

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

**New York City's Department of Design and
Construction Needs Assistance To Ensure
Compliance with Federal Regulations**





OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

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

July 21, 2014

MEMORANDUM FOR: Laura Phillips
Executive Director
New York Sandy Recovery Field Office
Federal Emergency Management Agency

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

SUBJECT: *New York City's Department of Design and Construction
Needs Assistance To Ensure Compliance with Federal
Regulations*
FEMA Disaster Number 4085-DR-NY
Audit Report Number OIG-14-115-D

We audited Public Assistance grant funds awarded to New York City's Department of Design and Construction (Department) in New York, New York (Public Assistance Identification Number 081-51000-19). Our audit objective was to determine whether the Department's policies, procedures, and business practices were appropriate to account for and expend Federal Emergency Management Agency (FEMA) grant funds according to Federal regulations and FEMA guidelines. We conducted this audit early in the Public Assistance process with the goal of identifying areas where the Department may need additional technical assistance or monitoring. In addition, proactively auditing grant recipients early in the grant cycle allows them the opportunity to correct noncompliance with Federal regulations before they spend the majority of their funding. It also allows them the opportunity to supplement deficient documentation or locate missing documentation before too much time elapses.

The New York State Division of Homeland Security and Emergency Services (New York), a FEMA grantee, awarded the Department \$13.3 million for damages resulting from Hurricane Sandy, which occurred on October 29, 2012. The award provided 90 percent funding for two projects—one large debris removal project (Category A) and one large permanent work project (Category C).¹ We audited both large projects for the period October 29, 2012, through June 27, 2013 (see exhibit). As of June 2014, the Department

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



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had completed all work under the award, but had not yet submitted its final claim to the grantee or FEMA. Therefore, the projects remain open.

We conducted this performance audit between July and December 2013 pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objective. We conducted this audit by applying the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.

We interviewed officials from FEMA, New York, New York City Office of Management and Budget, the Department, and the Department's contractors. We gained an understanding of the Department's method of accounting for disaster-related costs; reviewed the Department's procurement policies and procedures; judgmentally selected and reviewed project costs (generally based on the type of costs); reviewed applicable Federal regulations and FEMA guidelines; and performed other procedures considered necessary to accomplish our objective. We also notified the Recovery Accountability and Transparency Board of all contracts the Department awarded under the grant to determine whether the contractors were debarred or whether there were any indications of other issues related to those contractors that would indicate fraud, waste, or abuse. We did not perform a detailed assessment of the Department's internal controls over its grant activities because it was not necessary to accomplish our audit objective.

BACKGROUND

The Department is a New York City agency that builds many of the civic facilities New Yorkers use every day. As the City's primary capital construction project manager, its projects range from roadways, sewers, and water mains to public safety, health and human service facilities, cultural institutions, and libraries. Using a combination of in-house staff and contractors, the Department strives to deliver high quality, cost-effective projects in a safe and efficient manner.

Strong winds, heavy rains, and a storm surge from Hurricane Sandy caused extensive damage throughout New York City, including damage to a large number of sidewalks, making some impassable. When trees fell, their root systems pulled up large pieces of sidewalk creating trip hazards and rendering some sidewalks closed to pedestrian



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traffic. The Department removed the trees and stumps and made comprehensive repairs to the damaged sidewalks and curbs.

RESULTS OF AUDIT

The Department's policies, procedures and business practices were not sufficient to account for and expend FEMA grant funds according to Federal regulations and FEMA guidelines. The Department did not (1) properly compete \$14.3 million in contracts for debris removal and sidewalk repairs, (2) track grant expenditures by project as Federal regulations require, or (3) maintain documentation appropriate to support direct administrative costs.

In its formal response (see appendix A), the Department said that the debris and extensive damage to its sidewalks posed a significant danger to public safety; and, therefore, the exigent circumstances justified the Department's contract awards without full and open competition. FEMA agreed with the Department's position. Given the population density of the affected area, we understand that some debris removal and temporary repairs may have been necessary to alleviate immediate danger.

Regarding our findings on tracking costs by project and documenting direct administrative costs, Department officials said that they are developing policies and procedures for these tasks. We are not questioning any costs in this report. However, because the Department did not follow the appropriate contracting policies and the contracts exceed the award by \$1 million, FEMA should review the reasonableness of the \$14.3 million the Department intends to claim for contract work. FEMA should also direct New York to work with the Department in addressing the other issues we identified in this report and monitor the Department's progress in addressing these issues.

The Department Did Not Follow Federal Procurement Standards

The Department awarded eight contracts totaling \$14.3 million without full and open competition due to exigent circumstances. Federal regulations at 44 CFR 13.36, in part, require that subgrantees—

Perform procurement transactions in a manner providing full and open competition except under certain circumstances. One allowable circumstance is when there is a public exigency or emergency for the requirement that will not permit a delay resulting from competitive solicitation. (13.36(d)(4)(i)(B))



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Limited Competition - The Department awarded six fixed-unit-price contracts totaling \$11.3 million to remove debris and repair sidewalks and two additional contracts totaling \$3 million to monitor and oversee the work. For the six contracts, the Department sent bid packages to 13 pre-selected contractors it had done business with in the past and selected the six lowest priced bidders. For the two monitoring contracts, the Department solicited proposals from five contractors it had also done business with in the past. A Department contractor evaluation panel ranked the five proposals and selected the two contractors with the highest rankings.

The Department contracted for these services under the New York City Procurement Policy Board Rules, Section 3-06. Under those rules, the New York City Comptroller and Corporation Counsel must approve an agency's request to make emergency purchases. Once the agency obtains approval from the Comptroller and Corporation Counsel, it may bypass normal procurement methods. Due to the exigent circumstances, the Department limited competition to 13 pre-selected contractors for the sidewalk repairs and 5 contractors for the repair monitoring. It did not publicly advertise the solicitations for proposals so that all qualified contractors had an opportunity to bid.

In its formal response, the Department said that the hurricane damage was unforeseeable, which justified emergency procurements. Section 315 of the New York Charter authorizes emergency procurements in cases of "an unforeseen danger to life, safety, property or a necessary service." Department officials considered the circumstances to be exigent and therefore believed that Federal regulations allowed them to contract without full and open competition. FEMA agreed with the Department's position. While the hurricane scattered debris across the city and severely damaged sidewalks, debris and sidewalk damage do not normally present a threat to life or property. We agree that some immediate debris removal and temporary repairs may have been necessary to make sidewalks safe and we understand that inaccessible sidewalks in a densely populated area could put pedestrians at risk.

The Department Did Not Track Grant Expenditures by Project

The Department did not track grant expenditures by project as 44 CFR 13.20 and 206.205 require. Tracking costs by project (1) helps ensure that costs relate to the FEMA-authorized scope of work and do not duplicate other claimed costs and (2) assists FEMA and New York in final project closeout. While Department officials provided extensive support for contract costs, they were unable to identify which costs applied to which FEMA project. New York City Office of Management and Budget officials acknowledged this problem and said they were working with Department officials to resolve this issue.



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The Department's formal response said the Department has developed policies, procedures, and business practices to ensure compliance with FEMA guidelines. It also said the New York City Office of Management and Budget contracted with an outside consultant to provide assistance with tracking, documenting, and requesting Federal funding for Hurricane Sandy damages.

The Department Did Not Properly Document Direct Administrative Costs

The Department did not properly document or track direct administrative costs. Although the Department documented its overall costs, the support did not provide sufficient details of the work the Department performed and did not track costs by project. FEMA Disaster Assistance Policy 9525.9 allows subgrantees to claim administrative costs related directly to a specific project, but subgrantees must properly document the costs and clearly relate them to a specific project.

In its formal response, the Department said that it appropriately tracked administrative costs. We disagree because the documentation did not sufficiently tie the costs to specific projects as FEMA guidelines require. Department officials said they are currently working with FEMA to develop a set of procedures and guidance for capturing and requesting direct administrative costs.

Conclusion

Department officials believed they were justified in not conducting full and open competition because they had obtained an emergency exemption from the city. FEMA agrees with the Department's position. While debris and sidewalk damage do not normally place life and property at risk, we recognize that completing debris removal and sidewalk repairs quickly could be important in a high-density, urban environment. However, FEMA should review the reasonableness of the \$14.3 million that the Department is claiming for contract costs. FEMA should also direct New York, as the grantee, to assist the Department in correcting the other deficiencies we identified in this report and monitor the Department's progress. Department officials said they plan to comply with Federal requirements on future contracts.

RECOMMENDATIONS

We recommend that the Executive Director, New York Sandy Recovery Field Office:



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Recommendation #1: Review the reasonableness of the \$14.3 million that the New York City Department of Design and Construction is claiming for contract costs, and disallow any cost FEMA considers excessive, unreasonable, or unsupported.

Recommendation #2: Direct New York, as the grantee, to assist the New York Department of Design and Construction in accounting for costs on a project-by-project basis.

Recommendation #3: Direct New York, as the grantee, to assist the New York Department of Design and Construction in properly accounting for direct administrative costs.

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed the results of our audit with Department officials during our audit and included their comments in this report, as appropriate. We also provided a draft report in advance to FEMA, New York, and Department officials. We discussed it at an exit conference with FEMA officials on December 18, 2013, and discussed it again with FEMA officials on May 16, 2014. FEMA agreed with the Department's position that exigent circumstances existed, justifying the use of emergency procurement procedures and not having full and open competition.

We discussed our report at an exit interview with New York and Department officials on February 19, 2014. New York and Department officials disagreed with the findings. The New York City's Law Department provided a written response to our report on February 28, 2014. We discussed portions of the response in this report and included it in its entirety as appendix A.

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

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



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Major contributors to this report are Christopher Dodd, Acting Director; Judy Martinez, Audit Manager; Rebecca Hetzler, Senior Auditor; Mark S. Phillips, Auditor-in-Charge; and Katherine McPherson, Auditor.

Please call me with any questions at (202) 254-4100, or your staff may contact Christopher Dodd, Acting Director, Central Regional Office, at (214) 436-5200.



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Exhibit

Schedule of Projects Audited

Project Number	Category of Work*	Gross Award Amount	Insurance Reductions	Net Award Amount	Cost Incurred**
0793	C	\$10,990,975	\$0	\$10,990,975	Unknown
1568	A	<u>2,265,314</u>	<u>0</u>	<u>2,265,314</u>	Unknown
Totals		<u>\$13,256,289</u>	<u>\$0</u>	<u>\$13,256,289</u>	<u>\$13,960,220</u>

Source: FEMA's Emergency Management Mission Integrated Environment (EMMIE)

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

**The Department and New York City's Office of Management and Budget are in the process of breaking out costs by Project Number.



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Appendix A

New York City Department of Design and Construction's Response to Audit Report



ZACHARY W. CARTER
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

TERRI FEINSTEIN SASANOW
Chief, Grants & Compliance Unit
phone: 212 356 2616
fax: 212 788 3783
email: TSasanow@law.nyc.gov

February 28, 2014

VIA EMAIL

Judy Martinez
Supervisory Program Analyst
US Department of Homeland Security
Office of Inspector General
Office of Emergency Management Oversight
New Orleans, LA 70114

Re: New York City Department of Design & Construction ("DDC")
FEMA Disaster Number 4085-DR-NY
Audit Report Number OIG-14-XX-D

Dear Ms. Martinez:

As counsel to DDC, I write this letter to formally submit DDC's response to the draft audit findings contained in the undated memorandum from John V. Kelly to Willie G. Nunn ("Draft Findings"). We thank you for the opportunity to submit this response, and repeat our request expressed during the exit conference telephone call held last week that your office carefully consider this response when preparing the final audit report -- which will be sent to FEMA, other federal and state agencies, and several House and Senate oversight committees.

Response to Draft Audit Finding # 1:
"The Department did not follow Federal Procurement Standards"

The Draft Audit claims that DDC should not have used emergency procurement procedures because the damaged sidewalks and debris which were the subject of the contracts under review were merely a "significant inconvenience" and not a "threat to life or property," and therefore "exigent circumstances did not exist in this case." *Id.* at 4. The auditors further claim that DDC did not follow federal procurement standards in awarding \$14.3 million in contracts because the procurement procedures used purportedly did not "provide full and open competition," nor did the agency take affirmative steps to assure the use of minority firms, women's business enterprises, and labor-surplus-area firms. *Id.* at 3. The auditors' conclusions that exigent circumstances did not exist in this case, and that DDC did not follow federal



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procurement standards because it used emergency procurement methods rather than competitive bidding are wrong as a matter of fact and law, and the final audit report should be revised.

DDC's Declaration of an Emergency was Warranted

DDC disagrees with the auditors' opinion that the damage to City sidewalks and concomitant accumulation of debris resulting from Superstorm Sandy was a mere "inconvenience" not requiring an emergency response. New York City is a densely populated urban area where the ability to traverse sidewalks is essential to pedestrian movement. The extensive sidewalk damage and resulting debris caused by the storm in fact posed a significant danger to the public.¹ Such damage adversely impacts the ability of elderly and handicapped pedestrians who rely on wheelchairs, walkers, and canes to navigate City sidewalks. It also increases the possibility of injury from sidewalk falls. Danger to pedestrians, including those pushing strollers and wheelchairs, is increased when they are forced by damaged sidewalks to walk in the street. Damaged sidewalks and the presence of extensive debris additionally hinders the ability of first responders such as police, fire fighters and emergency medical technicians to gain access to buildings, and to those residents needing assistance—thus increasing response time, and the potential for fatalities.

For all these reasons, DDC sought and obtained authorization to procure the contracts at issue on an emergency basis.² Enclosed herewith are copies of the following documents:

1. Letter dated October 31, 2012 from DDC Commissioner David J. Burney to NYC Comptroller John C. Liu and NYC Corporation Counsel Michael Cardozo, declaring the existence of a public emergency within the meaning of GML § 103(4), Charter § 315 and PPB Rules § 3-06;
2. Letter dated December 26, 2012 from Deputy Comptroller Geneith Turnbull to DDC Commissioner David J. Burney approving DDC's emergency procurement request;
3. Letter dated January 13, 2013 from DDC Commissioner David J. Burney to NYC Comptroller John C. Liu and NYC Corporation Counsel Michael

¹ As an example, please *see* photograph at:
https://dl.dropboxusercontent.com/u/60277939/FEMA%2065%20LOCATIONS_AECOM/PERFETTO/36%20VALENCIA%20AVENUE/36%20VALENCIA%20AVENUE_PRE%20PHOTO.pdf

² DDC also sought this authorization because it enabled the agency to award the contracts at issue expeditiously, *i.e.*, in approximately one month. If competitive bidding procedures were used, it would have taken approximately nine months to award the contracts. Given the danger to the public posed by the storm damage, DDC could not wait nine months to award these contracts.



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Cardozo, advising that as sidewalks and streets were cleared of debris, additional damage was discovered;

4. Letter dated February 19, 2013 from Deputy Comptroller Geneith Turnbull to DDC Commissioner David J. Burney approving DDC's emergency procurement request.

DDC's declaration of emergency was based on the following facts:

on Monday and Tuesday, October 29 and 30, 2012 a severe hurricane created hazardous conditions throughout the City by damaging a vast number of trees. Most of those trees fell onto City streets and sidewalks making them impassable. Although many other trees remain partially standing, or leaning on other trees or buildings, they are in danger of falling onto the public way at any time. When many of the trees fell, their root systems pulled up huge pieces of the sidewalks and parts of the streets, creating trip hazards and/or rendering streets effectively closed to pedestrian and vehicular traffic.

On November 19, 2012, Acting Corporation Counsel Steven Stein Cushman concurred that the facts set forth in Commissioner Burney's October 31, 2012 letter constituted an emergency within the meaning of Charter § 315 as indicated by his stamp and signature affixed to Commissioner Burney's October 31, 2012 letter. The accuracy of these facts are also acknowledged in the Draft Findings at 2.

It is indisputable that the damage caused by Superstorm Sandy was unforeseeable. All of the City officials involved here—the DDC Commissioner, the Corporation Counsel and the Comptroller—concluded that damage caused to pedestrian thoroughfares by upended trees with exposed root systems posed a significant danger to public health and safety such that emergency procurements were needed to repair such damage. The auditors' view that such conditions were a merely a "significant inconvenience," not posing a "threat to life or property," is merely a difference of opinion not based on personal knowledge. Under these circumstances, deference should be given to the conclusions of the City officials who witnessed first hand the conditions demonstrating that exigent circumstances did in fact exist.

Applicable Law

The FEMA regulations require grantees and subgrantees to follow state and local procurement laws and regulations so long as such laws and regulations conform to applicable federal law. 44 CFR § 13.36(b). The procurement methods authorized by the FEMA regulations include, among others, sealed bids, competitive proposals and noncompetitive proposals. 44 CFR § 13.36(d). Noncompetitive proposals may be used in cases of public exigency or emergency. 44 CFR § 13.36(d)(4)(i)(B).



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As was acknowledged during last week's exit conference telephone call, the regulations do not specify what is meant by "exigency" or "emergency."

Further, while the FEMA regulations direct grantees and subgrantees to take all necessary affirmative steps to contract with small and minority firms, women's business enterprise and labor surplus area firms, use of such firms is only required "when possible." 44 CFR § 13.36(e)(1).

Under New York State law, competitive bidding or competitive offering requirements are excused in cases of

public emergency arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting public buildings, public property or the life, health, safety or property of the inhabitants of a political subdivision or district therein, require immediate action...

NY General Municipal Law ("GML") § 103(4). Similarly, emergency procurements are authorized under section 315 of the New York City Charter ("Charter") in cases of "an unforeseen danger to life, safety, property or a necessary service." The procedures governing emergency procurements in New York City are set forth in section 3-06 of the City's Procurement Policy Board ("PPB") Rules.³ 9 Rules of the City of New York ("RCNY") § 3-06. That rule specifies that the method of source selection for emergency procurements shall provide for "such competition as is possible and practicable." 9 RCNY § 3-06(d). Approval from both the Corporation Counsel, a mayoral appointee, and the Comptroller, an independently elected official, is also required. 9 RCNY § 3-06(c)(3).

Thus, federal, state and local law all excuse the use of competitive bidding to procure government contracts in emergencies. New York City PPB Rule § 3-06(d) requiring emergency contracts to be awarded using "such competition as is possible and practicable," easily satisfies the requirements of 44 CFR § 13.36((d)(4)(i)(B), which allows emergency procurements on a noncompetitive basis. Since City law conforms to the applicable federal standard, City agencies desiring to award contracts on an emergency basis are required to comply with PPB Rules § 3-06 by the FEMA regulations. 44 CFR § 13.36(b).

DDC Complied with Federal Procurement Standards

As the auditors acknowledge, DDC sent bid packages for the debris removal and sidewalk repair contracts to 13 pre-selected contractors who had performed responsibly and satisfactorily for the agency in the past. The six contracts were awarded to the six lowest-priced

³ The policies underlying the PPB Rules, like the Federal procurement standards, are to "encourage competition, prevent favoritism, and obtain the best value in the interest of the City and the taxpayers." 9 RCNY § 1-03(a)(1)(i).



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bidders. For the monitoring contracts, DDC used consultants still under contract to the agency as a result of an open competitive Request for Proposals process utilized after Hurricane Irene. (The auditors' statement that DDC solicited proposals from five contractors used in the past, and then selected two contractors with the highest rankings is incorrect. The facts are that after Hurricane Irene, DDC awarded two consultant contracts as a result of a competitive Request for Proposals process, and since those contracts were still active at the operative time, DDC decided to use these unexpired "Irene" contracts to manage "Sandy" construction work. See Letter dated October 31, 2012 from Commissioner David J. Burney to Comptroller John C. Liu and Corporation Counsel Michael A. Cardozo at 1 ("DDC intends to...issue emergency task orders under two (2) existing Resident Engineering and Inspection (REI) contracts for the supervision of the contractors.")).

FEMA regulations permit procurement by "noncompetitive proposals" in cases of public exigency or emergency. 44 CFR § 13.36(4)(i)(B). The competitive processes used here easily meet this standard -- particularly because they contain none of the indicia considered to be "restrictive of competition" within the meaning of 44 CFR § 13.36(c). Accordingly, the auditors' draft finding that DDC did not follow Federal Procurement standards is incorrect and should be removed from the final report.

Draft Audit Finding # 2: **"The Department Did Not Track Grant Expenditures by Project"**

The auditors claim that DDC "did not track grant expenditures by project as 44 CFR 13.20 and 206.205 require" based on their finding that agency employees were "unable to identify which costs applied to which FEMA project." Draft Findings at 4. However, there is nothing in 44 CFR §§ 13.20 and 206.205 which requires a subgrantee to identify which costs applied to which FEMA project, and the Draft Findings cite no such specific requirement. Rather, the regulations require use of fiscal control and accounting procedures which are sufficient to "permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes." 44 CFR § 13.20(a)(2)(b).

In this case, New York City's Office of Management and Budget ("NYCOMB") contracted with an outside consultant, Hagerty Consulting ("Hagerty"), to provide assistance with tracking, documenting and recouping federal funding for disaster related damages resulting from Superstorm Sandy. A detailed explanation of the system developed by Hagerty is enclosed herewith. As indicated in that document, the software developed by Hagerty is capable of, among other things, tracking project financial process and account balances, and aligning disaster expenditures with grant funding sources. The records shared with the auditors showed that DDC adequately tracked all incurred contractors' costs. Detailed accounting records for each component of the Federal Project Worksheets (PWs) (1568 & 793) were provided. In addition, the auditors were specifically advised that DDC was in the process of closing the contracts under review, and that detailed tabulations of final costs by PW were in process.

Moreover, FEMA Public Assistance created, and instructed DDC to use, PWs by category of work performed rather than by work orders or areas assigned to specific contractors. This preference resulted in the preparation of two PWs (one for Category A (PW 1568), and



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another for Category C (PW 793)), instead of nine PWs (one for each of the eight contracts and one for direct administration cost). The two PWs aggregated the distinct costs of each component of a particular category. It was this choice by FEMA which dictated how costs were tracked.

Finally, we emphasize that DDC utilized procedures which were adequate to meet the standards set forth in 44 CFR §§ 13.20 and 206.205. Accordingly, this finding with respect to tracking grant expenditures by project should be withdrawn.

Draft Audit Finding # 3:
“The Department Did Not Adequately Document Direct Administrative Costs”

DDC disagrees with this finding and contends that its administrative costs are adequately tracked. As requested by FEMA, the City is currently working to develop a set of procedures and guidance for capturing and requesting its costs related to obtaining, maintaining, and administering the FEMA PA Program (*i.e.*, FEMA Direct Administrative Costs (DAC)). The City's proposed solution is to use the existing City systems to track specific time charged to FEMA activities, simplify the process for requesting and obtaining DAC, and provide adequate documentation that identifies the name, position, time frame, and activity associated with the FEMA PA Program. The City will seek FEMA acceptance and approval of the process for implementing the guidance for documenting DAC. Once approved, the City will develop policies and implement business practices to ensure compliance with federal regulations in a consistent and enforceable manner in line with the process requested of the City and approved by FEMA.

Conclusion

In conclusion, we believe that the Draft Findings are based on an inaccurate and incomplete understanding of the facts and a misreading of the law. We urge you to reconsider those findings and withdraw them for the reasons set forth above.

Sincerely,


Terri Feinstein Sasanow

cc: Tonda Hadley



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Department of Homeland Security



NEW YORK CITY DEPARTMENT OF
DESIGN + CONSTRUCTION
GENERAL COUNSEL

2012 NOV 23 P 8:45

NYC DDC
GENERAL COUNSEL

DAVID J. BURNEY, FAIA
Commissioner

2012 NOV 22 P 8:45

October 31, 2012

Hon. John C. Liu
Comptroller
City of New York
One Centre Street
New York, New York 10007

RECEIVED

RECEIVED

CUSHMAN

Hon. Michael Cardozo, Esq.
Corporation Counsel
New York City Law Department
100 Church Street
New York, New York

Re: Declaration of Emergency
Relative to the hazardous conditions caused by damage to trees, sidewalks and streets by severe
Hurricane Sandy's weather throughout NYC on Monday, October 29, 2012 and Tuesday October
30, 2012.

Dear Honorable Sirs:

As you are aware, on Monday and Tuesday, October 29 and 30, 2012 a severe hurricane created hazardous conditions throughout the City by damaging a vast number of trees. Most of those trees fell onto City streets and sidewalks making them impassable. Although many other trees remain partially standing, or leaning on other trees or buildings, they are in danger of falling onto the public way at any time. When many of the trees fell, their root systems pulled up huge pieces of the sidewalks and parts of the streets, creating trip hazards and/or rendering streets effectively closed to pedestrian and vehicular traffic.

As a result, the City now seeks to make the extensive necessary repairs to the sidewalks, streets, curbs, pedestrian ramps, fire hydrants and public and private utilities under and above the ground. In addition, as trees and stumps are removed from the street, it is expected that additional damage will be discovered.

The Parks Department and Department of Transportation have jurisdiction over the damaged trees, as well as the obstructed public streets and parks. DDC has been asked to assist in making comprehensive repairs to the damaged sidewalks, and other damaged facilities, both due to the magnitude of the damage, and DDC's experience in these types of repairs.

At this time, DDC intends to procure six (6) emergency construction contracts for repairs Citywide, and to issue emergency task orders under two (2) existing Resident Engineering and Inspection (REI) contracts for the supervision of the contractors. The construction contracts will be bid on an emergency basis, to a small number of contractors who are known to have the capacity to handle this type of work on this scale.

30-30 Thomson Ave. L.I.C., NY 11101

Telephone: 718 391 1580

Facsimile: 718 391 1893

www.nyc.gov/buildnyc

2012-049933





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DDC has already received verbal approval for these emergency procurements from your respective offices.

Parks provided an initial estimate of Three Thousand Eight Hundred (3,800) locations where trees were reported damaged. Based upon past experience it is anticipated that sidewalk and related repair may be necessary in approximately 25% to 30% of these locations. In previous sidewalk emergency contracts, the average cost per location was Ten Thousand (\$10,000) Dollars. DDC has developed an estimate for the cost of the work, in accordance with this historical data.

The projected estimate of the total cost of the REI task orders is the Three Million (\$3,000,000.00) Dollars comprised of two (2) task orders at One Million Five Hundred Thousand (\$1,500,000) Dollars each.

The estimate for the construction contracts, based on the estimated locations known to DDC at this time, is Nine Million (\$9,000,000) Dollars.

I will supply a copy of the proposed scope of work, and other supporting documentation as soon as that becomes available.

At this time, DDC seeks formal confirmation of that authorization, pursuant to Chapter 55 of the New York City Charter. Chapter 55 provides that DDC may take control of the operations and administration of City construction projects on behalf of constituent City agencies, and procure emergency contractors and make the area safe for residents and pedestrians.

Based on the above, I hereby declare that a public emergency exists, as defined by and pursuant to section 103(4) of the General Municipal Law, section 315 of the New York City Charter and section 3-06 of the Procurement Policy Board Rules, and that circumstances affecting buildings, property and the safety of the citizens of the City of New York require immediate action by this Agency, which cannot await competitive procurement. Your concurrence in the same is hereby requested.

Sincerely,

David Burney (by D/C [Signature])
 David Burney, FAIA
 Commissioner

I hereby acknowledge receipt of this Declaration of Emergency on 11/19/12 and concur that the facts set forth constitute an emergency within the meaning of Section 315 of the New York City Charter.

[Signature]
 Acting Corporation Counsel

11/19/12
 DATE





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Geneith Turnbull
DEPUTY COMPTROLLER

CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
JOHN C. LIU
BUREAU OF CONTRACT ADMINISTRATION

MUNICIPAL BUILDING
ONE CENTRE STREET, ROOM 1005
NEW YORK, N.Y. 10007-2341
TEL: (212) 669-4126
FAX: (212) 815-8603
GTURNBULL@COMPTROLLER.NYC.GOV

December 26, 2012

David J. Burney
Commissioner
City of New York
Department of Design & Construction (DDC)
30-30 Thomson Avenue
Long Island City, NY 11101

Re: Emergency Request No. 2012104
Engineering and Construction Services Required to Repair Damage to Sidewalks,
Curbs, Pedestrian Ramps, Fire Hydrants and Utilities Caused by Hurricane Sandy
Estimated Cost: \$12,000,000

NYC D.D.C.
2012 DEC 31 PM 4:49

Dear Commissioner Burney:

This letter confirms the verbal approval given by the Comptroller's Office on October 27, 2012 and serves as written approval for the emergency procurement of services to make necessary repairs to sidewalks, streets, curbs, pedestrian ramps, fire hydrants and utilities above and below the ground level caused by trees falling as a result of Hurricane Sandy. Approval is based on DDC's representation that when many of the trees fell, their root systems pulled up large pieces of sidewalk and parts of the streets, creating trip hazards and/or rendering streets effectively closed to pedestrian and vehicular traffic. DDC's projected estimate for the resident engineering and inspection services is \$3,000,000. DDC's projected estimate for construction services is \$9,000,000. This Office's approval of the above-referenced emergency procurement is valid for six months from October 27, 2012.

We take this opportunity to remind your agency that our emergency approval is limited to the scope of work defined in your Agency's email sent October 26, 2012 which included DOT's estimated cost on which the Comptroller's Office has relied, and in the DOT emergency declaration, received in our Office on December 24, 2012. Therefore, if at any time you anticipate that additional work is needed to address the emergency, or that the estimated dollar amount is expected to be exceeded we require that you discuss with us whether an amended emergency declaration and approval is required before implementing any additional work.

Your attention is directed to the requirements contained in Procurement Policy Board (PPB) Rules Section 3-06 and Section 315 of the New York City Charter. Specifically, the agency should ensure that such competition as is possible and practicable under the circumstances be obtained and that written documentation detailing the basis for the emergency and the selection of the supplier be submitted at the earliest practicable time. In addition, Section 2-12 of the PPB Rules requires a copy of the contract and related materials to be submitted to the Comptroller's Office within thirty (30) business days of award.

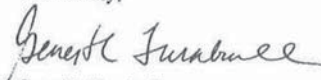


OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

David J. Burney
December 26, 2012
Emergency Request No. 2012104
Engineering and Construction Services Required to Repair Damage to Sidewalks, Streets,
Curbs, Pedestrian Ramps, Fire Hydrants and Utilities Caused by Hurricane Sandy
Estimated Cost: \$12,000,000
Page 2

On behalf of Comptroller John C. Liu, I am pleased to be of assistance in this matter.

Yours truly,


Geneith Turnbull

Cc: Charles Odiase
Wilfred Anigekwu
Stephen Malusa



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security



NEW YORK CITY DEPARTMENT OF
DESIGN + CONSTRUCTION

DAVID J. BURNEY, FAIA
Commissioner

January 13, 2013

Hon. John C. Liu
Comptroller
City of New York
One Center Street
New York, NY10007

Hon. Michael Cardozo, Esq.
Corporation Counsel
New York Law Department
100 Church Street
New York, NY10007

Re: Declaration of Emergency – Updated Scope Information
Relative to the hazardous conditions caused by damage to trees, sidewalks and streets
by Hurricane Sandy.

Dear Honorable Sirs:

As you are aware, Hurricane Sandy created hazardous conditions throughout the City, including damage to City streets and sidewalks caused by fallen trees. When many of the trees fell, their roots systems pulled up huge pieces of the sidewalks and parts of the streets, creating trip hazards and/ or rendering streets effectively closed to pedestrian and vehicular traffic. In anticipation of this situation, the City immediately declared an emergency and after the storm, started to make the expensive necessary repairs to the sidewalks, streets, curbs, pedestrian ramps, fire hydrants and public and private utilities under and above the ground. The Law Department and Comptroller's Office approved that emergency and the initial funding request. That approval was granted for \$12 million, with the Comptroller requiring that the funds be expended within three (3) months of the storm. As expected based on past experience, as sidewalks and streets were cleared of debris, additional damage was discovered.

In late November, DDC advised your offices that the work was rapidly reaching the original funding limit and that significant additional funds would be required to complete all of the necessary repairs. Information was provided concerning the number of additional sites requiring work and the revised estimated costs per location. At that time, the Comptroller's Office advised that DDC should request additional authorization when more of the original funds had been exhausted.

30 - 30 Thomson Ave. L.I.C., NY 11101

Telephone: 718 391 1580

Facsimile: 718 391 1893

www.nyc.gov/buildnyc





OFFICE OF INSPECTOR GENERAL
Department of Homeland Security



Page 2
January 13, 2013
Hon. John C. Liu
Hon. Michael Cardozo

DDC has recently been advised by the Comptroller's Office that the contracts that we are trying to register are over the initial amount approved. As a result, I am now providing this updated information to you in order to obtain approval for the additional necessary funds, as well as additional time, to complete all of the required work.

DDC's original request for an estimated \$12 million dollars was approved by your offices. DDC is now asking for an amendment to the original emergency declaration for an additional \$11 million. 2,226 locations with sidewalk damage have been identified. However, DDC anticipates additional locations will be added to that number, for an estimated total of 2,300 locations. The anticipated cost for each location is \$10,000. As a result, the current revised estimate to complete all work is: \$23,000,000 (\$17.25 M Construction, and \$5.75 M REI).

Due to the winter weather restrictions on installing concrete and the restriction on planting trees only during the spring and fall planting seasons, we estimate all construction/tree planting work should be completed by and final payments made by June 30, 2013. The REI work including project closeout should be completed by the original August 2013 REI contract completion date.

Based on the above, I ask for your concurrence and approval for the updated scope of work and associated costs, pursuant to section 103(4) of the General Municipal Law, Section 315 of the New York City Charter and section 3-06 of the Procurement Policy Board Rules.

Sincerely,

David J. Burney, FAIA
Commissioner





OFFICE OF INSPECTOR GENERAL
Department of Homeland Security



Geneith Turnbull
DEPUTY COMPTROLLER

CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
JOHN C. LIU

BUREAU OF CONTRACT ADMINISTRATION

MUNICIPAL BUILDING
ONE CENTRE STREET, ROOM 1005
NEW YORK, N.Y. 10007-2341
TEL: (212) 669-4126
FAX: (212) 815-8603
GTURNBULL@COMPTROLLER.NYC.GOV

February 19, 2013

David J. Burney
Commissioner
City of New York
Department of Design & Construction (DDC)
30-30 Thomson Avenue
Long Island City, NY 11101

Re: Emergency Request No. 2012104REV.1
DDC Repair of Sidewalks, Tree and Stump Removal, Chipping, Tree Re-Planting and
Construction Supervision
Revised Estimated Cost: \$23,000,000

NYC D.D.C.
2013 FEB 22 PM 6:41

Dear Commissioner Burney:

This letter confirms the revised verbal approval given by the Comptroller's Office on February 1, 2013 and serves as written approval for an additional \$11,000,000 in funding for the emergency procurement of services to make necessary repairs to sidewalks, tree and stump removal, chipping, tree re-planting and construction supervision required as a result of trees falling during Hurricane Sandy. The revised estimated cost of \$23,000,000 includes the original amount of \$12,000,000 (written approval was sent for this amount on December 26, 2012) and the current increase of \$11,000,000. DDC represents that the total request of \$23,000,000 be allocated between \$5,750,000 for resident engineering and inspection services and \$17,250,000 for construction services. Revised approval is based on DDC's representation that as sidewalks and streets were cleared of debris; additional sidewalk damage was discovered, creating hazardous conditions to pedestrian and vehicular traffic alike. This Office's approval of the above-referenced emergency procurement is valid for six months from February 1, 2013.

We take this opportunity to remind your agency that our emergency approval is limited to the scope of work defined in your Agency's revised emergency declaration, received in our Office on January 17, 2013. Therefore, if at any time you anticipate that additional work is needed to address the emergency, or that the estimated dollar amount is expected to be exceeded we require that you discuss with us whether an amended emergency declaration and approval is required before implementing any additional work.

Your attention is directed to the requirements contained in the Procurement Policy Board (PPB) Rules Section 3-06 and Section 315 of the New York City Charter. Specifically, the agency should ensure that such competition as is possible and practicable under the circumstances be obtained and that written documentation detailing the basis for the emergency and the selection of the supplier be submitted at the earliest practicable time. In addition, Section 2-12 of the PPB



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

David J. Burney
February 19, 2013
Emergency Request No. 2012104REV.1
DDC Repair of Sidewalks, Tree and Stump Removal, Chipping, Tree Re-Planting and
Construction Supervision
Revised Estimated Cost: \$23,000,000
Page 2

Rules requires a copy of the contract and related materials to be submitted to the Comptroller's Office within thirty (30) business days of award.

On behalf of Comptroller John C. Liu, I am pleased to be of assistance in this matter.

Yours truly,

A handwritten signature in cursive script, appearing to read "Geneith Turnbull".

Geneith Turnbull

Cc: Charles Odiase
Wilfred Anigekwu
Stephen Malusa



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Background

New York City's Office of Management and Budget (OMB) contracted with Hagerty Consulting following the October 2012 Hurricane Sandy to provide assistance with tracking, documenting and recouping federal funding for disaster related damages.

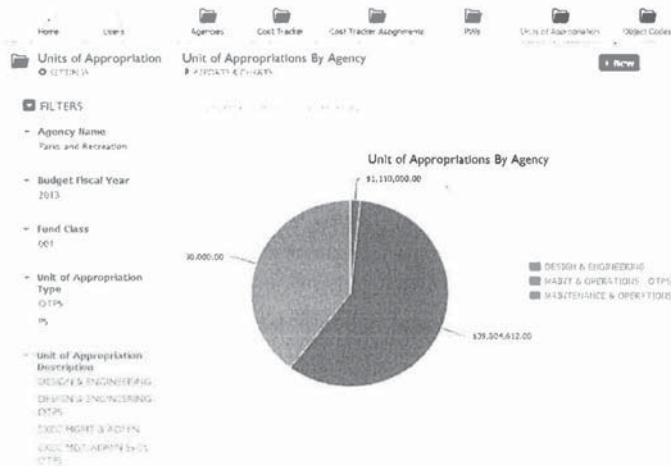
The multifaceted government structure of the City provided for the added complexity of 52 independent City Agency applicants across a \$5 Billion Federal program. Among the responsibilities of integrating the organizational emergency effort, Hagerty developed a centralized repository of information to monitor funds and report on the progression of FEMA Project Worksheets utilizing the web-based Intuit platform, QuickBase.

What is QuickBase?

QuickBase is customized by Hagerty consulting, at a citywide level, to centralize the recording, and tracking of Sandy-related revenues and expenses. This application is a web-based database that provides a central repository of information that monitors funds, tracks, and reports on the progress of project worksheets. It provides a relationship platform to aggregate Agency Budgets/Expenses, Emergency and Permanent Grants, Federal Projects, and allocating revenue via leveraging the following units:

- The City's Financial Management System (FMS), a computer-based platform used to operate and maintain centralized financial systems for the City's departments, managed by the Financial Information Services Agency (FISA).

Utilizing extracts from FMS's operating and capital budgets, daily uploads of all Sandy related expenses and revenues are pulled into the system for central oversight of organization-wide spending congruent to FEMA audit requirements. The transparent overview of all Agency funding allocations provides the City with immediate, comprehensive reporting and documentation from appropriation to reimbursement.





OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

- The **Emergency Management Mission Integrated Environment (EMMIE)** is a FEMA Public Assistance application source to manage Subgrantee submission, request assistance from Grantee, process revisions, and monitor the status of applications online.

EMMIE dashboard generated reporting is pulled into the QuickBase system to verify Project Worksheet information from formulation to close-out.

Category	Category Type	PW Grant Amount (tot)	Total Obligated Amount (tot)	Reimbursement Amount (tot)	Total Collected Earned Revenue (tot)	# of Versions (tot)
A	<u>Debris Removal</u>	\$214,769,721	\$187,035,009	\$157,551,954	\$143,059,787	56
B	<u>Emergency Protective Measures</u>	\$1,018,432,171	\$791,123,410	\$452,449,217	\$440,717,756	182
C	<u>Roads and Bridges</u>	\$22,049,442	\$19,844,459	\$10,003,859	\$10,003,859	10
E	<u>Buildings and Equipment</u>	\$78,882,508	\$23,141,729	\$2,189,692	\$1,967,910	158
F	<u>Utilities</u>	\$22,220,748	\$19,976,444	\$1,252,701	\$1,554,239	11
G	<u>Parks, Recreational Facilities and Other Items</u>	\$16,002,775	\$10,881,107	\$113,469	\$113,469	18
Totals (6 groups)		\$1,272,377,366	\$1,052,002,196	\$623,560,923	\$597,457,052	433

Functionality of QuickBase

As a customizable web-based database and tracking application, QuickBase (NYC Grants Management) was designed, developed and implemented by Hagerty to track the particular financial information needs of the disaster. Specifically, the application can:

- Monitor Funds
- Track project financial process and account balances
- Display real-time progress reporting across multiple agencies
- Provide a central repository of disaster related expenditures and revenue structures
- Create work flow processes to identify bottlenecks and streamline operations
- Provide financial stewardship and stakeholder transparency
- Create relationships between various data sets
- Align disaster expenditures with grant funding sources

QuickBase Timeline

On 15 January 2013, efforts to comprehend and leverage existing systems were initiated to build a Grants Management with the subsequent outcome of improving access to accurate, real-time information to drive decision making and visibility into grant financial management activity. The QuickBase timeline below shows several of the milestones in the development of the system and the timeline for some of its functionality. Because of the continual needs of the users and documentation requirements, this system provides the City



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

with evolving functionality and regulatory updates to allow enhancements and maintain pace with mounting changes.

January 2013: Commence development of QuickBase platform to mimic FMS and house PWs

February 2013: Meeting with FISA and OMB to gather the background information on FMS accounting

April 2013: Automate imports for live updates. Enhance and provide system-generated reporting

June 2013: Rollout of Database and begin reconciliation efforts

November 2013: Development of Split Records and Other Funding Sources



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Appendix B

Report Distribution List

Department of Homeland Security

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Chief Privacy Officer

Federal Emergency Management Agency

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Regional Administrator, FEMA Region II
Audit Liaison, FEMA Region II
Audit Liaison, FEMA (Job Code G-13-052)
Chief Procurement Officer

Recovery Accountability and Transparency Board

Director, Investigations, Recovery Accountability and Transparency Board

Office of Management and Budget

Chief, Homeland Security Branch
DHS OIG Budget Examiner

Grantee

Commissioner, New York State Division of Homeland Security and Emergency Services

State

New York State Comptroller, Office of the State Comptroller

Subgrantee

Commissioner, Department of Design and Construction



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Congress

Senate Committee on Appropriations, Subcommittee on Homeland Security

Senate Committee on Homeland Security and Governmental Affairs

House Committee on Appropriations, Subcommittee on Homeland Security

House Committee on Homeland Security

House Committee on Oversight and Government Reform

House Committee on Transportation and Infrastructure

ADDITIONAL INFORMATION

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For further information or questions, please contact Office of Inspector General (OIG) Office of Public Affairs at: DHS-OIG.OfficePublicAffairs@oig.dhs.gov, or follow us on Twitter at: [@dhsoig](https://twitter.com/dhsoig).

OIG HOTLINE

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Should you be unable to access our website, you may submit your complaint in writing to:

Department of Homeland Security
Office of Inspector General, Mail Stop 0305
Attention: Office of Investigations Hotline
245 Murray Drive, SW
Washington, DC 20528-0305

You may also call 1(800) 323-8603 or fax the complaint directly to us at (202) 254-4297.

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