



COUNTY OF ERIE

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MARK C. POLONCARZ

COUNTY EXECUTIVE

August 30, 2013

Honorable Members
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Re: Federal Emergency Management Agency Findings on October 2006 Storm

Dear Honorable Legislators:

Today, the Federal Emergency Management Agency ("FEMA") issued its formal written response to the U.S. Department of Homeland Security, Office of Inspector General ("OIG") Revised Audit dated March 29, 2013 regarding the October 2006 Storm and the County's response to, and use of federal funds for the disaster cleanup and relief effort. A copy of the FEMA formal response is enclosed for your review.

As you know, starting in February 2013, my administration stated our belief that OIG's original Audit and the Revised Audit were wrong and included erroneous understandings of the law, incomplete information, and incorrect findings. I am pleased to report that FEMA has come to the same conclusions and FEMA is rejecting nearly the entirety of the OIG Audit findings. FEMA is not recommending that the County be compelled to repay \$48,465,416 of federal assistance, as sought by OIG.

There are several minor areas in which FEMA has concurred with OIG, and FEMA is recommending recoupment of \$705,640.93 from Erie County, including \$278,177.65 representing cash overtime which was awarded via legislative resolution to County managerial-confidential employees by the Giambra Administration.

My administrative team has reviewed FEMA's response. Some of the claims contained in the response we never disputed. Others, such as the payment of overtime to managerial-confidential employees, we believe are meritorious.

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August 30, 2013
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Therefore, in order to put this matter behind us, we concur with FEMA's findings and will return \$705,640.93 of federal funding now sought in response to the October 2006 Storm recovery.

This FEMA decision represents a very positive development for the people of Erie County and would not have been possible without the strong advocacy of Senator Charles E. Schumer. I greatly appreciate his efforts to assist us in rebutting the illogical recommendations proffered by the OIG and in hosting a meeting between FEMA Administrator Craig Fugate and I in June in the Senator's Washington, D.C. office.

I also thank Senator Kirsten Gillibrand and Congressman Brian Higgins, who provided assistance to my administration in rebutting OIG's claims.

Given the magnitude of the possible recoupment of \$48.5 million, I am sure you will agree with me that a \$705,641 recoupment of federal disaster funds, while regrettable, is far more palatable to the County than the alternative.

Representatives from my office and the Division of Budget and Management will be available to attend a meeting of the Finance and Management Committee to discuss this matter and the financial implications. If you have any questions, please do not hesitate to contact me.

Sincerely yours,



Mark C. Poloncarz, Esq.
Erie County Executive

MCP/tcc
Enclosure

cc: Erie County Comptroller Stefan Mychajliw
Erie County Fiscal Stability Authority



FEMA

August 30, 2013

MEMORANDUM FOR: D. Michael Beard
Assistant Inspector General
Office of Emergency Management Oversight

From: MaryAnn Tierney
Acting Regional Administrator, 
FEMA Region II

SUBJECT: Response to Audit Report Number OIG-13-23 (Revised);
*FEMA Should Recover \$48 Million of Public
Assistance Grant Funds Awarded to Erie County,
New York – Severe Weather October 2006*

Region II of the Federal Emergency Management Agency (FEMA) has reviewed the Office of Inspector General (OIG) report OIG-13-23 (Revised) of March 29, 2013, entitled *Erie County, New York, FEMA should recover \$48 Million of Public Assistance Grant Funds Awarded to Erie County, New York – Severe Weather October 2006*. The following is FEMA Region II's response to the findings and recommendations presented in the OIG's report.

After meeting with the State and the County and reviewing roughly 2.0 GB of data, FEMA Region II has concluded that a total reduction of **\$705,640.93** is appropriate.

I. Summary of FEMA Region II's position

OIG Recommendation #1: "Disallow \$39,391,260.00 (Federal Share \$29,543,445.00) of improperly procured contract costs as ineligible, unless FEMA grants an exemption for all or part of the costs as provided for in 44 CFR 13.43(a) and section 705(e) of the Stafford Act."

FEMA's Response: Concur in part – Agree with reduction of **\$168,025.20** for unsupported costs. (PW 330 -\$47,595.00 and PW 344 -\$120,430.20)

OIG Recommendation #2: "Disallow \$9,030,634.00 (Federal Share \$6,772,976.00) in unsupported costs unless the County provides adequate documentation to support these costs."

FEMA's Response: Concur in part – Agree with reduction of **\$493,295.02** for unsupported costs. (PW 600, -\$12,043.87; PW 628, -\$478,399.62; PW 675, -\$2851.53)

OIG Recommendation #3: “Disallow \$33,066.00 (Federal share \$24,800.00) as indirect administrative costs.”

FEMA’s Response: Concur – Agree with reduction of \$33,066.00 for cost covered by the sub-grantee Administrative Allowance.

OIG Recommendation #4: “Disallow \$10,456.00 as duplicate expenditures.”

FEMA’s Response: Concur in part – Agree with reduction of \$8,112.05 of the costs identified by the OIG, but disagree with \$2,343.95 of the costs OIG suggests should be disallowed, as the cost is associated with damages that occurred performing eligible work under severe conditions, which are not covered by the FEMA cost code and are therefore deemed eligible.

Separately, however, Region II identified \$3,075.00 that it believes should be disallowed on the basis of unreasonable cost, resulting in total disallowance of \$11,254.71.

OIG Recommendation #5: “Develop and enforce policies and procedures to ensure that grantees and sub-grantees in the State of New York follow proper Federal procurement procedures when expending public assistance grant funds.”

FEMA’s Response: FEMA Region II, within 60 days of this response, will coordinate with New York State (Grantee) to conduct a review of Federal procurement under grants regulation/accounting standards, identify and recommend corrections to any known deficiencies that may exist in New York policies or procedures, and give recommendation to development or implementation of new policy or procedures to ensure future enforcement and compliance of Federal Procurement Procedures when expending Public Assistance Funds from the Grantee level to the Sub-Grantee level.

In addition, FEMA Region II will work with FEMA Headquarters to develop uniform training of FEMA Region II personnel in the review of procurements under grants and cost principles.

OIG Recommendation #6: “Develop and enforce policies and procedures to ensure that grantees and sub-grantees in the State of New York follow proper Accounting practices and procedures when accounting for public assistance grant funds.”

FEMA’s Response: FEMA Region II, within 60 days of this response, will coordinate with New York State (Grantee) to review proper Accounting practices and procedures; identify and recommend correction of any known deficiencies that may exist in New York’s policy or procedure; and provide recommendations for development or implementation of new policy or procedures to ensure future enforcement and compliance when accounting for Public Assistance Funds from the Grantee level to the Sub-Grantee level.

Background:

- October 10-12, 2006, Erie County was hit by a severe winter storm that dropped 2 feet of snow in less than 12 hours, taking down power lines and tree limbs and causing considerable damage throughout Northern Erie County.
- On October 15, 2006 the State of NY declared a state of emergency for the affected counties and sought FEMA assistance.
- On October 24, 2006, President George W. Bush declared a major disaster for Erie and the surrounding counties.
- Original declaration limited reimbursable debris removal and cleanup costs to 6 months following the disaster, but to complete the requisite work, Erie County requested multiple time extensions, which extended the period of completion to October 24, 2008.

II. **OIG Finding A: Contracting Practices Did Not Comply with Federal Procurement Regulations**

The OIG determined “the County awarded \$39,391,260.00 in Contracts in a manner that limited competition and disregarded Federal Contracting Regulations. The County Executive directed the purchasing department to award contracts giving preference to local contractors, but did not ensure the process followed open competition and documentation requirements. The work contracted for included vegetative debris removal and disposition, storm damaged tree removal, and the monitoring of these activities.” The OIG questioned the costs detailed in Table 1. FEMA approved the projects based on estimates. The OIG continues to identify that Federal Procurement standards, 44 CFR 13.36, require grant recipients to:

- Perform procurement transactions in a manner providing full and open competition except under certain circumstances.
- Prepare cost or price analysis in connection with every procurement action, including contract modifications.
- Take all necessary affirmative steps to assure that small businesses, minority firms, women’s business enterprise, and labor surplus area firms were used when possible.
- Not place arbitrary actions in the procurement process.
- Maintain records sufficient to detail the significant history of the procurement, including the rationale for the method of procurement, the basis for contractor selection, and basis for the contract price.

OIG Recommendation #1: “Disallow \$39,391,260.00 (Federal Share \$29,543,445.00) of improperly procured contract costs as ineligible, unless FEMA grants an exemption for all or

part of the costs as provided for in 44 CFR 13.43(a) and section 705(c) of the Robert T. Stafford Disaster Relief Act as amended.”

Table 1: Projects and Their Contracted Amounts¹

Project	Amount Contracted	Amount Not Questioned	Amount Questioned	Validated and Documented Expenditures	FEMA Recommended Change +/-
6	\$769,196		\$769,196	\$769,196.00	\$0
2080	\$812,306		\$812,306	\$812,306.00	\$0
241	\$809,854		\$809,854	\$809,854.00	\$0
242	\$1,667,633		\$1,667,633	\$1,667,633.00	\$0
243	\$9,221,951		\$9,221,951	\$9,221,951.00	\$0
244	\$1,031,546		\$1,031,546	\$1,031,546.00	\$0
330	\$6,121,895		\$6,121,895	\$6,074,300.00	\$(47,595.00)
342	\$2,244,165		\$2,244,165	\$2,244,165.00	\$0
344	\$7,740,314		\$7,740,314	\$6,831,906.92	\$(120,430.20)
485	\$202,689	\$138,676	\$64,013	\$202,689.00	\$0
609	\$4,125,064	\$197,910	\$3,927,154	\$4,125,064.00	\$0
615	\$4,505,539		\$4,505,539	\$4,505,539.00	\$0
645	\$475,694		\$475,694	\$475,694	\$0
TOTAL	\$39,727,846	\$336,586	\$39,391,260	\$39,559,285.20	\$(168,025.20)

FEMA Region II response:

Law: Federal Regulation 44 CFR 13.36(b) instructs Grantees and subgrantees to “use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and standards identified in this section.”

44 CFR 13.36(d) outlines the several methods by which grantees and subgrantees may conduct procurements. Section 13.36(d)(2), (3) and (4) details *procurement by sealed bids*, *procurement by competitive proposals*, and *procurement by noncompetitive proposals*, respectively.

In the event of noncompliance with the applicable Federal regulations, the enforcement provision at 44 CFR 13.43 lists the remedies an awarding agency may take, if a grantee or subgrantee materially fails to comply with any term of an award, as appropriate in the circumstances:

- (1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency
- (2) Disallow (that is, deny both use of the funds and matching credit for) all or part of the cost of the activity not in compliance,

¹ As depicted in Table 1, the OIG questioned all but \$336,586 of the contracted costs for the projects listed. FEMA, however, has validated and documented the expenditure except for \$47,595 and \$120,430.20 for Project numbers 330 and 344, respectively.

- (3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,
- (4) Withhold further awards for the program, or
- (5) Take other remedies that may be legally available.

Although not controlling, the Federal Acquisition Regulations (FAR) provide insight into governmental procurement practices. FAR Part 15.4 provides cost and price negotiation policies and procedures, including the purpose and rationale for developing a price analysis for negotiations, because it "permits the contracting officer and the offeror an opportunity to reach agreement on a fair and reasonable price." (48 CFR 15.405(a)). More specifically, FAR 15.404 provides detailed factors to consider when conducting a price analysis.

The Office of Management and Budget Circular A-87 Cost Principles for State, Local, and Indian Tribal Governments, Attachment A, Paragraph C.1.a, states that costs under federal awards must be allowable – that is, necessary and reasonable as well as allocable. The Circular defines a reasonable cost as a cost that does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. A cost is defined as allocable if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

FEMA Region II does not concur with the OIG's recommendation to disallow the entire amount of the contract costs as ineligible for the following reasons:

FEMA believes that Erie County did successfully compete the bid for debris removal. The Erie County procurement process admittedly did not strictly follow a standard procurement method per 44 C.F.R. 13.36(d); however, the end result was a contract that reflected a full and open competition, which resulted in a fair and reasonable cost of debris removal at the time of the award. While FEMA agrees that the procedural process used by Erie County did not technically comply with 44 C.F.R. 13.36, FEMA believes that these discrepancies were not material and the process met the spirit of the Federal procurement regulations and its competition requirements.

Facts: Erie County initially solicited bids from 70 pre-approved local contractors and received bids from 59 of those. The bids ranged from \$6.00 to \$32.00 per cubic yard, representing a full, competitive range of prices. Erie determined that the low bid contractors did not have sufficient resources to complete the project. Thus, based on the bids received, the County decided to issue contracts to any of these pre-approved vendors who were willing to perform the work at a rate of \$11.25/cubic yard. In order to arrive at a price the County determined fair and reasonable, the County averaged the bid proposal prices and offered the mean contract price of \$11.25/cubic yard to all parties that submitted proposals to the initial Request for Proposals (RFP). Based on its price analysis, the County determined that the price was fair and reasonable given the number of proposals received, the range of rates, and the inability of any of the low offerors to meet the

solicitation requirement. Eleven (11) contractors accepted the offer and renegotiated their proposals, and agreed to the amended terms and conditions. (See PW 6, Notes on Procurement.)

This Procurement was by Competitive Proposals: Although the process initially started out under Sealed Bid procurement procedures, under which a single award was to be made, upon receipt of the bids, the County determined that none of the offerors could meet the capacity requirement and thus it would have to make multiple awards. The County converted the procurement procedures from sealed bidding to competitive proposal under 44 CFR 13.36(d)(3). While the fact that the County altered the procurement method is not commensurate with the nature of the federal procurement process, it did not prejudice any of the contractors and FEMA believes it was in the spirit of competitive procedures.

The County made awards to the responsible firms whose proposals were most advantageous to the program, with price and other factors considered. (44 CFR 13.36(d)(3)(iv)). The technical factors the County used for consideration were included in the solicitation: the total number of crews; the number of crews that could be provided immediately, within 24 hours and within 48 hours; and the unit price. (See Accumulated Proposal Results-Debris Removal Table.) FEMA acknowledges that the County did not, however, properly articulate its method for conducting such an evaluation in the solicitation, as required by 44 CFR 13.36(d)(3)(iii), nor did it sufficiently document the justification for doing so after the fact.

The County performed a round of negotiations after the technical evaluations and cost analysis were performed per 44 CFR 13.36(d)(3)(v). The negotiations included offering the contract to all parties that competed for the initial RFP, the new terms of the contract included a set price of \$11.25/cubic yard, a price which was reached by performing a price analysis based on the prices offered.

Although this was not a Federal procurement, the FAR provides a helpful analytical analogue to the County contracting officer's position. FAR Part 15 describes Contracting by Negotiation. (48 CFR 15). Part 15.405 explains that the purpose of performing cost or price analysis is:

to develop a negotiation position that permits the contracting officer and the offeror an opportunity to reach agreement on a fair and reasonable price. . . . [T]he contracting officer is responsible for exercising the requisite judgment needed to reach a negotiated settlement with the offeror and is solely responsible for the final price agreement. . . (b) The contracting officer's primary concern is the overall price the Government will actually pay. The contracting officer's objective is to negotiate a contract of a type and price providing the contractor the greatest incentive for efficient and economical performance. The negotiation of a contract type and price are related and should be considered together with the issues of risk and uncertainty to the contractor and the Government.

See 48 CFR 15.405(a)-(b)). The County appears to have utilized its procurement process to solicit competition and then made a best value judgment based on its needs and the overall price the Government would actually be paying.

In addition, the County appears to have followed its own State and local laws, regulations, and procurement procedures; and they made a good faith effort to procure reasonably priced contracts to displace the original, more expensive contracts that were let for the first two days of the disaster.

The regulations, at 44 CFR 13.36(b)(1), set out the common rule procurement regulation by directing Grantees and subgrantees to use their own procurement procedures in accordance with State and local laws. This direction is tempered by the next clause which requires those procedures be in conformance with applicable Federal law and standards.

The County procurement process succeeded in procuring more affordable service contracts than the initial contracts that were let during the first 72 hours of the disaster clean up. Two contracts, reflected in the unquestioned costs columns of PW 485 and 609 (*See above, Table 1.*), were for debris removal from October 18th-20th and were priced at \$14.80/CY and \$15.00/CY. After the first 72 hours and the initial bid solicitation, the County extended the new averaged price of \$11.25/CY to each of these respective contractors, who accepted and continued to do the work at the new lower price, in addition to the nine other contractors with considerable cost savings to the County and the Federal Government.

Enforcement Discretion: While FEMA agrees with the OIG that Erie County failed to technically comply with the provisions of 44 C.F.R.13.36, FEMA disagrees with the OIG's recommendation for full disallowance of costs. The regulations, at 44 CFR 13.43(a) provide the awarding agency may take any enforcement action, as appropriate under the circumstances, if a grantee or subgrantee materially fails to comply with any term of an award. One of those remedies is either full or partial disallowance of costs.

As noted, FEMA agrees with the OIG finding that the County did not fully comply with the applicable Federal procurement regulations. However, FEMA disagrees that the County's actions constitute a material failure to comply with the grant-based procurement regulations. Even if its actions do constitute a material failure, the agency must decide whether the failure justifies disallowance of any of the costs. Here, FEMA believes that Erie's actions indicate that it used its best efforts to competitively award contracts at a price that it deemed fair and reasonable. Although it was not a traditional process for awarding contracts, it was effective and provided the County the services it needed at what appears to be a fair and reasonable price.

FEMA believes it has the discretion to disallow part of the costs, under 44 CFR 13.43(a) and does not believe an exemption under section 705(c) of the Stafford Act is applicable.

Price Determination Analysis: A determination of whether a price is fair and reasonable involves judgment and various factors including market conditions, general economic conditions, and supply and demand. In other words, fair and reasonable price determination is an assessment by the Government that an offeror's proposed price for a supply or service can be considered "fair and reasonable" on the basis of applying one or more price analysis techniques. Neither 44 CFR 13.36 nor Federal Acquisition regulation (FAR) Part 15, Contracting by Negotiation, explicitly define the phrase "fair and reasonable." The concept of a fair and reasonable price has typically been described as the price that a prudent businessperson would pay for an item or service under competitive market conditions, given a reasonable knowledge of the marketplace. Regardless of the precise definition, 44 CFR and the FAR establish the need for determining a price to be fair and reasonable price before awarding contracts.

In 1994, Congress passed the Federal Acquisition Streamlining Act (FASA), which established a preference for the types of information used to assess price reasonableness. Specifically, FAR 15.404-1(b)(2), implementing FASA, lists seven price analysis techniques by which the Government can make a fair and reasonable price determination. The preferred technique is the comparison of proposed prices received in response to the solicitation. Normally, adequate price competition establishes price reasonableness. This is also the most commonly used technique, as the majority of Government procurement actions attract two or more offers that are competing independently for award.

The second preferred method is the comparison of previously proposed prices and previous Government and commercial contract prices with current proposed prices for like items. Both the validity of the comparison and the reasonableness of the previous price(s) must be established. Additional techniques include: use of parametric estimating methods/application of rough yardsticks to highlight significant inconsistencies that warrant additional pricing inquiry; comparing the proposed price per square foot for a certain type of building construction against an established commercial standard is an example of this technique; comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements; comparison of proposed prices with independent Government cost estimates; comparison of proposed prices with prices obtained through market research for the same or similar items, and, analysis of pricing information provided by the offeror.

Here, Erie reviewed the bids received, noted the inability of any offeror to meet the capacity requirement, and decided to average the rate that the offerors proposed and award multiple contracts at the rate of \$11.25/CY, an amount that, albeit did not represent the lowest amount offered, was substantially lower than the \$14.80/CY or \$15.00/CY it was paying its current contractors. Based on the facts that existed, FEMA believes the County's price determination

was fair and reasonable. For these reasons, we disagree that Erie County should bear the onerous burden of a full disallowance of costs.

Cost Principles: In determining whether Erie's determination that \$11.25/CY is fair and reasonable, FEMA relied on the OMB Cost Principles for State, Local, and Indian Tribal Governments. The contract price of \$11.25/cubic yard was determined to be a reasonable price given the circumstance by the County at the time of procurement, and by both the OIG and by a FEMA independent price analysis.

OMB Circular A-87 defines reasonable costs as those that do not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining reasonableness of a given cost, consideration shall be given to:

- a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.
- b. The restraints or requirements imposed by such factors as: sound business practices; arm's length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.
- c. Market prices for comparable goods or services.
- d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.
- e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.

Both the OIG and FEMA when conducting audits of the procurement look to the market prices for comparable goods or services, as instructed by the Cost Principles circular, to determine whether or not the County was sufficiently prudent in pricing the debris contracts at \$11.25/CY.²

² OIG conducted an audit of the City of Buffalo in 2009 and determined that a range of \$11.25 - \$17.00/CY is reasonable for debris removal in Erie County. The scope of the OIG analysis was determined by:

1. Obtaining information from NEMIS on rates paid by other subgrantees in the area.
2. Scheduling those rates and comparing them to the City rate.
3. Deciding if the rates were reasonable compared to rates the City paid.
4. If the rates were not reasonable they would determine the difference and use the difference to question the rate.
5. Using the difference, determine the amount of unreasonable costs claimed by the city.

Of the four subgrantees in comparison, Erie County had the lowest price for debris removal, and the second lowest when the hauling costs were taken into account. The stated conclusion of the OIG was "we have accepted these rates as reasonable."

FEMA Region II reviewed actual contract costs for debris removal by localities in and around Erie County at the time of the disaster and consequent procurement process and identified that contract costs ranged from \$9.00 - \$18.20. Erie County, despite its minor procurement flaws, was able to obtain reasonably priced services, and even lower priced services than other counties that followed more traditional procurement processes. See Table 2, below.

Based on its review, FEMA finds the County's documented costs at the unit price of \$11.25/CY reasonable.

Table 2: Contract Cost Analysis

<i>DR 1665 Local Debris Removal Cost</i>			
Applicant	PW #	Cubic Yard	\$/CY
City of Buffalo	339	193,874	\$12.50
Genesee County	317	30,000	\$9.00
Town of Cheektowaga	620	21,000	\$10.47
Town of Grand Island	479	9,200	\$18.20
Lackawanna /Municipal	660	28,809	\$12.50
Blasdell	111	17,788	\$12.65
Depew	246	9769	\$11.25

Table 3: Averaged Cost Benefit

Awarded Contractors	\$/Cubic Yard Bid	\$/Cubic Yard Award	Benefit/Deficit
PRECISION CONCRETE	\$6.00	11.25	\$5.25
BOLTS EVERGREEN FARM INC.	\$9.50	11.25	\$1.75
UCC CINSTRUCTORS INC	\$9.75	11.25	\$1.50
PIRRITANO EXCAVATIONG, INC.	\$10.25	11.25	\$1.00
J-TAP	\$11.00	11.25	\$0.25
NICHOLS LONG & MOORE CONSTRUCTION	\$11.50	11.25	(\$0.25)
BENGERT GREENHOUSE	\$12.00	11.25	(\$0.75)
DIPIZIO CONSTRUCTION CO INC.	\$14.80	11.25	(\$3.55)
MICHAEL SERRAFINI INC.	\$15.00	11.25	(\$3.75)
AMHERST PAVING INC.	\$15.50	11.25	(\$4.25)
OCCHINO PAVING CORP	\$17.50	11.25	(\$6.25)
BOLDTS LODDING INC.	\$24.90	11.25	(\$13.65)
TOTAL	\$13.14	11.25	(\$1.89)

Source: Aggregate Bid Proposals Table

III. OIG Finding B: Unsupported Claimed Cost

The OIG determined the “County claimed unsupported costs of \$9,030,634.00 under projects 600, 614, 628 and 675. The county did not provide adequate documentation to show that the amounts charged to projects 600, 614, 628 and 675 contain expenditures allowable under the Public Assistance (PA) Program. Further, the County could not produce a cost summary or reconciliation that could support the amounts questioned. The project worksheets simply describe these costs as estimates. In addition, the interim summaries provided by the County showed these costs as estimates, and the projects as not completed. The County never performed a final reconciliation.” (See Table 4).

OIG Recommendation #2: “Disallow \$9,030,634.00 (Federal Share \$6,772,976.00) in unsupported costs unless the County provides adequate documentation to support these costs.”

Table 4: Reconciliation Findings B, C & D

PW #	Amount Obligated	Amount Questioned by OIG	Validated and Documented Expenditures	FEMA Recommended Change +/-
Finding B				
600	\$7,103,233.59	\$5,447,640	\$7,091,189.72	\$(12,043.87)
614	\$1,388,830.48	\$1,388,830	\$1,388,830.48	\$0
628	\$3,605,931.07	\$2,190,301	\$3,127,531.45	\$(478,399.62)
675		\$3,863		\$2,851.53
Finding C	\$495,069.53	\$33,066	\$447,897.29	\$(33,066)
Finding D		\$10,456		\$(11,254.71)
Total	\$12,593,063	\$9,030,634	\$12,055,448.94	\$(537,615.73)

FEMA Region II response:

According to federal regulation 44 CFR 13.20(b)(6), expenditures under a federal award must be supported by adequate source documentation such as canceled checks, paid bills, payroll, time and attendance records, contract award documents, etc. Office of Management and Budget Circular A-87 (*Cost Principles for State, Local, and Indian Tribal Governments*), Attachment A, Paragraph C, also requires that costs be adequately documented to be allowable under a federal award.

The County has provided FEMA documentation supporting the costs. FEMA has reviewed the documentation and believes that Erie County has provided FEMA with sufficiently detailed supporting documentation in relation to the costs and processes in question. (See Table 4 above)

for FEMA's reconciliation of costs). The documentation is available to the OIG for review through FEMA Region II personnel.

We partially concur with the OIG Finding; FEMA has completed a review of the documentation provided by Erie County and find that the County has provided adequate documentation to support costs in the amount of \$12,055,448.94 (See Table 4, including unsupported costs from Findings C and D).

FEMA Region II PA staff is directed to de-obligate funds in the amounts as follows:

PW 600: A reduction shall be taken in the amount of \$12,043.87 identified as cost associated with the sub-grantee administrative allowance.

PW 628: A reduction shall be taken in the amount of \$278,177.65 for cost related to a post disaster Overtime Resolution.

A reduction in equipment cost shall be taken as a result of a difference in the total number of equipment hours claimed and the total number of hours supported through documentation. The hours supported were 3,374.25 hours less than the claimed hours. In addition there was a claim for "service action corps vehicles" which had no documented support for the claim. The amount of hours claimed for that equipment was 10,578.50. A total reduction shall be taken for these two items in the amount of \$200,221.97 (\$14.35 times the total hours) for a total reduction of \$478,399.62.

PW 675: A reduction shall be taken in the amount of \$2,851.53 for undocumented costs

IV. OIG Finding C: Administrative Costs Charged Direct

The OIG determined the "County claimed ineligible administrative costs of \$33,066.00 under project 675. These expenditures apply to activities not specifically accountable to a work project.

FEMA denied the County's initial claim of \$45,000.00 for PW 675 consultant fees. The County appealed the denial and FEMA subsequently authorized the \$45,000.00 claim provided the County demonstrates the eligibility of the expenditures. During our review of the invoices, we (OIG) determined that a portion of the claim costs are administrative in nature and therefore not eligible.

Of the \$45,000.00 in claimed costs, the County paid \$33,066.00 to a consultant to review and research projects and other issues for the County. The consultant fee is supposed to be part of the administrative allowance. We (OIG) determined the remaining \$11,934.00 as eligible costs."

OIG Recommendation #3: "Disallow \$33,066.00 (Federal share \$24,800.00) as indirect administrative costs."

FEMA Region II response: FEMA concurs with the recommendation. Federal regulations for grant programs, in force prior to the year 2008, allow the grant recipients to claim reasonable administrative costs, unless the law authorizing a grant program includes specific provisions for these costs. For the PA Program, the Stafford Act stipulates that each grant recipient be provided an allowance to meet the cost of administering the grant. The allowance is calculated differently for applicants and States and covers different costs for each.

The Administrative Allowance for applicants (sub-grantees) covers direct and indirect costs incurred in requesting, obtaining, and administering Public Assistance, i.e., grant management. No other administrative or indirect costs incurred by an applicant are eligible. In accordance with the above, FEMA concurs with the OIG finding for a deobligation of \$33,066. (See Table 4, above).

V. OIG Finding D: Duplicate Cost Included in the EOC Supplies Costs

The OIG determined “the County claimed duplicate cost of \$10,456.00 under project 675 as part of an equipment usage claim. The County claimed equipment usage using FEMA’s equipment rates. The County also claimed the repair and maintenance cost of that same equipment.”

OIG Recommendation #4: “Disallow \$10,456.00 as duplicate expenditures.”

FEMA Region II response: FEMA partially concurs with the recommendation. The FEMA Schedule of Equipment Rates provides authorized reimbursement rates for applicant-owned equipment, and includes parts and labor for normal maintenance and periodic equipment overhaul. These rates are expected to cover most damage to equipment used under emergency conditions. However, when equipment sustains unusual damage or requires extraordinary maintenance as a result of emergency use under severe conditions (e.g., high water or very rough terrain), and such damage cannot be reasonably avoided, repair and/or maintenance costs may be eligible for reimbursement. FEMA funding will be limited to the cost of repairs less insurance proceeds, to avoid duplication of benefits, as required in Section 312(a) of the Stafford Act.

We consider the costs associated with damages to the trucks, as damages that occurred performing eligible work under severe conditions and are therefore eligible. It is assumed, however, that these costs were covered by insurance and we concur with a reduction of \$5,968.71.

We consider the cost associated with damages to the John Deere tractor tires, as damages that occurred performing eligible work under severe conditions and are therefore eligible. As they are not considered an insurable risk no insurance reduction will be taken.

The County used a helicopter to survey damages from the storm. They claimed an hourly rate of \$800.00/Hr for 4.5 hours and \$550.00/Hr for 8.5 hours at a total cost of \$8,275.00. In addition the county submitted cost of \$1,986.00 for aviation inspections and maintenance. The backup documentation, provided by the applicant, supports the cost for the maintenance. National Emergency Response rates of \$400.00/Hr, as published online, for similar helicopter usage was used for validation of the usage cost submitted by the applicant. We find the rate of \$400.00 to be reasonable and support a reimbursement of \$400.00 x usage of 13 hours = \$5,200.00. A reduction in the amount of \$3,075.00 will be taken. A reduction in cost for aviation inspection/maintenance will be taken in the amount of \$1,986.00 as duplicate cost. A reduction of \$225.00 for unexplained expenditures for Star Brite cleaner for an ambulance service provider will also be taken for a total reduction of \$5,286.00. (See Table 4, above).

VI. OIG Finding E: Accounting and Grants Management

The OIG determined “the County and NYS DHSES did not exercise due prudence over FEMA’s \$55.4 million disaster assistance grant.”

OIG Recommendation #5: “Develop and enforce policies and procedures to ensure that grantees and sub-grantees in the State of New York follow proper Federal procurement procedures when expending public assistance grant funds.”

County Response: No record of engagement of the County for response.

FEMA Region II response: FEMA concurs with the OIG recommendation for improved guidance and enhanced enforcement of FEMA procurement policies and procedures. Therefore, FEMA Region II, within 60 days of this response, will coordinate with New York State (Grantee) to provide a review of Federal procurement regulations; identify and correct any deficiencies that may exist in policy or procedure; and provide recommendations for the development or implementation of new policy or procedures to ensure future enforcement and compliance of Federal procurement procedures when expending Public Assistance Funds from the Grantee level to the Sub-Grantee level. In addition, FEMA will reach out to stakeholders in the PA grant process (such as DHS and the OIG) to create uniform training of FEMA personnel in the review of procurements under grants and cost principles.

OIG Recommendation #6: “Develop and enforce policies and procedures to ensure that grantees and sub-grantees in the State of New York follow proper Accounting practices and procedures when accounting for public assistance grant funds.”

FEMA Region II response: FEMA concurs with the OIG recommendation for improved guidance and enhanced enforcement of proper accounting practices and procedures when accounting for public assistance funding. Therefore, FEMA Region II, within 60 days of this response, will coordinate with New York State (Grantee) to provide a review of proper Accounting practices and procedures; identify and correct any deficiencies that may exist in policy or procedure; and provide recommendations on the development or implementation of new policy or procedures to ensure future enforcement and compliance when accounting for Public Assistance Funds from the Grantee level to the Sub-Grantee level.

VII. Summary of OIG Recommendations and FEMA Planned Actions

Recommendation #1: “Disallow \$39,391,260 (Federal share \$29,543,445) of improperly procured contract costs as ineligible, unless FEMA grants an exemption for all or part of the costs as provided for in 44 CFR 13.43(a) and section 705(c) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act as amended. (Finding A)”

FEMA Planned action: Despite the unorthodox procurement method by Erie County in awarding multiple contracts for debris removal, FEMA believes that, while the applicant failed to follow all the technical requirements of 44 C.F.R. 13.36, the competitively awarded contracts did result in the applicant obtaining the required services at a fair and reasonable rate. Upon review of documentation along with discussion with the applicant and in consideration of the magnitude of the impact of the event on Erie County, FEMA has determined that a non-material failure to comply with the regulations occurred and a partial disallowance of costs is the appropriate remedy available under 44 CFR 13.43(a)(2). FEMA has performed an analysis of contracted costs and have made a determination that contract cost as identified by the applicant are allowable as previously noted and that the applicant has sufficiently detailed supporting documentation in relation to the costs and processes in question. We therefore support the amounts indicated in Table 1. FEMA PA staff is directed to make the De-Obligations as noted in Table 1.

Recommendation #2: “Disallow \$9,030,634 (Federal share \$6,772,976) in unsupported costs unless the County provides adequate documentation to support these costs. (Finding B)”

FEMA Planned Action: We partially concur with the OIG Finding; FEMA has completed a review of the documentation provided by Erie County and find that the County has provided adequate documentation to support costs in the amount of \$12,055,448.94 (See Table 4). FEMA PA staff is directed to de-obligate a total of \$478,399.62 of funds in the amounts as follows;

PW 600: A reduction shall be taken in the amount of \$12,043.87 identified as cost associated with the sub-grantee administrative allowance.

PW 628: A reduction shall be taken in the amount of \$278,177.65 for cost related to a post disaster Overtime Resolution, a reduction in equipment cost shall be taken as a result of a difference in the total number of equipment hours claimed and the total number of hours supported through documentation. The hours supported were 3,374.25 hours less than the claimed hours. In addition there was a claim for “service action corps vehicles” which had no documented support for the claim. The amount of hours claimed for that equipment was 10,578.50. A total reduction was taken for these two items in the amount of \$200,221.97 (\$14.35 times the total hours) for a total reduction of \$478,399.62.

PW 675: A reduction shall be taken in the amount of \$2,851.53 for undocumented costs

Recommendation #3: “Disallow \$33,066 (Federal share \$24,800) as indirect administrative costs. (Finding C)”

FEMA Planned Action: We concur with this finding; the FEMA PA staff is directed to de-obligate funds in the amount of \$33,066 within 30 days of this letter.

Recommendation #4: “Disallow \$10,456 as duplicate expenditures. (Finding D)”

FEMA Planned Action: We partially concur with this recommendation, please see notes above. FEMA PA staff is directed to de-obligate funds in the amount of \$11,254.71 as ineligible/duplicate costs.

Recommendation #5: “Develop and enforce policies and procedures to ensure that grantees and sub-grantees in the State of New York follow proper Federal procurement procedures when expending public assistance grant funds. (Finding E)”

FEMA Planned Action: FEMA Region II, within 60 days of this response, will coordinate with New York State (Grantee) to provide a review of all Federal procurement regulations; identify and recommend correction of any known deficiencies that may exist in policy or procedure; and provide recommendations on development or implementation of new policy or procedures to ensure future enforcement and compliance of Federal Procurement Procedures when expending Public Assistance Funds from the Grantee level to the Sub-Grantee level. In addition, FEMA Region II will work with FEMA Headquarters to develop uniform training of FEMA Region II personnel in the review of procurements under grants and cost principles.

Recommendation #6: “Develop and enforce policies and procedures to ensure that grantees and sub-grantees in the State of New York follow proper accounting practices and procedures when accounting for public assistance grant funds. (Finding E)”

FEMA Planned Action: FEMA Region II, within 60 days of this response, will coordinate with New York State (Grantee) to review proper Accounting practices and procedures; identify and recommend correction any known deficiencies that may exist in New York’s policies or procedures; and provide recommendations on development or implementation of new policy or procedures to ensure future enforcement and compliance when accounting for Public Assistance Funds from the Grantee level to the Sub-Grantee level.

Table 5: Total FEMA Deobligations

	Award	OIG Questioned Costs	FEMA Deobligations
PW 330	\$6,121,895	\$6,121,895	\$(47,595.00)
PW 344	\$7,740,314	\$7,740,314	\$(120,430.20)
Finding A Total	\$39,391,260.00	\$39,391,260.00	\$(168,025.20)
PW 600	\$7,103,233.59	\$5,447,640.00	\$(12,043.87)
PW 628	\$3,605,931.07	\$2,190,301.00	\$(478,399.62)
PW 675	\$495,069.53	\$3,863.00	\$(2,851.53)
Finding B Total	\$12,593,064.67	\$9,074,156.00	\$(493,295.02)
PW 675 Finding C	\$495,069.53	\$33,066.00	\$(33,066.00)
PW 675 Finding D	\$495,069.53	\$10,456.00	\$(11,254.71)
Total FEMA Planned Deobligations:			\$(705,640.93)