

**FEMA Did Not Properly
Review the Port Authority of
New York and New Jersey's
Request for \$306 Million in
Public Assistance Funds**





DHS OIG HIGHLIGHTS

FEMA Did Not Properly Review the Port Authority of New York and New Jersey's Request for \$306 Million in Public Assistance Funds

September 23, 2019

Why We Did This Audit

We conducted this audit to determine to what extent FEMA properly reviewed the Port Authority of New York and New Jersey's request for Public Assistance grant funds for damages the Holland Tunnel sustained from Hurricane Sandy. The New York Division of Homeland Security and Emergency Services, a FEMA grantee, awarded \$306 million in Public Assistance funds to the Port Authority for Holland Tunnel repairs.

What We Recommend

We recommend that FEMA deobligate \$123 million of ineligible costs. We made two other recommendations that, when implemented, will improve FEMA's review and obligation of Public Assistance grant funds.

For Further Information:

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

What We Found

The Federal Emergency Management Agency (FEMA) did not properly review the Port of Authority of New York and New Jersey's (Port Authority) request for Public Assistance funds for damages the Holland Tunnel sustained from Hurricane Sandy. FEMA did not follow Federal regulations or its own guidelines for reviewing cost estimates and documenting its determinations. FEMA Region II personnel could not provide documentation to justify changes made to the cost estimates or prove they reviewed the cost estimates adequately, resulting in a lack of assurance the costs obligated are accurate and reasonable.

This occurred because FEMA Region II personnel conveyed the accuracy of estimates was not important since actual costs are determined at project completion, even though this project could take many years to complete. Additionally, FEMA Region II Recovery branch management did not ensure personnel adhered to policies and procedures required when reviewing costs.

As a result, FEMA lacks assurance the costs obligated are accurate and reasonable. FEMA should deobligate \$123 million of ineligible costs, and implement procedures to ensure its personnel follow Federal regulations and FEMA guidelines when reviewing Public Assistance grant requests. FEMA should also implement training to emphasize the importance of proper and appropriate obligation of Public Assistance funds.

FEMA Response

FEMA concurred with one recommendation, which we consider resolved and open. FEMA did not concur with two recommendations that remain unresolved and open. We included a copy of FEMA's comments in their entirety in appendix C.




OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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

September 23, 2019

MEMORANDUM FOR: Thomas Von Essen
Regional Administrator, Region II
Federal Emergency Management Agency

FROM: Sondra F. McCauley 
Assistant Inspector General for Audits

SUBJECT: *FEMA Did Not Properly Review the Port Authority of New York and New Jersey's Request for \$306 Million in Public Assistance Funds*

For your action is our final report, *FEMA Did Not Properly Review the Port Authority of New York and New Jersey's Request for \$306 Million in Public Assistance Funds*. We incorporated the formal comments provided by your office.

The report contains three recommendations that, when implemented, will improve FEMA's review and obligation of Public Assistance grant funds. Your office concurred with one recommendation and did not concur with two recommendations. Based on information provided in your response to the draft report, we consider recommendations 1 and 2 open and unresolved, and recommendation 3 open and resolved. As prescribed by the Department of Homeland Security Directive 077-01, *Follow-Up and Resolutions for the Office of Inspector General Report Recommendations*, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until your response is received and evaluated, the recommendations will be considered open and unresolved.

Please send your response or closure request to
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, or your staff may contact Maureen Duddy, Deputy Assistant Inspector General for Audits, at (617) 565-8723.



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Background

The Port Authority of New York and New Jersey (Port Authority) operates the Holland Tunnel (Tunnel). The Port Authority is a bi-state agency created in 1921 through a congressionally approved agreement between the States of New York and New Jersey. The Port Authority promotes and protects commerce in the port district and undertakes port and regional improvements that neither state is likely to attempt alone.

The Tunnel opened to traffic on November 13, 1927, and is a twin-tube tunnel under the Hudson River, connecting New York and New Jersey. The Tunnel is approximately 8,500 feet long, sits 93 feet under the river at its deepest point, and contains more than 6 million tiles (wall and ceiling). The Tunnel consists of two adjacent tunnels (north and south), 4 traffic lanes, 1 administration building, 14 pump rooms, and 4 ventilation buildings. The number of vehicles that used the Tunnel in 2017 totaled 14.9 million.



Figure 1. Holland Tunnel Entrance

Source: Port Authority of New York and New Jersey

According to Federal Emergency Management Agency (FEMA) officials, during Hurricane Sandy 45 percent of the Tunnel and its support facilities were severely flooded with an estimated 30 million gallons of brackish water,¹ sewage, and industrial contaminants. The north and south tunnels were inundated by 4,200 feet and 3,400 feet of seawater, respectively, which entered through the New Jersey roadway portals and the exhaust air-duct system.

¹ Brackish water is a mixture of salt and fresh water. It does not contain the minimum salinity level to be salt water.



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Both tunnels also experienced 7–9 feet of seawater storm surge above the roadway. The floodwaters remained for up to 10 days after the hurricane, causing damage to structural elements and critical mechanical and electrical systems. The President declared Hurricane Sandy a major disaster (DR 4085) on October 30, 2012. Through an agreement between the two states, the State of New Jersey deferred the responsibility for repairing the Tunnel to the State of New York. The Port Authority received a \$306 million grant award from the New York Division of Homeland Security and Emergency Services, a FEMA grantee, for Holland Tunnel repairs.

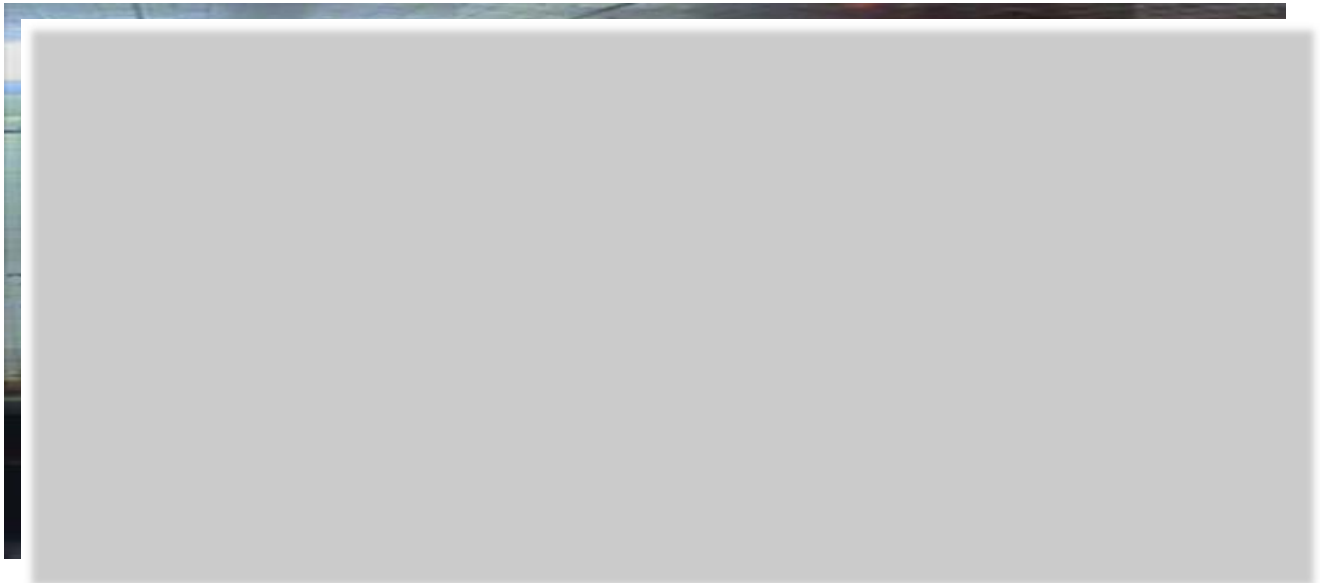


Figure 2. Interior of the Holland Tunnel



Figure 3. New Jersey North Tube



Figure 4. New Jersey Land Ventilation Building

Source: Port Authority of New York and New Jersey (Figures 2, 3, and 4)

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As the grant subrecipient, the Port Authority was responsible for identifying damage, and providing sufficient data regarding the Holland Tunnel in the request so that FEMA could develop an accurate scope and cost estimate for the repair work. New York, as the grantee, is responsible for implementing and monitoring the grant once it is awarded. FEMA is responsible for approving the grant and providing technical assistance to New York and the Port Authority.

FEMA recorded the permanent repair work for the Holland Tunnel in Project Worksheet (PW) 4594. As of November 2017, PW 4594 had four versions, numbered 0 through 3, for which FEMA had obligated \$306 million to the Port Authority (see table 1).

Table 1: PW 4594 – Holland Tunnel Permanent Repairs

PW 4594 Versions *	Funding Requested by Port Authority	Gross Amount Approved by FEMA	Insurance Reduction	Total Amount Obligated by PW Version
0	\$ 52,227,473	\$ 52,227,473	\$14,435,640	\$ 37,791,833
1	255,141,157	255,141,157	-	255,141,157
2	-	-	30,841,198	(30,841,198)
3	101,935,985	43,937,011	343,161	43,593,850
Totals	\$ 409,304,615	\$ 351,305,641	\$ 45,619,999	\$ 305,685,642

Source: Port Authority and Office of Inspector General (OIG) analysis

* Versions stand alone for separate project sites. New versions of the worksheet do not replace previous versions, but modify costs to the running total.

The Port Authority initially proposed 22 project sites in PW Version 0 and then consolidated that to 15 sites in subsequent versions. Version 0 includes initial costs for the proposed sites, and Versions 1 and 3 are stand-alone submissions for separate sites identifying additional damages. Version 2 shows PW costs reduced by insurance funds received.

The Port Authority contracted with two Architectural & Engineering (A&E) firms that provided two separate assessment reports used as the basis for cost estimates in PW 4594. The first assessment report, issued in June 2014, was the basis for Version 0 costs. The second assessment report, issued in March 2016, was the basis costs of Versions 1 and 3 and included a more in-depth assessment of latent storm-related damages. Port Authority officials said the significant increase in requested funding from Version 0 to Version 1 was mainly due to items identified in the second A&E assessment, such as replacement of critical infrastructures and hazard mitigation.

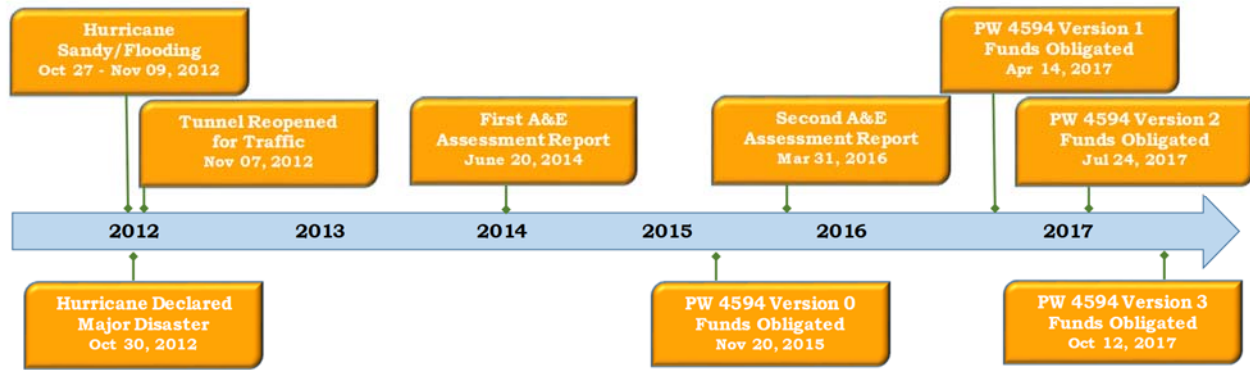


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Figure 5 shows the timeline of events:

Figure 5: Holland Tunnel Timeline



Source: The Port Authority of New York and New Jersey and OIG Analysis

Results of Audit

FEMA Did Not Properly Review the Port Authority's Request for Public Assistance Funds

FEMA did not follow Federal regulations or its own guidelines for reviewing cost estimates and documenting its determinations. FEMA Region II personnel could not provide documentation to justify changes made to the cost estimates or prove they adequately reviewed the cost estimates, resulting in a lack of assurance the costs obligated are accurate and reasonable. This occurred because FEMA Region II personnel conveyed the accuracy of estimates was not important since actual costs are determined at project completion, even though this project could take many years to complete. Additionally, FEMA Region II Recovery branch management did not ensure personnel adhered to policies and procedures required for adequate review of costs. To the extent that FEMA does not properly review the requests for Public Assistance, it may unknowingly approve PWs containing unnecessary and ineligible costs. We identified a number of issues in FEMA's review process that may be systemic and affect other Public Assistance requests.

Inadequate Review of Cost Estimates

FEMA is responsible for evaluating cost estimates for accuracy, validity, reasonableness, and scope of work eligibility. However, FEMA personnel did not adhere to policies and procedures required and therefore did not



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adequately review PW costs. According to the *Cost Estimating Format (CEF)*² for *Large Projects Instructional Guide V 2.1* (CEF Guide), the Public Assistance Group Supervisor or a designee is responsible for checking the appropriateness of individual cost factors and ranges, and for application of these factors. The Public Assistance Group Supervisor or designee is also responsible for justifying in writing any warranted changes to the cost factors.

FEMA took various actions based on its reviews of different versions of the worksheet. FEMA's review of Versions 0 and 1 resulted in no changes to the Port Authority's scope of work or costs proposed. FEMA's review of Version 3 resulted in changing the scope of work and removing or reducing more than half of the proposed costs (\$58 million) from this version. The reduction in costs for Version 3 pertained to instances when FEMA deemed costs ineligible or chose to repair instead of replace items.

The different results from the reviews of the PW versions demonstrate inconsistency in FEMA's process. Although FEMA determined that some PW costs were ineligible (contingency cost, finance costs, and cost for extra work) in Version 3, FEMA did not revise ineligible costs in previous versions that included the same type of costs for different sites. FEMA Region II personnel said they do not revise previous versions of project worksheets because they are estimates of costs, and to revise them would be an administrative burden. Various FEMA Region II personnel also said the Port Authority has a history of doing this type of work, knows what it costs to repair the Tunnel, and "the cost is going to be what it is going to be." Based on our analysis of cost estimates for PW 4594, by not revising the PW for ineligible costs FEMA over-obligated \$123 million in Public Assistance grant funds (see appendix B). *Principles of Appropriations Law*³ states, "the over-recording and under-recording of obligations are equally improper." Both practices make it impossible to determine the precise status of Federal appropriations. Therefore, the deobligation of ineligible costs should be accomplished in a timely and consistent manner.

Lack of Documentation for Changes and Reviews of Cost Estimates

FEMA did not follow its own policies and procedures pertaining to documentation of its decisions made during the review process. FEMA officials changed the cost estimate factors, but did not adequately document their justification for those changes for Version 3. They also lacked documentation of their reviews of cost estimate reasonableness for Versions 0, 1, and 3. FEMA

² Cost Estimate Format is a Microsoft Excel-based template that provides uniformity in estimating costs for large projects.

³ Government Accountability Office, GAO-06-382SP, *Principles of Appropriations Law*, 3rd ed., Vol. II, Ch.7, Pt. B at 7-6 (Feb. 2006) (Criteria for recording Obligations- 31 U.S.C. § 1501).



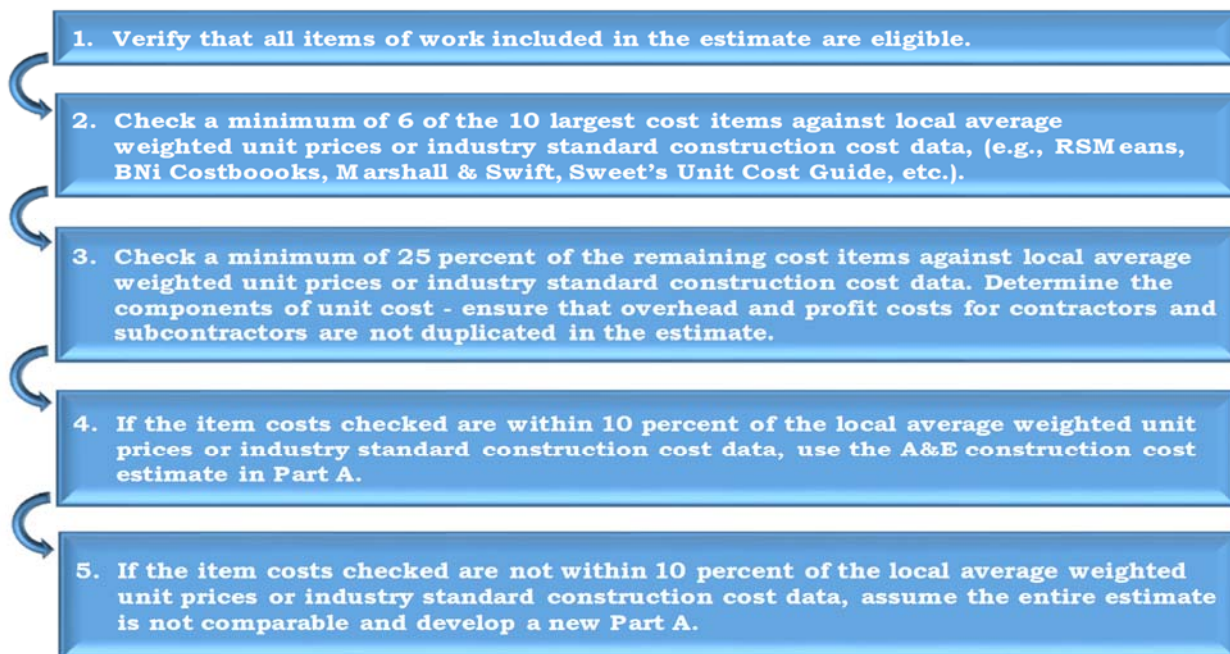
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included ineligible costs in Versions 0 and 1 of the PW, but FEMA could not provide documentation supporting its decision to remove the same costs from Version 3.

Additionally, for cost estimates based on A&E reports, the CEF Guide has specific guidance on how to review whether costs are reasonable (see Figure 6). FEMA officials did not provide sufficient documentation to demonstrate they checked for reasonableness.

Figure 6: Steps to Check for Reasonableness



Source: CEF for Large Projects Instructional Guide V 2.1, dated September 2009

FEMA's documentation of its review of Version 0 (initial costs) and Version 1 (additional site damage) was limited to email correspondence. This email correspondence did not describe the work FEMA performed as part of its review, nor any changes to the Port Authority's scope of work or costs proposed for Versions 0 and 1. One FEMA Region II employee said, "It is standard practice when reviewing a construction project not to document the review." FEMA also had emails documenting its review of Version 3 (additional site damage) but those emails did not detail how FEMA reviewed the PW. As previously stated, FEMA decided to reduce costs in Version 3 because it found instances of ineligible costs and other instances when it chose to repair instead of replace items.

FEMA Recovery Directorate Manual — Public Assistance Program Appeal Procedures, Version 2, requires FEMA to issue a Determination Memorandum



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when some portion of the damage, work, or cost requested by the subrecipient is ineligible. The purpose of the Public Assistance Determination Memorandum, which must be included in EMMIE,⁴ is to document FEMA's reason for the determination. As previously indicated, FEMA determined some PW costs were ineligible, but did not produce a Determination Memorandum documenting this decision. As of June 1, 2018, FEMA did not have any Determination Memoranda for PW 4594.

In addition, FEMA Region II could not provide documentation as to why it did not follow the *Strategic Funds Management — Implementation Procedures for the Public Assistance Program*⁵ (SFM) for this disaster. FEMA implemented this policy specifically for large permanent work projects that will not require funds for more than 180 days after the scope of work is determined to be eligible. SFM policy indicates that, as appropriate and practicable, all FEMA personnel shall follow the SFM process to obligate Public Assistance project funding. The Port Authority plans to start permanent repair projects for the Holland Tunnel in midyear 2019, but FEMA obligated funds for the PW versions in 2015 and 2017 (see Figure 5). FEMA did not provide evidence that it followed its SFM policy for this disaster. FEMA, therefore, cannot provide assurance that it obligated funds for the Holland Tunnel repair in a timely manner. Following the SFM policy would ensure FEMA rapidly reviews projects to identify disaster-related damage. Upon identification of qualifying projects, FEMA should approve the PW and obligate funding consistent with the Disaster Relief Fund appropriation process and with the subgrantee's readiness to carry out the project in accordance with the project schedule.

Conclusion

FEMA disregarded its own policies and procedures when reviewing the Port Authority's request for Public Assistance funds. We found limited documentation of FEMA's review of the engineering assessments, insufficient documentation explaining the reduction of funding in project worksheet costs, and no evidence that FEMA reviewed the cost factors for reasonableness. As a result, FEMA lacks assurance that the funds obligated are reasonable. This occurred because FEMA Region II personnel conveyed the accuracy of estimates was not important since actual costs are determined at project completion, even though this project could take many years to complete. Additionally, FEMA Region II Recovery branch management did not ensure personnel adhered to policies and procedures while reviewing costs. FEMA's insufficient review resulted in an over-obligation of \$123 million in Public

⁴ EMMIE (FEMA's Emergency Management Mission Integrated Environment) is a web-based application used to record, submit, and manage Public Assistance grant applications.

⁵ *Recovery Standard Operating Procedure, SOP 9570.24 – Strategic Funds Management – Implementation Procedures*, Federal Emergency Management Agency (Dec. 21, 2012).



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Assistance funding for damages the Holland Tunnel sustained because of Hurricane Sandy.

Recommendations

Recommendation 1: We recommend the Regional Administrator, FEMA Region II deobligate \$123,011,428 in ineligible costs from Holland Tunnel PW 4594.

Recommendation 2: We recommend the Regional Administrator, FEMA Region II implement controls and procedures to ensure personnel consistently perform grant reviews according to established FEMA guidelines and Federal regulations, and document the relevant discussions, decisions, and results of the reviews performed.

Recommendation 3: We recommend the Regional Administrator, FEMA Region II implement training for personnel on the proper and appropriate obligation of Public Assistance funds.

Management Comments and OIG Analysis

FEMA did not concur with recommendations 1 and 2, but concurred with recommendation 3. We include a copy of FEMA's comments in their entirety in appendix C. FEMA also provided technical comments to the draft report and we updated the report as appropriate. We consider recommendations 1 and 2 unresolved and open, and recommendation 3 is resolved and open.

FEMA's overall response was not sufficient to address our recommendations regarding its review process and the over-obligation of Public Assistance funds. FEMA was responsible for evaluating cost estimates for accuracy, validity, reasonableness, and scope of work eligibility. FEMA stated that it works to avoid under-obligating and over-obligating recovery funds. However, FEMA's "deliberative approach for PW development" without using the Strategic Funds Management initiative has over-obligated funds, which were obligated when FEMA approved each of the PW Versions. The approved project worksheets for the Holland Tunnel were based on cost estimates that contained calculation errors and ineligible costs. A summary of FEMA's responses and our analysis follows.

FEMA Comments to Recommendation 1: FEMA did not concur with the recommendation and stated it reviewed the project and estimates based on information available at the time and an understanding of the phase of the project's development. FEMA Region II's formal written response does not



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address our recommendation on funds being deobligated. However, in its technical comments FEMA agreed approximately \$51 million of the recommended \$123,011,428 should be deobligated.⁶

OIG Analysis of FEMA Comments to Recommendation 1

FEMA did not demonstrate it reviewed the project for completeness or accuracy. FEMA did not address errors and miscalculations that OIG identified in the Cost Estimating Format (CEF) for Versions 1 and 3. FEMA ignored ineligible finance charges, scopes of work for non-disaster related damages, and directly associated costs included in Versions 0 and 1.

FEMA stated it followed the steps included in the CEF Guide; however, the first step to check for reasonableness as shown in Figure 6, above, is to “verify that all items of work included in the estimate are eligible.” FEMA explained in its response there were ineligible items included in Versions 0, 1, and 3 of the project worksheets and obligated funds when the project worksheets were approved. Based on our calculations, FEMA obligated \$123,011,428 of Public Assistance funds, making the funds unavailable for other projects. Furthermore, FEMA’s response is incorrect, because it stated FEMA Region II determined the estimate approved in PW Version 3 included ineligible finance charges. Neither the Port Authority nor the New York Division of Homeland Security and Emergency Services (DHSES) agreed with FEMA’s position, and both parties requested further discussions on the matter. FEMA Region II decided not to remove the finance charges and allowed the discussions to continue rather than putting the Port Authority in a situation in which it would have to appeal while the project was still in development. PW Version 3 does not mention discussions and disagreements among FEMA, the Port Authority, and DHSES. FEMA Region II removed the finance charges submitted for PW Version 3. However, FEMA did not remove finance charges from PW Versions 0 and 1, even though it had determined finance charges were ineligible costs.

During its review of the CEF, FEMA did not identify calculation errors. FEMA has not deobligated the ineligible costs because, according to FEMA, the Port Authority will propose other eligible costs in the future. FEMA stated the Port Authority’s project costs would range from \$325 million to \$345 million, which exceeds the amount currently obligated. FEMA also stated when it receives PW Version 5 from the Port Authority; it will compare the prior PW’s scope and costs to Version 5 and make any necessary adjustments. *Principles of Appropriations Law* require Federal agencies to record obligations in accounting records on a factual and consistent basis throughout the Government. That is, an agency must increase or decrease obligated funds when probable or

⁶ FEMA Technical Comments OIG-17-103 Holland Tunnel FINAL 6.28.19, memorandum received by OIG on July 9, 2019, pp. 12 and 13.



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measurable information becomes known. Over-recording and under-recording obligations are equally improper. Both practices make it impossible to determine the precise status of Federal appropriations.

After FEMA Region II reviews the final design documents for the Holland Tunnel project, it will request that the Port Authority document withdrawal of its request for sites previously removed from the project and for finance charges. FEMA stated if the Port Authority does not document its withdrawal of these requests, FEMA would issue a Determination Memorandum deeming the costs ineligible. FEMA is not in compliance with its own guidance, *FEMA Recovery Directorate Manual — Public Assistance Program Appeal Procedures*, Version 2, which requires FEMA to issue a Determination Memorandum when some portion of the damage, work, or cost requested by the subrecipient is ineligible.

This recommendation will remain open and unresolved until FEMA provides support that it has deobligated funds for ineligible costs from Holland Tunnel PW 4594.

FEMA Comments to Recommendation 2: FEMA did not concur with the recommendation that it implement controls and procedures to ensure personnel consistently perform grant reviews according to established FEMA guidelines and Federal regulations, and document the relevant discussions, decisions, and results of the reviews performed. FEMA stated this is already standard practice, and for the Holland Tunnel project, the review was documented according to established FEMA guidelines.

OIG Analysis of FEMA Comments to Recommendation 2

FEMA Region II did not provide sufficient documentation for its review of the Holland Tunnel project. Not including sufficient information on actions and outcomes of a grant review is inconsistent with FEMA's guidelines. Therefore, FEMA Region II should implement controls and procedures to ensure relevant discussions, decisions, and results of such reviews are documented in the future. In its response, FEMA discussed three of its policies that we indicated FEMA Region II did not follow.

The Cost Estimating Format for Large Projects Instructional Guide V2.1

FEMA Region II stated it followed its CEF guide to review cost estimates the Port Authority provided for damages to the Holland Tunnel. According to the CEF guide, FEMA's Group Supervisor or designee is responsible for evaluating the reasonableness of cost estimates and the appropriateness of the factors making up the cost. If any changes to the cost estimates are warranted, FEMA is responsible for justifying those changes in writing. FEMA stated the section of the CEF regarding the Public Assistance Group Supervisor or designee's



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responsibility for evaluating and documenting cost changes is not relevant because the section pertains to situations outside of the recommended ranges where CEF factors are used. However, because FEMA Region II significantly changed the cost factors to zero, they fall outside of FEMA's desired ranges and are contrary to FEMA Region II's claims this section of the CEF is applicable. Accordingly, FEMA should have provided written justification as to why it changed the cost factors to zero.

The FEMA Recovery Directorate Manual – Public Assistance Program Appeal Procedures, Version 2

In the Holland Tunnel project, FEMA Region II identified ineligible costs and sites. Therefore, contrary to its assertion, the FEMA Recovery Directorate Manual required FEMA Region II to issue a determination memorandum.

Recovery Standard Operating Procedure, SOP 9570.24 – Strategic Funds Management – Implementation Procedures

FEMA Region II's actions to obligate project funding were not consistent with SOP 9570.24. FEMA ignored the SOP that specifically states it is applicable for use "...as appropriate and practicable, to all open projects from previously declared major disasters and emergencies. All FEMA personnel involved in implementation of the Public Assistance Program shall follow this SOP." The Holland Tunnel permanent repair project meets the criteria identified in the SOP - the costs exceed \$1 million and the work was not being performed within 180 days. FEMA could not provide adequate rationale for why it did not use the Strategic Funds Management initiative.

This recommendation will remain open and unresolved until FEMA provides support that it has implemented the controls and procedures needed to adequately address it.

FEMA Comments to Recommendation 3: FEMA concurred with the recommendation to implement training for personnel on proper and appropriate obligation of Public Assistance funds. FEMA also stated it has implemented a job aid, *Public Assistance: Reasonable Cost Evaluation*, for evaluating costs and requires that all staff use the current version of the *Public Assistance Program and Policy Guide* when developing and/or reviewing projects to ensure all policies and procedures are followed.

OIG Analysis of FEMA Comments to Recommendation 3

FEMA's current training program addressing Public Assistance obligation requirements is sufficient to resolve the intent of the recommendation. However, the recommendation remains open until FEMA Region II's Recovery



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Division provides documentation showing its compliance with staff training and qualifications requirements for obligating Public Assistance funds.



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Appendix A

Objective, Scope, and Methodology

The Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

We performed this audit to determine to what extent FEMA properly reviewed the Port Authority of New York and New Jersey's requests for FEMA Public Assistance grant funds for damages the Holland Tunnel sustained from Hurricane Sandy. The scope of our audit was Project Worksheet 4594, the permanent repair work for the Holland Tunnel. At the time of our audit, there were four versions of the PW — 0 through 3. We neither placed any significant reliance on nor tested the data from the system, but deemed it sufficient to meet our audit objective.

To achieve our objective, we reviewed Versions 0, 1, and 3. We did not review Version 2, as it was an insurance reduction only. We evaluated the documentation FEMA provided to demonstrate its review of the Holland Tunnel PW versions. We performed analytical procedures in the form of recalculations and comparative analysis and identified several errors in the cost estimates, such as incorrect cost factors and formula errors in the calculations of indirect costs.

The Port Authority is responsible for maintaining and repairing the Holland Tunnel. FEMA is responsible for determining if the costs included in the PW submitted for the repairs of the Holland Tunnel are eligible; therefore, we interviewed FEMA personnel who worked on the Holland Tunnel project to gain an understanding of FEMA's policies, procedures, and processes for reviewing, documenting, and determining eligibility. Additionally, we interviewed State of New York and Port Authority personnel to evaluate the damage assessment process and other supporting documentation.

We reviewed Federal and FEMA guidance to gain an understanding of the review and approval process for the Public Assistance program. We also researched Federal regulations and the Government Accountability Office's *Principles of Appropriations Law* to determine the criteria related to recording obligations in this context.

We reviewed the Port Authority's Holland Tunnel maintenance logs for the periods 2003 through 2017. We also reviewed its 2007 through 2015 biennial Facility Condition Surveys to determine the pre-disaster and post-disaster condition, and recommended repairs of the Holland Tunnel. The Port Authority's pre-disaster condition of the Holland Tunnel, as cited in the



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September 2011 biennial Facility Condition Survey, indicated that the tunnels were in good condition, except for the Low Point Sump Pump Room, which was in fair condition. The post-disaster condition for the Holland Tunnel, as cited in the December 2013 Facility Condition Survey, indicated that the tunnels and chambers were in good condition except for the Low Point Sump Room, which was in fair condition.

We conducted this performance audit between December 2017 and August 2018 pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.

The Office of Audits contributors to this report are William Johnson, Director; Kathy Hughes, Audit Manager; William Lough, Auditor-In-Charge (retired); Nicole Kraft, Auditor-in-Charge; Sharon Snedeker, Auditor; Dwight McClendon, Auditor; Kevin Dolloson, Communications Analyst; and Severa Williams, Independent Referencer.



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Appendix B
Potential Monetary Benefits from Over Obligated Funds

PW 4594 Version	Description	Amount
0	Associated Costs for Ineligible Sites	
0	Associated Construction Cost	\$698,416
0	Associated Planning & Engineering Cost	1,717,810
0	Associated General & Administrative Cost	277,066
0	Associated Project Contingency	1,584,191
0	Ineligible Finance Expense	2,454,439
1	Ineligible Construction Cost	
1	Engineering Contingency	28,623,408
1	Extra Work	25,761,420
1	Associated Performance Bond Cost	286,260
1	Associated Insurance Cost	1,944,202
1	Associated Planning & Engineering Cost	5,012,198
1	Associated Allocated Pools	1,049,744
1	Associated Project Contingency	4,667,392
1	Miscalculated Project Contingency	4,595,507
1	Ineligible Finance Expense	44,266,392
3	Calculation Error General & Administrative	72,983
Total		<u>\$123,011,428</u>

Source: OIG analysis of Cost Estimates for PW 4594



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Appendix C
FEMA Response

U.S. Department of Homeland Security
Region II
Jacob K. Javits Federal Office Building
26 Federal Plaza, Room 1807
New York, New York 10278



FEMA

July 24, 2019

MEMORANDUM FOR: Sondra F. McCauley
Assistant Inspector General for Audits
Office of Inspector General

FROM: Thomas Von Essen *for* *Valley Childs*
Regional Administrator, Region II

SUBJECT: Management Response to Draft Report: "FEMA Did Not Properly Review the Port Authority of New York and New Jersey's Request for \$306 Million in Public Assistance Funds" (Project No. 17-103-EMO-FEMA)

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

FEMA Region II staff did properly review the Port Authority's request for funds, following all applicable policies and procedures in place at the time of the reviews. The Project Worksheet (PW) is still in development and once FEMA Region II approves the final cost estimate, it will only include costs eligible under the Public Assistance program.

In keeping with FEMA's mission, and working in collaboration with the State of New York's Department of Homeland Security and Emergency Services (DHSES), and the Port Authority, FEMA works to avoid under-obligating or over-obligating recovery funds. For large, complicated restoration projects, FEMA takes a deliberative approach to PW development in collaboration with the grant recipients and subrecipients. This method allows FEMA to version the PW as more information becomes available through the various project design phases. Over the post-disaster recovery period, the damage description, scope of work (SOW) and cost estimate are further refined prior to the obligation of a final cost estimate.

During October 2012, Hurricane Sandy flooded the Port Authority's Holland Tunnel with seven to nine feet of water and the tunnel remained flooded for 10 days after the disaster.



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Appendix C (continued)

The Port Authority used its Project Delivery Manual to carefully plan repairs to the damaged structural elements and critical mechanical and electrical systems. Per its PA PW development process, FEMA anticipated from the beginning that future versions of the project would be forthcoming. The Agency opted against a needless de-obligation of funds that would likely be added later. Without these funds available, the Port Authority's ability to properly plan for and finance the project prior to the reimbursement of its actual costs would be impaired. At the time of this audit, FEMA had prepared four versions of the PW to restore the Holland Tunnel. FEMA and the Port Authority continue to prepare additional PW versions based on both the preliminary design and the final design. FEMA reviewed all documentation submitted by the Port Authority, in accordance with Agency policies and procedures, prior to obligating funds for each version of the PW.

The draft report contained three recommendations with which FEMA concurs with one and non-concurs with two. Attached find our detailed response to each recommendation. Technical comments were previously provided under separate cover.

Again, thank you for the opportunity to review and comment on this draft report. If you have any questions, please contact Dale McShine at (212)-680-3636 or by email at dale.mcshine@fema.dhs.gov. We look forward to working with you again in the future.

Attachment



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Appendix C (continued)

**Attachment: Management Response to Recommendations
Contained in OIG 17-103-EMO-FEMA**

The OIG recommended that the Regional Administrator, FEMA Region II:

Recommendation 1: Deobligate \$123,011,428 in ineligible costs from Holland Tunnel PW 4594.

Response: Non-concur. FEMA Region II reviewed the project and estimates based on the information available at the time and understanding the phase of the project's development. From 2015 through 2017, FEMA reviewed three versions of the project submitted by the Port Authority.

As noted in the OIG's report, there are five steps to review an applicant-provided estimate of base cost items. FEMA Region II followed those steps and also reviewed the Cost Estimating Format (CEF) factors applied to the base cost items in accordance with published guidance. Among the tools FEMA used to review the cost estimates provided by the Port Authority was *FEMA's CEF for Large Projects Instructional Guide V2.1*, September 2009. The CEF factors can range in percentage value depending on the project and location and the status of the project itself. It is common for CEF factors used during project development to change as project costs are better defined.

By the time a project enters the final design phase there is less need to use CEF factors to estimate all soft costs. Design costs, for example, can be included in the overall cost estimate based on actual costs incurred, since the design has been completed. In this stage of design, there is more clarity regarding the most appropriate value for other factors that address additional soft costs.

FEMA Region II, the Port Authority, and New York State's Division of Homeland Security and Emergency Services (DHSES) often discussed which factors would ultimately be used for the final estimate but at the time of the audit, all parties did not yet agree on the appropriate values. FEMA Region II removed some factors from the estimate approved in Version 3, but not because the associated costs were ineligible. FEMA Region II removed the factors because FEMA Region II, DHSES, and the Port Authority were not in agreement on the appropriate factors to use. All parties agreed to further discussions and to address the issue in future versions. Further, although FEMA Region II identified that the estimate approved in PW Version 3 included ineligible finance charges, neither Port Authority nor DHSES agreed with FEMA's position and both parties requested further discussions on the matter. FEMA Region II decided not to remove the finance charges to allow the discussions to continue rather than putting the Port Authority in a situation where it would have to appeal while the project was still in development. Finally, in June 2019 all parties agreed that the finance charges were not



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eligible and Port Authority removed them from its most recent cost estimate submitted and under review for obligation under PW Version 4. The Port Authority requested approval for an additional \$18,000,000 under Version 4.

FEMA Region II is reviewing the final submission of the preliminary design documents. The final design documents are anticipated to be submitted for review by July 31, 2019. All prior scope and costs will be reconciled in Version 5 based on the final design scope and cost estimate. FEMA Region II will validate the cost estimate using the recently released *Public Assistance: Reasonable Cost Evaluation* job aid and will document the agreed-upon factors for the project. The Port Authority currently projects the full project costs to range from \$325 to \$345 million, which is above the currently obligated amount.

After FEMA Region II reviews the final design documents, FEMA Region II will request the Port Authority to document its withdrawal of its request for sites previously removed from the project and its request for finance charges. If the Port Authority does not document its withdrawal of these requests, FEMA will issue a Determination Memo deeming that work and costs to be ineligible.

We request that the OIG consider this recommendation resolved and closed as implemented.

Recommendation 2: Implement controls and procedures to ensure personnel consistently perform grant reviews according to established FEMA guidelines and Federal regulations, and document the relevant discussions, decisions, and results of the reviews performed.

Response: Non-concur. This is already standard practice, and in this specific instance, FEMA reviewed the Holland Tunnel project and documented its review according to established FEMA policy and guidelines.

Specifically, the OIG referenced three policies that it said FEMA did not follow:

- 1) *The Cost Estimating Format (CEF) for Large Projects Instructional Guide V 2.1:* FEMA followed the steps outlined in this document for the Holland Tunnel project. The section the OIG cited referring to “the Public Assistance Group Supervisor or a designee” is not relevant to the Holland Tunnel project, as pointed out in FEMA’s technical comments. That section pertains to situations outside of the recommended ranges where CEF factors are used.
- 2) *The FEMA Recovery Directorate Manual — Public Assistance Program Appeal Procedures, Version 2:* Per regulation, at 44 C.F.R. § 206.206, permits an applicant a right to appeal a determination and establish the timeframe for submitting the appeal based on when the applicant receives notice of the action



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that is being appealed. Version 2 of the appeals manual states that when making eligibility determinations (that trigger an applicant's right to appeal), the FEMA staff should issue a formal determination to serve as the agency's official notice of its eligibility determination under 44 C.F.R. § 206.206 (and begin the 60-day timeframe during which an applicant may appeal). This manual does not require issuance of a Determination Memo. In the Holland Tunnel project, FEMA did not issue the determination of eligibility at the time of Version 3, so there was no need to establish documentation of a formal notice regarding eligibility.

- 3) *Strategic Funds Management*: FEMA Region II did not implement Strategic Funds Management (SFM) for Hurricane Sandy because the FEMA Recovery Directorate's Standard Operating Procedures (SOP) for implementing SFM did not apply to disasters declared before the SOP's issuance date (December 21, 2012).

FEMA Region II staff consistently performed grant reviews according to established FEMA guidelines and Federal regulations.

We request that the OIG consider this recommendation resolved and closed as implemented.

Recommendation 3: Implement training for personnel on the proper and appropriate obligation of Public Assistance funds.

Response: Concur. FEMA's robust training program includes fourteen courses addressing various Public Assistance obligation requirements. FEMA Region II's Recovery Division maintains documentation on staff training requirements and tracks attendance to ensure compliance. FEMA Region II also uses Technical Assistance Contractors with the appropriate technical qualifications to participate in PW development and reviews for complicated projects. These contractors are required to take Public Assistance training.

Approximately 78 percent of FEMA Region II's Public Assistance staff are "Qualified" in a traditional Public Assistance role, and approximately 69 percent are "Qualified" in a New Public Assistance Delivery Model role. Staff are "Qualified" after attending all required training and establishing knowledge of required roles and responsibilities through actual operational experience. Because it has such a high percentage of qualified staff, Region II is positioned well to support recovery events with staff who are fully aware of the requirements for obligation of Public Assistance funds.

In addition to attending training, FEMA Region II PA employees are required to use the Job Aid entitled *Public Assistance: Reasonable Cost Evaluation* for evaluating costs. Further, FEMA Region II requires that all staff refer to the current version of the *Public*



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Assistance Program and Policy Guide when developing and/or reviewing projects to ensure all policies and procedures are followed.

Given these measures that are currently implemented in Region II, we request that the OIG consider this recommendation resolved and closed as implemented.



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