

**OFFICE OF INSPECTOR GENERAL**

# **New York's Management of Homeland Security Grant Program Awards for Fiscal Years 2010-12**



Homeland  
Security

**June 19, 2015**  
**OIG-15-107**



# DHS OIG HIGHLIGHTS

## *New York's Management of Homeland Security Grant Program Awards for Fiscal Years 2010–12*

June 19, 2015

### Why We Did This

Public Law 110-53, *Implementing Recommendations of the 9/11 Commission Act of 2007*, requires the Department of Homeland Security Office of Inspector General to audit individual states' and territories' management of Homeland Security Grant Program awards. We audited New York, which was awarded about \$725 million from the Federal Emergency Management Agency (FEMA) from fiscal years 2010–12.

### What We Recommend

We recommend that New York improve its capabilities planning, risk assessments, award process, management controls, and monitoring.

#### **For Further Information:**

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

### What We Found

New York (State) and the New York City urban area distributed and spent Homeland Security Grant Program awards to enhance their homeland security capabilities; however, both need to make improvements to ensure future spending complies with applicable Federal laws and regulations. In addition, neither the State nor the urban area included adequately defined goals and objectives in their homeland security strategies. The State also did not obligate funds to subgrantees within the required timeframes. Neither the State nor the New York City urban area had sufficient management controls to ensure subgrantees used grant funds appropriately. The State's and urban area's inadequate fiscal monitoring contributed to these issues. As a result, we identified more than \$67 million in questioned costs related to operational overtime, management and administration, and training that were not spent according to grant guidance or were not adequately supported.

### FEMA Response

FEMA concurred with 10 of the 15 recommendations in this report. For the remaining 5 recommendations, the primary reason for FEMA's non-concurrence is its concern about a lack of authority to impose corrective actions not explicitly included in the terms of its grant agreement with the State or required by grantee's State law. However, we believe that FEMA's enforcement of the applicable Federal regulations will help resolve and close most of the recommendations.



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Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

JUN 19 2015

MEMORANDUM FOR: Brian Kamoie  
Assistant Administrator  
Grant Programs Directorate  
Federal Emergency Management Agency

FROM: Mark Bell *Mark Bell*  
Assistant Inspector General for Audits

SUBJECT: *New York's Management of Homeland Security Grant  
Program Awards for Fiscal Years 2010-12*

Attached for your action is our final report, *New York's Management of Homeland Security Grant Program Awards for Fiscal Years 2010-12*. The report identifies measures the Federal Emergency Management Agency can take to improve the efficiency and effectiveness of Homeland Security grant funds awarded to the State of New York.

The report contains 15 recommendations aimed at improving the effectiveness of the program. Your office concurred with 10 of the 15 recommendations. Based on information provided in your response to the draft report, we consider 13 of the recommendations open and resolved and 2 recommendations open and unresolved. We consider recommendations 1, 2, 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, and 15 open and resolved. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions and of the disposition of any monetary amounts.

Recommendations 4 and 6 are 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 agreement or disagreement, corrective action plan, and target completion date for each recommendation. Also, please include 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.



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Please send your response or closure request to  
[OIGAuditsFollowup@oig.dhs.gov](mailto:OIGAuditsFollowup@oig.dhs.gov).

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

Please call me with any questions, or your staff may contact Patrick O'Malley, Director, at (202)254-4100.

Attachment



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

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**Table of Contents**

[Background](#) ..... 1  
[Results of Audit](#) ..... 2

[Inadequate Planning to Fund Needed Capabilities](#) ..... 2  
    [DHSES' Untimely Obligation of Funds](#) ..... 6  
    [DHSES' Insufficient Management Controls](#) ..... 8  
    [NYC Office of Management and Budget's Insufficient Management Controls](#) ..... 15

[Recommendations](#) ..... 19  
[Management Comments and OIG Analysis](#) ..... 22

**Appendixes**

[Appendix A: Scope and Methodology](#) ..... 33  
[Appendix B: FEMA and State Comments to the Draft Report](#) ..... 37  
[Appendix C: Homeland Security Grant Program](#) ..... 85  
[Appendix D: Potential Monetary Benefits](#) ..... 86  
[Appendix E: Major Contributors to This Report](#) ..... 87  
[Appendix F: Report Distribution](#) ..... 88

**Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
DHSES	Division of Homeland Security and Emergency Services
DMNA	Division of Military and Naval Affairs
FDNY	Fire Department of New York
FEMA	Federal Emergency Management Agency
FMU	Fiscal Monitoring Unit
FY	fiscal year
HSGP	Homeland Security Grant Program
M&A	management and administration
MOU	memorandum of understanding
NYC	New York City
NYPD	New York Police Department
OIG	Office of Inspector General
SHSP	State Homeland Security Program
SPTC	State Preparedness Training Center
SUNY	State University of New York
THIRA	Threat and Hazard Identification and Risk Assessment
UASI	Urban Areas Security Initiative



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### Department of Homeland Security

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### **Background**

The Department of Homeland Security (DHS) provides Federal funding through the Homeland Security Grant Program (HSGP) to help state and local agencies enhance their capabilities to prevent, prepare for, protect against, and respond to acts of terrorism, major disasters, and other emergencies. Within DHS, the Federal Emergency Management Agency (FEMA) is responsible for administering the HSGP. The State Homeland Security Program (SHSP) and the Urban Areas Security Initiative (UASI) are part of the HSGP, which funds a wide range of preparedness activities such as planning, organization, equipment purchase, training, and exercises. Appendix C contains more information about the HSGP.

HSGP guidance requires a state administrative agency to administer and manage grant funding awarded under the HSGP. In July 2010, New York merged several legacy state offices to create the Division of Homeland Security and Emergency Services (DHSES). This division has five core offices: Office of Counter Terrorism, Office of Cyber Security, Office of Emergency Management, Office of Fire Prevention and Control, and the Office of Interoperable and Emergency Communications.

DHSES was designated as the state administrative agency for HSGP. As such, DHSES is responsible for managing the SHSP and UASI grants according to established Federal guidelines and regulations. DHSES received SHSP grant funds awarded to the State, as well as UASI grant funds awarded to the New York City (NYC) urban area. DHSES provided SHSP and UASI grant funds to a number of counties, cities, towns and state agencies, as well as NYC agencies that are partners in the State's preparedness efforts. The NYC urban area comprises seven jurisdictions: NYC, Nassau County, Suffolk County, Westchester County, City of Yonkers, the Port Authority of New York and New Jersey, and the Metropolitan Transportation Authority.

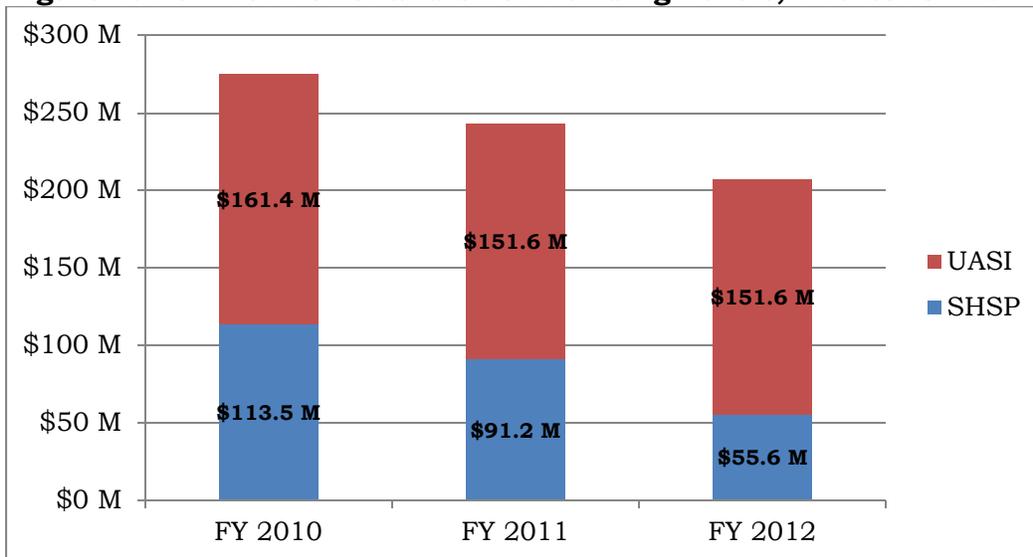
During fiscal years (FY) 2010–12, FEMA awarded SHSP and UASI grant funds to New York totaling about \$725 million. Figure 1 illustrates the UASI and SHSP funding that the State received over the 3-year period. UASI funding for the NYC urban area averaged about \$155 million per year during FYs 2010–12, the period covered by our audit. The State received its highest level of SHSP funding in FY 2010, but faced a decline of more than \$57 million from FYs 2010–12.



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Department of Homeland Security

**Figure 1. New York UASI and SHSP Funding Levels, FYs 2010–12**



Source: DHS Office of Inspector General (OIG) analysis of FEMA data.

Appendix A contains details on this audit’s scope and methodology.

### Results of Audit

New York (State) and the NYC urban area distributed and spent HSGP awards from FYs 2010–12 to enhance their homeland security capabilities; however, they need to make improvements to ensure future spending complies with applicable Federal laws and regulations. In addition, neither the State nor the urban area included adequately defined goals and objectives in their homeland security strategies. The State also did not obligate funds to subgrantees within the required timeframes. Neither the State nor the NYC urban area had sufficient management controls to ensure subgrantees used grant funds appropriately. The State’s and urban area’s inadequate fiscal monitoring of subgrantees contributed to these issues. As a result, we identified over \$67 million in questioned costs related to operational overtime, management and administration (M&A), and training that were not spent according to grant guidance or were not adequately supported.

#### Inadequate Planning to Fund Needed Capabilities

The State and NYC urban area homeland security strategies did not contain adequately defined objectives that met the required elements of specific, measurable, achievable, results-oriented, and time-limited. The State and NYC urban area also had no formal evaluation plan for monitoring progress, compiling key management information, tracking trends, and generally keeping their strategies on track. As a result, neither entity had tangible target levels of



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

---

performance or comprehensive assessment methodologies to effectively measure achievement of their strategic objectives over time.

In July 2005, FEMA issued the *State and Urban Area Homeland Security Strategy Guidance on Aligning Strategies with the National Preparedness Goal*, which advises grantees to implement strategic goals and objectives that are:

- Specific, detailed, particular, and focused – help identify what is to be achieved and accomplished;
- Measurable – quantifiable, provide a standard for comparison, and identify a specific achievable result;
- Achievable – not beyond the ability of a state, region, jurisdiction, or locality;
- Results-oriented – identify a specific outcome; and
- Time-limited – have a target date that identifies when the objective will be achieved.

Also according to FEMA’s guidance, grantees should assess the quality of their strategies’ objectives to determine whether the measures are meaningful in the context of a specific action item or preparedness effort, the measurement methodology is sound, and the measures can be verified with reliable data. According to FEMA, only objectives that meet these criteria should be included in a grantee’s homeland security strategy.

Neither the State’s nor NYC urban area’s homeland security strategies for 2010–12 complied fully with FEMA’s guidance for implementing effective objectives. Table 1 contains examples of goals and corresponding objectives included in each entity’s strategies.



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Department of Homeland Security

**Table 1: Examples of New York State’s and NYC Urban Area’s Homeland Security Strategies’ Goals and Objectives**

Strategy	Goal	Objective	Assessment
State 2010 – 2012*	Strengthen Counterterrorism and Law Enforcement Capabilities	Facilitate Federal, State, and local security and law enforcement efforts to protect critical infrastructure.	The objective is not: <ul style="list-style-type: none"> <li>• Specific</li> <li>• Measurable</li> <li>• Results-oriented</li> <li>• Time-limited</li> </ul>
State 2010 – 2012*	Enhance Incident Management and Response Capabilities	Conduct annual National Incident Management System implementation activities.	The objective is not: <ul style="list-style-type: none"> <li>• Specific</li> <li>• Measurable</li> <li>• Results-oriented</li> <li>• Time-limited</li> </ul>
Urban Area 2010 – 2011**	Protecting Critical Infrastructure and Key Resources	Continue and augment Intelligence Operations. Support intelligence sharing, production, and analysis by hiring new staff and contractors to serve as intelligence analysts.	The objective is not: <ul style="list-style-type: none"> <li>• Specific</li> <li>• Measurable</li> <li>• Time-limited</li> </ul>
Urban Area 2012	Public Health Readiness	Enhance radiological mitigation programs: purchase radiological mitigation equipment; develop radiological protocols; incorporate advancements in radiological and nuclear detection equipment, as they become available.	The objective is not: <ul style="list-style-type: none"> <li>• Specific</li> <li>• Measurable</li> <li>• Time-limited</li> </ul>

\* New York State developed its homeland security strategy for 2010–12 in 2009.

\*\* The NYC urban area developed its homeland security strategy for 2010–11 in 2009.

Source: OIG analysis of New York’s and NYC urban area’s homeland security strategies.

To ensure the success of the strategies, FEMA’s guidance also requires grantees to develop evaluation plans, including a process for reviewing and analyzing the steps taken to achieve their goals and objectives and for determining whether they are using right elements to measure progress. FEMA advises that such a review and analysis process should be part of a state’s or urban area’s normal operations.

Neither the State’s nor the NYC urban area’s homeland security strategies included written evaluation plans. Instead, FEMA’s biennial monitoring visits served as DHSES’ primary mechanism for assessing progress in achieving the State’s strategic goals and objectives. NYC’s Office of Management and Budget evaluated implementation of the NYC urban area’s strategies by reviewing subgrantees’ quarterly progress reports, which detailed the status of their grant-funded programs. Without an ongoing process to evaluate the extent to which they were accomplishing strategic goals and objectives, neither entity



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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had an effective methodology to measure capabilities for prevention, preparedness, protection, and response.

To determine whether New York and the NYC urban area improved their strategies, we performed a limited review of their 2014 strategies, which was outside the scope of our audit period. New York updated its homeland security strategy for 2014. Our limited review of the strategy showed significant improvement in the goals and objectives. The strategy contained targets and metrics, as well as a written evaluation plan that meet the intent of FEMA's guidance. The NYC urban area also updated its homeland security strategy for 2014. Our limited review showed some continuing weaknesses, such as inadequately defined objectives and a lack of specific performance targets or metrics for each objective. Also, the strategy did not include a strategic evaluation plan that complied with FEMA's guidance.

To qualify for FY 2012 funding, FEMA required all grantees to develop and maintain a Threat and Hazard Identification and Risk Assessment (THIRA). Although FEMA encouraged states to update their homeland security strategies, it focused on the THIRA to identify capability targets. FEMA's April 2012 *Comprehensive Preparedness Guide 201* includes a comprehensive approach to identify and assess risks and associated impacts, using the National Preparedness Goal's core capabilities. FEMA also requires states and territories receiving preparedness grants to submit an annual State Preparedness Report. According to FEMA, THIRA results and State Preparedness Reports provide a quantitative summary of preparedness.

Our review of the State's and NYC urban area's 2012 THIRAs showed they were not complete. The State and the NYC urban area used FEMA's required "whole community" approach to develop and document their THIRAs. However, neither the State nor the NYC urban area met all THIRA requirements. Specifically, neither provided a detailed analysis of threats and hazards with a high likelihood and significant consequences that posed the greatest concern. In addition, neither outlined specific and measurable capability targets. Table 2 shows areas of the 2012 THIRAs' compliance and noncompliance with FEMA guidance.



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Department of Homeland Security

**Table 2: New York State’s and NYC Urban Area’s 2012 THIRAs’ Compliance and Noncompliance with FEMA Guidelines**

Grantee	Identify Threats and Hazards	Put Threats and Hazards into Context	Examine Core Capabilities	Set Capability Targets	Apply the Results
<b>2012</b>					
New York State	Yes	No – put only one threat into context	No – examined core capabilities related to only one threat	No – did not quantify desired outcomes	No
NYC Urban Area	Yes	No – put only one threat into context	No – examined core capabilities related to only one threat	No – did not quantify desired outcomes	No

Source: OIG analysis of New York’s and NYC urban area’s 2012 THIRAs.

Although it fell outside our audit scope period, because of issues we identified in the 2012 THIRAs, we preliminarily reviewed the 2013 THIRAs, which had similar issues.

According to letters the State and NYC urban area sent to FEMA, the THIRA is not appropriate for major urban areas and diverse states; it is more appropriate for small localities. Also, the THIRA does not take into account planning for worst-case scenarios. The Executive Deputy Commissioner of the DHSES believes if jurisdictions prepare for the worst-case scenario then they will also be prepared for any lesser events. FEMA officials responded that the THIRA is designed to accommodate all jurisdictions’ needs regardless of size and complexity. FEMA officials also said the capability targets developed through the THIRA account for a range of impacts and desired outcomes associated with the different threats and hazards across jurisdictions.

Neither the State nor the NYC urban area completed all the elements of the 2012 THIRA. As a result, the State and the NYC urban area may be unprepared to mitigate risks associated with significant threats and hazards.

**DHSES’ Untimely Obligation of Funds**

We reviewed 23 SHSP subgrants that New York awarded from FYs 2010–12. DHSES did not obligate funds to subgrantees within the FEMA-required 45



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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days for any of the 23 subgrants, and took up to 670 days beyond that requirement to obligate funds.

According to Public Law 110-53 and *FEMA Homeland Security Grant Program Guidance*, state administrative agencies must obligate and make available to local government units at least 80 percent of SHSP and UASI grant funds within 45 days of FEMA's award date. The obligation must include the following requirements:

- There must be some action to establish a firm commitment on the part of the awarding entity.
- The action must be unconditional on the part of the awarding entity (i.e., no contingencies for availability of funds).
- There must be documentary evidence of the commitment.
- The award terms must be communicated to the official grantee.

During FYs 2010–12, DHSES sent letters to HSGP subgrantees, including 10 SHSP subgrantees we selected to sample, notifying them of the amount of funds they were eligible to receive. State officials considered the date of the notification letter to be the funding obligation date. However, the notification letters did not constitute obligation of funds because they contained conditions that had to be met before the funds would be made available to subgrantees. For example, the letters required subgrantees to submit applications for DHSES approval before DHSES entered into a contract with the subgrantee. In addition, the Office of the State Comptroller had to approve contracts before DHSES executed them.

We compared the date that FEMA awarded the grant funds to DHSES to the date DHSES executed the contract, i.e., made funds available to subgrantees for expenditure. During the same timeframe, DHSES awarded 23 SHSP grants to the 10 sampled subgrantees; none of the awards were obligated and available to the subgrantees within the required 45 days. The awards ranged from 154 to 670 days past the 45 days. We did note that DHSES reduced the delays in FY 2012. Table 3 contains details for all 23 awards we reviewed.



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Department of Homeland Security

**Table 3: Untimeliness of Subgrantee Awards, FYs 2010-12**

Name of Subgrantee	Fiscal Year	Date Funds Were Obligated to Subgrantee	Date Funds Should Have Been Obligated (45 Days After FEMA Award)	Number of Days Late
Broome County	2010	12/21/11	11/07/10	409
	2011	10/16/12	10/27/11	355
	2012	03/05/13	09/21/12	165
Clinton County	2010	07/12/11	11/07/10	247
	2011	10/01/12	10/27/11	340
Dutchess County	2010	12/27/11	11/07/10	415
	2011	10/11/12	10/27/11	350
Madison County	2010	06/09/11	11/07/10	214
	2011	09/14/12	10/27/11	323
Rockland County	2010	01/06/12	11/07/10	425
	2011	10/11/12	10/27/11	350
	2012	09/13/13	09/21/12	357
Wayne County	2010	07/13/11	11/07/10	248
	2011	09/26/12	10/27/11	335
	2012	02/22/13	09/21/12	154
Elmira City	2010	06/07/11	11/07/10	212
Village of Endicott	2010	09/07/12	11/07/10	670
	2012	09/13/13	09/21/12	357
New York City	2010	07/26/12	11/07/10	627
	2011	10/02/12	10/27/11	341
	2012	03/12/13	09/21/12	172
Watertown City	2010	06/07/11	11/07/10	212
	2011	01/25/13	10/27/11	456

Source: OIG analysis of DHSES data.

DHSES delays in obligating HSGP funds to subgrantees may be attributed to both the State and the subgrantees having to obtain several levels of approval before grant funds were obligated. SHSP grants had a 36-month (3-year) period of performance for FYs 2010 and 2011; this was reduced to 24 months in FY 2012. DHSES was granted two extensions to the FY 2010 performance period. The delay in making HSGP funds available for expenditure may have reduced the State’s ability to prevent, protect against, respond to, and recover from acts of terrorism, major disasters, and other emergencies.

**DHSES’ Insufficient Management Controls**

DHSES did not have sufficient management controls over state agencies to ensure that its subgrantees used grant funds appropriately. The State did not always provide applicants with written agreements, and the services listed in formalized agreements were not always clearly defined. DHSES also did not ensure its M&A costs were limited to HSGP expenditures. We identified several instances in which DHSES improperly reimbursed costs and awarded grant funds without ensuring subgrantees met the applicable requirements. DHSES



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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also performed inadequate financial monitoring of subgrantees, which contributed to these issues. As a result, we could not determine whether selected services were performed or whether associated costs were reasonable, allowable, and allocable. Thus, we are questioning about \$24 million in costs related to DHSES' insufficient management controls. Appendix D contains a breakdown of these questioned costs.

Specifically, DHSES did not have sufficient management controls when it:

- awarded funds to a state agency, without a formalized agreement identifying the services;
- awarded funds to a state agency that was unable to provide supporting records and was performing services under unclear agreements;
- charged state salaries, fringe benefits, and contractor costs to the HSGP, even though the costs applied to other grant programs;
- approved advance payments for lease/purchase agreements, maintenance contracts, and warranties;
- approved investigative overtime without a request by a Federal agency;
- allowed a state agency to claim administrative costs that may have exceeded the statutory limit of 5 percent; and
- performed no financial monitoring visits at state agencies and, in the last 3 years, issued a minimal number of Fiscal Monitoring Visit Reports for the two largest city agencies.

### **No Agreement for the Division of Military and Naval Affairs**

DHSES awarded the Division of Military and Naval Affairs (DMNA) \$32 million in SHSP and UASI funds between FYs 2010–12. As of December 31, 2013, DMNA incurred \$18.7 million in costs for Task Force Empire Shield. However, DHSES did not have an agreement with DMNA identifying what specifically is eligible for reimbursement. Additionally, incurred costs did not have adequate supporting documentation. Because we could not determine whether the incurred costs were allowable, allocable, and reasonable, we question all \$18.7 million.

According to the State's application with FEMA, Task Force Empire Shield is a New York National Guard unit that provides a rapid response force of National Guard members for homeland security missions. Soldiers augment Metropolitan Transportation Authority Police at Penn Station and Grand Central Station in NYC and also augment the Port Authority of New York and New Jersey Police Department at John F. Kennedy International Airport and LaGuardia Airport. In addition to random and routine patrols, Task Force



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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Empire Shield provides a “surge” capability to protect critical infrastructure during periods of heightened threat and immediate access to military resources to address both manmade and natural disasters.

FEMA’s *Fiscal Year 2010 Homeland Security Grant Program Guidance and Application Kit* authorized operational overtime for State Active Duty National Guard deployments for increased security measures to protect critical infrastructure. We reviewed payroll records and time reports for a sample of National Guard members and could not determine the work locations or the number of hours worked. As a result, we were unable to verify that the costs were for overtime to protect critical infrastructure.

Unlike other state agencies, DHSES did not require DMNA to submit an application for the funds or establish a memorandum of understanding (MOU) that included a budget, program workplan, and special conditions. Accordingly, we could not determine what critical infrastructure sites it was supposed to protect, what sites it did protect, and how long it protected them.

### **Missing Records and Unclear Agreements for the State University of New York**

The State University of New York (SUNY) was awarded \$5.5 million in FYs 2010–12 SHSP grants; as of December 31, 2013, the State claimed \$2.98 million for services provide by SUNY. We question the entire \$2.98 million because SUNY was unable to provide documentation to support the costs and because the State did not clearly identify in its agreement with SUNY the services SUNY was to provide or the costs the grants would fund.

According to Title 2 of the Code of Federal Regulations (CFR), Part 225, Appendix A, Section C, *Basic Guidelines*, costs must be adequately documented to be allowable under Federal awards. We reviewed a sample of SUNY expenditures for which we requested supporting documentation, but as of the end of our fieldwork in November 2014, we had not received the documentation.

DHSES did not execute agreements that clearly identified the services SUNY was to provide. For example, DHSES executed MOU #468 for \$3.38 million under which SUNY’s National Center for Security and Preparedness was to provide technical assistance in a number of areas from June 25, 2012, through December 31, 2013. The areas included the development (construction/renovation) of the State Preparedness Training Center (SPTC); general technical assistance to DHSES; provision of at least 3 full-time and a number of part-time staff for the SPTC; hiring of role players for the training



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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center; and programming assistance intended to help DHSES reach its target of training 10,000 personnel.

This agreement was later amended, increasing the amount from \$3.38 million to \$7.38 million and extending the performance period to December 31, 2014. The only change to the scope of work was the target for training was increased from 10,000 to 15,000 students in calendar year 2014.

We question the costs associated with MOU #468 because the agreement is too vague to understand the nature of the services and the work required. The agreement does not include details on the specific costs for the various tasks and does not contain descriptions of the deliverables associated with the services. It appears that the funds were supporting the SPTC; however, we could not determine what services were provided, when the services were provided, and whether the costs for these services were reasonable.

The MOU did not contain details on tasks such as providing general technical assistance, supporting the SPTC with certain staffing assistance, delivering workshops/seminars, assisting with a DHSES internship program, and developing and delivering specific training courses. Tasks did not include information on:

- who would carry out the tasks or their qualifications;
- how services would be budgeted, authorized, accounted for, and billed; or
- the seminars/workshops and specific training courses that would be developed and when they would be delivered.

### **Salaries, Fringe Benefits, and Contractor Costs Inappropriately Allocated**

As of December 31, 2013, DHSES claimed \$1.32 million in salaries and \$318,813 in contractor costs that included services that did not benefit the SHSP or UASI. Because DHSES could not segregate the beneficial costs from those that were not beneficial, we question the total amount. Additionally, we question fringe benefit costs of \$261,748, which were clearly identified as not beneficial. To be allowable under Federal awards, costs must be allocable to the Federal awards under the provisions of 2 CFR, Part 225. According to these provisions, costs are allocable to a particular cost objective if the goods and services involved are chargeable or assignable to the cost objective according to the relative benefits received. Therefore, we question these costs for the following reasons:

- \$1.32 million in salaries that were all charged to the FY 2010 UASI grant for grant administration. The salaries were for personnel



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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responsible for grants under the UASI and SHSP, as well as other grant programs for port security, interoperable emergency communications, nonprofit security, and regional catastrophic planning. Only salaries applicable to the SHSP should be charged to a SHSP grant, and only salaries applicable to the UASI should be charged to a UASI grant. We identified \$318,813 for contractor services to operate the Oracle Financial Management System and the Grant Management System, including maintenance, licenses, and consultant support. In accordance with a February 2006 MOU, DHSES (formerly the Office of Homeland Security) agreed to pay the Division of Criminal Justice Services for a fair share of the costs. Our review of Oracle invoices amounting to \$318,813 showed that all invoices were charged against the FYs 2010 and 2011 SHSP grants. We determined that contracting services were provided for UASI and SHSP, as well as other grant programs. Contractor services should be allocated against all grant programs receiving maintenance, licenses, and consultant support. Only contracting services applicable to the SHSP should be charged to the SHSP grant and only contracting services applicable to the UASI should be charged to the UASI grant.

- \$261,748 for fringe benefits that applied to grant programs such as the Buffer Zone Protection Program, Interoperable Communications Program, the UASI Non-Profit Program and the Citizen Corps Program, which did not benefit the SHSP or UASI.

DHSES personnel informed us that during the audit period costs were charged alternately to either the UASI or SHSP grants on a rotating basis. DHSES is currently implementing a Time Distribution System for employees, which will enable them to segregate their time by grant program.

In addition to not properly allocating costs to the SHSP and UASI, DHSES allocated expenditures to grant funds awarded in different fiscal years. For example, DHSES was reimbursed \$864,743 for computer services that covered a 3-year period (2011 to 2014) although the expenditure was allocated to grant funds awarded in FYs 2007–10. When asked, DHSES said that supporting documentation justifying proration of costs among the various fiscal year funds was not available. DHSES personnel also said they prorated the costs among fiscal years because they wanted to use available funds before the grant period expired. Service contracts are only allocable for the period of the grant, and DHSES has allowed several subgrantees to be reimbursed for service contracts extending beyond the grant period.

Unlike other state agencies, the Director of Grants Program Administration informed us that DHSES did not develop an MOU with a work plan and budget



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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for its expenditures. A work plan and budget are necessary management controls that help ensure expenditures are linked to the correct grant period.

#### **Approved Advance Payments for a Lease/Purchase Agreement and Maintenance Contracts**

We questioned \$180,009 for communication equipment obtained through a lease/purchase agreement because the subgrantee was reimbursed for lease payments in advance and did not analyze leasing compared to purchasing. We also questioned \$10,824 for maintenance and warranties that covered services beyond the grant period.

DHSES reimbursed the subgrantee for \$125,292 in lease payments that the subgrantee claimed before it was required to pay for the leased equipment. The lease agreement required 28 quarterly payments of \$27,358 starting on April 1, 2013. The subgrantee paid the vendor \$180,009 out of its own funds and on July 16, 2013, claimed reimbursement from DHSES for this expense. As of July 16, 2013, the lease only required 2 payments (on April 1, 2013, and July 1, 2013) of \$27,358 each, for a total of \$54,716. On July 22, 2013, DHSES reimbursed the subgrantee \$180,009, which was an advance payment of \$125,292 over the \$54,717 the subgrantee actually owed.

In addition, the subgrantee did not perform a lease/purchase analysis. According to 44 CFR §13.36, grantees and subgrantees should review proposed procurements to avoid purchasing unnecessary or duplicative items. In addition, for a more economical purchase, they should consider consolidating or breaking out procurements. Where appropriate, subgrantees should analyze leasing compared to purchasing. The subgrantee said the lease/purchase agreement was the best use of the funds, based on the options presented by the vendor.

Two other subgrantees were reimbursed \$10,824 for maintenance contracts (\$9,608) and warranties (\$1,216) that extended beyond the grant period of performance. The maintenance contracts were for items such as mobile data terminals and respirator equipment; the warranties were for laptops and computers. Costs incurred for services beyond the grant period of performance are not allowable.

#### **Ineligible Overtime at the Queens District Attorney Office**

We question \$177,842 awarded to the Queens District Attorney for overtime work on terrorist precursor crimes such as credit card fraud, cigarette smuggling, and identity fraud. According to FEMA guidance, overtime costs are allowable for personnel to participate in information, investigative, and



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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intelligence sharing activities specifically related to homeland security and specifically requested by a Federal agency. DHSES was unable to provide a documented request by a Federal agency. Additionally, allowable costs are limited to overtime associated with federally-requested participation in eligible activities including antiterrorism task forces, Joint Terrorism Task Forces, Area Maritime Security Committees, DHS Border Enforcement Security Task Forces, and Integrated Border Enforcement Teams. The expenditures by the Queens District Attorney Office did not meet the criteria.

#### **Administrative Costs May Exceed the Statutory Limit of 5 Percent**

We are alerting the State to a potential issue with SUNY's administrative fee. SUNY charged an administrative fee of 5.6 percent on all its invoices for administrative overhead. This fee should be included in the State's M&A costs, which are limited to 5 percent of the total grant award amount. As of December 31, 2013, the State had not exceeded the limit of 5 percent for M&A costs; however, the inclusion of SUNY's administrative fee could cause the State to exceed the limit in the future.

Under Public Law 111-83, *Department of Homeland Security Appropriations Act, 2010*, a grantee may use not more than 5 percent of the amount of a grant for expenses directly related to administration of the grant. DHSES intends to use the 5 percent to reimburse itself for DHSES personnel salaries and other expenses to administer the SHSP and UASI grants.

According to DHSES personnel, SUNY is a subgrantee and, as such, is entitled to charge an additional 5 percent for its administrative expenses. However, the 5 percent cap on administration costs applies to the total amount charged by the grantee and all subgrantees. Accordingly, the administrative expenses charged by DHSES and other state agencies should not collectively exceed 5 percent of the grant amount.

#### **DHSES' Inadequate Fiscal Monitoring of State and City Agencies**

DHSES did not perform adequate fiscal monitoring of state and city agencies. Specifically, DHSES did not conduct fiscal monitoring site visits at state agencies that received SHSP and UASI grant funds. In addition, although DHSES said it performed several site visits to the New York Police Department (NYPD) and the Fire Department of New York (FDNY), it had not issued a Fiscal Monitoring Site Visit Report on either since 2011. During FYs 2010-12, NYPD and FDNY received \$425 million, or 87 percent, of the \$487 million awarded to NYC agencies during the period.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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During our audit, we identified management weaknesses at both state and city agencies. The state agencies had inadequate accounting records, as well as missing or unclear MOUs. NYPD and FDNY had unsupported overtime, unapproved equipment purchases, questionable procurement practices, and unverifiable items. Had DHSES adequately monitored these state and city agencies, it might have identified these issues.

DHSES has a Fiscal Monitoring Unit (FMU) responsible for fiscal monitoring of subgrantees using HSGP funds. The FMU conducts fiscal monitoring through documentation review, onsite visits, and technical assistance. Although FMU personnel had not performed site visits at state agencies, in the past they issued site visit reports on city agencies receiving grant funds. The last time FMU issued a Fiscal Monitoring Site Visit report on either NYPD or FDNY was 2011. The FMU's Principal Auditor told us they had not conducted monitoring visits at NYPD or FDNY that met FEMA's *FY 2010–2012 Homeland Security Grant Program Guidance and Application Kit* requirements.

Financial monitoring site visits at state and city agencies, combined with reports documenting the reviews, help ensure expenditures comply with Federal laws and regulations. Additionally, fiscal reviews would ensure compliance with changing FEMA guidance.

### **NYC Office of Management and Budget's Insufficient Management Controls**

The NYC Office of Management and Budget did not implement sufficient management controls to ensure subgrantees used SHSP and UASI grant funds appropriately; and it did not ensure NYPD adequately supported overtime expenses for public safety. FDNY did not always follow proper procurement practices or acquire items according to the approved budget. Additionally, we were unable to verify that certain grant-funded equipment was present and operational. As a result, we could not determine whether certain costs were reasonable, allowable, and allocable. Thus, we are questioning more than \$43 million in costs. Appendix D contains a breakdown of the questioned costs.

Specifically, NYC's Office of Management and Budget did not have sufficient management controls when it:

- reimbursed the NYPD about \$3,000 in overtime expenses. In all, NYPD was awarded \$42.8 million for public safety overtime. We reviewed a sample of eight overtime requests and determined six did not have adequate support to ensure the overtime was for enhanced protection of critical infrastructure;



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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- allowed FDNY to award a \$440,942 noncompetitive contract because according to FDNY, the lease required the owner to award the contract;
- allowed FDNY to purchase items costing \$87,075 that were not included in the approved budget;
- allowed FDNY to purchase seven radios for \$123,975. During our audit, FDNY had only one radio on hand. The radio was not charged or useful in the event of an emergency; and
- performed no compliance reviews of city agencies that were awarded HSGP funds.

### **Unsubstantiated Public Safety Overtime for the NYPD**

Because of insufficient supporting documentation, we could not verify that most of the NYPD public safety overtime costs we sampled were directly linked to critical infrastructure. FEMA allows SHSP and UASI grantees to claim public safety overtime costs for reimbursement as “Operational Overtime,” provided the associated activities increase security measures at critical infrastructure sites. NYPD spent \$42.8 million in UASI grant funds to cover the cost of public safety overtime incurred in the performance of Operation Atlas, a counter-terrorism response program initiated in 2004. Department officials said that Operation Atlas deployment locations are often the result of threat-based intelligence; however, they were unsure whether documentation supporting specific threats would be available in every instance.

We tested a limited sample of eight NYPD personnel whose \$3,134 in public safety overtime charges were included in the Department’s total expenditure. We requested to review various source documents maintained at the precinct level, including overtime reports and deployment rosters, that NYPD said could support the locations where the sampled overtime costs were incurred. However, after working with NYPD for more than 5 months to obtain sufficient supporting documentation, we were only able to verify that \$371 in public safety overtime costs incurred by two of the eight sampled personnel were eligible for reimbursement as “Operational Overtime.”

For one of the six unsupported samples, NYPD’s documentation did not reference an overtime deployment location. For three other samples, the identified deployment locations, including hotels, commercial office buildings, and houses of worship, did not appear to meet the Federal definition of critical infrastructure.<sup>1</sup> For the remaining two unsupported samples, NYPD could not

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<sup>1</sup> *Critical Infrastructures Protection Act of 2001 (42 U.S.C. 5195c(e))*: [T]he term critical infrastructure means systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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provide any source documentation supporting the specific nature of the deployments. According to NYPD personnel, some of the overtime reports we requested were destroyed in a flood. Furthermore, NYPD did not maintain deployment rosters to support any public safety overtime costs incurred prior to October 2011, a timeframe which applied to half of our sample.

According to the terms of the UASI grant agreements between DHSES and the New York City Office of Management and Budget, the most important requirement of accounting for grant funds is the complete and accurate documentation of expenditures. The agreements further state that a grantee's failure to maintain specific documentation to support project-related personal service expenditures, such as NYPD's Operational Overtime claim, may result in a disallowance of costs. Because NYPD's documentation was insufficient for us to verify that more than 80 percent of the public safety overtime costs we sampled met the Federal criteria for "Operational Overtime," an undetermined portion of the Department's total \$42.8 million expenditure remains in question.

#### **Questionable Procurement Practice at FDNY**

FDNY did not justify the use of a \$440,942 noncompetitive contract for architect and engineering services to install a backup generator at FDNY headquarters. FDNY asserted that the building lease required the owner of the property to select the contractor. However, according to the lease, the tenant may only use contractors approved by the owner. FDNY could have awarded the contract competitively and then obtained the owner's approval. We question the \$440,942 for a noncompetitive contract as unsupported costs.

#### **Unapproved Items Included in FDNY's Claims**

From our sample of expenditures, we identified items that FDNY purchased with grant funds that were not included in its approved budget. Specifically:

- FDNY was approved for an Incident Command Vehicle for \$225,000; instead, FDNY purchased a Panoscan Camera for \$75,082.
- FDNY was approved for rebreather equipment repairs and replacements for \$150,000 but instead purchased a utility vehicle for \$11,993. FDNY claimed it uses the vehicle to transport rebreather equipment.

Because these expenditures were not included in the approved budget, we question the \$87,075 as unallowable costs.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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#### **FDNY Equipment Items Not Available or Inoperable**

FDNY purchased seven radios for \$123,975. During our audit, FDNY had only one radio on hand. The radio was not charged or useful in the event of an emergency. Inventory records showed that four of the seven radios had been disposed of in January 2014 because they were obsolete, even though they were purchased in 2012. A letter from the radio manufacturer showed that the four radios had been exchanged for two radios of a different model. Additionally, inventory records indicated that two of the three remaining radios were in service. However, we were told that two radios were with the manufacturer for testing. Because the equipment was not available or operable and the property records were not accurate, we question the \$123,975 as unsupported costs.

#### **Compliance Reviews of NYC Subgrantees Not Performed**

According to officials in NYC's Office of Management and Budget, it was unable to perform compliance reviews of city agencies as required by the office's *Grants Management Manual* because of inadequate staffing. Some of the issues cited above might have been identified through such reviews.

According to NYC's *Homeland Security and Criminal Justice Grant Management Policies and Procedures Manual*, NYC's Office of the Criminal Justice Coordinator and Office of Management and Budget are to conduct periodic compliance reviews for every city agency receiving HSGP funding. Also according to the manual, compliance reviews should focus on three questions:

1. Can retained agency documentation substantiate an agency's reported grant expenses?
2. Are claimed grant expenses allowable?
3. Upon examination, is documentation being kept in accordance with grant regulations?

Although they did not carry out compliance reviews, officials in NYC's Office of Management and Budget said they attend New York State DHSES FMU visits to ensure they are aware of any observations and can help correct issues. However, without compliance reviews, DHSES and NYC urban area cannot be assured that city agency expenditures are allowable and sufficiently documented.



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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### Recommendations

#### **Recommendation #1:**

We recommend that the FEMA Assistant Administrator, Grant Programs Directorate require the Division of Homeland Security and Emergency Services and the NYC urban area to ensure future State and NYC urban area THIRAs fully comply with the processes listed in *FEMA's Comprehensive Preparedness Guide 201*.

#### **Recommendation #2:**

We recommend that the FEMA Assistant Administrator, Grant Programs Directorate require the Division of Homeland Security and Emergency Services to assess and streamline the current processes and procedures for obligating funds to subgrantees so that it obligates grant funds within a reasonable time period.

#### **Recommendation #3:**

We recommend that the FEMA Assistant Administrator, Grant Programs Directorate require the Division of Homeland Security and Emergency Services to provide a budget and work plan for the Division of Military and Naval Affairs to account for its SHSP and UASI grant funds. The budget and work plan should specify the services to be provided and identify the location, and estimate the hours and number of National Guard members.

#### **Recommendation #4:**

We recommend that the FEMA Assistant Administrator, Grant Programs Directorate require the Division of Homeland Security and Emergency Services to amend Memorandum of Understanding #468 to include the specific tasks to be provided, the total amount for each task, when the task will be completed, and what deliverable will be provided.

#### **Recommendation #5:**

We recommend that the FEMA Assistant Administrator, Grant Programs Directorate require the Division of Homeland Security and Emergency Services to provide documentation that adequately supports \$23,537,386 in questioned costs that are unsupported or return the amount not supported. Specifically, the documentation should support:



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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- hours worked and locations for Task Force Empire Shield activities (\$18,731,021 in questioned costs);
- expenditures selected in a sample of costs for services that SUNY provided to DHSES under MOUs #432, #442, #443, and #468 (\$2,982,692 in questioned costs);
- costs related to non-HSGP grant programs for \$1,324,851 in salaries and \$318,813 in financial services; and
- the reasonability of \$180,009 to lease communication equipment.

#### **Recommendation #6:**

We recommend that the FEMA Assistant Administrator, Grant Programs Directorate require the Division of Homeland Security and Emergency Services to reimburse FEMA \$450,414 in questioned costs that are ineligible. Specifically, the Division of Homeland Security and Emergency Services should reimburse FEMA:

- \$261,748 for fringe benefits applicable to ineligible, non-HSGP grant programs;
- \$10,824 for claimed costs for maintenance contracts and warranties that extended beyond the performance period of the grant; and
- \$177,842 for overtime expenses not used for eligible activities and not federally requested.

#### **Recommendation #7**

We recommend that the FEMA Assistant Administrator, Grant Programs Directorate require the Division of Homeland Security and Emergency Services to provide budgets and work plans for all state agencies receiving HSGP funds, including the Division of Homeland Security and Emergency Services, to ensure funds are allocable, allowable, and reasonable.

#### **Recommendation #8:**

We recommend that the FEMA Assistant Administrator, Grant Programs Directorate ensure that the Division of Homeland Security and Emergency Services does not reimburse subgrantees for advanced payments on leases and costs for maintenance contracts, or for warranties that extend beyond the grant period.

#### **Recommendation #9:**

We recommend that the FEMA Assistant Administrator, Grant Programs Directorate require the Division of Homeland Security and Emergency Services



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

---

to ensure the total administrative expenses, including the administrative fee of 5.6 percent charged by State University of New York, will not exceed the grantee limit of 5 percent of the amount of the grant as required in Public Law 111-83, *Department of Homeland Security Appropriations Act, 2010*.

#### **Recommendation #10:**

We recommend that the FEMA Assistant Administrator, Grant Programs Directorate require the Division of Homeland Security and Emergency Services to ensure the Fiscal Monitoring Unit conducts site visits at state agencies and issues site visit reports on New York Police Department and Fire Department of New York identifying compliance with FEMA's *FY 2010-2012 Homeland Security Grant Program Guidance and Application Kit*.

#### **Recommendation #11:**

We recommend that the FEMA Assistant Administrator, Grant Programs Directorate determine whether FEMA's current guidance on operational overtime is adequate. If so, review the New York Police Department's operational overtime expenditures for allowability and recover the costs related to the protection of noncritical infrastructure. If FEMA believes that the current definition of operational overtime needs to include locations identified through intelligence data, FEMA should revise the guidance accordingly.

#### **Recommendation #12:**

We recommend that the FEMA Assistant Administrator, Grant Programs Directorate require the Division of Homeland Security and Emergency Services to conduct an independent review of the New York Police Department's \$42,844,265 in operational overtime for the protection of critical infrastructure during FYs 2010 through 2012. For all unallowable or unsupported costs, require the New York Police Department to return the funds.

#### **Recommendation #13:**

We recommend that the FEMA Assistant Administrator, Grant Programs Directorate require the Division of Homeland Security and Emergency Services to provide sufficient justification and documentation that adequately supports questioned costs that are unsupported or return to FEMA the amount not supported. Specifically, the documentation should support the following:



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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- \$440,942 for a noncompetitive contract for architect and engineering services (to ensure it was reasonable and in accordance with Federal grant guidance on procurement practices);
- \$87,075 for a camera and utility vehicle that were claimed, but not included in the approved budget.

### **Recommendation #14:**

We recommend that the FEMA Assistant Administrator, Grant Programs Directorate require the Division of Homeland Security and Emergency Services to investigate why the Fire Department of New York spent \$123,975 for seven radios that were not available or were inoperable during our audit. Require the Fire Department of New York to return the funds if determined to be wasted. Also, share and apply any lessons learned to future related investments.

### **Recommendation #15:**

We recommend that the FEMA Assistant Administrator, Grant Programs Directorate require the Division of Homeland Security and Emergency Services to ensure the NYC Office of Management and Budget and Office of the Criminal Justice Coordinator initiate compliance reviews of city agencies awarded HSGP funding as required by NYC's *Homeland Security and Criminal Justice Grant Management Policies and Procedures Manual*.

## **Management Comments and OIG Analysis**

In its response to the draft report, FEMA concurred with recommendations 1, 2, 5, 6, 9, and 11 through 15 and did not concur with recommendations 3, 4, 7, 8, and 10. The primary reason for FEMA's non-concurrence is its concern about a lack of authority to impose recommended corrective actions that are not explicitly required by a grantee's state law or as conditions of its grant award. However, we believe FEMA may still address the intent of our recommendations through its enforcement of applicable Federal criteria independent of any constraints on the scope of its existing authority. Based on our analysis, FEMA is working to address the concerns using different approaches.

The State submitted a 524-page response to our draft report, including 33 pages of management comments and 489 pages of supporting attachments. The State concurred with recommendations 8 and 15; did not concur with recommendations 1, 2, 4, 5, 6, 7, 9, 12, 13 and 14; partially concurred with recommendation 10; and neither concurred nor disagreed with recommendations 3 and 11. The State provided documentation supporting its responses to recommendations 3, 5, 6, 11, 12 and 13, some of which was



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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responsive to specific requests for this information we made more than 7 months prior to the issuance of our draft report. Accordingly, we are referring the State's written comments and package of supporting attachments to FEMA to assess as part of the corrective action plan due to OIG within 90 days of this report's issuance.

Neither FEMA's nor the State's responses resulted in any substantive changes to the findings or associated recommendations in our draft report. We consider recommendations 1, 2, 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, and 15 resolved and open, and recommendations 4 and 6, unresolved and open. FEMA's and the State's responses to our draft report are provided in appendix B. The following is our analysis of each recommendation and FEMA's planned corrective actions.

#### **FEMA and State Comments to Recommendation #1:**

FEMA concurred with the recommendation; the State did not concur. FEMA believes the State's and the NYC urban area's THIRAs met the 2012 criteria. FEMA further stated that the THIRA process is maturing and both jurisdictions submitted THIRAs in 2013 and 2014 using revised guidance that includes an additional real-world hazard scenario. With more experience in completing the THIRA process, FEMA affirmed that jurisdictions are setting more measurable capability targets and are implementing the capability estimation process.

The State believed it completed all of the necessary steps and responded that FEMA agreed that it was in compliance with the THIRA guidance in place at the time. The State also felt that OIG's interpretation of the THIRA guidance differed from what FEMA had previously articulated to it.

#### **OIG Analysis of FEMA and State Comments:**

We recognize that 2012 was the first year the THIRA process was implemented, although our initial review of the 2013 THIRA revealed similar issues as those for 2012. We did not review 2014 activities but would be willing to reserve judgment based on our review of the 2014 THIRAs and FEMA's corresponding guidance. We consider this recommendation resolved and open pending our receipt and review of the State's and NYC urban area's 2014 THIRAs and FEMA's 2014 THIRA guidance.

#### **FEMA and State Comments to Recommendation #2:**

FEMA concurred with the recommendation; the State did not concur. FEMA will require the State to assess and, where possible, streamline current grant management processes and procedures to obligate 80 percent of Homeland



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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Security Grant Program funds to subgrantees within the 45-day requirement. FEMA anticipated an estimated completion date of September 30, 2015.

The State contended additional factors needed to be taken into account in understanding its delays associated with the 45-day requirement. One factor it identified is Public Law 110-53 that requires states to make grant funds available rather than obligate them to subgrantees within 45 days, which the State said it met by virtue of notifying each subgrantee of its grant awards. The State also cited a required administrative review by authorized State agencies prior to executing certain grant agreements as an uncontrollable factor impacting timeliness of the grant obligation process.

#### **OIG Analysis of FEMA and State Comments:**

We believe the action proposed by FEMA satisfies the intent of the recommendation and consider it resolved and open pending the completion of the State's assessment to streamline current processes and procedures to obligate the funds within the 45-day requirement.

#### **FEMA and State's Comments to Recommendation #3:**

FEMA did not concur, while DHSES did not express a discernible opinion. FEMA noted that the terms of the State's HSGP grant awards do not explicitly require "work plans" and it cannot, therefore, compel the grantee to provide them. FEMA agreed that, to the extent that New York State law or policy requires DHSES to execute such plans, it would work to ensure these requirements are met. FEMA also agreed to implement OIG's recommendations to the extent that they are based on Federal uniform administrative requirements and cost principles, including the standards for financial management systems in 44 CFR §13.20. FEMA anticipated an estimated completion date of September 30, 2015.

The State's response was supplemented by documentation supporting the authorization of Task Force Empire Shield to augment existing law enforcement coverage at critical transportation sites throughout New York City but providing only limited details on expected resource allocations.

#### **OIG Analysis of FEMA and State Comments:**

Pursuant to the financial management standards contained in 44 CFR §13.20, FEMA is entitled to require that DHSES provide the budget and workplan recommended in order to achieve compliance with those standards. Other mandates governing FEMA, such as OMB Circular A-102, *Grants and Cooperative Agreements for State and Local Governments*, also allow FEMA to



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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insist on appropriate documentation of costs. We consider this recommendation resolved and open pending FEMA's verification that the questioned costs were allowable, allocable, and reasonable, under the HSGP and the subsequent recovery of any ineligible costs.

#### **FEMA and State's Comments to Recommendation #4:**

FEMA and the State did not concur. Similar to its response to recommendation 3, FEMA said it lacks the authority to impose specific terms on a contractual agreement made between a State recipient of HSGP funds and another State agency, other than those expressly required by the terms of its grant award. However, FEMA officials said they would require DHSES to comply with State laws and regulations and incorporate any applicable clauses required by Federal statutes and executive orders when entering into such intra-agency agreements. FEMA anticipated an estimated completion date of September 30, 2015.

The State disagreed that the governing MOU with SUNY did not clearly identify the services to be provided. The State officials also said that agreements between DHSES and other State agencies are neither mandated by FEMA nor legally binding according to State law.

#### **OIG Analysis of FEMA and State Comments:**

FEMA is required to enforce the provisions of 44 CFR §13 and those of any other applicable authorities to hold the State accountable for its use of the grant funds in question, recover any ineligible costs, and ensure that the eligibility of future expenditures made under this same agreement are verifiable according to specific details regarding the nature, timing, and intended outcomes of the proposed services. The steps outlined in our recommendation are within FEMA's authority to insist upon in order to meet the financial management standards the State must comply with. We disagree with FEMA's suggestion that it currently has no mechanism to prevent the continued expenditure of Federal grant funds that have not been adequately supported in order to procure services that have not been adequately defined under an active State contract. We consider this recommendation unresolved and open.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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#### **FEMA and State's Comments to Recommendation #5:**

FEMA concurred with the recommendation; the State did not concur. FEMA will require DHSES to provide documentation that supports the questioned costs. Even though FEMA concurred with the recommendation, it wanted to know the extent of the audit work at DMNA, and questioned why we want the State to determine the reasonability of leasing communication equipment. FEMA anticipated an estimated completion date of September 30, 2015.

Regarding recommendation 5a, the State disagreed that timesheets are necessary for DMNA because Guard members are not tasked to any other State active duty assignments. DMNA was able to provide sheets signed by the employee or the supervisor if the employee was on pass day, Federal pay, or leave without pay.

Regarding recommendation 5b, the State believed that information provided to the auditors was responsive to their request; SUNY policy does not require that exempt employees fill out time sheets. The Director of the SUNY National Center for Security and Preparedness signed an attestation that the payroll charges assessed were for related work.

Regarding recommendation 5c, the State said the financial services were costs associated with DHSES' maintenance of technological systems the agency uses to manage the grants. On the issue of salaries, DHSES was able to proportionally charge salaries consistent with the overall funding pool and estimated level of effort.

Regarding recommendation 5d, FEMA said that the OIG does not address why we believe the subgrantee should have conducted a lease/purchase analysis. The State's response maintains that the subgrantee actually saved \$180,000 by opting to not conduct a prior analysis.

#### **OIG Analysis of FEMA and State Comments:**

We consider this recommendation resolved and open until additional documentation is provided and FEMA performs a review of the documentation.

Regarding recommendation 5a, we examined records for two payroll periods from fiscal year 2010 and two from 2011 for Companies A, B, and C. We found no evidence of hours or locations in the documentation. Our review of documents provided in the State response indicated that the Task Force responsibilities included generating a Quick Response Force of 75 personnel stationed at Fort Hamilton. FEMA's *Homeland Security Grant Program Guidance and Application Kit* noted that these costs should be for increased security



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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measures at critical infrastructure sites, not for establishing a Quick Response Force. Additionally, sign-in sheets do not establish that the work was performed as overtime.

Regarding recommendation 5b, the State believed that information provided to the auditors for SUNY was responsive to their request. We agree that this information is responsive; however, we were told we would receive it in September 2014, not in April 2015. We will provide FEMA with a list of our sampled transactions so it can review and verify the adequacy of the documentation.

Regarding recommendation 5c, we agree that only the financial services costs associated with the SHSP and UASI programs are eligible under the grants we reviewed. Similarly on the issue of salaries, only those salaries related to SHSP and UASI are eligible.

Regarding recommendation 5d, in light of our findings, we believe the referenced analysis would have helped ensure the cost of the lease was reasonable. The State provided a document with a statement that the County saved \$180,000 because it leased this equipment. However, no support was provided to show how these savings were determined.

#### **FEMA and State's Comments to Recommendation #6:**

FEMA concurred with the recommendation while the State did not concur. FEMA stated that it will require DHSES to provide documentation or justification to support the expenditures, and after its review will recoup any disallowed costs. FEMA also informed us that recipients may procure an agreement, warranty, or contract extending beyond the grant period provided it is purchased incidental to the original system or equipment procurement. FEMA anticipated an estimated completion date of September 30, 2015.

Regarding recommendation 6a, the State wanted OIG to determine the meaning of "beneficial" versus "not beneficial" costs.

Regarding recommendation 6b, the State, similar to FEMA's response mentioned a FEMA Grant Programs Directorate Policy (FP 205-402-125-1), which allows such service costs to extend beyond the grant performance period.

Regarding recommendation 6c, the State strongly disagreed with our assessment that the activities conducted by the Queen's District Attorney's Office did not meet the criteria for Organizational Activities overtime costs and provided a detailed explanation for why these costs should be approved.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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#### **OIG Analysis of FEMA and State Comments:**

We consider this recommendation unresolved and open until additional documentation is provided and FEMA completes its review.

Regarding recommendation 6a, according to 2 CFR, Part 225, Section C(3)(a), cost is allocable to a particular cost objective if the goods and services involved are chargeable or assignable to such cost objective in accordance with relative benefits received. The costs in question were for other grant programs that had no benefit to the SHSP and UASI awards we reviewed.

Regarding recommendation 6b, the issuance date of this FEMA Grant Programs Directorate Policy (FP 205-402-125-1) was May 10, 2013. Although this policy came into effect after these costs were incurred, it applied to all grants that were open as of the date of issuance, including those we questioned. FEMA informed us following receipt of its management comments that it also applied to all grants that were open as of the date of issuance.

Regarding recommendation 6c, the *FY 2010 Homeland Security Grant Program Guidance and Application Kit* states overtime costs are allowable for personnel to participate in information, investigative, and intelligence sharing activities specifically related to homeland security and specifically requested by a Federal agency. Since we have no evidence of a request by a Federal agency and the costs were not for an eligible activity, our position remains unchanged.

#### **FEMA and State's Comments to Recommendation #7:**

FEMA and the State did not concur. FEMA stated that to the extent that New York State law or policy requires DHSES to execute such work plans described by the OIG, FEMA will work with DHSES to ensure that these requirements are met. The State responded that planned expenditures by State agencies are accounted for in the State's submission of Investment Justifications as part of the grant application process. FEMA anticipated an estimated completion date of September 30, 2015.

#### **OIG Analysis of FEMA and State Comments:**

Not all State agency subgrantees submitted grant applications or had established grant agreements, which is where detailed spending plans would otherwise be documented. Consistent with our analysis of its response to recommendation 3, we believe FEMA can still meet this recommendation's intent by exercising its existing Federal authority governing financial management standards under 44 CFR §13.20 and potentially others, such as OMB Circular A-102, *Grants and Cooperative Agreements for State and Local*



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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*Governments.* This recommendation is resolved but will remain open until FEMA can demonstrate that DHSES and all State agency subgrantees have implemented appropriate internal controls to ensure their grant expenditures can be verified as allocable, allowable, and reasonable.

#### **FEMA and State's Comments to Recommendation #8:**

FEMA did not concur, but the State concurred. FEMA cited the Federal authorities allowing the advance payment for leasing costs under Federal grant awards, noting that the reasonableness of such payments should be determined on a case-by-case basis. FEMA also explained that FEMA Policy No. 205-402-125-1 permits grant recipients to procure maintenance agreements, service contracts, or extended warranties for systems or equipment that exceed the period of performance under certain conditions.

#### **OIG Analysis of FEMA and State Comments:**

We agree with FEMA that advance payments can be allowable. However, the State requires that it approve the advance payments in its grant agreements with subgrantees. State personnel informed us that the subgrantee never received approval for the advance payments. Regarding FEMA Policy No. 205-402-125-1, FEMA clarified following our receipt of its written comments that it also covers all grant awards open as of May 10, 2013, the date of issuance, including the grant costs in question. We consider this recommendation resolved and open pending the State's verification to FEMA that the advance lease payments in question were made in compliance with all applicable Federal and State requirements.

#### **FEMA and State's Comments to Recommendation #9:**

FEMA concurred, but the State did not concur. FEMA does not dispute the finding; however, it wants to reserve judgment until it can determine whether SUNY is a State-controlled agency or a separate legal entity. The State disagreed, stating that the individual agency's administrative fees may be in slight excess of 5 percent and the State had not yet exceeded the 5 percent limit. FEMA anticipated an estimated completion date of September 30, 2015.

#### **OIG Analysis of FEMA and State Comments:**

We agree with FEMA that the determination of whether SUNY is a State-controlled agency or a separate legal entity has a bearing on this finding. However, we were informed by DHSES officials that SUNY was a State agency, and we wanted to ensure that the administrative fee (5.6%) charged by SUNY is included in the State's 5 percent maximum for M&A costs. We consider this



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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recommendation resolved and open pending a decision on the type of relationship SUNY has with DHSES.

#### **FEMA and State's Comments to Recommendation #10:**

FEMA did not concur but the State concurred in part. FEMA stated that it lacks the authority to prescribe the frequency and type of monitoring activities the grantees must conduct, such as the onsite monitoring of State agencies we are recommending. The State disagreed with the OIG's assertion that the only way to monitor subgrantees is exclusively through the issuance of reports and noted FMU conducted a site visit at NYPD in February 2015 and scheduled a site visit to FDNY for May 2015. Finally, the FMU said it would designate a Fiscal Liaison to complement the Program Representative currently assigned to each State agency to provide ongoing advice, training, and technical assistance. FEMA anticipated an estimated completion date of September 30, 2015.

#### **OIG Analysis of FEMA and State Comments:**

FEMA's *Homeland Security Grant Program Guidance and Application Kit* requires grantees to monitor award activities, including sub-awards, "to provide reasonable assurance that the Federal award is administered in compliance with requirements." Furthermore, the written procedures of the grantee's FMU state that issuance of a monitoring report will be the result of both office and field-based, i.e., onsite monitoring. We reported how the State is not meeting its responsibilities in this regard and suggested corrective steps that could be taken to meet this responsibility. However, we believe FEMA's and the State's proposed actions meet the intent of this recommendation. The recommendation is resolved and open pending issuance of the State's site visit reports on the NYPD and FDNY and its development of a plan and methodology for conducting substantive fiscal monitoring of all State agencies receiving grant funds.

#### **FEMA and State's Comments to Recommendation #11:**

FEMA concurred, but the State neither concurred nor disagreed. FEMA said it would review whether it needs to revise its current guidance on operational overtime as stated in its HSGP Guidance and Application Kits, Funding Opportunity Announcements, and Notices of Funding Opportunity. Specific operational overtime "allowability" issues with how NYPD administered that funding will be addressed through the corrective action plan for recommendation 12. FEMA anticipated an estimated completion date of September 30, 2015.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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#### **OIG Analysis of FEMA and State Comments:**

We consider this recommendation resolved and open pending FEMA's decision on the adequacy of FEMA's current guidance on operational overtime and the completion of the action plan included in recommendation 12.

#### **FEMA and State's Comments to Recommendation #12:**

FEMA concurred, but the State did not concur. FEMA officials said they will require DHSES to conduct an independent review of a sample of the NYPD's \$42,844,265 in operational overtime for the protection of critical infrastructure during FYs 2010–12. FEMA will require any identified unallowable costs be recouped. FEMA anticipated an estimated completion date of September 30, 2015.

In the State's response, NYPD disagreed that some locations linked to the questioned operational overtime costs did not meet the Federal definition of critical infrastructure. Included in the State's response were New York City's requests and FEMA's approvals to use FYs 2010–12 HSGP funds to cover operational overtime costs for critical infrastructure protection. It also includes an affidavit from a high-ranking NYPD official affirming that these costs were incurred in the course of protecting critical infrastructure.

#### **OIG Analysis of FEMA and State Comments:**

We consider this recommendation resolved and open pending the results of the State's independent review of a sample of NYPD expenditures in question based on FEMA's guidance on operational overtime and the documentation to support the costs.

#### **FEMA and State's Comments to Recommendation #13:**

FEMA concurred but the State did not concur. FEMA will require DHSES to provide support for the expenditures and reimburse funds where the documentation provided does not adequately support the noted expenditures. In the State's response, FDNY believed that the documentation it provided was adequate to support the costs. This documentation demonstrated that this was not actually an FDNY procurement and that the vendor was chosen by the landlord. Additionally, although the camera and the utility vehicle were not included in the initial approved grant budget, they were eligible items. FEMA anticipated an estimated completion date of September 30, 2015.



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

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**OIG Analysis of FEMA and State Comments:**

We consider this recommendation resolved and open pending DHSES providing justification to FEMA to support the expenditures.

**FEMA and State's Comments to Recommendation #14:**

FEMA concurred, but the State did not concur. FEMA officials said they will require DHSES to investigate FDNY's expenditures for seven radios that were not available to the OIG during its audit. FDNY said in the State response that the seven radios were returned to the manufacturer and were exchanged for three newer upgraded models. The value of the three new radios was equivalent to the value of the seven returned radios. FEMA anticipated an estimated completion date of September 30, 2015.

**OIG Analysis of FEMA and State Comments:**

We consider this recommendation resolved and open pending DHSES investigation of FDNY's expenditures for seven radios valued at \$123,975.

**FEMA and State's Comments to Recommendation #15:**

FEMA and the State concurred. FEMA will require DHSES to ensure the New York City Office of Management and Budget and the Office of Justice Coordinator complete compliance reviews of city agencies awarded HSGP funding as required by NYC's *Homeland Security and Criminal Justice Grant Management Policies and Procedures Manual*. The Office of Management and Budget in the State's response agreed with the recommendation to increase oversight and agreed to conduct formal compliance reviews of all City Homeland Security grantees. FEMA anticipated an estimated completion date of September 30, 2015.

**OIG Analysis of FEMA and State Comments:**

We consider this recommendation resolved and open pending the completion of compliance reviews of city agencies awarded HSGP funding.



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

## **Appendix A**

### **Scope and Methodology**

DHS OIG was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the Department.

Public Law 110-53, *Implementing Recommendations of the 9/11 Commission Act of 2007*, requires DHS OIG to annually audit a sample of individual states' management of SHSP and UASI grants. The audit objectives were to determine whether New York spent grant funds effectively and efficiently, and complied with applicable Federal laws and regulations and DHS guidelines governing the use of such funding. We also addressed the extent to which grant funds enhanced the grantees ability to prevent, prepare for, protect against, and respond to natural disasters, acts of terrorism, and other manmade disasters.

The HSGP encompasses several interrelated grant programs that fund a range of preparedness activities, including planning, organization, equipment purchase, training, exercises, and management and administration costs. We reviewed only SHSP and UASI funding and equipment and supported programs for compliance.

The scope of this audit included the plans developed by the State and the NYC urban area to improve preparedness and response to all types of hazards, goals, and objectives in those plans; measurement of progress toward the goals; and compliance with laws, regulations, and grant guidance. Table 4 shows the funding scope for the audit, which included SHSP and UASI grant awards for FYs 2010–12.

**Table 4. New York and New York City Urban Area SHSP and UASI Awards (FYs 2010–12)**

<b>Grant Program</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>Total</b>
State Homeland Security Program	\$113,536,625	\$91,192,861	\$55,610,384	\$260,339,870
Urban Areas Security Initiative	\$161,460,063	\$151,579,096	\$151,579,096	\$464,618,255
Total	\$274,996,688	\$242,771,957	\$207,189,480	\$724,958,125

Source: DHS OIG analysis of FEMA data.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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The audit methodology included work at DHSES, state agencies, New York City Office of Management and Budget, city agencies, and various subgrantee locations in New York. To achieve our audit objective, we analyzed data, reviewed documentation, and interviewed key state and local officials directly involved in management and administration of the HSGP. In addition, we verified the existence of selected equipment procured with SHSP and UASI grant funds.

We judgmentally selected a sample of 10 subgrantees with total awards of \$134 million, representing about 64 percent of the total SHSP grant funds awarded to New York cities, counties, and towns. We also judgmentally selected a sample of five state and local agencies with total awards of \$79 million, about 62 percent of the total SHSP and UASI grant funds awarded to state agencies. In addition, we judgmentally selected five City of New York agencies with total awards of \$478 million, about 98 percent of the total SHSP and UASI grant funds awarded to city agencies. We did not review the other participating and principal members of the NYC urban area, nor did we review the other four urban areas (Albany, Buffalo, Rochester, and Syracuse), which received funds only in FY 2010.

We determined our sample based on the total expenditures reported by DHSES as of December 31, 2013. Tables 5, 6, and 7 show the value of the subgrantee grant awards from our sample selections.



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

**Table 5. Sample Selection for SHSP Grants Awarded from Local Share during FYs 2010–12**

Subgrantees	Grant Awards	Grant	Year
Broome County	\$1,666,000	SHSP	2010–12
Clinton County	\$546,100	SHSP	2010–12
Dutchess County	\$1,750,000	SHSP	2010–12
Madison County	\$295,935	SHSP	2010–12
Rockland County	\$3,458,000	SHSP	2010–12
Wayne County	\$754,700	SHSP	2010–12
City of Elmira	\$49,092	SHSP	2010
Village of Endicott	\$252,466	SHSP	2010–12
New York City	\$124,558,007	SHSP	2010–12
Watertown	\$310,051	SHSP	2010–12
<b>Total</b>	<b>\$133,640,351</b>		

Source: DHS OIG analysis of FEMA data.

**Table 6. Sample Selection for SHSP and UASI Grants Awarded from State Share during FYs 2010–12**

Subgrantees	Grant Awards	Grant	Year
Division of State Police	\$11,709,416	SHSP UASI	2010–12
Division of Military and Naval Affairs	\$32,000,000	SHSP UASI	2010–12
Division of Criminal and Justice Services	\$1,971,918	SHSP	2010–12
Division of Homeland Security and Emergency Services	\$32,801,904	SHSP UASI	2010–12
Queens District Attorney (Not a State Agency but received state share funding)	\$200,000	SHSP	2010
<b>Total</b>	<b>\$78,683,238</b>		

Source: DHS OIG analysis of FEMA data.



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

**Table 7. Sample Selection for SHSP and UASI Grants Awarded to NYC Area FYs 2010–12**

<b>Subgrantees</b>	<b>Grant Awards</b>	<b>Grant</b>	<b>Year</b>
New York Police Department	\$282,353,394	SHSP UASI	2010– 12
Fire Department of New York City	\$142,770,894	SHSP UASI	2010– 12
Office of Emergency Management	\$34,430,833	UASI	2010– 12
Department of Information and Technology	\$4,818,017	SHSP UASI	2010– 12
Department of Health and Mental Hygiene	\$13,727,000	SHSP UASI	2010– 12
<b>Total</b>	<b>\$478,100,138</b>		

Source: DHS OIG analysis of FEMA data.

We conducted this performance audit between February and November 2014 pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

**Appendix B**  
**FEMA and State Comments to the Draft Report**



U.S. Department of Homeland Security  
Washington, DC 20472

**FEMA**

APR 17 2015

MEMORANDUM FOR: Mark Bell  
Assistant Inspector General for Audits  
Office of Inspector General (OIG)  
Department of Homeland Security

FROM: David Bibo *David Bibo*  
Associate Administrator (Acting) for  
Policy, Program Analysis and International Affairs  
Federal Emergency Management Agency (FEMA)

SUBJECT: FEMA's Response to OIG's Draft Report: "New  
York's Management of Homeland Security Grant  
Program Awards for Fiscal Years 2010 through 2012"  
OIG Project No. 14-076-AUD-FEMA.

Thank you for the opportunity to comment on your Draft Report, "New York's Management of Homeland Security Grant Program Awards for Fiscal Years 2010 through 2012" OIG Project No. 14-076-AUD-FEMA. The findings in the report will be used to strengthen the effectiveness and efficiency of how we execute and measure our program. We recognize the need to continue to improve the process, including addressing the recommendations raised in this report. The following are our written response to the 15 recommendations for implementation, of which, FEMA concurs with recommendations 1, 2, 5, 6, 9, and 11 through 15. FEMA non-concurs with recommendations 3, 4, 7, 8, and 10. FEMA is requesting closure of recommendations 1 and 8.

**Recommendation #1:** We recommend that the FEMA Assistant Administrator, Grant Programs Directorate, require the Division of Homeland Security and Emergency Services and the New York City (NYC) urban area to ensure future State and NYC urban area Threat and Hazard Identification and Risk Assessment (THIRAs) fully comply with the processes listed in FEMA's Comprehensive Preparedness Guide (CPG) 201.

**Response: Concur.** The Division of Homeland Security and Emergency Services (DHSSES) and NYC Urban Area 2012 THIRA submission are the basis of the findings of Recommendation #1. The submissions of both jurisdictions substantively aligned with the applicable FEMA guidance on the THIRA process, *CPG 201: First Edition*. Specifically, *CPG 201: First Edition* states: "For each threat and hazard on the list, explain briefly the different conditions under which a threat or hazard might occur that

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## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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are of greatest concern to the jurisdiction.” Although the DHSES and NYC Urban Area outlined several threats and hazards in Steps 1 and 2 of their THIRAs, both jurisdictions used the impacts from an Improvised Nuclear Device (IND) incident when completing Steps 3 through 5 of the THIRA process; when estimating impacts, setting capability targets, and applying the results from their THIRAs. The information contained in both jurisdictions’ THIRAs meets the 2012 criteria for the guidance alignment in that:

- The jurisdictions provide desired outcomes for the core capabilities defined in the National Preparedness Goal;
- The jurisdictions provide estimated impacts for the core capabilities defined in the National Preparedness Goal; and
- The jurisdictions provide capability targets for the core capabilities defined in the National Preparedness Goal.

The THIRA process is maturing. Since 2012, FEMA updated and released a second edition of *CPG 201*, to provide additional guidance and clarity to the THIRA process. Specifically, *CPG 201: Second Edition* expands the THIRA process to include estimation of resources needed to meet the capability targets identified by jurisdictions. *CPG 201: Second Edition* also reflects other changes to the THIRA process based on stakeholder feedback and supersedes the *CPG 201: First Edition*. In addition to the inclusion of a capability estimation process, updates to *CPG 201: Second Edition* includes the following:

- A streamlined four-step process to completing a THIRA; and
- More examples outlining how to complete the steps for a THIRA.

Both jurisdictions submitted THIRAs in 2013 and 2014, using the updated *CPG 201: Second Edition* as guidance. DHSES and NYC Urban Areas improved their THIRA in 2013, by including an additional hazard based on real-world events: a hurricane.

With the updated THIRA guidance from FEMA and with more experience in completing the THIRA process, jurisdictions are setting more measureable capability targets and are implementing the capability estimation process, as explained in *CPG-201: Second Edition*. The outputs of this process serve as the foundation for a range of other preparedness efforts as a part of the National Preparedness System.

While the THIRA process as a whole is undergoing a continuous refinement process, FEMA believes that DHSES, and the New York Urban Area have demonstrated their improvement modifications to their THIRA process and report that they are in accord with corresponding modifications made by FEMA to the guidance document (CPG).

FEMA believes the full intent of this recommendation has been met; therefore FEMA requests this recommendation be resolved and closed.



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

**Recommendation #2:** We recommend that the FEMA Assistant Administrator, Grant Programs Directorate require the Division of Homeland Security and Emergency Services to assess and streamline the current processes and procedures for obligating funds to subgrantees so that it obligates grant funds within a reasonable time period.

**Response: Concur:** The Assistant Administrator for Grant Programs will require DIISES to assess and, where possible, streamline current processes and procedures to obligate 80% of HSGP funds to sub-recipients within the 45-day requirement as required by 6 U.S.C. §§ 603 and 604 and the terms of its awards.

FEMA requests this recommendation remain resolved and open.

**Estimated Completion Date (ECD):** September 30, 2015

**Recommendation #3:** We recommend that the FEMA Assistant Administrator, Grant Programs Directorate require the Division of Homeland Security and Emergency Services to provide a budget and work plan for the Division of Military and Naval Affairs to account for its SIISP and UASI grant funds. The budget and work plan should specify the services to be provided and identify the location, and estimate the hours and number of National Guard members.

**Response: Non-Concur:** The Assistant Administrator for Grant Programs will ensure the Division of Military Affairs' documentation requirements are managed consistent with applicable State laws and policies, as well as with all applicable Federal uniform administrative requirements, cost principles, and audit requirements, including the *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments* at 44 C.F.R. Part 13 and the *Cost Principles for State, Local, and Indian Tribal Governments* at 2 C.F.R. Part 225. To the extent that New York State law or policy requires DIISES to execute such work-plans described by the OIG, FEMA will work with DHSES to ensure that these requirements are met.

To the extent that the OIG's findings are based on Federal uniform administrative requirements and cost principles, however, FEMA notes that the terms and conditions of DHSES's FY 2010 – FY 2012 HSGP awards, including the IISGP Guidance and Application Kits and Funding Opportunity Announcements, do not require "work-plans". FEMA cannot impose a requirement on a recipient or sub-recipient that is not a term and condition of its award. Absent a reference from the OIG to a specific authority that requires FEMA to direct recipients or sub-recipients to develop work-plans, FEMA cannot impose such an administrative requirement. As stated above, FEMA will work with the DHSES to ensure compliance with all administrative requirements. This will include the standards for financial management systems at 44 C.F.R. § 13.20, which requires a State to expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds.



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

FEMA requests this recommendation remain resolved and open.

ECD: September 30, 2015

**Recommendation #4:** We recommend that the FEMA Assistant Administrator, Grant Programs Directorate: Require the Division of Homeland Security and Emergency Services to amend Memorandum of Understanding #468 to include the specific tasks to be provided, the total amount for each task, when the task will be completed, and what deliverable will be provided.

**Response: Non-concur.** The Assistant Administrator for Grant Programs will require DIHSES to ensure that the terms of Memorandum of Understanding (MOU) # 468 are consistent with State law and policy requirements. Based on the information provided by the OIG in its report, this MOU appears to either be a contractual agreement executed by a state agency, or an agreement between two State agencies. Under either scenario, FEMA does not have the authority to impose specific terms on a State recipient when the State enters into a contractual agreement or an agreement with another State agency, other than those expressly required by the terms of its grant award, including the *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments* at 44 C.F.R. Part 13. If this is a contract under New York State law, pursuant to 44 C.F.R. § 13.36(a), FEMA will require DHSES to comply with State laws and regulations, and ensure that the State includes any clauses required by Federal statutes and executive orders, when entering into such an agreement.

FEMA requests this recommendation remain resolved and open.

ECD: September 30, 2015

**Recommendation #5:** We recommend that the FEMA Assistant Administrator, Grant Programs Directorate: Require the Division of Homeland Security and Emergency Services to provide documentation that adequately supports \$23,537,386 in questioned costs that are unsupported or return the amount not supported. Specifically, the documentation should support:

- hours worked and locations for Task Force Empire Shield activities (\$18,731,021 in questioned costs);
- expenditures selected in a sample of costs for services that SUNY provided to DIHSES under MOUs #432, #442, #443, and #468 (\$2,982,692 in questioned costs);
- costs related to non-IISGP grant programs for \$1,324,851 in salaries and \$318,813 in financial services; and the reasonability of \$180,009 to lease communication equipment.



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

**Response: Concur.** The Assistant Administrator for Grant Programs will require DIISES to provide documentation or justification to the Grant Programs Directorate to support the following expenditures:

- Hours worked and locations for Task Force Empire Shield activities (\$18,731,021 in questioned costs);
- Expenditures selected in a sample of costs for services that SUNY provided to DIISES under MOUs #432, #442, #443, and #468 (\$2,982,692 in questioned costs);
- Costs related to non-IISGP grant programs for \$1,324,851 in salaries and \$318,813 in financial services; and
- the reasonability of \$180,009 to lease communication equipment.

Subsequent to review, FEMA will require recoupment of any disallowed costs.

As part of its process in working with DHS&S to meet the intent of this recommendation, FEMA notes the following concerns regarding the information provided by the OIG underlying this recommendation. Regarding documentation for Task Force Empire Shield: the report does not indicate how many payroll records were queried for the sample from the Division of Military and Naval Affairs during the audit. To determine the scope of the documentation issue within the Division of Military and Naval Affairs, FEMA will work with DIISES, to identify a reasonable sample representative of the questioned costs, consistent with the GAO Government Auditing Standards (the “Yellow Book”).

Regarding the reasonability of \$180,009 to leased equipment: according to the *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments* at 44 C.F.R. Part 13, a local government sub-recipient will conduct an analysis of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach, “where appropriate.” 44 C.F.R. § 13.36(b)(4) (emphasis added). This regulation does not mandate that local government sub-recipients conduct such a lease versus purchase analysis in all circumstances. While the OIG properly cites this regulation, its report does not address why the OIG believes it was appropriate for the sub-recipient to conduct the analysis in this circumstance. FEMA also notes that renting or leasing costs for or equipment or buildings are generally allowable expenses under the *Cost Principles for State, Local, and Indian Tribal Governments* at 2 C.F.R. Part 225, App. B § 37.

FEMA requests this recommendation remain resolved and open.

ECD: September 30, 2015



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

**Recommendation #6:** We recommend that the FEMA Assistant Administrator, Grant Programs Directorate: Require the Division of Homeland Security and Emergency Services to reimburse FEMA \$450,414 in questioned costs that are ineligible. Specifically, the Division of Homeland Security and Emergency Services should reimburse FEMA:

- \$261,748 for fringe benefits applicable to ineligible, non-HISGP grant programs;
- \$10,824 for claimed costs for maintenance contracts and warranties that extended beyond the performance period of the grant; and \$177,842 for overtime expenses not used for eligible activities and not federally requested.

**Response: Concur.** The Assistant Administrator for Grant Programs will require DISES to provide documentation or justification to GPD to support the following expenditures:

- \$261,748 for fringe benefits applicable to ineligible, non-HISGP grant programs;
- \$10,824 for claimed costs for maintenance contracts and warranties that extended beyond the performance period of the grant; and
- \$177,842 for overtime expenses not used for eligible activities and not federally requested.

Subsequent to review, FEMA will require recoupment of any disallowed costs.

Regarding the information provided by the OIG underlying the issue of claimed costs for maintenance contracts and warranties that extended beyond the period of performance of the grant award, FEMA will work with the State to examine the details of those procurements. FEMA Policy No. 205-402-125-1 clarifies that when purchasing a maintenance agreement, service contract, or extended warranty for systems or equipment, the period of coverage provided under such a plan may not extend beyond the period of performance of the grant with which the agreement, warranty, or contract is purchased. However, per this FEMA Policy, recipients may procure such an agreement, warranty, or contract that exceeds the period of performance if the agreement, warranty, or contract is purchased incidental to the original purchase of the system or equipment. This limited exception only applies when such an agreement, warranty, or contract must be generally commercially available from the vendor. In other words, such an agreement, warranty, or contract must be consistent with that which is typically provided for, or available through these types of procurements of the underlying systems or equipment.

FEMA requests this recommendation remain resolved and open.

**ECD:** September 30, 2015



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

**Recommendation #7:** We recommend that the FEMA Assistant Administrator, Grant Programs Directorate: Require the Division of Homeland Security and Emergency Services to provide budgets and work plans for all state agencies receiving HSGP funds, including the Division of Homeland Security and Emergency Services, to ensure funds are allocable, allowable, and reasonable.

**Response: Non-Concur.** The Assistant Administrator for Grant Programs will require DIISES to ensure all state agency documentation requirements for HSGP funds are managed consistent with State laws and regulations as well as all applicable Federal uniform administrative requirements, cost principles, and audit requirements, including the *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments* at 44 C.F.R. Part 13 and the *Cost Principles for State, Local, and Indian Tribal Governments* at 2 C.F.R. Part 225. To the extent that New York State law or policy requires DHSES to execute such work-plans described by the OIG, FEMA will work with DHSES to ensure that these requirements are met.

To the extent that the OIG's recommendations are based on Federal uniform administrative requirements and cost principles, the terms and conditions of DHSES's FY 2010 - FY 2012 HSGP awards, including the HSGP Guidance and Application Kits and Funding Opportunity Announcements, do not require recipients to produce work-plans. FEMA cannot impose a requirement on a recipient or sub-recipient that is not a term and condition of its award. Absent a reference from the OIG to a specific authority that requires FEMA to direct recipients or sub-recipients to develop work-plans, FEMA cannot impose such an administrative requirement. As stated above, FEMA will work with the DIISES to ensure compliance with all administrative requirements. This will include the standards for financial management systems at 44 C.F.R. § 13.20, which requires a State to expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds.

FEMA requests this recommendation remain resolved and open.

**ECD:** September 30, 2015

**Recommendation #8:** We recommend that the FEMA Assistant Administrator, Grant Programs Directorate: Ensure that the Division of Homeland Security and Emergency Services does not reimburse sub-grantees for advanced payments on leases and costs for maintenance contracts, or for warranties that extend beyond the grant period.

**Response: Non-concur.** The terms of this recommendation regarding advanced payments and leases are inconsistent with the requirements of the *Uniform Administrative Requirements for Grants and Cooperative Agreements for State and Local Governments* at 44 C.F.R. Part 13 and the *Cost Principles for State, Local, and Indian Tribal Governments* at 2 C.F.R. Part 225. Advance payments under Federal grant awards are



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

permissible, per 44 C.F.R. § 13.21(c). Lease and rental costs are allowable under Federal grant awards, as described at 2 C.F.R. Part 225, App. B § 37 and 44 C.F.R. § 13.36(b)(4).

To the extent that this recommendation seeks to prohibit advanced payments made by a sub-recipient on a contract or lease that has a series of scheduled, periodic payments – and not an advance payment made by the recipient to a sub-recipient governed by the regulations at 44 C.F.R. § 13.21 – whether such advance payments are reasonable should be determined on a case-by-case basis. FEMA is unaware of any requirement that disallows such advance payments in all cases, especially where the advance payments are permissible under applicable State or local laws and regulations.

With respect to costs related to maintenance contracts and warranties that extend beyond the grant's period of performance, FEMA Policy No. 205-402-125-1 clarifies that when purchasing a maintenance agreement, service contract, or extended warranty for systems or equipment, the period of coverage provided under such a plan may not extend beyond the period of performance of the grant with which the agreement, warranty, or contract is purchased. However, per this FEMA Policy, recipients may procure such an agreement, warranty, or contract that exceeds the period of performance if the agreement, warranty, or contract is purchased incidental to the original purchase of the system or equipment. This limited exception only applies when such an agreement, warranty, or contract must be generally commercially available from the vendor. In other words, such an agreement, warranty, or contract must be consistent with that which is typically provided for, or available through these types of procurements of the underlying systems or equipment.

FEMA requests this recommendation be resolved and closed.

**Recommendation #9:** We recommend that the FEMA Assistant Administrator, Grant Programs Directorate: Require the Division of Homeland Security and Emergency Services to ensure the total administrative expenses, including the administrative fee of 5.6 percent charged by State University of New York, will not exceed the grantee limit of 5 percent of the amount of the grant as required in Public Law 111-83, *Department of Homeland Security Appropriations Act, 2010*.

**Response: Concur:** The Assistant Administrator for Grant Programs will require DHSES to comply with M&A requirements in the FY 2010 HSGP Guidance and Application Kit.

While FEMA concurs with the legal requirement that the grantee may only expend up to 5 percent of its HSGP award on management and administrative direct costs, FEMA does not have sufficient information to determine whether or not the State University of New York (SUNY) is a legal entity of the recipient or, whether it is a sub-recipient. Making



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

such a determination is a question of State law that New York State must provide to fully address this Recommendation.

Although it is generally true that M&A costs incurred by State agencies should be calculated as part of the State-recipient's 5% M&A allowance, FEMA notes two concerns with the OIG's analysis underlying this recommendation. First, FEMA does not have enough information to confirm that "SUNY is a state agency". As stated above, the question of whether SUNY is a State-controlled agency or a separate legal entity is a question of State law and interpretation. In some States, "State" universities are separate legal entities that the State will treat as an independent agency or quasi-governmental entity. Such universities may be managed by a board of trustees that do not report to the governor, and the board may control the university's budget. The focus here is that the legal organization of SUNY is a question of State law that only New York can answer. A Federal agency such as FEMA or the OIG is not in a position to interpret State law.

Second, the analysis underlying this recommendation incorrectly applies the definition of "grantee" at 44 C.F.R. § 13.3 to define the term as it is used in in the *Department of Homeland Security Appropriations Act, 2010* (Pub. L. No. 111-83), referring to the *Homeland Security Act of 2002*, as amended (Pub. L. No. 107-296). A plain reading of 44 C.F.R. § 13.3 instructs that the terms defined therein only apply to the terms as they are used in that Part:

#### § 13.3 Definitions.

##### **As used in this part:**

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

44 C.F.R. § 13.3 (emphasis added).<sup>1</sup>

<sup>1</sup> OMB addressed a similar question regarding the applicability of the definitions of terms in the regulatory scheme that recently superseded the *Uniform Administrative Requirements* previously adopted by FEMA at 44 C.F.R. Part 13. Specifically, OMB has stated that the definitions of terms in the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (2 C.F.R. Part 200) are only applicable as used in that regulation, unless specifically indicated otherwise:

.54-3 (previously Q III-6) Tribes Removed from Definition of State- Implications for Applications  
In section 200.54 Indian tribes were removed from the definition of a state. How will this impact the application process for funds reserved for states? Will tribes no longer qualify?

\* This should have no impact on the application process for funds reserved for states. **These definitions are applicable only to the Uniform Guidance at 2 CFR 200 unless specifically indicated otherwise.**



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

FEMA cautions against reading the *Definitions* section of the *Uniform Administrative Requirements* at 44 C.F.R. Part 13 as having any direct applicability to similar terms that appear in a separate authorization or appropriations act enacted by Congress. 44 C.F.R. Part 13 is FEMA's promulgation of the Office of Management and Budget's (OMB) *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*. The *Uniform Administrative Requirements* are not the implementing regulations of the *Homeland Security Act of 2002*, as amended, or any other statute. At the direction of the President, all Federal awarding agencies adopted this common set of administrative rules written by OMB to establish consistency and uniformity among the Federal agencies in their administration of grants to State, local, and tribal recipients. See, e.g., 52 Fed. Reg. 21820; 53 Fed. Reg. 8084. The purpose of this regulation is not to provide programmatic implementing regulations to define program specific questions. While the definition of "grantee" at 44 C.F.R. § 13.3 may seem to "fit" the term as it is used in Pub. L. No. 111-83, there is no legal basis that would allow FEMA to apply definitions of terms found in that regulation to the terms as they are used in a separate and independent act of Congress.

FEMA requests this recommendation remain resolved and open.

ECD: September 30, 2015

**Recommendation #10:** We recommend that the FEMA Assistant Administrator, Grant Programs Directorate: Require the Division of Homeland Security and Emergency Services to ensure the Fiscal Monitoring Unit conducts site visits at state agencies and issues site visit reports on New York Police Department and Fire Department of New York identifying compliance with FEMA's *FY 2010–2012 Homeland Security Grant Program Guidance and Application Kit*.

**Response: Non-concur.** The Assistant Administrator for Grant Programs will require DHSES to develop and document a methodology to conduct fiscal monitoring for all sub-recipients and state agencies that is consistent with the terms and conditions of its awards. In addition to the methodology, the fiscal monitoring protocols must address how DHSES FMU staff will assess compliance with federal requirements as well as the reports required to be produced upon completion of monitoring.

The OIG's recommendation is limited in scope and its report does not address whether DHSES has existing policies and procedures to determine which sub-recipients are monitored each year. Neither the FY 2010 – FY 2012 HSGP Guidance and Application Kits and Funding Opportunity Announcements, nor the *Uniform Administrative*

*Frequently Asked Questions For the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards At 2 CFR 200*, <https://efo.gov/wp-content/uploads/2014/11/2014-11-26-Frequently-Asked-Questions.pdf> (emphasis added).



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

*Requirements for Grants and Cooperative Agreements to State and Local Governments* at 44 C.F.R. § 13.40(a) prescribe the frequency of monitoring. With respect to site visits, FEMA cannot impose a requirement on a recipient that is not a term and condition of its award. Absent a reference from the OIG to a specific authority that requires FEMA to direct recipients to conduct site visits, FEMA cannot impose such an administrative requirement unless DIISES is required to do so by its own State laws, regulations, or policies. The report states the last fiscal monitoring reports for NYPD and FDNY were issued in 2011; the report does not indicate which award year or years this report addressed and whether FY 2010 HSGP-funded expenditures were included. Since the FY 2011 and FY 2012 HSGP awards remain open, DHSSES could monitor any of its sub-recipients, including NYPD and FDNY before the end of the periods of performance of each award, both of which end on August 31, 2015 and is not non-compliant with monitoring requirements.

FEMA requests this recommendation remain resolved and open.

**ECD:** September 30, 2015

**Recommendation #11:** We recommend that the FEMA Assistant Administrator, Grant Programs Directorate: Determine whether FEMA's current guidance on operational overtime is adequate. If so, review the New York Police Department's operational overtime expenditures for allowability and recover the costs related to the protection of noncritical infrastructure. If FEMA believes that the current definition of operational overtime needs to include locations identified through intelligence data, FEMA should revise the guidance accordingly.

**Response: Concur:** The Assistant Administrator for Grant Programs will review whether FEMA needs to revise its current guidance on operational overtime as stated in its HSGP Guidance and Application Kits, Funding Opportunity Announcements, and Notices of Funding Opportunity. The term "critical infrastructure" as it is used to apply to allowability of HSGP funding to support operational overtime costs is not limited to the definition of that term as it is used in the *Homeland Security Act of 2002*, as amended. Per FEMA policy, for purposes of operational overtime funded under HSGP, critical infrastructure includes assets which, if targeted, could result in a local disaster due to their value to the local community or profoundly damage the Nation's morale or confidence. Facilities or sectors can be deemed critical if there is a credible threat identified through intelligence data. Intelligence data underlies decision-making for operational activities to ensure resources are deployed where there is a credible threat. Without intelligence data, there would be no justification for the use of HSGP funds for any operational activities.

With respect to the New York Police Department's requests for prior approval to charge operational overtime costs to its HSGP sub-grant, FEMA can confirm that those requests



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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were consistent with this policy and intent. As a result, the NYPD properly requested, and FEMA properly provided, written prior approval to charge operational overtime costs under its HSGP sub-grant. Specific operational overtime allowability issues with how NYPD administered that funding after receiving such prior approval will be addressed through the corrective action plan for recommendation #12.

FEMA requests this recommendation remain resolved and open.

**ECD:** September 30, 2015

**Recommendation #12:** We recommend that the FEMA Assistant Administrator, Grant Programs Directorate: Require the Division of Homeland Security and Emergency Services to conduct an independent review of the New York Police Department's \$42,844,265 in operational overtime for the protection of critical infrastructure during FYs 2010 through 2012. For all unallowable or unsupported costs, require the New York Police Department to return the funds.

**Response: Concur:** The Assistant Administrator for Grant Programs will require DHSES to conduct an independent review of a sample of the New York Police Department's \$42,844,265 in operational overtime for the protection of critical infrastructure during FYs 2010 through 2012. FEMA will require any identified unallowable costs be recouped.

While FEMA concurs with the intent of the recommendation and agrees with the OIG's concerns about the percentage of unsupported costs the OIG identified, FEMA notes that the OIG based its finding off of a relatively small review sample: eight personnel for a total cost of \$3,134, which represents .007% of the \$42,844,265 questioned by the OIG. As a result, FEMA will work with New York State, Division of Homeland Security (DHSES) to identify a reasonable sample representative of the questioned costs, consistent with the GAO Government Auditing Standards (the "Yellow Book").

FEMA requests this recommendation be resolved and open.

**ECD:** September 30, 2015

**Recommendation #13:** We recommend that the FEMA Assistant Administrator, Grant Programs Directorate: Require the Division of Homeland Security and Emergency Services provide sufficient justification and documentation that adequately supports questioned costs that are unsupported or return to FEMA the amount not supported. Specifically, the documentation should support the following:



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

- \$440,942 for a noncompetitive contract for architect and engineering services (to ensure it was reasonable and in accordance with Federal grant guidance on procurement practices);
- \$87,075 for a camera and utility vehicle that were claimed, but not included in the approved budget.

**Response: Concur:** The Assistant Administrator for Grant Programs will require the New York State, DHSES to provide documentation or justification to GPD to support the following expenditures:

- \$440,942 for a noncompetitive contract for architect and engineering services (to ensure it was reasonable and in accordance with Federal grant guidance on procurement practices);
- \$87,075 for a camera and utility vehicle that were claimed, but not included in the approved budget.

FEMA will require the New York State DHSES to reimburse funds where the documentation provided does not adequately support the noted expenditures.

FEMA requests this recommendation be resolved and open.

**ECD:** September 30, 2015

**Recommendation #14:** We recommend that the FEMA Assistant Administrator, Grant Programs Directorate: Require the Division of Homeland Security and Emergency Services to investigate why the Fire Department of New York spent \$123,975 for seven radios that were not available or were inoperable during our audit. Require the Fire Department of New York to return the funds if determined to be wasted. Also, share and apply any lessons learned to future related investments.

**Response: Concur:** The Assistant Administrator for Grant Programs will require DHSES to investigate FDNY's expenditures for seven radios (\$123,975) that were not available to the OIG during its audit. FEMA must be reimbursed for any identified unallowable costs.

FEMA notes that the recommendation that the sub-recipient "return the funds if determined to be wasted" is not a comprehensive interpretation of the equipment management and disposition standards governing this grant award under the *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments* at 44 C.F.R. § 13.32. If the equipment purchased with HSGP funds by FDNY is in fact no longer being used to further the purpose of the HSGP award or for other activities currently or previously supported by a Federal agency, the sub-recipient must make proper disposition of the equipment in accordance with 44 C.F.R. § 13.32(e).



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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This in effect also includes the allowance to use the proceeds of the sale of equipment to purchase replacement equipment per 44 C.F.R. § 13.32(c)(4). Further, if any equipment had a per-unit fair market value of less than \$5,000 at the time of disposition, then the sub-recipient has no further obligation to the awarding agency, per 44 C.F.R. § 13.32(c)(1). Requiring the sub-recipient to return funds if “determined to be wasted” may be appropriate, but is not necessarily in all cases the appropriate action to take under these standards of disposition for equipment purchased with Federal grant funds.

FEMA requests this recommendation be resolved and open.

**ECD:** September 30, 2015

**Recommendation #15:** We recommend that the FEMA Assistant Administrator, Grant Programs Directorate: Require the Division of Homeland Security and Emergency Services to ensure the NYC Office of Management and Budget and Office of the Criminal Justice Coordinator initiate compliance reviews of city agencies awarded HSGP funding as required by NYC’s *Homeland Security and Criminal Justice Grant Management Policies and Procedures Manual*.

**Response: Concur:** The Assistant Administrator for Grant Programs will require DHSES to ensure the NYC Office of Management and Budget and Office of the Criminal Justice Coordinator complete compliance reviews of city agencies awarded HSGP funding as required by NYC’s *Homeland Security and Criminal Justice Grant Management Policies and Procedures Manual*.

FEMA requests this recommendation be resolved and open.

**ECD:** September 30, 2015

Again, we thank you for the work that you and your team did to inform us of measures we can take to enhance the program’s overall effectiveness. We look forward to OIG’s final report for “New York’s Management of Homeland Security Grant Program Awards for Fiscal Years 2010 through 2012” OIG Project No. 14-076-AUD-FEMA. Please direct any questions regarding this response to Gary McKeon, FEMA Audit Oversight Division, at 202-646-1308.



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security



ANDREW M. CUOMO  
Governor

JOHN P. MELVILLE  
Commissioner

via email to [OIGAuditsFollowup@oig.dhs.gov](mailto:OIGAuditsFollowup@oig.dhs.gov)

April 9, 2015

Mr. Mark Bell  
Assistant Inspector General for Audits  
U.S. Department of Homeland Security  
Office of the Inspector General  
324 West Ninth Street  
Cincinnati, Ohio 45202

**RE: OIG Project No. 14-076-AUD-FEMA**

Dear Mr. Bell:

Thank you for providing the Division of Homeland Security and Emergency Services (DHSES)<sup>1</sup> with the opportunity to review and comment on the draft Department of Homeland Security's Office of Inspector General's audit report entitled, *The State of New York's Management of State Homeland Security Program and Urban Areas Security Initiative Grants Awarded during Fiscal Years 2010 through 2012* (Report).

DHSES is exceptionally committed to the counter terrorism efforts within the State of New York, which undoubtedly includes the prudent management and fiscal stewardship of federal homeland security funding, including the distribution of grant program funds in accordance with federal, state and local laws, regulations and policies.

Enclosed please find DHSES' detailed rebuttal which we understand and expect will be attached in its entirety as an appendix to the final Report. Please do not hesitate to contact me if you have any questions.

Thank you.

Sincerely,

John P. Melville

Enclosure

<sup>1</sup> For clarification, page 2 of the draft Report states that the DHSES merger includes the Office of Cyber Security (OCS); OCS has since been removed from DHSES and its responsibilities were merged into the new State Office of Information Technology Services.



# OFFICE OF INSPECTOR GENERAL

## Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

**Recommendation #1:**

*We recommend that the FEMA Assistant Administrator, Grant Programs Directorate, require the Division of Homeland Security and Emergency Services and the NYC urban area to ensure future State and NYC urban area THIRAs fully comply with the processes listed in FEMA's Comprehensive Preparedness Guide 201.*

**New York State Response**

New York State and New York City **disagree** with the Report's analysis and conclusion that both the State and City are not in compliance with THIRA. The State and City have, in fact, completed all of the necessary steps and have been found by FEMA to be in compliance with the Federal THIRA guidance. New York State and New York City participated in several technical assistance sessions provided by FEMA to ensure compliance with the THIRA mandate, and the THIRAs are reviewed and approved annually to ensure compliance as part of the submission process. The IG Audit Team's interpretation of the THIRA guidance differs from what has been articulated to us by FEMA.

Of note, we understand that FEMA does not require a certain number of threats/hazards be examined as part of the THIRA. In fact, on page 13 of FEMA's Comprehensive Preparedness Guide 201 it states that a community "may elect to analyze *any number* of threats and hazards of significant concern" (emphasis added). The THIRA process involves identifying threats/hazards that will most stress state and local capabilities in an effort to identify capability targets that can be further assessed as part of the annual State Preparedness Report. New York State and the NYC Urban Area have collaborated to identify two catastrophic scenarios that will stress all State and local capabilities, because if we can build capabilities in support of these larger events, we will be able to handle the more frequent and less catastrophic events as well. This approach has been accepted by FEMA and is in line with the Comprehensive Preparedness Guide 201. On page 8 of the guidance it states that communities should consider "only those threats and hazards that would have a significant effect on them" and "also consider threats and hazards resulting in large-scale disasters or catastrophic incidents."



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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#### **New York Response to 14-076-AUD-FEMA**

The chart included in the report regarding our THIRA submission is inaccurate, as we have in fact completed all of the required THIRA steps. More specifically, as outlined in our THIRA and companion narrative documents, we have: identified the threats and hazards of greatest concern – based on a catastrophic/worst case scenario type approach (step 1); given each of the threats and hazards context (step 2); established capability targets for the core capabilities (step 3); applied the results by estimating resource requirements to achieve the capability target (step 4). Our process has improved over time, to include developing more measurable capability targets as the THIRA process has matured, but we have remained consistent in completing all of the necessary steps. To date, New York State has never received any feedback from FEMA indicating any issues with our THIRA submissions, nor have we ever been directed by FEMA to take any additional actions on these submissions based on their review.

We invite discussions with the OIG to show how the THIRAs are complete and that the State and the NYC Urban Area are prepared to mitigate risks associated with significant threats and hazards.

In addition to the THIRA, we leverage multiple mechanisms to understand risk and capability information that we shared with the Audit Team. For example, New York State has partnered with New York City and other local stakeholders to develop a comprehensive risk and capability assessment initiative known as the County Emergency Preparedness Assessment (CEPA) program. The CEPA program provides us with actionable information that we can use to help guide our preparedness efforts and it does help to inform our THIRA. We are disappointed it was not referenced in the audit report as we firmly believe CEPA is a model program for other states to consider regarding risk and capability assessments. We have routinely provided FEMA with information on the CEPA program, and we have continuously worked to identify opportunities to improve the overall THIRA process and methodology.

Regarding strategic planning efforts, both the New York State and the NYC Urban Area Strategies have been reviewed and approved by FEMA. The 2009 State Homeland Security Strategy included more than 100 individual objectives; the vast majority of these met the “SMART” criteria; furthermore, the Strategy did include a formal evaluation plan (outlined on page 8 of the document). Both the 2009 and 2014 State Strategies have been widely accepted and used by stakeholders across New York State. DHSES has documentation (collected through



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

stakeholder surveys) regarding the utility of these strategies to our first responders across the State. Additionally, ongoing efforts were employed to examine progress in meeting strategic goals, to include the use of surveys, FEMA monitoring visits, and regular stakeholder engagement through the Urban Area Work Group and other planning bodies. Please let us know if you have additional concerns in this regard.

FEMA's guidance on Homeland Security Strategies is dated (2005) and inadequate, as evidenced by the fact that numerous states and Urban Areas have been cited for not having measurable goals and objectives. For its current Strategy (2014-2016), New York State developed a framework for ensuring measurable goals and objectives which includes targets and metrics for each objective as a means of measuring progress toward the implementation of its strategic goals. The NYC Urban Area Strategy also includes metrics to help measure progress. The State and NYC Urban Area also engage in regular efforts to evaluate and monitor homeland security programs, to include: an assessment of progress towards meeting strategic goals (in both 2010 and 2012); after action reviews of major incidents and exercises; a statewide THIRA survey (in 2012); detailed assessments of specific specialty team capabilities (i.e. Bomb Squads and Tactical Teams); the CEPA program noted above; and ongoing dialogue with our stakeholders to understand their challenges and accomplishments.

As strategic planning is an ongoing process, New York State and the NYC Urban Area will continue to employ mechanisms to measure progress in terms of the implementation of our strategies.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

**Recommendation 2:**

*We recommend that the FEMA Assistant Administrator, Grant Programs Directorate require the Division of Homeland Security and Emergency Services to assess and streamline the current processes and procedures for obligating funds to subgrantees so that it obligates grant funds within a reasonable time period.*

**New York State Response**

DHSES agrees that providing funding to subgrantees as quickly as possible is a priority for the State and we are committed to effectively and responsibly managing well over \$200 million in federal homeland security funding annually. New York State is in compliance with the 45-day obligation requirement. DHSES does periodically revisit our internal processes to determine if there are any areas that can be strengthened in the processing of federal awards, while complying with federal regulations and so that the contract timeframe continues to be streamlined and will continue to do so.

New York State disagrees that it has not met the 45-day obligation. Related to the 45-day obligation, there are three related legal factors that need to be taken as a whole in reasonably applying the rule: 1) federal law, namely 6 USC §605(c)(1)(A); 2) FEMA Homeland Security Grant guidance; and 3) FEMA procurement and administrative regulations.

Public Law 110-53, codified in 6 USC §605(c)(1)(A) does not use the term “obligate,” but rather requires that states “shall make available” to local governments no less than 80 percent of the funds available within 45 days. *FEMA Homeland Security Grant Program Guidance*, however, in a slight but important variation from the law, states that State Administrative Agencies are required to “obligate” pass through grant funds within 45 days of FEMA’s award to the State with the qualifications that such obligation is: 1) a firm commitment on the part of the awarding entity; 2) unconditional; 3) documented; and 4) communicated to the grantee. New York State’s process is in compliance with 6 USC §605(c)(1)(A) since it *does* make funds available within 45 days of the State’s award, once award letters are issued notifying each subrecipient of the total funds available to that subrecipient.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

Furthermore, the 45-day rule cannot be interpreted in a vacuum. The analysis must include and be balanced against federal regulatory requirements encompassing many of the fiscal responsibilities of federal grant recipients. Specifically, 44 CFR §13.36 requires that States utilize their own procurement procedures when administering awards. Although New York State contracts with nonprofits under the UASI Nonprofit Security Grant Program, the majority of subgrantees are county governments and subdivisions of the State. Contracting with nonprofits is specifically addressed in Article XI-B of the State Finance Law. For county and municipal subrecipients, the Offices of New York State Comptroller and Attorney General have interpreted these agreements as intergovernmental agreements requiring review by the Office of State Comptroller under section 112 of the State Finance Law where it is valued at or above the agency's fiscal threshold value. DHSES complies with these requirements, as required by State law and 44 CFR §§13.36(a) and (b).



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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**New York Response**  
to  
**14-076-AUD-FEMA**

**Recommendation #3:**

*Require the Division of Homeland Security and Emergency Services to provide a budget and work plan for the Division of Military and Naval Affairs to account for its SHSP and UASI grant funds. The budget and work plan should specify the services to be provided and identify the location, and estimate the hours and number of National Guard members.*

**New York State Response**

As the Report states, Task Force Empire Shield is a New York National Guard unit that provides a rapid response force of National Guard members for homeland security operations. In response to this Recommendation, attached as **Exhibit A**, is the DHS-approved *Homeland Security Implementation Order (Implementation Order)*, under which the New York State Division of Military and Naval Affairs (DMNA) Joint Task Force Empire Shield (JTF-ES) is currently operating. The Implementation Order allows for JTF-ES to augment law enforcement coverage at critical infrastructure sites. Title 32, State Active Duty, National Guard deployments for the protection of critical infrastructure sites are part of the standard National Guard deployment package.

The *Implementation Order* allows JTF-ES to operate under random anti-terrorism measures to “conduct “pop-up” missions at pre-coordinated locations throughout NYC in order to provide an increased security presence to deter terrorist activity.” (FOUO)

Additionally, attached **Exhibit B** is a letter which referenced use of Operations Order (OPRD) 01-6 (dated 09/11/01); Fragmentary Order (FRAGO) #51 to OPORD 01-6 (dated 10/27/01); FRAGO #92 to (dated 01/17/03); and FRAGO #94 to OPLAN 06-08 (dated 05/17/07). DHSES will continue to ensure that all expenditures made are consistent with the terms of the DHS-approved *Implementation Order*.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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**New York Response**  
**to**  
**14-076-AUD-FEMA**

**Recommendation #4:**

*Require the Division of Homeland Security and Emergency Services to amend Memorandum of Understanding #468 to include the specific tasks to be provided, the total amount for each task, when the task will be completed, and what deliverable will be provided.*

**New York State Response**

DHSES **disagrees** with the Report's conclusion that DHSES did not execute agreements with SUNY that clearly identified the services to be provided by SUNY. As previously explained to the OIG auditors, DHSES is not required to enter into an MOU with any State agency, as it is not mandated under FEMA regulations (44 CFR Part 13), nor is it required by New York State Finance Law (section 112). Agreements between and among New York State agencies are not legally binding in the State of New York, as State agencies have "no distinct legal character apart from the State" (see 1980 Op Atty Gen 81).

While DHSES did opt to have an MOU in this case, it was done so in an effort to establish parameters around the types of activities that DHSES would fund and the anticipated not-to-exceed budgets for prudent planning purposes. DHSES, however, made the conscious decision to maintain a reasonable level of flexibility to make adjustments, as needed, to the types of training and course work that would be conducted pursuant to the MOU without having to document and resign an MOU that has no legal enforceability. The Report states that the MOU's annual amendment which increased the total funding amount for the subsequent cycle was insufficient because the scope of work was not changed. DHSES intended to maintain the same scope of work and we are confused by the logic the terms were deficient merely because the MOU was not completely amended. Furthermore, the Report's claim that the DHS OIG questions the costs associated with MOU #468 "because the agreement is too vague for all parties to understand the nature of the services and the work required" is conclusory and without support. While DHSES agrees that expenditures must be fully justified and documented, we do not agree that Recommendation 4 would aid in serving that purpose.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

**Recommendation #5:**

*Require the Division of Homeland Security and Emergency Services to provide documentation that adequately supports \$23,537,386 in questioned costs that are unsupported or return the amount not supported. Specifically, the documentation should support:*

- a) hours worked and locations for Task Force Empire Shield activities (\$18,731,021 in questioned costs);*
- b) expenditures selected in a sample of costs for services that SUNY provided to DHSES under MOUs #432, #442, #443, and #468 (\$2,982,692 in questioned costs);*
- c) costs related to non-HSGP grant programs for \$ in salaries and \$318,813 in financial services; and*
- d) the reasonability of \$180,009 to lease communication equipment.*

**New York State Response**

- a) Hours worked and locations for Task Force Empire Shield activities (\$18,731,021 in questioned costs)**

**Disagree.** While the DHS OIG auditors continually asked for time-sheets, the auditors seemed unfamiliar with the reporting structure of the National Guard members. Members are not required to fill out typical time sheets that are customary of other state departments or agencies. As referenced in the response to Recommendation #3, pursuant to the approved *Implementation Order*, guard members assigned to JTF-ES may not be tasked to any other State Active Duty Assignments. All DMNA guards members are assigned to one of three companies (A, B & C). Each company is set on a random rotation schedule with oversight by platoon leaders. Platoon leaders are responsible to account for each mission rotation and determine the presence of each guard member at assigned posts. Additionally, the three company commanders have overall oversight of their respective companies and associated activities.

At the request of DHSES, DMNA provided all backup documentation relating to deployments that occurred on January 18, 2011 for Alpha (A), Beta (B) and Charlie (C)



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

Companies. DMNA provided very detailed reports for A, B and C companies which listed, by guard member, the Unity, Duty Location, Mission and Duty Status (see *Exhibit C* attached). In addition, "Movement Reports" indicate the time of rotation as well as rotation local which is signed off by supervisory personnel. The Movement Reports are hereby attached as *Exhibits D (1), D (2) & D (3)*.

Finally, DMNA was able to provide hand signed State Active Duty sign-in sheets including each guard member and hours of duty. The roster was then signed off by a supervisor, including name rank, signature and date. The sign-in sheets also allow supervisory personnel to account for guard members that were not on duty such as those that are on pass day, federal pay, or leave without pay. Additionally, DMNA will also maintain revised JTF-ES Mission Trackers (see *Exhibit E* attached) which will allow for uniform tracking and monitoring of key data elements such as mission numbers, unit assignments and completion date which will be available to auditors for inspection upon request. DHSES is confident that the sample documentation submitted in conjunction with this response will more than adequately demonstrate that such costs were fully supported.

**b) expenditures selected in a sample of costs for services that SUNY provided to DHSES under MOUs #432, #442, #443, and #468 (\$2,982,692 in questioned costs)**

**Disagree.** The Report states that the auditors reviewed a sample of SUNY expenditures for which they requested support documentation and that, as of November 2014, they had not received the documentation. DHSES reviewed the original requests of the DHS OIG auditors and compared them to the documentation submitted by SUNY. In most instances, documentation was submitted to the DHS OIG that appeared to be responsive to the auditors' requests. With regard to requests for timesheets, these were submitted where available, but as it was explained during the field review, SUNY policy does not require that exempt employees fill out time sheets. Rather, where an employee is absent or on leave, such leave must be reported and accruals charged.

Attached as *Exhibit F*, is an attestation by Rick Mathews, Director of the SUNY National Center for Security & Preparedness, affirming that the payroll charges assessed against the MOUs were exclusively for work related to the MOUs. Additionally *Exhibits G (1) - G (22)* encompass documentation that was either submitted as part of the auditor's original request,



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

or received by DHSES subsequently. DHSES will work with FEMA to determine what further action is necessary to cure any documentation deficiencies.

**c) costs related to non-HSGP grant programs for \$1,324,851 in salaries and \$318,813 in financial services**

**Disagree.** As per the DHS-OIG audit findings, DHSES would charge personnel service to the oldest grant year in which personnel service costs were available. Furthermore, the financial services discussed in the report were costs associated with DHSES' maintenance of technological systems the agency uses to manage the grants. On the issue of salaries, DHSES was able to proportionally charge salaries consistent with the overall funding pool and estimated level of effort. As stated in the report, DHSES has instituted a time distribution system which will allow more granular reporting on charges at the specific grant program level.

**d) the reasonability of \$180,009 to lease communication equipment**

**Disagree.** DHSES does not agree with the Report's conclusion that a lease-purchase analysis is always required. 44 CFR §13.36(b)(4) only states that, "[w]here appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach" (emphasis added). In December of 2010 Broome County entered into a Municipal Lease-Purchase Agreement with Motorola Solutions, Inc. for the lease-purchase of radio consoles which are used by the 911 dispatchers to operate base radio equipment at multiple radio towers throughout the county. This equipment is essential in order to dispatch 911 emergency calls to police, fire, emergency medical services, and other public safety entities in and around Broome County. This purchase replaced existing equipment that was severely outdated and unable to be maintained. Broome County chose to (1) utilize state contracts PT62495 and PT62496 for the procurement of this equipment in accordance with NYS and Broome County purchasing guidelines, and (2) utilize a municipal lease-purchase agreement because it was the best use of the dollars based on the options presented by the vendor. Such purchases are permitted under Section 104 of the General Municipal law. Relevant documentation is hereby attached as **Exhibits H (1) - H (5)**.

Specifically due to the timing, this purchase *saved the county \$180,000.00* as specified in the "Statement of Essential Use/Source of Funds" on page 16 of the lease-purchase



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

agreement. Additionally this savings is detailed in section 8.1.1 of the vendor's quote. This agreement allowed the county to acquire this equipment immediately while make payments over time. Broome County made a payment to Motorola Solutions consistent with the invoice they submitted. The County's records indicate the dollar amount invoiced was consistent with the total cost expected over the time frame indicated on the invoice. Furthermore the timeframe indicated was also within the performance period of the grant. Most importantly, this procurement is a reasonable and effective use of grant funding void of any fraud, waste or abuse. Additionally, Broome County was eventually able to own the equipment and save taxpayer dollars utilizing this method of procurement.



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

**Recommendation #6:**

*Require the Division of Homeland Security and Emergency Services to reimburse FEMA \$450,414 in questioned costs that are ineligible. Specifically, the Division of Homeland Security and Emergency Services should reimburse FEMA:*

- a) \$261,748 for fringe benefits applicable to ineligible, non-HSGP grant programs;*
- b) \$10,824 for claimed costs for maintenance contracts and warranties that extended beyond the performance period of the grant; and*
- c) \$177,842 for overtime expenses not used for eligible activities and not federally requested.*

**New York State Response**

- a) \$261,748 for fringe benefits applicable to ineligible, non-HSGP grant programs**

**Disagree.** The charges for fringe benefits were for costs associated with staff work on federal awards. DHSES is requesting additional information from the OIG to determine the auditor's meaning of "beneficial" costs versus those that were "not beneficial." DHSES will work with FEMA to determine what options are available to address the Report's concerns.

- b) \$10,824 for claimed costs for maintenance contracts and warranties that extended beyond the performance period of the grant**

**Disagree.** Clinton County purchased the three year maintenance contract in the amount of \$5,030 incidental to the original purchase of equipment as shown on the Purchase Order dated 2/27/13. DHS has determined that it is a good practice if a maintenance or extended warranty is purchased incidental to the original purchase of the system or equipment, grantees may procure maintenance contracts, warranty coverage, licenses and user fees which exceeds the period of performance. See Grants Programs Directorate FP 205-402-125-1 (see *Exhibit I* attached).

Wayne County purchased the three year maintenance contract in the amount of \$4,864.55 incidental to the original purchase of equipment as shown on the Invoice dated



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

4/17/12. DHS has determined that it is a good practice if a maintenance or extended warranty is purchased incidental to the original purchase of the system or equipment, grantees may procure maintenance contracts, warranty coverage, licenses and user fees which exceeds the period of performance (see *Exhibit I* attached).

**c) \$177,842 for overtime expenses not used for eligible activities and not federally requested**

**Disagree.** DHSES strongly disagrees with the assessment that the activities conducted by the Queens District Attorney's Office did not meet the Organizational Activities overtime costs criteria. The Counterterrorism Fraudulent Identification Document Task Force (FDTF) program provided invaluable assistance to the Joint Terrorism Task Force by conducting investigations of persons producing and/or selling fraudulent identification documents. This task force was established to target identity theft that can allow terrorists and other criminals to disappear and conceal their activities from law enforcement. In the initial 120-day pilot project, 225 fraudulent identification document traffickers were arrested, 6 fraudulent document mills were shut down, and approximately 2,000 forged documents, as well as scores of printers, computers, and laminators were seized.

The results of this pilot underscored the extent and seriousness of the problem, and it became evident that Queens County was a major hub for potential terrorists to create an identity and legal status in the U.S., where forged identity documents including social security cards, drivers licenses, resident alien cards and other documents could be bought and sold. This dubious distinction is due to a number of reasons, including the fact that the county has been identified as one of the most ethnically diverse large counties in the nation. The production and sale of false identification documents is considered a serious breach of public security, as terrorists are known to strive for anonymity in order to allow for unrestricted movement to conduct activities, including furthering and concealing terrorist activities, without raising the interest of law enforcement. The use of false identification documents by terrorists was underscored by the 9/11 Commission, which reported that it found evidence that all but one of the 9/11 hijackers acquired forms of U.S. identification documents, some by fraud, to assist in the preparation for the attacks.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

The funding from this grant significantly enhanced public safety and security by continuing this aggressive counter-terrorism effort, focusing on preventing terrorist acts, gathering intelligence on and investigating and prosecuting crimes that have been identified as terrorist "precursor crimes" and related activity, including identity theft, credit card fraud, money laundering, and the manufacture, possession and use of fraudulent identification documents. Part of this effort included the assignment of a Rackets Investigator from the Office's Detective Squad as a liaison with the federal-state-local Joint Terrorism Task Force (JTTF). A comprehensive intelligence gathering effort was also instituted that included an aggressive debriefing effort, whereby assigned detectives from the Office were alerted upon the arrest of individuals of potential interest to the JTTF, which allowed for targeting various areas in the County with high levels of fraudulent document activity. Assigned staff also assisted NYPD's Intelligence Division, in addition to the Joint Terrorist Task Force, on numerous classified counter-terrorism/pre-cursor crime investigations. Other agencies that have been involved with the FDTF are NY State Police, NY Dept. of Motor Vehicles, Port Authority of NY and NJ, NYC Taxi and Limo Commission, Social Security Administration, NYS Inspector General, the U.S. Postal Service, U.S. Immigration and Naturalization Service, U.S. Dept. of Transportation, The F.B.I., and the U.S. Secret Service. In addition, a letter of commendation from the FBI Counterterrorism Division was issued to the Queen's DA Office on September 24, 2007 regarding the office's response to an earlier request from the FBI to provide information on individuals of interest involving counterterrorism operations, which is hereby attached as **Exhibit J**. Contemporaneous with the filing of this response, DHSES is submitting an official request to FEMA to acknowledge and approve these charges in light of the critical counter terrorism purpose these activities served (see **Exhibit K** attached).



# OFFICE OF INSPECTOR GENERAL

## Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

**Recommendation #7:**

*Require the Division of Homeland Security and Emergency Services to provide budgets and work plans for all state agencies receiving HSGP funds, including the Division of Homeland Security and Emergency Services, to ensure funds are allocable, allowable, and reasonable.*

**New York State Response**

DHSES **disagrees** with the Report's analysis that DHSES does not account for State agency budgets and work plans. Planned expenditures by State agencies are accounted for in the State's submission of Investment Justifications as part of the application process. Furthermore, all expenditures of grant funds by subcomponents of the Division are done with the full knowledge and awareness of the Division.



# OFFICE OF INSPECTOR GENERAL

## Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

**Recommendation #8:**

*Ensure that the Division of Homeland Security and Emergency Services does not reimburse subgrantees for advanced payments on leases and costs for maintenance contracts, or for warranties that extend beyond the grant period.*

**New York State Response**

**Agree.** Requests for reimbursement are reviewed by both program and fiscal staff. During this review process, the subgrantee may be contacted for additional documentation or clarification regarding expenditures to ensure costs are allowable and within the performance period of the grant prior to issuing payment. In order to provide administrative instructions and guidelines to subgrantees, Information Bulletins and Grant Programs Directorate Policy documents issued by FEMA are distributed via e-mail. This includes documentation related to maintenance contracts and warranty coverage. Policies and procedures are in place for requesting advance payments. These topics are discussed during our annual regional meetings with subgrantees and are a point of emphasis during monitoring visits.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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**New York Response**  
**to**  
**14-076-AUD-FEMA**

**Recommendation #9:**

*Require the Division of Homeland Security and Emergency Services to ensure the total administrative expenses, including the administrative fee of 5.6 percent charged by State University of New York, will not exceed the grantee limit of 5 percent of the amount of the grant as required in Public Law 111-83, Department of Homeland Security Appropriations Act, 2010.*

**New York State Response**

DHSES **disagrees** with the inclusion of this Recommendation in the Report and DHSES requests the removal of this Recommendation in its entirety. While the caption heading on page 16 states, "Administrative Costs May Exceed the Statutory Limit of 5 Percent," the narrative on page 16 specifically acknowledges that, "As of December 31, 2013, *the State had not exceeded the limit of 5 percent for M&A...*" (emphasis added).

While an individual agency's administrative fees may be in slight excess of five percent, New York State has continually complied with the five percent management and administration maximum requirement, since collectively no more than a maximum of five percent in administrative costs are actually charged to the grants. DHSES will continue to ensure that no more than the maximum allowable management and administrative fees are charged to available grants.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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**New York Response**  
**to**  
**14-076-AUD-FEMA**

**Recommendation #10:**

*Require the Division of Homeland Security and Emergency Services to ensure the Fiscal Monitoring Unit conducts site visits at state agencies and issues site visit reports on New York Police Department and Fire Department of New York identifying compliance with FEMA's FY 2010–2012 Homeland Security Grant Program Guidance and Application Kit.*

**New York State Response**

**Agree in part.** DHSES agrees that monitoring of subrecipients is a priority; however, we disagree with the DHS OIG's assertion that the only way to monitor subrecipients is exclusively through the issuance of reports. Monitoring is an ongoing and fluid process and the State of New York has one of the most, if not the most, robust homeland security subrecipient monitoring program in the Nation; this has been acknowledged by DHS and the OIG in the past; however, the Report does not adequately illustrate this fact or describe the ongoing work of the State.

In addition to on-site programmatic and fiscal monitoring, the following activities are undertaken from prior to grant award through grant close out to ensure proper oversight of the subrecipient expenditure of federal funds:

- 1) Grant funding applications are reviewed by program contract staff;
- 2) Expenditures submitted for reimbursement are reviewed by contract staff for allowability and by finance staff to ensure documentation is complete and expenditures are within the performance period; and
- 3) Desk audits are periodically conducted.

The Fiscal Monitoring Unit (FMU) is in regular communication with the New York City (NYC) Office of Management and Budget (OMB), as well as NYC component agencies regarding various aspects of fiscal management of grant funds awarded through DHSES. Topic areas include, but are not limited to: procurement, equipment inventory records, grant management



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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#### New York Response to 14-076-AUD-FEMA

procedures, equipment maintenance, personnel certifications, reimbursement requests, and equipment disposition.

The FMU has managed its fiscal monitoring responsibility by providing on-going technical assistance through meetings, phone calls and emails and conducting site visits as appropriate. While, every interaction with a sub-recipient is documented, an official report is not always warranted (or issued). NYC is the largest sub-recipient and their contracts contain multiple implementing City agencies. Currently ten different City agencies receive funding under various DHSES contracts. In addition to frequent communications, NYC OMB has initiated quarterly working group meetings which are attended by representatives from all implementing City agencies as well as DHSES Grants and FMU staff. This provides a forum for questions and answers session as well as in depth discussion or information sessions on areas of interest or concern. Two meetings have been held thus far with a third meeting scheduled for April 2015.

- Meeting 1 6/14: DHSES presentation at this meeting covered: Record retention, equipment inventory records, common observations from finance reimbursements as well as common observations from FMU site visit reviews.
- Meeting 2 11/14: At this meeting, presentations were delivered by representatives from DHSES Grants and Fiscal Monitoring Units. The Grants Unit covered Vendor Responsibility and other programmatic areas of the grants. The Fiscal Monitoring Unit covered the fiscal monitoring process that precedes an actual site visit. Emphasis was placed on procurement, and the need for the City to comply with 44 CFR and the new 2 CFR.

Attendance at these meetings has included participants from the following New York City agencies:

- Office of Management and Budget (OMB)
- Department of Environmental Protection (DEP)
- Office of Emergency Management (OEM)
- NYC Police Department (NYPD)
- NYC Fire Department (FDNY)
- Office of the Chief Medical Examiner (OCME)
- Health and Hospital Corporation (HHC)



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

- Department of Health and Mental Hygiene (DOHMH)
- Department of Information Technology and Telecommunications (DoITT)
- Department of Transportation (DOT)

Since 2011, seven fiscal monitoring reports of NYC agencies have been issued. Even though the scope of funding under this DHS OIG report may not have been specifically captured in every FMU report, the federal fiscal guidance in 44 CFR and the OMB Circulars has generally remained constant over the years. FMU staff regularly conveys that, although the sampled transactions may be from specific grant years, the compliance markers we seek apply to all federal funding grant contracts. Lastly, the FMU conducted a site visit of the NYPD in February 2015 as part of its routine monitoring schedule and the report is pending. The FDNY site visit is currently scheduled for May 2015.

The Fiscal Monitoring Unit will designate a Fiscal liaison to complement the Program Representative currently assigned to each State Agency to provide on-going advice, training and technical assistance. Any significant issues identified will be raised internally and addressed appropriately. The Office of the State Comptroller has the constitutional authority (Articles V & X) to conduct financial, compliance and performance audits of all State and New York City agencies, including their associated facilities, institutions, board and program activities, as well as virtually all public benefit corporations (authorities). In addition to the Constitution, the legal basis for the Comptroller's authority is contained in various statutes including the State Finance Law. The Comptroller also has the authority to audit the records of private firms and nonprofit organizations which are awarded contracts by, or receive funding from, these government entities.

In addition to site visits conducted by the Fiscal Monitoring Unit, DHSES Grants Program Administration (GPA) staff conducts programmatic monitoring visits of active contracts. During routine monitoring visits, the current status of the program, fiscal spending, programmatic reporting and other routine parts of contract management are reviewed, discussed and/or examined. Monitoring visits are recorded in our E-Grants database.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

**Recommendation #11:**

*Determine whether FEMA's current guidance on operational overtime is adequate. If so, review the New York Police Department's operational overtime expenditures for allowability and recover the costs related to the protection of noncritical infrastructure. If FEMA believes that the current definition of operational overtime needs to include locations identified through intelligence data, FEMA should revise the guidance accordingly.*

**New York City Police Department's Response**

FEMA's current guidance states that "operational overtime costs" are "allowable for increased security measures at *critical infrastructure sites*" in "support of efforts to enhance capabilities for detecting, deterring, disrupting, and preventing acts of terrorism." U.S. Department of Homeland Security, *Homeland Security Grant Program, Guidance and Application Kit* (Fiscal Years 2010-12) (emphasis added). The guidance does not define "critical infrastructure." However, the term "critical infrastructure" is defined in section 1016(3) of the Patriot Act of 2001, 42 USC § 5195c(e), and the auditors cite that definition in the Draft Report. The auditors posit that overtime costs incurred by the NYPD in deploying its personnel at certain New York City locations such as hotels, commercial office buildings and houses of worship "did not appear to meet" the Patriot Act definition. Draft Report at page 20.

We do not agree that such locations are not included within the statutory definition of critical infrastructure. Nor do we agree that insufficient documentation was provided to enable the auditors to verify that NYPD public safety overtime costs were directly linked to critical infrastructure. The record adduced before the auditors, including documents and information shared during in-person meetings, shows that NYPD has documented threats to specific types of locations, such as hotels, commercial office buildings and houses of worship, justifying deployment of personnel thereto, and that the FEMA Administrator has confirmed in writing that these types of locations fall within the statutory definition of critical infrastructure by approving the City's requests to use HSGP funds specifically for such activities. Such approvals by the Administrator evidences FEMA's view that the definition of "critical infrastructure" is broad enough to include such locations identified through intelligence data.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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#### New York Response to 14-076-AUD-FEMA

FEMA guidance states that grant funds “may only be spent for operational overtime costs upon prior approval provided in writing by the FEMA Administrator.” Since 2010, the FEMA Administrator has consistently approved the City of New York’s requests to use UASI funds to support key law enforcement operational programs to enhance security at particular locations in the City, including, among others, Wall Street, the Theatre District, the New York City subway system, and the Empire State Building. In its most recent request for UASI dollars, the NYPD described the daily Critical Response Vehicle (“CRV”) surges, for which it sought financial support, as follows:

The mission of the CRV surge is to prevent terrorist incidents; preempt and disrupt terrorist operations; detect pre-operational surveillance and activities; and, if necessary, respond to incidents or events that are unfolding. CRV deployments respond to a predetermined rally point and proceed to saturate critical infrastructure, iconic locations, soft targets, and *houses of worship* with a significant uniformed presence.

Letter dated December 3, 2014 from NYPD Deputy Commissioner Vincent Grippo to DHS Section Chief Lynn Bagorazzi at page 2 (emphasis added). The FEMA Administrator has unfailingly opined that NYPD’s requests (including the most recent one quoted above) for funding to support prevention and protection patrols at such locations “meet the intent” of the UASI program. Copies of all relevant correspondence, previously provided to the auditors, are attached hereto as **Exhibit L** for ready reference. By approving the City’s requests for use of grant funds to protect these general types of locations, the Administrator confirmed his view that the locations satisfied the definition of “critical infrastructure.” Nevertheless, if the belief by some is that current FEMA guidance may properly be read to exclude such locations from the definition (and the City of New York does not believe it can be read that way, nor do we feel that it is been applied that way given the consistent approvals for such locations under this grant by the FEMA Administrator), it should be revised to conform to Presidential Policy Directive/PPD-21 and formal guidance issued by the Department of Homeland Security (“DHS”) that explicitly includes such types of locations within the federal definition of critical infrastructure.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

---

**New York Response  
to  
14-076-AUD-FEMA**

Under the Patriot Act, “critical infrastructure” includes systems and assets, which are so vital to the United States, that their incapacity or destruction would have a debilitating impact on “security, national economic security, national public health or safety, or any combination of those matters.” Presidential Policy Directive/PPD-21 identifies 16 critical infrastructure sectors, one of which is commercial facilities. DHS explains on its official website that facilities associated with the commercial facilities sector are those which “operate on the principle of open public access, meaning that the general public can move freely throughout these facilities without the deterrent of highly visible security barriers.” <http://www.dhs.gov/commercial-facilities-sector>. DHS also explains that the commercial facilities sector consists of eight subsectors, including places of public assembly (including museums), lodging (including hotels), and real estate (including office buildings and mixed use facilities). The DHS publication, *Commercial Facilities Sector-Specific Plan (2010)* (“CFS Plan”) further explains that the commercial facilities sector includes entertainment districts, such as “areas with a concentration of different types of entertainment facilities in close proximity,” including “restaurants, nightclubs, and other such establishments.” CFS Plan at page 23.

In explaining the inclusion of the lodging subsector, the CFS Plan states that:

the lodging industry has a significant impact on business in the United States. In 2007, 11 percent of the national gross domestic product, or \$1.6 trillion, was generated throughout the national economic chain by the lodging and hospitality industry....Many hotels have been primary targets for terrorists overseas. Recent attacks have included hotels in Jakarta, Indonesia; Peshawar, Pakistan; Mumbai; and Islamabad; and in some instances, U.S. brand hotels were targets. These attacks have made the Lodging Subsector keenly aware of the importance of security and the implementation of protective programs.

CFS Plan at page 87-88.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

---

#### New York Response to 14-076-AUD-FEMA

In explaining the inclusion of the real estate subsector, the CFS Plan states:

The Real Estate Subsector comprises commercial office buildings, large residential buildings, multi-family residential units, and self-storage facilities. In short, this subsector contains those commercial facility assets in which Americans live and work every day. Some assets within the Real Estate Subsector are highly recognizable. The World Trade Center was not only a commercial office building, it was a national icon on the New York City skyline. Traditionally, terrorists have selected buildings (primarily commercial buildings) as the preferred target of attacks.

CFS Plan at page 111.

It is clear from this guidance that the statutory definition of “critical infrastructure” is to be construed broadly. Furthermore, the OIG should keep in mind that in 2013, the City received 54.3 million visitors, of which 42.9 million were domestic travelers. These numbers include business travelers as well as tourists. In addition to New York City’s burgeoning tourist industry, the City’s financial services and business industries are significant drivers of the national economy. As a result, protection of large hotels, located near the financial services and theatre districts and transportation hubs, is imperative – not only to protect the millions of visitors to the City each year – but also to protect the financial interests of the City and the nation.

As explained to the auditors at a meeting held on October 15, 2014 at NYPD Headquarters, and reiterated in the accompanying affidavits of NYPD Deputy Chief and Commander of the Citywide Counterterrorism Unit John O’Connell, attached hereto as *Exhibits M (1) & M (2)*, the NYPD follows the dictates of PPD-21 and DHS guidance when deploying its personnel and resources to protect critical infrastructure in New York City. The locations are determined by many factors, including daily intelligence analysis undertaken by the NYPD and its law enforcement partners, confidential intelligence sources, law enforcement sensitive data, and continuous, real time review of open source information. Based on this federal guidance

Page 24 of 33



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

and intelligence analysis, the NYPD deploys its personnel to certain locations, including hotels, commercial office buildings and houses of worship referenced in the supporting documentation (“hot sheets”) previously furnished to the auditors by NYPD. For example, the Times Square area is where New York City’s pre-eminent theatre and entertainment district is located. The Marriott Marquis Hotel, containing more than 1900 rooms, and the 626-room Millennium Broadway Hotel, identified in NYPD’s submission to the auditors and Chief O’Connell’s affidavit, are located in this area. The 1700-room Hotel Pennsylvania, also referenced by Chief O’Connell, is located across Seventh Avenue from Pennsylvania Station, the main intercity railroad station in New York City, serving over 600,000 commuter rail and Amtrak passengers a day. The World Financial Center, the Empire State Building and the Chrysler Building, cited by Chief O’Connell, are three of New York City’s iconic commercial office buildings, and Citigroup and JP Morgan are two of the City’s largest financial institutions. As indicated by Chief O’Connell, attacks on these, and similar targets would result in mass casualties, and would have a debilitating impact on City and national public and economic health, safety and security. For example, since 2009, attacks linked to terrorist organizations on hotels and other public lodging locations, and religious institutions and facilities have resulted in several hundreds of deaths and extensive property damage. Such recent occurrences and their public safety and economic consequences were specifically noted by DHS in the CFS Plan as reasons justifying increased protection and security at such locations. Under these circumstances, the auditors’ demand for production of documentation supporting specific threats have been met in accordance with the definition of critical infrastructure as the City of New York understands it and as outlined in DHS’ publication of the CFS Plan, as excerpted above. Draft Plan at page 20.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

**Recommendation #12:**

*Require the Division of Homeland Security and Emergency Services to conduct an independent review of the New York Police Department's \$42,844,265 in operational overtime for the protection of critical infrastructure during FYs 2010 through 2012. For all unallowable or unsupported costs, require the New York Police Department to return the funds.*

**New York City Police Department's Response**

We **disagree** with this recommendation. For the reasons given in response to Recommendation #11 above, we have provided ample confirmation that the overtime costs at issue are "directly linked to critical infrastructure." Draft Plan at page 20. Further, NYPD provided all available documentation of personnel charges and locations of personnel for the overtime tours requested by the auditors, including approved time sheets, overtime slips and deployment rosters with specific post descriptions. In this regard, we refer you to the email dated September 5, 2014 from DHS to NYPD in which DHS states that it considered all requests for overtime-related documents set forth in its email dated May 6, 2014 addressed to NYPD to be closed.

During the exit conference, a request was made for further documentation of overtime costs. In response, we are providing an affidavit of the Chief who is the Commanding Officer of the Counterterrorism Bureau's Citywide Counterterrorism Unit, together with the relevant portions of the contemporaneously-created memo books of the NYPD personnel included in the auditors' sample. These documents, as annotated and explained by the Chief, whose responsibilities included assignment of NYPD personnel to critical infrastructure locations, demonstrate that the officers included in the sample were all deployed to critical infrastructure locations within the meaning of the federal statutory definition as explained in PPD-21 and DHS guidance, and as described above. Based on this record, we believe that NYPD's costs have been properly supported and substantiated.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

**Recommendation #13:**

*Require the Division of Homeland Security and Emergency Services provide sufficient justification and documentation that adequately supports questioned costs that are unsupported or return to FEMA the amount not supported. Specifically, the documentation should support the following:*

- a) \$440,942 for a noncompetitive contract for architect and engineering services (to ensure it was reasonable and in accordance with Federal grant guidance on procurement practices);*
- b) \$87,075 for a camera and utility vehicle that were claimed, but not included in the approved budget.*

**New York City Fire Department's Response**

**a) Architect and Engineering Services**

The FDNY **disagrees** with the finding that it did not justify the use of \$440,942 in UASI funds to pay for design services in connection with the contemplated installation of an emergency back-up generator at 9 MetroTech Center, Brooklyn, New York, FDNY's leased headquarters.

The FDNY produced to the auditors, among other things, a letter dated November 2, 2012 from Alan Lee of First New York Partners to Dominic Morelli, Director of FDNY's Bureau of Support Services. First New York Partners is agent for Forest City Flatbush Associates, the landlord of 9 MetroTech Center FDNY's leased headquarters. Mr. Lee's letter indicates that the design work at issue was to be performed by a vendor chosen by the Landlord, under the Landlord's supervision, pursuant to section 12.03(c)(ii)(B) of the lease, and that FDNY, as tenant, would reimburse the Landlord for the cost of such services as additional rent, in accordance with section 10.02 of the lease.

In accordance with this letter, First New York issued its invoice #F12-055 dated December 7, 2012 to FDNY in the amount of \$440,942.25, which FDNY subsequently paid by check/electronic funds transfer on February 12, 2013. Copies of the invoice and electronic



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

funds transfer record were also provided to the auditors, along with copies of the relevant lease provisions.

The foregoing documentary record demonstrates that this was not a procurement by the FDNY. There was no contract between FDNY and the vendor. And the vendor was chosen by FDNY's landlord. FDNY reimbursed the landlord for this expense, in the form of additional rent, as required by the lease.

Since it is undisputed that the funds were used for an appropriate, grant-related purpose, the cost should be allowed.

**b) Camera and Utility Vehicle**

**Disagree.** The camera and utility vehicle support the intent of the grant to prepare for acts of terrorism and other catastrophic events, and both equipment items are listed on FEMA's Authorized Equipment List (AEL). The FDNY has documentation supporting these eligible equipment items.

FDNY recognizes that these items were not included in the initial approved grant budget. However, over the course of a 36-month grant period, the FDNY may make amendments to a grant based on evolving threats and hazards; and new preparedness needs. These changes are in accordance with FEMA Information Bulletin No. 379, which allows grantees to modify budget items to address immediate preparedness needs.

In making these changes, the FDNY also follows the City's own internal budget modification process. Both the camera and utility vehicle identified in the report received subsequent approval.

With respect to the camera, the approved project summary details a mobile response vehicle that supports the Bureau of Fire Investigation's capabilities to collect, analyze and share crime-scene and law enforcement information in real-time. The FDNY submitted a revised budget, which was approved, that supported the purchase of a Panoscan Camera. The camera is being utilized by the Bureau of Fire Investigation to support investigations of suspicious incidents, like the Times Square Car Bombing or an Active Shooter Incident. The approved budget is included as **Exhibit N**.



# OFFICE OF INSPECTOR GENERAL

## Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

The vehicle (a "gator") is specifically referenced in the City's application under the NIMS Investment Justification (IJ) and in the final Fiscal Cost Report (FCR). This documentation is provided as attached **Exhibits O & P**. The vehicle supports emergency responses that require units to be deployed over extended periods. We also expect the vehicle to be used during mutual-aid operations.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

**Recommendation #14:**

*Require the Division of Homeland Security and Emergency Services to investigate why the Fire Department of New York spent \$123,975 for seven radios that were not available or were inoperable during our audit. Require the Fire Department of New York to return the funds if determined to be wasted. Also, share and apply any lessons learned to future related investments.*

**New York City Fire Department Response**

The FDNY **disagrees** with this recommendation. The FDNY is working on a project to enhance communications in complex areas of the City. The goal is to reduce potential drops in coverage in these complex areas.

In support of this goal, the FDNY purchased 7 portable radio repeater systems for proof-of-concept pilot testing. The portable radio repeater systems support the intent of the grant to prepare for acts of terrorism and other catastrophic events, and they are listed on FEMA's Authorized Equipment List (AEL). Once the portable radio repeater systems pilot is accepted, these radio systems will support emergency response operations within complex environments. At that time, additional portable radio repeater systems will be ordered.

As is the case with any new technology, the portable radio repeater systems are being put through an extensive piloting and testing phase.

At the time of the auditor's visit, one of the selected radio systems was not charged. The protocol at the time was to charge the system's battery 24 hours prior to a scheduled testing date. The auditor's visit did not coincide with a scheduled testing date and the battery had not been charged. Since the auditor's visit, the FDNY's Office of Research and Development took a correction action to ensure battery power. A battery trickle charger was installed into the radio system to ensure battery power.

In light of new technology, the seven radio systems were returned to the manufacturer and were exchanged for three newer upgraded models that were also ruggedized. The three new radios at an equivalent dollar value to the seven returned radios. The exchange of radio



# OFFICE OF INSPECTOR GENERAL

## Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

systems was recorded in the City's Grants Tracking System (GTS), which is used to track grant-funded equipment assets.

The radio systems will be used during the next round of testing, which is scheduled to occur in June 2015.



# OFFICE OF INSPECTOR GENERAL

## Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

**Recommendation #15:**

*Require the Division of Homeland Security and Emergency Services to ensure the NYC Office of Management and Budget and Office of the Criminal Justice Coordinator initiate compliance reviews of city agencies awarded HSGP funding as required by NYC's Homeland Security and Criminal Justice Grant Management Policies and Procedures Manual.*

**NYC Office of Management and Budget's Response**

NYC OMB appreciates the need for, and is committed to, ensuring compliance by City agencies with grant requirements. Although compliance review procedures were followed during the audit period as described below, OMB **agrees** with the recommendation to increase oversight, and to that end, agrees to conduct formal compliance reviews all City Homeland Security grantees. These reviews will be conducted exclusively by OMB's Grant Unit as certain functions previously assigned to the NYC Office of the Criminal Justice Coordinator have been assumed by OMB as a result of an internal reorganization within the City designed to streamline the administration of DHS funds. We will communicate any monitoring changes to our grant recipients during our Homeland Security Working Group meetings, and by updating and distributing OMB's updated Homeland Security Policies and Procedures Manual.

Nevertheless, the Draft Report fails to acknowledge the following procedures followed by OMB during the audit period:

1. Before submitting agency Fiscal Status Reports ("FSR") to the State for reimbursement and reporting purposes, OMB critically examines the FSRs for expenditure eligibility and authorized signatory, and checks to see that each purchasing agency's fiscal department has performed an appropriate review.
2. OMB critically reviews quarterly progress reports from all grant recipients for completeness of programmatic reporting, including project-related metrics. Any challenges impacting the project are also reviewed. These narrative/qualitative reports provide programmatic documentation for grant-funded projects, and information on



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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**New York Response  
to  
14-076-AUD-FEMA**

project activity occurring during the reporting cycle, allowing for pro-active, corrective communication with agency partners.

3. OMB, as the contractual subgrantee of the State, also participates in the NYS Fiscal Monitoring Unit ("FMU") visits. OMB's role during these visits is to ensure that City agencies comply with all of NYS's data requests during the review. All responses to data requests made by the State in advance to entrance meeting are critically reviewed by OMB for completeness before transmittal to the State. OMB attends and participates in all scheduled entrance and exit conferences to facilitate communication and understanding between NYS and the City agencies. This involvement keeps OMB informed of any potential observations and any corrective actions required of the agencies. As needed, OMB initiates meetings between the respective agencies and NYS FMU Unit to resolve any potential observations before the close of the monitoring visit. In addition, OMB pushes agencies that have received any observations, following fiscal monitoring reviews, toward corrective action until the observation is closed.
4. OMB also reviews all budget modification requests prior to submission to NYS DHSES for approval. OMB has developed a budget modification template utilized by all DHS grant recipients when requesting changes to their grant budgets. A critical review is performed by OMB for financial and programmatic eligibility. Upon OMB review and approval, it is sent to NYS DHSES for final approval. The approval is then communicated to the agency so they may move forward with spending and reflect it on their next FSR and Progress Report submission.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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## Appendix C

### Homeland Security Grant Program

The HSGP provides Federal funding to help state and local agencies enhance capabilities to prevent, deter, respond to, and recover from terrorist attacks, major disasters, and other emergencies. The HSGP encompasses several interrelated Federal grant programs that together fund a range of preparedness activities, including planning, organization, equipment purchase, training, and exercises, as well as management and administration costs. Programs include the following:

- **The State Homeland Security Program** provides financial assistance directly to each of the states and territories to prevent, respond to, and recover from acts of terrorism and other catastrophic events. The program supports the implementation of the State Homeland Security Strategy to address the identified planning, equipment, training, and exercise needs.
- **The Urban Areas Security Initiative** provides financial assistance to address the unique planning, equipment, training, and exercise needs of high-risk urban areas, and to assist in building an enhanced and sustainable capacity to prevent, respond to, and recover from threats or acts of terrorism and other disasters. Funding is expended based on the Urban Area Homeland Security Strategies.

In addition, the HSGP includes other interrelated grant programs with similar purposes. Depending on the fiscal year, these programs include the following:

- Operation Stonegarden
- Metropolitan Medical Response System (through FY 2011)
- Citizen Corps Program (through FY 2011)



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

## Appendix D Potential Monetary Benefits

Classification of Monetary Benefits					
Description	Page No.	Corresponding Recommendation	Questioned Costs – Unsupported Costs	Questioned Costs – Other	Total
No Agreement for the Division of Military and Naval Affairs	9	5	\$18,731,021		\$18,731,021
Missing Records and Unclear Agreements for SUNY	10	5	\$2,982,692		\$2,982,692
Salary & Contractor Costs Inappropriately Allocated	11	5	\$1,643,664		\$1,643,664
Fringe Benefits Costs Inappropriately Allocated	11	6		\$261,748	\$261,748
Approved Advance Payments for a Lease	13	5	\$180,009		\$180,009
Maintenance Contracts and Warranties	13	6		\$10,824	\$10,824
Ineligible Overtime at the Queens District Attorney Office	13	6		\$177,842	\$177,842
<b>Total DHSES’ Insufficient Controls</b>			<b>\$23,537,386</b>	<b>\$450,414</b>	<b>\$23,987,800</b>
Unsubstantiated Overtime for NYPD	16	12	\$42,844,265		\$42,844,265
Procurement Practice at FDNY	17	13	\$440,942		\$440,942
Unapproved Items Included in Claim	17	13	\$87,075		\$87,075
Items Not Available or Inoperable	18	14	\$123,975		\$123,975
<b>Total NYC OMB’s Insufficient Controls</b>	(Sum) 32		<b>\$43,496,257</b>		<b>\$43,496,257</b>
<b>Total DHSES &amp; NYC OMB’s Insufficient Controls</b>	(Sum) 32		<b>\$67,033,643</b>	<b>\$450,414</b>	<b>\$67,484,057</b>



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Department of Homeland Security

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**Appendix E**  
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