

**The Port Authority of New York
and New Jersey's Recently
Updated Policies, Procedures,
and Business Practices Should
Be Adequate to Effectively
Manage FEMA Public
Assistance Grant Funds**





HIGHLIGHTS

The Port Authority of New York and New Jersey's Recently Updated Policies, Procedures, and Business Practices Should Be Adequate to Effectively Manage FEMA Public Assistance Grant Funds

April 14, 2015

Why We Did This

As of February 2014, the Port Authority requested an estimated \$213 million in Public Assistance funding for 2012 Hurricane Sandy damages. We conducted this audit early in the Public Assistance process to identify areas where the Port Authority may need additional technical assistance or monitoring to ensure compliance with Federal grant requirements.

What We Recommend

FEMA should direct New York and New Jersey, as FEMA grantees, to continuously monitor the Port Authority's subgrant activity to ensure the Port Authority adheres to the policies and procedures it established for FEMA-funded work.

For Further Information:

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

What We Found

At the time of the grant award, the Port Authority of New York and New Jersey (Port Authority) did not have adequate accounting and procurement policies and procedures in place to ensure compliance with Federal Emergency Management Agency (FEMA) grant requirements. However, in late 2013, the Port Authority made changes to its accounting and procurement policies and procedures for FEMA-funded work. These changes should provide FEMA reasonable assurance that the Port Authority has the capability to account for and expend FEMA grant funds according to Federal requirements.

Therefore, if the Port Authority adheres to the accounting policies and procedures it established for FEMA-funded work, it should avoid misspending the \$213 million of Public Assistance requested for Hurricane Sandy damages.

FEMA Response

FEMA's written response is due within 90 days.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security
Washington, DC 20528

APR 14 2015

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: *The Port Authority of New York and New Jersey's
Recently Updated Policies, Procedures, and Business
Practices Should Be Adequate to Effectively Manage
FEMA Public Assistance Grant Funds*
Audit Report Number OIG-15-67-D

We audited the capability of the Port Authority of New York and New Jersey (Port Authority) to manage Public Assistance grant funds. We conducted this audit early in the Public Assistance process to identify areas where the Port Authority may need additional technical assistance or monitoring to ensure compliance. In addition, by undergoing an audit early in the grant cycle, grant recipients have the opportunity to correct noncompliance with Federal regulations before they spend the majority of their funding. It also allows them the opportunity to supplement deficient documentation or locate missing documentation before too much time elapses.

At the time of our audit, the New York State Division of Homeland Security and Emergency Services (New York) and the New Jersey Office of Emergency Management (New Jersey), as Federal Emergency Management Agency (FEMA) grantees, expected to award the Port Authority an estimated \$213 million in Public Assistance funding for damages resulting from Hurricane Sandy, which occurred on October 29, 2012.¹ The award provided 90 percent FEMA funding for debris removal, emergency protective measures, and permanent work.

¹ The \$213 million is subject to change either upward or downward as recovery work progresses.



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To assess the Port Authority's policies, procedures, and business practices, we reviewed costs from four FEMA-approved projects totaling \$1.1 million. At the time of our audit, the Port Authority had completed debris removal work, but had not completed all emergency protective measures work. It had also started some permanent work.

Background

The Port Authority is a bi-state agency created through a 1921 Compact between the States of New York and New Jersey and consented to by the Congress of the United States. The Port Authority provides transportation and facilities of trade and commerce within the Port District, comprising an area of about 1,500 square miles in both States, centering around New York Harbor. The Port Authority operates and maintains many important transportation and trade facilities, including the region's five major commercial airports; marine terminals in both States; Trans-Hudson rail transit system; two interstate tunnels and four interstate bridges; and the Port Authority Bus Terminal in Manhattan. The Port Authority also owns and manages the 16-acre World Trade Center site. Hurricane Sandy made landfall on October 29, 2012, resulting in significant damage to numerous Port Authority facilities (see figures 1 and 2).

Figure 1. Flooded Runway at LaGuardia Airport in New York



Source: Port Authority of New York and New Jersey



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Figure 2. Uplifted Barge at Red Hook Terminal in New York



Source: Port Authority of New York and New Jersey

Because the Port Authority operates in both New York and New Jersey, it requested and received Public Assistance grant funds from both states. For the purpose of FEMA grants, the Port Authority is a subgrantee and both states are responsible, as grantees, for ensuring that the Port Authority is aware of and follows Federal regulations.² In November 2012, we deployed Emergency Management Oversight Teams, one in New York and another in New Jersey, to assess FEMA's initial response to Hurricane Sandy.³ Both teams also assisted FEMA and the states by attending applicant briefings to proactively advise the states and their potential subgrantees on how to account for and expend Public Assistance funds, with a heavy emphasis on procurement requirements for Federal grants. On November 15, 2013, we advised FEMA, New York, New Jersey, and the Port Authority that we would begin an audit of the Port Authority.

² Federal regulations at 44 Code of Federal Regulations (CFR) 13.37(a)(2) require grantees to ensure that subgrantees are aware of requirements that Federal regulations impose on them. Further, 44 CFR 13.40(a), requires grantees to manage the day-to-day operations of subgrant activity and monitor subgrant activity to ensure compliance with applicable Federal requirements.

³ *FEMA's Initial Response in New Jersey to Hurricane Sandy*, OIG-13-117, September 2013; and *FEMA's Initial Response in New York to Hurricane Sandy*, OIG-13-124, September 2013.



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Results of Audit

The Port Authority's recently updated policies, procedures, and business practices should be adequate to account for and expend FEMA grant funds according to Federal regulations and FEMA guidelines. In November 2013, after we announced our audit, the Port Authority established policies and procedures to account for Hurricane Sandy costs on a project-by-project basis as Federal regulations require. At the time of our audit, the Port Authority was working on allocating Hurricane Sandy disaster costs to individual FEMA projects that it had recorded in a single account before implementing the accounting change.

In December 2013, the Port Authority drafted contracting guidelines that comply with Federal procurement requirements. However, before December 2013, the Port Authority's standard procurement policies allowed prohibited cost-plus-percentage-of-cost contracts and did not address contract provisions that Federal regulation requires. We reviewed two contracts the Port Authority awarded for disaster-related work in our audit scope and determined that it had generally complied with Federal procurement requirements.

Provided that the Port Authority complies with the changes it made to its accounting and procurement policies in late 2013, FEMA should have reasonable assurance that the Port Authority has the capability to adequately account for and expend Public Assistance funds in accordance with Federal regulations and FEMA guidance. However, because the Port Authority implemented new accounting and procurement policies, FEMA should direct New York and New Jersey, as grantees, to continuously monitor the Port Authority's subgrant activity to ensure the Port Authority adheres to the policies and procedures it established for FEMA-funded work. Implementing this recommendation should provide reasonable assurance that the Port Authority will avoid misspending the \$213 million of Public Assistance funding it requested for Hurricane Sandy damages.

Accounting for Project Costs

The Port Authority's November 2013 revisions to its accounting policies and procedures are adequate to account for disaster costs on a project-by-project basis and to support project costs as Federal regulations require. However, before November 2013, they were not adequate to meet Federal requirements. According to 44 Code of Federal Regulations (CFR) 206.205(b), a subgrantee must account for large project expenditures on a project-by-project basis. Further, 44 CFR 13.20(b)(2) and (6) require subgrantees to maintain accounting records that adequately identify the source and application of



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Federal funds and to maintain source documentation to support those accounting records.

Before Hurricane Sandy made landfall, the Port Authority's Comptroller's Department established a single accounting code for expected operating costs associated with the storm. However, the single accounting code did not account for Hurricane Sandy costs on a project-by-project basis as Federal regulations require. In late November 2013, the Port Authority established a process to assign unique accounting codes to disaster costs (emergency and permanent work) to separately account for project costs the Port Authority would incur after December 1, 2013. It also began collecting required cost documentation and reconciling and allocating \$99.2 million of disaster costs it had incurred through December 31, 2013, to individual FEMA projects. Port Authority officials told us that, as of August 11, 2014, the Port Authority had allocated \$78 million of the \$108 million of disaster costs incurred to date to individual FEMA project worksheets, and that they were working to complete the reconciliation.

We reviewed disaster costs totaling \$976,776, which included \$872,459 of contract costs, \$96,686 of force account costs (labor, equipment, and materials), and \$7,631 of direct administrative costs. We determined that the projects were eligible and that the Port Authority properly charged the costs to specific projects and maintained appropriate documentation to support the costs.

Procurement Practices

The Port Authority's December 2013 revisions to its procurement policies and procedures are adequate to ensure compliance with Federal procurement requirements. However, before December 2013, the Port Authority's standard procurement policies allowed prohibited cost-plus-percentage-of-cost contracts and did not address contract provisions that 44 CFR 13.36(i) requires.

Federal procurement regulations at 44 CFR 13.36(f)(4) prohibit cost-plus-percentage of cost contracts because they provide a disincentive for contractors to control costs—the more a contractor charges, the more profit the contractor makes. Although the Port Authority had not awarded any cost-plus-percentage of cost contracts for FEMA-funded work at the time of our audit, we noted that its standard procurement guidelines did allow this type of contracting method. Also, the Port Authority did not include all contract provisions that 44 CFR 13.36(i) requires for the two disaster contracts it awarded for permanent work totaling \$850,703 that we reviewed. Federal regulation 44 CFR 13.36(i) requires subgrantees to include specific provisions in their contracts, such as Equal Employment Opportunity compliance, compliance with labor laws, and



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prohibition of “kickbacks.” These contract provisions document the rights and responsibilities of the parties and minimize the risk of contract misinterpretations and disputes.

To remedy these contracting issues, the Port Authority drafted contracting guidelines in December 2013 that specifically prohibit its use of cost-plus-percentage of cost contracts for FEMA-funded projects. The guidelines also require that all contracts contain the provisions that 44 CFR 13.36(i) requires. Additionally, the Port Authority created a specific office in March 2013 to act as primary coordinator of grants related to Hurricane Sandy. Further, Port Authority officials told us that their procurement department will review all contracts before award to ensure that contracts fully comply with the requirements of 44 CFR 13.36(b) through (i).

We reviewed two contracts totaling \$850,703 that the Port Authority awarded for permanent work projects. We concluded that the Port Authority generally complied with applicable Federal procurement standards in awarding the contracts. The Port Authority used full and open competition to award the contracts; took affirmative steps to solicit small, minority, and women-owned firms; conducted cost/price analyses; maintained adequate records documenting procurement history; and monitored contractors to ensure they met contract terms, conditions, and specifications.

Insurance Coverage

We interviewed Port Authority officials and determined that they have a process in place to allocate the insurance proceeds among disaster damages covered under the FEMA grant and to individual projects. We determined the Port Authority knew its responsibility to disclose all insurance policies and proceeds from insurance relating to FEMA claims when submitting reimbursement requests to New York and New Jersey for disaster-related damages.⁴ We also determined the Port Authority officials knew of the regulatory requirement to obtain and maintain insurance on facilities where FEMA has provided assistance.⁵

⁴ Federal regulations at 44 CFR 206.250(c) require FEMA to deduct actual or anticipated insurance recoveries that apply to eligible costs from project awards.

⁵ Section 311 of the *Robert T. Stafford Disaster Relief and Emergency Act*, Public Law 93-288, 42 U.S.C §5154, as amended (*Stafford Act*), requires recipients of disaster assistance to obtain and maintain such types of insurance “as may be reasonably available, adequate, and necessary, to protect against future loss” to “any property to be replaced, restored, repaired, or constructed with such assistance.”



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Conclusion

At the time of the grant award, the Port Authority did not have adequate accounting and procurement policies and procedures in place to ensure compliance with FEMA grant requirements. However, the changes the Port Authority recently made to its accounting and procurement policies and procedures in late 2013 should provide FEMA reasonable assurance that the Port Authority has the capability to account for and expend Public Assistance funds in accordance with Federal regulations and FEMA guidance. Therefore, if the Port Authority adheres to the accounting policies and procedures it established for FEMA-funded work, it should avoid misspending the \$213 million of Public Assistance requested for Hurricane Sandy damages.

Recommendation

We recommend that the Regional Administrator, FEMA Region II, direct New York and New Jersey, as grantees, to continuously monitor the Port Authority's subgrant activity to ensure the Port Authority adheres to the policies and procedures it established for FEMA-funded work. Implementing this recommendation should ensure that the Port Authority will avoid misspending the \$213 million of Public Assistance funding it requested for Hurricane Sandy damages.

Discussion with Management and Audit Follow-up

We discussed the results of our audit with FEMA, New York, New Jersey, and Port Authority officials during our audit and included their comments in this report, as appropriate. We also provided a draft report in advance to these officials and discussed it at an exit conference held on December 16, 2014. FEMA, New York, New Jersey, and Port Authority officials generally agreed with our findings.

However, Port Authority officials said that the report implied that the Port Authority changed its accounting and procurement policies and procedures after the announcement of the audit. The Port Authority agreed that at the time of the grant award it did not have certain accounting and procurement policies and procedures in place to ensure compliance with FEMA grant requirements. Nonetheless, it did make enhancements during 2013 to its cost accounting policies and certain procurement policies and procedures for FEMA-funded work, but not directly as the result of the audit announcement.



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Major contributors to this report are David Kimble, Director; William Johnson, Audit Manager; Kristine Odiña, Auditor-in-Charge; and Richard Kotecki and Katherine McPherson, Auditors.

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



Appendix A

Objective, Scope and Methodology

We audited FEMA Public Assistance grant funds awarded to the Port Authority, Public Assistance Identification Number 000-U998K-00. Our audit objective was to determine whether the Port Authority's policies, procedures, and business practices are adequate to account for and expend FEMA grant funds according to Federal regulations and FEMA guidelines for FEMA Disaster Numbers 4085-DR-NY and 4086-DR-NJ.

At the time of our audit, New York and New Jersey, as FEMA grantees, expected to award the Port Authority an estimated \$213 million in Public Assistance funding for damages resulting from Hurricane Sandy, which occurred on October 29, 2012. The award provided 90 percent FEMA funding for debris removal, emergency protective measures, and permanent work. We reviewed costs from four FEMA-approved projects totaling \$1.1 million (see table 1). We selected these projects because they were the only projects that the Port Authority had prepared reimbursement requests for project costs when we began our field work. The audit covered the period from October 27, 2012, through August 11, 2014.

We conducted this performance audit between February and December 2014 pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objective. We conducted this audit by applying the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.

We interviewed FEMA, New York, New Jersey, and Port Authority officials; gained an understanding of the Port Authority's accounting methods for disaster-related costs and its procurement policies and procedures; judgmentally selected and reviewed (generally based on dollar amounts) project costs and procurement transactions for the four projects in our audit scope; reviewed applicable Federal regulations and FEMA guidelines; and performed other procedures necessary to accomplish our objective. As part of our standard auditing procedures, we also notified the Recovery Accountability and Transparency Board of contracts the Port Authority awarded under the grant as of February 2013 to determine whether the contractors were debarred or whether there were any indications of other issues related to those contractors



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that would indicate fraud, waste, or abuse. We received a report from the Recovery Accountability and Transparency Board on December 15, 2014, and determined that no further action was necessary. We did not perform a detailed assessment of the Port Authority's internal controls over its grant activities because it was not necessary to accomplish our audit objective.

Table 1. Projects Reviewed

Project Number	Grantee	Category of Work⁶	Award Amount
PA-02-NJ-4086-PW-03344	New Jersey	E – Public Buildings	\$ 358,140
PA-02-NJ-4086-PW-04870	New Jersey	B – Protective Measures	22,106
PA-02-NY-4085-PW-01630	New York	B – Protective Measures	98,608
PA-02-NY-4085-PW-01950	New York	F – Public Utilities	623,686
Totals			\$1,102,540

Source: FEMA Project Worksheets

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



Appendix B

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Appendix B (cont.)

External

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

Recovery Bureau Chief, New Jersey Office of Emergency Management

New York State Comptroller, Office of the State Comptroller

New Jersey State Auditor, Office of the State Auditor

Executive Director, Port Authority of New York and New Jersey

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