
- Time-limited — a target date exists to identify when the objective will be achieved.

New York State Office of Homeland Security officials acknowledged that they did not have a basis for measuring improvements in the State's preparedness and response capabilities. The officials pointed out they have participated in DHS efforts to develop a Cost-to-Capability system. According to State Office of Homeland Security officials, the 2009 State strategy had been revised to emphasize the development of metrics for measuring progress. The 2009 strategy, however, contains goals and objectives that are not specific, and therefore, difficult to measure. For example, one goal is to Strengthen Communications and Emergency Alert Capabilities. An objective under this goal is to support State and regional planning efforts to find interoperable communications solutions. State Office of Homeland Security officials also stated that they obtained information on the estimated progress towards achieving goals and objectives from an annual assessment and information from surveys of subgrantees and first responders. In addition, State Office of Homeland Security officials pointed out that in some areas progress can be quantitatively measured. For example, State Office of Homeland Security effectively measures the capability advancement of Bomb Squads and Hazardous Materials Teams.

According to the State officials, the development of measurable goals was difficult. The State had not developed measurable goals because FEMA had not required the State to do so and FEMA had approved the State strategy for FYs 2006 through 2008. Also, the officials pointed out that DHS had not developed metrics for measuring progress. State officials stated that the progress on projects was addressed in annual FEMA monitoring reports which provided estimated percentages for completing projects. In addition, the State's participation with DHS on the Cost-to-Capability pilot project did not leave a positive impression with State Office of Homeland Security officials regarding DHS' assistance in developing metrics. In a September 2009 letter to DHS, State Office of Homeland Security officials provided the following observations:

- The Cost-to-Capability prototype fails to account for the essential role that risk plays in the allocation of homeland security resources. It does not capture State and local threat levels, which are critical to the effective distribution of grant funds.
- The system does not accurately measure capabilities or programmatic effectiveness.
- It does not provide for any linkage to State or Urban Areas Homeland Security Strategies; strategies that FEMA requires and that have guided the grant funding process since 2003.
- It is highly subjective and not user friendly or intuitive.

While we did not verify the above observations, we recognize that without measurable goals and objectives and a mechanism to collect objective, results-oriented data from local jurisdictions and first responders, the State did not have a basis to evaluate the effect of grant expenditures on its preparedness and response capabilities. Also, the State could not consider progress toward goals and objectives for future funding and management decisions. State Office of Homeland Security officials stated that they use a risk based approach for making funding decisions rather than progress in achieving goals and objectives. Without information on achieving specific and measurable goals and objectives, however, FEMA would not know what measurable progress was being made to improve preparedness and response capability or the amount of additional funding and time that would be needed to ultimately achieve goals and objectives.

Recommendations

We recommend that the Assistant Administrator, Grant Programs Directorate, require the Director of the New York State Office of Homeland Security to:

Recommendation #1: Develop strategic goals and objectives applicable to first responder capabilities that are specific, measurable, achievable, results-oriented, and time limited.

Recommendation #2: Incorporate the goals and objectives into a statewide system for measuring local jurisdiction first responder progress toward achieving the goals and objectives.

Recommendation #3: Include the progress achieved in the goals and objectives along with risk in the decision making process for future first responder grant funding decisions.

Management Comments and Auditors' Analysis

FEMA did not concur with recommendation #2 and #3. FEMA stated that the Homeland Security Strategy was meant to be a strategic document providing a framework to identify needed capabilities and was not designed to measure progress and identify gaps. We do not agree with FEMA's position. Once strategic goals and objectives are developed that are specific, measurable, achievable, results-oriented, and time limited as stated in recommendation #1, the goals and objectives should be used to measure progress and the progress achieved should be considered in future grant funding. While the Homeland Security Strategy was not designed to measure progress and identify gaps, there is a need for goals and objectives that comply with federal requirements and provide a basis for measuring progress in achieving needed capabilities.

The State Administrative Agency disagreed with the assessment leading to recommendation #1. The Agency officials said that it has complied with all federal requirements and implemented a strategy approved by DHS. The officials also said that measuring preparedness is difficult and complicated by FEMA's inability to develop a system for assessing the impact of grant funding.

The State Administrative Agency also disagreed with recommendation #2. The Agency officials said that it should not be required to do what the federal government has been unable to do. While it does not employ mathematical progress measures, it uses other processes to understand progress made through the use of federal grants. We recognize that while measuring progress is difficult, it should not be a reason for not trying to quantitatively measure progress.

For recommendation #3, the officials said that it considered both progress and risk in making grant funding decisions. Although we recognize that the State uses risk as a measure in grant funding decisions, we believe that using progress achieved should also be an important factor in funding decisions.

The Assistant Administrator, Grant Programs Directorate, needs to provide corrective actions for the recommendations and a plan to implement them within 90 days.

Sustainability Plans for Long Term Support

Sustaining long-term activities funded by the Homeland Security Grant Program may not be possible without continued federal funding. Actions by the State and subgrantees indicated that the Homeland Security Grant Program was being viewed as continuing indefinitely, even though the Homeland Security Grant Program is not an entitlement program. Multi-year projects were approved that extended beyond the grant period without identified state and local funds for completing the projects. Investment Justifications for projects within the programs indicated that additional federal funding would be needed to sustain the capabilities achieved with the projects. As a result, the sustainment of capabilities in the long run and the completion of projects funded by multi-year contracts may be in jeopardy should the funding for the Homeland Security Grant Program be discontinued or severely reduced.

The Homeland Security Grant Program receives funds through annual appropriations. The amount appropriated varies from year-to-year and is not guaranteed for any future year. Each grant program has specific appropriations and periods of performance within which the funds must be used. Grantees may only fund investments that were included in a specific year's Investment Justifications that were submitted to DHS and evaluated through the agency's peer review process. State Office of Homeland Security and New York City officials stated that while these funds are limited, the State and the City also have expended significant amounts of their own funds for Homeland Security projects.

The DHS funding provided to grantees through the Homeland Security Grant Program over the past several years has created a perception that this funding will continue indefinitely as would be the case for entitlement programs, such as Medicare and Social Security. Unlike entitlement programs, the annual appropriations for the Homeland Security Grant Program are based on budget justifications provided to the Congress by DHS. State Office of Homeland Security officials stated, however, that

information on proposed federal budgets and commitments to continue the war on terrorism indicates that funding will continue in the future.

The State's Investment Justifications for FY 2006-2008 included 45 programs. Our review showed that of the 45 individual program justifications, 25 (56%) indicated that federal funds were needed to sustain the program, or that the capability would not be sustained without federal funding. For the other 20 programs that did not mention that federal funds were needed, the justifications either did not mention funding sources or indicated that other sources, such as state or local funding, would be needed to sustain the capability. State Office of Homeland Security officials stated that the number of letter characters allowed for addressing sustainability in investment justifications was limited on the FEMA document. Therefore the amount of information provided was limited by this restriction. For FY 2010, FEMA did not require investment justifications to address sustainability. State Office of Homeland Security officials stated that other than the investment justification requirement, they were unaware of any other mandates requiring developing or reporting information on sustainment.

We noted several multi-year commitments that relied on future federal funding. For example, the Fire Department New York approved a multi-year contract based on the likelihood that federal funding would be available for the life of the contract. The Fire Department New York entered into a \$5.5 million contract on October 18, 2006, for development of a Patient Tracking System. The system would be utilized by the Fire Department New York for electronically tracking the movement of patients from initial contact by Fire Department New York through transfer of care to a medical receiving facility. The system would provide needed information in mass casualty incidents. The term of the contract was from February 22, 2007, through February 21, 2011. This contract period exceeded the original term of the grant performance period of July 1, 2006, through June 30, 2008. The deliverables for the contract were expected to extend beyond the grant period and the project would not be completed until near the end of the contract period (February 2011). At the time of our visit a substantial amount of work had yet to be completed for the Patient Tracking System project. Cumulative State Homeland Security Program expenditures as of February 25, 2010, were \$378,874 of the \$5.5 million dollar contract ceiling.

The Fire Department New York and the New York City Office of Management and Budget officials operated under the assumption that grant funds from future years would be available for project expenditures. A Fire Department New York official stated that, if federal funding was not available, the City would have to bear the cost of the contract. The

project would be reviewed and would not go forward if the project was still in the initial phase. The award of long-term contracts anticipates that federal funds will continue to be available to complete the projects.

The threat of terrorism and other hazards, and the annual award of funds from the Homeland Security Grant Program, have caused grantees and subgrantees to assume that federal funds will continue to be available. Nevertheless, DHS had required the States to address sustainability plans for long term support of acquired capabilities. However, the wording in the State's grant applications only addressed sustainability in general terms and did not actually identify other sources of funding should federal funding be reduced or eliminated all together.

The sustainment of capabilities in the long run and the completion of projects funded by multi-year contracts may be in jeopardy if future federal funding is not available or significantly reduced. If this occurs, grantees and subgrantees would have to provide support to retain acquired preparedness and response capabilities. If the required funds exceeded the financial ability of the grantee and subgrantees, the acquired capabilities could be reduced or eliminated.

Recommendation

We recommend that the Assistant Administrator, Grant Programs Directorate, require the Director of the New York Office of Homeland Security to:

Recommendation #4: Identify on-going and proposed projects for FYs 2006 through 2008 that will need federal funding beyond the grant period, estimate the timeframe and the amount of money needed to complete the projects, and provide contingency plans with options for sustaining the capabilities being acquired in the absence of federal funds.

Management Comments and Auditors' Analysis

FEMA did not concur with recommendation #4. FEMA officials said that addressing long-term sustainment of grant-funded activities is outside the scope of the audit, and that the State was not in violation of regulations or grant requirements. Imposing this requirement on the State is unreasonable and inequitable since it is not a requirement of all grant recipients. FEMA officials said that the issue of long-term sustainment of the projects/initiatives is a cross-cutting issue that should be discussed at the highest levels of

DHS, as requiring a state or urban area to complete such a task has broad policy implications.

We do not agree with FEMA's position. The purpose of the audit was to determine whether grant funds were spent strategically, effectively, and in compliance with laws, regulations, and guidance. To determine whether grant funds are being spent effectively, it is important to know if funded projects will be completed or sustained should future Federal funding be reduced or eliminated. Obtaining project completion and sustainment requirements is important information for approving future funding and should not be delayed because of the perceived need of a high level policy discussion. The State should have information available from Investment Justifications or other sources to determine the time period for completing and sustaining grant funded projects. Accordingly, gathering this information should not be an undue burden.

The State Administrative Agency disagreed with Recommendation #4. The State officials said that additional grant funding is available to support on-going and proposed projects. The officials further stated that the audit did not take into account funds approved for grant cycles FYs 2009 and 2010 that provided available funding until 2013. The State officials also said that the information contained in DHS Bulletin No. 336 regarding use of funds to sustain investments was omitted from the report. This bulletin allows grant funding to maintain and sustain current investments.

The recommendation, however, is focused on completing projects and not maintaining previous investments. We believe that the funding information that would be obtained through implementation of the recommendation would be useful for planning the completion of projects in the absence of federal funds.

The Assistant Administrator, Grant Programs Directorate, needs to provide corrective actions for the recommendation and a plan to implement it within 90 days.

Noncompliance with Procurement Regulations

The New York City Police Department awarded contracts without the use of full and open competition, and did not comply with federal requirements in procuring equipment. The New York City Police Department used a confidential and special expense purchase process that

involved negotiating directly with vendors for purchasing equipment and other items. Using this process, the New York City Police Department purchased 145 items costing more than \$10,000 each without being advertised and without the receipt of required sealed bids in accordance with New York state law and the subagreement provisions. The noncompetitive process was used because the New York City Police Department did not want to disclose information that could be used to compromise the equipment by terrorists or others. The process, however, denied the Department the full value of a competitive market place. The Department may have paid more for the equipment than if an open bidding process had been used. As a result of the noncompliance with requirements, we have questioned \$4.1 million of equipment purchased through the confidential and special expense process.

Grantees and subgrantees that receive State Homeland Security Program and Urban Areas Security Initiative grant funds are required to comply with all applicable laws, regulations, and program guidance. These regulations include FEMA's codified regulation, Code of Federal Regulations Title 44 Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Procurement is addressed in Code of Federal Regulations Title 44 §13.36 (a), which states that a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and implementing regulations.

The grant contracts that the State Office of Homeland Security utilized for awarding State Homeland Security Program and Urban Areas Security Initiative funds to subgrantees requires the subgrantee to make procurements in accordance with New York State General Municipal Law Article 5-A and other applicable regulations. Section 103 of Municipal Law Article 5-A states all purchase contracts involving an expenditure of more than \$10,000 shall be awarded to the lowest responsible bidder after advertisement for sealed bids. New York City Police Department Officials stated that they follow procurement standards set forth by the New York City Procurement Board rules. These standards define small purchase procurements as those of not more than \$100,000. Procurements over \$100,000 are subject to public solicitation and award and for those valued over \$5,000 at least five vendors shall be solicited from a small bidders purchase list. Because the New York City subagreements required using the \$10,000 threshold for bidding and we were not provided with documentation that released the City from this requirement, we believe that the New York City Police Department was required to use advertised procurement for purchases over \$10,000.

The New York City Police Department officials told us that they were concerned about publicly disclosing sensitive information on equipment procured that could be used by terrorists or others for criminal activities. Accordingly, the New York City Police Department adopted a confidential and special expense procurement process in order to not make public information that would be disclosed in an open bidding process. State officials said that the confidential and special expense purchase process was unique to the New York City Police Department and not used by other New York State subgrantees.

The Federal Acquisition Regulation does contain provisions that allow for non-competitive contracts for circumstances such as a unique source or national security. The circumstances for these type awards must be documented with justification for other than full and open competition. We question the use of the confidential and special expense purchase process by the New York City Police Department to purchase some items, as confidentially was not an apparent issue.

According to the March 2007 New York Police Department protocol the New York City Police Department conducts limited procurement outreach and negotiates directly with vendors for purchasing equipment when using the confidential and special expenses purchase process. The vendors agreed to comply with New York City Police Department confidentially requirements and other conditions for items costing more than \$100,000 that were purchased without being advertised and without the receipt of required sealed bids. New York City officials stated that while the purchased items were not publicly advertised, the Police Department did solicit bids from multiple vendors except in cases where only a single source was available. The Police Department selected the vendors from this solicitation of bids and believed this process was equal to the competitive process of publicly soliciting bids. Because we were not provided with the procurement information or contract specifications by City officials during our field work, we could not verify that this protocol was being followed as described.

For confidential and special expense purchases of \$100,000 or less, officials stated that a less formal competitive process was used but was comparable with the federal procurement regulations. Additional information was not provided on the process for procurements of \$100,000 or less, so we could not validate whether or not it was actually working as prescribed. In addition, a New York City Police Department presentation provided to us describing the implementation of the confidential and special expense purchase process stated that no oversight approvals were required for purchases under \$100,000. Also, according to a New York City Police Department official, the confidential and special

expense purchases were not approved by the State Office of Homeland Security. Documentation obtained showed that about \$4.1 million of equipment had been purchased through the confidential and special expense purchase process for items costing over \$10,000 under the DHS awards within the scope of our audit.

An October 2009 fiscal monitoring report by the State Office of Homeland Security Fiscal Monitoring Unit contained observations regarding New York City Police Department equipment property and procurement records. The report stated that equipment property and procurement records for transactions selected for review were not made available by the New York City Police Department. For eight transactions selected for review, no procurement files were made available for the transactions. The report further stated that without reviewing any procurement records, the State Office of Homeland Security was unable to determine if the New York City Police Department was in compliance with procurement procedures or grant contract requirements. During a follow-up visit to the New York City Police Department in March 2010, different transactions were selected for testing and three issues were reported regarding property records, mainframe server identification, and grant management procedures. In a final August 2010 report, the issues were resolved except for the finalization of the grant management procedures.

The State procurement regulations did not contain provisions that allowed for non-competitive contracts without adequate justifications documented for other than full and open competition. We question the New York City Police Department's claim that confidentially was an apparent issue for many of the items purchased without competition. Also, other grantees and subgrantees in New York State and other states have purchased similar equipment through advertised procurement for items the New York City Police stated were confidential type items.

In addition, the State Administrative Agency as the grantee had not enforced the contractual agreement with the New York City Police Department that required compliance with State and federal procurement requirements for purchases over \$10,000. The Police Department's noncompetitive procurements, particularly of high cost equipment and services, denied the Department the full value of a competitive market place. The Department may have paid less for the equipment if an open bidding process had been used. As a result of the City not complying with procurement requirements, the \$4.1 million of equipment purchased with federal funds by the New York City Police Department is questioned.

Recommendations

We recommend that the Assistant Administrator, Grant Programs Directorate, require the Director of the New York Office of Homeland Security to:

Recommendation #5: Ensure that New York City Police Department complies with federal procurement regulations and provides the visibility necessary for independent reviews of the Department's procurement activities.

Recommendation #6: Conduct a review to determine allowable cost and recover any unreasonable amount (up to \$4.1 million) from the City of New York used to pay for equipment items not purchased in accordance with the grant procurement requirements under the confidential and special expense process.

Management Comments and Auditors' Analysis

FEMA concurred with recommendation #5 and #6. However, the State Administrative Agency did not concur with recommendation #5 and the conclusion that the New York City Police Department is not in compliance with Federal procurement regulations. In its response, the State officials said that the New York City Police Department is in compliance with New York City procurement requirements and the process is competitive.

We disagree with this position. The process used by the New York City Police Department does not follow the competitive procurement requirements contained in its contract with the State nor did it comply with the requirements contained in the New York City Procurement Board rules. The Department's process did not comply with the federal requirement that procurements over \$100,000 be competitively bid.

The State Administrative Agency did not concur with recommendation #6. The State officials said that the procurement process used does not skirt competitive requirements but carries out a competitive process in a controlled information environment.

We disagree with this position. The New York City Police Department has defined, controlled, and used a unique procurement process not used by any other subgrantees in the State. The State Administrative Agency has in its response attempted to provide reasons why the process, which employs a

controlled rather than open competitive process, complies with existing procurement requirements. However, documentation was not provided to show that items were procured in an open and competitive manner. The State officials also said that the audit does not properly portray the interaction between the State's Fiscal Monitoring Unit and visits with the New York City Police Department in which the Fiscal Monitoring Unit is trying to understand nuances of the confidential procurement of the process. We believe that the State Administrative Agency should have been aware of the process before it was used to purchase \$4.1 million dollars of equipment in a less than open competitive environment.

The Assistant Administrator, Grant Programs Directorate, needs to provide corrective actions for the recommendations and a plan to implement them within 90 days.

Noncompliance with Grant Inventory Requirements

State subgrantees did not always maintain inventory records in accordance with federal requirements. Compliance with property record requirements was not being followed at 3 of 22 subgrantees we visited and 18 of 27 subgrantees visited by the State Fiscal Monitoring Unit. As a result, the State did not have reasonable assurance that the assets procured with federal funds were adequately safeguarded to prevent loss, damage, or theft of the property.

Code of Federal Regulations Title 44 § 13.32 (d) *Management requirements*, establishes procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, and includes the following minimum requirements:

- Property records must be maintained and include the property's cost, description, identification number, location, use, condition, and ultimate disposition.
- A physical inventory of the property must be taken and the results reconciled with the property records at least every two years.
- A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

Code of Federal Regulations Title 44 § 13.20 (a)(3) requires that effective control and accountability be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes. Also, Code of Federal Regulations Title 2

§ 215.34 (f)(4) requires that a control system be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the equipment. In the State of New York, contracts between the grantee and the subgrantees also require subgrantees to maintain control and accountability over assets acquired with federal funds.

Issues concerning compliance with federal inventory requirements have been a frequently reported problem within the State of New York. Inventory records at 3 of 22 subgrantees we visited did not contain required information such as equipment serial number, location, or evidence that a physical inventory had been conducted every two years. In addition, the State Department of Homeland Security Fiscal Monitoring Unit reported noncompliance with federal property management requirements was reported for 18 of 27, or 67%, of the subgrantees it visited. Note that two entities were visited by both organizations resulting in a total of 19 subgrantees where property problems were identified.

Noncompliance for the 19 subgrantees involved inventory records that did not contain all of the required information such as the property's cost, description, identification number, location, use, or condition. For example, in September 2009 the Fiscal Monitoring Unit reported that one subgrantee's inventory records did not contain information on who holds title, location, use and condition, and disposition data. There was also no evidence that periodic inventories were completed. In addition, our review showed that inventory records for another subgrantee did not contain information to support that required periodic inventories were conducted, and did not contain title, use, and condition information.

A State Office of Homeland Security official said that subgrantees were not always aware of the federal property management requirements. Even though the terms of the subgrantee contracts with the grantee included compliance with Federal requirements for maintaining inventory records, the subgrantees were not complying with the requirements. The State official said that the State office continuously educated subgrantees on State and federal requirements through annual regional meetings and site visits. The officials also said that information is provided by the State agency's website and through responses to emails and phone calls from subgrantees.

Six subgrantees within the New York City urban area were among the 19 subgrantees found by the State Fiscal Monitoring Unit and our audit to not be in compliance with federal inventory requirements. As shown below, the City's noncompliance has been a continuing problem.

-
- During Fiscal Year 2006, the New York Department of Homeland Security would not approve grant contracts until the New York City took actions to remedy the non-compliant inventory practices.
 - In March 2008, the DHS Office of Inspector General reported (Report OIG-08-32 dated March 26, 2008) that the City needed to improve its inventory record system. The OIG review showed that each subgrant agency used a different method of controlling and reporting assets. The OIG concluded that developing a city-wide database would enable the city to monitor on-hand assets; increase the visibility of quantities, locations, and availability of assets during response and recovery efforts; and help avoid duplicate assets.

In response to the identified inventory problems, the City of New York's Office of Management and Budget contracted for the development of an automated Grant Tracking System to track equipment inventory items of \$5,000 or greater. The city-wide Grant Tracking System was operational in July 2009 and all nine City agencies were inputting inventory information. However, the information put into the system by the nine City agencies was not independently tested to determine if the information was accurate and complete. According to a New York City Office of Management and Budget official, they are planning to conduct a comprehensive review of equipment records in the Grant Tracking System to ensure that the baseline equipment list for each City agency is accurate. New information placed into the system could be tested by verifying the entries with the fiscal cost reports submitted to the State by subgrantees.

The City's System contained over 4,000 equipment items with a total value that exceeds \$80 million. The System did not contain the location, manufacturer, and serial number for equipment costing approximately \$4.1 million that was purchased under the New York City Police Department's confidential and special expense procurement system. The system also did not include software items of \$5,000 or greater. Computer software is classified as equipment under the DHS Authorized Equipment List and classified as equipment for procurements by the New York Office of Homeland Security. Because software was not included in the Grant Tracking System, the number of software items purchased and the total cost was not available. Subsequent to our visit, a New York City Office of Management and Budget official stated that all software equipment with a unit cost greater than \$5,000 is now being entered into the Grant Tracking System retroactively.

Without the required property management records, there is a potential for subgrantees to not maintain, safeguard, control, or adequately account for millions of dollars of assets procured with federal funds. If subgrantees do

not have accurate records of existing equipment, they cannot make sound management decisions regarding what additional equipment they need in the future.

Recommendations

We recommend that the Assistant Administrator, Grant Programs Directorate, require the Director of the New York State Office of Homeland Security to:

Recommendation #7: Reaffirm and enforce the property management requirements for equipment purchased with federal funds in individual subgrantee contracts.

Recommendation #8: Require subgrantees that are not in compliance to provide a plan to the State to become compliant within a specified timeframe.

Recommendation #9: Confirm that New York City officials have conducted a comprehensive review of equipment records in its Grant Tracking System to ensure that the baseline equipment list for each City agency is accurate.

Recommendation #10: Ensure that all software with a unit cost greater than \$5,000 is being entered into Grant Tracking System retroactively and for software acquired in the future.

Recommendation #11: Inventory all the required property information for items purchased under the New York City Police Department confidential and special expense procurement process.

Management Comments and Auditors' Analysis

FEMA concurred with recommendation #8, #9, #10, and #11. The State Administrative Agency also concurred with the recommendations.

- For recommendation #8 the State officials said that it will continue to work with subgrantees to ensure compliance. The officials said that New York City has added additional controls to ensure compliance with inventory requirements.
- For recommendation #9, the officials said that the Criminal Justice Coordinator of the New York City Mayor's Office

has conducted a review of equipment records to ensure accuracy of equipment records.

- For recommendation #10, the officials said that software with a unit cost of \$5,000 or greater is now being entered into the Grants Tracking System.
- For recommendation #11, the officials said that the New York City Office of Management and Budget is working with the New York Police Department to collect the required property information and enter it into the Grants Tracking System with availability for defined administrators to view the sensitive information.

We believe that the State Administrative Agency and New York City have taken steps to address the intent of the recommendations, but further action will be needed to fully implement the recommendations.

The Assistant Administrator, Grant Programs Directorate, needs to provide corrective actions for the recommendations and a plan to implement them within 90 days.

Untimely Expenditure of Grant Funds

The State obligated grant funds to subgrantees in accordance with federal requirements, but the funds were not available for expenditure for months after the date of obligation because the subgrantees needed to sign contracts with the State before seeking reimbursement. The time available for subgrantees to make expenditures and be reimbursed by the State was significantly reduced and overall expenditure of grant funds was delayed. As a result, the opportunity for first responders to be better equipped, trained, and prepared was delayed because it took 8 to 12 months for subgrantees to receive signed contracts from the State.

FEMA Information Bulletin No. 257 dated July 17, 2007 addressed the condition that there were many requests by grantees for extending the grant performance periods for FY 2002, 2003, and 2004 grants. The bulletin recognized that there were problems in making timely procurements but that it was important to ensure that funds were obligated and expended in a timely manner, within established periods for performance. In addition, FEMA's Program Guidance for the FY 2008 Homeland Security Grant Program stated that FEMA strongly encouraged the timely obligation of funds from local units of government to other subgrantees. In addition, the Program Guidance for FYs 2006 and 2007

required that no less than 80% of the total grant funds available to local units of government be obligated by the State within 60 days of the receipt of funds. For FY 2008 this requirement was within 45 days.

The State Office of Homeland Security required that contracts be made with subgrantees for the award of grant funds before subgrantees could seek reimbursement from the State Office of Homeland Security for grant expenditures. The State notified subgrantees of the obligated amount they would receive within the required federal timeline of within 60 or 45 days. Therefore, the State technically complied with grant guidance. However, while notified of the amounts, the funds were not available to the subgrantee for reimbursement of expenditures until a contract between the grantee and subgrantee was approved by the State Office of Homeland Security.

The State and subgrantee review processes took several months and delayed the expenditure of grant funds. The process provided extensive financial controls over grant funds and started with the subgrantees submitting an application for funding to the State Office of Homeland Security. The application was reviewed by the State program and fiscal review units and the State prepared a contract for grant funds which was mailed to the subgrantee. The contract was approved through the local approval process and was then returned to the State. The contract was signed by the State and approved by three State organizations. After approval it was mailed to the subgrantee and then the subgrantee could request from the State reimbursement for expenditures.

Table 2 below shows for FYs 2006, 2007, and 2008, the average time taken from the obligation of funds to subgrantees until the subgrantees received contract awards. Also included are total grant funds obligated to and the amounts expended by the subgrantees and reimbursed by the State as of September 30, 2009.

Table 2

| Timeliness of Grant Funds Expenditures FY 2006 - 2008 | | | | |
|--|--|--------------------------------------|---|--|
| Grant Program and Fiscal Year | Average Months from Subgrantee Obligation to Contract Award | Total Contract Awards | Amount **Expended and Reimbursed | Percent Expended and Reimbursed |
| FY 2006 | | | | |
| State Homeland Security Program | 10.5 | \$25,824,775 | \$14,756,035 | 57% |
| New York City* | 11.1 | \$118,227,500 | \$13,143,075 | 11% |
| Buffalo* | 10.5 | \$3,710,000 | \$1,983,957 | 53% |
| FY 2007 | | | | |
| State Homeland Security Program | 8.9 | \$33,355,800 | \$4,865,000 | 15% |
| New York City* | 8.9 | \$129,475,000 | \$4,347,749 | 3% |
| Buffalo* | 8.4 | \$5,142,443 | \$1,979,247 | 38% |
| FY 2008 | | | | |
| State Homeland Security Program | 9.8 | \$45,736,426 | \$91,754 | 0% |
| New York City* | 11.2 | \$132,657,528 | \$0 | 0% |
| Buffalo* | 11.3 | \$4,384,800 | \$0 | 0% |
| Albany* | 12.0 | \$1,405,600 | \$21,023 | 1% |
| Syracuse* | 9.3 | \$1,280,800 | \$29,112 | 2% |
| Rochester* | 11.7 | \$1,172,800 | \$0 | 0% |

*Urban Areas Security Initiative Grants

** According to State Office of Homeland Security officials the “Amount Expended and Reimbursed” could be very deceiving. While many of the Urban Areas Security Initiatives may have expended funds, reimbursement requests have not yet been submitted to the State. Therefore, the actual amount expended could be significantly more than the amount reimbursed at any point in time.

Subgrantees we visited viewed the lengthy time it took to receive approved contracts as problematic for timely expenditure of funds. For example, one Urban Areas Security Initiative official stated that they received their first approved FY 2008 contract on July 21, 2009. The State Office of Homeland Security was awarded funds for the Urban Areas Security Initiative on September 16, 2008, approximately 10 months earlier.

According to State Office of Homeland Security officials, subgrantees do make obligations of funds for projects before seeking reimbursement from the State, but this obligation information is not compiled by the State. Also, subgrantees often wait until projects are completed before requesting

reimbursement from the State. However, we were not provided with documentation supporting these statements. The officials further stated that the State has been working closely with the State Division of the Budget and Office of the State Comptroller to tighten the timeframe for making the funding available to local jurisdictions. The State Office of Homeland Security officials stated that they will continue to work with these agencies as needed. As part of grantee monitoring visits and annual regional grantee meetings, the officials said that the local jurisdictions are educated on the time it takes to get this funding approved. The State Office of Homeland Security officials stated they worked with the subgrantees at the local level to ensure information is provided to State Office of Homeland Security early enough in the process to ensure timely approval of contracts. Despite these efforts, measurable reductions in the timeliness of the process have not occurred and the process has not been changed.

New York is a home rule state which means the lowest level of government has the authority over the expenditure of funds, including grant funds. The local units of government must approve the planned expenditure of grant funds before the subgrantee submits a draft contract to the State. This process can take months to complete because of local governing bodies schedules to meet and consider the draft contract. Additional time is taken to review and approve subgrantee approved contracts by the State and return the contract to the subgrantee.

The process delays the expenditure of grant funds and shortens the time period subgrantees have to expend funds within the authorized grant period of performance. The delayed expenditures affect the opportunity for the first responder to enhance preparedness and response capability. This specifically affects the timing of expenditures, such as training, that require time for subgrantees to coordinate activities with other participants.

Recommendation

We recommend that the Assistant Administrator, Grant Programs Directorate, require the Director of the New York Office of Homeland Security to:

Recommendation #12: Assess the current processes and procedures involved with the execution of subgrantee awards to identify efficiencies to expedite expenditures.

Management Comments and Auditors' Analysis

FEMA concurred with recommendation #12. The State Administrative Agency also concurred with recommendation #12. The State officials agree that grant funds be made available to subgrantees in a timely manner but it is important to maintain proper oversight of funds. The process used by the State is to ensure that planned expenditures are allowable before the State awards a contract to a subgrantee. In addition, expenditure delays may be caused by procurement delays and federal requirements. The officials also said that they were concerned about what constituted timely availability of funds.

The Assistant Administrator, Grant Programs Directorate, needs to provide corrective actions for the recommendations and a plan to implement them within 90 days.

Salary Claims Not Based on Actual Expenditures

The Fire Department New York did not have a reasonable basis to support its claims for salary expenditures, specifically \$143,437 claimed for salaries of personnel backfilling for other employees (participants) who were attending training. The amounts claimed were not based on payrolls documented in accordance with federal requirements. Rather, the amounts were based on a model that computed estimated backfill expenditures rather than actual time charges. As a result, the claimed amounts were not supported by adequate documentation. Accordingly, we question the \$143,437 claimed for personnel backfill expenses.

According to the Code of Federal Regulations Title 2 Part 225 Appendix B *Selected Items of Cost: Compensation for personnel services* (Formerly Office of Management and Budget Circular A-87) all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries, and fringe benefits whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by a responsible official(s) of the governmental unit. Furthermore, the Code of Federal Regulations Title 2 Part 225 Appendix A, states that a cost must be reasonable to be allowable under a federal grant and be adequately documented.

Under contracts with the State of New York, subgrantees agreed to comply with federal requirements including Office of Management and Budget Circular A-87. The contracts required that expenditures be

supported by detail itemization in State Office of Homeland Security format.

Personnel backfill expenses are the result of personnel working overtime in order to perform the duties of other personnel who are temporarily assigned to FEMA-approved activities outside their core responsibilities. Personnel backfill expenses are allowable under the State Homeland Security Program and Urban Areas Security Initiative grant programs. The Fire Department New York was the only organization in the State of New York that used a model to compute backfill amounts, according to a State Office of Homeland Security official.

The personnel backfill amounts claimed were based on a model that computed estimated backfill expenditures rather than actual time charges. The State Office of Homeland Security claims that this practice was approved by the Department of Justice. In support of this position they provided an August 26, 2003 email from a Department of Justice employee approving of the practice for Byrne Grants (a Department of Justice State and Local Law Enforcement Grant Program). The email was in response to a July 14, 2003, Fire Department New York letter to the Department of Justice requesting the ability to submit replacement cost information based on a model approved by FEMA during the submission of personnel service costs related to the World Trade Center Disaster. The State also provided a letter from FEMA supporting approval of the practice. However, the letter was not a formal approval letter from the agency for the model to be used for all future grant awards.

Furthermore, the State provided a FEMA Project Work Sheet from Disaster 1391-DR (911 disaster) for overtime incurred to backfill for New York Fire Department employees for managing the search and rescue and recovery operations at the World Trade Center site, the Office of the Chief Medical Examiner, and the Staten Island Landfill in the amount of \$24,617,123. State Office of Homeland Security officials stated that Title 2 Code of Federal Regulations 225 Part B does provide for substitute systems for allocating salaries and wages to Federal awards if required for approval by the cognizant agency. Although the model may have been used for a specific disaster, it was not approved by FEMA for the awards we reviewed or all future grant awards. The State is inferring that the backfill model is a form of an indirect cost plan since the alternative methodology it is citing in the federal regulations discusses methods of recovering indirect costs. As such the methodology would have to be submitted to FEMA for review, analysis, and approval for a specific time period. Because the cost of the backfill employees changes over time, costs that were applicable to one year may not necessarily reflect costs in another year.

Fire Department New York officials claimed that the model resulted in lower personnel backfill expenses claimed than if actual employee costs were used. The Fire Department New York provided information on why the costs were less using the model, but this information was not a comparison of actual expenses to model estimates for a given time period. In addition, we were not provided with documentation which showed that FEMA had reviewed and approved the model for the awards reviewed. Accordingly, we could not determine if the personnel backfill expenses were reasonable.

The above condition exists because the Fire Department New York personnel claim that they do not have the capability to identify actual time charges because of the size of the organization. Furthermore, the State Office of Homeland Security Fiscal Monitoring Unit accepted Fire Department New York's utilization of the model during their monitoring visit. Regardless, the subgrantee was not in compliance with Code of Federal Regulation Title 2 Part 225 because the personnel backfill amounts expenditures claimed were not based on actual payroll amounts nor was the backfill model specifically approved for the awards reviewed. While FEMA approved the model for a specific disaster in 2002 there is no evidence it approved or was aware that the model was being used for ongoing grant programs. Without knowing the actual payroll amounts it is unclear whether the model amounts were more or less than actual payroll amounts.

Recommendations

We recommend that the Assistant Administrator, Grant Programs Directorate, require the Director of the New York Office of Homeland Security to:

Recommendation #13: Require the Fire Department New York to compute actual payroll costs in determining the amounts charged for backfill expenditures, or submit to FEMA the backfill model for its analysis and evaluation to determine if the model results in a reasonable allocation of backfill costs to the current grant awards.

Recommendation #14: Disallow any of the \$143,437 claimed that are determined to be in excess of the amounts determined to be reasonable by FEMA.

Management Comments and Auditors' Analysis

FEMA concurred with recommendation #13 and #14. However, the State Administrative Agency did not concur with recommendation #13. The State officials said that identifying the overtime coverage for specific individuals is a difficult challenge and, because of this challenge, the Fire Department New York developed a model to calculate backfill costs. The State officials said that FEMA is aware that this model is being used by the Fire Department New York.

We disagree with the position of the State Administrative Agency because while compliance with regulations is challenging, it is not a valid reason for noncompliance. No evidence was provided that FEMA was aware that the model was being used for the grant programs reviewed or that FEMA approved the model for the grant programs reviewed.

The State Administrative Agency did not concur with recommendation #14 in its response. The State officials said that, because it believes FEMA was aware of the use of the model, the Fire Department New York acted in good faith.

As stated above, there is no evidence that FEMA was aware of or approved the use of the model for the grant programs reviewed. Therefore, we disagree with the position taken by the State Administrative Agency.

The Assistant Administrator, Grant Programs Directorate, needs to provide corrective actions for the recommendations and a plan to implement them within 90 days.

Appendix A

Purpose, Scope, and Methodology

The purpose of the audit was to determine whether the State of New York distributed and spent State Homeland Security Program and Urban Areas Security Initiative grant funds strategically, effectively, and in compliance with laws, regulations, and guidance. The goal of the audit was to identify problems and solutions that can help the State of New York better prepare for and respond to threats, acts of terrorism, and other hazards. The audit further enabled us to answer the following nine researchable questions:

- Were measurable goals developed from plans?
- Do funded plans link all-hazards capabilities to goals?
- Were funds and resources distributed based on goals?
- Does the State accurately measure risk?
- Does the State measure response capabilities?
- Can the State demonstrate improved performance?
- Were grants administered compliantly?
- Did the State monitor grant programs?
- What innovative practices can be used by other states?

The scope of the audit included the State Homeland Security Program and Urban Areas Security Initiative grant awards for FYs 2006, 2007, and 2008 as described in the Background section of this report.

The audit methodology included work at FEMA Headquarters, State of New York offices, each of the urban areas that received grants, and various subgrantee locations. To achieve our audit objective, we analyzed data, reviewed documentation, and interviewed the key state and local officials directly involved in the management and administration of the State of New York's Homeland Security Grant Programs. We conducted 22 site visits and held discussions with appropriate officials from 6 counties, 10 local governments or first responders, and 6 State agencies awarded State Homeland Security Program and Urban Areas Security Initiative grants, in order to determine if program grant funds were expended according to grant requirements and State-established priorities.

We conducted site visits to the following 22 subgrantee organizations:

- Albany County
- Erie County

Appendix A

Purpose, Scope, and Methodology

- Monroe County
- Niagara County
- Onondaga County
- Westchester County
- City of Albany
- City of Binghamton
- City of Niagara Falls
- City of Rochester
- City of Schenectady
- City of Syracuse
- City of Troy
- City of Utica
- New York City Police Department
- Fire Department of New York

State Agencies

- Department of Agriculture and Markets
- Department of Health
- Department of State
- Division of Military Affairs
- Emergency Management Office
- New York Division of State Police

At each location, we interviewed responsible officials, reviewed documentation supporting State and subgrantee management of the awarded grant funds (including expenditures for equipment, training, and exercises), and physically inspected some of the equipment procured with the grant funds.

We conducted the audit between December 2009 and May 2010, in accordance with *Government Auditing Standards* as prescribed by the Comptroller General of the United States (Yellow Book-2007 Revision). 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 on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Although this audit included a review of costs claimed, we did not perform a financial audit of those costs. This was a performance audit as defined by Chapter 1 of the standards, and included a review and report of program activities with a compliance element.

Appendix A
Purpose, Scope, and Methodology

Foxx & Company was not engaged to and did not perform a financial statement audit, the objective of which would be to express an opinion on specified elements, accounts, or items. Accordingly, Foxx & Company was neither required to review, nor express an opinion on, the costs claimed for the grant programs included in the scope of the audit. Had Foxx & Company been required to perform additional procedures, or conducted an audit of the financial statements in accordance with generally accepted auditing standards, other matters might have come to their attention that would have been reported. This report relates only to the programs specified and does not extend to any financial statements of the State of New York.

While the audit was being performed and the report prepared under contract, the audit results are being reported by the DHS Office of Inspector General to appropriate Federal Emergency Management Agency and State of New York officials.

Appendix B Management Comments to the Draft Report



NEW YORK STATE
DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES
OFFICE OF COUNTER TERRORISM

David A. Paterson, Governor

James M. Sherry, Director

November 10, 2010

Martin W. O'Neill
Foxx & Company
324 West Ninth Street
Cincinnati, Ohio 45202

Dear Mr. O'Neill:

Thank you for the opportunity review and comment on the draft audit report entitled, "The State of New York's Management of State Homeland Security Program and Urban Areas Security Initiative Grants Awarded during Fiscal Years 2006 through 2008."

Given New York State's threat profile and history of man-made and natural disasters, the Division of Homeland Security and Emergency Services¹ very much appreciates the need to ensure the effective use of federal homeland security grant funding. We also welcome federal oversight and insight into our grants management processes. However, we disagree with the underlying analyses of 7 of the 14 recommendations identified in the audit report.

The audit report disregards material facts and makes broad generalizations and misleading statements in several of the recommendations. Some recommendations are included despite the fact that the relevant issues have already been addressed. There are instances where recommendations are made without any discernable criteria, such as federal law, regulation or U.S. Department of Homeland Security (DHS) or Federal Emergency Management Agency (FEMA) policy.

We invested a great deal of time and effort with the audit team to explain our processes and demonstrate how our efforts align with the requisite federal requirements. We are very disappointed that the audit report failed to accurately reflect the level of detail we provided throughout this process. For this reason, in accordance with Section 8.33 of the Government Auditing Standards of 2007, we must insist that this letter and our detailed rebuttal (enclosed) be included in the final audit report.

Sincerely,

James M. Sherry
Executive Deputy Commissioner &
Director, Office of Counter Terrorism
Division of Homeland Security and Emergency Services

¹ As part of the Governor's SFY2010-2011 Executive Budget, the legacy Office of Homeland Security was merged into the new Division of Homeland Security and Emergency Services (DHSES). DHSES serves as the State Administrative Agency for the federal homeland security grant programs.

Appendix B

Management Comments to the Draft Report

New York State's Audit Rebuttal

Recommendation #1: Develop strategic goals and objectives applicable to first responder capabilities that are specific, measurable, achievable, results-oriented, and time limited.

NYS Response: DHSES **disagrees** with this assessment and the assertion that the State has not developed measurable goals and objectives consistent with federal requirements. As stated by the report, the State of New York has complied with all federal requirements and has implemented a State Homeland Security Strategy, duly approved by DHS. Using a scale provided by DHS part of their annual monitoring visit, we have been able to assess the progress made on our goals and objectives and we continue to improve our State Homeland Security Strategy.

DHSES has recently completed a major revision of the State Homeland Security Strategy, which involved hundreds of New York's State and local stakeholders. The goals and objectives are aligned with the federal priority areas and the national preparedness capabilities. We have worked to assess our preparedness capabilities, but the inability to measure capability improvements and demonstrate the effect that the grant funds have had on the capabilities of first responders are issues the entire nation is struggling with. A task force of federal, state, local and tribal stakeholders commissioned to review national preparedness efforts recently found that, "...while stakeholders across the nation have been working to improve preparedness, specific measurable outcomes for these efforts have yet to be defined and assessed."²

Measuring preparedness is inherently a difficult challenge, one made more complicated by FEMA's inability to develop a consistent and viable system for assessing capability and the impact of grant funding. The failure of the Cost to Capability project and recent GAO and Inspector General Reports³ highlight FEMA's challenges. Further underscoring this lack of federal guidance on national performance measures, federal legislation was recently enacted (HR3980) mandating DHS develop a standard of measurement against which state and local stakeholders can use to compare their level of progress and indicate capability. **These examples are not intended as criticisms of our federal partners, rather they are offered to highlight the complexity of the issue and disingenuous nature of holding state and local stakeholders to standards that do not currently exist.**

Despite the challenges, DHSES and our State and local stakeholders have and will continue to work closely with FEMA to assist them in developing tools to assess and measure preparedness, because it is critical FEMA have feedback from "end-users" when developing national policies and preparedness measures. DHSES will also maintain an open dialogue with our federal, state and local stakeholders regarding our strategic planning efforts, gathering feedback through surveys, regional workshops, meetings and other mechanisms to ensure our strategy remains effective and that we continue to advance our goals and objectives.

² Perspectives on Preparedness: Taking Stock Since 9/11

http://www.fema.gov/pdf/preparednesstaskforce/perspective_on_preparedness.pdf

³ GAO Report: FEMA Has Made Limited Progress in Efforts to Develop and Implement a System to Assess National Preparedness Capabilities <http://www.gao.gov/new.items/d1151r.pdf>

DHS Inspector General Report: FEMA's Preparedness for the Next Catastrophic Disaster - An Update http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_10-123_Sep10.pdf

Appendix B

Management Comments to the Draft Report

Recommendation #2: Incorporate the goals and objectives into a statewide system for measuring local jurisdiction first responder progress toward achieving the goals and objectives.

NYS Response: DHSES **disagrees** with this recommendation and the assertion that states should be required to do what the federal government has, thus far, been unable to do. As our experience with the Cost to Capability pilot revealed, DHS currently lacks a sound “system” to measure the effectiveness of the use of grant funds. It is, therefore, unreasonable to expect that state and local stakeholders adhere to uniform standards of measurement absent a national system, or, in the least, clear and effective federal guidance. New York State has been a willing partner in the effort to help DHS identify and test systems to measure preparedness, and we remain committed to working with our federal, State and local stakeholders on this issue.

Although DHSES does not currently employ ‘mathematical’ measurements, we utilize several comprehensive processes to understand how our local stakeholders are advancing homeland security goals and objectives through the use of federal grant funding. This process includes several elements outlined below:

- **Regional Workshops:** Although we communicate with our stakeholders on a daily basis, DHSES facilitates an annual series of “Regional Workshops” across the State dedicated to gathering feedback from our local grantees. Through these Workshops, the State provides detailed grant information to attendees. We also collect information from subgrantees on their strengths, weaknesses, and priority needs with regard to homeland security funding. This information, along with other data points, is utilized during our grant Investment Justification development process.
- **Contracts and Reporting:** Prior to the initiation of projects, New York State engages an extensive contracting system with our grantees to document: 1) what projects will be funded; 2) how the funds will be used and; 3) how the various projects and initiatives support the homeland security goals and objectives. Each contract contains performance measures and quarterly reporting timeframes which grantees must comply with and report against. All of the contracts are monitored by DHSES Program Representatives. Each funded project must be cross-referenced with, and linked to, federal and State preparedness doctrines and documents, including our State Homeland Security Strategy, our Investment Justifications, National Priorities, Target Capabilities, and federal “G&T” Codes. This extensive process requiring subgrantees to crosswalk their projects with federal and State priorities and policies helps to underscore the importance of continuous evaluation and prioritization of federally funded activities. To help facilitate this data collection and analysis, all grant applications and contract information, including the quarterly reports, are captured through our web-based grants portal, E-Grants.
- **Capability Assessments:** New York State has conducted a series of Capabilities Assessments to better understand the capability strengths, weaknesses and needs of our local and State stakeholders. In 2006 and 2008, we launched formalized “Capabilities Surveys”, which assessed each County’s respective progress on 10 or more of the Target Capabilities identified by DHS. The data captured from these surveys was then used to better inform our Investment Justification development, prioritization and strategic grant planning efforts. Also, since FY 2007, New York State has completed the mandated State Preparedness Report (SPR) to assess our capabilities. The information collected via the SPR was reviewed, along with our other capabilities data, to better inform our decision-making.

Appendix B

Management Comments to the Draft Report

- **NIMS Typing for Team-Based Capabilities:** In addition to our formalized Capability Assessments, New York State has also been an early proponent of the use of FEMA NIMS Typing Standards to assess progress and capability levels. NIMS Typing Standards exist primarily for “Team-Based Capabilities”, such as Explosive Device Response Operations, Search and Rescue, WMD/HazMat Decontamination and Response, etc. The State has focused “Targeted Grant Programs” to bolster and enhance these specialized capabilities of local stakeholders. Offering these Targeted Grants gives the State greater visibility into the true nature of local capabilities in highly technical areas. In terms of our Explosive Device Response Operations Targeted Grant, there are no formal NIMS Typing Standards associated with Explosive Detection Canine Teams. Accordingly, New York State is coordinating with DHS’ Office of Bombing Prevention to develop these standards.
- **After Action Reports:** In addition to formalized Capability Assessments and NIMS Typing Analyses, we also look at past history, lessons learned and after action reports from exercises and significant incidents and responses. Our experience with local first responders indicates that this is one of their primary mechanisms for assessing capabilities and identifying priority needs for future rounds of grants.
- **Subject Matter Experts:** DHSES also relies on subject matter experts from a range of disciplines to help us evaluate our progress and programs. Subject matter experts provide assistance in developing and shaping our annual grant Investment Justifications and State Homeland Security Strategy, both of which consider local progress towards our homeland security goals and objectives. DHSES holds monthly meetings of the Homeland Security Strategy Workgroup (HSSWG), which includes subject matter experts from more than 15 different State agencies involved in homeland security issues. We also host an annual UASI workshop to engage local subject matter experts from within and among UASI regions across the State. We actively work to ensure cross-talk and regular interactions between the HSSWG and our UASI and other local stakeholders, as well.

Recommendation #3: Include the progress achieved in the goals and objectives along with risk in the decision making process for future first responder grant funding decisions.

NYS Response: DHSES agrees that progress and risk are important factors to consider. In fact, we already take both factors into consideration when allocating homeland security grant dollars. That said, we firmly believe that risk should be the driving factor in the decision to allocate homeland security funding. We have long advocated this position to DHS and note that they too use risk (not progress) as the primary factor related to the allocation of grant awards. Every county in New York State has some degree of risk, which is why we use a risk-based formula to allocate a large portion of the local homeland security grant awards. There is no federal directive on how the homeland security funding should be allocated; given New York’s threat profile we feel that risk should be the driving factor.

Although risk is the driving factor in our funding decisions, we do very much consider progress and capability gaps/needs in the allocation funding as well. Progress and previous effectiveness are considered with the allocation of grant funds to support State level homeland security activities, and in the development of our targeted grant programs aimed at developing and enhancing critical capability areas at the local level. For example, DHSES has provided targeted grant funding to the State’s 12 local bomb squads since 2006. In 2008, the DHS Office of Bombing Prevention (OBP) conducted detailed capability assessments of each bomb squad in NYS. These assessments outlined squads’ capability gaps and needs

Appendix B

Management Comments to the Draft Report

(i.e. equipment, training) using the NIMS Typing Guidelines provided by FEMA. Squads are now required to link their funding applications back to their capability assessment to ensure progress is being made toward the development of their capabilities (which align to homeland security goals and objectives). Moreover, using the NIMS Typing Standards, New York is able to ascertain how squads have used grant funds to increase their status (i.e. from a Type 4 to a Tier 3). It should also be noted that previous contract implementation is a factor considered in the bomb squad grant application, which is another example of how progress is considered.

Other targeted grant programs have been developed based on the need to improve critical capability areas across the state, and DHSES will continue to analyze and consider progress as we develop current and future targeted grant programs. However, risk will remain the driving factor as it relates to the allocation of homeland security grant funding.

Recommendation #4: Identify on-going and proposed projects for FYs 2006 through 2008 that will need federal funding beyond the grant period, estimate the timeframe and the amount of money needed to complete the projects, and provide contingency plans with options for sustaining the capabilities being acquired in the absence of federal funds.

NYS Response: DHSES **disagrees** with this recommendation as it fails to recognize the fact that additional grant funding is available to support on-going and proposed projects. This audit looked at funding for FFY 06-08, but it did not take into account the two additional grant cycles (FFY 09-10) that have since been approved, which means grantees will have funding available at least until 2013 as the grants have a minimum three year performance period. The President's 2011 budget includes additional homeland security funding, which will further extend the available resources.

The recommendation also clearly and directly contradicts the recent decision of the Department of Homeland Security Secretary, issued in Information Bulletin No. 336 on November 30, 2009, specifically allowing the use of federal homeland security funding to maintain and sustain current and previous investments. We question the audit report's omission of this key fact. The preparedness task force mentioned earlier has also recommended that grantees have the flexibility to use federal grant funds to support maintenance and sustainment costs without limitation. Furthermore, most, if not all, localities are realistically unable to establish funding source "contingency plans" absent a specific earmark or appropriation. Without appropriate legal authority, state and local governments may not establish a 'pre-identified' funding source as a contingency plan. If such a funding source is properly designated with the requisite legal budgeting authority, such an 'alternate' funding source may arguably violate non-supplanting rules. Nonetheless, the additional responsibilities placed on state and local governments to support national homeland security efforts require a sustained commitment of federal funding, particularly during these challenges fiscal times. It is an inevitable certainty that without this sustained commitment of federal funding our national preparedness capabilities will begin to erode – not due to a lack of state and local commitment, but rather the limitation in resources. Additionally, as we are unaware of formal DHS guidance on the issue, the notion of homeland security grant funding as an entitlement program appears an editorial comment on behalf of the auditors.

Appendix B

Management Comments to the Draft Report

Despite the need for continued homeland security funding, DHSES also appreciates the need to leverage other resources in support of the capabilities developed with the federal funds. We will stress this point both in the application process and in the guidance we offer to our State and local grantees. We must also point out, however, that the audit fails to fully recognize the commitment of State and local resources beyond the federal grant programs, , as millions of State and local dollars go to support homeland security efforts, particularly as it relates to the funding of personnel, the most critical homeland security resource.

New York State has invested more than \$400 million in State resources on homeland security programs and initiatives from 2006 to date, with an annual average of nearly \$84 million. Even during these austere fiscal times, New York State is poised to invest an additional \$42 million in capital funding in the State Preparedness Training Center and up to \$75 million annually to support interoperable and emergency communications, a local priority and goal in the State Homeland Security Strategy.

Few, if any, jurisdictions expend more of its local resources on homeland security than the City of New York. New York City's local annual commitment for anti-terrorism measures amounted to \$330 Million in 2009 alone. The City invested nearly \$500 Million to design and roll out a broadband data network to support emergency communications, and many millions more to upgrade public health labs and hospitals, and to enhance protection at critical infrastructure.

The examples outlined above highlight New York's commitment to the homeland security mission. It also underscores the fact that this is a long-term effort, sometimes necessitating that contracts extend beyond fixed grant years. Long-term projects will often take several years to complete and grantees are well aware that if grant funds are no longer available, they will need to obtain other funding sources. This is clearly spelled out in the contract agreement. As a federal multiple year appropriation, grantees generally have three years to spend the federal funds (absent federally-approved extensions) and often approve contracts knowing that additional federal funds are "in the pipeline" as outlined above.

Recommendation #5: Ensure that New York City Police Department complies with federal procurement regulations and provides the visibility necessary for independent reviews of the Department's procurement activities.

NYS Response: DHSES **disagrees** with this assessment and the conclusion reached that the New York City Police Department (NYPD) is currently not in compliance with federal procurement regulations. The NYPD uses Department of Homeland Security grant funds to purchase equipment and technology utilized to prevent and protect New York City from future terrorist plots. New York City procurements are authorized by the Charter of the City of New York and adopted by joint action of the City Council and the Procurement Policy Board, and the Board sets the small purchase procurement threshold at \$100,000 – not \$10,000. 44 CFR §13.36(b)(1) requires that grantees and subgrantees follow their own procurement procedures provided that the procurements conform to applicable federal law and the standard; DHSES does recognize this special condition in the NYC contracts. The City is required to follow the procedures of its Procurement Policy Board, which is directed in many instances by New York City Charter, including the small purchase purchasing threshold of \$100,000, which is directly aligned with the federal competitive bidding threshold. The auditors failed to appreciate this distinction with New York City's grant contract. Purchases made under \$100,000 are made under a less formal competitive process and comports with federal procurement regulations. Second, the auditors erroneously described the NYPD's procurement process as "non-competitive." While the NYPD may not have publicly advertised the type,

Appendix B

Management Comments to the Draft Report

quantity, and technical specifications of equipment and services purchased by the NYPD in order to prevent such information from falling into the hands of would-be terrorists, the audit erroneously equates the NYPD's efforts with a "non-competitive" procurement process.

Having done so, the auditor then speculates that the NYPD "may have paid less for the equipment if an open bidding process had been used." In fact, these purchases are conducted through a competitive process (except where only a single source is available) consistent with the process used for advertised proposals. The NYPD solicited proposals and considered bids from multiple vendors, conducted technical evaluations of each, and determined fair and reasonable pricing.

Except as specifically noted below, or where otherwise permitted, multiple vendors are solicited and multiple vendors submitted proposals in response to a solicitation by the NYPD. The NYPD often solicited requests from vendors that have existing City, State and/or federal contracts. Occasionally, and as federal regulations and State law permit, the NYPD solicited a proposal from only one vendor when there was only one vendor that could provide the services (e.g., proprietary software or hardware or unique goods or services).

The NYPD is always required to demonstrate that the prices received are "fair and reasonable". This is done through one or more of the following methods: 1) by comparing the price received to the price listed on an existing contract, OGS or GSA schedule; 2) by comparing price offered to the price paid by other purchasers – typically other municipalities or law enforcement agencies; 3) by comparing historically similar procurements; and/or 4) by using a method called price per technical point. When using price per technical point, they first have an evaluation committee score the proposals that were received. They then divide the vendor's total cost by their average proposal score. The vendor with the lowest price per technical point is superior.

Recommendation #6: Conduct a review to determine allowable cost and recover any unreasonable amount (up to \$4.1 million) from the City of New York used to pay for equipment items not purchased in accordance with the grant procurement requirements under the confidential and special expense process.

NYS Response: DHSES **disagrees** with this recommendation. The NYPD's procurement process, by DHSES' estimate, does not seek to skirt competitive requirements, but rather attempts to carry out a competitive process within a controlled information sharing environment. DHSES will work with the NYPD to ensure that the NYPD's procurement process is conducted in accordance with 44 CFR 13.36.

It should also be noted that the audit does not properly portray the dialogue, meetings and resolution of the DHSES Fiscal Monitoring Units visits with the NYPD. Both parties have worked collaboratively to understand the nuances of this issue and we will ensure compliance with federal, State and local requirements.

Recommendation #7: Reaffirm and enforce the property management requirements for equipment purchased with federal funds in individual subgrantee contracts.

NYS Response: DHSES **agrees** with this recommendation. As stated in the report, DHSES expends a significant amount of effort in educating sub-recipients on the very specific federal property record requirements under 44 CFR and then verifying compliance. Although subgrantee property records may not include the level of detail the federal guidelines require, few, if any, sub-recipients are wholly lacking

Appendix B

Management Comments to the Draft Report

in property record retention. Most, if not all, subgrantees are substantially compliant with these requirements. Additionally, the lack of federally required data fields, such as 'who holds title', does not automatically result in deficiencies in safeguarding the assets purchased, as stated in the report, nor does it mean that the subgrantee cannot locate the equipment or assess their future equipment needs. Regardless, DHSES continues to reaffirm and enforce the federally mandated property record and management requirements and will research innovative ways to do so.

Recommendation #8: Require subgrantees that are not in compliance to provide a plan to the State to become compliant within a specified timeframe.

NYS Response: DHSES **agrees** with this recommendation. DHSES has and will continue to work with our subgrantees to ensure compliance. DHSES has an inventory tracking system (TC/MAX) utilized for the hundreds of pieces of CBRNE equipment associated with the 172 WMD Trailers across the State. DHSES will work with our subgrantees to determine if and how TC/MAX can be used to comply with their local inventory tracking needs, as well.

New York's State largest subgrantee, New York City, has several internal controls in place to manage inventory and to track equipment purchased with federal funds. Equipment assets are subject to the provisions of the New York City Comptroller's Internal Control and Accountability Directives and Comptroller's Memoranda. On inventory, the Comptroller's Office has outlined the requirements for each City agency to follow in order to manage assets, to maintain internal inventory records, and to conduct an annual physical inventory of capital assets.

For DHS grants, New York City added an additional layer of controls through the development of a Grant Tracking System (GTS). GTS is a web-based inventory tracking system to manage and track DHS funded equipment. There are currently 4,356 equipment assets recorded in GTS. For each asset, GTS allows the City to collect important information and to store this information centrally, including a description of each equipment item, the serial number, the date the equipment was purchased, the location and condition of each asset, and the last date the asset was inventoried. GTS has helped the City systematically control and report on DHS assets, and to make the information available centrally for our oversight team.

Since the OIG visit, a number of enhancements have been made to GTS and several new processes have been instituted. When New York City developed GTS, it worked with a vendor to customize many different functions. One key area was the report generation capability. Today, GTS is used to generate the Fiscal Cost Reports for quarterly reporting. In this past quarter, New York City has greatly improved its ability to generate reports centrally that can focus on specific grant programs, agencies, and defined time periods. To expand the information collected under each asset, the City has made it possible for agencies to now upload images, drawings and documents.

Recommendation #9: Confirm that New York City officials have conducted a comprehensive review of equipment records in its Grant Tracking System to ensure that the baseline equipment list for each City agency is accurate.

NYS Response: DHSES **agrees** with this recommendation. The Mayor's Office of the Criminal Justice Coordinator (CJC) conducted a comprehensive review of the equipment records recorded in GTS. CJC worked with the GTS Program Manager and each City agency to cross check the information in GTS

Appendix B

Management Comments to the Draft Report

against the information each agency had provided on the standard reporting form, the Fiscal Cost Report. CJC is now in the process of reconciling a few inconsistencies to ensure quality assurance. Going forward, CJC and the Office of Management and Budget will conduct quarterly reviews of equipment records in GTS to ensure that the baseline equipment list for each City agency is accurate. This process will be outlined in a revised *Policies and Procedures* document that the City will soon distribute.

DHSES anticipates that the issues associated with this recommendation will be addressed within the next 90 days.

Recommendation #10: Ensure that all software with a unit cost greater than \$5,000 is being entered into Grant Tracking System retroactively and for software acquired in the future.

NYS Response: DHSES **agrees** with this recommendation. All software with a unit cost greater than \$5,000 is now being entered into the Grant Tracking System, and we will soon conduct a review to ensure that software purchases from earlier grant cycles have been entered, as well. Over \$100,000 in software purchases have been recorded in GTS.

DHSES anticipates that the issues associated with this recommendation will be addressed within the next 90 days.

Recommendation #11: Inventory all the required property information for items purchased under the New York City Police Department confidential and special expense procurement process.

NYS Response: DHSES **agrees** with this recommendation. The Mayor's Office of Management and Budget is working with the Police Department to collect the property information on the expense items they have entered into GTS. Each of the items in question has been bar coded and these records now exist in GTS. The NYC Office of Management and Budget is working with the NYPD to arrange for secure user rights, so that defined administrators can enter and view sensitive property-related information.

DHSES anticipates that the issues associated with this recommendation will be addressed within the next 90 days.

Recommendation #12: Assess the current processes and procedures involved with the execution of subgrantee awards to identify efficiencies to expedite expenditures.

NYS Response: DHSES **agrees** that it is imperative that grant funds be made available to subgrantees in a timely manner. However, it is equally important that the awarding agencies maintain proper oversight over the grantees' use of these funds and ensure that these funds are used appropriately and as intended. This process helps to ensure fiscal accountability and allows DHSES to review and track expenditure plans and progress on previous projects (see DHSES response to Recommendations 2 and 3) before funds are awarded.

The report explicitly states that New York State is in compliance with the 45/60-day congressional obligation requirement, yet the recommendation overlooks this noted compliance and provides a conclusory statement that funds were not provided in a timely manner. We are concerned, however, that the report does not articulate what criteria forms the basis for this recommendation, nor does it define

Appendix B

Management Comments to the Draft Report

what is considered the “timely” availability of funds. The contracting process referred to in the report is governed by New York State Finance Law, which requires a multi-step review process that includes DHSES fiscal and program staff, review by the Attorney General’s Office and final approval from the State Comptroller. Although the entire process can take several months, the time also includes the requisite local planning and approval process. For example, grantees have 60 days to complete the grant applications, and often times must gain approval from their local governing bodies before accepting the grant awards.

As stated above, the local applications must include linkages to the State Homeland Security Strategy goals and objectives, as well as anticipated budgets, so that DHSES can ensure that the planned expenditures are allowable and in accordance with federal guidelines and regulations. In New York’s experience, these issues are most appropriately addressed *before* the contract award to ensure that funds will be expended appropriately and so that local grantees are not placed in a position where costs were incurred in good faith only to later discover later that the expenditures were not allowable.

As it relates to the actual expenditure of the funds, procurement delays and federal requirements can slow the process as well. For example, FEMA requires an Environmental and Historical Preservation (EHP) review be completed prior to the approval of initiatives that may impact the environment in some capacity. For large projects, these reviews may take up to a year; therefore, funds cannot be spent until those approvals have been received. Additionally, since the grants are reimbursement-based, grantees must actually incur the expenses and submit vouchers prior to reimbursement. Oftentimes, subgrantees may decide to wait until projects are completed to submit for reimbursements. DHSES is not aware of any law, regulation or rule that would preclude them from submitting for reimbursement in this way as long as they do so within the grant performance period; however, it is understandable that timing reimbursement requests in such a way may create the appearance that federal funds are not expended when in fact they are merely awaiting reimbursement.

Although we are confident in our process, we always seek to improve the contract award practices within our control in order to achieve a well-functioning process that is both efficient and well planned. The regional workshops outlined previously have proven to be an effective way of gathering local feedback on our contracting process and other grant related issues.

Recommendation #13: Require the Fire Department New York to compute actual payroll costs in determining the amounts charged for backfill expenditures, or submit to FEMA the backfill model for its analysis and evaluation to determine if the model results in a reasonable allocation of backfill costs to the current grant awards.

NYS Response: DHSES **disagrees** with this recommendation. The New York City Fire Department (FDNY) is contractually required to maintain fixed-post coverage in Engine, Ladder, Squad, and Rescue Companies, along with their HazMat Unit, Battalions and Divisions at all times with uniformed members of specified ranks. When staffing drops below the fixed post level, this creates a vacancy that must be filled by a replacement firefighter on straight time, or overtime if no straight time employees are available.

Appendix B

Management Comments to the Draft Report

When members are detailed to training, they are removed from the field chart and follow a 40-hour Monday to Friday schedule. For every forty hours of training conducted, FDNY has calculated that fifty-three hours of overtime is needed to cover the individual's field schedule. An 80 hour program would involve 92 hours of backfill. Based on the fact that the FDNY has several hundred vacancies on any given day, the Overtime Impact Factor - the percentage of time in which a post needs to be covered due to a vacancy - has a weighted average of 100%. Due to this, identifying overtime coverage against specific vacated posts (i.e., Firefighter Jones covering Firefighter Smith's day tour due to training) becomes an extremely difficult challenge.

Because of this challenge, the FDNY developed a model to capture training-related backfill costs for the purpose of claiming and documenting these amounts under federal grants. 2 CFR 225.8 allows for the use of random sampling or other approved method for determining personal service costs. The FDNY model was first proposed to, and approved by, the federal government during the FEMA WTC Public Assistance process. During this process, the FDNY claimed backfill expenses under FEMA Project Worksheet #753 (FIPS No. 061-51000-29). During FEMA's review of the FDNY's claim, they determined that the methodology and resulting claim amount did not exceed the actual overtime paid out by the FDNY.

This methodology was also subsequently approved the U.S. Department of Justice and FEMA is aware that FDNY continues to use this model. The model involves taking the actual number of attendees at a training program, breaking the list of attendees down by rank, determining the total daily hours lost in the field, and multiplying an average overtime hourly rate for each rank.

It is worth mentioning that the FDNY does maintain payroll documentation for each employee consistent with general accounting principles.

Recommendation #14: Disallow any of the \$143,437 claimed that are determined to be in excess of actual time charges.

NYS Response: DHSES **disagrees** with this recommendation. As outlined above, FEMA is aware of FDNY's model and methodology and provided initial federal approval for its use. In light of these facts, the FDNY acted in good faith, and a requirement to disallow such funds would, in our view, be arbitrary and capricious. The Fiscal Monitoring Unit within DHSES will continue to monitor this practice and help to identify and correct any administrative issues. We further request that FEMA re-affirm its approval of FDNY's methodology to avoid unnecessary confusion in the future.

Potential Best Practices: We were disappointed that the audit report failed to identify any best practices; New York State has a variety of innovative initiatives that should be considered. These initiatives are outlined below:

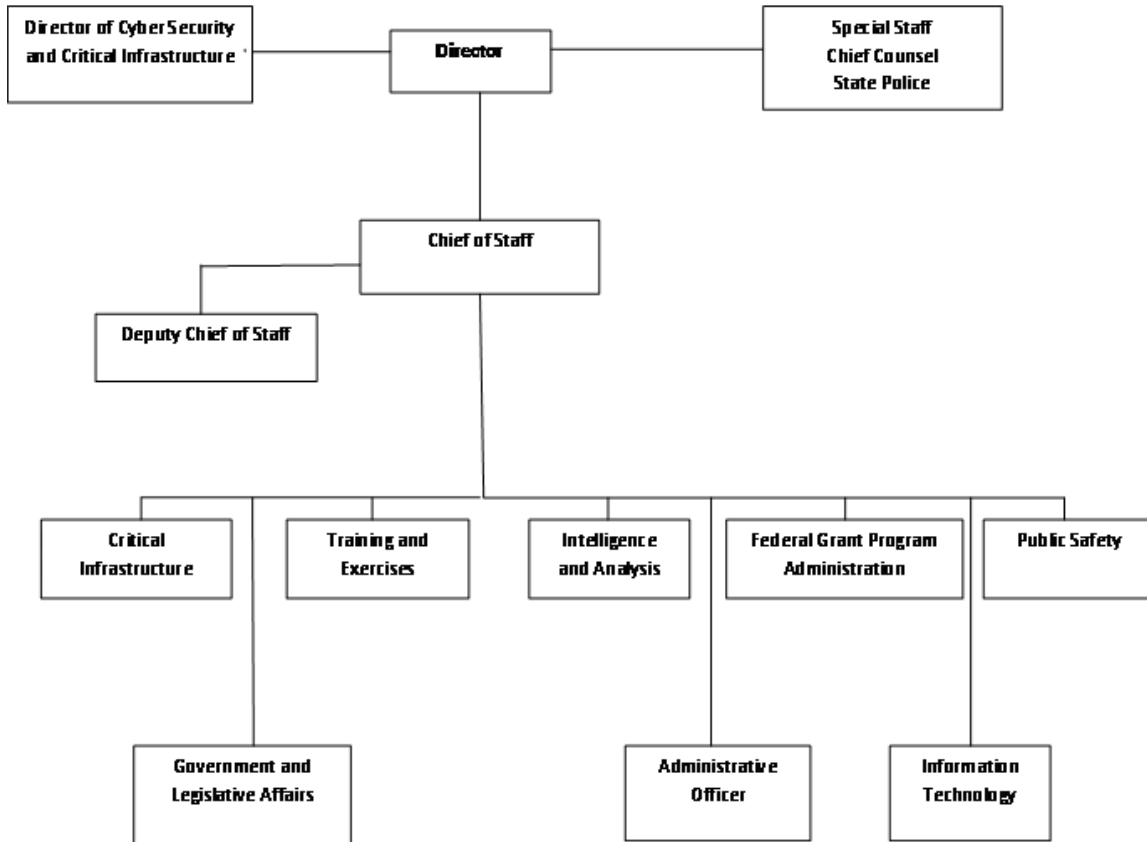
- **Regional Stakeholder Workshops:** These annual workshops are used to provide technical assistance on grant issues; share insights into DHSES and other State-level undertakings; identify best practices/lessons learned; and gauge capability improvement. But most importantly, they provide customer service and a feedback loop to local grantees.

Appendix B

Management Comments to the Draft Report

- **State Preparedness Training Center:** The State is making progress in its plans to establish the State Preparedness Training Center (SPTC); a New York State facility which serves as a hub for emergency response training for natural, technological and terrorism related disasters for first responders at all levels of government. On December 6, 2008, the State Preparedness Training Center was officially accredited by the Commission on Accreditation for Law Enforcement Agencies, as one of only two training academies in New York State (along with the New York City Police Department Training Bureau) to become accredited. The State has dedicated \$42 million in funding for 2010 to further advance the development of the SPTC. This funding will support the development of a Simulations Complex and other unique training resources that will help to ensure the highest level of preparedness for New York's first responders.
- **Preparedness Capability Workshop:** DHSES developed this workshop to help our State and local stakeholders better understand how the national preparedness capabilities and doctrine relate to the homeland security grant programs and the State Homeland Security Strategy. DHSES has provided multiple deliveries of the workshop across the State and it was recently identified by FEMA as a possible national best practice. Several states have asked for copies of the workshop materials, further supporting the notion of it being endorsed as a best practice.
- **Targeted Grants:** DHSES has used federal homeland security dollars to develop several strategically focused grant programs addressing discrete capabilities in which small investments can provide concrete and demonstrable improvements. Using various metrics (national recognition of typing, etc.), these grants help to provide easily measurable impacts of federal funding dollars. The targeted grant programs are currently aimed at developing and sustaining capabilities related to: Bomb Squads, Technical Rescues/USAR, HazMat Teams, Explosive Detection Canines, and Animal Sheltering.
- **Monitoring (Contract/Fiscal) Efforts:** As part of NYS's commitment to accountability and good governance, DHSES has long engaged in both programmatic and fiscal monitoring of grantees to ensure they are meeting the grant requirements and spending the funds appropriately. DHSES has established a Contracts Unit with dedicated representatives for the various grantees in New York State. Each Contract Representative engages in field visits and regular programmatic monitoring to provide ongoing customer service to our local grantees. A separate and distinct Fiscal Monitoring Unit also works with grantees to identify and correct any fiscal compliance/reporting issues. Although every State has some monitoring procedures in place, we are unaware of any State with a more robust monitoring program than New York.
- **Logistics Center:** DHSES has established a centralized Logistics Center to process, maintain and track the CBRNE equipment associated with the 172 WMD Trailers across State. The Logistics Center helps to ensure some degree of equipment standardization and interoperability and provides for ongoing maintenance and calibration of the equipment.
- **Risk Formula:** This formula assesses risk to jurisdictions (counties) across New York State based on more than 30 variables related to numerous aspects of homeland security risk. This data-driven analysis includes threat elements (both terrorism and all-hazards), vulnerability elements (critical infrastructure) and consequence elements (critical infrastructure and population elements). This analysis is subsequently used to guide the distribution of grant funds.

New York State Office of Homeland Security Organizational Chart



Appendix D
Report Distribution

Department of Homeland Security

Secretary
Deputy Secretary
Chief of Staff
Deputy Chief of Staff
General Counsel
Executive Secretary
Director, GAO/OIG Liaison Office
Assistant Secretary for Office of Policy
Assistant Secretary for Office of Public Affairs
Assistant Secretary for Office of Legislative Affairs

Federal Emergency Management Agency

Administrator
Assistant Administrator, Grant Programs Directorate
Federal Emergency Management Agency Audit Liaison
Grant Programs Directorate Audit Liaison

Office of Management and Budget

Chief, Homeland Security Branch
DHS OIG Budget Examiner

Congress

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