

**FEMA Should Disallow
\$2.78 Million of \$14.57 Million
in Public Assistance Grant
Funds Awarded to the
Township of Brick, New Jersey,
for Hurricane Sandy Damages**





DHS OIG HIGHLIGHTS

FEMA Should Disallow \$2.78 Million of \$14.57 Million in Public Assistance Grant Funds Awarded to the Township of Brick, New Jersey, for Hurricane Sandy Damages

September 9, 2015

Why We Did This Audit

The Township of Brick, New Jersey (Township) received a \$14.57 million Public Assistance grant award from the New Jersey Office of Emergency Management (New Jersey), a Federal Emergency Management Agency (FEMA) grantee, resulting from Hurricane Sandy damages in October 2012. Our audit objective was to determine whether the Township accounted for and expended FEMA funds according to Federal requirements.

What We Recommend

FEMA should disallow the \$2.78 million of ineligible costs.

For Further Information:

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

www.oig.dhs.gov

What We Found

FEMA should disallow \$2.78 million in grant funds awarded to the Township. Although the Township generally accounted for FEMA funds on a project-by-project basis, it did not fully comply with Federal and FEMA procurement requirements in awarding contracts for disaster work, resulting in \$1,496,131 in unreasonable debris removal costs. The unreasonable costs represent the difference between hourly rates the Township paid its contractors and the hourly rates that the State of New Jersey negotiated for statewide debris removal activities and made available to all municipalities within the state. Therefore, we question the unreasonable costs as ineligible.

We also question as ineligible \$1,286,255 of unrelated hazard mitigation costs. However, these costs may be eligible under other FEMA projects or programs. Therefore, the Township should work with New Jersey and FEMA to determine the eligibility of the hazard mitigation costs we question.

FEMA Response

FEMA's written response is due within 90 days.

OIG-15-141-D



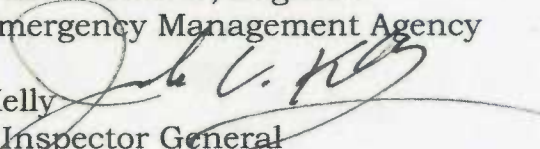
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Department of Homeland Security

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

SEP 9 2013

MEMORANDUM FOR: Jerome Hatfield
Regional Administrator, Region II
Federal Emergency Management Agency

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

SUBJECT: *FEMA Should Disallow \$2.78 Million of \$14.57 Million in Public Assistance Grant Funds Awarded to the Township of Brick, New Jersey, for Hurricane Sandy Damages*
Audit Report Number OIG-15-141-D

We audited Public Assistance grant funds awarded to the Township of Brick, New Jersey (Township). The Township received a Public Assistance grant award of \$14.57 million (gross) from the New Jersey Office of Emergency Management (New Jersey), a Federal Emergency Management Agency (FEMA) grantee, 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 roads and other facilities. We audited 10 projects with net awards totaling \$12.90 million (see appendixes A and B). At the time of our audit, the Township had partially completed work on the 10 projects we audited but had not submitted a final claim to New Jersey for all expenditures. Table 1 shows the gross and net award before and after FEMA's insurance reductions for all projects and for those in our audit scope.

Table 1: Gross and Net Award Amounts

	Gross Award Amounts	Insurance Reductions	Net Award Amounts
All Projects	\$14,573,465	\$794,884	\$13,778,581
Audit Scope	\$12,981,997	\$84,908	\$12,897,089

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



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Results of Audit

FEMA should disallow \$2.78 million in grant funds awarded to the Township. Although the Township generally accounted for FEMA funds on a project-by-project basis, it did not fully comply with Federal and FEMA procurement requirements in awarding contracts for disaster work, resulting in \$1,496,131 in unreasonable debris removal costs. The unreasonable costs represent the difference between hourly rates the Township paid its contractors and the hourly rates that the State of New Jersey negotiated for statewide debris removal activities and made available to all municipalities within the state. Therefore, we question the unreasonable costs as ineligible.

We also question as ineligible \$1,286,255 of unrelated hazard mitigation costs. However, these costs may be eligible under other FEMA projects or programs. Therefore, the Township should work with New Jersey and FEMA to determine the eligibility of the hazard mitigation costs we question.

Finding A: Unreasonable Debris Removal Contract Costs

The Township did not comply with Federal procurement requirements and FEMA guidelines when awarding contract work for disaster-related activities, resulting in \$1,496,131 of unreasonable contract costs. Federal procurement standards at 44 Code of Federal Regulations (CFR) 13.36 required the Township, among other actions, to—

- perform procurement transactions in a manner providing full and open competition except under certain circumstances. One allowable circumstance is when a public exigency or emergency for the requirement exists that will not permit a delay resulting from competitive solicitation (44 CFR 13.36(c) (1) and (d)(4)(i));
- perform a cost or price analysis in connection with every procurement action, including contract modifications, to determine the reasonableness of the contractor's proposed price (44 CFR 13.36(f)(1)); and
- use time-and-material type contracts only after determining that no other contract is suitable; and the contract contains a ceiling price that the contractor exceeds at its own risk (44 CFR 13.36(b)(10)(i) and (ii)).

Federal regulations and FEMA guidelines place restrictions on the use of time-and-material contracts because this method of procurement does not encourage effective cost controls. For debris removal activities, FEMA generally limits the reimbursement of time-and-material contracts to the first 70 hours of actual work and asserts that an applicant's use of such contracting type for



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longer than 70 hours may impact the applicant's reimbursement amount.¹ After the initial 70 hours of work, the applicant should have sufficient information on the required scope of work to solicit and negotiate payment based on a lump sum or unit price.

Further, according to Federal cost principles (*Cost Principles for State, Local, and Indian Tribal Governments*) at 2 CFR 225, Appendix A, section C.1.a., costs must be reasonable to be allowable under a Federal award; and section C.2. defines a reasonable cost as one that, in nature and amount, does not exceed that which a prudent person would incur under the circumstances prevailing at the time. According to section C.2, in determining reasonableness of a given cost, governmental units should consider items such as sound business practices, Federal regulations and guidelines, and market price for comparable goods and services. FEMA may grant exceptions to Federal procurement requirements to subgrantees on a case-by-case basis (44 CFR 13.6(c)).

Shortly after the disaster in late October 2012, the Township hired seven contractors to remove storm-related debris from roadways and rights-of-way and to construct an emergency berm to protect improved property. The Township hired four of the contractors from a list of contractors it had prequalified from a 2011 competitive solicitation for standby snow removal services and garbage collection. The Township hired the remaining three contractors on a noncompetitive basis via purchase orders, with the contractors accepting the same contract terms and conditions as the four contractors the Township hired under the 2011 solicitation. We concluded that exigent circumstances warranted the Township's use of the noncompetitive contracts.

The Township paid the seven contractors a total of \$4,208,811 for their services. The contractors hauled the debris collected from roadways and rights-of-way to several temporary staging areas within Ocean County, New Jersey, where a contractor Ocean County hired processed and disposed of the debris. The contractors performed the vast majority of work (about \$3.7 million of the \$4.2 million claimed) from October 28, 2012, to January 3, 2013, which was within the exigent period that FEMA allowed for Hurricane Sandy debris removal activities in New Jersey.² The remaining \$500,000 of the \$4.2 million the Township claimed was for work contractors performed from January 4, 2013, to May 13, 2013, to construct an emergency berm.

¹ FEMA 325, *Public Assistance Debris Management Guide*, July 2007, p. 100.

² FEMA allowed New Jersey and its municipalities to use noncompetitive contracts for Hurricane Sandy debris removal work through January 3, 2013, because of exigent circumstances that existed after the disaster.



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The Township paid the contractors based on “fully burdened” hourly equipment rates it had negotiated in the 2011 solicitation for snow removal activities.³ The Township could not provide any evidence that it had conducted a cost or price analysis to determine the reasonableness of the rates for the scope of work (debris removal) the contractors actually performed. In addition, the Township should have negotiated a unit price rate for work contractors performed after the first 70 hours as FEMA guidelines require.

The Township did not record the quantity of debris collected by the time-and-material contractors. Therefore, we could not determine whether the \$4.2 million of costs the Township claimed for the debris removal work was reasonable for the quantity of debris the contractors collected. However, the hourly rates the Township paid for the debris removal work, which were rates the Township negotiated for snow removal, appear unreasonable and higher than hourly rates other municipalities paid for similar debris removal work in New Jersey. We compared the Township’s contractors’ hourly equipment rates to fully burdened hourly equipment rates in an emergency debris removal contract that New Jersey awarded shortly after the disaster. New Jersey made this State contract available for its local municipalities to use. In this comparison, we found that the Township’s contract rates were much higher, in many cases, than those in the statewide contract.⁴ For example, the Township paid its contractors \$340 per hour to use a Kamatsu Wheel Loader (4.5 cubic yards), though the statewide debris removal contract listed a \$200 per hour rate for the same or similar equipment.

From our analysis of the hourly equipment rates, we concluded that the Township’s claim included \$1,496,131 of unreasonable costs. The questioned costs are for work contractors performed after November 8, 2012. FEMA established the incident period for the disaster as October 26, 2012, to November 8, 2012. We believe this 14-day period provided the Township sufficient time to negotiate unit price rates for the contract work. Therefore, we question \$1,496,131 of costs the Township claimed as unreasonable as table 2 shows.

³ Fully burdened rates include the costs for operator labor, equipment use, overhead, and profit.

⁴ The statewide debris removal contract was primarily a unit price contract. However, the contract contained fully burdened hourly equipment rates for emergency debris clearance and miscellaneous debris removal activities. We used those hourly rates to make our comparison.



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Table 2: Unreasonable Contract Costs

Project Number	Dates of Contract Charges	Amount Claimed	Amount Questioned
2449	10/28/12–01/03/13	\$ 3,482,840	\$ 1,144,050
1143	10/28/12–1/3/13	236,909	95,816
1143	1/4/13–5/13/13	489,062	256,265
Subtotal		\$ 725,971	\$ 352,081
Total		\$4,208,811	\$1,496,131

Source: FEMA and Township records and OIG analysis

Township officials said that they were not aware of Federal procurement requirements when they contracted for the work. They also said that time was of the essence to move the debris from the rights-of-ways and that they believed they did not have time to renegotiate rates. We discussed Federal procurement requirements with Township officials and they indicated that the Township would comply with such requirements on future procurements under the FEMA award.

New Jersey officials withheld comments on this finding pending receipt of the final report. FEMA officials said they would review the costs for reasonableness during the audit resolution process.

Finding B: Unrelated Project Costs

The Township’s expenditures under Projects 3829 and 3551 included \$1,286,255 of costs that were outside the projects’ authorized scope of work. According to Federal cost principles at 2 CFR 225, Appendix A, C.1.b, a cost must be allocable to a Federal award to be eligible for reimbursement.

Project 3829 authorized the demolition and removal of 51 privately owned damaged structures within the Township that posed a threat to public health and safety. Additionally, Project 3551 authorized debris monitoring costs for the period November 7, 2012, to January 27, 2013. The Township contracted with a debris consulting firm to implement the authorized demolition and debris monitoring work. Township officials provided us a list of invoices totaling \$4,001,265 for costs the Township had incurred under the two projects. However, our review of the invoices identified \$1,286,255 for survey work the firm performed for the Township to identify potential hazard mitigation projects, activities that did not relate to the projects’ authorized scope of work. Therefore, we question as ineligible the \$1,286,255 of unrelated project costs as table 3 shows.



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Table 3: Unrelated Project Costs

Project	Scope of Work	Total Value of Invoices	Amount Ineligible
3829	Demolition of Private Structures	\$ 3,291,940	\$ 1,269,255
3551	Debris Monitoring	709,325	17,000
Totals		\$4,001,265	\$1,286,255

Source: FEMA and Township records and OIG analysis

Township officials said that they do not plan to submit these costs for FEMA reimbursement under the two projects in question. However, they included these costs in the project expenditure listing they provided to us. Therefore, New Jersey and FEMA should disallow these costs if the Township submits them for reimbursement.

These costs may be eligible under other FEMA projects or programs. Therefore, the Township should work with New Jersey and FEMA to determine the eligibility of the hazard mitigation costs we question. FEMA and New Jersey officials withheld comments on this finding pending receipt of the final report.

Recommendations

We recommend the Regional Administrator, FEMA Region II:

Recommendation 1: Disallow \$1,496,131 (Federal share \$1,346,518) of unreasonable and ineligible contract charges 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 \$1,286,255 (Federal share \$1,157,630) of ineligible project costs charged to Projects 3829 and 3551 that were outside the projects' authorized scope of work unless FEMA determines the costs are eligible under the projects (finding B).



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Discussion with Management and Audit Follow-up

We discussed the results of our audit with Township, New Jersey, and FEMA officials during our audit. We also provided a draft report in advance to these officials and discussed it at the exit conference on June 22, 2015. Township officials disagreed with the findings and recommendations. We included their comments, as appropriate, in the body of this report. We also included New Jersey and FEMA officials' comments, as appropriate, in the body of this report.

Within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include the contact information of responsible parties and any other supporting documentation necessary to inform us about the status of the recommendations. Please email a signed pdf copy of all responses and closeout request to carl.kimble@oig.dhs.gov. Until we receive and evaluate your response, we will consider the recommendations open and unresolved.

The Office of Emergency Management Oversight major contributors to this report are David Kimble, Director; Adrienne Bryant, Audit Manager; Oscar Andino, Auditor-in-Charge; and Amos Dienne, Auditor.

Please call me with any questions at (202) 254-4100, or your staff may contact David Kimble, Director, Eastern Regional Office - South, at (404) 832-6702.



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Appendix A

Objective, Scope, and Methodology

We audited Public Assistance funds awarded to the Township, FIPS Code 029-07420-00. Our audit objective was to determine whether the Township accounted for and expended FEMA grant funds according to Federal regulations and FEMA guidelines for Disaster Number 4086 DR-NJ. The Township received a Public Assistance award of \$13.78 million (net of insurance and other adjustments) from New Jersey, a FEMA grantee, for damages resulting from Hurricane Sandy on October 2012. The award consisted of 12 large projects and 3 small projects.⁵

We audited nine large projects and one small project with net awards totaling \$12.90 million (see appendix B). The audit covered the period from October 26, 2012, to February 25, 2014, during which the Township incurred \$17.51 million under the 10 projects in our audit scope. At the time of our audit, the Township had partially completed work on the 10 projects we audited but had not submitted a final claim to New Jersey for all expenditures.

To accomplish our objective, we interviewed Township, New Jersey, and FEMA personnel; gained an understanding of the Township'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. As part of our standard audit procedures, we also notified the Recovery Accountability and Transparency Board of all contracts the subgrantee awarded under the grant to determine whether the contractors were debarred or whether there were any indications of other issues related to those contractors that would indicate fraud, waste, or abuse. As of the date of this report, the Recovery Accountability and Transparency Board's analysis of contracts was ongoing. When it is complete, we will review the results and determine whether additional action is necessary. We did not perform a detailed assessment of the Township'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.



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Appendix A (continued)

We conducted this performance audit between February 2014 and June 2015 pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objective. We believe 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.



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Appendix B

Potential Monetary Benefits

Table 4: Projects Audited and Questioned Costs

FEMA Project Number	FEMA Category of work ⁶	Net Amount Award	Project Cost Incurred	Amount Questioned	FEMA Share @90%	Finding
Large Projects:						
2449	A	\$ 3,881,209	\$ 5,319,068	\$ 1,144,050	\$ 1,029,645	A
3828	A	1,057,163	0	0	0	
3551	A	709,325	709,325	17,000	15,300	B
3829	A	1,092,330	3,881,209	1,269,255	1,142,330	B
4889	B	295,040	295,040	0	0	
1143	B	184,295	725,971	352,081	316,873	A
70	B	3,858,490	4,147,152	0	0	
2433	G	1,784,995	2,427,201	0	0	
4552	G	31,742	0	0	0	
Sub-Total		\$12,894,589	\$17,504,966	\$2,782,386	\$2,504,148	
Small Projects:						
3465	E	\$ 2,500	\$ 4,743	\$ 0	\$ 0	
Sub-Total		\$ 2,500	\$ 4,743	\$ 0	\$ 0	
Grand Totals		\$12,897,089	\$17,509,709	\$2,782,386	\$2,504,148	

Source: FEMA and Township records and OIG analyses

Table 5: Summary of Potential Monetary Benefits

Type of Potential Monetary Benefit	Amounts	Federal Share
Questioned Costs – Ineligible	\$ 2,782,386	\$ 2,504,148
Questioned Costs – Unsupported	0	0
Funds Put to Better Use	0	0
Totals	\$2,782,386	\$2,504,148

Source: OIG analysis of findings in this report

⁶ FEMA classifies disaster-related work by type: debris removal (Category A), emergency protective measures (Category B), and permanent work (Categories C through G).



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Appendix C

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