



**The State of New Jersey, Trenton, NJ**

**Community Development Block Grant  
Disaster Recovery-Funded Tourism Marketing  
Program**



Issue Date: August 29, 2014

Audit Report Number: 2014-PH-1008

TO: Stan Gimont, Deputy Assistant Secretary for Grant Programs (Acting), DG  
//signed//  
FROM: David E. Kasperowicz, Regional Inspector General for Audit, Philadelphia  
Region, 3AGA  
SUBJECT: The State of New Jersey Did Not Fully Comply With Federal Procurement and  
Cost Principle Requirements in Implementing Its Tourism Marketing Program

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of the State of New Jersey's Community Development Block Grant Disaster Recovery-funded tourism marketing program.

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, Title 5 United States Code, section 8M, requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call me at 215-430-6730.



August 29, 2014

## **The State of New Jersey Did Not Fully Comply With Federal Procurement and Cost Principle Requirements in Implementing Its Tourism Marketing Program**

# Highlights

Audit Report 2014-PH-1008

### **What We Audited and Why**

We audited the State of New Jersey's Community Development Block Grant Disaster Recovery-funded tourism marketing program. We conducted the audit based on a congressional request to review the State's Hurricane Sandy tourism marketing contract bidding process and the appropriateness of the content of its marketing campaign. Our objectives were to determine whether the content of the marketing campaign was proper and whether the State procured services and products for its tourism marketing program in accordance with applicable Federal procurement and cost principle requirements.

### **What We Recommend**

We recommend that HUD's Deputy Assistant Secretary for Grant Programs determine whether corrective actions and documentation the State began providing at the end of the audit are adequate to show that (1) the overall contract price was fair and reasonable, (2) \$19.5 million disbursed under the contract for marketing costs was fair and reasonable, and (3) \$3.5 million disbursed under the contract for labor costs was allowable and supported or direct the State to repay HUD from non-Federal funds for any amount that it cannot support.

### **What We Found**

The audit found nothing improper in the content of the State's marketing campaign. The State was challenged to quickly launch the campaign before the 2013 summer beach season. However, although the State complied with HUD instructions by certifying that its policies and procedures were equivalent to Federal procurement requirements, it did not procure services and products for its tourism marketing program in a manner that fully met the intent of the Federal requirements. It did not immediately address the need for a required independent cost estimate and cost analysis before awarding a contract with a budget of up to \$25 million for marketing and outreach services. The regulations required the State to make independent estimates before receiving bids or proposals. They also required the State to perform a cost analysis. Also, it could not demonstrate that purchases of marketing services and products were made competitively and that the winning contractor had timesheets to support wages and salaries it charged to the program. These deficiencies occurred because the State was not fully aware of Federal procurement and cost principle requirements. As a result, the State needed to fully demonstrate that the budgeted contract amount was fair and reasonable and that \$23 million it had disbursed under the contract was adequately supported.

The State began taking corrective actions at the end of the audit and began providing some documentation to resolve these deficiencies. HUD needs to assess the documentation to determine the appropriateness of all contract costs.

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## BACKGROUND AND OBJECTIVES

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On October 29, 2012, Hurricane Sandy made landfall near Atlantic City, NJ. The storm caused unprecedented damage to New Jersey's housing, business, infrastructure, health, social service, and environmental sectors. On October 30, 2012, President Obama declared all 21 New Jersey counties major disaster areas. The U.S. Department of Housing and Urban Development (HUD) identified the following nine counties as New Jersey's most impacted areas: Atlantic, Bergen, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean, and Union.

Through the Disaster Relief Appropriations Act of 2013,<sup>1</sup> Congress made available \$16 billion in Community Development Block Grant funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization. In accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974, these disaster relief funds were to be used in the most impacted and distressed areas affected by Hurricane Sandy and other declared major disaster events that occurred during calendar years 2011, 2012, and 2013.

On March 5, 2013, HUD issued Federal Register Notice 5696-N-01, which advised the public of the initial allocation of \$5.4 billion in Block Grant funds appropriated by the Disaster Relief Appropriations Act for the purpose of assisting recovery in the most impacted and distressed areas declared a major disaster due to Hurricane Sandy.<sup>2</sup> The notice allowed for pre-award costs to be reimbursable as long as the costs were incurred after the date of the storm. HUD awarded the State of New Jersey \$1.8 billion from this initial allocation of funds. On April 29, 2013, HUD approved the State's action plan. The action plan identified the purpose of the State's allocation, including criteria for eligibility, and how it uses addressed long-term recovery needs. On May 13, 2013, HUD approved a grant agreement that obligated more than \$1 billion of the initial \$1.8 billion allocation. The Disaster Relief Act required the State to expend obligated funds within 2 years of the date of obligation.

Through the notice, HUD issued a waiver, which allowed the State to spend no more than \$25 million of its disaster recovery grant to fund a tourism marketing program. The State planned to provide disaster recovery assistance to its tourism industry and promote travel to communities in the disaster-impacted areas. By way of comparison, HUD issued a waiver to the State of New York to spend no more than \$30 million on advertising and marketing activities using Disaster Relief Act funds. HUD also issued waivers to the States of Louisiana and Mississippi to promote tourism after Hurricane Katrina hit the Gulf Coast in 2005. HUD granted these waivers because the grant funds can be a useful recovery tool in a damaged regional economy that depends on tourism for many of its jobs and tax revenues. Without the waivers, tourism industry support, such as a national consumer awareness advertising campaign, would have been ineligible for regular Block Grant assistance.

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<sup>1</sup> Public Law 113-2, dated January 29, 2013

<sup>2</sup> Areas impacted by Hurricane Sandy included Connecticut, Maryland, New Jersey, New York City, New York State, and Rhode Island.

The governor of New Jersey designated the State's Department of Community Affairs as the responsible entity for administering its disaster recovery grant. The Department of Community Affairs entered into a subrecipient agreement with the State's Economic Development Authority to administer the tourism marketing program. The Economic Development Authority is a component unit of the State government. The State was challenged to quickly launch a tourism marketing campaign before the 2013 summer beach season to support its tourism industry, specifically in the communities that were hardest hit by the storm. On April 23, 2013, the Authority entered into a contract with MWW Group LLC,<sup>3</sup> to implement a tourism marketing program with a budget of up to \$25 million, including the contractor's fees and any pass-through marketing costs.

As of February 2014, the State had disbursed \$23 million for its tourism marketing program. Of that amount, it disbursed \$19.5 million for marketing costs, which included public relations event costs; television, radio, billboards, and Internet advertising costs; and the contractor's placement fees. It disbursed the other \$3.5 million to pay for the contractor's labor costs.

In a letter to the HUD Inspector General, dated August 8, 2013, Congressman Frank Pallone, Jr., requested that we review and investigate the contract bidding process used by the State, and the appropriateness of the content of its marketing campaign to promote the New Jersey Shore and encourage tourism.

Our objectives were to determine whether the content of the marketing campaign was proper and whether the State procured services and products for its tourism marketing program in accordance with applicable Federal procurement and cost principle requirements.

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<sup>3</sup> MWW Group LLC, a full-service public relations firm, partnered with Brushfire, Inc., a full-service marketing firm. MWW was the lead contractor.

## RESULTS OF AUDIT

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### Finding: The State Did Not Fully Comply With Federal Procurement and Cost Principle Requirements in Implementing Its Program

The audit found nothing improper in the content of the State's marketing campaign. However, the State did not procure services and products for its tourism marketing program in a manner that met the intent of all Federal procurement requirements. Also, it did not comply with all Federal cost principle requirements for supporting salary and wage compensation. It did not immediately address the need for an independent cost estimate and cost analysis before awarding a contract with a budget of up to \$25 million for marketing and outreach services. Also, it could not demonstrate that it acquired marketing services and products competitively and that the winning contractor had timesheets to support labor costs charged by its employees. These conditions occurred because the State was not fully aware of Federal procurement and cost principle requirements. It (1) believed that it was not required to complete an independent cost estimate and analysis, (2) was not fully aware of Federal procurement requirements, and (3) was unaware of the Federal cost principle requirements for supporting time charges. As a result, the State needed to fully demonstrate that the budgeted contract amount was fair and reasonable and that the \$23 million it disbursed under the contract was adequately supported.

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#### **The Content of the Marketing Campaign Was Proper**

The congressional request asked us to review the appropriateness of the content of the State's marketing campaign. In particular, we were asked to review whether having the governor in the advertisements was appropriate. During 2013, the State launched its "Stronger than the Storm" marketing campaign to promote tourism in the aftermath of Hurricane Sandy. The campaign, produced under the contract awarded to MWW Group, portrayed the State as being resilient and having recovered from the impact of the hurricane. It included billboards, radio spots, and television commercials featuring the New Jersey Shore and including appearances by the governor and his family. The audit showed that the governor's appearance in the commercials did not violate Federal procurement requirements. The commercials did not identify the governor or his family by name or title, mentioned no State race or office, did not solicit funds for any purpose, and included no political message.

In addition, there was no evidence that Federal and State election laws had been violated as a result of contributions to the governor's political campaign. Federal election laws were not applicable because according to Federal election regulations, Federal election laws apply to State campaigns only if there is some connection to a Federal election. There was nothing in the commercial in which

the governor appeared that would bring it under the jurisdiction of Federal election laws. With regard to State election laws, government contractors are prohibited from contributing to State campaigns. State law also prohibits contracting with any business entity (in which the value of the contract would exceed \$17,500) if the entity had made a contribution in the previous 18 months to a candidate committee or election committee of any candidate for the office of the governor or any State or county political party committee of a political party nominating the governor. MWW Group made monetary contributions to national Republican and Democratic Party committees and candidates. However, it did not contribute to the governor's campaign or the State Republican Party.

Lastly, the congressional request asked us to address concerns that the winning proposal had the governor in the advertisements, while the lower bid that was not selected did not. The audit showed, however, that the proposal submitted by the losing bidder, Weber Shandwick, proposed using the governor in social media, while the proposal by the winning bidder, MWW Group, made no mention of using the governor in any media.

### **The State Followed Several Key Procurement Requirements**

The State's process for awarding a contract for marketing and outreach services complied with several key procurement requirements. The HUD notice<sup>4</sup> required the State to either adopt the specific procurement standards identified in 24 CFR (Code of Federal Regulations) 85.36 or have a procurement process and standards that were equivalent to the procurement standards at 24 CFR 85.36.<sup>5</sup> The State acknowledged in its procurement policy for Block Grant disaster recovery grants that it was required as a grantee to adhere to the requirements at 24 CFR 85.36. Accordingly, it complied and certified that its policies and procedures were equivalent to HUD's procurement regulations at 24 CFR 85.36.

The regulations for competitive proposals at 24 CFR 85.36(d)(3)(i) required the State to publicize requests for proposals. Also, 24 CFR 85.36(d)(3)(ii) required the State to solicit proposals from an adequate number of qualified sources. The State met these requirements by using the U.S. General Services Administration's Web site, known as "eBuy," to issue a request for quotation to 260 contractors. The State received bids from four contractors as shown below.

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<sup>4</sup> Federal Register Notice 5696-N-01, dated March 5, 2013

<sup>5</sup> In audit report 2013-FW-0001, dated March 28, 2013, we recommended that HUD include the procurement standards in 24 CFR 85.36 in its future disaster recovery grant terms and provide procurement training and technical assistance to ensure that future disaster recovery grantees are aware of and follow Federal procurement requirements. HUD agreed to specifically reference these requirements in future grant agreements and include this topic in future conference and webinars, and post information on specific topics on the Block Grant disaster recovery Web site.



<b>Contractor</b>	<b>Bid amount<sup>6</sup></b>	<b>Estimated marketing costs<sup>7</sup></b>	<b>Total</b>
Winning Strategies	\$6,500,000	\$18,003,350	\$24,503,350
Sherry Matthews, Inc.	\$5,575,000	\$19,500,000	\$25,075,000
MWW Group	\$5,255,321	\$17,765,000	\$23,020,321
Weber Shandwick	\$2,811,250	\$24,750,000	\$27,561,250

Regulations at 24 CFR 85.36(d)(3)(iii) required the State to have a method for conducting technical evaluations of the proposals received and for selecting awardees. The State established an evaluation committee to perform a technical review and price comparison of the bids it received based on the bidders' personnel, experience, and ability to complete the scope of work. The evaluation committee consisted of eight members: six voting members and two nonvoting members. The evaluation committee was responsible for performing a technical review and price comparison of the quotes received. The focus of the technical review was the strengths and weaknesses of the quotes as they related to the bidders' ability to undertake and successfully complete the work required. The request for quotation indicated that the technical evaluation criteria would include the following factors: personnel, experience of the firm, and ability of the firm to complete the scope of work based on its technical proposal.

The evaluation committee determined that two of the four bidders, MWW Group and Weber Shandwick, were clearly in a competitive technical range based upon the technical scoring. The following table shows the scores.

<b>Contractor</b>	<b>Overall score</b>
MWW Group	953
Weber Shandwick	733
Winning Strategies	550
Sherry Matthews, Inc.	445

The State invited the top two bidders to make an oral presentation to the evaluation committee based upon a written script and later to submit their best and final offer. The two bidders submitted their best and final offers.

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<sup>6</sup> Total contractor labor costs related to implementing a tourism marketing activity with a budget of \$25 million that included the contractor's fees and any pass-through marketing costs

<sup>7</sup> Contractors were required to submit an estimate of the pass-through marketing costs related to their proposed advertising and marketing campaigns. Marketing costs include public relations event costs, such as ribbon-cutting ceremonies and celebrity appearances, and media costs, such as television, radio, print, billboard, and Internet advertising.

<b>Contractor</b>	<b>Bid amount</b>	<b>Estimated marketing costs</b>	<b>Total</b>
MWW Group	\$4,682,375	\$17,765,000	\$22,447,375
Weber Shandwick	\$2,533,500	\$24,750,000	\$27,283,500

Regulations at 24 CFR 85.36(d)(3)(iv) required the State to make awards to the responsible firm with the proposal that was most advantageous to the program, with price and other factors considered. MWW Group had the highest overall technical score. Also, considering the contractor costs (bid amounts) and estimated marketing costs submitted, MWW Group submitted the lowest initial and overall bids, and best final offer. The evaluation committee recommended that the State award MWW Group a contract to perform marketing and outreach services relative to the State’s recovery from Hurricane Sandy. Consistent with its request for quotation which indicated that the resulting contract would be based on a budget of up to \$25 million, the State awarded MWW Group a contract with a budget of up to \$25 million. The State paid the contractor’s costs on a reimbursable basis.

Although the State complied with the key procurement requirements discussed above, it did not implement some key requirements before awarding the contract as discussed below.

**The State Did Not Prepare an Independent Cost Estimate and Analysis Before Awarding a Contract**

Contrary to regulations at 24 CFR 85.36(f), the State did not prepare an independent cost estimate and cost analysis before receiving bids or proposals and awarding a contract. The regulations required the State to make independent estimates before receiving bids or proposals. They also required the State to perform a cost analysis. An independent cost estimate serves as a yardstick for evaluating the reasonableness of the contractor’s proposed costs or prices. An independent cost analysis consists of evaluating the separate elements (for example, labor, materials, etc.) that make up a contractor’s total cost proposal to determine whether they are allowable, directly related to the requirement, and reasonable. Although the State did not adopt the Federal procurement standards, it needed to ensure that its alternate policies and procedures met the intent of the Federal requirements. Therefore, it needed to demonstrate that it developed a yardstick for evaluating the reasonableness of contractors’ proposed costs or prices, and evaluated the separate elements that made up the contractors’ total costs.

The State asserted that its \$25 million budget for its tourism marketing activity was reasonable and justified based on a comparison it performed with the State of Louisiana’s \$30 million Economic Revitalization Small Tourism Business Support Program, established in the aftermath of Hurricanes Katrina and Rita in 2005. HUD had granted Louisiana a waiver in the amount of \$30 million to conduct marketing and outreach services activities. In our opinion, this comparison of summary budget information did not satisfy the requirement to perform an independent cost estimate and analysis because it did not consider the contractors’ proposed costs before it received bids or proposals and did not determine whether the pricing of the separate elements that made up the total costs in the contractors’ proposals were fair and reasonable.

This condition occurred because the State believed that it was not required to complete an independent cost estimate and analysis. Because the State did not perform an independent cost estimate and a cost analysis, HUD and the State had no assurance that the budgeted contract amount was fair and reasonable.

*The State Began To Take Action To Resolve Deficiencies*

At the end of the audit, the State provided us an independent cost estimate report related to its contract award. The report, dated May 13, 2014, was prepared by ICF International, a technology, policy, and management consulting firm. The report incorrectly stated that the State had a waiver for the requirement to develop an independent cost estimate. However, the report provided a high-level breakdown of estimated costs that would be associated with executing a similar campaign for the State’s tourism marketing program. The estimates from the report are presented in the schedule below.

<b>Cost category</b>	<b>Specific costs</b>	<b>Estimated amount</b>
<b>Consulting</b>	Direct labor	\$ 3,783,900
	Indirect labor	To be determined
<b>Purchases</b>	Television	8,540,000
	Radio	3,920,000
	Outdoor media	3,475,000
	Internet and social media	3,500,000
	Print media	330,000
<b>Other direct costs</b>	Event supplies	395,000
	Promotional items	100,000
<b>Travel</b>	Approximately 60 trips	60,000
<b>Total estimate</b>		<b>\$24,103,900</b>

We could not determine the validity of the estimated costs because the report did not include sufficient backup detail information related to the specific cost categories. Also, the cost categories presented did not match the cost categories in MWW Group’s proposal. In addition, the schedule of the estimated costs was

incomplete because it indicated that indirect labor costs were yet to be determined. The State should have used information such as this to evaluate the bids before awarding the contract.

**The State Did Not Ensure That Marketing Services Were Procured Competitively**

The State could not demonstrate that marketing services and products totaling \$19.5 million were acquired competitively. More than half of the amount spent was for media advertising on television and radio as shown in the schedule below.

<b>Category</b>	<b>Amount</b>
Television advertising	\$ 9,547,960
Radio advertising	3,230,710
Billboard advertising	1,752,070
Digital advertising	745,690
Other	4,222,590
<b>Total</b>	<b>\$19,499,020</b>

The State’s contract with MWW Group required the contractor to provide copies of at least three quotes or proposals when submitting invoices for payment. However, shortly after the State awarded the contract, it waived the requirement because the contractor claimed that it would hinder its ability to move quickly on certain activities. Although the State had the authority to waive the specific contract requirement, since this action changed the terms of the contract, it should have formalized the change and issued a contract modification because the regulations at 24 CFR 85.36 (b)(9) required the State to maintain records sufficient to detail the significant history of the procurement. The regulations at 24 CFR 85.36(c) required the State to conduct all procurement transactions in a manner providing full and open competition. Also, the regulations at 24 CFR 85.36(d) required the State to obtain bids from an adequate number of sources regardless of the procurement method unless the noncompetitive proposal method was selected. The State could not provide adequate documentation to show that it met the intent of these requirements. This occurred because the State was not fully aware of Federal procurement requirements. As a result, HUD had no assurance that marketing services and products were acquired competitively, and that associated disbursements totaling \$19.5 million were supported.

*The State Began To Take Action To Resolve Deficiencies Regarding Procurement of Marketing Services*

After we notified the State of this problem, it began providing additional documentation that it believed demonstrated that funds it disbursed for marketing costs were fair and reasonable. HUD needs to assess whether the documentation

the State provided at the end of the audit and any additional documentation it provides after the audit are sufficient to demonstrate that the prices the contractor paid for marketing services and products were fair and reasonable.

### **Contract Labor Costs Were Not Fully Supported**

When submitting invoices for payment, the contract required the contractor to provide copies of weekly timesheets for employees assigned to do the work referenced in the invoice. The State did not have timesheets to support \$3.5 million in labor costs charged by the contractor's employees. For MWW Group, the State provided billing worksheets that identified the employee, the number of hours worked by date and activity, the hourly rate, and the total amount due. For Brushfire, Inc., a subcontractor to MWW Group, the State provided backup worksheets for its invoices that identified the employee, the employee's job title, the number of hours worked by date, and the daily total cost.

In addition to not meeting the terms of the contract, these billing worksheets and backup worksheets did not meet Federal cost principle requirements for supporting salary and wage compensation for personal services because they did not account for all the activities for which the employee was compensated and they were not signed by the employees. Federal cost principle requirements at 2 CFR Part 225, appendix B(8)(h), required the State, in instances in which employees worked on multiple activities or cost objectives, to have personnel activity reports or equivalent documentation to support the distribution of their salaries or wages. This documentation was required to reflect an after-the-fact distribution of the actual activity of each employee, account for all activities for which each employee was compensated, be prepared at least monthly and coincide with one or more pay periods, and be signed by the employee. The State did not provide documentation that met these requirements.

The State should have had weekly timesheets or equivalent personnel activity reports in its possession when it paid invoices as required by the terms of the contract. Also, regulations at 24 CFR 570.490(a)(1) required the State to establish and maintain such records as may be necessary to facilitate review and audit by HUD of its administration of Block Grant funds under 24 CFR 570.493.

The problem noted occurred because the State was unaware of the Federal cost principle requirements and believed that documents it accepted to support contractor employee time charges were subject to its discretion rather than the contract requirements. As a result, HUD had no assurance regarding how much time the contractor's employees spent working on the program, and the \$3.5 million that the State disbursed to the contractor for public relations and marketing costs performed by its employees was unsupported.

## *The State Began To Take Action To Resolve Deficiencies Regarding Labor Costs*

After we notified the State of this problem, it contacted the contractors and provided us reports and excerpts from MWW Group's automated timekeeping system, and for Brushfire, it provided copies of documents labeled as employee timesheets from its automated timekeeping system. However, these documents alone did not satisfy the requirements of the contract and Federal cost principles. The contract required copies of weekly timesheets. The regulations at 2 CFR Part 225 required that personnel activity reports or equivalent documentation account for the total of all activities for which each employee was compensated and be signed by the employee. Additionally, the Brushfire timesheets had fields designated for the employee and supervisor to sign and date, but none had been signed and dated by either the employee or the supervisor.

### **Conclusion**

The content of the State's marketing campaign was proper, and it followed several key Federal procurement requirements. However, the State did not procure services and products for its tourism marketing program in full compliance with Federal procurement and cost principle requirements (a summary of the audit issues is presented in appendix C). This condition occurred because the State was not fully aware of applicable requirements. As a result, HUD had no assurance that the budgeted contract amount was fair and reasonable, that marketing products and services were acquired competitively, and that labor costs were supported. Although the State began taking corrective action at the end of the audit to resolve most of the deficiencies, we did not perform a detailed review of documentation it later provided. HUD needs to assess whether the State's corrective action and related documentation are adequate to ensure that all disbursements are reasonable and supported.

### **Recommendations**

We recommend that HUD's Deputy Assistant Secretary for Grant Programs

- 1A. Determine whether the documentation the State provided is adequate to show that the overall contract price was fair and reasonable and if not, direct the State to repay HUD from non-Federal funds for any amount that it cannot support (excluding any amounts repaid as a result of recommendations 1B and 1C).
- 1B. Determine whether the documentation the State provided is adequate to show that the \$19,499,020 disbursed for marketing costs was fair and reasonable and if not, direct the State to repay HUD from non-Federal funds for any amount that it cannot support.

- 1C. Determine whether the documentation the State provided is adequate to support \$3,487,461 disbursed for wages and salaries charged to the program by the contractors' employees and if not, direct the State to repay HUD from non-Federal funds for any amount that it cannot support.
- 1D. Direct the State to update its procurement processes and standards to ensure that they are fully aligned with applicable Federal procurement and cost principle requirements.

## SCOPE AND METHODOLOGY

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We conducted the audit from September 2013 through March 2014 at the State's offices located at 101 South Broad Street and 33 and 36 West State Street, Trenton, NJ, and our office located in Philadelphia, PA. The audit covered the period January 2013 through February 2014.

To accomplish our objectives, we reviewed

- Relevant background information;
- Applicable regulations, HUD notices, and the State's policies and procedures;
- The Disaster Relief Appropriations Act, Public Law 113-2;
- The funding agreement between HUD and the State, dated May 13, 2013;
- The subrecipient agreement between the State's Department of Community Affairs and its Economic Development Authority, dated May 21, 2013;
- Correspondence prepared by HUD, the State, and other related parties;
- Audited financial statements for the State and its Economic Development Authority for the periods ending June 30, 2011, and December 31, 2012, respectively;
- Organizational charts for the State's Department of Community Affairs and its Economic Development Authority;
- The State's request for quotations;
- Bids, proposals, and other supporting documentation submitted by contractors;
- The State's bid evaluation documentation;
- The State's contract with MWW Group;
- Contractor invoices and supporting documentation;
- Reports from the contractor's automated timekeeping systems;
- Documentation provided by the State to address its noncompliance with the competition requirement in HUD's procurement regulations;
- A contractor-prepared independent cost estimate report related to the State's contract award;



- Contractor analyses conducted by the Federal Recovery Accountability and Transparency Board;
- A HUD management review, dated September 13, 2013; and
- Information entered by the State into HUD's Disaster Recovery Grant Reporting system.

We conducted interviews with responsible employees of the State and HUD staff located in Philadelphia, PA; Fort Worth, TX; and Washington, DC.

To achieve our audit objective, we relied in part on the State's computer-processed data. We used the computer-processed data to select a sample of disbursements to review. Although we did not perform a detailed assessment of the reliability of the data, we did perform a minimal level of testing and found the data to be adequate for our purposes.

As of October 2013, the beginning of the audit, the State had made 10 disbursements totaling \$21.8 million for its tourism marketing activity. That amount included costs for advertising, which included television, radio, billboards, and the Internet. It also included the contractor's public relations and marketing costs, which included salaries and wages for its employees. We selected 3 of the 4 largest of the 10 disbursements made during the period April to October 2013 for review. The value of the three disbursements was \$14.4 million (about 66 percent of the total disbursed). We reviewed the disbursements to determine whether they were eligible and supported by adequate documentation. Of that amount, the State disbursed \$12.5 million for advertising and \$1.9 million for public relations and marketing. During the period November 2013 to February 2014, the State made two additional disbursements to the contractor totaling \$1.2 million and had disbursed a total of \$23 million for its tourism marketing activity as of February 2014.

We accessed a database operated by the Center for Responsive Politics and a database operated by the New Jersey Election Law Enforcement Commission to determine whether MWW Group had made corporate contributions to the governor's campaign or to any State or county political party committee.

We conducted the audit in accordance with 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 on our audit objective(s). We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# INTERNAL CONTROLS

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Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

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## Relevant Internal Controls

We determined that the following internal controls were relevant to our audit objectives:

- Validity and reliability of data – Policies and procedures that management has implemented to reasonably ensure that valid and reliable data are obtained, maintained, and fairly disclosed.
- Compliance with laws and regulations – Policies and procedures that management has implemented to reasonably ensure that the use of resources is consistent with laws and regulations.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

## Significant Deficiencies

Based on our review, we believe that the following items are significant deficiencies:

The State did not

- Establish and implement procedures to ensure that it complied with all applicable procurement and cost principle requirements.

## APPENDIXES

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### Appendix A

#### SCHEDULE OF QUESTIONED COSTS

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Recommendation number	Unsupported 1/
1B	\$19,499,020
1C	<u>3,487,461</u>
<b>Total</b>	<b>\$22,986,481</b>

- 1/ Unsupported costs are those charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures


# Appendix B

## AUDITEE COMMENTS AND OIG'S EVALUATION

### Ref to OIG Evaluation

### Auditee Comments

### Comment 1



*State of New Jersey*  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
PO BOX 080  
TRENTON, NJ 08625-0080

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*IA, Governor*

JOHN J. HOFFMAN  
*Acting Attorney General*

**The State of New Jersey's Response to HUD OIG's Audit Findings  
Concerning the "Stronger than the Storm" Tourism Marketing Campaign**


Summary

Superstorm Sandy was the worst natural disaster in New Jersey's history. In the aftermath of the storm, there was a critical need to support the State's tourism industry, which contributes more than \$38 billion to the State's gross domestic product. There was a particularly acute need to support tourism in the iconic and vibrant beach communities on the Jersey Shore.

With the assistance of the Department of Housing and Urban Development ("HUD"), New Jersey launched a tourism marketing campaign to announce to the nation that it was recovering, and that its beaches and attractions would be open for business in the summer of 2013. The State selected New Jersey media services firms MWW Group and Brushfire Inc. ("MWW/Brushfire") to run the campaign in mid-April 2013, following an open procurement process consistent with applicable Federal and State statutes and regulations.

MWW/Brushfire's "Stronger than the Storm" tourism marketing campaign began in early May 2013, and successfully portrayed the State as being resilient and having recovered from Superstorm Sandy's impact. The marketing campaign incorporated advertising across a broad array of media, including television, radio, billboard and digital advertising. More than 43 community events were organized in shore communities to attract tourists and media coverage that reinforced the message that the Jersey Shore was open for business. These events, which were attended by more than 334,000 people, generated considerable positive media attention for the State's tourism industry and local businesses. Studies suggest that New Jersey's 2013 tourism marketing campaign was a resounding success, as metrics show that the 2013 tourism year was more successful than 2009, 2010, and 2011, and only barely trailed the record 2012 tourism year.

On August 8, 2013, as the summer season progressed and as MWW/Brushfire's successful marketing campaign was underway, U.S. Representative Frank Pallone sent a letter to the HUD Office of the Inspector General ("OIG") requesting that OIG investigate whether it was appropriate for Governor Chris Christie to have personally appeared in "Stronger than the Storm" advertisements. Representative Pallone claimed that the State contract bidding process was politically motivated and that a purportedly



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"lower bid" from New York-based public relations firm Weber Shandwick was not selected because it did not propose having the Governor appear in the commercials.

Based on Representative Pallone's letter, OIG initiated a fact-finding audit (not an investigation) of the State's tourism marketing program. The audit showed that Representative Pallone was mistaken. First, OIG found that the proposal by the winning bidder, MWW/Brushfire, made no mention whatsoever of using the Governor in any media campaign. Instead, it was the unsuccessful bid by Weber Shandwick, whose bid was actually higher than the bid from MWW/Brushfire, that had proposed using the Governor in its campaign. Second, OIG found that the Governor's appearance in commercials did not violate federal procurement requirements. Finally, OIG concluded that no Federal or State election laws had been violated and that, in fact, the purported contributions made by MWW Group to the Governor's campaign did not exist.

In addition to finding no merit to any of Representative Pallone's concerns, OIG also found that the State complied with several key federal procurement requirements. Nonetheless, OIG raised three questions concerning certain technical aspects of the tourism marketing campaign: (1) whether the State conducted a pre-bid cost estimate or post-bid cost analysis of its tourism marketing campaign; (2) whether the State was able to demonstrate cost reasonableness in its procurements of goods and services for the campaign; and (3) whether labor costs charged by MWW/Brushfire were supported by adequate timesheet documentation.

The State respectfully disagrees with OIG and submits that its procurement of tourism marketing services does not implicate those technical concerns. The State submits that it followed all applicable Federal and State laws and regulations in connection with the Stronger than the Storm marketing campaign and notes specifically that:

- The State was not required to conduct a pre-bid cost estimate or post-bid cost analysis in connection with its tourism marketing campaign, but even if it was, the State's efforts to estimate and evaluate costs were sufficient to meet State and Federal standards.
- The State provided documentation demonstrating cost reasonableness and in all respects complied with applicable Federal and State laws and regulations.
- Consistent with the contract between the State and MWW/Brushfire and Federal cost principles, the State had sufficient documentation justifying all contract labor costs at the time that it paid invoices associated with those labor costs.

**Independent Cost Estimate and Cost Analysis**

OIG asserts that the State did not comply with the technical requirements of 24 C.F.R. § 85.36(f) because it did not obtain an independent cost estimate before receiving bids or proposals to conduct its tourism marketing campaign, and because it did not perform a cost analysis of the submitted bids. However, this is not a proper basis for a finding of non-compliance against the State because New Jersey did not adopt the requirements of 24 C.F.R. Part 85 and therefore, pursuant to the express terms of HUD's regulations, was not bound by the provisions of 24 C.F.R. § 85.36(f). Rather, as expressly

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permitted under HUD's regulations, the State advised HUD of "equivalent" state procurement processes that it would use in lieu of adopting the requirements of 24 C.F.R. Part 85. New Jersey complied with its own regulations that, in the aggregate, are equivalent with regard to both cost estimate and cost analysis.

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Moreover, HUD expressly affirmed the adequacy of the State's procurement policy, including aspects relating to § 85.36(f), when it approved the State's Action Plan. The State justifiably relied on HUD's approval of its procurement policy when it went forward with the procurement process for tourism marketing outreach. Notably, HUD also has been to the State for two monitoring visits and did not raise any concerns about the State's procurement policy during either visit. To the contrary, HUD reviewed the State's procurement files and processes and found no deficiencies.

**Comment 7**

Also, even assuming that the State was required to strictly comply with the provisions of 24 C.F.R. Part 85, the State did in fact estimate the costs of its tourism marketing campaign before receiving bids by: (1) meeting with Louisiana disaster relief officials and reviewing actions taken by the State of Louisiana following Hurricanes Katrina and Rita; (2) conferring with and receiving the assent of HUD as to the appropriate amount of funds that should be included in a waiver application that the State submitted in connection with its tourism marketing campaign; (3) conducting an analysis of the actual costs incurred by the State for a previous tourism campaign; and (4) applying for and receiving a waiver from HUD for the estimated \$25 million cost of the tourism marketing campaign. Additionally, Federal regulations did not compel a post-bid cost analysis because the bids submitted to the State provided sufficient price competition. Finally, a post-hoc cost estimate conducted at OIG's request confirmed the reasonableness of the State's expenditures for the tourism marketing campaign. Thus, there is no basis for OIG's finding as to the technical requirements of 24 C.F.R. § 85.36(f).

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**Cost Reasonableness**

OIG has deferred to HUD on whether the State has demonstrated cost reasonableness in its procurements of goods and services for the Stronger than the Storm campaign. Simply put, we have.

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As of June 1, 2014, the State had spent approximately \$23.34 million in connection with its tourism marketing campaign. The costs can be grouped into three categories:

- Media (television, radio, billboards, internet and print advertising);
- Public Relations and Events Management; and
- Advertising Production.

**Comment 10**

For media, which is by far the largest category of expense, it was not feasible, instructive or consistent with industry standards - due to the uniqueness of each respective media buy option - to require MWW/Brushfire to solicit competitive bids from vendors before buying media advertising space. In fact, the State presented OIG with a signed certification from a media buying expert who confirmed the fact that it was not feasible or consistent with industry standards to require competitive bids for media buys; this expert certification is unrefuted. Thus, MWW/Brushfire, pursuant to a waiver request that was granted by the State, did not seek competitive bids. Instead, pursuant to industry standards (as confirmed by the State's expert), MWW/Brushfire leveraged its extensive media buying experience and

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knowledge of markets to negotiate fair and reasonable prices for the State as to each advertisement purchase, thereby saving the State hundreds of thousands of dollars. Additionally, EDA and its contractors provided OIG (and HUD) with comprehensive supporting documentation that demonstrates that amounts disbursed for other marketing costs, including events management and advertising production, were fair and reasonable.

**Time Sheets**

**Comment 11**

OIG expressed another technical concern that the State did not have full documentation to support \$3.5 million in labor costs. However, the State had detailed documentation to support the labor costs invoiced by MWW/Brushfire *at the time that the State paid the invoices*. That documentation included monthly invoices from MWW/Brushfire, as well as Time and Expense Reports and Project Invoices for MWW/Brushfire employees performing the associated work.

The Time and Expense Reports, Project Invoices and general monthly invoices that MWW/Brushfire submitted, together with its invoices for labor costs, were sufficient to allow the State to: (1) review specific project labor costs for inaccuracies (e.g., overbilling or double billing); and (2) otherwise confirm the accuracy and reasonableness of the labor costs. In fact, the time and expense reports required by MWW/Brushfire's contract with the State allowed the State to examine labor costs on an even more granular basis (daily) than called for by the contract (weekly).

That said, we recognize OIG's concern that the State did not fully comply with Federal regulations because it did not possess certain information as to each employee's total compensable activity (including hours worked for other clients) when it paid invoices submitted by MWW/Brushfire. See 2 C.F.R. Part 225. Going forward, the State will adhere to this technical requirement (which appears to be an anti-fraud measure designed to discourage over-billing), and will require its contractors to submit timesheets which account for each employees' total daily hours irrespective of client.

The State of New Jersey values its partnership with HUD, and also greatly appreciates OIG's assistance in helping the State efficiently deliver relief to the victims of Superstorm Sandy. The State commends OIG for its professional, thoughtful and thorough audit of the State's tourism marketing campaign, which ultimately led it to reject Representative Pallone's mistaken claims concerning the campaign.



**The State of New Jersey's Response to HUD OIG's Audit Findings  
Concerning the "Stronger than the Storm" Tourism Marketing Campaign**

This document explains the process by which the State of New Jersey procured, implemented, and documented expenditures for the successful "Stronger than the Storm" campaign to support the State's tourism industry following Superstorm Sandy. As explained in the following pages, the tourism marketing campaign was implemented in compliance with applicable laws and regulations.

**Comment 1**

**I. Introduction**

When Superstorm Sandy made landfall in New Jersey in October 2012, the State suffered the worst natural disaster in its history. In the storm's aftermath, State workers labored tirelessly and under intense pressure to deliver relief to the citizens of New Jersey and to help the State recover from the storm.

Even as the State deployed all available resources to aid the hundreds of thousands of its residents that were impacted by Superstorm Sandy, there was a critical need to support the State's tourism industry, centered on some of the same Jersey Shore communities that had been hardest hit. Through a tourism marketing campaign, New Jersey announced to the nation that it was recovering, and that its beaches and attractions would be open for business in the summer of 2013. This effort was crucial for the economic well-being of the State in general and the numerous businesses and communities along our shoreline in particular.

As set forth herein, despite the extreme exigency of launching this important tourism marketing campaign before the summer beach season, we are confident that the State followed applicable Federal and State laws and regulations when it procured tourism marketing services related to this vital campaign.

**Comment 1**

**A. Tourism is Vital to New Jersey's Economy**

Tourism is New Jersey's third largest industry and contributes more than \$38 billion to the State's gross domestic product. A large portion of those tourism dollars are spent along the Jersey Shore, which is a long-established and iconic tourist destination. Tourism on the Jersey Shore is critical to the State's overall employment and economic vitality.

In 2011, tourism represented 24.5% of the State's private sector employment, directly or indirectly supporting 800,000 jobs. In Atlantic and Cape May Counties, two of the places impacted by Superstorm Sandy, the tourism sector represents 55.5% and 54.2% of private sector employment, respectively. Moreover, tourism is essential to the State's tax revenue base. For example, in 2011, tourism in New Jersey generated \$4.4 billion in State and local taxes.

**B. Superstorm Sandy Caused Unprecedented Damage to the State of New Jersey**

Superstorm Sandy battered the State of New Jersey on October 29-30, 2012, inflicting catastrophic damage across the State.<sup>1</sup> Entire portions of the State lost electricity for an extended period of time, and many communities experienced severe flooding. New Jersey's business sector suffered severe harm. Businesses in 113 of New Jersey's 565 municipalities incurred a combined \$382 million in commercial property losses and \$63.9 million in business interruption losses. Tourism businesses along the Jersey Shore were particularly hard hit. Even tourism areas that sustained comparatively less actual damage suffered under a misperception that the entire Jersey Shore had been decimated by Superstorm Sandy.

**C. The Federal Government's Response to Superstorm Sandy**

On October 30, 2012, President Obama declared all 21 New Jersey counties major disaster areas. Thereafter, on January 29, 2013, the President signed the Disaster Relief Appropriations Act of 2013 ("the Disaster Relief Act"). The Disaster Relief Act made available \$16 billion in CDBG-DR funds to help areas of the nation affected by major disaster events in 2011, 2012 and 2013. This included states such as New Jersey that were responding to and recovering from the storm's severe devastation. The CDBG-DR program is administered by the U.S. Department of Housing and Urban Development ("HUD").

On February 6, 2013, approximately one week after the Disaster Relief Act was signed, HUD announced that it would allocate \$5.4 billion in CDBG-DR funding to five states and New York City.<sup>2</sup> Of this total amount, HUD announced that it would allocate \$1.83 billion to the State of New Jersey.<sup>3</sup>

**D. The State Requested a Waiver to Conduct a Tourism Marketing Campaign**

Given the central role of tourism to New Jersey's recovery from the storm, and the need to avoid a second wave of economic devastation that could result if tourists misperceived the speed of recovery and believed they should vacation elsewhere, the State immediately recognized the necessity of using some small portion of the newly allocated CDBG-DR funds to combat such misperceptions. As a result, the State submitted a waiver request to HUD to allow the State to use CDBG-DR funds to support a carefully calibrated tourism marketing campaign.<sup>4</sup> In making its waiver request, the State informed HUD of a preliminary estimate that it had completed which suggested that the State's tourism industry was in jeopardy of losing \$950 million in revenue just in the third quarter of 2013 as a result of the storm.

<sup>1</sup> As recognized by OIG in its final report, the storm caused "unprecedented damage" to New Jersey and harmed the State's housing, business, infrastructure, health, social service, and environmental sectors. OIG Report, p. 3.

<sup>2</sup> It is our understanding that this was HUD's swiftest ever allocation of CDBG-DR funds to grantees following the passage of a funding bill. The State is grateful to HUD for speeding this much needed relief to the citizens of New Jersey.

<sup>3</sup> Notably, the Disaster Relief Act required the State to expend these obligated funds within two years of the date of the obligation, creating additional urgency for the State to stand-up its disaster relief programs on an expedited basis.

<sup>4</sup> Waiver requests to use even more CDBG-DR funds for tourism marketing campaigns previously were approved by HUD for Lower Manhattan following the 2001 terror attacks, and Louisiana after Hurricanes Katrina and Rita.

**E. HUD Approved the State's Waiver Request and Action Plan**

On March 5, 2013, HUD published a Notice in the Federal Register ("March 5, 2013 Notice") that confirmed and memorialized the allocation of \$1.83 billion of CDBG-DR funds to the State of New Jersey, and also set forth certain requirements that the State had to meet before HUD would fully obligate the CDBG-DR funds. See 78 C.F.R. § 43, 14329-14349. Among other things, the March 5, 2013 Notice provided that the State was required to submit an Action Plan to HUD detailing its proposed use of the CDBG-DR funds. The Action Plan was to include substantiation and justification for a range of activities from sustainable development to economic revitalization, needs assessments, addressing the housing and floodplain-related needs of impacted residents, and a process to show a nexus between requested activities and the use of CDBG-DR funding. See generally, 78 C.F.R. § 43 at 14332-35, 14346. Additionally, the Secretary of HUD was required to approve the Action Plan based on the State providing the extensive supporting documentation contained within the March 5, 2013 Notice. *Id.* at 14331. Secretary Donovan, through his authorized representative, certified New Jersey's information on April 29, 2013. Notably, the Secretary's certification affirms that, among other things, "the grantee has in place proficient financial controls and procurement processes ...[.]" *Id.*

In its March 5, 2013 Notice, HUD also granted the State's request for a waiver to allow it to spend up to \$25 million of CDBG-DR funds for a tourism marketing campaign. In granting the waiver, HUD credited the State's estimate that its tourism industry was at risk of losing hundreds of millions of dollars absent some action by the State.

On March 27, 2013, in compliance the March 5, 2013 Notice, the State submitted its CDBG-DR Action Plan to HUD. In the Action Plan, the State requested up to \$25 million in CDBG-DR funds to support a tourism marketing campaign specifically focused on the State's recovery from Superstorm Sandy.<sup>5</sup> The Action Plan, including the request for funding for tourism marketing, was approved by HUD on April 29, 2013.

**F. The State Procured a Contractor for its Tourism Marketing Campaign**

In late February 2013, in anticipation of HUD approving New Jersey's waiver request,<sup>6</sup> the State began the process of procuring a contractor to execute a tourism marketing campaign. On February 26, 2013, the New Jersey Department of Treasury, Division of Purchase and Property ("DPP"), pursuant to applicable Federal and State procurement statutes and regulations, issued a Request for Quotation ("RFQ") on behalf of the New Jersey Department of Community Affairs ("DCA") and the New Jersey Economic Development Authority ("EDA")<sup>7</sup> for the purpose of soliciting quotations for tourism marketing and outreach services related to the State's recovery from Superstorm Sandy. As stated in the RFQ, these services were necessary to assist EDA in its efforts to promote within the State and across the

<sup>5</sup> The State's Action Plan also contemplated marketing campaigns in 2014 and 2015, contingent on the availability of additional funding.

<sup>6</sup> As discussed herein, HUD actually assisted the State with its waiver request by helping the State estimate the costs of an appropriate tourism marketing campaign.

<sup>7</sup> The EDA is an independent State authority whose primary mission is to strengthen New Jersey's economy by retaining and growing businesses through financial assistance and by renewing communities.

nation the fact that the State of New Jersey, including the Jersey Shore, was recovering and open for business and that visitors were welcome.

The State's RFQ indicated that any proposed tourism marketing and outreach campaign had to be in place by April 2013 in order to raise awareness among potential tourists that the Jersey Shore's attractions and businesses would be ready and operational for the start of summer. The RFQ also called for a marketing and outreach campaign that encouraged both New Jerseyans and others who visited the State to shop locally and to support New Jersey businesses that had survived the storm's devastation and had reopened their doors for business.

The RFQ contemplated that the winning contractor would create and execute a tourism marketing campaign that included a "media plan," as well as public relations activities and support for community events. Among other things, the media plan would describe proposed media advertising to include: (1) television and radio advertisements; (2) out-of-home advertisements (e.g., billboards); (3) digital (Internet) advertisements; and (4) print advertisements. The RFQ also called on the winning contractor to identify the target audience for the media advertisements.

On April 16, 2013, following an open procurement process consistent with applicable Federal and State statutes and regulations, as well as an evaluation by an eight-person evaluation committee, the contract for tourism marketing and outreach services was awarded to MWW/Brushfire.<sup>8</sup> In its winning proposal, MWW/Brushfire identified the target audience for the tourism marketing campaign as: (1) mature adults from the tri-state area (consisting of New Jersey, New York and Pennsylvania) and Eastern Canada; (2) families with children from the tri-state area and Eastern Canada; and (3) Millennials (i.e., people who are approximately 18 to 33 years old) from the tri-state area.<sup>9</sup> Among other things, MWW/Brushfire proposed using a combination of three broadcast media vehicles including "spot (local) television," local cable television and "spot radio" to broadcast its advertising message to effectively target identified demographic groups.

**G. The "Stronger than the Storm" Marketing Campaign was a Resounding Success**

The "Stronger than the Storm" tourism marketing campaign executed by MWW/Brushfire began in early May 2013, immediately after HUD approved the State's CDBG-DR Action Plan. The campaign successfully portrayed the State as being resilient and having recovered from the impact of the storm.

The State's marketing campaign incorporated advertising across a broad array of media to reach the State's target audience in a variety of ways. A television advertising effort introduced New Jersey's "Stronger than the Storm" campaign to key markets in New Jersey, New York, Pennsylvania, Eastern

<sup>8</sup> In the winning proposal, MWW Group was identified as the lead agency on the campaign, and Brushfire was identified as MWW's subcontractor. MWW Group, which is based in East Rutherford, New Jersey, is a leading full-service public relations firm with more than 200 employees. Brushfire Inc. ("Brushfire") is a full-service marketing firm based in Cedar Knolls, New Jersey, and has more than 40 years of comprehensive brand-building expertise.

<sup>9</sup> Underscoring the perception problem faced by New Jersey in the weeks leading up to Memorial Day 2013, MWW/Brushfire noted in its winning proposal that it had recently conducted a survey of respondents in the tri-state area which revealed that 44% of the respondents erroneously believed that at least one-third of the Jersey Shore would be closed for business in the summer of 2013.

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Canada and other areas on the Eastern Seaboard. Billboard advertising in top commuter locations around New York City supported the advertising campaign. Digital advertising appeared on internet sites popular with target audiences. Radio spots were created and aired throughout New Jersey and surrounding locales. A website designed around tourism and recovery was launched and received nearly 400,000 visits. Social media was utilized and yielded over 100,000 "likes" on Facebook, and over 6,700 followers on Twitter with 217 million Twitter "impressions" (i.e., posts or "tweets" to the "Stronger than the Storm" Twitter account).

Community events across the Jersey Shore were organized to attract tourists and media coverage that reinforced the message that the Jersey Shore was open for business. In total, 43 events were held in shore communities. These events, which were attended by more than 334,000 people, generated considerable positive media attention for the State's tourism industry and local businesses.

Studies suggest that following the most devastating natural disaster in its history, New Jersey's 2013 tourism marketing campaign was a resounding success, drawing tourists to the State and combatting the misperception that Superstorm Sandy decimated the entire Jersey Shore. In fact, tourism metrics show that the 2013 tourism year was more successful than 2009, 2010, and 2011, and only barely trailed the record 2012 tourism year.<sup>10</sup> The "Stronger than the Storm" campaign made a significant difference for tourism across the State, bringing revenues into recovering communities and protecting jobs threatened by the impact of the storm. It was only with the consent, support and cooperation of HUD that the State was able to successfully implement this program.

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<sup>10</sup> The success of the "Stronger than the Storm" tourism campaign is demonstrated by the following sample of statistical data:

- In June 2013, municipal and State hotel tax receipts for the Jersey Shore counties (Monmouth, Ocean, Atlantic and Cape May) were higher than they had been in three of the previous five years (despite the fact that June 2013 was the wettest ever recorded in the State).
- The anticipated loss of an estimated 11,000 tourism-related jobs on the Jersey Shore in the third quarter of 2013 did not materialize. In fact, based on data from New Jersey's Bureau of Labor Statistics, 2013 employment in the hospitality and leisure sectors of the Jersey Shore job market remained steady or even increased slightly as compared to previous years.
- Data showed that during the summer of 2013, the Jersey Shore's hotel occupancy numbers were on par with or better than the hotel occupancy numbers from certain competing summer destinations, including Cape Cod, the Delaware Shore and Nassau and Suffolk Counties on Long Island, New York.
- The Coast and Atlantic City rail lines on New Jersey Transit experienced ridership increases during the period from the July 4th holiday through Labor Day, while all four major bus lines that serve the Jersey Shore saw an aggregate increase in ridership as compared to 2012. In fact, the number of visitors to New Jersey in 2013 rose to 87.2 million, which represented a 5.9% increase compared to 2012.
- Tourism generated \$35.9 billion of State GDP in 2013, or 7% of the entire state economy. Including both direct and indirect impacts, tourism in New Jersey generated \$4.6 billion in State and local taxes and \$5.2 billion in Federal taxes in 2013.
- MWW/Brushfire won numerous awards for its "Stronger than the Storm" marketing campaign from both State of New Jersey and national advertising and marketing associations.

#### H. Representative Pallone's Demand for an Investigation

On August 8, 2013, as the summer season progressed and as MWW/Brushfire's successful marketing campaign was underway, U.S. Representative Frank Pallone sent a letter to HUD OIG requesting that OIG investigate whether it was appropriate for Governor Chris Christie to have personally appeared in certain "Stronger than the Storm" advertisements. Representative Pallone claimed that the State contract bidding process was politically motivated and that a purportedly "lower bid" from New York-based public relations firm Weber Shandwick was not selected because it did not propose having the Governor appear in the commercials.

#### I. OIG's Audit

Based on Representative Pallone's letter, OIG initiated a fact-finding audit (not an investigation) of the State's tourism marketing program. The audit showed that: (1) Representative Pallone was mistaken - the proposal by the winning bidder, MWW/Brushfire, made no mention of using the Governor in any media campaign, whereas it was the unsuccessful bid by Weber Shandwick, whose bid was actually higher than MWW/Brushfire's,<sup>11</sup> that had proposed using the Governor in its campaign; (2) the Governor's appearance in commercials did not violate Federal procurement requirements; and (3) there was no evidence that Federal or State election laws had been violated and that, in fact, purported contributions to the Governor's political campaign by MWW Group did not exist.

In addition to finding no merit to any of Representative Pallone's concerns, OIG also found that the State's procurement of marketing services in connection with its tourism marketing campaign complied with several key Federal procurement requirements. Nonetheless, OIG raised three different technical questions about certain aspects of the tourism marketing program. OIG's three issues relating to the State's tourism marketing program are: (i) whether the State conducted a pre-bid cost estimate or post-bid cost analysis of its tourism marketing campaign; (ii) whether the State was able to demonstrate cost reasonableness in its procurements of goods and services for the marketing campaign, including its expenditures for media advertisements; and (iii) whether labor costs charged by MWW/Brushfire were supported by adequate timesheet documentation. These concerns are addressed below.

#### II. The State Properly Procured and Documented Expenditures Related to its "Stronger Than the Storm" Tourism Marketing Campaign

As set forth herein, the State has complied with all applicable Federal and State statutes and regulations, and has addressed each of three issues raised by OIG. Specifically:

- The State was not required to conduct a pre-bid cost estimate or post-bid cost analysis in connection with its tourism marketing campaign, but even if it was, the State's efforts to estimate and evaluate costs were sufficient to meet State and Federal requirements.

<sup>11</sup> The total bid for MWW/Brushfire's proposed campaign was \$22,447,375, while the total bid for Weber Shandwick's proposed campaign was \$27,283,500, approximately 17% higher than MWW/Brushfire's proposal.

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- The State provided documentation demonstrating cost reasonableness and in all respects complied with applicable Federal and State laws and regulations.
  - Consistent with the contract with MWW/Brushfire and Federal cost principles, the State had sufficient documentation justifying all contract labor costs at the time that it paid invoices associated with those labor costs.
- A. **The State was not Required to Perform a Pre-Bid Cost Estimate or Post-Bid Cost Analysis and the State's Procurement Policies and Procedures met the Intent of Federal Requirements.**

OIG asserts that the State did not comply with the technical requirements of 24 C.F.R. § 85.36(f) because the State did not ensure that its alternative State policies and procedures "met the intent of the Federal requirements" set forth in 24 C.F.R. § 85.36(f). OIG Report at 8. This is not a proper basis for a finding of non-compliance against the State because New Jersey did not adopt the requirements of 24 C.F.R. Part 85 and therefore, pursuant to the express terms of HUD's regulations, was not bound by the provisions of 24 C.F.R. § 85.36(f). Rather, as expressly permitted under HUD's regulations, the State advised HUD of "equivalent" State procurement processes that it would use in lieu of adopting the requirements found in 24 C.F.R. Part 85, including 24 C.F.R. § 85.36(f). As discussed herein, New Jersey complied with its own regulations that, in the aggregate, satisfy equivalence with regard to both cost estimate and cost analysis. Thus, HUD's finding that the State did not meet the "intent" of the Federal requirements is not warranted, particularly in light of HUD's guidance that states should be given "considerable latitude" and "flexibility" in administering CDBG-DR funds. Additionally, the State justifiably relied on HUD's approval of its procurement policy when it went forward with the procurement process for its tourism marketing campaign. Finally, even assuming that the State was required to strictly comply with the provisions of 24 C.F.R. Part 85, the State did in fact estimate the costs of its tourism marketing campaign before receiving bids, and Federal regulations did not compel a post-bid cost analysis because the bids submitted to the State provided sufficient price competition. There is thus no basis for OIG's finding as to the technical requirements of 24 C.F.R. § 85.36(f).

1. **The State did not Adopt 24 C.F.R. Part 85 and was thus not Required to Comply with 24 C.F.R. § 85.36(f)**

As a preliminary matter, the State, due to the comprehensive nature of its own procurement processes, chose not to adopt the provisions of 24 C.F.R. Part 85. Thus, there is no proper basis for OIG to find that the State was directly non-compliant with 24 C.F.R. § 85.36 or even the "intent" of the Federal requirements.

States are considered to be the HUD program participants in state CDBG-DR programs. See HUD Handbook 6509.2 REV-5 CHG-2, Ch. 4 at 4-2. With certain limited exceptions, none of which are applicable here, only Subpart I of the HUD regulations found at 24 C.F.R. Part 570 governs the administration of state CDBG programs. See id. at 4-1.

Notably, "24 C.F.R. Part 85 and most of the CDBG regulations of Part 570, other than Subpart I, do not apply to states unless they choose to adopt all or parts of these requirements." Id. at Exhibit 4-1, p.

4-10 (emphasis in the original). In fact, unless a state has formally adopted the provisions of 24 C.F.R. Part 85, “variances from part 85 . . . are not” a proper basis for findings of non-compliance with the administration of CDBG funds. *Id.* at Exhibit 4-1, p. 4-2 (emphasis in the original). Instead, findings of non-compliance in the administration of CDBG and CDBG-DR funds can only be made based upon: (i) the Housing and Community Development Act of 1974; (ii) 24 C.F.R. § 570, Subpart I; (iii) certain relevant Office of Management and Budget Circulars; or (iv) a state’s own procedures. *Id.* at Exhibit 4-1, p. 4-10.

Here, the State adhered to equivalent State procurement processes it used in lieu of adopting the requirements found in 24 C.F.R. Part 85. Thus, as a participant in HUD’s state CDBG-DR program, New Jersey was not bound by the provisions of 24 C.F.R. § 85.36(f), and HUD’s own guidance specifically provides that any variance by New Jersey from the provisions of 24 C.F.R. § 85.36(f) cannot be used to support a finding of non-compliance. *Id.* Moreover, OIG does not claim that the State violated: (1) any provision of 24 C.F.R. § 570, Part I; (2) the Housing and Community Development Act of 1974; (3) relevant Office of Management and Budget Circulars; or (4) the State’s own procedures. None of these statutes or regulations require an Independent cost analysis as part of the procurement process. Thus, there is no basis for a finding against the State under any Federal or State regulation.

**2. HUD Regulations Permitted the State to Demonstrate that its Procurement Processes were Equivalent to Federal Procurement Standards**

Pursuant to the Disaster Relief Act, the Secretary of HUD must certify, before making a CDBG-DR grant, that each grantee has established proficient financial controls and procurement processes. See 127 Stat 4, 37. This requirement was further defined by HUD’s March 5, 2013 Notice, which described, among other things, the documentation to be submitted by grantees with the State Action Plan to establish a basis for the Secretary to make a certification. See 78 C.F.R. § 43, 14329-14349. Notably, the Secretary is charged with reviewing the proffered procurement process and, if the Secretary finds that the grantee lacks sufficient controls or processes, he can disapprove the Action Plan, identify any deficiencies, and allow the grantee to submit a revised plan. See 78 C.F.R. § 43 at 14331.

In order to obtain the Secretary’s certification, a grantee must demonstrate that proficient financial controls and procurement processes exist in the Action Plan. With regard to the procurement processes, a grantee may demonstrate this by: (1) adopting the specific procurement standards identified in 24 C.F.R. § 85.36; or (2) showing that the grantee’s procurement processes/standards are equivalent to the procurement standards at 24 C.F.R. § 85.36. See 78 C.F.R. § 43 at 14336. This latter method of demonstrating a proficient procurement process is expressly available only to State grantees. *Id.*

On March 27, 2013, the State submitted its CDBG-DR Action Plan and supporting financial control certification documents to HUD, including the “State of New Jersey Procurement Policy” (“Procurement Policy”). As OIG has noted, the State did not formally adopt the standards for procurement set forth in 24 C.F.R. § 85.36. Rather, the State opted to follow its own comprehensive procurement statutes and regulations, and provided HUD with the Procurement Policy Included with the Action Plan. This action is permissible pursuant to the March 5, 2013 Notice. The Procurement Policy detailed how the State’s procedures were in line with the procurement standards set forth in 24

**Comment 6**



**Comment 5**

C.F.R. § 85.36. For the corresponding State equivalent standard to 85.36(f), the State outlined its process under N.J.A.C. §17:12-1A.5. An independent cost estimate and analysis were not required by State law and regulations, as set forth in the Procurement Policy.

**Comment 13**

Notably, HUD expressly affirmed the adequacy of the State's Procurement Policy, including those aspects of the policy relating to 85.36(f), when it approved the State's Action Plan. On April 29, 2013, Yolanda Chávez, Deputy Assistant Secretary for Grant Programs, approved New Jersey's Action Plan and certified that the State of New Jersey had in place proficient financial controls and procurement processes to satisfy the requirements of the Disaster Appropriations Act. HUD approved the Action Plan after numerous discussions with State representatives, never once questioning the adequacy of the State's Procurement Policy or requiring an independent cost estimate or analysis prior to the release of an RFQ.

**Comment 13**

Subsequently, on May 13, 2013, the State of New Jersey received the Funding Approval/Agreement from HUD in the amount of \$1.83 billion. Notably, HUD's signature on the grant agreement certifies that the grantee has "in place proficient ... procurement processes ...." See 78 C.F.R. § 43 at 14331. In so certifying, HUD consented to New Jersey's decision to "demonstrate that the grantee's procurement process/standards [were] equivalent to the procurement standards at 24 C.F.R. § 85.36." See 78 C.F.R. § 43 at 14336.

**Comment 6**

**3. Two HUD Monitoring Reviews found no Deficiencies with the State's Procurement Methods**

In addition to HUD's approval of the State's Procurement Policy, HUD has been to the State for two monitoring visits and, likewise, did not raise any concerns regarding the State's procurement processes during either visit. Instead, during those monitoring visits, HUD reviewed the State's procurement files and processes and found no deficiencies.

For example, HUD conducted an on-site review of New Jersey's CDBG-DR programs between July 8 and July 12, 2013. During this visit, HUD specifically reviewed the Procurement Policy that had been adopted by the State before it awarded CDBG-DR funded contracts. In a report issued by HUD after its July 2013 monitoring visit, HUD found that New Jersey's procurement process "appear[ed] to be compliant with CDBG regulations, statutes, and Federal Register notices." Specifically, HUD stated:

This process involves DCA drafting the scope of work, identifying the applicable CDBG-DR program as stated in the Action Plan, a request for quotation (RFQ), and timeframe for completion of work. Once DCA receives approval from both [DPP] and the State's Office of the Comptroller, the RFQ is then issued. Subsequently, representatives from DCA and DPP review bids through a formal evaluation process and select bidders on factors that include price, vendor experience, qualifications and other factors. This process appears to be compliant with the CDBG regulations, statutes, and Federal Register notices.

HUD Management Review Report, September 13, 2013, page 4. (emphasis added).

Later, between March 10 and March 14, 2014, HUD conducted a second on-site management review of New Jersey's CDBG-DR programs. During this visit, HUD specifically met with the State to discuss and review the progress of the State's tourism marketing campaign while also reviewing documents and invoices against disbursements. Following this review, HUD again issued a report in which it stated: "There were no findings and concerns related to the State's tourism efforts during this monitoring visit." HUD Management Review Report, June 10, 2014, page 7.

**Comment 6**

**4. The State Relied on HUD's Approval of the Action Plan and Attached Procurement Policy When it Solicited Vendors to Bid the Tourism Marketing Campaign**

The State's Procurement Policy, which it submitted with its Action Plan in March 2013, notified HUD that it was not adopting the Federal requirements of 24 C.F.R. § 85.36(f), but instead would use its own procurement process, which was "equivalent" to HUD requirements. See 78 C.F.R. § 43, 14329-14349. HUD assented to the State's plan, and the State relied on HUD's approval of its Procurement Policy when it went forward with the procurement process for tourism marketing services. Given that HUD previously affirmed that the State's comprehensive process satisfied the equivalency standard, it is inequitable for OIG, after-the-fact, to take the position that the State did not meet the intent of Federal requirements.

**Comment 14**

"Equivalent" does not mean "identical." If it did, then states' option to adopt the Federal standard or instead submit a document advising HUD that State regulations are the equivalent of the Federal standard would be rendered meaningless. Here, the State advised HUD of equivalent state-level regulations and made good faith efforts to: (1) ensure that both HUD and the State understood the general funding range that would be needed to engage in a meaningful tourism marketing campaign; and (2) communicate with representatives from HUD *before* the issuance of the RFQ regarding the tourism marketing campaign so HUD could express any concerns if it had them. During this process, HUD did not assert that either a cost estimate or cost analysis was required.

**Comment 7**

**5. State Procedures Prior to the Issuance of the RFQ were Equivalent to a Cost Estimate**

Regardless, despite OIG's claim to the contrary, the State certainly complied with the "intent" of the provisions of 24 C.F.R. Part 85 because it did in fact analyze the estimated costs associated with its tourism marketing campaign before receiving bids by: (1) meeting with Louisiana disaster relief officials and reviewing actions taken by the State of Louisiana following Hurricanes Katrina and Rita; (2) conferring with and receiving the assent of HUD as to the appropriate amount of funds that should be included in a waiver application that the State submitted in connection with its tourism marketing campaign; (3) conducting an analysis of actual costs incurred by the State for a previous tourism campaign; and (4) applying for and receiving a waiver from HUD for the estimated \$25 million cost of the tourism campaign. The State thus undertook a reasonable assessment of costs that satisfied the objectives and intent of the regulations.

**Comment 7**

**a. The State Performed a Cost Estimate Based on a Comparison with Similar Recent Catastrophes in Louisiana**

Because the disaster that struck New Jersey was unprecedented, it was extremely difficult to compare New Jersey's post-disaster marketing needs with earlier and smaller State marketing efforts, or the marketing efforts of other disaster stricken states. Compounding this problem, estimating the needs for a post-disaster tourism marketing campaign is obviously not the same as quantifying the amount a State agency should expend for a basic good or service for which comparable expenditures are readily available. Notably, however, the State attempted in good faith to estimate the costs associated with the marketing campaign.

In attempting to draw comparisons, the State concluded that Louisiana's marketing needs in 2005 following Hurricanes Katrina and Rita were the most similar to what New Jersey faced in 2012. Like New Jersey, Louisiana suffered severe physical and economic damage in 2005. Both states were heavily dependent on their tourism industries for jobs and revenue but struggled, post-disaster, with public misperceptions about the conditions of its key tourist attractions. Like Louisiana before it, New Jersey badly needed to boost its tourism industry by messaging to the nation that Sandy affected attractions had been rebuilt and were open for business.

Given the similarities with Louisiana, New Jersey in fact performed a cost estimate of its tourism marketing campaign by considering and analyzing Louisiana's activities and expenses following Hurricanes Katrina and Rita. As discussed herein, this effort, which was done before New Jersey received bids for its tourism marketing campaign, was more than merely a "comparison of summary budget information" with Louisiana's tourism program as OIG has suggested.

Among other things, New Jersey requested the assistance of representatives from Louisiana to consult and advise the State on its tourism marketing campaign. For example, a high-ranking disaster relief official from Louisiana was in New Jersey in February 2013 to consult with DCA personnel on developing pricing and budgets for the State's tourism marketing program. The State also obtained a summary of Louisiana's tourism marketing plan from Louisiana officials.

Not surprisingly, there were many comparable aspects between Louisiana's tourism marketing campaign following the 2005 hurricanes and New Jersey's 2012 "Stronger than the Storm" campaign. Both campaigns were designed to strengthen consumer confidence, encourage people to visit, and support small businesses that relied on tourism. Both campaigns were designed to reach prospective travelers through television and print advertising, communications and media. In sum, the goals set forth in Louisiana's earlier Action Plan closely matched New Jersey's goal of communicating the message that the Jersey Shore was recovering and open for visitors during the summer of 2013.

Yet, despite the similarities between the post-disaster marketing needs of Louisiana and New Jersey, Louisiana actually requested and received more money for its tourism marketing program in 2005 than New Jersey requested and received in 2012. Louisiana was given a HUD waiver in the amount of \$30 million to conduct a tourism marketing campaign in the aftermath of the dual hurricanes, and it ultimately received \$28.5 million for its marketing campaign. New Jersey, on the other hand, asked for \$25 million, which was less than Louisiana even without considering inflation.

**Comment 7**

Notably, there is no indication that HUD or OIG ever deemed Louisiana's tourism marketing expenditures unreasonable. Moreover, HUD has also issued a waiver to the State of New York to spend up to \$30 million dollars on a post-Sandy tourism marketing campaign (18% more than New Jersey) which, like New Jersey's tourism campaign, is certainly reasonable based on the damage suffered by New York and the economic impact of the storm on the state. Thus, there should be no question that the State of New Jersey's more modest expenditures were also reasonable.

**b. The State Consulted with HUD as to Reasonable Costs**

**Comment 7**

In addition to consulting with key Louisiana officials, the State also discussed and shared its plans for its tourism marketing campaign with HUD before it began the procurement process and issued its RFQ. In fact, the State received guidance from HUD concerning: (1) the dollar amount that would be approved pursuant to the State's waiver application; and (2) the purpose for which the funds could be used. These efforts culminated in the State's waiver request for up to \$25 million which HUD assented to and granted.

**c. The State did a Cost Comparison with Other Past Projects**

**Comment 7**

Before issuing its RFQ, the State also performed a cost estimate by conducting an analysis of actual costs incurred by other contractors for services related to past New Jersey tourism and travel campaigns and marketing activities. For example, when estimating the cost of its "Stronger than the Storm" campaign, the State considered costs associated with a 2011 tourism marketing campaign by the New Jersey Division of Travel and Tourism, which was designed to enhance New Jersey's reputation as a premier vacation destination. While the 2011 campaign was on a smaller scale than the contemplated "Stronger than the Storm" campaign, the comparison nonetheless helped New Jersey make a cost estimate which served as a yardstick for the 2013 marketing campaign.

In sum, the State of New Jersey substantially complied with the all Federal requirements regarding cost estimates. The State acted consistently with the "intent" of the provisions of 24 C.F.R. Part 85, and findings to the contrary by OIG are unwarranted.

**d. A Post-Hoc Cost Estimate Conducted at OIG's Request Confirmed the Reasonableness of the State's Expenditures for the Tourism Marketing Campaign**

**Comment 8**

In response to the issue raised by OIG during the audit, and in response to a request by OIG, the State engaged ICF International ("ICF") to prepare an independent cost estimate of its tourism marketing program.<sup>22</sup> ICF's estimate was provided to OIG. ICF's estimate indicates that a campaign of the scope

<sup>22</sup> ICF is the State consultant and provider of services for HUD CDBG and FEMA funded disaster assistance programs. ICF's services include program design, planning, project management and monitoring, information technology and reporting systems and communications. ICF has previously worked with community development experts and supported states with HUD recovery efforts.

and size of the "Stronger than the Storm" campaign would cost approximately \$24.1 million, or about \$1,656,000 more than MWW/Brushfire's winning bid of \$22,447,375.<sup>13</sup>

OIG questions the ICF report, stating that certain cost categories in ICF's estimate did not match cost categories in MWW/Brushfire's bid, and that the ICF estimate did not itemize certain indirect labor costs.<sup>14</sup> Nonetheless, aside from these relatively minor inconsistencies, none of which go to the reasonableness of the overall costs, the ICF report directly estimated the main deliverables in the MWW/Brushfire bid, including direct labor costs, television, radio, out-of-home, internet and social media. Estimating these deliverables alone, ICF's estimate was still higher than MWW/Brushfire's bid. This report from ICF, submitted pursuant to OIG's request and recommendation, confirms that the State's expenditures in connection with tourism marketing and outreach services were fair and reasonable.

**Comment 5**

Thus, any finding against the State, particularly given the HUD guidance (discussed below) that states should be given "flexibility" and "considerable latitude" in administering their CDBG-DR programs, is unfair and inappropriate. See HUD Handbook 6509.2 REV-5 CHG-2, Ch. 4-3, p. 4-2 and 24 C.F.R. § 570.489.

**Comment 5**

**6. Competing Bids Complied with State Procurement Processes that are the Equivalent of a Cost Analysis**

OIG also submits that New Jersey failed to perform a cost analysis with regard to the tourism marketing campaign. As noted previously, the cost analysis requirement contained within 24 C.F.R. § 85.36(f) was not adopted by the State of New Jersey; rather, HUD was notified that the State had equivalent processes in place. The State complied with its own procurement processes, and an OIG finding that the State somehow did not comply with the "intent" of Federal requirements is not warranted.

The State complied with its requirement that bidders provide "all RFP-required pricing information" N.J.A.C. 17:12-2.2, thus ensuring that cost was known before the contract was awarded. Also, New Jersey's procedures for creating a State contract based on the pricing offered through a Federal procurement program are equivalent to the intent of the Federal standard set forth in 24 C.F.R. § 85.36(f) with respect to GSA procurements. Federal supply schedule-based contracts can only be promulgated when: (1) the price of the good and/or service is no greater than the cost offered to a Federal agency; (2) the State receives the benefit of any price reductions, be they statutory, regulatory or contractual, during the course of the contract; and (3) the price of the good or service via a Federal

**Comment 15**

<sup>13</sup> During a meeting in February 2014, OIG recommended that the State obtain a post hoc independent cost estimate. Even though it was not required to do so under State or Federal regulations, the State followed OIG's recommendation and, in good faith, obtained the independent cost estimate from ICF on an expedited basis. Indeed, the ICF report was delivered to OIG within three months of the February meeting. Nonetheless, OIG now appears to be critical of the State's timing in producing the ICF report. Specifically, OIG characterizes the State as having "finally" provided the independent cost estimate "[a]t the end of the audit."

**Comment 16**

<sup>14</sup> OIG also asserts that the report "did not include sufficient backup detail information related to the specific cost categories." Although this information was readily available from ICF, it was not requested by OIG before it issued its report.

supply schedule is not equal to or greater than the State contract price (unless approved by the Director of DPP). N.J.A.C. 17:12-1A.5. This regulation ensures that goods and services procured by the State are done in a way that is fiscally prudent and most advantageous to the State, price and other factors considered.

**7. A Cost Analysis was not Required**

Even assuming that the State had to comply with the strict letter of 24 C.F.R. § 85.36(f), it still was not required to perform a cost analysis even under the express terms of that regulation because during the procurement process, the State received four competitive bids that, in the aggregate, reflected a reasonable market range among the bidders. See OIG Final Report at 7. The bids received by the State ranged from a top line of slightly more than \$27.5 million to a low bid of slightly more than \$23.2 million. Indeed, the low bidder, MWW/Brushfire, was ultimately awarded the contract. Significantly, the plain language of 24 C.F.R. § 85.36(f) provides that a cost analysis is required when "adequate price competition is lacking, and for sole source procurements ..." Neither scenario occurred here. Rather, there was adequate price competition as reflected by the four proposals and the roughly \$4.3 million spread between the highest and lowest bids (the lowest bid ultimately being the winning bid). Thus, even if the State had adopted 24 C.F.R. § 85.36(f), the submission of multiple bids within a varying price range adequately provided "price competition" such that a cost analysis was not required. Moreover, as previously noted, after the competitive bids were received, the State performed a price analysis which confirmed the reasonableness of the proposed contract prices.

**8. The State should be given Flexibility and Latitude in Establishing and Interpreting Its own Procedures and Standards for Procurement**

As discussed herein, in connection with its CDBG-DR programs, the State chose to use its own equivalent State procurement processes in lieu of adopting the requirements found in 24 C.F.R. Part 85. As recognized by HUD in both its regulations and guidance, the State should be given great leeway in using this State process to distribute and expend CDBG-DR funds. Indeed, recognizing that states like New Jersey have to deal with "sophisticated issues" and "complex problems" in administering CDBG funds, HUD has opined that states should be given "flexibility in interpreting the statute and regulations" that govern the administration of CDBG funds. HUD Handbook 6509.2 REV-5 CHG-2, Ch. 4-3, p. 4-2. In fact, Federal regulations specifically provide that when administering state CDBG funds, a state should be given "considerable latitude" in establishing its own procedures and standards. 24 C.F.R. § 570.489; Cf. HUD Handbook 6509.2 REV-5 CHG-2, Exhibit 4-7 at 4-1. As such, HUD has instructed its personnel who are reviewing state CDBG-DR programs to evaluate how a state is meeting its statutory and regulatory requirements from a broad perspective and determine if the state's system or systems, "when viewed as a whole, [are] adequate." HUD Handbook 6509.2 REV-5 CHG-2, Exhibit 4-7 at 4-2.

In administering its disaster relief programs following the worst natural disaster in its history, the State of New Jersey was under intense pressure to hurry aid to its citizens who desperately needed help and support. The State was in fact faced with the very "sophisticated issues" and "complex problems" contemplated by HUD in its guidance. The State did not have the benefit of hindsight to help it make the necessary but difficult choices it faced.

**Comments 2,  
5, and 12**

**Comments 5  
and 17**

**9. Conclusion**

There is no proper basis for an OIG finding that the State failed to comply with the provisions of 24 C.F.R. § 85.36(f), because New Jersey did not adopt the requirements of 24 C.F.R. § Part 85. Therefore, pursuant to the express terms of HUD's regulations, the State was not bound by the provisions of 24 C.F.R. § 85.36(f). Rather, as directly permitted under HUD's regulations, the State advised HUD of "equivalent" state procurement processes that it would use in lieu of adopting the requirements of 24 C.F.R. Part 85. New Jersey complied with its own regulations that, in the aggregate, are equivalent with regard to both cost estimate and cost analysis.

Moreover, HUD expressly affirmed the adequacy of the State's procurement policy, including aspects relating to 85.36(f), when it approved the State's Action Plan. The State justifiably relied on HUD's approval of its procurement policy when it went forward with the procurement process for tourism marketing outreach. Notably, HUD also has been to the State for two monitoring visits and did not raise any concerns about the State's procurement policy during either visit. To the contrary, HUD reviewed the State's procurement files and processes and found no deficiencies.

Also, even assuming that the State was somehow required to strictly comply with the provisions of 24 C.F.R. Part 85, the State did in fact estimate the costs of its tourism marketing campaign before receiving bids by: (1) meeting with Louisiana disaster relief officials and reviewing actions taken by the State of Louisiana following Hurricanes Katrina and Rita; (2) conferring with and receiving the assent of HUD as to the appropriate amount of funds that should be included in a waiver application that the State submitted in connection with its tourism marketing campaign; (3) conducting an analysis of the actual costs incurred by the State for a previous tourism campaign; and (4) applying for and receiving a waiver from HUD for the estimated \$25 million cost of the tourism marketing campaign. Additionally, Federal regulations did not compel a post-bid cost analysis because the bids submitted to the State provided sufficient price competition. Finally, a post-hoc cost estimate conducted at OIG's request confirmed the reasonableness of the State's expenditures for the tourism marketing campaign. There is thus no basis for OIG's finding as to the technical requirements of 24 C.F.R. § 85.36(f).

**B. The Process used by MWW/Brushfire to Solicit Vendors to Perform Marketing Services for the State was Competitive, and the Marketing Costs Incurred by the State Were Reasonable and Fair.**

The State has provided ample documentation demonstrating that the funds it disbursed for marketing costs were fair and reasonable. This documentation was provided to OIG by the State in a good faith effort to alleviate concerns raised by OIG about the costs of the marketing campaign. Nonetheless, OIG has deferred to HUD as to whether the State has demonstrated cost reasonableness in its procurement of goods and services for the "Stronger than the Storm" campaign. Simply put, the State's documentation clearly shows that the marketing services were properly solicited, and that the market costs incurred were fair and reasonable.

**Comments 2  
and 5**

**Comments 6  
and 13**

**Comments 7,  
8, and 12**

**Comments 3,  
9, and 10**

**1. Background**

As discussed above, the "Stronger than the Storm" campaign executed by MWW/Brushfire incorporated advertising across a broad array of media to reach the State's target audience in a variety of ways. The campaign also involved organizing public relations events across the Jersey Shore to attract tourists and media coverage that reinforced the message that the Jersey Shore was open for business.

As of June 1, 2014, the State had spent approximately \$23.34 million in connection with its tourism marketing campaign. The costs associated with the marketing campaign generally can be grouped into three categories:

- Media (television, radio, billboards, Internet and print advertising) (\$16.24 million);
- Public Relations and Events Management (\$5.6 million); and
- Advertising Production (\$1.5 million).

For media, which is by far the largest category of expense, it was not feasible, instructive, or consistent with industry standards - due to the uniqueness of each respective media buy option - to require MWW/Brushfire to solicit competitive bids from vendors before buying media advertising space. Thus, MWW/Brushfire, pursuant to a waiver request that was granted by the State, did not seek competitive bids. Instead, consistent with industry standards (as confirmed by an expert that the State consulted), MWW/Brushfire leveraged its extensive media buying experience and knowledge of markets to negotiate fair and reasonable prices for the State as to each advertisement purchase, thereby saving the State hundreds of thousands of dollars. Additionally, EDA and its contractors provided OIG (and HUD) with comprehensive supporting documentation that demonstrates that events management and public relations production services that were procured for the campaign were properly solicited and reasonably priced.

**2. There was no Three Bid Requirement**

As a preliminary matter, OIG correctly states in its findings report that under the original terms of MWW/Brushfire's contract with the State, MWW/Brushfire was responsible for obtaining three bids or proposals when submitting invoices for payment. However, OIG also correctly recognizes that the State, acting within its authority, waived the contractual provision which required three bids and, thus, at all relevant times, there was no requirement that MWW/Brushfire receive three bids from competing vendors before awarding contracts.

**3. Media Buys were made Pursuant to Industry Standards and were Fairly and Reasonably Priced**

As of June 1, 2014, the State had spent approximately \$16.24 million on media advertising. Due to the unique nature of each media advertising opportunity, MWW/Brushfire, pursuant to a granted waiver request from the State, did not seek competitive bids because it simply was not feasible or instructive for them to do so. Instead, following industry standards in the media and advertising services industries, MWW/Brushfire used its media buying experience and knowledge of markets to negotiate

**Comment 18**

**Comments 3  
and 10**



fair and reasonable prices for the State as to each advertisement purchase, saving the State significant amounts of money.

**a. The State's Media Buys Were Purchased Pursuant to Industry Standards**

As discussed herein, the State's media buys were made in a manner consistent with industry standards. There should thus be no finding that the State's contractor, MWW/Brushfire, was somehow deficient in the manner in which it procured media buys.

**i. Television and Radio Advertisements Were Purchased Pursuant to Industry Standards and were Fairly and Reasonably Priced**

In order to understand why competitive bidding is not used for media advertising, it is important to recognize how media buyers such as MWW/Brushfire typically execute a media campaign. When planning a broadcast media advertising campaign, including radio and television advertisements, media buyers typically create a media purchase plan which guides and informs their advertising expenditures. (See Certification of Professor Lou Rodolico, Rowan University).<sup>15</sup>

When developing a media purchase plan, media buyers such as MWW/Brushfire understand the unique nature each radio and television program on which advertising may appear. *Id.* at ¶ 7. Each program appeals to different numbers of viewers and listeners within different demographic groups. Factors that make programs more or less attractive to advertisers, and thus affect the cost of advertising on that program, non-exhaustively include: (1) the content of the program; (2) the popularity of the program; (3) the featured artist or broadcast personality; (4) the time slot in which the program is aired; (5) the station or network that hosts the program; and (6) the region or location where the broadcast airs (*i.e.*, Greater Philadelphia or Greater New York). *Id.*

Media buyers like MWW/Brushfire will identify demographic groups that they wish to target with an advertising campaign, such as men between the ages of 18 and 34. *Id.* at ¶ 8. Next, after identifying the targeted audience, media buyers typically identify radio and television programs that appeal to people in the targeted demographic groups. *Id.* at ¶ 9. Then, because there are only a finite number of commercial spots available during any particular program (*i.e.*, an hour long television program may have only three or four commercial breaks), a media buyer must determine whether any commercial spots are available on the programs that appeal to the targeted demographic groups. *Id.* at ¶ 10.

In order to determine how wide an appeal a particular ad placement will have, media buyers use data from commercial ratings agencies to determine the number of viewers within the targeted demographic groups that watch or listen to a particular program. *Id.* at ¶ 11. Notably, programs that air during the same time slot on rival networks and stations often will intentionally target and appeal to different audiences and demographic groups. *Id.* at ¶ 12. As an example, one television station may broadcast a golf tournament opposite a football playoff game in order to capture a different

<sup>15</sup> Lou Rodolico is a Professor at Rowan University, Department of Public Relations and Advertising. He holds a Bachelor's Degree in Marketing from Drexel University, and a Master's Degree in Mass Media and Communication from Temple University.

Comment 3

Comments 10  
and 19

demographic group and appeal to a different set of consumers in an effort to avoid competition and maximize viewership. Id. at ¶ 12.

Even programs that appeal to the same demographic group and broadcast at the same time on rival networks or stations still will have a different audience (i.e., two different NFL games being broadcast at the same time on two different networks will have a different audience depending on a number of factors, including the broadcast region (e.g., Greater New York versus Greater Philadelphia)). Id. at ¶ 12. Thus, each of the two programs will attract a different number of viewers or listeners even though they may appeal to a similar demographic group. Id. at ¶ 13.

Based on many factors, but most importantly the number of people within the targeted demographic group who watch or listen to a particular program, a media buyer will attempt to negotiate the best possible price for open commercial spots on each program that is popular with the targeted demographic groups. Id. at ¶ 14. Thus, the goal of effective media buying is to advertise on programs that appeal to the largest number of people in the targeted demographic groups, at the best possible negotiated price, within the advertisers' budget. Id. at ¶ 15).

Notably, it is never the goal of effective media buyers to simply buy the least expensive commercial spots regardless of a particular program's content, targeted audience or time slot. Id. at ¶ 16. Such a media plan would be wasteful because advertisements likely would be broadcast to a limited number of people (such as radio listeners awake and driving in their cars at 3:00 a.m.), or to people with little to no interest in the content of the advertisement (such as advertising reverse mortgages to people under the age of 30). Id.

Given that each program is unique (based on factors such as content, targeted audience and time slot) it is neither feasible nor instructive to require media buyers to solicit competitive bids from various media outlets before buying the desired commercial time slot. Id. at ¶ 17. Given the unique characteristics of each specific program and its targeted viewership, networks rarely if ever (and for reasons that make competitive sense) have materially similar programming focused on the same demographic group. Id. at ¶ 18. This eliminates the possibility of the media buyer undertaking a viable direct comparison of commercial spots or engaging in an effective bidding process. Id.

Because media buyers cannot do an "apples-to-apples" comparison of the various programs that are broadcast at a particular date and time, requiring media buyers to use a bidding process to buy commercial spots would serve no competitive purpose. Id. at ¶ 19. It is, therefore, not the industry standard to require direct comparisons or competitive bidding when buying advertising space. Id. at ¶ 22. Indeed, despite having done a comprehensive search, the State was unable to identify a media marketing campaign in which the media buyer was required to do either cost comparisons or competitive bidding as to each individual media buy.

Rather, the industry standard for buying commercial spots involves a media buyer first identifying a specific program which has available commercial time spots and appeals to the targeted demographic groups. Id. at ¶ 23. Then, based on factors such as a program's ratings with a targeted demographic

group, a media buyer like MWW/Brushfire will use its expertise and experience to negotiate the best possible price for that commercial slot. *Id.*, at ¶¶ 23, 40.<sup>16</sup>

In compliance with industry standards, Brushfire negotiated with several television stations to obtain below-market prices for advertisements related to the "Stronger than the Storm" marketing campaign. In addition to direct price discounts, MWW/Brushfire also negotiated free "added value" elements on television media buys for the "Stronger than the Storm" campaign. These free added value items included live television broadcast remotes, on-air interviews and promotional programs that highlighted attractions and businesses on the Jersey Shore. Additionally, MWW/Brushfire leveraged its marketing expertise and relationships in the media industry to negotiate free announcements on television and radio related to the tourism marketing campaign.

In sum, MWW/Brushfire was able to obtain television and radio media buy discounts for the "Stronger than the Storm" campaign. These purchases were well below the prevailing market prices, and demonstrate the reasonableness of the costs incurred. Thus, the State's television and radio advertisement expenditures were clearly fair and reasonable.

**ii. Digital (Internet) Advertisements Were Purchased Pursuant to Industry Standards and were Fairly and Reasonably Priced**

Likewise, each internet site is unique. (See Rodolico Certification at ¶ 35). In fact, different internet sites appeal to different numbers of people and different demographic groups based on content and notoriety. *Id.* For example, advertisements on the social media site Facebook will reach far more people than advertisements on less used social media outlets such as Myspace, and a far different group of people than, for example, WebMD which typically appeals to mature adults concerned about health issues. *Id.* As a result, requiring competitive bidding is neither a feasible nor viable way to buy advertisement space on the internet. (*Id.*, at ¶ 36).

Because of the unique nature of each internet site, an apples-to-apples comparison of different internet sites is not possible, and any attempt to do so serves no competitive or instructive purpose. *Id.*, at ¶ 37. Similar to the other forms of advertisements discussed above such as television and radio, the industry standard for buying advertising space on the internet does not and cannot effectively involve a competitive bidding process, therefore, and consistent with the above, the granted waiver was justified. *Id.*, at ¶ 38.

Nevertheless, MWW/Brushfire utilized its experience, marketing expertise and existing media relationships to negotiate significant discounts on the purchase of digital media buys during the tourism marketing campaign. Again, these steeply discounted rates clearly demonstrate the reasonableness of the costs incurred in connection with the "Stronger than the Storm" campaign.

<sup>16</sup> The industry standard for purchasing broadcast media such as television and radio commercial spots is thus obviously different from purchasing other goods and services. *Id.*, at ¶ 20. For example, unlike purchasing construction supplies where prices are easily attainable and identical products are easily comparable, media buying involves purchasing a unique product with simply no comparable product. *Id.*, 21.

Comments 10  
and 19

iii. **Out-of-Home Advertisements (Billboards) Were Purchased Pursuant to Industry Standards and were Fairly and Reasonably Priced**

Similar to television and radio programs, each billboard is unique based on its location, potential viewership and its availability. (See Rodolico Certification at ¶ 24). If a media buyer wants to advertise to particular demographic groups, such as men and women in New Jersey ages 35 to 55, the media buyer likely will choose to advertise on billboards along traditional commuter routes that are heavily traveled by people in those demographic groups, such as I-80 in New Jersey. Id. at ¶ 25.

A billboard's location, such as its specific location on I-80, will dictate how many people see it. Id. at ¶ 26. As an example, more commuters to New York City will see a billboard that is on I-80 just outside of New York City as opposed to a billboard that is 20 miles west of the City. Many commuters likely will never drive by the more remote billboard because they will enter the highway closer to the City. Id. at ¶ 27. This was particularly problematic for the State since it had to create its marketing plan very quickly and did not have ample advance time to reserve billboards for its campaign.

Similar to radio and television advertising, therefore, the goal of buying advertising space on billboards (assuming billboard space is even available, particularly on short notice), is to appeal to the largest number of people in the targeted demographic groups, at the best possible negotiated price, within the advertisers' budget. Id. at ¶ 28. To accomplish this goal, media buyers typically will determine where they want to advertise using a billboard, such as on I-80 close to New York City. Id. at ¶ 29. Then, the media buyer will determine whether billboard space is available in the desired location. Id. Notably, billboards in desired locations often have very limited availability because the billboard owners often sell advertising space to a single client for an extended period of time (e.g., three months at a time). Id.

If a billboard is available, media buyers next will determine the reach of the available billboard based on estimates of how many people will drive by the billboard. Id. at ¶ 30. Once media buyers identify a specific billboard that best meets their needs, they then negotiate the best possible cost for that specific billboard. Id. at ¶ 31.

Because each billboard is unique based on its location and availability, there is no feasible way to do a direct apples-to-apples comparison of the cost of one billboard to another billboard. Id. at ¶ 32. Requiring a bidding process in such a situation would therefore serve no instructive or competitive purpose. Id. As a result, the industry standard for buying advertising space on billboards does not and cannot effectively involve a direct comparison or a competitive bidding process. Id. at ¶ 33. Instead (and again similar to radio and television advertising), the Industry standard for buying billboard advertisements is first to identify a specific billboard which is available and is located where it will be seen by the greatest number of people in the targeted demographic groups. Then, assuming that billboard space is even available in that location, a media buyer will attempt to negotiate the best possible price for that billboard space based on factors such as the billboard's location and reach. Id. at ¶ 34.

Similar to its purchases of television, radio and digital media buys, MWW/Brushfire also negotiated significantly discounted rates. Again, these steep discounts demonstrate the reasonableness of the cost incurred in connection with the State's tourism marketing campaign.

**Comments 10  
and 19**

**iv. Costs Incurred in Connection with the MLB All Star Game Program and NY Giants Yearbook were Fair and Reasonable**

In addition to the expenditures described above, MWW/Brushfire had a unique opportunity to buy inexpensive advertising in certain print materials associated with the New York Giants and the 2013 Major League All-Star game in New York City. Notably, MWW/Brushfire determined that these events appealed directly to the core of the demographic groups that the State was targeting in its "Stronger than the Storm" campaign. For example, the New York Giants are the most popular football team in New Jersey, and the majority of its highly devoted fan base live in New Jersey and New York, which is part of the core geographic region that the State was trying to reach with its tourism marketing campaign. In fact, New York Giants football games and the Major League All-Star game are unique events that simply cannot be compared to any other events. Thus, for reasons similar to those stated above, competitive bidding was not a viable or informative option.

Notably, MWW/Brushfire was offered a very favorable, less-than-market rate to advertise at these events, ensuring that the cost was in fact reasonable. Indeed, Brushfire negotiated a significant discount in the purchase of "Stronger than the Storm" print media in the 2013 MLB All-Star Game Program. Once again, the savings negotiated by MWW/Brushfire for these services demonstrate the reasonableness of the cost.

**Comments 10  
and 19**

**4. Marketing Costs Incurred for Live Events, Public Relations and Production Services Met State and Federal Procurement Standards and were Fairly and Reasonably Priced**

MWW/Brushfire undertook the task of developing, staffing and equipping unique events across the State on an expedited basis in order to effectuate the objectives of the "Stronger than the Storm" marketing campaign. In many instances, MWW/Brushfire had just days or weeks to procure services in support of the \$25 million tourism marketing campaign, which included numerous live events, as well as production services for television, radio and internet advertisements. Nevertheless, EDA advised MWW/Brushfire to follow certain criteria to ensure cost reasonableness in the context of this unique, time-sensitive project.

OIG's audit and findings did not fully account for the unique circumstances presented in the use of CDBG-DR funds to implement the "Stronger than the Storm" marketing campaign. Regardless, the State's procurement method complied with State regulations and also met Federal procurement requirements. The resulting costs of goods and services for the campaign were fair and reasonable, as demonstrated by the substantial supporting documentation supplied to OIG by MWW/Brushfire.

a. **MWW/Brushfire Demonstrated Cost Reasonableness for Goods and Services Obtained for the Marketing Campaign In Accordance with State Regulations**

Many of the events and activities held along the Jersey Shore were unique and had to be implemented on an expedited basis in anticipation of Memorial Day. After the services of MWW/Brushfire were secured on April 16, 2013, EDA advised MWW/Brushfire that, given the expedited nature of the program, the State would waive the contractual three bid requirement for all expenses, including the out-of-pocket event management and production expenses;<sup>17</sup> however, EDA advised MWW/Brushfire to follow certain procedures to ensure cost reasonableness. Specifically, MWW/Brushfire was required to demonstrate that the cost of goods and services was reasonable within the marketplace by, among other things: (i) comparing the cost with other vendors; (ii) requesting after-the-fact competitive bids; or (iii) demonstrating that the prices paid for goods and services during the "Stronger than the Storm" marketing campaign were consistent with pre-Sandy prices.

EDA advised MWW/Brushfire that it needed to establish that goods and services were procured at reasonable prices by determining the following:

- That the per-item cost of purchased goods (e.g., hats or decals) or services were reasonable within the marketplace by conducting an internet search, or by comparing the cost with other vendors;
- That the costs for overall marketing activities and specific vendor activities were priced at least at the same level, or less, than costs incurred on tourism campaigns that occurred before Superstorm Sandy; or
- In certain circumstances where there was one bid on a project, that the vendor being utilized to provide a good or service was the only source available to provide that product or service in a timely manner.

The procedures outlined by the State ensured that MWW/Brushfire expended CDBG-DR funds in accordance with State (and Federal) regulations. In sum, the State waiver of the triple bid requirement gave MWW/Brushfire the flexibility it needed to carry-out a highly successful tourism marketing campaign in a cost efficient manner.

This flexible, yet thorough, approach was demonstrated during the procurement of goods and services throughout the campaign. For example, MWW/Brushfire met the State procurement standards in relation to the Jersey Shore Ribbon Cutting Ceremony, one of the campaign's marquee events. MWW/Brushfire obtained two bids for the event, which called for several unique goods and services (including a ribbon that was approximately five miles long). Ultimately, a vendor was selected to produce the event based on its low bid and its thorough plan for the project. Thus, MWW/Brushfire

<sup>17</sup> Three bids are not required by any Federal or State statute or regulation.

complied with the State procurement process for this event, which was one of the largest projects undertaken by a sub-contractor.

Likewise, MWW/Brushfire complied with the State's process while procuring goods or services when only a sole bid was obtained. For instance, MWW/Brushfire contracted with a vendor to provide professional sand castle sculptures for several public relations events throughout the State when no other bidders were able to provide these unique services on an emergent basis. Thus, MWW/Brushfire complied with the State procurement processes detailed above when unique circumstances precluded competitive bidding.

**b. The State also met Federal Procurement Standards as set forth in 24 C.F.R. § 85.36**

As discussed above, the State did not adopt the Federal procurement standards established at 24 C.F.R. § 85.36. Thus, these Federal standards are not binding on the State. Nonetheless, even if 24 C.F.R. § 85.36 applied to the procurement of goods and services related to the "Stronger than the Storm" marketing campaign, the State met these Federal standards.

Different procurement methods are provided under 24 C.F.R. § 85.36 depending on the cost of a particular good or service, and whether or not the good or service is readily available from more than one source. Specifically, the Federal procurement guidelines establish different controls for "micro purchases" (up to \$2,000), "small purchases" (up to \$100,000) and purchases greater than \$100,000. Id.

Although the State was not bound to follow 24 C.F.R. Part 85, MWW/Brushfire nonetheless met the Federal procurement requirements when making micro purchases, small purchases and purchases above \$100,000, and employed reasonable cost bases for securing these products and services in connection with its "Stronger than the Storm" marketing campaign.

**i. The State Satisfied both State and Federal Standards for Micro Purchases**

"Micro purchases" are defined as items or services that cost no more than \$2,000. HUD, "Procurement Handbook for Public Housing Agencies," HUD Handbook 7460.8 REV 2, § 3.2 (February 2007) (hereinafter "PHA Procurement Handbook"). Micro purchases do not require solicitation if the contracting officer considers the price to be reasonable based on recent research, experience or past purchases. Id. at § 5.3(B). Rather, the contracting officer's determination that the price is reasonable is evidenced simply by his or her signature on the invoice. Id. at § 5.5(A)(1).

MWW/Brushfire typically made micro purchases at common, name-brand stores such as Rite Aid, Party City and Radio Shack, that typically offer similar goods at competitive prices. EDA reasonably relied on MWW/Brushfire's professional experience in determining what micro purchase items were necessary, and in obtaining these items from stores that offered reasonable pricing, without unduly complicating and delaying the purchase process by requiring competitive bidding or a more formal cost comparison. In fact, the process used by MWW/Brushfire for micro purchases clearly satisfied both

Comment 5

Comment 20

Comment 20

Comment 20

State and Federal procurement requirements because the purchases were reasonable within the marketplace. There is thus no basis for findings as to micro purchases.

**Comment 19**

**ii. The State Met both State and Federal Standards for Procuring Small Purchases**

**Comment 20**

"Small purchases" are defined as items or services costing no more than \$100,000. See 24 C.F.R. § 85.36(d)(1). Under Federal procurement standards, price quotes for small purchases may be obtained in writing (hard-copy or email), orally, by fax, catalog, letter, internet, advertisement, by displaying the solicitation in a public place or by using past prices paid. PHA Procurement Handbook at § 5.5(A)(2). Notably, HUD's guidance provides that supporting documentation for small purchases should be kept to a minimum. PHA Procurement Handbook at § 3.2(D)(2).

A contractor can memorialize the reasonableness of small purchases by including an explanation in the procurement file explaining the circumstances of the procurement. If only one bid is obtained in connection with a small purchase, the contracting officer should generally include a statement of reasonableness in the procurement file. Id. at § 5.5(A)(2). This statement of reasonableness can be properly based upon several explanations, including the following: (1) market research; (2) comparison of the proposed price with prices found reasonable on previous purchases; (3) current price lists; (4) catalogs; (5) advertisements; (6) comparisons with similar items in a related industry; (7) the contracting officer's personal knowledge at the time of purchase; (8) comparison to a cost estimate; or (9) any other reasonable basis. Id.

MWW/Brushfire made numerous purchases of goods and services which qualified as small purchases pursuant to Federal procurement regulations. Consistent with both State and Federal procurement processes, these products and services were obtained from vendors based on: (1) a review of available competitive price quotes; (2) MWW/Brushfire's professional expertise; or (3) through a comparison to past purchases related to similar projects. Thus, the procurement process utilized by MWW/Brushfire assured a fair and reasonable price for small purchases consistent with both State and Federal requirements.

For example, a vendor was contracted by MWW/Brushfire for the "Kites and Castles Event" after a review of several competitive bids. The Kites and Castles Event consisted of public relations events at numerous locations at the Jersey Shore throughout the summer. In total, MWW/Brushfire received three competitive bids for the event before selecting the vendor. Significantly, this procurement complied with the State requirement that bids be reasonable based on a comparison of other bids in the marketplace. Furthermore, the procurement complied with Federal procurement standards for small purchases given the competitive bid submissions.

Small purchases for which MWW/Brushfire obtained only a single bid were completed only where competitive bidding was not feasible. In each such instance, MWW/Brushfire used effective and fair procurement methods to secure reliable vendors at reasonable prices. Notably, after-the-fact analyses have confirmed that these prices were reasonable.



iii. **The State Satisfied State and Federal Standards for Procuring Goods and Services Above the Small Purchase Threshold**

Comment 19

When purchasing goods and services with a cost that exceeded \$100,000, MWW/Brushfire typically received more than one bid for the services. For example, a vendor was chosen by MWW/Brushfire to create Facebook ads for the State's tourism marketing campaign after MWW/Brushfire obtained three bids for these services from competing vendors and analyzed the merits of each of the competing bids. Likewise, a vendor was selected to design the "Stronger than the Storm" website after two competitive bids were submitted and MWW/Brushfire determined that the winning vendor submitted the most reasonable bid based on price and other factors.

By obtaining competitive bids before awarding these large contracts to vendors, MWW/Brushfire complied with State regulations by performing a viable cost comparison. This also ensured, consistent with the goal of Federal standards, that products and services were procured competitively and at a fair and reasonable price.<sup>18</sup>

5. **Conclusion**

Comment 19

The procurement methods employed by the State for the "Stronger than the Storm" marketing campaign were reasonable given the unique circumstances of the program. Indeed, the comprehensive supporting documentation provided by EDA and its contractors demonstrates that the amounts disbursed for marketing costs were fair and reasonable. The State obtained documentation of cost reasonableness from MWW/Brushfire for goods and services purchased to support the "Stronger than the Storm" marketing campaign that fully complied with State procurement rules. Further, even though the State was not bound by the procurement rules outlined in 24 C.F.R. Part 85, MWW/Brushfire acquired marketing products and services in compliance with Federal procurement standards at the various price thresholds. Accordingly, a finding by OIG that the State failed to procure marketing services competitively is not warranted.

Comments  
11 and 21

C. **The State had Documentation supporting \$3.5 Million in Labor Costs Charged to the State by MWW/Brushfire**

OIG asserts that the State did not have proper documentation to support \$3.5 million in labor costs charged to the State by MWW/Brushfire. However, the State respectfully submits that it had detailed documentation to support labor costs invoiced by MWW/Brushfire at the time that the State

<sup>18</sup> To ensure cost reasonableness on vendor contracts involving more than \$100,000, 24 C.F.R. Part 85 contemplates the use of a sealed bid process or a more formal competitive bidding process when feasible. Again, the State was not subject to the requirements of 24 C.F.R. Part 85. Nonetheless, here, neither a sealed bid process nor a formal bidding process was feasible. Notably, the services being sought by MWW/Brushfire in the larger contracts involved creative services such as Internet design and television productions services, which involve many potential cost variables and are therefore difficult to estimate. A sealed bidding process is typically used only to procure goods and services which are easily estimated at a fixed price. See 85.36(d)(2)(i)(c). A more formal and lengthy competitive bidding process, as described in 24 C.F.R. § 85.36(d)(3), also was not feasible, given the exigency of the campaign and because MWW/Brushfire was required to solicit vendors for events and services within a matter of days or weeks.

paid the invoices. As discussed herein, this documentation included monthly invoices from MWW/Brushfire, as well as Time and Expense Reports and Project Invoices for MWW/Brushfire employees assigned to perform the work referenced in the invoices.

As a preliminary matter, it is important to understand the process used by the State to pay invoices submitted by MWW/Brushfire in connection with its labor costs. MWW/Brushfire would typically submit invoices for its labor costs to the State on a monthly basis. The invoices itemized the billable labor costs by project. For example, MWW/Brushfire's invoice for May 2013, which is dated June 14, 2013, specifically itemizes: (1) each of the various projects for which labor charges were being billed by MWW/Brushfire (e.g., "NJ Marathon Activation and Monmouth Event" (the "NJ Marathon project")); and (2) the amount of labor charges billable to the State as to each project (e.g., the billable cost associated with the NJ Marathon project is itemized.)

Additionally, in support of the itemized costs listed on the invoice, MWW/Brushfire would submit Time and Expense Reports. Notably, as to each specific project (e.g., the NJ Marathon project), the Time and Expense Reports show: (1) a daily breakdown of the total number of labor hours that individual MWW/Brushfire employees worked on the project; (2) the billable rate for the individual employees that worked on the project; and (3) the total labor costs associated with each individual employee's work on the project on both a daily and monthly basis. Also as to each project, the Time and Expense Reports tallied the employees' collective hours and associated labor costs on a monthly basis.

In addition to monthly Time and Expense Reports and general monthly invoices, MWW/Brushfire also provided the State with monthly project-specific invoices (hereinafter "Project Invoices"). These Project Invoices provided even greater detail as to each employee's daily work on particular projects. For example, a Project Invoice for May 2013 demonstrates that on May 5, 2013, a particular MWW/Brushfire employee "[performed] logistical planning for street teams," "[s]et up tent and table, gave out postcards and t-shirts," and "[e]ngaged the public and informed them of what we will be doing at the shore throughout the summer." Importantly, this level of detail assured the State that MWW/Brushfire's labor charges were accurate, verifiable and reasonable.

The Time and Expense Reports, Project Invoices and general monthly invoices that MWW/Brushfire submitted to the State, together with proper invoices for its labor costs, were sufficient to allow the State to: (1) review specific project labor costs for inaccuracies (e.g., overbilling or double billing); and (2) otherwise confirm the accuracy and reasonableness of the labor costs. Moreover, in compliance with the contract between the State and MWW/Brushfire, these time and expense reports were submitted monthly to the State along with MWW/Brushfire's invoices for payment. Also in compliance with the contract, the time and expense reports allowed the State to examine labor costs on an even more granular basis (daily) than called for by the contract (weekly). Thus, the State clearly possessed ample supporting documentation before disbursing payment to the contractor MWW/Brushfire for its labor costs.

Nonetheless, we recognize OIG's concern that the State did not fully comply with Federal regulations because it did not possess information about each employee's total compensable activity (including hours worked for other clients) when it paid invoices submitted by MWW/Brushfire. See 2 C.F.R. Part 225. Going forward, the State will adhere to this technical requirement (which is seemingly

an anti-fraud measure designed to discourage over-billing), and will require its contractors to submit timesheets which account for each employees' total daily hours irrespective of client.

**State Responses to OIG's Recommendations:**

**1A.**

**Comment 22**

The State has provided documentation to demonstrate that the contract for tourism and marketing services was fair and reasonable in price. The State engaged ICF International to prepare an independent cost estimate of its tourism marketing program. ICF's estimate indicates that a campaign of the scope and size of the "Stronger than the Storm" campaign would cost approximately \$24.1 million, or about \$900,000 more than MWW/Brushfire's winning bid of \$22,447,375. Further, evidence of cost reasonableness for the entire contract was demonstrated when the State received four competitive bids that, in the aggregate, reflected a reasonable market range among the bidders. The bids received by the State ranged from a top line of slightly more than \$27.5 million to a low bid of slightly more than \$23.2 million. Indeed, the low bidder, MWW/Brushfire, was ultimately awarded the contract. Through the ICF independent cost estimate and four competitive bids received, HUD has assurances that the budgeted contract amount was fair and reasonable; therefore, it is not necessary for the State to repay federal funds.

**1B.**

**Comment 22**

The State has provided ample documentation demonstrating that the funds disbursed for marketing costs, in the amount of \$19,499,020, were fair and reasonable. Consistent with industry standards, MWW/Brushfire leveraged its extensive media buying experience and knowledge of media markets to negotiate fair and reasonable prices for the State. Additionally, events management and public relations production services that were procured for the campaign were properly solicited and reasonably priced. For non-media goods and services, MWW/Brushfire was required to demonstrate that the cost of goods and services was reasonable within the marketplace by, among other things: (i) comparing the cost with other vendors; (ii) requesting after-the-fact competitive quotes; or (iii) demonstrating that the prices paid for goods and services during the "Stronger than the Storm" marketing campaign were consistent with pre-Sandy prices. The State previously provided OIG with evidence of each expenditure and supporting documentation demonstrating cost reasonableness. Through this documentation, HUD has assurances that the contractor acquired services and products competitively; therefore, it is not necessary for the State to repay federal funds.

**1C.**

**Comment 23**

The State had detailed documentation to support the labor costs invoiced by MWW/Brushfire at the time that the State paid the invoices. That documentation, which included monthly invoices from MWW/Brushfire, Time and Expense Reports and detailed Project Invoices for MWW/Brushfire employees performing the associated work, were sufficient to allow the State to: (1) review specific project labor costs for inaccuracies (e.g., overbilling or double billing); and (2) otherwise confirm the accuracy and reasonableness of the labor costs. In fact, the time and expense reports required by MWW/Brushfire's contract with the State allowed the State to examine labor costs on an even more

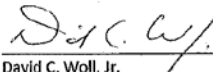
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granular basis (daily) than called for by the contract (weekly). Nonetheless, New Jersey recognizes OIG's concern that the State did not fully comply with Federal regulations because it did not possess information about each employee's total compensable activity (including hours worked for other clients) when it paid invoices submitted by MWW/Brushfire. See 2 C.F.R. Part 225. Going forward, the State will require its contractors to submit timesheets which account for employees' total daily hours irrespective of client.

1D.

The State's process and procedures for procurement, assuring cost reasonableness of goods and services, and verification of time sheets to support wages and salaries charged to the program, are comprehensive and sufficiently ensured compliance with applicable Federal standards. However, it is always in the State's best interest to periodically review and revise policies and procedures. The State will continue to consult with our partners at HUD to ensure the policies are in compliance with applicable Federal standards.

Very truly yours,



David C. Woll, Jr.  
Director

Superstorm Sandy Compliance Unit

## OIG Evaluation of Auditee Comments

- Comment 1** The State contended that its tourism marketing campaign was implemented in compliance with applicable laws and regulations. We found, however, that the State did not procure services and products for its tourism marketing program in a manner that met the intent of all Federal procurement requirements.
- Comment 2** The State contended that it was not required to conduct a pre-bid cost estimate or post-bid cost analysis for its tourism marketing campaign. It also contended that, had it been required to conduct a pre-bid cost estimate or post-bid cost analysis, its efforts to estimate and evaluate costs were sufficient to meet State and Federal standards. As stated in the audit report, the State was required to conduct a pre-bid cost estimate and post-bid cost analysis. The State certified to HUD that its procurement policies and procedures were equivalent to the Federal procurement requirements. However, its actions did not demonstrate compliance with the intent of the Federal standards.
- Comment 3** The State contended that it provided documentation demonstrating cost reasonableness and in all respects complied with applicable Federal and State laws and regulations. As stated in the audit report, the State began providing documentation that it believed demonstrated that costs were fair and reasonable after we notified it of the problem. Actions taken to resolve audit issues require input from HUD. Therefore, HUD needs to assess whether the documentation provided at the end of the audit and any additional documentation the State provides after the audit are sufficient to demonstrate that costs were fair and reasonable.
- Comment 4** The State believed that it had sufficient documentation justifying all contract labor costs when it paid invoices associated with those costs. As stated in the audit report, the contract required the contractor to provide copies of weekly timesheets when submitting invoices for payment. The State, however, did not have the required timesheets at the time of the audit. As required by the terms of the contract, the State should have had weekly timesheets or equivalent personnel activity reports in its possession when it paid invoices as required by the terms of the contract.
- Comment 5** The State contended that a finding of non-compliance was not proper because it did not adopt the procurement requirements of 24 CFR Part 85, and therefore was not bound by its provisions. However, for this disaster recovery effort, unlike previous disaster recovery efforts, HUD required the State to either adopt the specific procurement standards identified in 24 CFR 85.36 or have a procurement process and standards that were equivalent to the procurement standards at 24 CFR 85.36. The reason for this requirement was our recommendation to HUD, in our audit report 2013-FW-0001, dated March 28, 2013, on HUD's State Community Development Block Grant Hurricane Disaster Recovery program for

hurricanes that hit the Gulf Coast States from August 2005 through September 2008. Based on our prior audits and a review of the program's data, we identified several lessons to be learned including in the area of procurement. To improve the effectiveness and efficiency of the program, we recommended that HUD include the procurement standards in 24 CFR 85.36 in its future disaster recovery grant terms and provide procurement training and technical assistance to ensure that future disaster recovery grantees are aware of and follow Federal procurement requirements. HUD agreed with our recommendation.

Also, the State acknowledged in its procurement policy for Block Grant disaster recovery grants *that it was required as a grantee to adhere to the requirements at 24 CFR 85.36*. Accordingly, it complied and certified to HUD that its policies and procedures were equivalent to the procurement standards at 24 CFR 85.36. Furthermore, a State Executive Order, dated February 19, 2013, required that all proposed procurements funded with Sandy-related Federal funds be submitted to the Office of the State Comptroller for review. The Office of the State Comptroller required that all proposals for procurement be accompanied with a description of the goods or services to be provided and an estimate of the cost of the goods or services to be procured.

**Comment 6** The State contended that HUD expressly affirmed the adequacy of its procurement policy, including aspects relating to 24 CFR 85.36, when it approved the State's action plan and it justifiably relied on HUD's approval of its procurement policy when it went forward with the procurement process for the tourism marketing activity. It also contended that during two monitoring visits by HUD, HUD did not raise any concerns about its procurement policy during either visit. However, HUD relied on the State's certification that its procurement policies and procedures were equivalent to the Federal procurement requirements.

HUD's monitoring reviews did not focus on the State's compliance with the specific Federal procurement and cost principle requirements with which we took issue. In its July 2013 monitoring visit, HUD reviewed certain aspects of the State's procurement process. HUD spoke with staff from the State's Department of Community Affairs about its general protocol before awarding Block Grant disaster recovery-funded contracts. HUD noted that the process involved drafting the scope of work and a Request for Quotation, identifying the applicable Block Grant program, timeframe for completion of the work and a formal evaluation process for reviewing bids. HUD noted that the State's process appeared to be compliant with Block Grant requirements, and Federal Register notices. HUD noted that given the workload, additional staff and resources were needed to adequately accomplish contract management responsibilities. HUD also noted that the State generally complied with procurement transparency requirements but that some information was not easily obtainable from the State's Web site. Lastly, HUD reviewed four contracts, not including the \$25 million contract with MWW Group, for compliance with 24 CFR 85.36, the relevant Federal Register notices, and other authorities. HUD reported that all four contracts appeared to be

in compliance. Specifically, the contracts had a clear statement of work, provisions detailing Federal requirements, a proper method of procurement, complied with the Department of Community Affairs' procurement guidelines, and did not contain prohibited contract pricing, such as cost plus a percentage of cost.

In March 2014, HUD reviewed eligibility criteria and provided on-site technical assistance to the staff overseeing the "Stronger than the Storm" advertising campaign, including assistance to help the staff understand the audit process and purpose of our information requests. HUD noted that the State had disbursed \$23.5 million of the \$24.4 million it allocated for the campaign and listed the accomplishments that the State credited to the advertising campaign. HUD reported no findings and concerns related to the State's tourism efforts during this visit. HUD also reviewed the area of procurement. It noted that the State *had adopted 24 CFR 85.36 with regard to Federal procurement standards* and followed the procurement provisions found in the Federal Register Notice for Hurricane Sandy recovery grants. HUD reviewed seven sample procurement transactions including the \$25 million contract with MWW Group. HUD reported that the responsible staff was knowledgeable of the procurement process and walked the HUD staff through a contract file upon discussion of procurement (although it did not indicate which contract file was used during the discussion). HUD made several observations including that the contract files were extensive, well-organized, and easy to follow. The files contained an overall procurement checklist, along with documents such as the Request for Proposals and Request for Quotation with typical related information, and a copy of the executed contract. Additional contract file documents included the scoring and evaluation of the proposals along with a narrative and justification for selecting a particular vendor. Overall, HUD's review of procurement contained no findings or concerns. In general, we made the same conclusion. As stated in the audit report, the State's process for awarding a contract for marketing and outreach services complied with several key procurement requirements.

**Comment 7** The State contended that it complied with the provisions of 24 CFR 85.36(f) and estimated the costs for its tourism marketing campaign before receiving bids by (1) meeting with Louisiana disaster relief officials and reviewing actions taken by that State following Hurricanes Katrina and Rita, (2) conferring with and receiving the assent of HUD as to the appropriate amount of funds that should be included in a waiver application that the State submitted, (3) conducting an analysis of the costs incurred by the State for a previous tourism campaign, and (4) applying for and receiving a waiver from HUD for the estimated \$25 million cost of the tourism marketing campaign. However, these four actions do not demonstrate compliance with the provisions of 24 CFR 85.36(f). The State also contended that Federal regulations did not necessitate a post-bid cost analysis because the bids submitted to the State provided sufficient price competition. However, these actions, though prudent and required, did not satisfy the requirement to perform an independent cost estimate and analysis because the

State did not consider the contractors' proposed costs before it received bids or proposals and it did not determine whether the pricing of the separate elements that made up the total costs in the contractors' proposals were fair and reasonable. The State's request for \$25 million did not qualify as a cost estimate.

**Comment 8** The State contended that a cost estimate conducted at our request confirmed the reasonableness of its expenditures for the tourism marketing campaign and there was no basis for our finding as to the technical requirements of 24 CFR 85.36 (f). We did not request that the State conduct a post-hoc cost estimate. In February 2014, we presented the State a draft finding outline, which is part of the normal audit process, to inform it of our results and obtain feedback on the audit issues. The draft finding outline included a draft recommendation to HUD to direct the State to conduct an independent cost analysis. The cost report the State provided, dated May 13, 2014, incorrectly stated that the State had a waiver for the requirement to develop an independent cost estimate. It provided a high-level breakdown of estimated costs that would be associated with executing a similar campaign for the State's tourism marketing program. We could not determine the validity of the estimated costs because the cost report did not include sufficient backup detail information related to the specific cost categories. Also, the cost categories presented did not match the cost categories in MWW Group's proposal. In addition, the schedule of the estimated costs was incomplete because it indicated that indirect labor costs were yet to be determined. The State should have used information such as this to evaluate the bids before awarding the contract.

**Comment 9** The State believed that it demonstrated cost reasonableness in its procurement of goods and services for its tourism marketing campaign. As stated in the audit report, HUD needs to assess whether documentation the State provided at the end of the audit and any additional documentation it provides after the audit is sufficient to demonstrate that the prices the contractor paid were fair and reasonable for the marketing services and products. If not, we recommended that HUD direct the State to repay from non-Federal funds any amount that it cannot support.

**Comment 10** The State contended that it was not feasible, instructive or consistent with industry standards to require the contractor to solicit competitive bids from vendors before buying media advertising space due to the uniqueness of each respective media buy option. The State showed in the early stages of its procurement process that it was important for the contractor to solicit competitive bids because, in the contract with MWW Group, the State required the contractor to provide copies of at least three quotes or proposals when submitting vendor invoices for payment. However, shortly after the State awarded the contract, it waived the requirement because the contractor claimed that it would hinder its ability to move quickly on certain activities. Given the need to move quickly and the uniqueness of the availability and cost for products and services within the industry, the State should have documented a justification for non-competitive



procurements to explain why competition was limited before purchases were made. Federal cost principle requirements at 2 CFR Part 225, appendix A(C)(1)(a), required that in order to be allowable under a Federal award, costs must be necessary and reasonable.

**Comment 11** The State contended that it had detailed documentation to support the labor costs invoiced by the contractor at the time that it paid the invoices. As stated in the audit report, for MWW Group, the State provided billing worksheets that identified the employee, the number of hours worked by date and activity, the hourly rate, and the total amount due. For Brushfire, Inc., a subcontractor to MWW Group, the State provided backup worksheets for its invoices that identified the employee, the employee's job title, the number of hours worked by date, and the daily total cost. This documentation did not meet the terms of the contract because the contract required the contractor to provide copies of weekly timesheets for employees when submitting invoices for payment. At the time of the audit, the State did not have the weekly timesheets to support labor costs charged by the contractor's employees at the time it paid invoices. In addition to not meeting the terms of the contract, these billing worksheets and backup worksheets did not meet Federal cost principle requirements for supporting salary and wage compensation for personal services because they did not account for all the activities for which the employees were compensated. In addition, they were not signed by the employees. Federal cost principle requirements at 2 CFR Part 225, appendix B(8)(h), required the State to have personnel activity reports or equivalent documentation to support the distribution of employees' salaries or wages in instances in which they worked on multiple activities or cost objectives. This documentation was required to show an after-the-fact distribution of the actual activity of each employee. This included accounting for all activities for which each employee was compensated, being prepared at least monthly to coincide with one or more pay periods, and being signed by the employee. The State did not provide documentation that met these requirements.

**Comment 12** The State contended that, even if it was required to strictly comply with the Federal requirements, it estimated the costs of its tourism marketing campaign before receiving bids and did not need to perform a cost analysis because the bids it received provided sufficient price competition. While the Federal regulations at 24 CFR 85.36(f) provide that a cost analysis is necessary when price competition is lacking, the regulations also state that a cost analysis must be performed when the offeror is required to submit the elements of his estimated cost (for example, under professional, consulting, and architectural engineering services contracts). In this case, the bids the State received from contractors included the components of their total costs. Therefore, the State should have performed a cost analysis.

**Comment 13** The State contended that HUD expressly affirmed the adequacy of its procurement policy when it approved the State's action plan. However, HUD relied on the State's certification that its policies and procedures were equivalent

to the procurement standards at 24 CFR 85.36. The State was responsible for the accuracy of its certification to HUD.

**Comment 14** The State contended that *equivalent* does not mean *identical* and that it advised HUD of equivalent State-level regulations, made good faith efforts to communicate with HUD before issuing a Request for Quotation, and HUD did not assert that either a cost estimate or cost analysis was required. HUD relied on the State's certification that its procurement policies and procedures were equivalent to the Federal procurement requirements. Although the State did not adopt the Federal procurement standards, it needed to ensure that its alternate policies and procedures met the intent of the Federal requirements. Therefore, it needed to demonstrate that it developed a measure for evaluating the reasonableness of contractors' proposed costs or prices, and evaluated the separate elements that made up the contractors' total costs.

**Comment 15** The State contended that, in February 2014, we recommended it obtain a post-hoc independent cost estimate. We did not recommend that the State obtain a post-hoc independent cost estimate. In February 2014, we presented the State a draft finding outline, which is part of the normal audit process, to inform it of our results and obtain feedback on the audit issues. The outline included a draft recommendation to HUD to direct the State to conduct an independent cost analysis. We commend the State for being proactive and having an independent cost estimate completed. However, the issue related to the timing of the contractor's cost estimate report was not that it was 3 months after the February meeting but that the cost estimate was not completed before the State received bids or proposals. Additionally, we deleted the word "finally" from the report.

**Comment 16** The State contended that backup detail information relating to the contractor's cost estimate report was readily available before we issued our report and that we did not request it. However, the main issue raised in the audit report was that the State did not complete an independent cost estimate before it received bids or proposals. In addition, actions taken to resolve audit issues require input from HUD. Therefore, HUD needs to assess whether the documentation the State provided was sufficient to show that the overall contract price was fair and reasonable.

**Comment 17** The State contended that it should be given flexibility and latitude in establishing and interpreting its own procedures and standards for procurement in accordance with Block Grant program regulations. The State was granted flexibility to implement its tourism marketing program in that it received a waiver to spend Block Grant disaster recovery funds on activities that were otherwise ineligible. Also, the State had the flexibility to implement its own standards and procedures for procurement. However, since it acknowledged in its procurement policy that it was required to adhere to Federal procurement requirements at 24 CFR 85.36, it should have ensured that its procurement standards and procedures met the intent of the Federal requirements.

**Comment 18** The State contended that there was no three bid requirement because it waived the contractual provision requiring three bids for purchases. As stated in the audit report, shortly after the State awarded the contract, it waived the requirement because the contractor claimed that it would hinder its ability to move quickly on certain activities. Although the State had the authority to waive the specific contract requirement, it should have formalized the change and issued a contract modification because this action changed the terms of the contract and the regulations at 24 CFR 85.36(b)(9) required the State to maintain records sufficient to detail the significant history of the procurement. Moreover, in light of the lack of an independent cost estimate, the removal of the three bid requirement resulted in a lack of assurance that the contractor's expenditures totaling nearly \$20 million were reasonable.

**Comment 19** The State contended that the procurement methods it used for its marketing campaign were reasonable given the unique circumstances of the program. The State provided a detailed explanation as to why it believed the various purchases were reasonable. Given the need to move quickly and the uniqueness of the costs for products and services within the industry, the State should have documented a justification, such as the explanation it provided in its response to the audit report with documentation to support the explanation, for non-competitive procurements to explain and show why competition was limited before purchases were made.

Also, at the end of the audit, the State provided documentation that it believed supported some of the \$19.5 million in expenditures. This included documentation that it asserted was for production costs related to a similar campaign produced for the New Jersey Division of Travel and Tourism several years ago that cost more than the State's "Stronger than the Storm" commercial; an April 2013 invoice from a vendor to MWW Group for copywriting services for another client which showed that the hourly rate for this service at that time was the same hourly rate charged to the "Stronger than the Storm" campaign for copywriting services in August 2013; and rate cards for print ads in the New York Giants' yearbook and an ad in the 2013 Major League Baseball All-Star Game program with an explanation that it negotiated rates better than the rates advertised on the cards. Some quotes the State provided were obtained after we raised this issue with the State. To conduct a proper audit of the expenditures, an auditor would need to follow the trail from the State's disbursement, to the contractor's invoice, to the specific cost on the invoice, to the source documentation. We were not able to do this during the audit because the State did not have the source documentation readily available.

Actions taken to resolve audit issues require input from HUD. Therefore, HUD needs to assess whether documentation the State provided at the end of the audit and any additional documentation it provides after the audit is sufficient to demonstrate that the prices the contractor paid for marketing services and products totaling \$19.5 million were fair and reasonable.

- Comment 20** The State contended that Federal procurement guidelines contained in HUD Handbook 7460.8, REV 2, Procurement Handbook for Public Housing Agencies, applied to it. However, the handbook applies only to public housing agencies. The applicable regulations at 24 CFR 85.36 do not address micro purchases. Rather, for purchases that do not cost more than the small purchase threshold, currently set at \$100,000, price or rate quotations shall be obtained from an adequate number of qualified sources.
- Comment 21** The State recognized our concern and acknowledged that it did not fully comply with Federal regulations and stated that it would adhere to requirements going forward.
- Comment 22** The State believed that the documentation it provided was adequate to show that the overall contract price and funds disbursed for marketing costs were fair and reasonable and that it was not necessary for it to make any repayment. However, OIG recommendations are addressed to HUD program officials. Therefore, HUD program officials are ultimately responsible for ensuring that corrective actions satisfy the intent of the audit recommendations.
- Comment 23** The State believed that it had detailed documentation to support the contractor's labor costs at the time it paid the invoices. It recognized our concern and acknowledged that it did not fully comply with Federal regulations and stated that it would adhere to requirements going forward. However, HUD program officials need to determine whether the State's documentation is adequate to support \$3.5 million it disbursed for wages and salaries charged to the program by the contractors' employees.

## Appendix C

### SUMMARY OF AUDIT ISSUES

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Audit issue	When should action have been taken?	Criteria	Was adequate documentation available in the State's files during the audit?	When did the State begin taking action?
Lack of a cost estimate	Before receiving bids or proposals	24 CFR 85.36(f)(1)	No	May 2014
Lack of a cost analysis	Before awarding a contract	24 CFR 85.36(f)(1)	No	-
Lack of evidence of competitive procurement of services and products	Before making a purchase	24 CFR 85.36(c) and (d)	No	February 2014
Lack of employee timesheets	Timesheets should have accompanied invoices for payment.	Section 5 of the State's contract with MWW Group 2 CFR Part 225, appendix B(8)(h)	No	February 2014