

**FEMA Should Disallow  
\$22.3 Million in Grant  
Funds Awarded to the  
Chippewa Cree Tribe of the  
Rocky Boy's Indian  
Reservation, Montana**





# DHS OIG HIGHLIGHTS

## *FEMA Should Disallow \$22.3 Million in Grant Funds Awarded to the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation, Montana*

November 28, 2018

### Why We Did This Audit

FEMA awarded the Chippewa Cree Tribe a \$32.4 million Public Assistance Program grant for damages from a June 2010 flood disaster. The award provided 100 percent Federal funding to replace the Tribe's severely damaged health clinic. Our objective was to determine whether the Tribe accounted for and expended FEMA Public Assistance Program grant funds according to Federal regulations and FEMA guidelines.

### What We Recommend

We recommend FEMA disallow about \$22.3 million of Public Assistance Program grant funds spent on three projects for ineffective grant management and noncompliance with Federal regulations and FEMA guidelines.

#### **For Further Information:**

Contact our Office of Public Affairs at (202) 981-6000, or email us at [DHS-OIG.OfficePublicAffairs@oig.dhs.gov](mailto:DHS-OIG.OfficePublicAffairs@oig.dhs.gov)

### What We Found

The Chippewa Cree Tribe of the Rocky Boy's Indian Reservation in Montana (Tribe) did not account for and expend all Federal Emergency Management Agency (FEMA) Public Assistance Program grant funds according to Federal regulations and FEMA guidelines.

The Tribe failed to manage a \$32.4 million Public Assistance Program grant from FEMA according to Federal regulations and FEMA guidelines. As a result, FEMA has no assurance that expenditures the Tribe claimed for Project 2 (engineering and design), and plans to claim for Projects 132 (facility construction) and 133 (site preparation) are valid, allowable, or eligible. Therefore, FEMA should disallow about \$22.3 million of the grant award for these three projects.

The findings discussed in this report occurred in part because the Tribe was ineffective in managing day-to-day grant activities and did not comply with Federal procurement regulations or its own procurement procedures when awarding six prime contracts. In addition, the Tribe had poor cost accounting practices and inadequate financial administration procedures.

### FEMA Response

FEMA officials agreed with our findings and recommendations. FEMA's written response is included in appendix C.



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Department of Homeland Security

Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

November 28, 2018

MEMORANDUM FOR: Lee K. dePalo  
Regional Administrator, Region VIII  
Federal Emergency Management Agency

FROM: Sondra F. McCauley   
Assistant Inspector General for Audits

SUBJECT: *FEMA Should Disallow \$22.3 Million in Grant Funds  
Awarded to the Chippewa Cree Tribe of the Rocky Boy's  
Indian Reservation, Montana*

Attached for your action is our final report, *FEMA Should Disallow \$22.3 Million in Grant Funds Awarded to the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation, Montana*.

The report contains two recommendations. Your office concurred with both recommendations. Based on information provided in your response to the draft report, we consider recommendation 1 resolved and open with an estimated completion date of December 31, 2018. Recommendation 2 is closed, and no further action is required from the Federal Emergency Management Agency (FEMA).

Once your office has fully implemented recommendation 1, please submit a formal closeout letter to us within 30 days so that we may close the recommendation. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions and the disposition of any monetary amounts. Please send your response or closure request to [OIGAuditsFollowup@oig.dhs.gov](mailto:OIGAuditsFollowup@oig.dhs.gov).

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

Please call me with any questions at (202) 981-6000, or your staff may contact Patrick O'Malley, Acting Deputy Assistant Inspector General for Audits, at (202) 981-6000.



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### Background

The Chippewa Cree Indian Tribe (Tribe), headquartered in Box Elder, Montana, was established by Executive Order on September 7, 1916, and is recognized according to the *Indian Reorganization Act of 1934*. The Tribe is located on the Rocky Boy's Indian Reservation, which encompasses nearly 130,000 acres in Northern Montana, about 50 miles south of the United States and Canadian border. As a federally recognized group, the Tribe possesses certain inherent rights of self-government (tribal sovereignty) and is entitled to receive certain Federal benefits, services, and protections because of its special status in the United States.

On June 15, 2010, severe storms released more than 5 inches of rain during a 36-hour period and caused widespread flooding in north central Montana. Nearly 115,000 acres of the Rocky Boy's Indian Reservation experienced heavy flooding that produced landslides. The disaster severely damaged the Tribe's health clinic resulting in abandonment of the facility. (See figure 1.)

**Figure 1: Na-toose Health Clinic damaged by floods and mudslides**



Source: Chippewa Cree Tribe photo

To provide Federal assistance, on July 10, 2010, the President signed a major disaster declaration (1922-DR-MT) for Public Assistance.<sup>1</sup> The Tribe applied for the assistance and qualified for Federal funding to help build a new health clinic. (See figure 2.)

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<sup>1</sup> FEMA's Public Assistance Program awards grants to state, local, and federally recognized tribal governments and certain private nonprofit entities to assist them with the response and recovery of federally declared disasters.



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**Figure 2: New Chippewa Cree Tribe Health Clinic**



Source: DHS Office of Inspector General (OIG) photo

The Federal Emergency Management Agency (FEMA) awarded the Tribe \$32.4 million (before insurance proceeds) for damages from the June 2010 flood disaster. The Tribe, as a FEMA grantee, is fully accountable for the Federal funds the agency provided. The award provided 100 percent Federal share<sup>2</sup> funding for 25 large projects and 117 small projects for emergency protective measures and permanent work. At the time of our audit, the Tribe had completed most of the work on the projects, except for one small and five large projects that remained open.

To build the new health clinic, FEMA approved and funded three projects with a total gross award of about \$22.3 million, excluding insurance proceeds. FEMA adjusts allocations for insurance proceeds to projects during its closeout process of the Tribe's grant. The Tribe hired four prime contractors, including the Chippewa Cree Construction Corporation (Corporation), a tribal-owned entity, and three other non-tribal prime contractors to design the new health clinic (Project 2), prepare the construction site (Project 133), and construct the new facility (Project 132).

This was our second audit of FEMA Public Assistance Program grants awarded to the Tribe. In our prior report, we noted significant procurement, financial administration, and grant management problems that led to fraud, waste, and mismanagement of Federal funds. We also noted that the significant issues we identified could negatively affect the Tribe's other projects.<sup>3</sup> Therefore, to

<sup>2</sup> The Federal share is the portion of the total project costs paid with Federal funds.

<sup>3</sup> *The Chippewa Cree Tribe of the Rocky Boy's Indian Reservation in Montana Mismanaged \$3.9 Million of FEMA Disaster Grant Funds*, OIG-15-101-D.



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determine whether the Tribe mismanaged additional project funding, we selected three large projects with a total gross award of about \$22.3 million (before insurance proceeds), which comprises most of the Tribe's total gross Public Assistance Program award of about \$32.4 million. The three projects included Project 2 (engineering and design of the new health clinic), Project 132 (construction of the new facility), and Project 133 (construction site preparation). At the time of our audit, the Tribe had completed Project 2, but had not completed Projects 132 or 133.

### **Ineffective Grant Management**

The Tribe failed to follow Federal grant requirements when managing and overseeing FEMA-funded projects. As a result, FEMA has no assurance that costs the Tribe claimed for Project 2, and plans to claim for Projects 132 and 133 are valid, allowable, or relate to work FEMA authorized.

Specifically, the findings discussed in this report occurred in part because the Tribe, as grantee, (1) did not comply with Federal procurement regulations or its own procurement procedures, (2) had poor cost accounting practices, and (3) had inadequate financial administration procedures. The Tribe neglected to administer and monitor day-to-day grant activities, pursuant to the Code of Federal Regulations (CFR) (44 CFR 13.40(a)).<sup>4</sup> The Tribe also failed to maintain effective controls and accountability of FEMA funds, maintain adequate safeguards for such assets, and ensure the use of Federal funds solely for authorized purposes, as set forth in 44 CFR 13.20(b)(3).

The Tribe did not provide sufficient evidence that it complied with the Federal requirements for grant management. The Tribe's noncompliance and lack of oversight led to fraud, waste, and mismanagement of Federal grant funds. For example, the Tribe gave the Corporation's Chief Executive Officer (CEO) full oversight of the FEMA projects. The CEO hired three consultants and awarded them about \$1.6 million of project management work on a sole-source basis. However, the Tribe's cost records did not accurately identify the work the consultants performed. The few invoices for consulting work the Tribe provided had limited descriptions of the services performed. Some invoices contained a single line item, which read, "Clinic-Management Invoice-3 weeks, Amount \$30,000"; these invoices lacked any detailed support identifying the work accomplished.

The Tribe's major weaknesses in internal controls led to mismanagement of the Federal grant. These weaknesses allowed the CEO to collude with at least two

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<sup>4</sup> 44 CFR 13 was subsequently rescinded and reformulated in the Super Circular, which came into effect in 2014. The grants and sub-grants reviewed herein were made when Part 13 still applied.



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of the three consultants to defraud FEMA of Public Assistance grant funds and the Tribe's insurance proceeds. Since the collusion, a Federal court convicted the CEO (a former state legislator), the consultants, and five other contractors of conspiracy, bribery, wire fraud, and false claim charges stemming from kickback schemes related to contracts awarded under the FEMA projects.<sup>5</sup>

Because of the Tribe's mismanagement of the grant, FEMA should continue to classify the Tribe "high risk" under Title 44 C.F.R. section 13.12(b), which we recommended previously in our June 9, 2015 report.<sup>6</sup>

### **Improper Procurement**

The Tribe did not follow Federal procurement regulations in 44 CFR 13.36 or its own tribal procurement procedures when it awarded six prime contracts. The Tribe hired the Corporation and three other non-tribal prime contractors to replace its health clinic. In awarding these contracts, the Tribe neglected to:

- conduct procurement transactions in a manner providing full and open competition (44 CFR 13.36(c)(1));
- award contracts under sole-source basis only under certain circumstances; for example, when public exigency or emergency will not permit a delay because of competitive solicitation (44 CFR 13.36(d)(4)(i)(B));
- perform a cost or price analysis for every procurement action, including contract modifications, to determine the reasonableness of the contractor's proposed price (44 CFR 13.36(f)(1));
- maintain records sufficient to detail the significant history of procurement (44 CFR 13.36(b)(9));
- include all applicable Federal contract provisions in federally-funded contracts (44 CFR 13.36(i)); and
- maintain a contract administration system that ensures contractors perform according to the terms, conditions, and specifications of their contracts or purchase orders (44 CFR 13.36(b)(2)).

The Tribe awarded two of the six prime contracts, one for engineering design services and the other for contract management services, for a combined value of about \$3 million. These contracts used a percentage-of-construction-cost

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<sup>5</sup> Our June 9, 2015, report, *The Chippewa Cree Tribe of the Rocky Boy's Indian Reservation in Montana Mismanaged \$3.9 Million in FEMA Disaster Grant Funds* (OIG-15-101-D), indicated that the CEO of the Corporation resigned in September 2013 following allegations of fraud, waste, and mismanagement of Federal funds. A Federal Court convicted the CEO of Federal corruption charges for embezzling Tribal insurance proceeds and FEMA grant funds for this disaster and sentenced him to prison in August 2014.

<sup>6</sup> We first recommended that FEMA classify the Tribe as *High Risk* in our June 9, 2015 report (OIG-15-101-D).



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basis, which Federal procurement regulations prohibit. (See 44 CFR 13.36(f)(4)). As a result, FEMA has no assurance that the Tribe's contract costs are reasonable.

#### **Full and Open Competition**

The Tribe awarded the six prime contracts without full and open competition and justification for awarding the contracts on a sole-source basis. Federal regulations permit sole-source procurements in certain circumstances, such as when a public exigency or emergency exists that will not permit a delay because of competitive solicitation.

We reviewed documentation of the Tribe's procurement history for Projects 2, 132, and 133, and determined that a public exigency or emergency did not exist. Therefore, the Tribe did not follow applicable Federal procurement regulations when it awarded the disaster-related work on a sole-source basis.

Tribal procurement procedures allow the Tribe to waive full and open competition under circumstances similar to Federal procurement regulations. However, Tribal procurement procedures require a written justification for each sole-source award. The Tribe did not provide written justification for its sole-source awards.

#### **Cost or Price Analysis**

The Tribe did not perform a cost or price analysis for any of the six prime contracts. Without a cost or price analysis, FEMA has no assurance that contract costs are reasonable. Tribal officials said they did not know whether they performed a cost or price analysis for the contracts, and could not provide evidence that they performed analyses of any type.

#### **Procurement History**

The Tribe did not maintain sufficient records to support the significant history of most of its procurements. The Tribe's procurement history should include at a minimum the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. We did not identify this support in the Tribe's procurement records.

#### **Contract Provisions**

The Tribe did not include most of the required Federal contract provisions in any of its six prime contracts. The Tribe's own procurement policy requires the inclusion of these provisions in federally funded contracts. The provisions document the rights and responsibilities of the parties and minimize the risk of



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contract misinterpretations and disputes. For instance, the termination-for-cause provision gives the Tribe the right to end an agreement with a contractor for nonperformance; the access to records provision allows the Tribe and FEMA the right to examine the contractor's records; and the *Copeland "Anti-Kickback" Act* (18 United States Code 874) provision prohibits "kickbacks" to prime contractors, prime contractor employees, subcontractors, and subcontractor employees. We did not identify these provisions in the Tribe's contracts.

### **Contract Administration**

When awarding the six prime contracts, the Tribe did not maintain a contract administration system that conforms to Federal procurement standards. The procurement history did not show evidence of contract administration or that the Tribe appropriately monitored the work. For instance, the CEO of the Corporation awarded work valued at about \$1.6 million to three consultants. Additionally, the Corporation awarded a consulting services contract for contract management work on a percentage-of-construction-cost basis, which Federal procurement regulations prohibit. Without an adequate contract administrative system, the Tribe did not have sufficient oversight to ensure the contractors performed in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Because the Tribe did not comply with either Federal procurement requirements or its own Tribal procurement procedures when awarding and managing contract costs, FEMA should disallow the total grant award of about \$22.3 million (excluding insurance proceeds) for Projects 2, 132, and 133.

### **Inadequate Project Cost Accounting**

The Tribe recorded cost summaries on a project-by-project basis. However, most of the Tribe's documentation was inadequate and did not always identify work by project. The CFR (44 CFR 206.205(b)) requires the Tribe to account for project expenditures by each large project, and FEMA's *Public Assistance Guide* (June 2007 ver. at 137) mandates that the Tribe include and track cost documentation for each corresponding federally funded project. Specifically, the Tribe neglected to:

- separate costs from invoices that charged for work performed on more than one project;
- isolate disaster costs from non-disaster related costs;
- ensure invoice costs records were not duplicated throughout different FEMA projects; and
- provide adequate documentation to support costs.



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Tribal officials acknowledge that their accounting records for the three projects we reviewed did not always support costs with adequate documents as required by 44 CFR 13.20(b)(6). For instance, as support for the costs the Tribe reportedly incurred to build its health clinic, the Tribe provided (1) individual cost summaries for the three FEMA projects; (2) contractor billings that included charges for multiple projects in a single invoice; and (3) payment summaries and checks. We could not always reconcile the expense records to the cost summaries. As a result, we could not fully determine the validity, accuracy, or eligibility of costs. The CFR (2 CFR 225, Appendix A, Section C.1.j., *Federal Cost Principles*) requires grant recipients to adequately document costs under a Federal award. Tribal officials explained that they had engaged the services of a consultant to help them identify costs by project and correct accounting errors.<sup>7</sup>

The following examples demonstrate the Tribe's inadequate record keeping:

- load tickets for material sent to the health clinic's construction site did not always describe the "who, what, when, or where" of the work performed;
- invoices contained disaster-related costs and non-disaster-related costs;
- invoices lacked supporting records; and
- cost records did not accompany invoices.

The deficiencies with the project cost accounting occurred primarily because the Tribe (1) was not sufficiently familiar with documenting disaster-related costs according to Federal regulations, and (2) did not have an effective financial management system to track large project expenditures according to Federal regulations. Therefore, FEMA should disallow the unsupported costs unless the Tribe provides sufficient documentation to support the costs.

### **Inadequate Financial Administration**

The Tribe's financial administration procedures do not fully meet Federal regulations set forth in 44 CFR 13.20. As a result, FEMA cannot be assured that the Tribe's administrative procedures sufficiently permit tracing funds to expenditures to verify such funds have not been used in violation of the restrictions and prohibitions of applicable statutes. The Tribe could not provide adequate documentation to support most of the \$22.3 million incurred for the three projects we reviewed. However, we are not questioning costs under this finding because we have already questioned them under the Project Cost Accounting finding in this report.

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<sup>7</sup> At the end of our audit fieldwork, the Tribe provided additional records the consultant helped compile, which we reviewed and determined they had no effect on the findings of this report (See "Discussion with Management and Audit Follow-up").



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Records we reviewed and interviews with Tribal officials reveal that the Tribe's administrative procedures do not meet most Federal regulations required under 44 CFR 13.20(b). Specifically, the Tribe did not maintain:

- a financial reporting system that provides accurate, current, and complete financial information (44 CFR 13.20(b)(1)); or
- records that adequately identify the source and application of funds — these financial records must contain information pertaining to the grant award and authorizations, obligations, unobligated balances, assets, liabilities, and outlays or expenditures (44 CFR 13.20(b)(2)).

Additionally, the Tribe did not provide evidence that it followed Federal requirements when determining allowable costs. For instance, we did not identify records that showed the Tribe followed applicable Office of Management and Budget cost principles, FEMA's program regulations, or the terms of the grant agreement in determining the reasonableness, allowability, and allocability of costs as required by 44 CFR 13.20(b)(5).

Furthermore, 44 CFR 13.20(b)(6) requires that the Tribe support accounting records with source documentation such as canceled checks, paid bills, payroll, time and attendance records, and contract documents. The Tribe could not provide adequate source documentation to support the \$22.3 million it spent in Public Assistance funding to rebuild the damaged health clinic. For example, we identified the following deficiencies in the Tribe's documented costs:

- \$841,248 of costs invoiced for construction management services did not have descriptions of the tasks performed. The contractor's billing invoices only contained a dollar amount and memo that read, "fees for construction management." The contractor billings did not include additional information or source documentation to support the tasks performed.
- \$1.7 million of costs invoiced for architectural and engineering (A/E) services lacked adequate supporting documentation. In one instance, the Tribe provided a hand-written invoice for \$633,115 that read "A/E services as per professional service agreement." The invoice did not contain a description of the work performed, and there was no other documentation.

FEMA expressed similar concerns regarding the Tribe's inadequate documentation of disaster-related costs. In a determination letter for Project 2 dated April 1, 2016, FEMA identified the following deficiencies regarding the Tribe's documentation of project costs:



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- insufficient documentation from the Tribe, making it difficult to verify the approved scope of work and project costs;
- unreliable and inaccurate documentation to determine final eligible costs for the project; and
- inadequate documentation for work outside the reservation boundary.

Because the Tribe maintained inadequate financial administration over the three projects we audited, the \$22.3 million grant award is ineligible. Since we questioned the \$22.3 million costs in the “Improper Procurement” section of this report, we are not questioning any costs under this finding.

### Recommendations

**Recommendation 1:** The Regional Administrator, FEMA Region VIII should disallow the \$22,318,110 in Public Assistance grant funds awarded for Projects 2, 132, and 133 because the Tribe did not comply with all Federal regulations and FEMA guidelines necessary to properly manage the grant. However, FEMA may grant an exception for all or part of the costs under 44 CFR 13.6(c).

**Recommendation 2:** The Regional Administrator, FEMA Region VIII should proactively monitor the Tribe’s grant activities for the remaining open projects to ensure compliance with all Federal grant requirements.

### Discussion with Management and Audit Follow-up

During our audit, we discussed the results with FEMA and Tribal officials and included their comments in this report, as appropriate. On August 8, 2017, we provided Tribal officials with our potential findings and requested their comments. Tribal officials explained they had additional documentation that might clarify some of the findings, specifically for procurement. On September 29, 2017, we received the additional records from the Tribe. We reviewed the records and determined that they had no effect on the findings. We provided a notice of findings and recommendations to FEMA and Tribal officials and discussed it at the exit conference held on January 24, 2018.

FEMA officials provided a written response to our audit report on April 26, 2018, and concurred with both recommendations. (See appendix C.) For recommendation 1, FEMA expected to complete its proposed corrective action by September 30, 2018. FEMA, however, requested an extension and revised its completion date for recommendation 1 to December 31, 2018. For recommendation 2, FEMA continues to proactively monitor the Tribe's activities for all open projects to ensure compliance with all Federal grant requirements. Because we accepted FEMA’s proposed corrective actions, we consider



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recommendation 1 resolved but open, and recommendation 2 closed, with no further action required from FEMA.

The Office of Audits major contributors to this report are Humberto Melara, Director; Louis Ochoa, Audit Manager; Renee Gradin, Auditor-in-Charge; Paul Sibal, Auditor; Victor Du, Auditor; Daniel Flores, Auditor; Stuart Josephs, Independent Reference Reviewer; and Deborah Mouton-Miller, Communications Analyst.



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**Appendix A**  
**Objective, Scope, and Methodology**

We audited Public Assistance grant funds awarded to the Tribe (Public Assistance Identification Number 000-63925-00). Our audit objective was to determine whether the Tribe accounted for and expended FEMA Public Assistance grant funds according to Federal regulations and FEMA guidelines (FEMA Disaster Number 1922-DR-MT).

FEMA awarded the Tribe a total gross award of \$32.4 million for damages resulting from severe storms and flooding that occurred from June 15, 2010, to July 30, 2010. The Tribe, as grantee, is fully accountable for the Federal funds FEMA provided. The award provided 100 percent Federal funding for 25 large projects and 117 small projects for emergency protective measures and permanent work.<sup>8</sup> At the time of our audit, the Tribe had completed most of the projects except for one small and five large projects that remained open.

Our audit covered the period of grant activity from June 15, 2010, through January 24, 2018, the cutoff date of our audit. We audited three large projects with total Public Assistance Program gross award of \$22.3 million. Of the three projects we audited, the Tribe had completed Project 2, and Projects 132 and 133 were ongoing. (See table 1). We obtained the fund information from FEMA and Tribal officials and FEMA’s Emergency Management Mission Integrated Environment (EMMIE) system. We tested the reliability and accuracy of the information and determined that the supporting documentation for costs data was unreliable.

**Table 1: Projects Audited**

<b>Project Number</b>	<b>Category of Work*</b>	<b>Award Amount</b>	<b>Questioned Costs</b>	<b>Project Status</b>
2	E	\$ 965,485	\$ 965,485	Closed
132	E	15,835,349	15,835,349	Open
133	G	5,517,276	5,517,276	Open
<b>Totals</b>		<b>\$22,318,110</b>	<b>\$22,318,110</b>	

*Source:* FEMA EMMIE system and DHS OIG analysis

\*FEMA classifies disaster work by type: Permanent work — Buildings and Equipment (Category E); and Parks, Recreational, and Other (Category G).

The allocation of anticipated insurance proceeds was not relevant to the scope of our review (Projects 2, 132, and 133) because it is not final and FEMA will

<sup>8</sup> Federal regulations in effect at the time of the disaster set the large project threshold at \$63,200. See Notice of Adjustment of Disaster Grant Amounts, 74 Fed. Reg. 51,297 (Oct. 6, 2009).



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base its allocation of actual insurance proceeds on eligible costs for all of the Tribe's projects, not just the ones in our review.

To accomplish our objective, we interviewed FEMA and Tribal officials. We judgmentally selected and reviewed project costs and procurement transactions; reviewed applicable Federal regulations, FEMA guidelines, and Tribal policies and practices; and performed other procedures considered necessary to accomplish our objective. We gained an understanding of the Tribe's method of accounting for disaster-related costs and its policies, procedures, and business practices the Tribe used and planned to use to administer activities provided for under the FEMA award.

We conducted this performance audit between March 2017 and January 2018, the end of our fieldwork, under the authority of 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.



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**Appendix B**  
**Potential Monetary Benefits**

**Table 2: Summary of Potential Monetary Benefits**

Type of Potential Monetary Benefit	Rec No.	Total	Federal Share (100 Percent)
Questioned Costs – Ineligible	1	\$ 22,318,110	\$ 22,318,110
<b>Totals</b>		<b><u>\$22,318,110</u></b>	<b><u>\$22,318,110</u></b>

Source: DHS OIG analysis of findings in this report



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**Appendix C**  
**FEMA Region VIII Response to Draft Report**

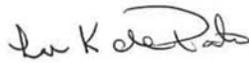
U.S. Department of Homeland Security  
Region VIII  
Denver Federal Center, Building 710  
P.O. Box 25267  
Denver, CO 80225-0267



**FEMA**

April 26, 2018

MEMORANDUM FOR: John E. McCoy II  
Assistant Inspector General  
Office of Audits  
Office of the Inspector General

FROM: Lee K. dePalo   
Regional Administrator  
FEMA Region VIII

SUBJECT: Management's Response to OIG Draft Report: "FEMA Should Disallow \$22.3 Million in Grant Funds Awarded to the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation, Montana"  
(Project No. OIG-18-XX-D)

Thank you for the opportunity to review and comment on this Draft Report. The Federal Emergency Management Agency (FEMA) appreciates the work of the Department of Homeland Security (DHS) Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

FEMA agrees with the OIG's determinations related to compliance with the Federal procurement standards, costs without sufficient supporting documentation, and the Tribe's inadequate financial administration and ineffective grantee activities. FEMA recognizes the critical importance of documenting project costs with supporting documentation and effectively completing grantee activities. To address the OIG's recommendation that FEMA ensure proper documentation and grantee activities, FEMA will continue to closely monitor the Chippewa Cree Tribe of the Rocky Boy's Reservation's (Tribe) grantee activities.

While the Tribe requested \$22,887,947.93 in funding for the clinic demolition and rebuild to a new location, it received \$16,313,435.42 in insurance proceeds toward that request. Deducting anticipated insurance proceeds per Stafford Act § 312, 42 U.S.C. § 5155 and 2 CFR § 200.406, FEMA obligated a total of \$6,046,435.42 for projects 2, 132, and 133.

[www.fema.gov](http://www.fema.gov)



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**Attachment: DHS Management Response to Recommendations Contained in  
OIG-17-XX-D Draft Report**

**Recommendation 1:** Disallow as ineligible the \$22,318,110 (Federal share \$22,318,110) Public Assistance grant award for projects 2, 132, and 133 because the Tribe did not comply with all Federal regulations and FEMA guidelines necessary to properly manage the grant. However, FEMA may grant an exception for all or part of the costs as 44 C.F.R. § 13.6(c) allows if it determines that costs are eligible, reasonable, and allocable (findings A and B). If FEMA does not disallow the costs as ineligible, it should disallow them as unsupported (finding C).

**Response:** Concur.

FEMA agrees that the Tribe did not comply with all Federal regulations and FEMA guidelines necessary to properly manage the grant. Under the authority of 44 C.F.R. § 13.43, FEMA exercises its enforcement authority to grant reasonable costs on Project 2 for the supported and documented costs.

FEMA's cost estimate for projects 2, 132, and 133 was calculated by FEMA utilizing the Cost Estimate Format (CEF) for returning the facility back to pre-disaster condition using reasonable cost standards. Therefore, FEMA limited its funding to an amount determined to be reasonable, effectively disallowing any greater amounts to be awarded. Additionally, because this was an improved project, the costs were capped and the Tribe was responsible for any overruns.

While enforcement action taken by FEMA pursuant to 44 C.F.R. § 13.43 is discretionary, the action selected must be appropriate given the circumstances. In response to the audit, FEMA has again reviewed the costs of the entire health clinic project compared to the funds obligated under the PA grant. Through this analysis, FEMA determined the obligated costs are necessary and reasonable, as required in Appendix A, Part C of OMB Circular A-87 and clarified in the PA Guide 322, Page 40-41.

Project 2 was written by FEMA and accepted by the Tribe to estimate the architecture and design costs. In response to the Draft Report, the Tribe provided FEMA with photos of the completed construction, records that the Tribe drew down \$965,485.00 in funds for architecture and design, and payment documentation reflecting the invoices for architecture and design were paid by the Tribe. In addition, FEMA reviewed all closeout documents submitted by the Tribe for Project 2 and verified through invoices and proofs of payment that the amount of \$965,485.00 was incurred and paid by the Tribe for architecture and design services. Therefore, FEMA verified that the costs claimed for Project 2 are valid and for work authorized in the project's scope of work.



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However, at this time, the Tribe has not provided the closeout documentation to FEMA Region VIII for projects 132 and 133, which will include detail of all costs for final accounting reconciliation. The Tribe completed construction and moved all operations into the new health clinic in February 2018. FEMA Region VIII's PA program will review the information associated with these two projects and will make final eligibility determinations, including cost reasonableness, during the closeout process. Actual costs, supporting documentation, and insurance claim documents will be evaluated at the time the project is ready to be closed.

Estimated Completion Date: 09/30/2018

**Recommendation 2:** Proactively monitor the Tribe's grant activities for the remaining open projects, to ensure compliance with all Federal grant requirements (Finding D).

**Response:** Concur.

FEMA continues to proactively monitor the Tribe's activities for all open projects to ensure compliance with all Federal grant requirements. On October 23, 2015, FEMA placed the Tribe on payment restriction status, requiring adequate supporting documentation to support costs in order to draw funds. The Tribe currently remains on payment restriction.

In addition to monitoring payments, FEMA maintains consistent communication through phone, mail, email, and visits with the Tribe to continue grant monitoring activities. FEMA has maintained consistent communication with the Tribe since the disaster declaration date in July 2010, with the first monitoring visit with the Tribe occurred in April 2013. Since then, FEMA has consistently visited the Tribe to continue supporting grant management activities as recent as June 2017.

FEMA requests that the OIG close this recommendation. FEMA has ensured that appropriate controls are in place to closely monitor the Tribe's grant activities and ensure compliance with all Federal grant requirements.

Please direct any questions regarding this response to Tom Bush, FEMA Region VIII Public Assistance Infrastructure Branch Chief, at (303) 235-4860, or [Tom.Bush@fema.dhs.gov](mailto:Tom.Bush@fema.dhs.gov).



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