

**FEMA Should Recover
\$9.9 Million of \$36.6 Million
Awarded to the Town of North
Hempstead, New York, for
Hurricane Sandy Damages**





DHS OIG HIGHLIGHTS

FEMA Should Recover \$9.9 Million of \$36.6 Million Awarded to the Town of North Hempstead, New York, for Hurricane Sandy Damages

September 26, 2016

Why We Did This Audit

The Town of North Hempstead, New York, (Town) received a \$36.6 million Federal Emergency Management Agency (FEMA) grant award for damages from Hurricane Sandy, which occurred in October 2012. We audited four projects totaling \$20.9 million for debris removal and emergency protective services.

What We Recommend

FEMA should recover \$9.9 million in funds that were ineligible, unsupported, or unused. FEMA should also direct New York, as its grantee, to assist the Town in properly supporting all costs it has claimed or plans to claim.

For Further Information:

Contact our Office of Public Affairs at (202) 254-4100, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

The Town did not always comply with Federal grant requirements. Of the \$20.9 million we reviewed, we questioned \$9.1 million composed of the following amounts:

- \$4,894,551 for contracts that did not meet Federal standards,
- \$3,229,478 for costs claimed twice,
- \$562,387 for unsupported costs, and
- \$405,158 for costs that insurance paid.

In addition, we identified \$791,175 in funds that FEMA should put to better use. The Town completed work in October 2013 on a project for \$791,175 less than FEMA's estimate.

These findings occurred, in part, because the Town was unfamiliar with Federal grant requirements. However, it was New York's responsibility as FEMA's grantee to ensure that its subgrantee, the Town, was aware of and complied with all Federal regulations and FEMA guidelines applicable to FEMA Public Assistance grants.

FEMA Response

FEMA officials agreed with our findings and recommendations and provided written comments on July 27, 2016, which we included as appendix D.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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

9-26-2016

MEMORANDUM FOR: Jerome Hatfield
Regional Administrator, Region II
Federal Emergency Management Agency
Thomas M. Salmon

FROM: Thomas M. Salmon
Assistant Inspector General
Office of Emergency Management Oversight

SUBJECT: *FEMA Should Recover \$9.9 Million of \$36.6 Million
Awarded to the Town of North Hempstead, New York,
for Hurricane Sandy Damages*
Audit Report Number OIG-16-140-D

We audited Public Assistance Program grant funds awarded to the Town of North Hempstead, New York (Town). The New York State Division of Homeland Security and Emergency Services (New York), a Federal Emergency Management Agency (FEMA) grantee, awarded the Town \$36.6 million for damages resulting from Hurricane Sandy, which occurred in October 2012. The award provided 90 percent FEMA funding for debris removal, emergency protective measures, and permanent repairs to buildings and other facilities. We audited four projects totaling \$20.9 million or about 57 percent of the total award (see appendix C). At the time of our audit, the Town had completed work related to debris removal and emergency protective measures; however, Town officials had not submitted final claims for expenditures under those projects.

Background

The Town is on Long Island in Nassau County, New York. Hurricane Sandy's high winds and heavy rain caused downed trees and limbs and other damage in rights of way, parks, buildings, grounds, parking lots, and cemeteries the Town maintains (see figures 1 and 2).



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Figure 1: Mudslide after Hurricane Sandy



Source: Town of North Hempstead, New York

Figure 2: Damaged Sidewalk after Hurricane Sandy



Source: Town of North Hempstead, New York

Results of Audit

The Town generally did not account for and expend FEMA grant funds according to Federal regulations and FEMA guidelines. Of the \$20.9 million we reviewed, we questioned \$9.1 million composed of the following amounts:

- \$4,894,551 for contracts that did not meet Federal standards,
- \$3,229,478 for costs claimed twice,
- \$562,387 for unsupported costs, and
- \$405,158 for costs that insurance paid.

In addition, we identified \$791,175 in funds that FEMA should put to better use. The Town completed work in October 2013 on a project for \$791,175 less than FEMA's estimate. At the time of the disaster, the Town was unfamiliar with Federal requirements for grants. Therefore, New York should have done more as FEMA's grantee to ensure the Town was aware of and complied with all Federal regulations and FEMA guidelines applicable to FEMA Public Assistance grants. Because of our audit, Town officials informed us that, as of



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

August 1, 2015, they adopted new procurement procedures for future work that aligns more closely with Federal requirements.

Finding A: Improper Contracting Procedures

The Town did not follow Federal procurement standards in awarding contracts totaling \$4,894,551 under Project 2116 for debris removal. As a result, full and open competition did not occur, and FEMA has no assurance that costs were reasonable or that disadvantaged firms received opportunities to bid on federally funded work. Federal procurement standards at 44 Code of Federal Regulations (CFR) 13.36 required the Town, among other actions, to —

- conduct all procurement transactions in a manner providing full and open competition except under certain circumstances (44 CFR 13.36(c)(1)). One acceptable circumstance is when the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (44 CFR 13.36(d)(4)(i));
- take specific affirmative steps to assure the use of disadvantaged firms (small and minority firms, women's business enterprises, and labor surplus area firms) when possible (44 CFR 13.36(e));
- use time-and-material contracts only after determining that no other contract is suitable, and only if the contract contains a ceiling price that the contractor exceeds at its own risk (44 CFR 13.36(b)(10)(i)(ii)); and
- include specific provisions in its contracts (44 CFR 13.36(i)(3)(4)(10) and (11)).

The four projects we reviewed totaled \$20.9 million, including \$20,335,279 for debris removal and \$556,746 for emergency protective measures.¹ The Town used its own employees for emergency protective measures and for part of the debris removal and awarded three time-and-material contracts totaling \$4,894,551 for the remaining debris removal. However, the Town did not follow Federal procurement standards in awarding the three debris removal contracts.

Specifically, the Town —

¹ FEMA classifies disaster-related work by type: debris removal (Category A), emergency protective measures (Category B), and permanent work (Categories C through G).



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

- did not solicit competitive bids. As a result, FEMA has little assurance that contract costs are reasonable. Full and open competition usually increases the number of bids received and thereby increases the opportunity for obtaining reasonable pricing from the most qualified contractors. Full and open competition also helps discourage and prevent favoritism, collusion, fraud, waste, and mismanagement of Federal funds;
- did not take all necessary affirmative steps to provide opportunities for disadvantaged firms to bid on federally funded work. The steps include using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce to solicit and use these firms;
- inappropriately used high-risk, time-and-material contracts for debris removal without justification and without including ceiling prices in the contracts that contractors would exceed at their own risk; and
- did not include all required provisions in the contracts, such as Equal Employment Opportunity compliance, compliance with labor laws, prohibition of “kickbacks,” and access to records and record retention requirements. These provisions document the rights and responsibilities of all parties and minimize the risk of contract misinterpretations and disputes.

The Town continued to use these non-competitive, time-and-material contracts for up to 1 year after Hurricane Sandy. According to the FEMA *Public Assistance Guide* (FEMA 322, June 2007, p. 53) applicants should avoid using time and materials contracts. FEMA may provide assistance for work completed under such contracts for a limited period (generally not more than 70 hours) for work that is necessary immediately after the disaster has occurred when it is difficult to develop a clear scope of work. Applicants must carefully monitor and document contractor expenses and include a cost ceiling or “not to exceed” provision in the contract.

Further, in January 2001, FEMA issued a fact sheet (FEMA 9580.4) that stated the following, in part, (see appendix A):

In some situations, such as clearing road for emergency access (moving debris off the driving surface to the shoulders or rights-of-way), or removal of debris at a specific site, awarding a non-competitive contract for site-specific work may be warranted; however, normally, non-competitive bid awards should not be made several days (or weeks) after the disaster or for long-term debris removal. Obviously, the latter situations do not address a



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

public exigency or emergency, which “will not permit a delay resulting from competitive solicitation.”

We generally do not question contract costs when the work is exigent; that is, when an immediate threat to life and property exists. However, as noted in its *Public Assistance Guide* and fact sheet (FEMA 9580.4), FEMA does not consider normal debris removal to be exigent work that justifies non-competitive contracts or time-and-material contracts. The Town not only used non-competitive, time-and-material contracts, it also failed to provide opportunities for disadvantaged firms to bid on debris removal and did not include ceiling prices or required provisions in its contracts. Therefore, we question as ineligible all of the \$4,894,551 in contract costs.

FEMA has the regulatory authority to enforce grant compliance under 44 CFR 13.43(a)(2) by disallowing all or part of costs not in compliance. FEMA also has limited authority to grant exceptions to administrative requirements, which include procurement standards, on a case-by-case basis under 44 CFR 13.6(c). For example, FEMA granted a 60-day exception after Hurricane Sandy to the State of New Jersey for a statewide non-competitive debris removal contract. Specifically, FEMA would reimburse all eligible program costs for work performed and invoiced under the non-competitive contract from November 4, 2012, to January 3, 2013. FEMA based its decision on the size of the storm, New Jersey's compliance with State law in entering into the sole source contract, the public exigency that existed throughout the State after the storm, and the multiple steps the State required to award a competitively bid debris contract after the 60 days expired. However, the circumstances in every state are unique, even with the same disaster; and FEMA has been silent with respect to a similar exception for New York's response to and recovery from Hurricane Sandy.

To facilitate FEMA's review of the facts, we have compiled the following information on the three contractors (labeled Firms A, B, and C) and the timing of their debris removal work.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Table 1: Debris Removal Timeframes by Contract

Firm	Time Period of Debris Removal	(70 Hours) Costs Oct 30 – Nov 1, 2012	(60 Days) Costs Nov 2 – Dec 31, 2012	Costs After Dec 31, 2012	Total Contract Amount
A	Oct 29, 2012– Oct 24, 2013	\$ 69,300	\$ 631,510	\$ 722,870	\$ 1,423,680
B	Nov 05, 2012– Jan 11, 2013	0	1,093,814	63,773	1,157,587
C	Jan 01, 2013– Sept 30, 2013	0	0	2,313,284	2,313,284
Totals		\$69,300	\$1,725,324	\$3,099,927	\$4,894,551

Source: Town records and Office of Inspector General (OIG) analysis

All three of the contractors based their fees on the total number of labor and equipment hours and expenses (time and attendance, hourly equipment rates, etc.). We noted during the audit that FEMA wrote Project 2116 based on estimated costs, and the FEMA debris team had not validated actual timesheets nor had the Town provided sample debris load tickets to validate tipping fee costs claimed in the project worksheet. Therefore, FEMA depended on the Town providing supporting documentation in an amended or revised version project worksheet or during Closeout Final Inspection.

Firm A had a pre-positioned contract in place with the Town for routine tree pruning and unit-priced tree removal based on a tree's diameter (trees ranged from 12 to 63 inches). However, on October 30, 2012, Firm A submitted a "fully-burdened" hourly rate for Hurricane Sandy work for employees' labor costs (including fringe benefits, overhead, and profit) and equipment usage. The contractor charged the Town \$440 per hour for four employees plus the use of equipment and an overtime rate of \$550 with the same terms. This emergency contract differed from the original (pre-positioned) unit-price contract terms. The Town used this contractor until October 24, 2013 (almost a full year).

Firm B submitted to the Town time-and-material rates (for labor and equipment) for debris removal work. The Town used this contractor from November 5, 2012, to January 11, 2013 (approximately 2 months).

Firm C submitted time-and-material rate proposals for debris removal, and the subsequent contract included several addendums dated from March 29, to September 27, 2013. The Town used this contractor from January 1, to September 30, 2013 (approximately 9 months).



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Town officials informed us that in response to our findings, as of August 1, 2015, they adopted new procurement procedures for future work that aligns more closely with Federal requirements.

New York and the Town disagreed with this audit finding. They assert emergency contracts are allowable under New York State law and the Town's procurement guidelines. In addition, they assert that the auditors ignored exigent circumstances and that FEMA already determined the costs as reasonable. However, our position remains unchanged. While New York and the Town may authorize emergency contracts, the Town did not present evidence that the work was exigent — or that life and property were at risk to justify using emergency time-and-material contracts for almost a year after Hurricane Sandy. Further, a state or town cannot waive Federal grant requirements. Although Federal regulation does not define exigent circumstances, we have consistently interpreted it to mean a period when life and property are at risk requiring immediate action that “will not permit a delay resulting from competitive solicitation.” In our review of Project 2116, we did not find evidence of FEMA making a final determination regarding the reasonableness of costs.

Finding B: Duplicate Benefits from Costs Claimed Twice

The Town claimed \$3,229,478 in duplicate costs under Project 2516 to pay the Town's Solid Waste Management Authority (Authority)² to manage collected disaster debris. The Town's Authority claimed costs for payments it made to three contractors to dispose of debris that other entities had brought to the Authority's landfill. However, the Town's Authority had already collected income for debris disposal from those entities when it accepted the debris at its landfill. All authorized work ended in October 2013.

Town Authority officials explained the cost breakdown of inbound debris disposal rates (based on tonnage) for vegetative and construction and demolition debris. The cost breakdown rates are rates charged to all entities to dispose of debris. For the period of May 2012 through May 2013, the Town's Authority charged \$73.25 per ton for inbound vegetative debris. This rate included \$56.67 for debris disposal, an administrative fee of \$8.71, and a transfer station operation fee of \$7.87. The Inbound rate for construction and demolition debris was \$84.50 per ton, which included \$70 for debris disposal, an administrative fee of \$6.63, and a transfer station operation fee of \$7.87.

² Solid Waste Management Authority (Authority) is a department within the Town of North Hempstead whose main responsibility is to manage all activities related to collection, processing and disposal of debris, recyclables, and solid waste/trash. This department directly charges the Town of North Hempstead and other neighboring municipalities to whom it provides services.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

The Town's Authority contracted with three separate companies to dispose of the debris that it received at its landfill between October 29, 2012 and October 30, 2013. The three companies billed the Town's Authority for debris disposal costs totaling \$3.2 million for 55,129 tons of vegetative debris and 17,790 tons of construction and demolition debris. The Town sought reimbursement from FEMA for that \$3.2 million. However, the Town's Authority already received income for disposal costs in its rates it charged the entities that brought the debris to the landfill. Therefore, the Town's request for reimbursement from FEMA was, in fact, a request for duplicate benefits.

In a July 2015 discussion, the Town's Authority officials disclosed that they do not accrue high amounts of fund balances when managing the Town's solid waste (trash), recycling, debris, etc. However, we reviewed their Comprehensive Annual Financial Reports from 2008 through 2014 (6-year period beginning January 1, 2008, and ending December 31, 2014). For years 2008 through 2011, the Town's Authority year-end fund balances totaled \$204,000 in 2008, \$353,000 in 2009, a deficit of (\$293,000) in 2010, and \$7,000 in 2011. However, for years 2012 through 2014, the Town's Authority year-end fund balances spiked significantly: \$1.5 million in 2012 (the President declared Hurricane Sandy as a major disaster on October 30, 2012); \$2.7 million in 2013; and \$2.7 million in 2014. Our review of the \$3.2 million debris disposal costs claimed to FEMA for reimbursement determined that the claim was indeed duplicative.

The \$3,229,478 of duplicated debris disposal costs remained obligated under Project 2516 in Version 1, dated August 6, 2013; and in Version 2, dated September 18, 2014 (FEMA issued both versions before the audit). In addition, Version 3, dated April 21, 2015 (FEMA issued this version during our audit fieldwork), included the duplicated debris disposal costs although the Town had completed all authorized work in October 2013.

Because of our audit, the Town's Authority reduced its claim by \$3,229,478 in Version 4, dated August 3, 2015, during our audit fieldwork; and FEMA deobligated the Federal share.

New York and Town officials disagreed with this audit finding. They said the Town did not receive funds for duplicate debris disposal costs and that we are taking credit for normal project reconciliation procedures. However, our position remains unchanged. At the start of this audit, New York submitted a spreadsheet specifying payments made to the Town for the claimed duplicate debris disposal costs. We collected the Town's monthly bank statements to verify and validate that the Town did in fact receive funds for the claimed



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

duplicate debris disposal costs. In July 2015, we conducted interviews and received written evidence from the Town Authority's former Executive Director from which we identified the duplicate debris disposal costs. In August 2015, New York and the Town's Authority immediately removed the duplicate debris disposal costs only after we identified those costs as duplicate; FEMA agreed with us and subsequently deobligated the duplicate costs.

Finding C: Unsupported Costs

The Town's Authority did not provide documentation adequate to support \$562,387 of costs (\$557,039 of force account equipment costs, \$3,622 of direct administrative costs, and \$1,726 of professional membership fees). As a result, FEMA has no assurance that these costs were valid or eligible.

Federal cost principles require recipients of Federal awards to provide documentation adequate to support the costs they claim under the awards (2 CFR 225, appendix A, section C.1.j.). In addition, 44 CFR 13.20(b)(2) and (6) require recipients to maintain records that adequately identify the source and application of Federal funds and maintain source documentation to support those records.

For Project 2516, the Town's Authority provided us with summary cost sheets for force account equipment (vehicles and heavy equipment) that its employees used to complete work under each project. These summary cost sheets contained a description of the equipment, operator's name, dates of use and total hours used, and a FEMA pre-approved hourly equipment rate. The Town's Authority calculated its daily use of each piece of equipment using data from employee timesheets. For example, if an employee worked a 10-hour day, the Town's Authority claimed 10 hours of use for a vehicle assigned to the employee on that day, using a FEMA pre-approved hourly equipment rate. However, this methodology assumes that FEMA reimburses the use of all equipment based on an hourly rate and that the employee used the equipment continuously throughout the day. According to FEMA's *Public Assistance Guide* (FEMA 322, June 2007, p. 48), FEMA generally reimburses an applicant's use of automobiles and pickup trucks based on mileage. For all other types of equipment, FEMA reimburses costs using an hourly rate. Standby, or idle, time for applicant-owned equipment is not eligible; and, if an applicant uses equipment intermittently for the majority of the day, the applicant may claim use for the entire day if the applicant submits adequate documentation. Equipment that an applicant uses for less than half a day is reimbursable only for the hours used.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

In a July 2015 discussion, the Town's Authority officials disclosed that they did not track their force account equipment costs. We reviewed force account equipment costs for another Town department (Highway Department) that claimed approximately \$1.6 million in force account equipment costs (three times more than the Town's Authority). However, we found no problems with the Town Highway Department's documentation because it created and retained manual entries of all equipment usage and recorded all disaster activity in hardcover logbooks.

For Project 2763, we determined the documentation was not sufficient to support the \$3,622 in direct administrative costs the Town claimed for its employees who performed work related to emergency protective measures. The Town provided us with time and attendance records, but those records did not match the claimed costs or contain a clear description of work relating to the disaster. In addition, the Town also claimed \$1,726 for membership costs to the Port Washington-Manhasset Office of Emergency Management, a consortium of villages and districts in the immediate area for November and December 2012. The Town used the services of the consortium to issue important announcements regarding Hurricane Sandy and the Town's response to the disaster. However, the Town did not provide us with a copy of the current contract in place or any other relevant documentation to verify the claimed cost.

Table 2 summarizes the costs we questioned as unsupported for the four projects in our audit scope.

Table 2: Costs Awarded, Claimed, Reviewed, and Not Supported

Project Number	FEMA Category of Work	Awarded Amount	Claimed Amount	Costs Not Supported
2116	A	\$ 14,251,983	\$ 14,251,983	\$ 0
2516	A	2,969,543	5,407,847	557,039
2763	B	556,746	556,746	5,348
4383	A	675,449	675,449	0
Totals		\$18,453,721	\$20,892,025	\$562,387

Source: FEMA project worksheets and OIG analyses

New York and Town officials disagreed with this audit finding and said that fuel records and employee time records the Town submitted to us were adequate to support force account equipment costs claimed to FEMA for reimbursement. However, our position remains unchanged. In a July 2015 interview, the Town Authority's former Deputy Director admitted to us that the Authority did not



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

record or track force account equipment charges it claimed to FEMA for reimbursement.

Finding D: Duplicate Benefits from Insurance

The Town's claim includes \$405,158 in duplicate benefits for costs related to wind damage that its insurance carrier should have covered. Section 312 of the *Robert T. Stafford Disaster and Emergency Assistance Act*, as amended, states that no entity will receive assistance for any loss for which it has received financial assistance from any other program, insurance, or any other source. Before we started our audit, the Town received \$349,357 from its insurance carrier for wind damages. However, as of February 2015, FEMA had not conducted a final review of insurance proceeds for permanent work damage and repairs. Although our audit scope did not include permanent projects, we always review potential insurance coverage of disaster work. In response to our inquiries, FEMA requested the Town to contact its insurance carrier and reopen/revisit 11 projects covered for wind damage.

In May 2015, Town officials requested their insurance carrier to reopen/revisit 11 projects as FEMA suggested. On August 31, 2015, the Town's insurance carrier notified the Town that it would receive an additional \$405,158. Therefore, we question \$405,158 as ineligible duplicate benefits because FEMA has not yet applied the additional insurance proceeds to reduce amounts obligated for applicable projects.

New York and Town officials disagreed with this audit finding because the projects have not undergone final project reconciliation. They said that we are taking credit for being present for the insurance discovery during audit fieldwork. However, our position remains unchanged. Both our office and FEMA's insurance specialist performed a detailed analysis of insurance coverage and arrived at the same conclusion — that the Town's insurance carrier should pay an additional \$405,158 to the Town. We recommend that FEMA ensure the Town applies the insurance proceeds to the project worksheets to reduce project amounts.

Finding E: Unneeded Funds

In October 2013, the Town's Authority completed authorized work on Project 2516 for \$791,175 less than the \$2,969,543 FEMA estimated for the project. However, these unused funds remained obligated at the time of our audit. Therefore, FEMA should deobligate \$791,175 from Project 2516 and put those funds to better use. FEMA informed us in its formal comments to this



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

report that it deobligated the \$791,175 in Version 4 of Project 2516 dated August 3, 2015.

Federal appropriations laws require Federal agencies to record obligations in the accounting records, on a factual basis, throughout the government.³ That is, the agency must increase or decrease obligated funds when probable and measurable information becomes known. The *Statement of Federal Financial Accounting Standards* also requires Federal agencies to record obligations in the accounting records on a factual and consistent basis. The over-recording and the under-recording of obligations are equally improper as both practices make it impossible to determine the precise status of Federal appropriations.

New York and Town officials disagreed with this audit finding and said that the Town had not received the unneeded funds. However, our position remains unchanged. At the start of this audit, New York submitted a spreadsheet specifying payments made to the Town for Project 2516. We collected the Town's monthly bank statements to verify and validate that the Town did in fact receive the unneeded funds for Project 2516.

Finding F: Grant Management

New York should have done more as FEMA's grantee to ensure the Town was aware of and complied with Federal grant requirements. In its FEMA-State Agreement, New York agreed to "comply with the requirements of laws and regulations found in the *Stafford Act* and 44 CFR." Further, 44 CFR 13.37(a)(2) and 13.40(a) require grantees to (1) ensure that subgrantees are aware of Federal regulations, (2) manage subgrant activity, and (3) monitor subgrant activity to assure compliance. Therefore, it was New York's responsibility to ensure the Town complied with applicable Federal regulations and FEMA guidelines. It is also New York's responsibility to ensure the Town complies with Federal grant requirements in completing the \$15.7 million that was not in our audit scope.⁴ It is FEMA's responsibility to hold New York accountable for proper grant administration.

New York and Town officials disagreed with this audit finding and said that this audit report fails to establish non-compliance with 44 CFR 13.40(a). However, our position remains unchanged. In accordance with Federal regulations and FEMA guidelines, it is New York's responsibility to ensure the Town complies with Federal grant requirements.

³ U.S. Government Accountability Office, *Principles of Federal Appropriations Law*, Third Edition, Volume II, February 2006, chapter 7, section B: Criteria for Recording Obligations (31 USC § 1501).

⁴ We audited \$20.9 million of the Town's \$36.6 million award.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Recommendations

We recommend the Regional Administrator, FEMA Region II:

Recommendation 1: Disallow \$4,894,551 (Federal share \$4,405,096) resulting from improper procurement procedures unless FEMA decides to grant an exception for all or part of the costs as 44 CFR 13.6(c) allows and determines that the costs are reasonable (finding A).

Recommendation 2: Disallow \$3,229,478 (Federal share \$2,906,530) of ineligible duplicate benefits for costs the Town's Authority claimed twice. Because of our audit, the Town's Authority reduced its claim by \$3,229,478 and FEMA deobligated the Federal share. Therefore, because the Town's Authority and New York took corrective action, we consider this recommendation resolved and closed (finding B).

Recommendation 3: Disallow \$562,387 (Federal share \$506,148) for unsupported costs unless the applicant provides adequate documentation to support the costs (finding C).

Recommendation 4: Disallow \$405,158 (Federal share \$346,642) as ineligible duplicate benefits that insurance provided and review the Town's insurance policies to ensure FEMA has applied all proceeds to reduce applicable projects (finding D).

Recommendation 5: Deobligate and put to better use \$791,175 (Federal share \$712,058) of unneeded Federal funding. Because of our audit, FEMA deobligated the \$791,175, and we consider this recommendation resolved and closed (finding E).

Recommendation 6: Direct New York to work with the Town to ensure it complies with all Federal grant requirements (finding F).

Discussion with Management and Audit Follow-up

We discussed the results of our audit with Town, New York, and FEMA officials during our audit. We also provided a draft report in advance to these officials and discussed it at exit conferences with FEMA on June 29, 2016, and with the Town and New York on July 5, 2016. Town and New York officials disagreed with our findings and provided written comments, which we summarized and addressed within the body of this report. We also included their written comments in their entirety as appendix E (New York) and appendix F (Town).



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

FEMA officials agreed with our findings and recommendations and provided written comments on July 27, 2016, which we included as appendix D. FEMA's response and actions were sufficient to resolve and close recommendations 2 and 5; therefore, we require no further action from FEMA for those recommendations. FEMA's response and planned actions were sufficient to resolve, but not close, recommendations 1, 3, 4, and 6 with a target completion date of October 31, 2016. Therefore, we consider recommendations 1, 3, 4, and 6 as resolved but open. We will close those recommendations once we receive FEMA's closeout requests and documentation to verify that FEMA has completed its planned actions. Please email a signed pdf copy of all responses and closeout requests to William.Johnson@oig.dhs.gov.

The Office of Emergency Management Oversight major contributors to this report are William H. Johnson, Director; David Kimble, Director; Carlos Aviles, Audit Manager; Adrienne Bryant, Audit Manager; Nadine F. Ramjohn, Auditor-in-Charge; and Omar D. Russell, Auditor.

Please call me with questions at (202) 254-4100, or your staff may contact William H. Johnson, Director, Eastern Regional Office - North at (404) 832-6703.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Appendix A

FACT SHEET: DEBRIS OPERATIONS - CLARIFICATION EMERGENCY CONTRACTING VS. EMERGENCY WORK FEMA 9580.4, January 19, 2001

SUMMARY: Contracting for debris operations, even though it is “emergency work” in FEMA operations, does not necessarily mean the contracts can be awarded without competitive bidding. Applicants should comply with State laws and regulations, but should be aware that non-competitive contracting is acceptable **ONLY** in rare circumstances where there can be no delay in meeting a requirement. In general, contracting for debris work requires competitive bidding. The definition of “emergency” in contracting procedures is not the same as FEMA’s definition of “emergency work”.

DISCUSSION: There appears to be some confusion regarding the awarding of some contracts, especially for debris, without competitive bidding. The reason cited for such actions is that the contract is for emergency work, and competitive bidding is not required. Part 13 of 44 CFR is entitled “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”. These requirements apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or regulations authorized in accordance with the exception provisions of Section 13.6. In essence, these regulations apply to all Federal grants awarded to State, tribal and local governments. Non-competitive proposals awarded under emergency requirements are addressed as follows:

“Procurement by non-competitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:

(A).....

(B) The public exigency or emergency of the requirement will not permit a delay resulting from competitive solicitation.” (44 CFR Part 13.36(d)(4)(1)(B)).”

Staff of the Office of General Counsel and the Office of the Inspector General expressed concern that contracts are being awarded under this section without an understanding of the requirement. Simply stated, non-competitive contracts can be awarded only if the emergency is such that the contract award cannot be delayed by the amount of time required to obtain competitive bidding.

FEMA’s division of disaster work into “emergency” and “permanent” is generally based on the period of time during which the work is to be performed, and not on the urgency of that work. Therefore, the award of non-competitive contracts cannot be justified based on “emergency work”, as defined by FEMA.

In some situations, such as clearing road for emergency access (moving debris off the driving surface to the shoulders or rights-of-way), or removal of debris at a specific site, awarding a non-competitive contract for site-specific work may be warranted; however, normally, non-competitive bid awards should not be made several days (or weeks) after the disaster or for long-term debris removal. Obviously, the latter situations do not address a public exigency or emergency, which “will not permit a delay resulting from competitive solicitation”. Regarding competitive solicitations, applicants can use an expedited process for obtaining competitive bids. In the past, applicants have developed a scope-of-work that identified contractors that can do the work, made telephone invitations for bids, and received excellent competitive bids. Again, applicants must comply with State and local bidding requirements.

Please remind applicants that no contractor has the authority to make determinations as to eligibility, determinations of acceptable emergency contracting procedures, or definitions of emergency work. Such determinations are to be made by FEMA.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Appendix B

Objective, Scope, and Methodology

We audited Public Assistance funds awarded to the Town (FIPS Code 059-53000-00). Our audit objective was to determine whether the Town accounted for and expended FEMA grant funds according to Federal regulations and FEMA guidelines for FEMA Disaster 4085-DR-NY. The Town received a Public Assistance gross award of \$36.6 million from New York, a FEMA grantee, for damages resulting from Hurricane Sandy. The award provided 90 percent FEMA funding for debris removal, emergency protective measures, and permanent repairs and damages to other facilities. The award consisted of 22 large projects and 8 small projects.⁵ At the time of our audit, the Town had completed debris removal and emergency protective measures work, but had not completed permanent repairs to other damaged facilities. The Town had not submitted final claims for expenditures under those projects associated with permanent work.

We reviewed four large projects totaling \$20.9 million. The work on the projects we selected for review was complete and insurance was not applicable to the emergency work. However, we identified \$405,158 in insurance proceeds the Town received that FEMA was not aware of and for which FEMA had not applied to permanent projects to reduce amounts obligated (finding D). Therefore, we questioned these costs as ineligible, but did not otherwise audit the applicable projects. Table 3 provides additional details of costs we questioned for the four projects in our audit scope and the additional \$405,158 we questioned. The audit covered the period from October 29, 2012, through October 13, 2015.

We interviewed Town, New York, and FEMA personnel; gained an understanding of the Town's method of accounting for disaster-related costs and its procurement policies and procedures; judgmentally selected (generally based on dollar amounts) and reviewed project costs and procurement transactions for the projects in our audit scope; reviewed applicable Federal regulations and FEMA guidelines; and performed other procedures considered necessary to accomplish our audit objective. We did not perform a detailed assessment of the Town's internal controls applicable to its grant activities because it was not necessary to accomplish our audit objective.

⁵ Federal regulations in effect at the time of disaster set the large project threshold at \$67,500. [Notice of Adjustment of Disaster Grant Amounts, 77 Fed. Reg. 61,423 (Oct. 9, 2012)].



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Appendix B (continued)

We conducted this performance audit between February 2015 and July 2016 pursuant to the *Inspector General Act of 1978*, 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 the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objective. To conduct this audit, we applied the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Appendix C
Potential Monetary Benefits

Table 3: Questioned Costs and Funds Put to Better Use by Project

Project Number	FEMA Category of Work	Awarded Amount	Claimed Amount	Costs Questioned	Finding	Funds Put to Better Use (Finding E)
2116	A	\$ 14,251,983	\$ 14,251,983	\$ 4,894,551	A	
2516	A	2,969,543	3,229,478 2,178,369	3,229,478 557,039	B C	\$ 791,175
2763	B	556,746	556,746	5,348	C	
4383	A	675,449	675,449	0		
Other	C-G	Not Audited	Not Audited	405,158	D	
Totals		\$18,453,721	\$20,892,025	\$9,091,574		\$791,175

Source: FEMA project worksheets and OIG analyses

Table 4: Summary of Potential Monetary Benefits

Type of Potential Monetary Benefit	Total	Federal Share
Questioned Costs – Ineligible	\$ 8,529,187	\$ 7,676,268
Questioned Costs – Unsupported	562,387	506,148
Funds Put to Better Use (Unused Funds)	791,175	712,058
Totals	\$9,882,749	\$8,894,474

Source: OIG analysis of findings in this audit report



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Appendix D
FEMA Region II Audit Response




U.S. Department of Homeland Security
Region II
Jacob K. Javits Federal Office Building
26 Federal Plaza, 13th Floor
New York, New York 10278

FEMA

July 27, 2016

MEMORANDUM FOR: Thomas M. Salmon
Acting Assistant Inspector General
Office of Emergency Management Oversight
Office of Inspector General

FROM: Jerome Hatfield
Regional Administrator
Region II 

SUBJECT: Management's Response to OIG Draft Report: "FEMA Should
Recover \$9.9 Million of \$36.6 Million Awarded to North
Hempstead, New York, for Hurricane Sandy Damages"
(Project Number 15-015-EMO-FEMA)

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security's (DHS) Federal Emergency Management Agency (FEMA) appreciates the Office of Inspector General's (OIG) review and report.

FEMA concurs with the 6 recommendations contained in the draft report. Please see the attached for the detailed response to each recommendation.

Again, FEMA thanks you for the opportunity to review and comment on this draft report. Please direct any questions regarding this response to Anastasia Holmes, FEMA Region II Recovery Division Appeals and Audits Analyst, at Anastasia.holmes@fema.dhs.gov or 202-384-2925.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Attachment: Management Response to Recommendations Contained in 15-015-EMO-FEMA

Recommendation 1: Disallow \$4,895,551 (Federal share \$4,405,996) resulting from improper procurement procedures unless FEMA decides to grant an exception for all or part of the costs as 44 CFR 13.6(c) allows and determines that the costs are reasonable (finding A).

Response: Concur. FEMA is reviewing the costs resulting from improper procurement procedures and will deobligate any costs found to be ineligible.
Estimated Completion Date (ECD): October 31, 2016.

Recommendation 2: Disallow \$3,229,478 (Federal share \$2,906,530) of ineligible duplicate benefits for costs the Town's Authority claimed twice (finding B). Because of our audit, the Town's Authority reduced its claim by \$3,229,478, and FEMA deobligated the Federal share. Therefore, because Town and New York took corrective action, we consider this recommendation resolved and closed (finding B).

Response: Concur. FEMA reimbursed the Subgrantee for \$3,229,478 in tipping fees twice under Project Worksheet (PW) 2516. FEMA corrected the duplication in Version 4 of the PW on August 3, 2015 when adjusting estimated project costs based on actual costs claimed by the Subgrantee. FEMA requests that this recommendation be considered resolved and closed.

Recommendation 3: Disallow \$562,387 (Federal share \$506,148) for unsupported costs unless the Town's Authority provides adequate documentation to support the costs (finding C).

Response: Concur. FEMA will review these costs and any additional supporting documentation submitted by the Grantee and the Subgrantee to determine whether or not to disallow the costs.
ECD: October 31, 2016

Recommendation 4: Disallow \$405,158 (Federal share \$346,642) as ineligible duplicate benefits that insurance provided and review the Town's insurance policies to ensure FEMA has applied all proceeds to reduce applicable projects (finding D).

Response: Concur. FEMA will review all the insurance proceeds for the Subgrantee and amend the appropriate Project Worksheets (PWs) to reduce the applicable project funding by all actual proceeds including the \$405,158.00 in additional insurance proceeds.
ECD: October 31, 2016

Recommendation 5: Deobligate and put to better use \$791,175 (Federal share \$712,058) of unneeded Federal funding (finding E).

Response: Concur. FEMA deobligated the \$791,175 in unused funds (PW under run) on August 3, 2015. FEMA requests that this recommendation be considered resolved and closed.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Recommendation 6: Direct New York to work with the Town to ensure it complies with all Federal grant requirements (finding F).

Response: Concur. FEMA will direct the Grantee in writing to work with the Subgrantee in complying with all Federal grant requirements.
ECD: August 15, 2016



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Appendix E
New York State Audit Response



ANDREW M. CUOMO
Governor

JOHN P. MELVILLE
Commissioner

August 1, 2016

Mr. Thomas M. Salmon
Acting Assistant Inspector General
Office of Emergency Management Oversight
U.S. Department of Homeland Security
Washington, DC 20528

Re: Audit Report Number OIG-16-XX-DTown of North Hempstead, 4085

Dear Assistant Inspector General Salmon:

Thank you for the opportunity to respond on behalf of the Division of Homeland Security and Emergency Services (DHSES) and the Town of North Hempstead (Town), as our 4085-DR-NY subgrantee, to the draft Office of Inspector General's Report (OIG Report) which questions \$9.1 million out of the \$20.9 million in FEMA funding reviewed by your office. The OIG Report contained six findings and six recommendations. DHSES disputes all findings along with four of the six recommendations, as detailed below. For your additional information, DHSES has appended the Town's comments to this response letter.

We formally request that this response be attached in its entirety as an appendix to the final report.

Finding A	Recommendation 1
The Town did not follow Federal procurement standards in awarding contracts totaling \$4,895,551 under Project 2116 for debris removal.	Disallow \$4,895,551 (Federal share \$4,405,996) resulting from improper procurement procedures unless FEMA decides to grant an exception for all or part of the costs as 44 CFR 13.6(c) allows and determines that the costs are reasonable

New York State Response

This Finding is unsupported as it ignores: 1) the exigent circumstances in which the firms operated; 2) the fact that two of the firms were competitively procured; and 3) that FEMA has already determined all these costs to be reasonable.

Section c(1) of Appendix A of 2 CFR Part 225 states that, in order to be allowable under federal awards, the costs must be reasonable. Section C(2) further defines "reasonable cost" as a cost if, in its nature and amount, does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. Time and material contracts are permitted under 44 CFR §13.36(b)(1) where: 1) a determination that no other contract is suitable; and 2) the contract includes a ceiling price the contractor exceeds as its own risk. To DHSES' knowledge, no ceiling price was included in the contract; however, FEMA has already reviewed the duration and cost of these contracts and found them to be reasonable.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Additionally, the underlying assumption by the OIG in this Finding is that none of the work conducted was exigent, which is clearly not the case. The local officials determined the vast volume, location and nature of the debris presented a threat to public health and safety. These officials made the operational decisions to enter into the contracts and executed these decisions in accordance with appropriate State law. The OIG Report should also reflect that during FEMA's response to Sandy, a major snow storm impacted the area further complicating and significantly slowing debris removal operations. Again, these costs should not be disallowed as they have already been determined to be reasonable by FEMA.

Finding B	Recommendation 2
The Town claimed \$3,229,478 in duplicate costs under Project 2516, to pay the Town's Solid Waste Management Authority (Authority) ² to manage collected disaster debris. The Town's Authority claimed costs for income that they already collected when they accepted debris at their landfill. All authorized work ended on October 30, 2013.	Disallow \$3,229,478 (Federal share \$2,906,530) of ineligible duplicate benefits for costs the Town's Authority claimed twice. Because of our audit, the Town's Authority reduced its claim by \$3,229,478, and FEMA deobligated the Federal share. Therefore, because the Town and New York took corrective action, we consider this recommendation resolved and closed.

New York State Response

While the OIG Report considers this Recommendation resolved and closed, no Finding is warranted as the duplicate costs were never reimbursed to the Town since it was identified and corrected as part of FEMA's standard reconciliation process.

The OIG Report claims \$3,229,478 was claimed twice by the Town, and leaves the impression the Town actually received these funds from FEMA. In fact, DHSES, FEMA and the Town identified the duplication and corrected the error during the reconciliation process. As noted by the OIG, the duplicate project cost was de-obligated prior to the funds being released. The de-obligation of funds in Version 4 of the project worksheet occurred while the Town was still working directly with FEMA on project development. Since the funds were de-obligated and never reimbursed to the Town, the OIG should correct the misstatements in the Report indicating these funds as still being owed to FEMA.

Finding C	Recommendation 3
The Town's Authority did not provide documentation adequate to support \$562,387 of costs (\$557,039 of force account equipment costs, \$3,622 of direct administrative costs, and \$1,726 of professional membership fees). As a result, FEMA has no assurance that these costs were valid or eligible.	Disallow \$562,387 (Federal share \$506,148) for unsupported costs unless the applicant provides adequate documentation to support the costs

New York State Response

This Finding is unsubstantiated because the auditors fail to establish that a mileage rate would have been lower than the hourly rates and how the documentation maintained by the Town is insufficient by regulation or guidance.

The OIG Report incorrectly cites page 48 of FEMA's Public Assistance Guide (PA Guide) as stating that FEMA generally reimburses an applicant's use of automobiles and trucks based upon mileage. This is an incorrect reading as the default reimbursement method is hourly rate, unless mileage is lower; Page 48 of the PA Guides states that:



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

"...Costs for use of automobiles and pick-up trucks may be reimbursed on the basis of mileage *if less costly than hourly rates*. For all other types of equipment, costs are reimbursed using an *hourly rate*. ...Stand-by time for equipment is not eligible. However, *if an applicant uses equipment intermittently for more than half of the normally scheduled working hours for a given day, use for the entire day may be claimed if adequate documentation is submitted*. Equipment that is used for less than half of the normally scheduled working day is reimbursable only for the hours used." (Emphasis added)

The Town submitted a spreadsheet and maintains a log of GPS locations and fuel use for each vehicle for the \$562,387 in costs claimed. The supporting documentation provided by the applicant contains a level of detail routinely accepted by FEMA as sufficient to validate the claimed costs. Rather than reviewing the information against the written standards developed and accepted by FEMA, the auditor chose to compare the information to how a completely different Town department (Highway) documented their vehicle use. There is no requirement in local, state or federal regulation requiring a single method of tracking equipment usage. The OIG Report does not outline a condition which violates any established written requirement.

Finding D	Recommendation 4
The Town's claim includes \$405,158 in duplicate benefits for costs related to wind damage that its insurance carrier should have covered.	Disallow \$405,158 (Federal share \$346,642) as ineligible duplicate benefits that insurance provided and review the Town's insurance policies to ensure FEMA has applied all proceeds to reduce applicable projects

New York State Response

DHSES agrees that the amount of increased insurance benefits is a duplication of benefits and should be deobligated but disagrees that a Finding is warranted since the Project Worksheets have not undergone final reconciliation.

The projects associated with these insurance settlements have not been closed. FEMA standard policy states final adjustments for actual insurance proceeds are made at close out of the project during final reconciliation. During FEMA's standard insurance review, FEMA noted the Town's carrier had appeared to under pay on the policy and recommended the Town contact the carrier. The Town states this was not done as a result of a request by the OIG, and that the OIG had, in fact become aware of the call with the carrier during discussion with the Town and asked to be allowed to sit in. FEMA and the Town were successful in capturing the additional insurance allocation from the carrier, and the projects will be adjusted accordingly at grant closure. It is important to note that since the funds are provided to the sub-grantee as a reimbursement, there will not be a duplication of benefits, as the Town has provided the full insurance allocation information to FEMA and can only request release of the amount not covered by insurance.

Finding E	Recommendation 5
In October 2013, the Town's Authority completed authorized work on Project 2516 for \$791,175 less than the \$2,969,543 FEMA estimated for the project. However, these unused funds remained obligated at the time of our audit. Therefore, FEMA should deobligate \$791,175 from Project 2516 and put those funds to better use.	Deobligate and put to better use \$791,175 (Federal share \$712,058) of unneeded Federal funding.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

DHSES agrees that the unused funds originally estimated should be deobligated but disagrees that a Finding is warranted since the Project Worksheets have not undergone final reconciliation.

The \$712,058 have not been disbursed to the Town and on close out of the project will be deobligated and returned from smartlink to another federal account.

Finding F	Recommendation 6
New York should have done more as FEMA's grantee to ensure the Town was aware of and complied with Federal grant requirements.	Direct New York to work with the Town to ensure it complies with all Federal grant requirements.

New York State Response

The OIG's finding that DHSES should have done more in its monitoring of the Town is unsubstantiated since the Report fails to establish noncompliance with 44 CFR §13.40(a).

While not acknowledged in the OIG Report, the OIG auditors are aware of and have acknowledged proactive efforts by DHSES to provide regulatory information and education too all applicants, both before during and after disaster declarations. DHSES conducted thorough applicant briefings which include very specific instructions to applicants regarding contract and procurement, as well as audit requirements. This information is also provided to every applicant in a hard copy handbook produced specifically for the disaster. DHSES also provides Public Assistance Workshops throughout the State on a recurring basis which provides greater detail and emphasis on these areas. Additionally, DHSES maintains regular contact with all applicants during the entire life span of the grant, providing direct technical advice, administrative assistance as well as development and review of quarterly reporting on all open large projects. The OIG also fails to mention that DHSES provided full copies of the briefing and handbook to the OIG in November of 2012, prior to conducting these briefings. Moreover the OIG Report should include mention of the fact that DHSES invited the OIG to participate in these briefings – and that the OIG did participate and, itself, presented contract, procurement and audit information directly to the Town during this brief. DHSES has, made ample effort to ensure awareness, manage and monitor the activities of our sub-grantees. The OIG Report does not substantiate specifically how DHSES did not uphold its responsibilities under 44 CFR 13.40(a). Should the OIG decide to include that finding, DHSES requests that its response to this finding be included to provide the readers of that report a full and accurate description of the issues discussed.

Thank you for taking these comments into consideration.

Sincerely,

Barbara Lee Steigerwald
Deputy Commissioner for Disaster Recovery Programs



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Appendix F
Town of North Hempstead Audit Response

Supervisor
JUDI BOSWORTH

Town Board
VIVIANA L. RUSSELL
PETER J. ZUCKERMAN
ANGELO P. FERRARA
ANNA M. KAPLAN
LEE SEEMAN
DINA M. DE GIORGIO

Town Clerk
WAYNE H. WINK, JR.

Receiver of Taxes
CHARLES BERMAN

TOWN OF NORTH HEMPSTEAD
OFFICE OF THE SUPERVISOR

TOWN HALL
220 PLANDOME ROAD
MANHASSET, NY 11030
TEL: (516) 869-2429
FAX: (516) 627-4204

ALINEK@NORTHHEMPSTEADNY.GOV



ALINE KHATCHADOURIAN
Deputy Supervisor

July 20, 2016

William Johnson
Director, DHS-OIG/EMO-ERO-N
William.johnson@oig.dhs.gov

Carlos Aviles
Audit Manager, DHS OIG/EMO-ERO-N
Carlos.Aviles@oig.dhs.gov

Nadine Ramjohn
Senior Auditor, AIC DHS OIG/EMO-ERO-N
Nadine.ramjohn@oig.dhs.gov

Omar Russell
Auditor, DHS OIG/EMO-ERO-N
Omar.Russell@oig.dhs.gov

Re: Response of Town of North Hempstead to Draft Audit of the Town of North Hempstead, Disaster 4085

Dear Director Johnson and Audit Staff:

These responses submitted on behalf of the Town of North Hempstead refer to the version of the draft audit provided to the Town and discussed with OIG staff at a meeting on July 5, 2016. These responses address first the specific findings in the draft audit and then the choice of sensational language to mischaracterize the audit findings.

Finding A – Competitive Procurements

The audit report faults the Town for using time and materials contracts in an emergency. The report does not discuss whether the rates set by these contracts are within the range of rates previously approved by FEMA for the New York City metropolitan area, which they are. The auditors should at least discuss whether the costs incurred by the Town in debris clean up were similar to costs approved by FEMA in other neighboring jurisdictions before jumping to the assertion that these costs should be disallowed.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

The audit report does not discuss how the Town could possibly have done anything other than an emergency contract, especially since the Town lacked power for ten days following the storm. Emergency contracts are authorized under New York State law and the Town's procurement guidelines. The report fails to acknowledge that at a meeting of all local governments with FEMA staff and New York State disaster recovery officials just days after the storm, governments were advised they could follow emergency contracting rules pursuant to State law. One of the OIG auditors was present at the county-wide meeting days after the storm and did not say a word to prevent what is now characterized as "improper" contracting procedures.

The report fails to acknowledge that removal of debris from Town roads and rights of way was a matter of public health and safety. Instead, the report characterizes this as "normal" non-exigent work.¹ It is not normal when roads and sidewalks are closed because of fallen trees and other debris. If power is out because of debris, grocery stores cannot be restocked because of debris, sick and injured people cannot get to hospitals because of debris, the Town considers the problem an emergency that justifies using emergency procurement procedures.

Further, the report fails to acknowledge that there were a limited number of firms available in Western Nassau to assist with debris removal and all the local governments were chasing the same few contractors to do the same debris removal work. Getting a firm lined up to help was the most important first step to opening up local roads. The report's preference for competitive sealed bids speaks to a world where there are multiple firms seeking work, rather than our situation where there were multiple governments seeking assistance from only a few firms.

In addition to these general comments, applicable to the discussion of all three firms, the Town has specific objections:

1. Firm A was selected through a competitive procurement

The Town's tree removal contract with Firm A constitutes almost half of the contract findings (\$2.3 million out of \$4.8 million). The Town selected Firm A as a contractor for tree removal as a result of a sealed competitive bid. Under the contract, tree removal pricing was tied to a measurement of the tree's diameter. Obviously, the Town needed to implement a change order to the contract terms to cover the massive amount of tree removal required post-Sandy, without requiring that every downed tree or limb be measured before an invoice could be generated. The revised terms of \$440 an hour for four workers, a truck and a chipper were cheaper than the Rental Rate Blue Book² rate for similar crews (\$599.48 per hour) and the RS Means³ rate for similar crews (\$495.20).

If the Town had used the bid terms for the debris removal work, tying the cost of each removal to the diameter of the tree, this finding would have to be eliminated. The Town should not be faulted for using a competitively bid contract with a change in terms to reflect the emergency situation.

¹ Draft audit report page 5

² © 2003-2016 Penton

³ www.rsmeansonline.com



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

2. Firm B's work was properly procured as an emergency since it was limited to the immediate aftermath of the storm

OIG informed us at the exit conference, but did not include in the draft report, that FEMA has approved the use of emergency contracts for 60 days after a disaster in New Jersey. Nonetheless, because this disaster occurred in New York, the auditors dispute the payment of \$1,157,587 to firm B, all but \$64,000 of which was spent during the first 60 days after the storm. This contract ran its course entirely in the first response to the emergency and should not have been held up for criticism as improperly procured.

3. Firm C's pricing was reasonable

Firm C provided many types of equipment for debris removal. The Town did conduct a competitive procurement for these services and entered into a contract (with Firm C) nine months after the storm. The pricing on the competitively bid contract was on average 6% higher than the pricing on the time and materials charges in the storm's aftermath. The auditors should recognize that given the extreme need for assistance throughout Long Island, the Town saved federal taxpayers money by negotiating lower prices during the emergency than they were able to obtain through a competitive procurement after the immediate emergency had passed.

Finding B – Duplicate Benefits

OIG acknowledges in the text of this finding that the Town, NYS and FEMA reduced the Town's claim by \$3.2 million ("the Town worked with New York and FEMA officials and reduced its claim by \$3.2 million in Version 4 during our audit field work"). FEMA and recipients will always see changes as claims based on initial estimates are updated when actual expenditures occur. Until the final numbers are closed out and the Town signs FEMA's P4, all allocations remain in flux. OIG auditors are taking credit simply for being present while the Town, State and FEMA engaged in the process of turning initial estimates into claims based on actual expenses.

Since FEMA already reduced the Town's overall claim by \$3.2 million to eliminate any duplicate benefit, there is no money to be "recovered". Indeed, OIG acknowledges in its Recommendation 2 that this issue is "closed".

Finding C – Unsupported Costs

The OIG auditors question the records maintained by employees of the Solid Waste Management Authority (SWMA), finding \$562,387 to be unsupported. The Town provided a spreadsheet summary and has records to show gps location and fuel use for each vehicle and employee time records. This should be more than sufficient to show that the equipment was used by SWMA employees during the emergency clean up period. The fact that a different Town Department provided more detailed records should not lead the auditors to question the otherwise adequate records provided by SWMA.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

At the exit conference, the auditors also justified this finding based on an ad hoc remark for the former Deputy Director of SWMA, which Town officials had not previously learned about. The adequacy of the records maintained by SWMA should not be placed in doubt simply because one employee characterized his activities in an intemperate way. The Town has provided objective proof through vehicle fuel use and employee time records. These should be adequate to support the costs.

Finding D- Duplicate Benefits from Insurance

OIG acknowledges in the text of this finding that the Town's insurer reopened the Town's claim for Sandy damage and paid \$405,158 on the insurance policy. This potential insurance recovery was identified to the Town by FEMA and State officials. The Town followed up with the insurer in a call together with FEMA and State representatives. Simply as a courtesy, Town officials discussed the call with OIG staff and offered to allow an OIG representative to sit in on the call, during which OIG staff person said nothing. OIG again is taking credit for simply being present while the Town, State and FEMA made the insurance recovery.

Since the Town did not receive FEMA funding for the same damages covered by insurance, there is no money to be "recovered".

Finding E – Unneeded Funds

The Town completed work for \$791,175 less than the \$2,969,543 we initially informed FEMA we would have to spend. Obviously the Town only sought reimbursement for the amount actually spent: \$2,178,368. Instead of complimenting the Town for accomplishing work at less cost to federal taxpayers, the auditors take the \$791,175 and characterize it as an amount that needs to be recovered from the Town. Without expressing a view on whether FEMA should account differently for the money, this sum should be omitted from any discussion of funds used by the Town.

Inaccurate and Sensational Language in the Report Should be Corrected

The "Highlights" page of the draft audit states FEMA should "recover" \$9.9 million from the Town of North Hempstead. Even if all the audit findings are accepted as correct, the auditors identified only \$5.5 million in potential costs to be "recovered." The following deductions must be made:

- **\$3.2 million:** The audit states that a supposed \$3.2 million duplicate payment was already resolved through an overall reduction in award to the Town. The associated recommendation states that the issue is "resolved and closed." There is no \$3.2 million to "recover".
- **\$405,158:** The \$405,158 paid by insurance was never paid to the Town by FEMA. Therefore there is nothing to "recover."
- **\$791,175:** The \$791,175 reduction in a Town claim reflecting the Town's actual expenditures is not money that was paid to the Town. Therefore, there is no \$791,175 to recover.

\$9.9 million
- \$3.2 million
- \$405,158
- \$791,175
\$5.5 million



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Additional over-statements, while less egregious, are still inaccurate and unfairly cast the Town in a negative light.

In Finding A, the report states one of the three vendors was used for "almost a full year" after the storm, one vendor was used for "approximately 2 months" and one vendor was used for "approximately 9 months".⁴ Yet in the summary, the auditors characterize the Town's use of the contracts as "up to 1 year". It would be just as accurate to say "two months or more", yet the most extreme time length is chosen to paint the Town in as negative a light as possible. Moreover, the auditors even exaggerate their own finding, turning "almost a full year" into "1 year".

Further, in Finding A the audit states the Town did not solicit competitive bids. As the report acknowledges on page 6, Firm A, the vendor used for "almost a full year," was chosen through a competitive bid process.

Town officials thank OIG for the opportunity to submit this response separately from FEMA's response.

Sincerely,

Aline Khatchadourian

⁴ Quotes are from page 6 of the draft audit.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Appendix G
Report Distribution

Department of Homeland Security

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

Federal Emergency Management Agency

Administrator
Chief of Staff
Chief Financial Officer
Chief Counsel
Chief Procurement Officer
Associate Administrator, Response and Recovery
Director, Risk Management and Compliance
Audit Liaison, FEMA Region II
Audit Liaison, FEMA (Job Code G-15-015)

Office of Management and Budget

Chief, Homeland Security Branch
DHS OIG Budget Examiner

Congress

Executive Congressional Oversight and Appropriations Committees

External

New York State Division of Homeland Security and Emergency Services
Executive Director, Governor's Office, New York
State Auditor, New York
Attorney General, New York
Town Attorney, Town of North Hempstead
Deputy Supervisor, Town of North Hempstead

ADDITIONAL INFORMATION AND COPIES

To view this and any of our other reports, please visit our website at: www.oig.dhs.gov.

For further information or questions, please contact Office of Inspector General Public Affairs at: DHS-OIG.OfficePublicAffairs@oig.dhs.gov. Follow us on Twitter at: @dhsoig.



OIG HOTLINE

To report fraud, waste, or abuse, visit our website at www.oig.dhs.gov and click on the red "Hotline" tab. If you cannot access our website, call our hotline at (800) 323-8603, fax our hotline at (202) 254-4297, or write to us at:

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