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UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

New York State Can Improve Its Disaster Recovery Procurement Processes

Audit Report Number: 2025-FW-1001

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Highlights

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What We Audited and Why

We audited New York State's Hurricane Sandy disaster procurement processes. Our audit objective was to determine whether the State conducted its Hurricane Sandy-funded 2017 through 2023 disaster recovery procurements using full, fair, and open competition methods.

What We Found

By continuing to use a November 2012 Governor-issued temporary waiver of procurement provisions long after the disaster passed, the State did not foster open competition and did not ensure that it obtained the best services at the best prices. Our testing found that the State used the Governor's waiver to explain why it did not follow its contracting requirements when it (1) allowed six contracts to extend beyond 5 years, (2) did not follow its mini bid process for two contracts, and (3) entered into four contracts with initial terms of more than 1 year. As of the date of our fieldwork, the State indicated the waiver was not expired or explicitly superseded and was still valid and in effect. Further, the U.S. Department of Housing and Urban Development (HUD) has not issued any requirements instructing disaster recovery grantees to limit the use of waivers of procurement requirements. Although we agree a waiver of specific requirements, including those for procurement, might be needed immediately following a disaster, the State's continued use of a waiver 5 or more years after a storm does not appear to be reasonable or cost effective. The State's repeated use of the waiver led to numerous contract extensions that cost more than \$99 million and other contract changes that increased those contracts' costs by \$103 million.

In addition, the State can improve its disaster recovery procurement processes by addressing its procurement policy control weaknesses. Our review of 14 contracts found that the State's policies (1) allowed amendment agreements to lapse before entering a subsequent amendment or backdated agreements to a period before execution, and (2) did not address potential conflict-of-interest issues when they occurred. These issues occurred because Federal regulations¹ required the State to adopt and follow its own procurement requirements, and the State lacked key internal controls to ensure these issues were prevented. Further, the Housing Trust Fund Corporation (Corporation), which had oversight authority, gave the State authority to enter into contracts on its behalf. Improvement in the State's procurement processes for its remaining disaster recovery funds should ensure that the State (1) limits its potential liability for contractors' actions and costs, (2) provides full, fair and open treatment to prospective contractors, and (3) obtains the contracted services at the best value, all of which could result in improved program delivery to disaster impacted communities.

¹ The Office of Management and Budget's (OMB) Uniform Guidance at 2 Code of Federal Regulations (CFR) 200.317, Procurements by States and Indian Tribes, and HUD's State Community Development Block Grant Program requirements at 24 CFR 570.489(g), Procurement. See appendix B.



What We Recommend

We recommend that the Office of Community Planning and Development's Office of Disaster Recovery issue guidance to all disaster recovery grantees that waivers of requirements related to disaster's impact should be for reasonable and limited time periods after a disaster's occurrence. Further, the State should revise its procurement policies and procedures to improve its procurement processes and address the issues identified in this report, including taking steps to stop relying on a temporary authorization that waived procurement requirements long after the disaster's occurrence.

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Background and Objectives

In January 2013, Congress passed the Disaster Relief Appropriations Act, 2013, which appropriated to HUD's Office of Community Planning and Development (CPD) \$15.2 billion² to provide aid for recovery from Hurricane Sandy, which struck in October 2012, and other disasters occurring in 2011-2013. The 2013 Act required, for the first time, that grantees expend their funds within 24 months of the date on which HUD obligated the funds to them. Congress and CPD later took action to extend and ultimately waive the 24-month expenditure requirement due to the COVID-19 pandemic and to allow grantees the time necessary to complete activities to recover from the disasters.

CPD allocated more than \$4.4 billion in Community Development Block Grant Disaster Recovery (CDBG-DR)³ funds to the State of New York to assist in its recovery efforts. CPD announced the first allocation in a Federal Register notice in March 2013. CPD awarded the grant funds to the State in distinct rounds starting in March 2013 to stagger the funds awarded and to assist the State in meeting the initial 24-month expenditure deadline. In 2022 and 2023, CPD also allocated the State more than \$68 million in disaster recovery funds for recovery and resiliency efforts related to Hurricane Ida.

The State is required to follow disaster recovery requirements outlined in Federal Register notices specific to the congressional supplemental funding authority, which includes 31 notices for Hurricane Sandy and other disasters.⁴ The first Federal Register notice gave the State two options for conducting procurements: (1) in accordance with Federal requirements at 24 Code of Federal Regulations (CFR) 85.36⁵ or (2) in accordance with its own procurement standards that are equivalent to the Federal standards at 24 CFR 85.36. Initially CPD required that State grantees' procurement requirements be equivalent to Federal procurement requirements. However, in June 2016, CPD removed the equivalency requirement and required State grantees to follow their own procurement standards.⁶

In June 2013, the Governor of New York created a temporary agency, the Governor's Office of Storm Recovery,⁷ to handle Federal disaster recovery funding allocated in response to Hurricanes Sandy and Irene and Tropical Storm Lee. Organizationally, the State was a subsidiary of the Housing Trust Fund Corporation, which is a subsidiary public benefit corporation. The State operated independently and had its own senior management.

² The amount appropriated by Public Law 113-2 was reduced by sequestration according to the Balanced Budget and Emergency Deficit Control.

³ This report will use the term "disaster recovery funds" to refer to CDBG-DR funds.

⁴ HUD's Office of Inspector General (OIG) and the U.S. Government Accountability Office (GAO) previously reported on the need for codification of HUD's disaster recovery program, which would address grantees' administering their programs using rules outlined in multiple Federal Register notices. HUD OIG audit report 2018-FW-0002, HUD's Office of Block Grant Assistance Had Not Codified the Community Development Block Grant Disaster Recovery Program, issued July 23, 2018, and GAO Report GAO-21-569T, Disaster Block Grants Factors to Consider in Authorizing a Permanent Program, issued May 19, 2021.

⁵ Regulations at 2 CFR part 200 superseded 24 CFR 85.36.

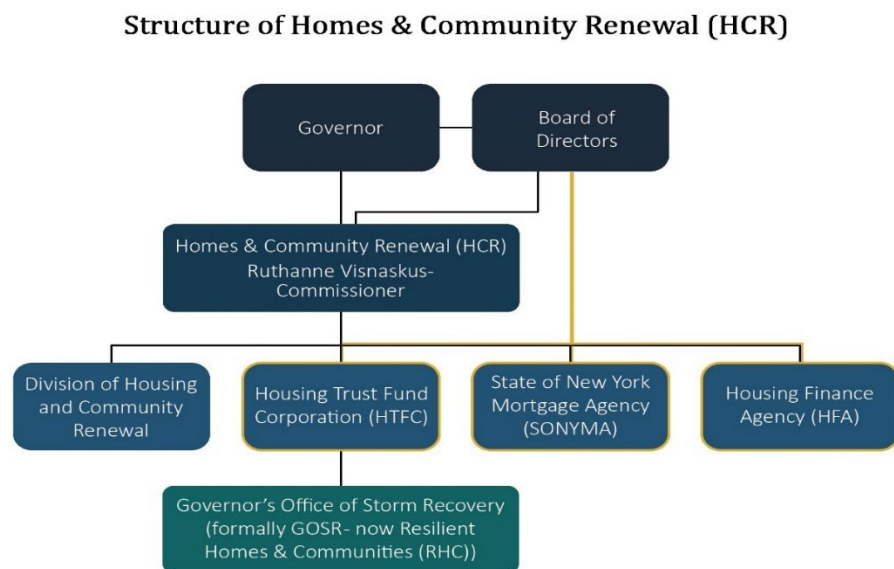
⁶ 81 Federal Register (FR) notice 36557

⁷ This report will refer to the Governor's Office of Storm Recovery, its successor entity, the Office of Resilient Homes and Communities, and the Office of Homes and Community Renewal, as the State.

On November 20, 2012, the Governor granted a temporary suspension of standard procurement requirements in response to Hurricane Sandy, which did not contain an expiration date. On September 20, 2013, the Corporation granted the State procurement authority to award, modify, and amend contracts conditioned upon continuing representations that all such contracts entered into would be done in full compliance with all applicable Federal, state and local laws, rules and regulations, Corporation policies, and CDBG-DR policies and guidelines. As required by Federal regulations,⁸ the State adopted its own separate procurement requirements on July 9, 2014. These procurement requirements differed from the Corporation's requirements. The State updated and made numerous revisions to the procurement policies, and the most recent policy provided was dated March 8, 2018. Although the Corporation granted the State procurement authority, the Corporation entered into the 14 contracts we reviewed. The contracts stated that the Corporation was authorized to administer disaster recovery funds in the State. Further, the contracts either listed the State as a "contract referee" or tasked it with monitoring and oversight of the contractor.

In October 2022, the Governor announced the creation of a permanent Office of Resilient Homes and Communities, which assumed the Office of Storm Recovery's portfolio.

Figure 1: Office of Resilient Homes and Communities organizational placement as of January 2024



Source: Office of Inspector General

Our audit objective was to determine whether the State conducted its Hurricane Sandy-funded 2017 through 2023 disaster recovery procurements using full, fair, and open competition methods.

⁸ 2 CFR 200.317 and 24 CFR 570.489(g), see appendix B.

Results of Audit

The State's Use of an Aged Waiver Did Not Foster Competition or Ensure the Best Services or Prices

By continuing to use a November 2012 Governor issued temporary waiver⁹ of procurement provisions long after the disaster passed, the State did not foster open competition and did not ensure that it obtained the best services at the best prices. Our testing found that the State used the Governor's waiver to explain why it did not follow its contracting requirements when it (1) allowed six contracts to extend beyond 5 years, (2) did not follow its mini bid process for two contracts, and (3) entered into four contracts with initial terms of more than 1 year. As of the date of our fieldwork, the State indicated the waiver was not expired, and it had not been explicitly superseded by a later Governor's administration. HUD has not issued any requirements instructing grantees to limit the use of waivers of procurement requirements. Although we agree a waiver of some specific requirements, like procurement requirements, might be needed immediately following a disaster, the State's continued use of a waiver of procurement processes 5 or more years after a storm does not appear to be reasonable or cost effective. The State's repeated use of the waiver led to numerous contract extensions that cost more than \$99 million and other contract changes that increased those contracts' costs by \$103 million.

The State Allowed Contracts To Extend Beyond 5 Years

The State repeatedly amended and extended 6 of the 14 contracts (43 percent) reviewed totaling almost \$130 million for periods ranging from 6 to 10 years even though it originally estimated that the agreements would not exceed 5 years.

Table 1: Six contracts whose terms extended beyond 5 years

Sample number	Original contract amount	Total amendment amount	Ending contract amount	Initial contract date	Amended contract end date	Contract term in years	Contract term extensions♦	Contract amount increase
2	\$10,000,000	\$48,480,000	\$58,480,000	5/16/2016	11/15/2023	7.50	6	485%
4	10,000,000	21,050,000	31,050,000	7/11/2017	7/17/2023	6.02	4	211%
6	5,000,000	21,100,000	26,100,000	9/7/2016	12/6/2023	7.25	4	422%
7	*	5,500,000	9,363,577^	11/27/2013	12/31/2023	10.10	6	
10	500,000	2,285,000	2,785,000	5/11/2015	1/28/2023	7.72	7	457%
13	*	1,220,600	2,178,436^	1/7/2015	7/27/2023	8.56	7	
Totals	25,500,000	99,635,600	129,957,014				34	391%

* Professional services contracts without an original contract amount, which instead contained an hourly billable rate. As an original amount did not exist, a percentage of the amount of the contract increase could not be calculated.

^ Calculated the ending contract amount in samples 7 and 13 by adding the total amendment amount to the amounts the State had spent before it executed the first amendment that increased the contract amount.

♦ Most contracts in this table were renewed on or around an annual basis, see the report section detailing that the State allowed contracts to lapse.

⁹ We used the term "waiver" to refer to the "State Compilation of Codes, Rules and Regulations of the State of New York, Title 9. Executive Department, Subtitle A. Governor's Office, Chapter I. Executive Orders, Part 8. Executive Orders (Andrew M. Cuomo), 8.79 Executive Order, No. 79: Temporary Suspension of Provisions Related to State Contracts and for the Repair of State Facilities for the State Disaster Emergency."

The State's procurement policy stated that contracts projected to exceed 5 years without a new competitive award process required concurrence of the Housing Trust Fund Corporation. However, the State used the Governor's 2012 waiver and the Corporation's delegation of authority to extend the contracts. Further, the State was inconsistent in its treatment of the six contracts, as all contracts amended in 2023 had the Corporation's approval. While it agreed that limiting contracts to 5-year terms is a best practice, the State said it used the waiver and the authority granted by the Corporation to extend contract terms beyond 5 years without the Corporation's approval (1) due to the depth of disaster recovery work required and (2) because it did not want to reprocur the services. Contracts that last more than 5 years could restrict competition, and this condition resulted in the State's not providing other contractors with a fair and open opportunity to bid for the work. Further, if the State had solicited for the various services after 5 years, it could have potentially obtained the contracted work for a better price. In addition, continued reliance on an aged disaster emergency waiver from a prior Governor, more than a decade after the disaster event, does not appear reasonable.

The State Did Not Follow Its Mini Bid Process on Two Contracts

The State did not follow its mini bid process¹⁰ when awarding two contracts,¹¹ which totaled \$126 million after 12 amendments. It initially awarded one contract in 2015 for \$7 million and the other in 2020 for \$16 million, for a total of \$23 million. Although the documents indicated that the State intended to use mini bids after it performed a competitive solicitation to select a group of qualified firms to perform specific tasks, it did not do so. Instead, a State official said it chose the contractor for these two contracts based on direct assignment, similar to a single-source determination, due to factors such as experience, rates, knowledge, and prior work. When asked about a lack of evidence for minibids, an official said the State relied on the Governor's 2012 temporary emergency waiver, which allowed the State to exclude procurement steps that hindered or slowed disaster recovery. Relying on "temporary" emergency waivers for multiple years, in this instance up to 8 years, does not appear reasonable or related to an immediate emergency. Further, this practice may impede full, fair, and open procurement competition by other contractors on the prequalified list. Because it used the temporary emergency waiver instead of going through its established mini bid process, the State lacked assurance that it obtained the best services at the best price for these two contracts.

Relying on the Governor's 2012 waiver, the State entered into 12 contract amendments for the two mini bid contracts that originally totaled \$23 million and increased the contracts' total costs to \$126 million.

¹⁰ According to the State's policy, a mini bid is a solicitation from a pool of eligible contractors for specific tasks that are within the contract scope of services. Mini bids may be conducted when a request for proposals results in a multiple award for the same scope of services.

¹¹ Only 2 of the 14 contracts reviewed had mini bid language in the procurements.

The State Entered Into Four Contracts With Initial Terms of More Than 1 Year

The State's procurement policy¹² required the Corporation's approval for contracts with terms greater than 1 year. However, for 4 of the 14 contracts reviewed, the State entered into agreements with initial terms of 2 or more years without Corporation approval.

Table 2: Four contracts with initial terms of more than 1 year without Corporation approval

Sample number	Original contract date	Original term in years	Extended contract end date	Years past original contract end date	Number of times contract extended
7	11/23/2013	2	12/31/2023	8.10	6
8	7/8/2014	2	12/31/2018	2.48	3
12	11/1/2022	2	10/31/2024	0.83	0
14	12/1/2018	3	11/30/2023	3	2

In these four contracts, the State did not demonstrate that it obtained or documented the Corporation's approval. According to an official, the State entered into these extended disaster recovery agreements because it needed longer timelines for completion. Further, the State generally used the 2012 waiver authority to not follow State requirements. However, two of the four contracts had amendments which were executed 6 to 10 years after the waiver was issued. In addition, the State said the Corporation granted the State signatory authority on behalf of the Corporation as necessary and appropriate for carrying out its disaster recovery action plan in September 2013, which meant that the Corporation needed to see these agreements only as information items rather than approval items. By entering into contracts with longer terms, the State did not treat all contractors and their contracts in a full, fair and open manner in accordance with its written policies, and it cannot assure stakeholders that it got the best services at the best price.

Conclusion

Continuing to use a 2012 temporary waiver for a State disaster emergency to avoid normal procurement requirements several years after a disaster prevents competition and could lead to different treatment for contracts that are intended to benefit impacted communities. As responding to and recovering from a disaster is a long-term process which can take years and even decades, procurement waivers can be needed in disaster impacted areas due to urgent health, welfare, and safety issues. Thus, CPD and the State should visit this issue and assess the continued need for extended waivers for current and future disasters as the continued use of them could potentially affect the services obtained and increase contract costs. Further, the State should take action to ensure that it has controls to ensure its existing procurement procedures are followed.

¹² OMB's Uniform Guidance and HUD's State CDBG program regulations require State grantees to follow their own procurement standards. See appendix B.

Recommendations

We recommend that the Director of the Office of Disaster Recovery

1A. Issue guidance, including technical assistance, to all disaster recovery grantees that waivers for issues related to a disaster's impact, like waivers of procurement policies, should be for reasonable and limited time periods after a disaster's occurrence to ensure full and open competition.

1B. Require the State to include in its procurement policy a reference to the New York State law which limits a State waiver of policies to 30 days unless renewed and to ensure that it clearly states whether the law affects the Governor's 2012 waiver. Further, if it does not affect the 2012 waiver, require the State to take action to limit the use of that waiver to ensure full and open competition.

1C. Require the State to implement a control, including documenting exceptions, to ensure that all contracts that exceed 5 years are approved by the Corporation.

1D. Require the State to implement a control to ensure that it follows its mini bid process to ensure that it obtains the best services for the best price or document those exceptions and have the Corporation's approval for them.

1E. Require the State to implement a control to ensure that it follows its procurement policy and limits contract terms to 1 year unless it has the Corporation's approval and it documents those exceptions.

Management Responses

In its written response, the State's management stressed that the Governor's Office of Storm Recovery was rebranded and incorporated into the Homes and Community Renewal's (HCR) public benefit corporation, the Housing Trust Fund Corporation (Corporation), in October 2022. Further, the Corporation formalized this action in February 2023. The State stressed that its long-standing and strictly followed policies had already addressed the recommendations. It also said that it has a tracker for contracts approaching their fifth year to ensure contracts are renewed prior to the end date and that Corporation's board resolutions document exceptions to one-year contract terms. Further, the State stated that New York already had requirements in its State Executive Law, at section 29-a, which says that waiving any State law in response to an emergency, including State procurement rules, expires after 30 days, unless extended.

HUD CPD also provided written comments. It generally agreed in principle with the recommendations but expressed concern that the OIG's recommendations would conflict with OMB's Uniform Guidance for procurements by States,¹³ HUD's State CDBG Program regulations for procurements,¹⁴ and Executive Order 14219, "Ensuring Lawful Governance and Implementing the President's Department of Government Efficiency' Deregulatory Initiative." HUD CPD also stressed that States are permitted to

¹³ 2 CFR 200.317

¹⁴ 24 CFR 570.489(g)


adopt their own procurement policies and stated that the OIG's use of the word "allow" may mischaracterize regulatory flexibility. Further, HUD CPD discussed the concept of maximum feasible deference, which gives considerable weight to a State's interpretation of the CDBG statutory and regulatory requirements. Its response also stated that the State was legally allowed to grant waivers independent of HUD. HUD CPD stressed that it supports the intent to strengthen internal controls but noted that implementation falls to the State, which limits HUD to providing guidance to encourage voluntary adoption. HUD CPD also discussed its belief that there is no strong statutory basis for developing new regulations restricting the State's use of procurement waivers. Lastly, HUD CPD stated setting broad requirements for recommendations 1A-B may not be feasible. Therefore, HUD CPD requested that 1A be removed and it also provided alternative language for recommendations 1B-E, which all included technical assistance provisions.

OIG Evaluation of Management Responses

Although we appreciate the State's comments concerning its dedication to following its procurement requirements, its employees did not follow them. The State extended four of the six contracts for more than 5 years after the State placed oversight under the Corporation in February 2023, and the State did not seek new competition for these contracts. The State's comments regarding the November 2012 waiver and New York State Executive law¹⁵ limiting waivers to 30-days contradicted its July 2024 written comments. The Corporation's Homes and Community Renewal staff stated in writing to our audit questions that the November 2012 waiver suspended procurement requirements, and no future executive order explicitly superseded it. This shows that State staff improperly relied for years on a 2012 waiver, which it could not show that it appropriately extended. Since the New York Executive law limiting waivers provided in its response to the audit has existed since at least September 2014, the Corporation's policies still have room for improvement, and its policies should include reference to the State's law limiting waivers to 30 days unless renewed. Doing so should ensure the State complies with full and open competition requirements and operates its disaster recovery program in an efficient and effective manner. Therefore, we revised recommendation 1B's language to reference the New York State Executive law in its policies. The State should work with HUD during the audit resolution process to implement the recommendations.

We agree with HUD CPD's assertion that OMB's and HUD's regulations require States to follow their own procurement policies. However, HUD CPD's rules and Federal regulations require a State to establish procurement policies based on full and open competition. The State's continued waiving of procurement requirements long after the disaster did not allow full and open competition. Further, even though the State said that its laws limited suspensions of rules to 30 days unless renewed, our audit showed that the State did not follow this requirement for some of the reviewed contracts, which shows that both HUD CPD and the State need to adopt additional guidance and internal controls. Our recommendation to HUD CPD only included language to issue guidance and not new regulatory requirements. Additionally, regarding HUD CPD's maximum feasible deference discussion, we have previously noted that the term maximum feasible deference is not in the Housing and Community Development Act of 1974. Instead, CPD noted in its public guidance regarding State CDBG that the term was created by HUD's Office of General Counsel. The guidance states that HUD created the theory of maximum feasible deference to (1) provide for minimal regulation beyond the statute and (2) allow States to adopt more restrictive

¹⁵ Consolidated Laws of New York, Executive Law, Chapter 18, Article 2-B, section 29-a. Suspension of other laws, see appendix B.



requirements as long as they do not contradict or are not inconsistent with the 1974 Act. In practice, however, States have used this concept, with the implicit support of HUD, to adopt less restrictive requirements.

Based on HUD CPD's comments, we revised recommendation 1A to include a reference to "technical assistance." We will work with HUD during the audit resolution process to ensure that the recommendations are addressed.

The State Can Improve Its Disaster Recovery Procurement Processes

The State can improve its disaster recovery procurement processes by addressing control weaknesses within its policy. Our review of 14 contracts found that the State (1) allowed amendment agreements to lapse before entering a subsequent amendment or backdated agreements to a period before execution, and (2) did not address potential conflict-of-interest issues when they occurred. These issues occurred because the State's procurement requirements lacked controls or contained weaknesses. Further, the Housing Trust Fund Corporation, which had oversight authority, gave the State authority to enter into contracts on its behalf. Procurement process improvements will ensure that for its remaining Hurricane Sandy and Ida disaster recovery funds, the State (1) limits its potential liability for contractors' actions and costs, (2) provides full, fair and open treatment to prospective contractors, and (3) obtains the contracted services at the best value.

The State Allowed Some Agreements To Lapse and Backdated Others

As shown in table 3, the State allowed amendment agreements to lapse before entering a subsequent amendment or backdated the agreements to a period before execution. These issues continued from shortly after the initial Hurricane Sandy disaster to the current period. For example, the contracts reviewed had backdating that started in 2014 and ran through 2022. Further, the State's lapses in contracts and amendments ran from 2016 through 2023.

Table 3: Summary of lapsed and backdated agreements

Agreement reviewed	Total number reviewed	Number lapsed	Number backdated
Contract	14	0	12
Amendment	97	44	7
Totals	111	44	19

As shown in table 4, the number of days the amendments had lapsed before a new agreement was executed varied and ranged from 8 to 257 days, or more than 8 months. Further, the number of backdated days in agreements ranged from 1 to 126 days, or more than 4 months.

Table 4: Range of days for lapsed and backdated agreements

Agreement type and issue	0 to 30 days	31 to 60 days	61 to 90 days	91 to 120 days	121 or more days
Contracts backdated	3	8	0	1	0
Amendments backdated	4	1	1	0	1
Amendments lapsed	19	14	7	0	4
Totals	26	23	8	1	5

The State indicated that the lapses and backdating occurred because it is a large entity with many programs, and it took time and coordination across departments and parties to execute the agreements. We determined that the State did not have a policy or process with controls to prevent contract lapses from occurring. An effective contract oversight system, which identifies contracts that are nearing their expiration term and tracks contracts that need execution, could prevent such lapses and backdating.

Because the State allowed contractors to work when it did not have executed agreements in place, the State's actions could have resulted in the contractors' incurring expenses and exposing the State to potential liability for contractors' actions when no agreement was in place.

The State Allowed Significant Amendments Without Outside Oversight

In 13 of the 14 contracts reviewed, the State entered into 61 contract amendments that included a significant change, which increased (1) the scope of work, (2) the total contract amount by 10 percent or more of the original contract amount, or (3) both the scope and amount. These contract amendments were not subject to outside oversight and review, such as by the Corporation. Of the 13 contracts that had a significant change, amounts increased from an initial total of \$63.8 million to more than \$234 million, which is a 367 percent increase in the amount that the State initially expected to spend on the contracts' projects. We determined that the State's adopted procurement policy did not contain language to address outside oversight and review of significant contract amendments like the Corporation's policy did. The State confirmed that its policy did not contain oversight requirements to allow it to manage its multi-billion-dollar grant and balance the emergency nature of the storm. In addition, the State said that the Corporation gave it the authority to execute contracts without the Corporation's approval. However, the State awarded 51 of 61 amendment agreements in 2017 or later, which was 5 or more years after the storm had passed, indicating that the emergency nature of these procurements was no longer a factor. As a result, the State could not show that it took steps to ensure that the scope and amount increases were reasonable. Further, the State spent significantly more on the contract projects than initially anticipated under emergency authority long after the emergency had subsided.

The State Did Not Address a Potential Conflict of Interest in a Timely Manner

Although a potential conflict of interest had been identified in January 2015, the State did not formally address and document its resolution of the issue until December 2020 in an investigation report. An embedded consultant¹⁶ at the State left in March 2014 and formed a consulting firm. The new consulting firm subcontracted with another consulting firm that submitted a bid to the State for disaster recovery services in January 2015. The State awarded the contract to the bidding consulting firm in May 2015. The State concluded that the consultant likely participated in drafting the State's request for qualifications for the contract and the individual was aware of it before its release. As this individual had inside knowledge, we concluded that this individual likely had an advantage over other potential contractors. The State did not document that it took any action regarding this conflict of interest. This issue occurred because the State's ethics and conflict-of-interest policy for employees did not address whether or how these policies applied to embedded consultants. Additionally, the State lacked a policy regarding how it would handle complaints. Further, the State's contractor certifications regarding conflicts of interest covered only entities and did not cover conflicts of interest for individuals who worked for those entities or subcontracted entities. As a result, the State could not show that it awarded

¹⁶ An embedded consultant is a technical expert who brings specialized knowledge and expertise. These consultants are deeply embedded in the organization. This individual was not a State employee.

this contract using full, fair, and open methods of competition or that it obtained the best services at the best value. In 2024, the State said it no longer used embedded consultants.

Conclusion

The State can improve its procurement processes to ensure disaster funds are awarded based on full, fair, and open competition, which could result in improved program delivery to disaster impacted communities. Since grantees often take years to spend these funds, the State has opportunities to strengthen its existing procurement processes. Adopting strong controls over its procurement process should ensure that the State spends the remaining and newly awarded funds in a cost-effective manner and in a way that promotes fair, full, and open competition. Although the State has spent a significant portion of the Hurricane Sandy disaster recovery funds, it recently received additional disaster recovery funds totaling \$68 million for Hurricane Ida which will benefit from strengthened procurement processes.

Recommendations

We recommend that the Director of the Office of Disaster Recovery require the State to

- 2A. Revise its procurement policies, practices, and controls to ensure that it executes and renews contracts in a timely manner to prevent lapses and backdating of agreements.
- 2B. Revise its procurement policies to include requiring Corporation oversight for material changes in an agreement's scope or amount.
- 2C. Revise its ethics, conflict-of-interest and contractor certification policies and forms to address issues that can arise, including when using embedded consultants.
- 2D. Create and implement a policy that documents how it handles and addresses conflict of interest complaints.


Management Responses

In its written response, the State's management indicated that existing policies addressed recommendations 2A and 2B, and that it would revise its conflict-of-interest policy to address recommendations 2C and 2D.

HUD CPD's written response agreed in principle with the recommendations. Rather than require the State to make changes to its policies and controls, it wanted to provide technical assistance to the State to ensure that the State meets Federal procurement requirements. As such, HUD CPD requested the OIG to revise the recommendations to reflect that it will provide technical assistance.

OIG Evaluation of Management Responses

While management believes existing policies addressed most of the issues found, our results identified that the State's employees did not follow the Corporation's existing procurement policies. Eight of 11 amendments reviewed that the State executed from February 2023 to December 2023, which was after the Corporation formally assumed oversight, had lapsed. Further, the State signed 1 of the 11 amendments in November 2023 and backdated it by 34 days. As a result, we believe that the



Corporation also has a need to improve its compliance with its policies, which should improve the effectiveness and efficiency of its contracting.

We appreciate the State taking action to revise its conflict-of-interest policy to address recommendations 2C and 2D. The State should work with HUD during the audit resolution process to implement the recommendations.

We appreciate that HUD CPD agreed in principle with the identified issues. We did not revise our recommendations as requested as we believe the State's policies need revisions to strengthen its controls to ensure that it spends its remaining and future disaster recovery funds in a cost-effective manner and in a way that promotes fair, full, and open competition as required by OMB's Uniform Guidance and HUD's State CDBG procurement requirements. We will work with HUD during the audit resolution process to ensure that the recommendations are addressed.

Scope and Methodology

We conducted the audit at the State's office in New York City, NY, and in our offices in Texas. We conducted our audit work from January through October 2024. Our audit period was January 1, 2017, through December 31, 2023.


To accomplish our audit objective, we reviewed

- A total of 14 contracts and their 97 amendments, including various supporting procurement documentation, identified as having potential full and open competition issues. We expanded our scope to include the original procurement agreements that were amended during our scope period.
- All 31 Federal Register notices issued from March 2013 through January 2024 for the disaster recovery program relevant to Hurricane Sandy.
- The Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments that were in effect from the grant origination in 2014 through the December 2023 scope period.
- Office of Inspector General (OIG) audit report 2018-FW-0002, HUD's Office of Block Grant Assistance Had Not Codified the Community Development Block Grant Disaster Recovery Program, issued July 23, 2018.
- U.S. Government Accountability Office (GAO) audit report GAO-21-569T, Disaster Block Grants Factors to Consider in Authorizing a Permanent Program, issued May 19, 2021.
- The Disaster Relief Appropriations Act, 2013.
- The State's policies and procedures related to procurement and ethics.
- The Corporation's original policies and procedures adopted in December 2013 and amended multiple times throughout our scope period related to procurement and the current ethics policy.
- The State's financial and procurement control certifications from 2013 through 2018.
- The organizational structure and web pages of the Corporation and the various State agencies to obtain background information.
- A State internal audit report, dated January 2022.
- Multiple State internal investigation reports related to contracts in our scope.
- The Corporation's board minutes granting the State authority to enter into contracts.
- The Governor's temporary waiver Executive Order, dated November 2012.
- Grant agreements between HUD and the State from 2013 through 2017 for Hurricane Sandy funding.
- A HUD monitoring report of the State, dated July 2023.

We also interviewed

- State staff about the State's procurement policies and procedures.
- HUD staff.

We assessed procurement controls established by the State and the Corporation during our expanded scope of work. We determined that the State's internal controls over procurement were at risk due to its reliance on a waiver, which allowed it to suspend specific provisions during the disaster emergency, and



because the State adopted and followed its own procurement policy. We did not review payments for the 14 contracts, including any payments that may have occurred when the contracts lapsed or for backdated periods.

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 objective.

Appendixes

Appendix A – Management Responses

State of New York Management’s Response

The State of New York’s Office of Home and Community Renewal provided the following comments.



August 1, 2025

Office of Inspector General
US Department of Housing and Urban Development
Attention: Theresa Carroll, Assistant Audit Director

New York State Homes and Community Renewal (HCR) would like to thank you for the opportunity to respond to your draft audit recommendations regarding the procurement practices of the Office of Resilient Homes and Communities (RHC), formerly known as the Governor’s Office of Storm Recovery (GOSR).

As previously discussed, when the office was first created immediately following Super Storm Sandy, GOSR was acting largely independently from HCR. In October 2022, the Governor announced the decision to make this office permanent, rebranding it as RHC and fully incorporating it under HCR’s public benefit corporation, the Housing Trust Fund Corporation (HTFC). This action was formalized by written resolution and approved by the HTFC Board of Directors in February of 2023 (see Attachment 1).

The integration of RHC fully under the auspices of HTFC is important in addressing several of the recommendations contained in your draft audit report. As outlined below, HCR believes many of the recommendations you have cited in your draft report are fully addressed based on long standing and strictly adhered to written policies that govern HTFC procurement practices (see Attachment 2). Furthermore, since taking over responsibility for oversight of RHC, HTFC has ensured that all of the existing procurement guidelines have been adhered to with respect to RHC contracts.

Below is a more detailed response to each of the recommendations contained in your draft audit report:

- **Recommendation 1A.** Issue guidance to all disaster recovery grantees that waivers for issues related to a disaster’s impact, like waivers of procurement policies, should be for reasonable and limited time periods after a disaster’s occurrence

RHC Response: As you confirmed in our exit call on July 28th, 2025, this recommendation is only actionable by HUD’s Office of Disaster Recovery and not by RHC.

- **Recommendation 1B.** Require the State to develop and implement a policy that sets an expiration date or required renewals for temporary procurement waivers which are issued as a result of a disaster to limit their use to a reasonable period after a disaster’s occurrence.

RHC Response: Under section 29-a of the New York State Executive Law, Executive Orders waiving any State law in response to an emergency, including but not limited to State procurement rules, expire after 30 days unless renewed.

- **Recommendation 1C.** Require the State to implement a control, including documenting exceptions, to ensure that all contracts that exceed 5 years are approved by the Corporation.

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RHC Response: As stated above, this recommendation is well covered by an HTFC Procurement Guideline, under Article 9.b.ii, which states:

Any determination not to enter into a new competitive award process, as a result of which a Contract would exceed a projected five years without a new competitive award process being conducted, shall require the affirmative concurrence of the Corporation's Members included in a resolution adopted by the Corporation's Members, as required by Article X of these Guidelines. Such affirmative concurrence shall not be required in relation to Single Source Contracts, Sole Source Contracts, existing State Agency or Authority Contracts or existing GSA Contracts.

Moreover, RHC maintains an internal tracker to keep track of all contracts that are approaching their fifth year and works with relevant program staff to ensure those contracts are brought back to the HTFC Board of Directors for renewal prior to contract end date.

- **Recommendation 1D.** Require the State to implement a control to ensure that it follows its mini bid process to ensure that it obtains the best services for the best price or document those exceptions and have the Corporation's approval for them.

RHC Response: Also contained in the existing HTFC Procurement guidelines is a section that specifically speaks to this recommendation. Per HTFC Procurement Guidelines Article 4.b:

Pre-qualified Panel. The Corporation may select Contractors for any Procurement activity from a qualified panel of potential Vendors and/or Contractors, selected on the basis of an RFP or RFQ. Such a panel must have been qualified by the Corporation, or by an Affiliate, State Agency, or State Authority. The purpose of using a pre-qualified panel is to allow aspects of the competitive process to be addressed early in a phased selection process. This is so that Vendors and Contractors on the panel can be subsequently engaged on an accelerated or more efficient basis. In accordance therewith, panels shall be administered so that the Contract award is based upon a formal evaluation of qualifications and/or the subsequent negotiation of fair and reasonable compensation for specific services actually required. At such time as a panel is utilized, the Corporation shall document for the Procurement Record with respect to that panel, which aspects of the competitive process (a) are being addressed prior to the panel's utilization and (b) shall be fulfilled subsequent to the establishment of the panel. The award of assignments to respective Vendors on a panel need not be based purely on competitive selection processes, to the extent that assignments based on distribution of workload, distribution of risk, and/or a policy of rotation intended to benefit the Corporation are reasonable. Panels shall be identified to the Corporation's Procurement Contract Officer, reported in the Annual Procurement Contract Report, and reviewed and recertified annually to the Corporation's Procurement Contract Officer by the Corporation Officer in charge of administering the panel.
(4.b.v)

In addition, it should be noted that while mini-bids or other evaluation criteria used to select a specific vendor from a panel do not require HTFC Board of Directors approval, the contracts and their "not to exceed" amounts are reviewed and approved by the HTFC Finance team.

- **Recommendation 1E.** Require the State to implement a control to ensure that it follows its procurement policy and limits contract terms to 1 year unless it has the Corporation's approval and it documents those exceptions.

RHC Response: Contained in HTFC's Procurement Guidelines, Article 10.a, it states:

Members' Approval. All Contracts where compensation is expected to be in an amount of \$100,000 or more, as well as any Contracts involving services to be provided in excess of one year, shall require initial approval of the Corporation's Members, unless they specifically delegate such approval authority by resolution to an agent of the Corporation. Unless specifically permitted by a resolution of the Corporation's Members, Procurement Contracts shall be for a term not exceeding one year and shall be terminable by the Corporation, at its option, without cause, within a period that is less than a year into the future. An Officer may submit other Contracts as he or she deems appropriate to the Corporation's Members for their consideration and approval
(10.a)

HTFC Board resolutions document exceptions to one-year contract terms. In addition, RHC, using the same contract tracker mentioned above, works with program staff to ensure reauthorizations are taken back to the HTFC Board of Directors prior to contract expiration.

- **Recommendation 2A.** Revise its procurement policies, practices, and controls to ensure that it executes and renews contracts in a timely manner to prevent lapses and backdating of agreements.

RHC Response: Per HTFC Procurement Guidelines Article 10.b:

Members' Annual Review. The Corporation's Members shall, at least annually, review any Contract lasting more than a year, each June, as part of the approval of the Annual Report on Procurement Contracts. Contracts considered as lasting for more than a year for this purpose shall include Contracts where the Contract itself, by virtue of its stated terms, has a period of longer than a year, and in addition, shall include Contracts where, by virtue of renewal or execution of new or subsequent Contracts without an intervening Contractor or Vendor Selection Process, the Corporation's contractual relationship with the Vendor or Contractor continues for more than a year. Annual approval or review by the Corporation's Members shall be as follows:

i. Provided that timely annual review for each Contract is affected, firms on Corporation panels can be brought for annual review:

(1) collectively, or in such combinations as are deemed appropriate, on a single annual review anniversary, or

(2) individually, based on the dates that Procurement Contracts first required the Corporation's Members' approval (10.b)

It should also be noted that the HTFC Finance team will not approve an invoice for payments if a valid contract is not in place.

- **Recommendation 2B.** Revise its procurement policies to include requiring Corporation oversight for material changes in an agreement's scope or amount.

RHC Response: Per HTFC Procurement Guidelines Article 10.f

Contract Amendments and Adjustments. An increase in funding which amount is less than 10% of the total original Contract amount, where there is no change to the scope of work, shall be approved by the appropriate assigned Senior Officer of the Corporation, as set forth in Article V of the Corporation's Bylaws, with the specified deliverables and supporting documentation, as applicable and shall not be

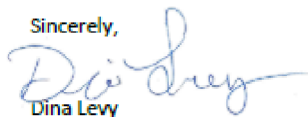
subject to approval by the Corporation's Members. An increase in funding which amount is 10% or more of the total original Contract amount must receive approval by the Corporation's Members, regardless of whether a change to the scope of services is proposed. If, however, an increase in the Contract award is a Critical Contract amendment, then the appropriate senior Officer of the Corporation and the Corporation's Counsel, or designee, may approve the amendment without prior approval by the Corporation's Members. If the exception is granted, then the information regarding the Critical Contract amendment shall be provided to the Corporation's Board at its next scheduled meeting. Any Contract amendment, regardless of whether there will be a change to the Contract amount, which results in a change in the scope of work to be undertaken pursuant to the Contract and/or where the term of the Contract will be extended, shall be presented to the appropriate senior Officer and Counsel for review and is subject to approval by the Corporation's Members.(10. f)

- **Recommendations 2C.** Revise its ethics, conflict-of-interest and contractor certification policies and forms to address issues that can arise, including when using embedded consultants; and **Recommendation 2D.** Create and implement a policy that documents how it handles and addresses conflict of interest complaints.

RHC Response: RHC agrees with these recommendations, and we are in the process of revising our conflict-of-interest policy to address these recommendations. Specifically, the new policy will ensure that all conflict-of-interest policies extend to any employee, temporary employee or contractor hired to do business on behalf of HTFC.

Again, we thank you for the opportunity to respond to this draft audit report. HCR believes the responses contained herein will satisfy or demonstrate meaningful progress toward addressing the recommendations raised by the OIG and hope that will be reflected as such in the final report. We also are happy to have an additional meeting if requested to answer any questions regarding this response.

Sincerely,



Dina Levy
Senior Vice President, Homeownership and Community Development
NYS Homes and Community Renewal

Attachments:

Attachment 1: Minutes of the Members' Meeting of the New York State Housing Trust Fund Corporation held On Thursday, February 16, 2023

Attachment 2: Procurement and Contract Guidelines of the Housing Trust Fund Corporation for Contracts

cc: Angela Russo, Assistant Director- NYRO
Office of Disaster Recovery

HUD Management's Response

HUD CPD's Office of Disaster Recovery provided the following comments.



OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

MEMORANDUM FOR: Kilah S. White, Assistant Inspector General for Audit, Office of Inspector General, GA

FROM: Gerilee W. Bennett, Acting Director, Office of Disaster Recovery,
DGR GERILEE BENNETT
Digitally signed by GERILEE BENNETT
Date: 2025.08.20 13:46:07 -04'00'

SUBJECT: HUD Comments for OIG Draft Audit Report – New York State Can Improve Its Disaster Recovery Procurement Processes

The Office of Community Planning and Development (CPD), Office of Disaster Recovery has reviewed the draft audit report of New York State's Hurricane Sandy disaster procurement processes under Community Development Block Grant – Disaster Recovery (CDBG-DR) funding. CPD offers the following comments on the draft audit report for consideration.

The U.S. Department of Housing and Urban Development (HUD) Office of Inspector General (OIG) reviewed whether the State conducted its Hurricane Sandy-funded 2017 through 2023 disaster recovery procurements using full, fair, and open competition methods. The OIG draft report indicated that by continuing to use a November 2012 temporary waiver for an extended period of time, the State did not ensure that it obtained the best services at the best prices.

HUD acknowledges the audit conclusions but requests clarification that, under 24 CFR 570.489(g) and the Uniform Requirements (2 CFR Part 200), States are permitted to adopt their own procurement policies when administering federal funds. However, language in the draft report may mischaracterize this regulatory flexibility. Specifically, on PDF page 2, the report states, "These issues occurred because HUD allowed the State to adopt and follow its own procurement requirements," and again on PDF page 6, "As allowed by CPD, the State adopted its own separate procurement requirements..." These statements incorrectly suggest that the federal grant Uniform Requirements and HUD-specific regulations that permit adoption of State procurement processes caused the identified deficiencies. HUD has been and will continue to provide technical assistance to the grantee to enable them to comply with federal procurement requirements. HUD respectfully requests that these sections be revised to clarify that any deficiencies resulted from the State's internal control weakness in implementing its own procurement process – not from the regulation. We request the OIG correct these sections to accurately reflect this.

Additionally, HUD notes that the procurement waiver referenced in the audit was issued by New York State and was within the State's legal authority to grant, independent of HUD. This poses an implementation challenge given HUD cannot retroactively impose limits or expiration requirements to a State-issued waiver. Setting such broad requirements, as described in recommendations 1A-B, may not be feasible. HUD supports the intent to strengthen internal controls, but notes that implementation hinges on the State's authority and willingness to revise existing policies, many of which are tied to the same waiver and to the State's broader emergency

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response framework. HUD is concerned that the OIG's recommendations would conflict with the Office of Management and Budget's state procurement requirements at 2 CFR 200.317 as well as the CDBG regulations for state grantees at 24 CFR Part 570.489(g). Furthermore, HUD operates under Executive Order 14219, "Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative," which instructs agencies to ensure that regulations have a strong statutory foundation. The Department does not believe that there is a strong statutory basis for developing new regulations restricting the State's use of procurement waivers.

Due to this being beyond the agency's legal authority and in conflict with the aims of EO 14219, we request the OIG modify the recommendations to request HUD to provide guidance to encourage voluntary adoption.

The discussion below includes CPD's comments on the specific OIG Recommendations:

OIG Finding 1: The State's Use of an Aged Waiver Did Not Foster Competition or Ensure the Best Services or Prices

OIG Recommendation 1A: HUD should issue guidance to all disaster recovery grantees that waivers for issues related to a disaster's impact, like waivers of procurement policies, should be for reasonable and limited time periods after a disaster's occurrence.

HUD Comment: HUD agrees with the premise of this recommendation that for certain waivers it is a good practice for grantees to consider the benefits of a time limitation or sunset provision. However, the Department is concerned with introducing time constraints on all waivers for all grantees based on one grantee's use of an aged procurement waiver.

The Department acknowledges that this recommendation stems from the State of New York continuing to use a State-issued 2012 temporary, unexpired procurement waiver which the OIG believes resulted in the State not using fair and open competition. However, HUD maintains that it has no regulatory or statutory authority to restrict grantees' use of waivers for their own requirements and policies. Furthermore, CDBG-DR grants given to states maintain maximum feasible deference that is afforded to them in the annual CDBG program – this gives considerable weight to a state's interpretation of the CDBG statutory and regulatory requirements. Additionally, HUD has no evidence that procurement waivers with no time limitations are a pervasive issue across the CDBG-DR grant portfolio. Therefore, issuing guidance or requiring all grantees to put a time limit on procurement waivers may not have the intended impact to address the core issues addressed in this audit directed at the State. Given all of this, HUD requests that the OIG remove this recommendation. Instead, HUD is committed to working with the State to strengthen its procurement internal controls.

OIG Recommendation 1B: HUD should require the State to develop and implement a policy that sets an expiration date or required renewals for temporary procurement waivers which are issued as a result of a disaster to limit their use to a reasonable period after a disaster's occurrence.

HUD Comment: HUD agrees in principle that emergency procurement waivers should be effective

for a reasonable period after a disaster. However, under 24 CFR 570.489(g) and 2 CFR 200.317, the State is permitted to follow its own procurement policies when administering CDBG-DR funds. Accordingly, HUD does not have the legal authority to impose the suggested requirement. Therefore, we respectfully request the OIG revise this recommendation as the following:

“HUD should continue to provide technical assistance to the State regarding appropriate controls to ensure federal procurement requirements for fair and open competition are met.”

The Department is supportive of the State adopting a policy that temporary procurement waivers be time-limited. The Department will continue to provide technical assistance to the State to ensure it meets existing federal procurement requirements.

OIG Recommendation 1C: HUD should require the State to implement a control, including documenting exceptions, to ensure that all contracts that exceed 5 years are approved by the Corporation.

HUD Comment: HUD agrees in principle that emergency procurement waivers should be effective for a reasonable period after a disaster. However, under 24 CFR 570.489(g) and 2 CFR 200.317, the State is permitted to follow its own procurement policies when administering CDBG-DR funds. We respectfully request the OIG revise this recommendation as the following:

“HUD should continue to provide technical assistance to the State regarding appropriate controls to ensure federal procurement requirements are met, including documenting exceptions.”

The Department will work with the State to ensure it is meeting existing federal procurement requirements.

OIG Recommendation 1D: HUD should require the State to implement a control to ensure that it follows its mini bid process to ensure that it obtains the best services for the best price or document those exceptions and have the Corporation’s approval for them.

HUD Comment: HUD agrees in principle that emergency procurement waivers should be effective for a reasonable period after a disaster. However, under 24 CFR 570.489(g) and 2 CFR 200.317, the State is permitted to follow its own procurement policies when administering CDBG-DR funds. We respectfully request the OIG revise this recommendation as the following:

“HUD should continue to provide technical assistance to the State regarding appropriate controls to ensure federal procurement requirements are met regarding the bid process and documenting exceptions.”

The Department will work with the State to ensure it is meeting existing federal procurement requirements.

OIG Recommendation 1E: HUD should require the State to implement a control to ensure that it follows its procurement policy and limits contract terms to 1 year unless it has the Corporation’s

approval and it documents those exceptions.

HUD Comment: HUD agrees in principle that emergency procurement waivers should be effective for a reasonable period after a disaster, which may differ depending on the magnitude and scope of the event. However, under 24 CFR 570.489(g) and 2 CFR 200.317, the State is permitted to follow its own procurement policies when administering CDBG-DR funds. We respectfully request the OIG revise this recommendation as the following:

“HUD should continue to provide technical assistance to the State regarding appropriate controls to ensure federal procurement requirements are met for contract term limits, including documenting exceptions.”

The Department will work with the State to ensure it is meeting existing federal procurement requirements.

OIG Finding 2: The State Can Improve Its Disaster Recovery Procurement Processes

OIG Recommendation 2A: HUD should require the State to revise its procurement policies, practices, and controls to ensure that it executes and renews contracts in a timely manner to prevent lapses and backdating of agreements.

HUD Comment: HUD agrees in principle that the State should avoid contract lapses and backdating agreements. However, under 24 CFR 570.489(g) and 2 CFR 200.317, the State is permitted to follow its own procurement policies when administering CDBG-DR funds. We respectfully request the OIG revise this recommendation as the following:

“HUD should continue to provide technical assistance to the State to ensure federal procurement requirements are met, including procurement policies, practices, and controls related to timely contract renewals, prevention of lapses, and appropriate agreement documentation.”

The Department will work with the State to ensure it is meeting existing federal procurement requirements.

OIG Recommendation 2B: HUD should require the State to revise its procurement policies to include requiring Corporation oversight for material changes in an agreement’s scope or amount.

HUD Comment: HUD agrees in principle that the State should have clear policies regarding oversight from its governing body, including policies related to material changes to procurement contracts. However, under 24 CFR 570.489(g) and 2 CFR 200.317, the State is permitted to follow its own procurement policies when administering CDBG-DR funds. We respectfully request the OIG revise this recommendation as the following:

“HUD should continue to provide technical assistance to the State to ensure federal procurement

requirements are met, to include grantee oversight for material changes in an agreement's scope or amount."

The Department will work with the State to ensure it is meeting existing federal procurement requirements.

OIG Recommendation 2C: HUD should require the State to revise its ethics, conflict-of-interest and contractor certification policies and forms to address issues that can arise, including when using embedded consultants.

HUD Comment: HUD agrees that the State should have strong ethics, conflict-of-interest, and contractor certification policies. Since the State is subject to the requirements in 2 CFR 200.112 and 24 CFR 570.489(h), HUD will provide technical assistance to the grantee to confirm its compliance with the federal rules concerning conflict of interest policies.

OIG Recommendation 2D: HUD should require the State to create and implement a policy that documents how it handles and addresses conflict of interest complaints.

HUD Comment: HUD agrees that the State should create and implement a policy that documents how it handles and addresses conflict of interest complaints. Since the State is subject to the requirements in 2 CFR 200.112 and 24 CFR 570.489(h), HUD will provide technical assistance to the State to confirm its compliance with the federal rules concerning conflict of interest policies.

Should you have any questions regarding these draft audit report comments, please do not hesitate to contact me or William L. Bedford at William.L.Bedford@hud.gov

Appendix B – Criteria

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards¹⁷

Subpart D: Post Federal Award Requirements

200.317 Procurements by States. When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with [§ 200.322](#) Procurement of recovered *materials* and ensure that every purchase order or other contract includes any clauses required by section [§ 200.326](#) Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow [§§ 200.318](#) General procurement standards through 200.326 Contract provisions.¹⁸

24 CFR Part 570 Community Development Block Grant

Subpart I: State Community Development Block Grant Program

24 CFR 570.489(g) Procurement. When procuring property or services to be paid for in whole or in part with CDBG funds, the State shall follow its procurement policies and procedures. The State shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition. Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the State. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts. (Other conflicts of interest are covered by [§ 570.489\(h\)](#).) The State shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, Executive orders, and implementing regulations. The State shall make subrecipient and contractor determinations in accordance with the standards in [2 CFR 200.330](#).

Consolidated Laws of New York, Executive Law, Chapter 18, Article 2-B

Section 29-a. Suspension of other laws

1. Subject to the state constitution, the federal constitution and federal statutes and regulations, the governor may by executive order temporarily suspend specific provisions of any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster.
2. Suspensions pursuant to subdivision one of this section shall be subject to the following standards and limits:
 - a. no suspension shall be made for a period in excess of thirty days, provided, however, that upon reconsideration of all of the relevant facts and circumstances, the governor may extend the suspension for additional periods not to exceed thirty days each;
 - b. no suspension shall be made which does not safeguard the health and welfare of the public and which is not reasonably necessary to the disaster effort;
 - c. any such suspension order shall specify the statute, local law, ordinance, order, rule or regulation or part thereof to be suspended and the terms and conditions of the suspension;

¹⁷ The common name for 2 CFR Part 200 is the Uniform Guidance.

¹⁸ January 3, 2017, version which was effective as of the start of our audit scope.

- d. the order may provide for such suspension only under particular circumstances, and may provide for the alteration or modification of the requirements of such statute, local law, ordinance, order, rule or regulation suspended, and may include other terms and conditions;
 - e. any such suspension order shall provide for the minimum deviation from the requirements of the statute, local law, ordinance, order, rule or regulation suspended consistent with the disaster action deemed necessary; and
 - f. when practicable, specialists shall be assigned to assist with the related emergency actions to avoid needless adverse effects resulting from such suspension.
3. Such suspensions shall be effective from the time and in the manner prescribed in such orders and shall be published as soon as practicable in the state bulletin.
4. The legislature may terminate by concurrent resolution executive orders issued under this section at any time.