

**FEMA Should Recover \$1.2
Million of \$10.1 Million in
Grant Funds Awarded to
Tuscaloosa, Alabama, for a
2011 Disaster**





DHS OIG HIGHLIGHTS

FEMA Should Recover \$1.2 Million of \$10.1 Million in Grant Funds Awarded to Tuscaloosa, Alabama, for a 2011 Disaster

January 26, 2016

Why We Did This Audit

The City of Tuscaloosa, Alabama (City) received a \$40.4 million grant, of which insurance covered all but \$10.1 million. The Public Assistance grant was for damages from severe storms, tornadoes, straight-line winds, and flooding that occurred in April and May 2011. We audited \$4.2 million of the \$10.1 million net amount awarded.

What We Recommend

FEMA should disallow \$874,055 of ineligible contract costs and \$300,315 of duplicate benefits. FEMA should also direct Alabama to instruct the City to comply with Federal procurement standards.

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

The City did not always account for and expend Federal Emergency Management Agency (FEMA) funds according to Federal regulations and FEMA guidelines. First, the City did not comply with Federal procurement requirements when awarding a contract valued at \$874,055 for professional consulting services. Specifically, the City did not—

- provide adequate full and open competition,
- perform a cost or price analysis, or
- use proposed cost as a basis for selection.

Therefore, FEMA has no assurance that the City received the most reasonable contract price; and the lack of full and open competition increased the risk of favoritism, collusion, fraud, waste, and mismanagement of Federal funds.

In addition, for the projects we reviewed, the City did not advise FEMA or Alabama (FEMA's grantee) that it received \$300,315 more in insurance proceeds than initially anticipated. Therefore, FEMA should disallow the \$300,315 because FEMA cannot fund costs that insurance covers.

These issues occurred primarily because the grantee (Alabama) did not ensure that the City understood and complied with Federal procurement requirements and the process for applying actual insurance proceeds to reduce eligible costs.

FEMA Response

FEMA's written response is due within 90 days.



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Department of Homeland Security

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

January 26, 2016

MEMORANDUM FOR: Gracia Szczech
Regional Administrator, Region IV
Federal Emergency Management Agency



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

SUBJECT: *FEMA Should Recover \$1.2 Million of \$10.1 Million in Grant Funds Awarded to Tuscaloosa, Alabama, for a 2011 Disaster*
Audit Report Number OIG-16-24-D

We audited Federal Emergency Management Agency (FEMA) Public Assistance Program grant funds awarded to the City of Tuscaloosa, Alabama (City). The City received a Public Assistance award of \$40.4 million from the Alabama Emergency Management Agency (Alabama), a FEMA grantee, for damages from severe storms, tornadoes, straight-line winds, and flooding that occurred in April and May 2011. The award provided 90 percent FEMA funding. We reviewed eight projects totaling \$4.2 million (see appendix B, table 3), or about 10 percent of the total \$40.4 million gross award the City received. However, the City's net award was \$10.1 million after \$30.3 million in insurance reductions; therefore, our review of \$4.2 million represents about 42 percent of the City's \$10.1 million net award.

Table 1 shows the gross and net award amounts before and after reductions for insurance for all projects and for those in our audit scope.

Table 1: Gross and Net Award Amounts

	Gross Award Amount	Insurance Reductions	Net Award Amount
All Projects	\$40,444,071	\$(30,337,495)	\$10,106,576
Audit Scope	\$ 4,774,022	\$ (570,533)	\$ 4,203,489

Source: FEMA project worksheets and City records



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At the time of our audit, the City had not completed work on all projects and, therefore, had not submitted a final claim to Alabama for all project expenditures.

Background

The City of Tuscaloosa is located along the banks of the Black Warrior River in west-central Alabama. On April 27, 2011, a tornado tore a path more than 6 miles long and 1 mile wide through the City leaving an unprecedented path of destruction. The City suffered significant damages to infrastructure, residential neighborhoods, schools, businesses, and other public facilities. The EF-4 tornado damaged over 12 percent of the City's housing and generated about 751,875 cubic yards of debris.¹ On April 28, 2011, the President issued a major disaster declaration for certain areas of the State of Alabama for severe storms, tornadoes, straight-line winds, and flooding during the period of April 15, to May 31, 2011.

Results of Audit

The City did not always account for and expend FEMA funds according to Federal regulations and FEMA guidelines. First, the City did not comply with Federal procurement requirements when awarding a contract valued at \$874,055 for professional consulting services. Specifically, the City did not provide adequate full and open competition, perform a cost or price analysis, or use cost as a basis for selecting a contractor. As a result, FEMA has no assurance that the City received the most reasonable contract price; and the lack of full and open competition increased the risk of favoritism, collusion, fraud, waste, and mismanagement of Federal resources. Second, the City did not advise FEMA or Alabama of the actual amount of insurance proceeds it received for disaster damages. As a result, the City received ineligible duplicate benefits totaling \$300,315 because FEMA cannot fund costs that insurance covers. Therefore, FEMA should disallow \$1.2 million in ineligible costs.

These issues occurred primarily because the City misunderstood Federal procurement requirements and the process for applying insurance proceeds to reduce otherwise eligible costs. However, the grantee (Alabama) is responsible for ensuring that its subgrantee (the City) is aware of and complies with these requirements, as well as for providing technical assistance and monitoring

¹The Enhanced Fujita (EF) Scale is a measurement system for rating the intensity of tornadoes by type and severity after their impact. The EF Scale ranges from F0 (light) to F5 (incredible); an F4 has devastating winds ranging from 166 to 200 miles per hour.



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grant activities. Therefore, FEMA should also (1) direct Alabama to instruct the City to comply with Federal procurement regulations and FEMA guidelines when acquiring goods and services under the FEMA award and (2) emphasize to Alabama its grant management responsibilities for ensuring subgrantees follow Federal procurement regulations.

Finding A: Contracting Procedures

The City did not comply with Federal procurement requirements when awarding a contract valued at \$874,055 for professional consulting services. Specifically, the City did not provide adequate full and open competition; award the contract based on the contractor's qualifications, rather than cost; or perform a cost or price analysis for a professional consulting services contract supporting work under 66 projects. Therefore, we question \$874,055 as ineligible contract costs. Federal procurement regulations at 44 Code of Federal Regulations (CFR) 13.36 required the City, among other things, to—

1. conduct all procurement transactions in a manner providing full and open competition. Subgrantees may use noncompetitive procurement under certain circumstances, one of which is when the public exigency or emergency will not permit a delay resulting from competitive solicitation (44 CFR 13.36(c)(1) and 44 CFR 13.36(d)(4)(i)(B));
2. procure architectural and engineering (A/E) professional services using a method where competitors' qualifications rather than price is a selection factor, subject to negotiation of fair and reasonable compensation. However, a subgrantee cannot use this method to purchase other types of services from A/E firms (44 CFR 13.36(d)(3)(v));
3. maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price (44 CFR 13.36(b)(9)); and
4. perform a cost or price analysis in connection with every procurement action, including contract modifications, to determine the reasonableness of the proposed contract price. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost (44 CFR 13.36(f)(1)).



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FEMA may grant exceptions to Federal procurement requirements to subgrantees on a case-by-case basis (44 CFR 13.6(c)).

Full and Open Competition

The City did not provide adequate full and open competition when awarding a contract for professional consulting services valued at \$874,055. Full and open competition increases the probability of reasonable pricing from the most qualified contractors and helps discourage and prevent favoritism, collusion, fraud, waste, and mismanagement of Federal funds.

The City took all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor-surplus-area firms received opportunities to bid, when possible, as Federal regulations require. However, the City did not openly solicit competitive bids for professional consulting services, but instead advertised the work on its website. The City believed this gave all contractors who were interested in the work the opportunity to bid. In addition to advertising on its website, the City provided a Request for Proposals to six firms; however, the firm the City selected was not one of the six firms.

Basis for Contract Award

Although the work was not A/E type work, the City used a qualifications-based contracting method to select the firm from the proposals submitted. The City scored the firms using a point system based on the firms' responses to criteria in the Request for Proposals. However, the City could not explain the evaluation process used for scoring the responses to determine the best firm. Therefore, the selection process was not transparent to show whether price was a determining factor. City officials said that they did not obtain bids based on price because State guidelines do not require them to do so for professional services. However, Federal procurement standards prohibit using qualifications-based procurements, where price is not an evaluation factor, for non-A/E professional services such as consulting services; and require the City to maintain records sufficient to detail the significant history of procurement.

Regarding competition and basis of contract award, City officials disagreed with our findings. They contend that they met and exceeded the standards required to satisfy full and open competition and avoided all situations that restrict competition. The City also contends that it met the standards through the dual notice process of direct solicitation and advertisement on the City's website. In addition, the City contends the far-reaching media coverage of the widely known 2011 tornado placed contractors and consultants on constructive notice that the City would be issuing procurements for services related to recovery.



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According to the City, nine firms located all over the United States submitted proposals, and the firm it selected was an out-of-state firm, not directly solicited. The City believed it met and exceeded the standards required to satisfy full and open competition as evidenced by the number of proposals the City received from diverse geographical locations. Lastly, the City stated they used price as a determining factor in its evaluation and selection process. Therefore, the City contends its evaluation process met the requirements of 44 CFR 13.36.

We disagree with the City's reasoning. After our review of the solicitation and selection process, we concluded the City did not give the general public an opportunity to compete for the contract, and the City did not base its selection of the firm on price as it asserts. According to 44 CFR 13.36(d), the City should have publicly solicited bids and awarded a firm-fixed price contract to the lowest and best bidder with the selection based principally on price. Finally, when soliciting a firm for professional consulting services, the City based the initial scoring on each firm's experience and qualifications. Only after the City decided the firms it wanted to choose from did the City consider pricing in the form of hourly rates. However, the City's Request for Proposals did not require the bidders to submit a total contract amount and stated that the City would set a "not to exceed" amount in the contract. The City did not meet Federal requirements; therefore, our position remains unchanged.

Cost or Price Analysis

The City also did not perform an adequate cost or price analysis in awarding the professional consulting services contract. The absence of a cost or price analysis increases the likelihood of unreasonable contract costs and misinterpretations or errors in pricing. City officials believed they performed a cost or price analysis because one of the factors they considered in the proposal was the hourly rates of each firm. Although the City considered the hourly rates, it did not take into account other elements, such as hours to perform the work, which can also affect overall contract cost. The City selected the firm with the lowest hourly rates; however, the City may not have chosen the most economical approach or received the best price because the selected firm could have charged more hours versus a firm with higher hourly rates. Therefore, the cost comparison is inadequate and does not meet Federal procurement requirements. We were not able to evaluate the number of hours each firm proposed to complete the work because that data was not in the proposal packages.



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City officials disagreed with our finding and contend they performed an adequate cost or price analysis in awarding the professional consulting services contract. According to City officials, absent specific guidance in 44 CFR 13.36, the City is entitled to exercise discretion in the procurement process including the method of cost or price analysis. City officials stated that they used a master agreement and subsequent task orders, designed to eliminate unreasonable contract costs and provide the most economical approach. Further, the City believed evaluation based on the firms' hourly rates would always result in the best price because the City vetted and "locked in" the hourly rates firms submitted in their proposals by using the agreement. City officials stated that the cost or price analysis they used was the most economical approach and resulted in the best price.

We disagree with the City's assertion. Federal procurement standards at 44 CFR 13.36(f)(1) required the City, as a starting point, to make independent estimates for its professional consulting services contract before receiving bids or proposals. Further, the Request for Proposals did not require proposals to include the number of hours the firms expected to bill or the total amount of the contracts. Therefore, the City could not provide a true evaluation of the cost of the contract. Accordingly, our position remains unchanged.

Summary

Because of the City's procurement actions, FEMA had no assurance that the City received the most reasonable contract price, and the lack of adequate full and open competition increased the risk of favoritism, collusion, fraud, waste, and mismanagement of Federal resources. Therefore, we question the \$874,055 as ineligible procurement costs.

Finding B: Duplicate Benefits (Insurance Coverage)

Despite notifying Alabama and FEMA that it anticipated receiving almost \$33.8 million in insurance proceeds, the City did not advise FEMA or Alabama that it actually received \$300,315 more in insurance proceeds than initially anticipated. FEMA estimated damages for four projects in question at \$572,671 and reduced that amount by \$270,218 for the amounts the City informed Alabama and FEMA it anticipated receiving in insurance proceeds. However, the City subsequently received \$570,533 in actual insurance proceeds for those four projects. As a result, the City's claim included ineligible duplicate benefits totaling \$300,315.



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Section 312 of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act*, as amended, states that no entity will receive assistance for any loss for which it has received financial assistance from any other program, insurance, or any other source. Additionally, 44 CFR 206.250(c) requires FEMA to deduct actual and anticipated insurance recoveries from otherwise eligible costs.

Project worksheets for four of eight projects within our audit scope indicated that FEMA had applied anticipated insurance proceeds to reduce two of the projects by \$270,218 (Projects 1986 and 1936). Subsequently, from May 2011 through May 2013, the City received actual insurance proceeds totaling \$570,533 for the four projects. However, the City did not notify FEMA or Alabama that it had received more insurance proceeds than initially anticipated. Therefore, FEMA did not have the information it needed to reduce the amounts obligated for the projects. Federal appropriations laws require Federal agencies to record obligations in the accounting records, on a factual and consistent basis throughout the government.² That is, the agency must increase or decrease obligated funds when probable and measurable information becomes known. The over-recording and the under-recording of obligations are equally improper. Both practices make it impossible to determine the precise status of Federal appropriations.³

City officials believed that they were to report actual insurance proceeds at project closeout. However, documentation shows that Alabama consistently asked the City for actual insurance proceeds between March 2014 and April 2014, but the City did not provide the data. Because the City claimed costs that insurance covered, we question \$300,315 as ineligible duplicate benefits (see table 2).

City officials disagreed with our finding. They said FEMA informed them that it completes adjustments for actual insurance proceeds during project closeout, which was the appropriate time to provide that documentation. The City contends that it also informed Alabama of actual insurance proceeds and will continue to keep it informed of all insurance proceeds. The City will also recommend the changes necessary to all project worksheets in accordance with Federal regulations.

² U.S. Government Accountability Office, *Principles of Federal Appropriations Law*, Third Edition, Volume II, February 2006, chapter 7, section B: Criteria for Recording Obligations (31 U.S.C. § 1501).

³ *7 Government Accountability Office Policy and Procedures Manual* § 3.5.D; B-300480, April 9, 2003; and Statement of Federal Financial Accounting Standards Number 5, paragraphs 19, 24, 25, and 29.



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We disagree with the City’s comments. By May 2013, the City received \$30,637,810 (\$30,337,495 plus \$300,315) in actual insurance proceeds. While the City notified FEMA and Alabama of the \$30,337,495 in anticipated insurance, it failed to notify either entity when it actually received \$300,315 more than expected. Further, despite the City’s claim that it notified Alabama of its actual insurance proceeds, it could not provide documentation supporting that it informed Alabama of its actual insurance proceeds before our audit. Finally, according to FEMA, because of time and personnel constraints, it relies on grantees and subgrantees to request adjustments for actual insurance proceeds before closeout. Therefore, because of the lack of additional evidence, our position remains unchanged.

Table 2: Project Costs Covered by Insurance

Project Number	Project Size	Project Description	Gross Award Amount ⁴	Anticipated Insurance Proceeds	Actual Insurance Proceeds	Amount Questioned
1986	Large	Buildings 3,4,6,19 & 20 Waste Water Treatment	\$481,769	\$248,494	\$481,551	\$233,057
1226	Small	Emergency Protective Measures	42,065	0	42,065	42,065
1936	Small	Building 8 Roof Repair	27,128	21,724	25,208	3,484
2406	Small	Curry Building Relocation	21,709	0	21,709	21,709
Total			\$572,671	\$270,218	\$570,533	\$300,315

Source: FEMA project worksheets and City records

Finding C: Grant Management

Alabama did not fulfill its grantee responsibility to ensure the City followed applicable Federal procurement regulations. The nature and extent of ineligible costs we identified demonstrate that Alabama should have been more thorough in reviewing the City’s contracting methods. Federal regulations require grantees to (1) ensure that subgrantees are aware of Federal regulations, (2) manage the operations of subgrant activity, and (3) monitor subgrant activity to ensure compliance. Therefore, FEMA should direct Alabama to monitor the City’s subgrant activities and provide technical assistance to assist the City in improving its procurement policies and procedures for federally funded work.

⁴ The gross award amount represents FEMA’s initial estimate of eligible damages before the deduction of anticipated or actual insurance proceeds.



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FEMA and Alabama officials withheld comments pending receipt of our final report.

Recommendations

We recommend that the Regional Administrator, FEMA Region IV:

Recommendation 1: Disallow \$874,055 (Federal share \$786,650) of ineligible contract costs for professional consulting services that the City did not procure in accordance with Federal requirements, 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: Direct Alabama to instruct the City to comply with Federal procurement regulations and FEMA guidelines when awarding contracts for FEMA-funded work (finding A).

Recommendation 3: Disallow \$300,315 (Federal share \$270,283) of ineligible duplicate benefits for insurance recoveries that the City did not deduct from eligible project costs unless the City can provide sufficient evidence that insurance did not cover the eligible costs (finding B).

Recommendation 4: Direct Alabama to provide additional technical assistance and monitoring to the City to correct the deficiencies we identified in this report and to ensure compliance with grant requirements (finding C).

Discussion with Management and Audit Follow-Up

We discussed the results of our audit with the City, Alabama, 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 October 8, 2015. We included the officials' comments, as applicable, in the body of the report. City officials disagreed with all findings. Alabama and FEMA officials elected to withhold comments until after we issue our final 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 for responsible parties and any other supporting documentation necessary to inform us about



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the status of the recommendations. Please email a signed pdf copy of all responses and closeout request to Larry.Arnold@oig.dhs.gov. Until we receive and evaluate your response, we will consider the recommendations as open and unresolved.

The Office of Emergency Management Oversight major contributors to this report are David Kimble, Director; Larry Arnold, Director; Melissa Williams, Audit Manager; Alicia Lewis, Auditor-in-charge; and Emma Peyton, Auditor.

Please call me with any questions at (202) 254-4100, or your staff may contact Larry Arnold, Director, Gulf Coast Regional Office, at (228) 822-0387.



Appendix A

Objective, Scope, and Methodology

We audited FEMA Public Assistance Program grant funds awarded to the City (Public Assistance Identification Number 125-77256-00). Our audit objective was to determine whether the City accounted for and expended FEMA funds according to Federal regulations and FEMA guidelines for FEMA Disaster Number 1971-DR-AL. The City received a Public Assistance grant award of \$40.4 million (\$10.1 million net after reductions for insurance) from Alabama, a FEMA grantee, for damages resulting from severe storms, tornadoes, straight-line winds, and flooding, occurring in April and May 2011. The award provided 90 percent FEMA funding for debris removal activities; emergency protective measures; repairs/replacement of vehicles; and repairs to buildings and other facilities and consisted of 35 large projects and 31 small projects.⁵

We audited five large and three small projects totaling \$4.2 million (Federal share \$3.8 million, see table 3). Our audit covered the period April 28, 2011, to December 3, 2014, during which the City claimed \$4.2 million (Federal share \$3.8 million) in costs for the eight projects in our audit scope. For five of the eight projects, we performed a full audit review that included eligibility, procurement, and support; however, we found a duplication issue involving insurance that affected three additional projects. Therefore, we expanded our scope to include the three projects and only reviewed insurance related to those projects. At the time of our audit, the City had not completed work on all projects and, therefore, had not submitted a final claim to Alabama for all project expenditures.

To accomplish our objective, we interviewed FEMA, Alabama, and City officials; gained an understanding of the City's method of accounting for disaster-related costs and its procurement policies and procedures; judgmentally selected and reviewed (generally based on dollar values) 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 under the circumstances to accomplish our audit objective.

⁵ Federal regulations in effect at the time of Alabama tornadoes set the large project threshold at \$63,900.



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Appendix A (continued)

As part of standard audit procedures, we also notified the Recovery Accountability and Transparency Board of all contracts the City awarded under the projects within our audit scope 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. The Recovery Accountability and Transparency Board determined that none of the contractors was debarred and no other issues came to its attention related to those contractors that would indicate fraud, waste, or abuse. We did not perform a detailed assessment of the City's internal controls applicable to its grant activities because it was not necessary to accomplish our audit objective.

We conducted this performance audit between December 2014 and October 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 that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objective. Unless stated otherwise in this report, 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 3: Projects Audited and Questioned Costs

Project Number	Category of Work - Project Scope ⁶	Net Amount Awarded ⁷	Amount Claimed	Questioned Costs
Projects Included in Audit Scope:				
2245 Plus 65 Other Projects ⁸	B - Emergency Protective Measures (Police Department)	\$1,396,495	\$1,396,495	\$ 874,055
1986	E - Buildings 3,4,6,19 & 20/Waste Treatment Plant	233,275	233,275	233,057
2266	B - Private Structure Demolition	697,183	697,183	0
2264	B - Private Structure Demolition	953,666	953,666	0
2395	B - Tuscaloosa (Volunteer Reception Center)	853,692	853,692	0
Projects Included in Insurance Review Only:				
1226	B - Emergency Protective Measures	42,065	42,065	42,065
1936	E - Building 8 Roof Repair	5,404	27,128	3,484
2406	B - Curry Building Relocation	21,709	21,709	21,709
Totals		\$4,203,489	\$4,225,213	\$1,174,370

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

Table 4: Summary of Potential Monetary Benefits

Type of Potential Monetary Benefit	Amounts	Federal Share
Questioned Costs – Ineligible	\$1,174,370	\$1,056,933
Questioned Costs – Unsupported	0	0
Funds Put to Better Use	0	0
Totals	\$1,174,370	\$1,056,933

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).

⁷ These amounts are net of anticipated insurance proceeds that FEMA had deducted when we started this audit in December 2014. They do not reflect the \$300,315 of additional insurance proceeds we identified in finding B.

⁸ We did not audit all 66 projects. However, allocated among 66 projects, including Project 2245, is the \$874,055 of contract costs for professional consulting work that we questioned. We provided FEMA, Alabama, and the City a separate schedule of the 66 projects with questioned costs allocated by project.



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Appendix C

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