

Kansas and the Unified School District #473 in Chapman, Kansas, Did Not Properly Administer \$50 Million of FEMA Grant Funds





DHS OIG HIGHLIGHTS

Kansas and the Unified School District #473 in Chapman, Kansas, Did Not Properly Administer \$50 Million of FEMA Grant Funds

June 24, 2015

Why We Did This

The Unified School District #473 in Chapman, Kansas, (Chapman) received an award of \$65.2 million in Federal Emergency Management Agency (FEMA) grant funds for damages from severe storms, tornadoes, and flooding that occurred May 22, through June 16, 2008.

What We Recommend

FEMA should remind Kansas of its grantee responsibilities and direct Kansas to inform Chapman that, for future disasters, it must fully comply with FEMA grant requirements or risk losing future FEMA funding. FEMA should also disallow the \$285,727 of ineligible duplicate costs.

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

After the devastating storms, Chapman did an outstanding job of reopening all schools by August 18, 2008. However, a year after the storms, Chapman began work to rebuild its schools, but did not follow Federal procurement standards in awarding contracts valued at \$50 million. As a result, FEMA has no assurance that contract costs were reasonable; full and open competition did not occur; and small and minority/women-owned firms did not receive opportunities to bid on Federal contracts.

We generally question costs based on noncompliance with Federal procurement standards when incurred after the danger passes and exigent conditions no longer exist. However, we are not in this case because FEMA determined the costs were reasonable and allowed them at project closeout using its authority under 44 Code of Federal Regulations (CFR) 13.6(c). FEMA's acceptance of the contracted costs does not alleviate Kansas' responsibility for oversight of Chapman's day-to-day subgrant operations as 44 CFR 13.40(a) requires. In addition to the procurement findings, we also determined that Chapman claimed \$285,727 in ineligible duplicate costs.

FEMA Response

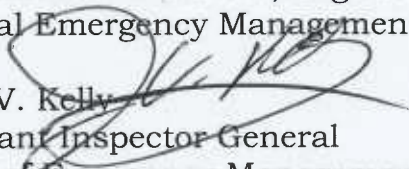
FEMA officials agreed with our findings and recommendations, and provided sufficient information to close recommendations 1 and 2, and resolve recommendation 3.



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

JUN 24 2015

MEMORANDUM FOR: Beth A. Freeman
Regional Administrator, Region VII
Federal Emergency Management Agency

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

SUBJECT: *Kansas and the Unified School District #473 in
Chapman, Kansas, Did Not Properly Administer
\$50 Million of FEMA Grant Funds*
Report Number OIG-15-109-D

We audited Federal Emergency Management Agency (FEMA) Public Assistance grant funds awarded to the Unified School District #473 in Chapman, Kansas (Chapman). Chapman received a \$65.2 million Public Assistance grant award from the Kansas Division of Emergency Management (Kansas), a FEMA grantee, for damages resulting from severe storms, tornados, and flooding that occurred May 22, through June 16, 2008. The award provided 75 percent FEMA funding primarily for temporary operations; repairs, demolition, and replacement of schools, buildings, and facilities; and replacement of fixtures, equipment, and contents. We audited nine projects totaling \$54.1 million, or 83 percent of the total award (see appendix A). At the time of our audit, FEMA had reviewed and closed all of Chapman's projects.

Background

The Chapman school district, located in northeast Kansas, serves students in a 550 square mile area in both Dickinson and Geary counties. At the time of the disaster, Chapman operated four elementary schools, a middle school and a high school.¹ Chapman had 982 students enrolled in pre-school through twelfth grade during the 2007-2008 school year. On June 11, 2008, a

¹One of the four elementary schools, the middle school, and the high school were located in Chapman, Kansas and were the target of a devastating tornado.



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devastating EF-3 tornado ravaged Chapman, Kansas, and severely damaged or destroyed one of the elementary schools, the middle school, the high school, the administrative office building, and several ancillary facilities (figure 1).

Figure 1: Chapman High School – Tornado Damage



Source: Chapman’s architectural and engineering firm.

Results of Audit

After the devastating tornado, Chapman did an outstanding job of reopening schools by August 18, 2008. However, a year after the storms when exigent circumstances no longer existed, Chapman did not follow Federal procurement standards in awarding contracts valued at \$50 million to rebuild its schools. As a result, FEMA has no assurance that contract costs were reasonable; full and open competition did not occur; and small and minority/women-owned firms did not receive opportunities to bid on Federal contracts.

We generally question costs based on noncompliance with Federal procurement standards when exigent circumstances no longer exist. However, we are not in this case because FEMA determined the costs were reasonable and closed the projects using its authority under 44 Code of Federal Regulations (CFR) 13.6(c). FEMA’s determination that the contracted costs were reasonable does not alleviate Kansas’ responsibility, as the grantee, to oversee the day-to-day



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operations of the subgrantee administering its grant, as 44 CFR 13.40(a) requires.

In addition to the procurement findings, we also determined that Chapman claimed \$285,727 in duplicate material and contract costs that were ineligible.

Finding A: Chapman Quickly Reopened Schools Under Exigent Circumstances

After the devastating tornado, Chapman did an outstanding job reopening the three schools by August 18, 2008. Chapman contracted with an architectural and engineering firm within days of the tornado and quickly hired construction contractors to assist with emergency response. As a result, Chapman was able to reopen its schools for the 2008-2009 school year in just 2 months. Chapman spent approximately \$3.4 million to reopen schools.

Chapman initially used a bank's conference room located on the undamaged side of town and eventually leased space at a doctor's office to conduct the district's business and enroll students for the 2008-2009 school year. Chapman quickly rebuilt its computer, phone, and information systems, all essential to restart operations.

To prepare for the new school year, Chapman installed 24 portable trailers located at 5 sites. These portable trailers served elementary, middle, and high school students. Chapman also rented and retrofitted a local church for elementary school students. In addition, Chapman was able to use less damaged areas of the high school and the gymnasium. Chapman used these areas as a cafeteria for high school and middle school students and for additional classroom space. Chapman also quickly repaired other necessary facilities such as the technology and industrial arts buildings.

We determined that exigent circumstances existed until Chapman reopened for the 2008-2009 school year on August 18, 2008. The exigent period is the time when immediate actions are required to protect life and property. We generally do not question costs based on noncompliance with Federal procurement standards regarding noncompetitive contracting when lives and property are at risk. However, once the danger passes, subgrantees should fully comply with Federal procurement standards.

Finding B: Improper Contracting

Chapman began permanent construction of the new schools a year after the disaster, but did not follow Federal procurement standards in awarding contracts valued at \$50 million. As a result, FEMA has no assurance that



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contract costs were reasonable; full and open competition did not occur; and small and minority/women-owned firms did not receive opportunities to bid on Federal contracts.

We generally question costs based on noncompliance with Federal procurement standards after the danger passes and exigent conditions no longer exist. However, in this case, we are not questioning the costs because FEMA determined the costs were reasonable and allowed them at project closeout using its authority under 44 CFR 13.6(c). This regulation allows Federal agencies to waive administrative requirements on a case-by-case basis.

Before the disaster, an elementary and the middle school were in one building. Chapman replaced and relocated the elementary school, and replaced and elevated the middle school in its original location. Chapman replaced the administrative office building and the high school except for the “L” section and gymnasium, which it repaired. Chapman also replaced or repaired the remaining ancillary facilities such as the art building and greenhouse. Of the \$50.2 million in contracts and small purchases we reviewed, Chapman did not follow Federal procurement standards for any of the 9 large contracts or for 8 of the 11 small purchases.²

Federal regulations at 44 CFR 13, in part, require that subgrantees—

1. perform procurement transactions in a manner to provide, to the maximum extent possible, full and open competition (44 CFR 13.36(c)(1) and (d)(4)(i));
2. take affirmative steps to use small and minority firms, women’s business enterprises, and labor surplus area firms when possible (44 CFR 13.36(e));
3. include required provisions in all of their contracts (44 CFR 13.36(i)); and
4. conduct a cost or price analysis in connection with every procurement action, including contract modifications (44 CFR 13.36(f)(1)).

As table 1 shows, Chapman incurred \$49.8 million of costs for work during the non-exigent period.³ In addition, of the 11 small purchases we reviewed totaling \$288,669, Chapman awarded 8 small purchases totaling \$239,208 without obtaining quotes from other sources as Federal regulations require.

² The \$50.2 million includes \$49,953,585 in contracts (see table 1) plus \$288,669 in small purchases.

³Chapman may have incurred a substantial amount of contract costs during the exigent period included in the \$11 million not in our audit scope (gross award amount for all projects totaling \$65 million less gross award amount for projects in our audit scope totaling \$54 million).



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Table 1: Contract Costs – Exigent vs. Non-Exigent Period

Contract Award Amount	Exigent Period Amount	Non-Exigent Period Amount	Contract Scope of Work
\$43,257,931	\$ 8,679	\$43,249,252	General contractor construction and management services for emergency response, new construction, and the repairs of three schools, an administrative office building, and ancillary buildings.
4,441,479	0	4,441,479	Architectural, engineering, and consulting services in support of the construction contract and for the procurement and installation of furniture and equipment.
715,802	0	715,802	Nicholson Road improvement including excavation, clearing, asphalt pavement, and concrete sidewalks from 7 th Street to Irish Drive for the elementary school.
511,455	0	511,455	Preliminary grading and utility plans for the elementary school.
311,838	0	311,838	Booster pump station and telemetry system for water supply for the new elementary school.
304,756	0	304,756	Site preparation including demolition, clearing, excavation, and concrete pavement for the middle school.
127,043	0	127,043	Site development for the elementary, middle, and high schools.
122,798	0	122,798	Engineering services supporting Nicholson Road improvements from 7 th Street to Irish Drive for the elementary school.
160,483	128,542	31,941	Architectural and engineering services in support of the emergency response.
\$49,953,585	\$137,221	\$49,816,364	Totals

Source: FEMA Project Worksheets and Office of Inspector General (OIG) Analysis

Non-Competitive Contracts and Small and Minority Firms, Women’s Business Enterprises, and Labor Surplus Area Firms

Chapman awarded nine contracts totaling \$50 million without full and open competition. Generally, full and open competition requires that Chapman allow all responsible sources to compete for contracts. Chapman did not advertise or otherwise publicize the contracts, but rather invited a limited number of preselected general contractors to bid on the work and selected an architectural and engineering firm and other contractors it had worked with before. In addition, Chapman did not take affirmative steps to ensure the use of small and minority firms, women’s business enterprises, and labor surplus area firms for any of these contracts.

In July 2008, Chapman awarded a construction contract to one of three preselected contractors invited to bid on emergency work by Chapman’s architectural and engineering firm. The scope of work in the invitation to bid addressed only the emergency response. The contractor billed with time-and-materials rates, but the contract did not include a set amount or even a ceiling



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(maximum) amount. The contractor billed \$8,679 for work it performed by August 18, 2008, when Chapman reopened its schools. In December 2008, without any further competition, Chapman amended the original contract to expand the scope of work to new construction, but the contract still did not include a set amount or maximum price. In a second amendment, dated August 10, 2009, Chapman set a guaranteed maximum price of \$42,777,919. The third amendment, dated June 11, 2011, added construction of another building and repairs or improvements to two other buildings to the scope and raised the guaranteed maximum price by \$1,852,935. Finally, the fourth amendment, dated February 20, 2012, added site improvements for the high school and additional parking for the elementary school to the scope of work and raised the guaranteed maximum price again by an additional \$595,966, making the final guaranteed maximum price total \$45,226,820. In total, the contractor billed Chapman \$43,257,931.

Chapman limited competition by preselecting contractors to bid, rather than advertising or otherwise publicizing its procurement to other potential qualified bidders. Full and open competition increases the probability of achieving reasonable pricing from the most qualified contractors and allows greater opportunity for small and minority firms, women's business enterprises, and labor surplus area firms to compete for federally funded work. Full and open competition also helps to discourage and prevent favoritism, collusion, fraud, waste, and abuse.

We considered exigent circumstances to exist until August 18, 2008, the first day of the new school year. However, the contractor continued to bill for emergency-related work after August 18, 2008. Chapman also signed four amendments to the original construction contract to allow the same contractor to build the new school buildings (non-exigent work) instead of openly publicizing and allowing competition for this work. Chapman signed the first amendment on December 8, 2008; nearly 4 months after the school reopened and signed the last amendment on February 20, 2012, nearly 4 years after the disaster. We recognize that during exigent circumstances Chapman would not have had time to develop clear scopes of work and solicit competitive bids; however once school resumed, Chapman had time to procure contracts competitively.

Additionally, Chapman awarded two noncompetitive contracts to its architectural and engineering firm to provide design and consulting services for \$4,441,479 for permanent work and \$160,483 for emergency-related consulting services. Rather than allowing open competition for these two contracts, Chapman awarded them to the architectural and engineering firm that it had worked with before. According to the architectural and engineering firm's representative, Chapman selected his firm in 1990 through a



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qualification-based selection process—nearly two decades before the disaster. However, neither the architectural and engineering representative nor Chapman could provide documentation to substantiate this assertion. Additionally, the architectural and engineering firm billed for emergency-related services for work done after August 18, 2008, (the last date of the exigent period) when Chapman should have procured contracts using full and open competition.

Further, Chapman awarded six additional contracts for non-exigent work totaling \$2,093,692 without full and open competition. All of these contract costs were for construction-related work that occurred more than a year after the disaster, when Chapman had ample time to procure contracts competitively.

Federal regulations at 44 CFR 13.36(e) also require subgrantees to take affirmative steps to ensure the use of small and minority firms, women's business enterprises, and labor surplus area firms when possible. These steps include using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce to solicit and use these firms.

Chapman's architectural and engineering representative said that they were unaware that they needed to comply with Federal procurement standards and that the only contracting guidance they received was FEMA's Public Assistance Applicant Handbook (FEMA 323). He also said that his firm obtained approval from the Kansas Board of Education to solicit competitive proposals from three preselected contractors for the construction contract. Chapman officials we interviewed said they were not Chapman employees when Chapman procured these contracts and therefore did not know what guidance FEMA or Kansas provided to Chapman's former Superintendent.

Small Purchases

Chapman did not obtain multiple rate or price quotes from qualified sources for 8 small purchases of services totaling \$239,208. Federal regulations at 44 CFR 13.36(d)(1) require subgrantees to obtain price or rate quotations from an adequate number of qualified sources. Chapman obtained quotes only from the vendors it had already selected to perform the contracted work, although it had time to obtain additional quotes. The majority of these selected contractors performed the work nearly a year or more after the disaster. Chapman officials said they did not know about this requirement or why previous officials did not obtain the price or rate quotes.



Other Contracting Violations

For all of the nine contracts totaling \$50 million and for eight small purchases totaling \$239,208, Chapman also did not (1) include each required contract provision or (2) perform a cost or price analyses in connection with the procurement actions. The required contract provisions document the rights and responsibilities of the parties involved and minimize the risk of misinterpretations and disputes. The absence of a cost or price analysis increases the likelihood of unreasonable contract costs and misinterpretations or errors in pricing relative to scopes of work.

Grant Management Issues

Although grantees and subgrantees are responsible for complying with Federal procurement standards, the procurement issues we address in this report occurred, in part, because Kansas, as the grantee, did not adequately monitor Chapman's activities to ensure compliance with these standards. Federal regulations at 44 CFR 13.40(a) require grantees to manage the day-to-day operations of subgrant supported activities and to monitor subgrant supported activities to ensure compliance with applicable Federal requirements. Additionally, 44 CFR 13.37(a)(2), states that the grantee is required to ensure that subgrantees are aware of, and comply with, Federal requirements.

Kansas officials told us that they briefed Chapman officials on contracting rules during the Applicant Briefing and Kick-Off Meeting conducted by Kansas and FEMA, respectively, and that FEMA's 323 handbook clearly describes Federal procurement requirements. Kansas officials also said that FEMA was in-charge of disaster operations at the time Chapman awarded the majority of its contracts and that Kansas relied on FEMA to provide regulatory guidance to Chapman. Kansas officials also told us that competition for the construction contract was not necessarily limited because Chapman's architectural and engineering representative prequalified the only three local firms capable of doing the work and that there is no evidence that publicizing the work would have produced additional competing firms. This reasoning, even if sound, does not relieve Chapman of its responsibility to conduct full and open competitions and does not relieve Kansas of its grantee responsibilities to oversee its subgrantees. Therefore, Kansas should have more closely monitored Chapman to ensure Chapman complied with Federal procurement standards.



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Contracting Summary

Under these circumstances, our usual practice would be to question \$49.8 million of the \$50 million in contract costs plus \$239,208 in small purchases because Chapman did not comply with Federal procurement requirements and because Chapman incurred these costs after exigent conditions had passed. In fact, 44 CFR 13.43(a) lists five actions that Federal agencies can take to enforce compliance with administrative requirements. However, FEMA chose none of these options, one of which is to disallow all or part of the noncompliant costs. Instead, FEMA waived the administrative requirements that Federal regulations imposed on Chapman.

In a letter dated April 10, 2013, to the state of Kansas, FEMA closed Chapman's claim stating that the documentation provided meets the requirements of 44 CFR 206.205 concerning the payments of all projects. FEMA reviewed the eligibility of the \$50 million in contract costs and \$239,208 in small purchases and allowed the costs based on its determination that the costs were fair and reasonable for the work performed. While we believe FEMA had better options, we defer to FEMA's decision to allow the costs because 44 CFR 13.6(c) allows FEMA to grant exceptions to Federal grant administrative requirements.

Therefore, we are not questioning any costs related to this finding. However, FEMA should at minimum (1) remind Kansas of its grantee responsibilities to ensure that subgrantees are aware of Federal regulations and to monitor subgrant activities to ensure compliance, and (2) direct Kansas to inform Chapman that it must comply with Federal procurement requirements and that noncompliance with such requirements in the future would place FEMA reimbursements at risk.

Finding C: Duplicate Costs

Chapman officials included \$285,727 of duplicate material and contract costs in their claim under various projects. Chapman mistakenly claimed invoice costs or portions of invoice costs twice in the same payment request or under two different payment requests, often under two different projects. Section 312(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act prohibits the duplication of benefits from any source; therefore, we question \$285,727 as ineligible duplicate costs.



Recommendations

We recommend that the Regional Administrator, FEMA Region VII:

Recommendation 1: Remind Kansas of its grantee responsibilities to ensure that subgrantees are aware of Federal regulations and to monitor subgrant activities to ensure compliance (finding B).

Recommendation 2: Direct Kansas to inform Chapman that it must fully comply with Federal grant administrative requirements for procurement and that noncompliance with such requirements in the future will place FEMA reimbursements at risk (finding B).

Recommendation 3: Disallow \$285,727 (\$214,295 Federal share) of ineligible duplicate material and contract costs (finding C).

Discussion with Management and Audit Follow-up

We discussed these findings with Chapman officials during our audit and included their comments in this report as appropriate. We also provided a draft report in advance to FEMA, Kansas, and Chapman officials and discussed it at exit conferences on April 30, 2015, May 27, 2015, and May 26, 2015, respectively. FEMA and Kansas agreed with our findings and recommendations. Chapman generally agreed with our findings and recommendations but withheld comment on recommendation 1.

FEMA has taken action and has provided sufficient information to resolve and close recommendations 1 and 2 and to resolve recommendation 3. FEMA said that they will provide us with documentation that shows Kansas repaid the funds. Once this occurs, we will consider all recommendations resolved and closed.

The Office of Emergency Management Oversight major contributors to this report are Christopher Dodd, Director; Trudi Powell, Audit Manager; DeAnna Fox, Auditor-in-Charge; Pat Epperly, Auditor; and Heather Hubbard, Auditor.

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



Appendix A

Objective, Scope, and Methodology

We audited FEMA Public Assistance grant funds awarded to the Unified School District #473 in Chapman, Kansas, Public Assistance Identification Number 041-U558L-00. Our audit objective was to determine whether Chapman accounted for and expended FEMA grant funds according to Federal regulations and FEMA guidelines for FEMA Disaster Number 1776-DR-KS. Kansas awarded Chapman \$65.2 million for 28 large projects and 35 small projects.⁴ We audited nine projects (seven large and two small) totaling \$54.1 million, or about 83 percent of the total award. The audit covered the period of May 22, 2008, through November 13, 2013, during which Chapman was awarded \$54.1 million in FEMA funds for the nine projects we reviewed. Table 2 lists the gross and net award amounts before and after reductions for insurance for all projects and for those in our audit scope. Table 3 describes the nine projects we audited and the amounts we questioned under each project.

Table 2: Gross and Net Award Amounts

	Gross Award Amount	Insurance Reductions	Net Award Amount
All 63 Projects	\$65,225,371	(\$20,312,092)	\$44,913,279
Audit Scope	\$54,145,313	(\$18,123,911)	\$36,021,402

Source: FEMA Project Worksheets

⁴ Federal regulations in effect at the time of the disaster set the large project threshold at \$60,900.



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Appendix A (Continued)

Table 3: Projects Audited, Award Amounts, and Costs Questioned

Project Number/ Category	Gross Award	Less Insurance Proceeds	Net Award Amount	Finding C	Total Questioned Costs
473/ E	\$ 18,861,117	\$ 9,219,865	\$ 9,641,252	\$ 0	\$ 0
475/ E	15,314,332	3,111,467	12,202,865	27,098	27,098
489/ E	16,376,937	5,792,579	10,584,358	20,018	20,018
869/ E	1,742,721	0	1,742,721	152,061	152,061
868/ E	1,025,163	0	1,025,163	33,352	33,352
867/ E	711,077	0	711,077	0	0
862/ E	91,222	0	91,222	48,878	48,878
532/ E	18,424	0	18,424	0	0
298/ E	4,320	0	4,320	4,320	4,320
Totals	\$54,145,313	\$18,123,911	\$36,021,402	\$285,727	\$285,727

Source: FEMA Project Worksheets and OIG Analysis

We conducted the majority of on-site audit work at Chapman’s offices in Chapman, Kansas. We interviewed FEMA, Kansas, and Chapman officials; gained an understanding of Chapman’s method of accounting for disaster-related costs and its procurement policies and procedures; judgmentally selected and performed a limited review (generally based on dollar amounts) of project costs and procurement transactions for the projects included in our scope; reviewed applicable Federal regulations and FEMA guidelines; and performed other procedures considered necessary under the circumstances to accomplish our audit objective.

As part of our standard audit procedures, we also notified the Recovery Accountability and Transparency Board of contracts that Chapman 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 them that would indicate fraud, waste, or abuse.⁵

⁵ We notified the Recovery Accountability and Transparency Board of contracts in our audit scope greater than \$1,000; however, we did not notify the board of contracts with public utilities.



Appendix A (continued)

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 Chapman's internal controls applicable to its grant activities because it was not necessary to accomplish our audit objective. However, we did gain an understanding of the District's method of accounting for disaster-related costs and its procurement policies and procedures.

We conducted this performance audit between November 2013 and April 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. We conducted this audit by applying the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.



Appendix B

Potential Monetary Benefits

Table 1: Summary of Potential Monetary Benefits

Type of Potential Monetary Benefit	Total	Federal Share
Questioned Costs – Ineligible Duplicate	\$ 285,727	\$ 214,295

Source: Office of Inspector General Analysis of findings in this report.



Appendix C

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