

# Department of Homeland Security **Office of Inspector General**

## **FEMA's Dissemination of Procurement Advice Early in Disaster Response Periods**





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Department of Homeland Security

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February 28, 2014

MEMORANDUM FOR: Joseph L. Nimmich  
Associate Administrator, Response and Recovery  
Federal Emergency Management Agency

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

SUBJECT: *FEMA's Dissemination of Procurement Advice  
Early in Disaster Response Periods*  
FEMA Disaster Number 4117-DR-OK  
Audit Report Number OIG-14-46-D

We are currently auditing FEMA's initial response to the Oklahoma tornadoes (FEMA Disaster Number 4117-DR-OK), which occurred May 18 through June 2, 2013. This memorandum advises you of two issues that require your immediate attention. First, FEMA should provide training to its employees to ensure they provide complete and accurate guidance on Federal procurement standards to potential applicants early in the disaster response period. Second, FEMA should correct the FEMA draft *Public Assistance Program Field Operations Pocket Guide, Appendix D: Kickoff Meeting Checklist* to more accurately and completely describe Federal procurement standards.

Our overall objective is to determine whether FEMA's response to Oklahoma's severe storms and tornadoes was effective and efficient, and to evaluate FEMA's actions, resources, and authorities according to Federal regulations and FEMA guidelines in effect at the time of our fieldwork. Our objective with this report is to determine whether FEMA accurately disseminated procurement information to potential applicants during the initial response phase of this disaster. We reviewed Federal regulations and FEMA guidelines related to procurement procedures; interviewed FEMA officials; attended programmatic meetings between FEMA and potential applicants; reviewed audit and field reports from various disasters; and performed other procedures considered necessary to accomplish our objective. We did not assess the adequacy of the agency's internal controls applicable to disseminating procurement advice because it was not necessary to accomplish our audit objective.

We are conducting this performance audit pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing



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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.

### BACKGROUND

From May 18 to 20, 2013, Oklahoma City, Oklahoma, and surrounding counties experienced severe storms and tornadoes, including an EF-5 tornado that struck the City of Moore on May 20, 2013.<sup>1</sup> The State of Oklahoma (State) reported 26 fatalities and more than 387 injuries as a result of these storms.<sup>2</sup> On May 20, 2013, the President declared a major disaster with an incident period beginning on May 18, 2013, and extending to June 2, 2013.

On May 28, 2013, the Office of Inspector General deployed an Emergency Management Oversight Team (EMOT) to the Joint Field Office in Oklahoma City, Oklahoma.<sup>3</sup> The EMOT serves as an independent unit for oversight of disaster response and recovery activities and provides FEMA an additional resource for proactive evaluation to prevent and detect systemic problems in disaster programs and helps ensure accountability over Federal funds.

### RESULTS OF AUDIT

During our deployment to the Oklahoma City Joint Field Office, we observed instances where FEMA personnel provided incomplete and, at times, inaccurate information to Public Assistance applicants regarding Federal procurement standards. Based on our audit reports and personal observations, similar instances have been occurring for several years. Thus, we were not surprised when we learned that FEMA officials did not

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<sup>1</sup>Based on the Enhanced Fujita Scale (EF Scale), an EF-5 tornado is the most severe with winds speeds in excess of 200 miles per hour. The EF-5 tornado remained on the ground for 40 minutes tearing a path 1.3 miles wide and 17 miles long and causing massive destruction in the cities of Newcastle and Moore, Oklahoma.

<sup>2</sup>On May 30–31, 2013, another series of severe storms moved across Central Oklahoma, creating eight tornadoes; one a 2.6 mile-wide EF-5, the widest ever recorded. Total fatalities rose to 48 with more than 508 reported injuries.

<sup>3</sup>FEMA establishes Joint Field Offices in or near the disaster-impacted area for use by Federal and State staff as the focal point of disaster recovery operations.



emphasize contracting compliance training at the Joint Field Office. Contracting violations significantly increase the risk that contracts for disaster work will result in ineligible and excessive costs and that open and fair competition will not occur. Therefore, FEMA should take immediate steps to ensure that its Joint Field Office personnel provide complete and accurate information on Federal procurement standards.

### **Need To Provide Contracting Guidance**

Early in the Public Assistance process, complete and accurate contracting guidance is crucial to ensuring Public Assistance applicants comply with Federal procurement regulations and FEMA guidelines. FEMA personnel provided applicants incomplete and inaccurate contracting information during applicant Kickoff Meetings by telling applicants they needed to follow State law or their own contracting procedures.<sup>4</sup> However, this is incomplete information because, for grant recipients other than States, this is true only if the contracting procedures happen to meet the specific Federal requirements. In our experience, local governments and private non-profit organizations typically do not use contracting procedures that mirror Federal requirements.

Federal Regulation 44 CFR 13.36(a) allows States, as grantees, to use their own procurement procedures. Other grantees and subgrantees may also use their own procurement procedures, but those procedures must conform to Federal law and standards stated in 44 CFR 13.36(b) through (i). If a subgrantee is an institution of higher education, hospital, or other non-profit organization, it must conform to 2 CFR 215.40 through 48.

### **FEMA Needs To Provide Accurate and Complete Contracting Guidance**

FEMA's draft *Public Assistance Program Field Operations Pocket Guide, September 2012*, contributed to the problem because its appendix includes this same incomplete contracting guidance (see exhibit). FEMA developed the draft pocket guide to help FEMA staff deliver the Public Assistance program consistently across all FEMA Regions.<sup>5</sup> The pocket guide includes Appendix D: Kickoff Meeting Checklist, which serves as a guide to Public Assistance crew leaders in preparing for kickoff meetings. The checklist,

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<sup>4</sup>A Kickoff Meeting is a FEMA-led meeting, scheduled within a week of FEMA's receipt of the applicant's Request for Public Assistance form, to discuss eligibility, documentation, and FEMA and State reporting requirements.

<sup>5</sup>FEMA headquarters provided on-site training at the Oklahoma City Joint Field Office where Public Assistance crew leaders received copies of the draft pocket guide.



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which states “contract[s] must be procured in accordance with State law or local procedures” is incomplete because it does not say that those State laws or local procedures must also conform to Federal law and standards (see Exhibit, Appendix D: Kickoff Meeting Checklist).

At each of the kickoff meetings we attended, we emphasized to applicants the need for contracts to comply with Federal procurement requirements to be eligible for Federal funding. In particular, we emphasized that Federal regulations require them to (1) bid their contracts competitively; (2) include specific provisions within their contracts; (3) take affirmative steps to include small-, minority-, and women-owned businesses; and (4) maintain documentation to support all their claimed costs, including those related to their procurement process. However, many applicants were not aware of these Federal procurement requirements or that noncompliance with the requirements could put their Federal grant funds at risk. This situation strongly indicates that applicants, even those that previously received Federal Public Assistance grant funds, may not have received complete or accurate information in the past.

We also observed an instance where FEMA’s disaster field employees provided inaccurate procurement information to an applicant. FEMA officials requested that we review an applicant contract that FEMA’s disaster field employees previously reviewed and found no contracting deficiencies.<sup>6</sup> However, the contract was not eligible for FEMA funding because it did not comply with Federal regulations or FEMA guidelines. Specifically, the contract did not include federally required contract provisions. FEMA’s disaster field employees should have identified all the contracting deficiencies and advised FEMA’s Public Assistance Program staff that the contract was ineligible for FEMA funding.

FEMA’s dissemination of inaccurate procurement information has been a recurring problem for several years. For example, during an informational meeting FEMA held in October 2005, a FEMA Public Assistance Coordinator distributed an instructional handout to Hurricane Katrina applicants on how they should conduct procurements. The handout inaccurately informed applicants that they should “contract for disaster recovery work as you normally contract for services” and “follow the same rules after the disaster as you did before the disaster.”

In February 2010, we reported that a Hurricane Katrina subgrantee did not comply with Federal contracting requirements for full and open competition. The subgrantee

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<sup>6</sup>We also reviewed a second contract for which we determined FEMA’s field employees had provided accurate procurement guidance.



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contended and we confirmed that FEMA's Public Assistance Coordinator approved the subgrantee's inappropriate procurement practice of soliciting bids from a list of pre-approved contractors.<sup>7</sup> In December 2010, we reported that a Hurricane Ike subgrantee did not provide full and open competition in four of its five unit-price and time-and-material contracts, nor did its contracts contain the required contract provisions or cost ceilings that Federal procurement standards require. Despite this, a FEMA Technical Assistance Contractor advised the subgrantee that its contracts were "deemed eligible, reasonable and reimbursable [by FEMA]."<sup>8</sup> Finally, in September 2011, we reported that FEMA's advice to a Hurricane Katrina subgrantee that "FEMA procurement policy requires three bids to obtain reasonable pricing" was not sufficient to comply with Federal procurement regulations.<sup>9</sup>

When we informed senior FEMA officials of these problems, they concurred with our finding stating that "complete and accurate contracting guidance is crucial to ensuring Public Assistance applicants comply with Federal procurement regulations and FEMA guidelines." They also said that "local governments and private non-profits need to understand that they are obliged to follow not only their own procurement requirements but also those of 44 CFR Part 13 and 2 CFR Part 215, respectively."

### **Recent Audits Identified Over \$200 Million in Improper Contracting**

In past audits, we questioned a significant amount of Public Assistance grant costs because of improper contracting. In fiscal years 2010 through 2012, we reported more than \$227 million in contract costs that were ineligible primarily because of improper contracting. To reduce the likelihood of similar occurrences, it is imperative that FEMA provides applicants with complete and accurate procurement guidance, especially during the initial response phase of disasters.<sup>10</sup>

Contracting practices that do not comply with Federal procurement regulations result in high-risk contracts that can cost taxpayers millions of dollars in excessive costs and that often do not provide full and open competition to all qualified bidders, including small

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<sup>7</sup>Department of Homeland Security, Office of Inspector General report DD-10-05, *Roman Catholic Archdiocese of New Orleans, Bidding Process*, issued February 5, 2010, in response to Hurricane Katrina.

<sup>8</sup>Department of Homeland Security, Office of Inspector General report DD-11-05, *Chambers County, Texas*, issued December 13, 2010, in response to Hurricane Ike.

<sup>9</sup>Department of Homeland Security, Office of Inspector General report DD-11-21, *FEMA Public Assistance Grant Funds Awarded to Jesuit High School, New Orleans, Louisiana*, issued September 26, 2011, in response to Hurricane Katrina.

<sup>10</sup>See Department of Homeland Security, Office of Inspector General's *Audit Tips for Managing Disaster-Related Project Costs, September 2012*, at [http://www.oig.dhs.gov/assets/Audit\\_Tips.pdf](http://www.oig.dhs.gov/assets/Audit_Tips.pdf).



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firms and women- and minority-owned businesses. In addition, full and open competition helps prevent favoritism, collusion, fraud, waste, and abuse.

### **FEMA and States Jointly Manage Disaster Assistance Programs**

As a FEMA grantee, the State is responsible for ensuring that subgrantees are aware of requirements imposed on them by Federal regulations (44 CFR 13.37(a)(2)). The State is also responsible for managing the day-to-day operations of grant and subgrant supported activities to ensure compliance with applicable Federal requirements and the achievement of performance goals (44 CFR 13.40(a)). Although the State is responsible for its applicants' compliance with Federal contracting regulations and guidelines, FEMA staff members also need to make sure they are not disseminating incomplete or inaccurate information to applicants. Accordingly, we recommend that FEMA take immediate steps to ensure that its personnel receive training on Federal procurement standards and correct deficiencies in its draft pocket guide.

### **RECOMMENDATIONS**

We recommend that FEMA's Associate Administrator, Response and Recovery:

**Recommendation #1:** Provide training to FEMA Joint Field Office Public Assistance and Office of the Chief Counsel staff on Federal procurement standards to ensure FEMA provides complete and accurate guidance to applicants consistent with 44 CFR 13.36 and 2 CFR 215.40 through 48.

**Recommendation #2:** Correct the FEMA draft *Public Assistance Program Field Operations Pocket Guide, Appendix D: Kickoff Meeting Checklist* to more accurately and completely describe the Federal contracting standards outlined in 44 CFR Part 13, 2 CFR Part 215, and FEMA guidelines.

### **DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP**

We discussed the issues we identify in this report with FEMA officials during our audit and provided them a draft report. We discussed our draft report with FEMA officials at an exit conference on November 21, 2013. FEMA officials generally agreed with our findings and recommendations. FEMA officials concurred with Recommendation #1, and stated that the Procurement and Fiscal Law Division of the Office of Chief Counsel will develop a training curriculum and video-record the training so that it is available within



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120 days from the date the final report is issued. FEMA officials also concurred with Recommendation #2, stating that the Recovery Directorate will complete an update to the *Public Assistance Program Field Operations Pocket Guide* in fiscal year 2014 to address the checklist found in Appendix D. Upon report issuance, we consider Recommendation #1 open and resolved with a target completion date of 120 days from the report issuance date, and Recommendation #2 open and resolved with a target completion date of September 30, 2014. Until FEMA confirms it has completed its corrective actions, we will consider these recommendations open and resolved.

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

Major contributors to this report are Christopher Dodd, Acting Director; Moises Dugan, Supervisory Program Analyst; David B. Fox, Auditor-in-Charge, Pat Epperly, Program Analyst; and Heather Hubbard, Auditor.

Please call me with any questions at (202) 254-4100, or your staff may contact Christopher Dodd, Acting Director, Central Regional Office, at (214) 436-5200.



Draft Public Assistance Program Field Operations Pocket Guide, September 2012  
Appendix D: Kickoff Meeting Checklist (Page 42)

APPENDIX D: KICKOFF MEETING CHECKLIST

**Small Business Administration** (continued)

- Include all SBA-related documentation with the PW

**For all Categories of Work contract as follows:**

**Contracts should have a clear relationship to the approved scope of work**

- Properly procured
- Costs incurred to fix disaster damage (*invoices, bid pricing, schedule of values*)

**Copy of the contract, procurement procedure**

- Time and materials only eligible for the first 70 hours of operations in most circumstances
- Contract must be procured in accordance with State law or local procedures

**Monitoring:** Load tickets and supporting documentation to quantify debris

**Types of contracts that are acceptable**

**Types of contracts that are not acceptable**

**Special Considerations**

**Insurance:** Request that the Applicant present all applicable insurance information as requested during the Exploratory Call to prevent duplication of benefits.

**Environmental and Historic Preservation**

- Work performed in undisturbed areas
- Work performed in or near waterways
- Potential endangered species in the area
- Removal of critical habitat



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