

FEMA Should Not Have Awarded Two Contracts to Bronze Star LLC





DHS OIG HIGHLIGHTS

FEMA Should Not Have Awarded Two Contracts to Bronze Star LLC

May 7, 2019

Why We Did This Audit

We received a request from seven U.S. Senators to examine FEMA's contracts awarded to Bronze Star LLC (Bronze Star) as part of its 2017 hurricane response and recovery efforts in Puerto Rico. We conducted this audit to determine whether FEMA followed procurement laws, regulations, and procedures when awarding contracts to Bronze Star.

What We Recommend

We made two recommendations to FEMA to address issues we noted during our audit. We removed a third recommendation, which upon further consideration we determined is not integral to addressing the findings in this report.

For Further Information:

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

What We Found

The Federal Emergency Management Agency (FEMA) did not follow all procurement laws, regulations, and procedures when it awarded more than \$30 million for two contracts to Bronze Star for tarps and plastic sheeting. In fact, FEMA:

- did not fully determine Bronze Star's or its supplier's compliance with the contracts' terms because it did not verify that Bronze Star could meet either contract's delivery schedule. It also did not perform steps necessary to determine whether Bronze Star's supplier could provide the necessary roof coverings within contractually specified timelines;
- performed inaccurate technical reviews of the Bronze Star proposals;
- used incorrect Federal Acquisition Regulation clauses and did not reissue the original solicitations because FEMA personnel believed that a 5-hour response window for the tarp modification was sufficient, and the plastic sheeting solicitation had already closed; and
- did not consult the Disaster Response Registry, as required, because it lacked guidance and procedures.

As a result of these management control weaknesses, FEMA inappropriately awarded two contracts to Bronze Star, which did not meet the requirements of either contract. This deficiency delayed delivery of crucial supplies, and impeded Puerto Rican residents' efforts to protect their homes and prevent further damage. Overall, FEMA wasted personnel resources, time, and taxpayer money by issuing, canceling, and reissuing contracts for tarps.

FEMA Response

FEMA non-concurred with both remaining recommendations, asserting that our recommendations should focus solely on specific issues related to the two Bronze Star contracts reviewed rather than broader FEMA procurement practices.




OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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

May 7, 2019

MEMORANDUM FOR: Peter T. Gaynor
Acting Administrator
Federal Emergency Management Agency

FROM: John V. Kelly 
Acting Inspector General

SUBJECT: *FEMA Should Not Have Awarded Two Contracts to Bronze Star LLC*

For your action is our final report, *FEMA Should Not Have Awarded Two Contracts to Bronze Star LLC*. We incorporated the formal comments provided by your office.

The report contains two recommendations aimed at improving the Federal Emergency Management Agency. We removed a third recommendation, which upon further consideration we determined is not integral to addressing the findings in this report. Your office non-concurred with both recommendations. Based on information provided in your response to the draft report, we consider recommendations 1 and 2 open and unresolved. As prescribed by the Department of Homeland Security Directive 077-01, *Follow-Up and Resolutions for the Office of Inspector General Report Recommendations*, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include contact information for responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until your response is received and evaluated, the recommendations will be considered open and unresolved.

Please send your response or closure request to OIGAuditsFollowup@oig.dhs.gov. We will post the final report on our website, including your formal comments as an appendix to the report.

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

Please call me with any questions, or your staff may contact Sondra McCauley, Assistant Inspector General for Audits, at (202) 981-6000.

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Background

Within 30 days in 2017, three unprecedented, catastrophic hurricanes devastated areas of the United States and its territories, causing significant destruction. On August 25, 2017, Hurricane Harvey made landfall in Texas as a Category 4 hurricane, causing disastrous flooding and widespread damage. Almost 2 weeks later, Hurricane Irma devastated parts of the Caribbean as a Category 5 hurricane before making landfall in Florida as a Category 4 hurricane. Then, on September 20, 2017, Hurricane Maria ravaged Puerto Rico as a Category 4 hurricane, leaving survivors without electricity or access to clean drinking water. According to the Federal Emergency Management Agency's (FEMA) *2017 Hurricane Season After-Action Report*, damages from these hurricanes total \$265 billion.

Hurricane Maria left many Puerto Rican residents with damaged or destroyed roofs. To help protect property from further damage, FEMA provided two options for temporary roof repairs. The first option was the U.S. Army Corps of Engineers' Operation Blue Roof program, in which contracted personnel installed plastic sheeting; and the second option was a FEMA-provided "self-help" tarp installed by the homeowner.



Figure 1: Relief Workers Distributing Supplies in Puerto Rico, October 2017

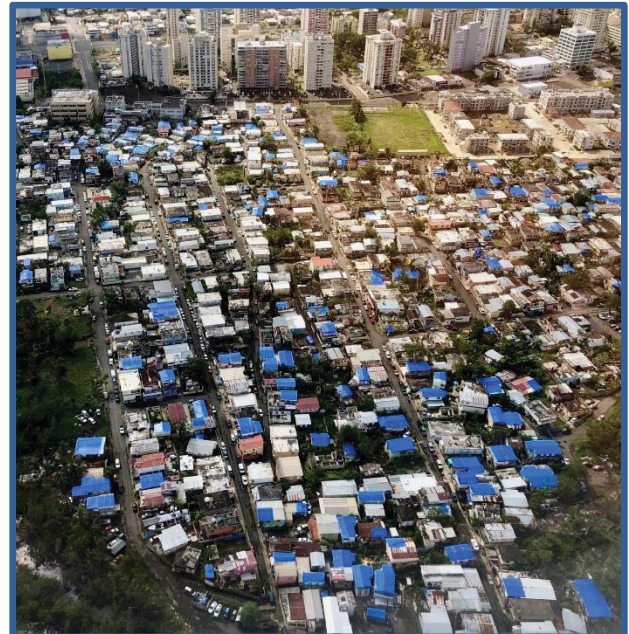


Figure 2: Blue Tarps Deployed in Puerto Rico, January 2018



Figure 3: Relief Workers Installing Tarp on Damaged Home, December 2017

Source: Photo 1 and 3 are from the Samaritan Purse website. Photo 2 is from the Lavida Baseball website.

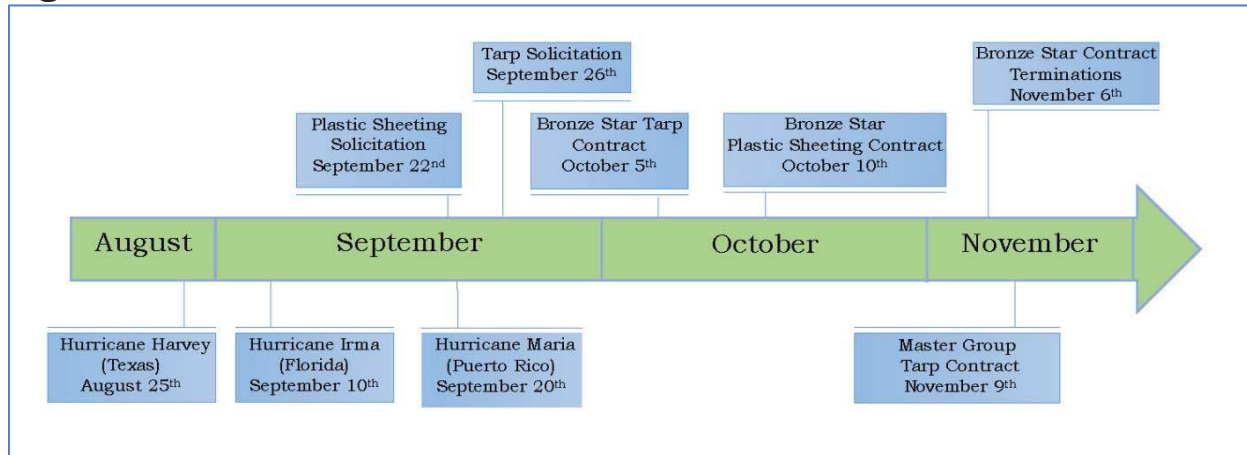


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On October 5, 2017, FEMA awarded Bronze Star LLC (Bronze Star), a Florida-based company, a \$21.2 million contract for 475,000 tarps. Five days later, FEMA awarded another contract to Bronze Star for \$9.2 million for 60,000 units of plastic sheeting. Then, on November 6, FEMA canceled both Bronze Star contracts due to non-delivery of the tarps and plastic sheeting. Following the Bronze Star cancellations, FEMA awarded a new \$30.8 million contract, on November 9, 2017, to another bidder from the original tarps solicitation — Master Group USA LLC (Master Group) — for 475,000 tarps. However, it did not reissue a plastic sheeting contract because there were no other qualified bidders in response to the original plastic sheeting solicitation. Instead, FEMA issued two additional plastic sheeting solicitations — beyond the scope of this audit — and subsequently awarded two additional plastic sheeting contracts to different contractors.

Figure 4: Bronze Star Contract Timeline – 2017



Source: Office of Inspector General (OIG) created

On December 5, 2017, we received a request from U.S. Senators Elizabeth Warren, Robert Menendez, Richard Blumenthal, Tammy Baldwin, Catherine Cortez Masto, Richard J. Durbin, and Bernard Sanders to review the circumstances surrounding the award of the Bronze Star contracts. After receiving this request, we conducted this audit to determine whether FEMA followed procurement laws, regulations, and procedures when awarding the tarp and plastic sheeting contracts to Bronze Star.

FEMA Did Not Fully Determine Bronze Star's or Its Supplier's Compliance with the Contracts' Terms

In response to the solicitations, FEMA reviewed submitted proposals and awarded two contracts to Bronze Star, but did not verify whether Bronze Star could meet the delivery schedule set forth in the contracts as the Federal



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Acquisition Regulation (FAR) requires.¹ Similarly, FEMA did not perform steps necessary to determine whether Bronze Star's supplier could provide the tarps and plastic sheeting within the contractually specified timelines. The FAR stipulates that contracts should only be awarded to "responsible prospective contractors" and no award should be made until the contracting officer affirmatively determines that responsibility.² The determination should be based on the contractor's ability to comply with the required delivery or performance schedule, as well as its ability to obtain required resources. Additional Federal regulations apply similar stipulations to the contractor's supplier — ensuring the supplier affirmatively demonstrates its responsibility and its capability of fulfilling the contractual terms and conditions.³

Even though FEMA relied on three Federal databases⁴ to aid in determining a contractor's capability, FEMA did not obtain verifiable information from Bronze Star to ensure it made arrangements with the supplier to deliver the tarps and plastic sheeting when the contracts were awarded. In addition to not following Federal guidelines or utilizing other available resources to verify capability, FEMA procurement personnel relied on Bronze Star to determine whether its supplier could provide the tarps and plastic sheeting, as the contract requires. Ultimately, Bronze Star could not fulfill the terms and conditions of the contracts and FEMA canceled both contracts. A total of 34 days passed before FEMA personnel awarded follow-on contracts for these critical supplies.

Ironically, during an acquisition immediately following cancellation of the Bronze Star contracts, FEMA required a potential contractor to provide verifiable information, such as three reference letters and two letters of a commitment from its suppliers prior to contract award. FEMA did not perform this level of due diligence during the acquisition of the Bronze Star contracts.

FEMA's Technical Evaluation of Proposals Was Inaccurate

In response to the solicitation for the plastic sheeting, FEMA's contracting officer did not ensure that procurement personnel accurately evaluated

¹ Detailed FAR citations used as criteria in this report are in appendix B.

² FAR 9.103(a)–(b). Under FAR 9.104-1(b), in order to be determined responsible, a prospective contractor must be able to comply with the required delivery or performance schedule. FAR 9.104-3(a) requires the contracting officer to obtain acceptable evidence of the prospective contractor's ability to obtain the contract's required resources.

³ FAR 9.103(c), 9.104-4(c), 15.305(a)(2)(iii)

⁴ These databases — the System for Awards Management, the Federal Awardee Performance and Integrity Information System, and the Past Performance Information Retrieval System — provide procurement personnel with relevant information about a company's contract history, such as past ability to meet the period of performance; record of accomplishments; infrastructure and business processes; and financial capabilities.



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submitted proposals against FEMA's specifications, as the FAR requires.⁵ As a result, two separate proposals from different contractors that did not meet the solicitation's requirements were incorrectly determined to be technically acceptable. These proposals were submitted by Oil Housing Management Services (Oil Housing) and Bronze Star. FEMA should have eliminated both of them from further consideration.

FEMA made two errors in determining that Bronze Star's and Oil Housing's bids for the plastic sheeting contract were technically acceptable. First, FEMA's solicitation required compliance with FAR 52.225-1, also known as the Buy American – Supplies clause, which requires the acquisition of only domestic end products for public use inside the United States. However, Bronze Star's plastic sheeting proposal stated it would purchase its product from "USA and other countries," making the bid noncompliant with the terms of the Buy American – Supplies clause. Second, FAR 15.305(a) prevents an agency from evaluating a bid against any criteria other than those included in the solicitation. Instead of evaluating the proposals for compliance with the Buy American – Supplies clause, FEMA evaluated them against terms set forth in FAR 52.225-5 — the Trade Agreements⁶ clause — which was not part of the solicitation. FEMA should have updated the solicitation to replace the Buy American – Supplies clause with the Trade Agreements clause and reissued the solicitation. Then, it would have properly evaluated the proposals against the terms of the solicitation.

Additionally, FEMA's plastic sheeting solicitation required that the awardee make full delivery of all 60,000 rolls of plastic sheeting within 30 days of the award date. However, the Oil Housing proposal specified a delivery date of 40 days from the date FEMA awarded the contract. Despite this, FEMA procurement personnel determined that this proposal met all of FEMA's technical requirements and recommended that it continue through the selection process. After receiving the evaluation results, the contracting officer did not review the results for accuracy. FEMA ultimately eliminated this proposal from consideration because the contractor failed to submit an amended proposal to reflect the change in the delivery location for the plastic sheeting. However, the contracting officer should have noticed the 10-day proposed delivery discrepancy much earlier.

Although expediting the contract award process is often necessary during major disaster responses, inaccurate technical evaluations could cause a

⁵ FAR 15.303(b)(4) requires that the contracting officer ensure that proposals are evaluated solely on the factors and subfactors contained in the solicitation.

⁶ As FAR 25.402(a)(1) explains, the *Trade Agreements Act* "provides the authority for the President to waive the *Buy American* statute and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States, or that meet certain other criteria, such as being a least developed country."



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qualified bidder to be eliminated mistakenly from further consideration. More importantly, inaccurate technical evaluations could contribute to a technically unqualified bidder receiving further consideration or inappropriately receiving a contract award. In this instance, FEMA awarded the contract for plastic sheeting to Bronze Star even though its proposal did not meet the solicitation's technical specifications. As a result, subsequent reviews and contract cancellations wasted valuable time and caused delays in the delivery of crucial recovery supplies.

FEMA Used Incorrect FAR Clauses in Original Solicitations

FEMA incorrectly included the Buy American – Supplies clause in both the tarps and plastic sheeting solicitations. FAR 25.1101(c)(1) generally requires contracts for supplies valued at \$191,000 or more to include the Trade Agreements clause. Although FEMA eventually amended the tarps solicitation to correctly include the Trade Agreements clause, it did not amend the plastic sheeting solicitation. This may have prevented potential contractors from submitting bid proposals for both solicitations, thereby reducing competition.

Instead of canceling the original tarp solicitation, FEMA significantly modified it to include the required Trade Agreements clause. FAR 15.206(e) requires the contracting officer to cancel an original solicitation and issue a new one if the modification affects potential contractors that did not submit a proposal but likely would have if they knew of the ensuing change. This clause provides an avenue for contractors to use resources produced outside of the United States. However, FEMA allowed only a 5-hour window for potential contractors to revise or submit their proposals before the solicitation closed, which may have limited the number of revised proposals submitted. FEMA procurement personnel believed 5 hours was a sufficient amount of time for potential contractors to submit amended proposals.

Although FEMA amended the solicitation for tarps to include the Trade Agreements clause, it did not amend the plastic sheeting solicitation, and the solicitation closed with this incorrect clause error. According to FAR 15.206(a), the contracting officer must amend the solicitation when the Government changes its requirements or terms and conditions, either before or after receipt of proposals. FAR 15.203(a)(2) requires, at a minimum, that proposal requests during a competitive acquisition describe anticipated terms and conditions that will apply to the contract. FEMA's contracting officer said the plastic sheeting solicitation had already closed when FEMA noticed the Buy American – Supplies clause error. However, FEMA opted to move forward and award the contract to Bronze Star instead of canceling and reissuing the solicitation. FEMA eventually added the Trade Agreements clause to the Bronze Star contract itself; however, by not amending and correcting the solicitation, it may



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have limited competition for the plastic sheeting contract because potential bidders were relying on inaccurate information.

FEMA Did Not Consult the Disaster Response Registry

To expedite the process that procurement personnel use to acquire supplies and services quickly after a major disaster, the System for Award Management maintains a Disaster Response Registry in accordance with the FAR. However, FEMA procurement personnel did not review the Disaster Response Registry to determine the availability of contractors for the tarp and plastic sheeting contracts during market research. This registry contains valuable contractor information, detailing their willingness to perform disaster response or emergency relief activities within the United States and its outlying areas.

FAR 4.1104 and FAR 26.205(a) require that contracting officers consult the Disaster Response Registry when contracting for disaster or emergency relief activities. Additionally, FAR 7.103(y) stipulates that the agency head or a designee must prescribe procedures for ensuring that contracting officers consult the Disaster Response Registry for disaster or emergency relief activities.

Procurement personnel said they did not know the registry or the requirement to use the registry existed. Instead of consulting the Disaster Response Registry, as required by the FAR, they used Google to search for contractors. As a result, FEMA potentially wasted invaluable time and resources because they overlooked the registry's readily available information on contractors.

Conclusion

FEMA, as the Federal awarding agency, holds the ultimate responsibility to prepare solicitations, review proposals, and award contracts after a disaster. Therefore, FEMA must be meticulous in its approach when developing solicitations, conducting technical reviews, and determining the award of contracts to qualified and responsive contractors and suppliers. FEMA awarded two contracts to Bronze Star, and Bronze Star could not meet the requirements of either contract. This delayed delivery of crucial supplies, and impeded Puerto Rican residents' efforts to protect their homes and prevent further damage. FEMA's errors within both solicitations may have prevented other potential qualified contractors from submitting bid proposals. FEMA also wasted personnel resources by issuing, canceling, and reissuing contracts for



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protective tarps. Through such actions, FEMA may have compromised its credibility with congressional oversight personnel and American taxpayers.

Recommendations

Recommendation 1: We recommend the FEMA Administrator include specific requirement(s) in all future solicitations for prospective contractors to provide verifiable information in their proposal packages. This information should be used to assess and support whether a contractor and supplier is responsible.

Recommendation 2: We recommend the FEMA Administrator develop or update current policies to:

- make certain that applicable Federal Acquisition Regulation clauses are included in each solicitation;
- aid the contracting officer in the decision-making process regarding solicitation changes and when a solicitation should be canceled and reissued;
- provide oversight to ensure the accuracy of all technical evaluations of bid proposals prior to contract award; and
- conduct market research using the Disaster Response Registry.

Management Comments and OIG Analysis

FEMA's Associate Administrator, Office of Policy and Program Analysis, provided written comments in response to a draft of this report. We have included a copy of FEMA management's response in its entirety in appendix A of this report.

An earlier version of this report contained three recommendations. Our third recommendation to the FEMA Administrator was to create or update current after-action report template(s) for major disasters to include procurement personnel actions, including the identification of any areas of success and areas for improvement. We removed this recommendation when, upon further consideration, we determined it is not integral to addressing the findings in this report, nor is action on this recommendation necessary to satisfy the intent of our other two recommendations.

In its management response, FEMA non-concurred with all three of our original report recommendations, maintaining that its existing processes already adequately ensure that all contract terms and conditions are clearly defined and implemented. Furthermore, FEMA stated that it only canceled four



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contracts during the 2017 hurricane season, which did not hinder FEMA's ability to achieve its mission.

First, we are surprised by FEMA's non-concurrence with our recommendations, given that FEMA, in its response, does not disagree with our report findings and plans to take other corrective actions to address the deficiencies we identified.

Second, we disagree with FEMA's assertion that its existing processes adequately ensure that all contract terms and conditions are clearly defined and implemented. Our report findings indicate otherwise. As we discuss in our report, despite existing Federal guidance, FEMA personnel:

- did not fully determine Bronze Star or supplier compliance with contract terms;
- did not adequately conduct technical reviews of proposals, granting approvals despite missing areas where prospective contractors did not meet key contract requirements;
- used the wrong FAR clauses in the original solicitations, failing to identify the errors until the solicitations were issued — in one instance, FEMA chose not to correct the FAR clause citations because the time period for the solicitation had closed; in a second instance, FEMA significantly modified the solicitation instead of canceling and reissuing the solicitation as required; and
- lacked awareness to consult the Disaster Response Registry to identify contractors that could potentially meet contract requirements.

In our view, such deficiencies are indicative of systemic problems that FEMA must address to uphold the integrity of its procurement process. This is especially critical during disaster response and recovery when personnel are working expeditiously to meet demands. It is imperative that FEMA personnel be aware of and fully understand existing guidance, and that controls be in place to ensure that they follow through.

It should be noted that the issues we found are not unique to the Bronze Star contracts. Multiple OIG reports, Government Accountability Office (GAO) reports, and internal DHS reviews detail instances in which FEMA did not follow Federal rules and regulations. Our recommendations in this report are intended to help ensure similar issues are not repeated in future disaster-related contracts.

Finally, even though FEMA maintains in its management response that it canceled only four contracts during the 2017 hurricane season, documentation provided by FEMA during our audit revealed that the agency canceled a total of 19 contracts related to Hurricane Maria alone. This high number of



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cancellations could potentially indicate systemic contracting deficiencies that FEMA needs to address.

Following is our analysis and response to FEMA's comments on each individual recommendation.

FEMA Response to Recommendation 1: FEMA non-concurred with this recommendation. In its response, FEMA states that the term "verifiable" is inconsistent with the requirements and terminology in the FAR. Furthermore, it maintains that it is not possible to "verify" or project with 100 percent certainty that contractors will be able to deliver as proposed and required by the contract. FEMA also maintains that contracting officers must consider the results of solicitation evaluations (including price, past performance, and any technical factors), as well as the results of the responsibility determination required by FAR 9.103(b), when concluding whether an offeror is ultimately eligible to receive an award.

However, FEMA also states in its response that it will request additional information, either through the evaluation process or when conducting the responsibility determination, to provide greater assurances of a company's potential capability to meet future contract requirements, particularly under urgent requirements and when significant subcontracting is involved. FEMA also states that it will ensure future solicitations for urgent requirements mandate that prospective contractors include sufficient information and/or supporting evidence to allow contracting officers to adequately assess whether the contractor or its supplier can comply with the required delivery schedules. FEMA plans to accomplish this by issuing reminders to Office of Chief Procurement Officer (OCPO) staff and continuing reviews at appropriate thresholds to ensure compliance. FEMA requested that OIG consider this recommendation resolved and closed as implemented.

OIG Analysis: Although FEMA non-concurred with our recommendation, FEMA's corrective actions during its assessment of Master Group's tarp proposal and other proposed actions in its response to our draft report denote concurrence with our findings and are steps in the right direction. Furthermore, during our audit, FEMA personnel indicated they realized that additional actions must be taken to ensure a potential supplier can meet contract demands. To help better ensure a successful contract, a FEMA contracting official stated that the agency would advocate for a more comprehensive responsibility determination for future disaster contracts, especially those that are of high dollar value or require large quantities of goods in an expedited timeframe.

Even though FEMA disagreed with our use of the term "verifiable," the intent of our recommendation is for FEMA to obtain additional information in future



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proposal packages. This will help FEMA determine whether a proposed contractor has the ability to meet the terms and requirements of the contract. Our recommendation is for FEMA to implement some type of standard, policy, or supplemental guidance for its personnel to follow. Both the FAR and the Department include policies for acquisition personnel to follow when issuing contracts; however, FEMA personnel did not fully adhere to the policies. This recommendation addressed the deficiencies that we identified; it is not prescriptive in nature. FEMA should determine what information to request during the solicitation process and continue to request information that it can verify before contract award.

This recommendation will remain open and unresolved until FEMA provides written guidance or procedures requiring prospective contractors to submit additional information to improve FEMA's assessments of whether future prospective contractors can meet the terms and conditions of the contract.

FEMA Response to Recommendation 2: FEMA non-concurred with this recommendation. FEMA stated that the FAR, Departmental policy, and FEMA's contracting procedures already address the aspects of the procurement process identified in this recommendation. Specifically, FEMA said that the FAR cites instances in which a clause(s) is applicable to a procurement and thus required for solicitations. The FAR also requires the agency to review the Disaster Response Registry when contracting for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities. FEMA provided information regarding requirements in the Department's *Homeland Security Acquisition Manual* (HSAM) for the contracting officer, one level above the contracting officer, and legal counsel to review procurement actions over \$500,000. Lastly, FEMA's *Quality Review Standard Operating Procedures* require the Quality Control and Policy Branch to review certain contract actions. According to FEMA officials, these reviews, in addition to peer and management reviews, ensure proposed contract actions are executed in accordance with applicable laws, regulations, and procedures.

Nonetheless, in its response FEMA also states that its OCPO will reinforce existing policies and guidance to ensure:

- (1) applicable FAR clauses are included in solicitations;
- (2) contracting officers understand when it is appropriate to amend, cancel, and reissue solicitations;
- (3) technical evaluations are accurately conducted; and
- (4) use of the Disaster Response Registry when conducting market research.

FEMA's response indicates that OCPO will continue its policy of post-award reviews to increase compliance and enhance knowledge of the acquisition threshold. OCPO will also continue to monitor Contracting Officer



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Representative certifications and training to increase the accuracy of technical evaluations. During OCPO's Disaster Webinar, OCPO will reiterate the contracting policies and procedures in place regarding technical evaluations, as well as the requirement to use the Disaster Response Registry when conducting market research. FEMA requested that OIG consider this recommendation resolved and closed as implemented.

OIG Analysis: Although FEMA non-concurred with this recommendation, its proposed actions denote concurrence and address the intent of our recommendation. As such, we do not understand the reason for FEMA's non-concurrence, which may only complicate the process for resolving and ultimately closing this recommendation at the senior-most levels within the Department.

This recommendation will remain open and unresolved until FEMA provides support that it has updated or issued guidance or procedures to address the elements in this recommendation.

Objective, Scope, and Methodology

The Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Pub. L. No. 107-296) by amendment to the *Inspector General Act of 1978*.

On December 5, 2017, U.S. Senators Elizabeth Warren, Robert Menendez, Richard Blumenthal, Tammy Baldwin, Catherine Cortez Masto, Richard J. Durbin, and Bernard Sanders requested that DHS OIG examine FEMA's decision to award Bronze Star LLC (Bronze Star) \$30 million in contracts for critical hurricane recovery efforts in Puerto Rico. The Senators requested that OIG determine how Bronze Star won the contracts, and whether FEMA followed all relevant procurement laws, regulations, and procedures when awarding the contracts.

Our audit objective was to determine whether FEMA followed procurement laws, regulations, and procedures when awarding contracts to Bronze Star. In order to answer our objective, we interviewed officials in FEMA's Office of Chief Procurement Officer, Office of Chief Counsel, and Office of Chief Financial Officer, as well as individuals directly responsible for the Bronze Star contract awards. We also obtained and reviewed previous DHS OIG and GAO reports, public laws, DHS directives, FEMA acquisition policies and procedures, contract documents, and contract payment records.

We conducted audit coordination efforts with DHS OIG Office of Inspections and Evaluations, Office of Enterprise Risk Identification and Management, Office of Integrity and Quality Oversight, and Office of Investigations. We also



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coordinated with GAO to understand current audit efforts related to FEMA's Hurricane Maria contracts.

We used the Federal Procurement Data System to identify contracts awarded by FEMA for Hurricane Maria supplies, and deobligations, which allowed us to confirm any contracts terminated by FEMA. However, we did not materially rely on the data from this system to support findings, conclusions, or recommendations in this report.

We assessed FEMA's control structure, policies, procedures, and practices applicable to acquisitions for disaster supplies. Our assessment would not necessarily disclose all material weaknesses in this control structure; however, it disclosed weaknesses in how FEMA applied laws, regulations, internal policies, and procedures governing acquisitions for disaster supplies. We discussed these weaknesses in the body of this report.

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


The Office of Audits major contributors to this report are Brooke Bebow, Director; LaParacina Williams, Audit Manager; Heather Hubbard, Auditor-In-Charge; Patricia Benson, Auditor-in-Charge; Carolyn Berry, Auditor; Edward Brann, Program Analyst; Darrel Francis, Program Analyst; Daniel Malone, Program Analyst; Michael McGee, Program Analyst; Matthew Taylor, Auditor; Curtis Watkins, Program Analyst; Kevin Dolloson, Communications Analyst; and Tai Cheung, Independent Reference Reviewer.



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Appendix A
FEMA Comments to the Draft Report

U.S. Department of Homeland Security
Washington, DC 20528

 **FEMA**

MAR 21 2019

MEMORANDUM FOR: John V. Kelly
Senior Official Performing the Duties of the
Inspector General

FROM: Joel Doolin 
Associate Administrator
Office of Policy and Program Analysis

SUBJECT: Management Response to OIG Draft Report: "FEMA Should
Not Have Awarded Two Contracts to Bronze Star, LLC"
(Project No. 18-034-AUD-FEMA)

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

Contracts fulfill a key role in disaster response and long-term community recovery. The Post Katrina Emergency Reform Act of 2006 (PKEMRA) required FEMA to establish advance contracts for commodities and services typically required during disaster response. These contracts facilitate rapid movement of resources and commodities to areas most in need by lessening the burden on ad hoc contract needs during disaster response.

Between fiscal year (FY) 2014 and FY 2017, all of FEMA's annual contract obligations averaged approximately \$1.3 billion. By comparison, between August 25, 2017 and November 30, 2017, FEMA obligated more than \$3 billion across 1,464 contract actions, solely for hurricanes Harvey, Irma, and Maria disaster operations. By the end of May 2018, this number increased to 2,872 contract actions with obligations totaling more than \$3.9 billion.

To protect the rights of the Government, FEMA creates contracts that clearly define the terms and conditions required for successful performance under the contract, particularly with respect to delivery schedule and quantities. During the 2017 Hurricane Season FEMA cancelled just four contracts, actions which did not hinder FEMA's ability to deliver its mission.



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Appendix A (cont.)

FEMA Comments to the Draft Report

At the start of the 2017 Hurricane Season, FEMA had advance contracts in place to supply tarps. Due to unforeseen demand created by an extraordinary series of three catastrophic hurricanes, FEMA conducted acquisitions for additional contracts to supply extra tarps. One of the additional contract awards was to Bronze Star, LLC. FEMA subsequently cancelled this contract due to Bronze Star's inability to perform. However, based on other contracts let during the 2017 Hurricane Season, combined with the existing advanced contracts, FEMA was nevertheless able to provide tarps where needed.

The draft report contained three recommendations with which FEMA non-concurs because OIG makes broad recommendations regarding policy and additional actions based on a review of just 2 contracts. FEMA and DHS believe that the recommendations should be focused on specific actions needed for the 2 contracts reviewed rather than broad recommendations directed at FEMA across the entire procurement system. This allows us to fix the basic cause for the conditions cited to prevent or significantly reduce the likelihood of the problems recurrence, not the development of additional policy. Attached find our detailed response to each recommendation. Technical comments were previously provided under separate cover.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Attachment



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Appendix A (cont.)
FEMA Comments to the Draft Report

**Attachment: Management Response to Recommendations
Contained in 18-034-AUD-FEMA**

The OIG recommended that the FEMA Administrator:

Recommendation 1: Include specific requirement(s) in all future solicitations for prospective contractors to provide verifiable information in their proposal packages. This information should be used to assess and support whether a contractor and supplier is responsible.

Response: Non-Concur. Specifically, having contractors provide “verifiable” information in their proposal packages is neither consistent with the requirements and terminology in the Federal Acquisition Regulation (FAR), nor in practice is it possible to “verify” or project with 100 percent certainty, that contractors will be able to deliver as proposed and as required by the contract. Rather, contracting officers must consider the results of solicitation evaluations (including price, past performance, and any technical factors), as well as the results of the responsibility determination required by FAR 9.103(b), when concluding that an offeror is ultimately eligible to receive an award. The FAR provides well-established requirements for evaluating offers, and separately, for making proper responsibility determinations.

FEMA will request additional information, either through the evaluation process or when conducting the responsibility determination to provide greater assurances of the company’s potential capability to meet future contract requirements, particularly under urgent requirements and when significant subcontracting is involved. FEMA’s Office of the Chief Procurement Officer (OCPO) will ensure solicitations for urgent requirements mandate prospective contractors include sufficient information and/or supporting evidence so contracting officers can adequately assess whether the prospective contractor and their major subcontractors/suppliers can comply with required delivery or performance schedules. This will include reminders to OCPO staff of responsibility determinations and continuing reviews at the appropriate thresholds to ensure compliance.

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

Recommendation 2: Develop or update current policies to:

- Make certain that applicable Federal Acquisition Regulation clauses are included in each solicitation;
- Aid the contracting officer in the decision-making process regarding solicitation changes and when a solicitation should be canceled and reissued;



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Appendix A (cont.) FEMA Comments to the Draft Report

- Provide oversight to ensure the accuracy of all technical evaluations of bid proposals prior to contract award; and
- Conduct market research using the Disaster Response Registry.

Response: Non-Concur. FAR, Departmental policy, and contracting activity acquisition procedures already address these aspects of the procurement process. Specifically:

- FAR documents the specific instances at which a clause(s) is applicable to a procurement and thus required to be included in a solicitation,
- FAR 4.1104 and 26.205 requires the Disaster Response Registry to be reviewed when contracting for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas; and,
- The Homeland Security Acquisition Manual (HSAM), as it relates to oversight, already requires procurement actions in excess of \$500K be reviewed by the contracting officer, a level above the contracting officer, and legal counsel. In addition to the HSAM requirements, FEMA's Quality Review Standard Operating Procedure requires certain contract actions be reviewed by the Quality Control and Policy Branch.

These reviews, in addition to peer and management reviews, ensure proposed contract actions are executed in accordance with applicable laws, regulations, and procedures.

OCPO will reinforce existing policies and guidance to ensure (1) that applicable FAR clauses are included in solicitations, (2) contracting officers understand when it is appropriate to amend, cancel and reissue solicitations, (3) technical evaluations are accurately conducted, and (4) the Disaster Response Registry is used when conducting market research. OCPO will continue their policy of post-award reviews to increase compliance and enhance knowledge of the acquisition threshold. Further, OCPO will continue to monitor Contracting Officer Representative certifications and training to increase the accuracy of technical evaluations. Also, during OCPO's Disaster Webinar, OCPO will reiterate the contracting policies and procedures in place regarding technical evaluations, as well as using the Disaster Response Registry when conducting market research.

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

Recommendation 3: Create or update current after-action report templates(s) for major disasters to include procurement personnel actions. The after-action report should identify any areas of success and areas for improvement.



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Appendix A (cont.) FEMA Comments to the Draft Report

Response: Non-Concur. The actions requested in this recommendation are already addressed under FEMA's Continuous Improvement Program (CIP). Under the CIP, staff are required to prepare after-action reports based on collected data. That data is then analyzed to identify trends and other observations to assist leadership in making actionable improvements. These after-action reports, including the report on the 2017 Hurricane Season (a copy of which was provided to the OIG under separate cover), include input from representatives from the contracting activity, and identify procurement personnel actions as well as areas for improvement or success as applicable. The CIP staff will continue to include procurement as part of any future after-action reports.

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



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Appendix B Federal Acquisition Regulation Criteria

1. **FAR 4.1104 Disaster Response Registry.** Contracting officers shall consult the Disaster Response Registry via <https://www.acquisition.gov> when contracting for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas. (See 26.205).
2. **FAR 7.103(y) Agency-head Responsibilities.** The agency head or a designee shall prescribe procedures for— (y) Ensuring that contracting officers consult the Disaster Response Registry via <https://www.acquisition.gov> as a part of acquisition planning for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas. (See 26.205).
3. **FAR 9.103 Policy.**
 - (a) Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only.
 - (b) No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility. In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility. If the prospective contractor is a small business concern, the contracting officer shall comply with subpart 19.6, Certificates of Competency and Determinations of Responsibility. (If Section 8(a) of the Small Business Act (15 U.S.C. 637) applies, see subpart 19.8).
 - (c) The award of a contract to a supplier based on lowest evaluated price alone can be false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs. While it is important that Government purchases be made at the lowest price, this does not require an award to a supplier solely because that supplier submits the lowest offer. A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors.
4. **FAR 9.104-1(b) General Standards.** To be determined responsible, a prospective contractor must— (b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
5. **FAR 9.104-3(a) Application of Standards – Ability to obtain resources.** Except to the extent that a prospective contractor has sufficient resources or proposes to perform the contract by subcontracting, the contracting officer shall require acceptable evidence of the prospective contractor's ability to obtain required resources (see



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- 9.104-1(a), (e), and (f)). Acceptable evidence normally consists of a commitment or explicit arrangement, that will be in existence at the time of contract award, to rent, purchase, or otherwise acquire the needed facilities, equipment, other resources, or personnel. Consideration of a prime contractor's compliance with limitations on subcontracting shall take into account the time period covered by the contract base period or quantities plus option periods or quantities, if such options are considered when evaluating offers for award.
6. **FAR 9.104-4(c) Subcontractor Responsibility.** When it is in the Government's interest to do so, the contracting officer may directly determine a prospective subcontractor's responsibility (*e.g.*, when the prospective contract involves medical supplies, urgent requirements, or substantial subcontracting). In this case, the same standards used to determine a prime contractor's responsibility shall be used by the Government to determine subcontractor responsibility.
 7. **FAR 15.203(a)(1) and (2) Requests for Proposals.** Requests for proposals (RFPs) are used in negotiated acquisitions to communicate Government requirements to prospective contractors and to solicit proposals. RFPs for competitive acquisitions shall, at a minimum, describe the— (1) Government's requirement; (2) Anticipated terms and conditions that will apply to the contract. The solicitation may authorize offerors to propose alternative terms and conditions. If the solicitation permits offerors to submit one or more additional proposals with alternative line items (see 52.204-22 or 52.212-1(e)), the evaluation approach should consider the potential impact of the alternative line items on other terms and conditions or the requirement (*e.g.*, place of performance or payment and funding requirements) (see 15.206).
 8. **FAR 15.206(a) Amending the Solicitation.** When, either before or after receipt of proposals, the Government changes its requirements or terms and conditions, the contracting officer shall amend the solicitation.
 9. **FAR 15.206(e) Amending the Solicitation.** If, in the judgment of the contracting officer, based on market research or otherwise, an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, so that additional sources likely would have submitted offers had the substance of the amendment been known to them, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.
 10. **FAR 15.303(b)(4) Responsibilities.** (b) The source selection authority shall— (4) Ensure that proposals are evaluated based solely on the factors and subfactors contained in the solicitation (10 U.S.C. 2305(b)(4)(C) and 41 U.S.C. 3703(c)).
 11. **FAR 15.305(a) Proposal Evaluation.** Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract successfully. An agency shall evaluate competitive



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proposals and then assess their relative qualities solely on the factors and subfactors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall be documented in the contract file.

12. **FAR 15.305(a)(2)(iii) Proposal Evaluation.** The evaluation should take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition.
13. **FAR 25.1101(c)(1) Acquisition of Supplies.** Insert the clause at 52.225-5, Trade Agreements, in solicitations and contracts valued at \$191,000 or more, if the acquisition is covered by the [World Trade Organization Government Procurement Agreement] (see subpart 25.4) and the agency has determined that the restrictions of the Buy American statute are not applicable to U.S.-made end products. If the agency has not made such a determination, the contracting officer must follow agency procedures.
14. **FAR 25.402 (a)(1) General.** The Trade Agreements Act (19 U.S.C. 2501, *et seq.*) provides the authority for the President to waive the Buy American statute and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States, or that meet certain other criteria, such as being a least developed country. The President has delegated this waiver authority to the U.S. Trade Representative. In acquisitions covered by the WTO GPA, Free Trade Agreements, or the Israeli Trade Act, the U.S. Trade Representative has waived the Buy American statute and other discriminatory provisions for eligible products. Offers of eligible products receive equal consideration with domestic offers.
15. **FAR 26.205 Disaster Response Registry.**
 - (a) Contracting officers shall consult the Disaster Response Registry via <https://www.acquisition.gov> to determine the availability of contractors for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas.
 - (b) A list of prospective vendors voluntarily participating in the Disaster Response Registry can be retrieved using the System for Award Management (SAM) search tool, which can be accessed via <https://www.acquisition.gov>. These vendors may be identified by selecting the criteria for “Disaster Response Contractors”. Contractors are required to register with SAM in order to gain access to the Disaster Response Registry.



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16. **FAR 52.225-1 *Buy American—Supplies***. As prescribed in 25.1101(a)(1), insert the following clause: Buy American—Supplies (May 2014).
17. **FAR 52.225-5 *Trade Agreements***. As prescribed in 25.1101(c)(1), insert the following clause: Trade Agreements (Oct 2016).



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Appendix C **Report Distribution**

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