



The City of New York, NY

Community Development Block Grant Disaster Recovery-Funded Infrastructure Rehabilitation and Reconstruction of Public Facilities Program



To: Stanley A. Gimont, Deputy Assistant Secretary for Grant Programs, DG

//SIGNED//

From: Kimberly S. Dahl, Regional Inspector General for Audit, 2AGA

Subject: The City of New York, NY, Did Not Always Use Disaster Recovery Funds Under Its Program for Eligible and Supported Costs

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 City of New York's Community Development Block Grant Disaster Recovery-funded Infrastructure Rehabilitation and Reconstruction of Public Facilities 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 website. 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 212-264-4174.



Audit Report Number: 2018-NY-1007

Date: September 27, 2018

The City of New York, NY, Did Not Always Use Disaster Recovery Funds Under Its Program for Eligible and Supported Costs

Highlights

What We Audited and Why

We audited the City of New York's Infrastructure Rehabilitation and Reconstruction of Public Facilities Program. We selected this program for review because the City had allocated nearly \$91 million to the program and disbursed more than \$59.6 million as of October 31, 2017, and as part of our ongoing oversight of the U.S. Department of Housing and Urban Development's (HUD) Disaster Recovery programs. Our objective was to determine whether the City used Disaster Recovery funds under its program for eligible and supported costs.

What We Found

The City did not always use Disaster Recovery funds under its program for eligible and supported costs. Specifically, for one of two projects reviewed, the City did not (1) have sufficient documentation to show that the use of salary multipliers for overhead and profit, resulting in \$594,012 in additional costs, was supported and eligible; (2) maintain adequate documentation to show compliance with Davis-Bacon and Related Acts requirements; and (3) identify billing and payroll errors made by subcontractors, including \$1,198 in overpaid wages and \$2,689 in wages that may have been overpaid. These deficiencies occurred because the City did not fully understand how to document compliance with Federal requirements and relied on its subrecipient instead of performing a detailed review of invoices to ensure that they contained adequate documentation showing compliance with requirements. As a result, HUD did not have assurance that the City used \$597,899 in Disaster Recovery funds as intended for matching requirements for other federally funded infrastructure projects, and HUD could not be assured that funds were disbursed for only eligible and supported costs that complied with applicable Federal requirements.

What We Recommend

We recommend that HUD require the City to (1) provide documentation to show that the \$596,701 disbursed due to the use of multipliers and a higher than required overtime rate was for eligible, reasonable, necessary, and supported costs or reimburse its program from non-Federal funds; (2) reimburse its program from non-Federal funds \$1,198 for overpaid wages; (3) provide documentation showing that it has strengthened its invoice review process to ensure that costs are eligible and supported before disbursing Disaster Recovery funds; and (4) provide documentation showing compliance with Davis-Bacon requirements and that restitution has been made to affected workers for any underpayments identified.

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Background and Objective

Hurricane Sandy damaged a variety of New York City facilities when it hit the east coast on October 29, 2012. Critical healthcare facilities, such as public hospitals and nursing homes, and important public spaces, such as the Rockaway Boardwalk, were among the hardest hit. Approximately 4.7 miles of the Boardwalk and three large hospitals were severely damaged.

Through the Disaster Relief Appropriations Act of 2013,¹ Congress made available \$16 billion in Community Development Block Grant Disaster Recovery funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization. These funds were to be used in the most impacted and distressed areas affected by Hurricane Sandy and other declared disaster events that occurred during calendar years 2011, 2012, and 2013. The U.S. Department of Housing and Urban Development (HUD) awarded the City of New York \$4.2 billion of the authorized Disaster Recovery funds.

The City allocated nearly \$91 million of the \$4.2 billion to its Infrastructure Rehabilitation and Reconstruction of Public Facilities Program to serve as the required local match to Federal Emergency Management Agency (FEMA)-funded infrastructure projects. The projects varied in scale and scope throughout the five boroughs, and FEMA funds covered 90 percent of the total project cost. While the City initially covered the remaining 10 percent, it later used Disaster Recovery funds to reimburse all or part of its local match share.

The City's Office of Management and Budget (OMB) manages the Disaster Recovery funds for the program and provides funds to four City agencies² under memorandums of understanding and subrecipient agreements. The four agencies act as implementing entities and administer seven infrastructure projects using the funds. They are responsible for overseeing the planning, design, and construction work and for ensuring compliance with Federal requirements for environmental review and labor standards. OMB and the four agencies are responsible for reviewing and monitoring the activities to ensure eligibility for Disaster Recovery funding. As of October 31, 2017, the City had disbursed more than \$59 million in Disaster Recovery funds for the program, including more than \$13 million for the two infrastructure projects reviewed. Specifically, we reviewed the (1) Rockaway Boardwalk project and (2) New York City Health and Hospitals project.

Our objective was to determine whether the City used Disaster Recovery funds under its program for eligible and supported costs.

¹ Public Law 113-2, dated January 29, 2013

² The four city agencies are (1) the Department of Design and Construction, (2) the Economic Development Corporation, (3) the Fire Department of the City of New York, and (4) the Trust for Governors Island.

Results of Audit

Finding: The City Did Not Always Use Disaster Recovery Funds for Eligible and Supported Costs

The City did not always use Disaster Recovery funds under its program for eligible and supported costs. For the Rockaway Boardwalk project, the City did not (1) have sufficient documentation to show that the use of salary multipliers for overhead and profit, resulting in \$594,012 in additional costs, was supported and eligible; (2) maintain adequate documentation to show compliance with Davis-Bacon and Related Acts requirements; and (3) identify billing and payroll errors made by subcontractors, including \$1,198 in overpaid wages and \$2,689 in wages that may have been overpaid. These deficiencies occurred because the City did not fully understand how to document compliance with Federal requirements and relied on its subrecipient instead of performing a detailed review of invoices to ensure that they contained adequate documentation showing compliance with requirements. As a result, HUD did not have assurance that the City used \$597,899 in Disaster Recovery funds as intended for matching requirements³ for other federally funded infrastructure projects, and HUD could not be assured that funds were disbursed for only eligible and supported costs that complied with applicable Federal requirements.

Overhead and Profit Multipliers Were Not Adequately Documented and May Not Have Been Allowable

The City lacked sufficient documentation to show that the use of salary multipliers for overhead and profit, resulting in \$594,012 in additional costs, was supported and eligible. Federal cost principle requirements⁴ at 2 CFR (Code of Federal Regulations) Part 225, appendix A, paragraph C, required all costs to be reasonable and adequately documented. Further, procurement regulations⁵ at 24 CFR 85.36(b)(9) required the City to maintain sufficient records detailing the history of the procurement, including records to document that a cost analysis was performed as required by 24 CFR 85.36(f)(1) and that profit was negotiated as a separate element of the price as required by 24 CFR 85.36(f)(2). However, the City did not provide documentation showing how the salary multipliers for overhead and profit were determined and negotiated or that it had adequately analyzed them as part of its cost analysis. The City also did not adequately show that the additional salary costs resulting from the use of the multipliers were allowable.

³ The Disaster Recovery funds discussed in this report were intended to meet the matching portion of the City's FEMA-funded infrastructure projects. Matching requirements represent the portion of the costs of a federally assisted project or program not borne by the Federal Government.

⁴ At the time of this procurement, the cost principle requirements at 24 CFR Part 225 were in effect. Grantees are now required to follow the cost principle requirements at 2 CFR Part 200, which includes similar requirements. In this case, the requirements cited are found at 2 CFR 200.403 and 200.404.

⁵ At the time of this procurement, the procurement requirements at 24 CFR 85.36 were in effect. Grantees are now required to follow the procurement requirements at 2 CFR Part 200, which includes similar requirements. In this case, the requirements cited are found at 2 CFR 200.323(a), 200.323(b), and 200.318(i).

The cost and fee schedule attached to the consultant contract listed multipliers that were to be applied to salary costs, and the two monthly requisitions reviewed included \$594,012 in markups from multipliers applied to both the consultant and its subconsultants. The markups were calculated using a multiplier of 3.38, or 338 percent, against salary costs for the consultant and multipliers of 2.8 and 2.03, or 280 and 203 percent, against salary costs for two subconsultants. For example, if salary costs for a position were \$1,000 and the multiplier for overhead and profit was 3.38, the total cost on the requisition would be \$3,380.

While the City stated that the multipliers included overhead and profit that had been negotiated before the contracts were executed, it did not provide documentation showing (1) how the multipliers were determined and negotiated and (2) that it had performed an analysis of the reasonableness of the multipliers as part of its cost analysis. Further, the multiplier found in the final contract was higher than the multiplier listed in the consultant's September 24, 2013, proposal for its staffing costs. While the consultant's staff positions were listed as having a 2.09 multiplier in the September 24, 2013, proposal, they were assigned a 3.38 multiplier in the revised proposal, dated October 15, 2013, and the final contract and the reason for the increase was not documented.

The City also did not adequately show that the additional salary costs resulting from the use of the multipliers were allowable. While the multipliers were included in the contract's cost and fee schedule for both the consultant and the subconsultant salaries, appendix C of the contract stated that no multiplier overhead, administrative fee, or other markup would be paid to the consultant for subcontractors' costs or general conditions. The City stated that this provision did not apply to subconsultant salaries. However, the contract's definition of a subcontractor included subconsultants, and there was a subcontract in place for their services. Due to the conflicting information in the contract, we could not determine whether the additional salary costs for subconsultants were allowable. Further, the costs generated by using the multipliers may not have been allowable under Federal regulations.⁶

This condition occurred because the total project cost was unknown at the start of the contract and the City believed that structuring the payments to the consultant based on actual hourly rates with multipliers was reasonable and allowable because the markups were not calculated or dependent on final trade costs. As a result of the issues identified, HUD did not have assurance that the City used \$594,012 in Disaster Recovery funds as intended for matching requirements for other federally funded infrastructure projects.

Compliance With Davis-Bacon Requirements Was Not Documented

The City used two different wage determinations for the Rockaway Boardwalk project and did not always maintain certified payroll reports that contained required information, such as the

⁶ Regulations at 24 CFR 85.36(f)(4) and 2 CFR 200.323(d) prohibit the use of the cost-plus-a-percentage-of-cost method of contracting. While this contract was not worded directly as a cost-plus contract, the City did not adequately show that it was not one. In this case, the multiplier, or percentage, was applied only to salary costs under the contract, not to trade costs or general condition costs.

correct work classifications,⁷ fringe benefits, and actual wages paid. The Davis-Bacon and Related Acts require that all laborers and mechanics be paid prevailing wage rates⁸ on Federal construction projects in excess of \$2,000, and regulations at 29 CFR 5.5(a)(1)(i) require that any construction contract subject to the labor standards provisions contain labor standards clauses and a wage determination. Regulations at 29 CFR 5.5(a)(3)(i) also require contractors to maintain payroll and basic records for all laborers and mechanics, documenting key information, such as the name, address, and Social Security number of each worker; the correct work classification; the hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents); the daily and weekly number of hours worked; the deductions taken out of gross wages; the actual wages paid; and a statement of compliance, which serves as a certification.

The amended subcontracts showed that the City used wage determinations, dated April 4, 2014, and November 14, 2014, to pay trade costs. While the City paid New York City's prevailing wage rates, the correct wage determination date for this contract was April 4, 2014. As a result of the City's using two different wage determinations, we were unable to determine that all workers were paid not less than Davis-Bacon wage rates. Additionally, (1) the City did not always maintain certified payroll reports that contained required information, such as work classifications listed on the wage determinations, fringe benefits, and actual wages paid, and (2) payrolls were not always certified in a timely manner.

These conditions occurred because the City relied on its subrecipient and consultant instead of performing a detailed review of invoices to ensure that they contained adequate documentation showing compliance with requirements. While the subrecipient sought technical assistance and clarification from HUD and the U.S. Department of Labor on how to handle the wage determinations, the City did not ensure that the final guidance received from HUD was implemented. As a result of the issues identified, HUD did not have assurance that the City complied with Davis-Bacon requirements.

Wages Were Overpaid and Billing and Payroll Errors Were Not Identified

The City disbursed \$1,198 in overpaid wages and \$2,689 in wages that may have been overpaid, and it did not identify \$544 in unpaid wages. Specifically, the City paid a consultant \$934 for 20 staff hours incorrectly billed to the project, paid a consultant \$264 for payroll errors due to miscalculations of employees' overtime and base pay, and may have overpaid this consultant \$2,689 for employee overtime rates that were higher than those required by Federal labor standards incorporated into the subcontracts.⁹ Additionally, the City did not identify payroll

⁷ While the certified payroll reports did not contain this information for one subcontractor, the City later provided work classifications to us separately. Further, some certified payroll reports listed union job classifications that did not match the work classifications listed on the wage determination.

⁸ The U.S. Department of Labor determines prevailing wage rates.

⁹ Federal labor standards incorporated into the subcontracts, specifically, Sections 103 and 107 of the Contract Work Hours and Safe Standards Act, provide that no laborer or mechanic will be required or allowed to work more than 8 hours in a calendar day or more than 40 hours in any workweek, unless such laborer or mechanic is paid at an overtime rate of one and one-half times the basic rate of pay. A higher overtime rate was not explicitly allowed.

errors, resulting in unpaid wages to six employees totaling \$544. The payroll errors occurred because the City relied on its subrecipient and did not perform a detailed review of invoices to ensure proper calculation of payroll amounts. While the City stated that overtime rates varied between trade unions and among positions within the same trade union, it did not provide documentation to support overtime rates that were different from the Federal labor standards included in the subcontracts. As a result, the City owed six affected employees \$544 in unpaid wages and disbursed \$1,198 and \$2,689 in Disaster Recovery funds for ineligible and unsupported costs, respectively.

The City's Monitoring Report Also Identified Issues

In April 2018, an OMB monitoring report¹⁰ also identified issues related to compliance with Davis-Bacon requirements and the use of the multipliers. It recommended that the subrecipient (1) ensure that all payrolls showed the work classifications listed on the wage determination, including additional classifications that received approval¹¹ from the U.S. Department of Labor; (2) perform retroactive payroll reviews to verify that there were no underpayments; and (3) place less reliance on the consultant by increasing its compliance-monitoring efforts. Additionally, the report stated that the City should provide additional detail regarding the multipliers included in staffing cost estimates, reconcile the fact that the multiplier in the executed contract exceeded that in the cost estimate, and add a memorandum to the file or an addendum to the initial cost estimate showing that comparable projects had similar costs. As of August 2018, OMB had not conducted any followup to determine whether the City had implemented its recommendations, and a final action target date for their implementation had not been established.

Conclusion

The City did not fully understand how to document compliance with Federal requirements and relied on its subrecipient instead of performing a detailed review of invoices for sufficient supporting documentation, eligibility, and compliance before approving them for reimbursement. As a result, HUD did not have assurance that the City used \$597,899 in Disaster Recovery funds as intended for matching requirements for other federally funded infrastructure projects. In addition, HUD could not be assured that funds were disbursed only for eligible and supported costs that complied with applicable Federal requirements.

Recommendations

We recommend that HUD's Deputy Assistant Secretary for Grant Programs require the City to

- 1A. Provide documentation to show that the \$594,012 disbursed due to the use of multipliers was for eligible, reasonable, necessary, and supported costs or reimburse its program from non-Federal funds.

¹⁰ We did not use the findings and conclusions from this monitoring report to support our findings and conclusions.

¹¹ Contrary to the regulations, the payrolls sometimes showed the union job classifications instead of the wage determination classifications. In such cases, the City was required to request approval from the U.S. Department of Labor for additional classifications and wage rates, which it did not do in a timely manner.

- 1B. Provide documentation to show that the \$2,689 disbursed due to a higher than required overtime rate was supported by documentation from the trade unions or reimburse its program from non-Federal funds.
- 1C. Reimburse its program \$1,198 from non-Federal funds for overpaid wages due to billing and payroll errors.
- 1D. Pay \$544 in unpaid wages to the subcontractors of the affected employees and submit evidence that these employees have been paid.
- 1E. Provide training to its staff to help ensure compliance with applicable cost principle, procurement, and Davis-Bacon requirements.
- 1F. Provide documentation showing that it has strengthened its invoice review process to ensure that costs are eligible and supported before disbursing Disaster Recovery funds.¹²
- 1G. Provide documentation showing that payments made under the Rockaway Boardwalk construction management services contract complied with Davis-Bacon and Related Acts requirements and that restitution is made to affected workers for any underpayments identified.

¹² As discussed in the Followup on Prior Audits section, we previously recommended that HUD require the City to strengthen its invoice review process. However, that recommendation was specific to invoices related to the subrecipient of a different program. Because the recommendation is still open, we do not know that any updated policies would impact the City's review of invoices received from subrecipients under this program. Therefore, we are recommending that the City strengthen its invoice review process.

Scope and Methodology

We conducted our audit from January through July 2018 at the City’s office located at 255 Greenwich Street, New York City, NY, and our office located in New York City, NY. The audit covered the period October 29, 2012, through October 31, 2017, and was expanded to include the City’s most recent action plan, effective December 20, 2017, and a City monitoring report, dated April 17, 2018.

To accomplish our audit objective, we interviewed City and HUD officials and reviewed

- relevant background information;
- applicable laws, regulations, and program requirements;
- the City’s policies and procedures;
- the City’s HUD-approved partial action plan and amendments;
- relevant funding agreements and amendments between HUD and the City;
- relevant memorandums of understanding, subrecipient agreements, and amendments among City agencies;
- HUD and City monitoring reports and annual financial reports, single audit reports, quarterly performance reports, and an internal audit report provided by the City; and
- data and reports from HUD’s Disaster Recovery Grant Reporting system¹³ and the City’s accounting system, Davis-Bacon wage determination rates, and FEMA project worksheets.

As of October 31, 2017, the City had disbursed approximately \$59.6 million in Disaster Recovery funds for program costs related to six of the seven¹⁴ public facilities’ infrastructure projects administered by City agencies. The infrastructure projects met the national objectives of benefiting low- and moderate-income persons. We selected two of six projects with the highest total disbursements, which represented more than 95 percent of the Disaster Recovery funds disbursed and 66 percent¹⁵ of the vouchers submitted for reimbursement. Using ACL Analytics,¹⁶ we randomly selected five vouchers for review. The disbursements for the five vouchers totaled \$13.24 million, or approximately 22 percent, of the \$59.6 million in Disaster

¹³ The Disaster Recovery Grant Reporting system was developed by HUD’s Office of Community Planning and Development for the Disaster Recovery program and other special appropriations. Data from the system are used by HUD staff to review activities funded under these programs and for required quarterly reports to Congress.

¹⁴ There were no disbursements for the seventh project during the audit period.

¹⁵ There were 45 vouchers for the 6 projects, and 30 of them related to the 2 projects selected for review.

¹⁶ Audit Command Language (ACL) Analytics is software used to perform data analysis and audit tests, enabling its users to identify fraud patterns and data irregularities.

Recovery funds disbursed for the program through October 31, 2017. Although this sample selection method did not allow for projection to the entire \$59.6 million disbursed, it was sufficient to meet our objective.

The table below shows the amount of Disaster Recovery funds budgeted and disbursed as of October 31, 2017, and the amount of vouchers and disbursements reviewed.

Project name - subproject	Disaster Recovery funds budgeted	Disaster Recovery funds disbursed	Number of vouchers selected	Dollar value of vouchers selected
(1) Department of Parks and Recreation - Rockaway Boardwalk	\$48,037,354	\$48,037,354	2	\$10,359,276
(2) NYC Health and Hospitals & 428 Public Assistance Alternative Procedures Pilot Program	35,270,535	9,057,027	3	2,878,184
Fire Department of the City of New York (3) alarm box repair (4) staff time for alarm box repair (5) fleet repair	2,494,133	2,432,436	0	0
(6) Hazard Mitigation Grant Program: resiliency and mitigation measures for nursing homes and adult care facilities	4,100,000	112,609	0	0
(7) Trust for Governors Island	1,027,978	0	0	0
Totals	90,930,000	59,639,426	5	13,237,460

We reviewed documentation for each of the five sampled vouchers to determine whether the amounts disbursed were for eligible and supported costs. The documentation reviewed included contracts; subcontracts; procurement records, invoices, and supporting documentation; and employee timesheets, payroll reports, and certified payroll transcripts. We reviewed 100 percent of the payroll reports and certified payroll transcripts found in the two vouchers reviewed for the Rockaway Boardwalk project. Vouchers for the New York City Health and Hospitals project did not include payroll reports. As part of our review of the payroll reports, we recalculated payroll amounts, including straight and overtime wages, to ensure that they were properly calculated. Our recalculation identified six employees, who were underpaid \$544 because they were paid at an overtime rate that was less than one and a half times their basic rates of pay. If the City provides evidence that these employees were later paid, the funds will be put to their intended use. To verify compliance with the Davis-Bacon requirements, we reviewed vouchers to ensure that they contained complete and accurate payroll reports. Lastly, we reviewed documentation to verify compliance with environmental clearance and national objective requirements.

To achieve our objective, we relied in part on computer-processed data from the City's accounting system and HUD's Disaster Recovery Grant Reporting system. We used the data to

obtain background information and to select a sample of disbursements for review. While we did not perform a detailed assessment on the reliability of the data, we performed a minimal level of testing and found the data to be accurate for our purposes. Specifically, we traced the disbursements selected for review to the source documentation.

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.

Internal Controls

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.

Relevant Internal Controls

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

- Program operations – Policies and procedures that management has implemented to reasonably ensure that a program meets its objectives.
- Compliance with laws and regulations – Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.
- 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 in reports.
- Safeguard resources – Policies and procedures that management has implemented to reasonably ensure that resources are safeguarded against waste, loss, and misuse.

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 Deficiency

Based on our review, we believe that the following item is a significant deficiency:

- The City did not have adequate controls to ensure that it always used Disaster Recovery funds for eligible and supported costs (finding).

Followup on Prior Audits

The City of New York, NY, Could Improve Its Invoice Review Process Before Disbursing Disaster Funds Under Its Public Housing Rehabilitation and Resilience Program, Audit Report 2017-NY-1012, Issued September 21, 2017

The following recommendation relevant to our objective was still open at the time of this report:

- 1B. Provide documentation showing that it has strengthened its invoice review process to ensure that costs are eligible and supported before disbursing disaster funds to its subrecipient under the program.

The prior report identified concerns related to the City's reliance on a subrecipient to review contractor invoices under its Public Housing Rehabilitation and Resilience Program. While the circumstances are different, the issue of not obtaining sufficient documentation before disbursing funds is similar to the issues identified in our current report. On January 12, 2018, we agreed with HUD's proposed management decision for this recommendation. The final action target date for completing the corrective actions was May 28, 2018. As of September 2018, HUD had not closed the recommendation or requested an extension to the final action target date.

Appendixes

Appendix A

Schedule of Questioned Costs and Funds To Be Put to Better Use

Recommendation number	Ineligible 1/	Unsupported 2/	Funds to be put to better use 3/
1A		\$594,012	
1B		2,689	
1C	\$1,198		
1D			\$544
Totals	1,198	596,701	544

- 1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or Federal, State, or local policies or regulations.
- 2/ Unsupported costs are those costs 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.
- 3/ Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an Office of Inspector General (OIG) recommendation is implemented. These amounts include reductions in outlays, deobligation of funds, withdrawal of interest, costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in preaward reviews, and any other savings that are specifically identified. In this case, the \$544 represents unpaid wages for six employees. If the City pays the subcontractors of the affected employees and ensures that the employees have been paid, the funds will be put to their intended use.

Appendix B

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation

Auditee Comments



The City of New York
Office of Management and Budget
255 Greenwich Street, 6th Floor
New York, New York 10007

September 17, 2018

Ms. Kimberly S. Dahl
Regional Inspector General for Audit
U.S. Department of Housing and Urban Development
Office of the Inspector General
Jacob K. Javits Federal Building
26 Federal Plaza, Room 3430
New York, NY 10278-0068

Re: Draft Audit Report on The City of New York, NY: Community Development Block Grant Disaster Recovery-Funded Infrastructure Rehabilitation and Reconstruction of Public Facilities Program

Dear Ms. Dahl:

The City of New York's Office of Management and Budget is in receipt of the Draft Audit Report concerning the City of New York, NY and its Community Development Block Grant Disaster Recovery-Funded Infrastructure Rehabilitation and Reconstruction of Public Facilities Program.

We would like to express our gratitude to your audit team for their due diligence in reviewing the City's administration of the Community Development Block Grant Disaster Recovery funds for its Infrastructure Rehabilitation and Reconstruction of Public Facilities Program during the period of October 29, 2012 through October 31, 2017, and expanded to include the City's most recent action plan, effective December 20, 2017, and a City monitoring report dated April 17, 2018.

The City believes it has adequately addressed the Finding contained in the Draft Audit Report in our attached response.

Again, the City of New York's Office of Management and Budget appreciates the efforts of your audit team and looks forward to working with you in the future.

Sincerely,

A handwritten signature in blue ink, appearing to read "Calvin Johnson".

Calvin Johnson,
Assistant Director, CDBG-DR



The City of New York
Office of Management and Budget
255 Greenwich Street • New York, New York 10007-2146

**CITY OF NEW YORK'S
RESPONSE TO SEPTEMBER 2018
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF INSPECTOR GENERAL
DISCUSSION DRAFT AUDIT REPORT**

**PREPARED BY THE CITY OF NEW YORK'S
OFFICE OF MANAGEMENT AND BUDGET
IN COORDINATION WITH ITS SUBRECIPIENT
THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**

SEPTEMBER 17, 2018

OVERVIEW

The City of New York (the "City") values all feedback provided by oversight agencies and auditors. The Department of Housing and Urban Development Office of Inspector General's ("HUD OIG" or "OIG") independent oversight provides valuable information that the City can utilize to better implement its Community Development Block Grant – Disaster Recovery ("CDBG-DR") funded activities in response to Hurricane Sandy. This relationship with our federal partners is critical to successful Program implementation.

While the scope of the HUD OIG audit started as a review of the CDBG-DR funded Infrastructure Rehabilitation and Reconstruction of Public Facilities, the scope was eventually narrowed and the Draft Audit Report addresses concerns related solely to the Rockaway Boardwalk project. The City's response here will address the one Finding and one Recommendation (seven parts) contained in the OIG's Report.

The Rockaway Boardwalk project is an example of successful disaster recovery and resiliency project. Built more than 100 years ago, the Boardwalk's original design made it vulnerable to disasters, as made clear by the extent of damage caused by Hurricane Sandy. High winds, rain, and storm surge from Hurricane Sandy destroyed about 3.4 miles of the 5-mile Boardwalk in October 2012. For this reason, the City pursued a more resilient design – such as replacing destroyed tropical hardwood decking with precast concrete panels.

The project was expedited to facilitate the economic recovery of Rockaway businesses and to better protect more than 130,000 year-round residents living near the Boardwalk. The complexity of the project was compounded by the fact that the Construction Management (CM) contract needed to be executed before the design of the project was completed. Construction, which began in April, 2014, was challenging due to unforeseen beach site conditions, the presence of an endangered bird population on the beach, new City rules that delayed work by cranes when wind reached a certain speed, and many other factors. The Boardwalk reconstruction was substantially complete in May 2017. **There was no precedent in the United States for such a complex, fast-paced, large-scale beach boardwalk restoration and mitigation project.**

Comment 1

Comment 2

Comment 2

Comment 3

The City's Response to Finding 1

The City Did Not Always Use Disaster Recovery Funds for Eligible and Supported Costs

New York City takes its compliance responsibilities seriously. Controls throughout program implementation and at close-out were put in place to ensure that funding decisions were fair, timely, complied with regulations and program policy, and would not be subject to recapture.

The City firmly believes that it had and continues to have adequate controls to ensure that the use of CDBG-DR funds was and is always consistent with the Action Plan and applicable Federal, State, and City requirements. The City believes it provided sufficient documentation to support costs associated with the Rockaway Boardwalk project and demonstrated that all costs were eligible and supported.

The following responses to each section will address this in more depth.

A. Overhead and Profit Multipliers Were Not Adequately Documented and May Not Have Been Allowable

Regarding the use of consultant staff multipliers for the Rockaway Boardwalk project contract (the "Contract"), the New York City Economic Development Corporation ("EDC") held the Contract with [REDACTED] held contracts with its subconsultants [REDACTED]. Consultant staff multipliers are common practice for New York City public construction projects and are consistently used by EDC. Multipliers cover consultant indirect costs, overhead and profit; they were not applicable to trade costs.

After Hurricane Sandy, EDC and its NYC agency partners carefully considered options for progressing this complex design and construction project spanning over five miles. It was agreed that a construction manager contract structure would enable the project to start design and construction in phases, while the full project scope was still being determined. Due to the Rockaway Boardwalk project's aggressive delivery schedule, construction started in 2014 while design was not completed until 2015. This required work to proceed with certain trades/phases in advance of design completion of others. Additionally, the project required numerous City approvals, as well as State and Federal approvals, which were obtained over several years. The CM Contract allowed flexibility in responding to such variability and complexity and, of the of the various payment options, multipliers established up front provided reasonable certainty to the parties.

In March 2017, EDC provided a comparison of six other open EDC construction manager contracts. Consultant staff multipliers were used in each of the contracts and they were similar to the range proposed by [REDACTED] for the Rockaway Boardwalk project.

The City will work with HUD's Disaster Recovery and Special Issues Division to address any outstanding questions regarding the use of multipliers.

B. Compliance With Davis-Bacon Requirements Was Not Documented

NYC Prevailing Wage applied to the Rockaway Boardwalk project, as did Davis-Bacon and Related Acts. It is EDC policy that, in the event of a wage differential between Davis-Bacon and NYC Prevailing Wage, workers are to be paid the higher of two rates. In practice it is our understanding that NYC Prevailing Wage is generally higher than Davis-Bacon; NYC Prevailing Wage is adjusted annually while

Comment 4

Davis-Bacon is established at the beginning for the life of the project. The job descriptions, salary and fringe rates are distinct under each wage program and it is fair to say that reconciliation of the two wage systems is challenging, especially for contractors. For reconciliation, EDC and ██████ asked contractors to create crosswalks for worker titles. Where job titles under NYC Prevailing Wage did not exist under Davis-Bacon, EDC worked with the Department of Labor (DOL) to add comparable provisions. It is our understanding that all workers were paid the higher of the two wage rates and ██████ is providing additional documentation to support that conclusion.

- As a policy question, it is worth noting inconsistencies in this area across federal agencies; FEMA, for example, which funded most of the Rockaway Boardwalk reconstruction, does not impose Davis Bacon requirements, instead deferring to local prevailing wage. HUD and DOL have no written guidance regarding application of Davis Bacon to construction manager contracts where various trade contracts are entered into at different times. Finally, in instances where local and federal wage requirements differ and local wage requirements meet or exceed the federal standards, we believe the best solution is the application of a single administrative requirement that provides strong protection for workers.

C. Wages Were Overpaid and Payroll Errors Were Not Identified

As noted above, it is our understanding that all workers were paid, at a minimum, the higher of the two wage rates and ██████ is providing additional documentation to support that conclusion.

D. The City's Monitoring Report Also Identified Issues

The City appreciates the OIG's recognition of the hard work performed by the OMB's CDBG-DR Task Force's Compliance and Monitoring Unit (the "Unit") and the effort to complete the Monitoring Report on the Rockaway Boardwalk project. As the OIG is aware, the monitoring of this project began in September, 2016 and the report was released in April, 2018. During the course of the monitoring there were various meetings with EDC and its contractor ██████, as well as a site visit conducted to perform Davis Bacon and Related Acts ("DBRA") monitoring. Also, the Compliance and Monitoring Unit provided technical assistance to both EDC, as well as internally, to ensure Davis Bacon compliance. The Unit, using a risk-based approach, strives to adequately address any issues or perceived issues in advance of an audit or monitoring.

The OIG's Draft Audit Report is accurate, as of August, 2018, the City has not completed a follow-up monitoring, as the City Monitoring Report was final in April, 2018 and the HUD OIG audit was already underway. OMB will conduct follow-up monitoring and will include any remaining areas of concern and recommendations from this audit as applicable.

E. Conclusion

The City did not rely solely on a review by its subrecipient prior to seeking Federal reimbursement. As discussed during HUD OIG's Audit and as evidenced by the *Invoice Review Guidelines*, the City did perform a review of the invoices in question prior to submission for HUD reimbursement.

As the guidelines describe, OMB's review begins long before a contractor begins work by collecting procurement documentation to ensure compliance with applicable federal procurement guidelines, reviewing scope for alignment with the City's Action Plan and program requirements, and reviewing contracts, task orders, and purchase orders to ensure completeness and eligibility.

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Comment 6

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OMB relies on its agency partners and subrecipients to thoroughly review invoices for completeness and eligibility prior to submission to OMB. However, this review is not in lieu of OMB's own review which takes place after documentation has been approved by our agency partners and subrecipients.

For certain projects, OMB may elect to review several of the first invoices after an agency partner or subrecipient has completed its review but *prior to having agencies and subrecipient partners issue payment to a contractor* to ensure that OMB and the agency partner or subrecipient agree on standards for eligibility and completeness¹.

After an agency partner or subrecipient has issued payment to a contractor, OMB collects invoices and supporting documentation and completes a financial review to ensure that all costs charged:

- Are allocable, allowable, necessary and reasonable in their amount and nature;
- Conform to the requirements of 2 CFR Part 200 and CDBG[-DR] requirements as modified by HUD guidance and relevant Federal Register Notices;
- Conform to State and local laws, policies, and practices, especially where such policies are more stringent than Federal;
- Are consistently treated as direct or indirect costs when billed for "the same purpose in like circumstances" as required by 2 CFR Part 200;
- Are charged in accordance with GAAP accounting;
- Are not be double counted, especially as both match and Federally-reimbursable; and
- Are adequately documented.

Once complete, OMB submits a request for HUD reimbursement and maintains documentation for future audits.

Finally, OMB's Compliance and Monitoring Unit and Internal Auditor both may elect (based on a frequently updated risk analysis) to review any portion of the documentation, processes, and internal controls related to any step or component of this process to determine eligibility and compliance with all applicable laws, requirements, and internal procedures.

In addition to all of these steps throughout the contracting, invoicing, and federal reimbursement processes, OMB provides frequent training to staff and technical assistance to partner agencies and subrecipients on eligibility and federal compliance requirements.

City Response to Recommendation 1A

Provide documentation to show that the \$594,012 disbursed due to the use of multipliers was for eligible, reasonable, necessary, and supported costs or reimburse its program from non-Federal funds.

It is the City's position that the use of multipliers are eligible, reasonable, necessary, and supported costs. Documentation indicating this has been provided to the HUD OIG during the course of this audit and up until the exit conference. The City will work with HUD's Disaster Recovery and Special Issues Division to satisfy any outstanding requests for documentation.

¹ This portion of the Invoice Review Guidelines was not in place at the time of the first payments for Rockaway Boardwalk contracts, and therefore invoices were not selected for review prior to issuing payment. It has been added since to further bolster invoice review and partner agency and subrecipient documentation and controls early in the payment process.

Comments 1, 2 and 3

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Evaluation**

Auditee Comments

Comment 4

City Response to Recommendation 1B

Provide documentation to show that the \$2,689 disbursed due to a higher than required overtime rate was supported by documentation from the trade unions or reimburse its program from non-Federal funds.

It is the City's position that all workers were entitled to be paid, at a minimum, the higher of the two wage rates and [REDACTED] is providing additional documentation to support that conclusion.

EDC is committed to working with its contractor [REDACTED] to address any perceived issue related to payment to workers.

The City works to ensure that it follows all applicable City, State, and Federal rules and regulations to pay workers in accordance with each.

City Response to Recommendation 1C

Reimburse its program \$1,198 from non-Federal funds for overpaid wages.

It is the City's position that all workers were entitled to be paid, at a minimum, the higher of the two wage rates and [REDACTED] is providing additional documentation to support that conclusion.

EDC is committed to working with its contractor [REDACTED] to address any perceived issue related to payment to workers.

It is the City's responsibility to ensure all applicable City, State, and Federal rules and regulations are followed in paying workers, and this is a responsibility the City takes seriously.

City Response to Recommendation 1D

Pay \$544 in unpaid wages to the subcontractors of the affected employees and submit evidence that these employees have been paid.

It is the City's position that all workers were entitled to be paid, at a minimum, the higher of the two wage rates and [REDACTED] is providing additional documentation to support that conclusion.

EDC is committed to working with its contractor [REDACTED] to address any perceived issue related to payment to workers.

The City has safeguards to ensure that it pays workers in accordance with all applicable City, State, and Federal rules and regulations.

City Response to Recommendation 1E

Provide training to its staff to help ensure compliance with applicable cost principle, procurement, and Davis-Bacon requirements.

It is the City's position that the City of New York's Office of Management and Budget performed an adequate review to ensure compliance with applicable cost principle, procurement, and DBRA

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Comment 7

requirements, as mentioned by HUD OIG in their Draft Audit Report (Page 7, Section "The City's Monitoring Report Also Identified Issues").

OMB met with EDC during the monitoring of this project to address DBRA areas of concern and EDC worked to resolve each recommendation and provided documentation to support their efforts.

Furthermore, OMB holds frequent trainings – both internally and with City partners – on these topics (cost principle, procurement, and Davis-Bacon requirements).

City Response to Recommendation 1F

Provide documentation showing that it has strengthened its review process to ensure that costs are eligible and supported before disbursing Disaster Recovery funds to subrecipients.

It is the City's position that City has continuously had robust controls to review costs for eligibility and for supporting documentation. Building on a strong foundation of the City working closely in partnership with its subrecipient in reviewing costs, the City is continually improving its invoice review procedures. Examples since the completion of the Rockaway Boardwalk project include adding a pre-payment review process and clarifying review responsibilities of different members of the review team. The City is open to adding additional controls if the HUD OIG has specific recommendations.

City Response to Recommendation 1G

Provide documentation showing that payments made under the Rockaway Boardwalk construction management services contract complied with Davis-Bacon and Related Acts requirements and that restitution is made to affected workers for any underpayments identified.

It is the City's position that all workers were entitled to be paid, at a minimum, the higher of the two wage rates and [REDACTED] is providing additional documentation to support that conclusion.

EDC is committed to working with its contractor [REDACTED] to address any perceived issue related to payment to workers.

The City has controls in place to ensure that all applicable City, State, and Federal rules and regulations are followed when paying workers.

Comment 8

Comments 4 and 5

OIG Evaluation of Auditee Comments

- Comment 1 The City disagreed with our finding and believed that it provided sufficient documentation to support costs associated with the Rockaway Boardwalk project and demonstrated that all cost were eligible and supported. We disagree that the City provided sufficient documentation. Therefore, as part of the audit resolution process, it will need to provide documentation to HUD or repay from non-Federal funds any amount that it cannot support.
- Comment 2 The City contended that staff multipliers are common practice for New York City public construction projects and are consistently used. It also noted that while using a construction management contract allowed flexibility due to the complexity of the project, the multipliers established up front provided reasonable certainty to the parties. However, the City did not provide adequate documentation to show how the reasonableness of the multipliers was determined and negotiated, and to show that it complied with Federal procurement requirements, such as the 24 CFR 85.36(f)(2) requirement that profit be negotiated as a separate element of the price. Further, Federal cost principal requirements at 2 CFR Part 225, appendix A, paragraph C, required all costs to be reasonable and adequately documented. The contractor and subcontractor names included in the auditee comments were redacted for privacy reasons.
- Comment 3 The City contended that it provided a comparison of six open construction manager contracts that used consultant staff multipliers similar to the range proposed by the consultant for the Rockaway Boardwalk project. However, the comparison was dated March 2017, or more than 3 years after the contract was executed, and it lacked contextual information, such as contract dates and the funding sources. As a result, we could not fully evaluate the comparison provided. Further, we found that some of the multipliers in the revised October 2013 proposal and contract were higher than those proposed in September 2013 and fell outside of the range of multipliers used in the contracts the City included in its comparison. As part of the normal audit resolution process, the City will need to provide documentation to show that the \$594,012 disbursed due to the use of multipliers was for eligible, reasonable, necessary, and supported costs or reimburse its program from non-Federal funds.
- Comment 4 The City stated that reconciling the City's prevailing wage rates with those required by Davis-Bacon was challenging, and noted how there are some inconsistencies across Federal agencies. Further, the City indicated that contractors were asked to create crosswalks for worker titles and that it worked with the Department of Labor to add comparable titles when needed. Last, it contended that it believed all workers were paid the higher of the two wage rates and stated that it would provide documentation to support that conclusion. However, our review found that the City did not always maintain the crosswalks

for worker titles and comparable titles added by the Department of Labor. As a result of this and the different dates used for wage determinations, we could not determine compliance with Davis-Bacon requirements. As part of the normal audit resolution process, the City will need to provide documentation showing that payments made under the contract complied with Davis-Bacon requirements and that restitution is made to affected workers for any underpayments identified.

- Comment 5 In response to the section of the report related to overpayments of wages and payroll errors, the City contended that it believed all workers were entitled to and paid, at a minimum, the higher of the two wage rates and stated that the consultant would be providing additional documentation to support that conclusion. However, as discussed in the finding, the City disbursed \$1,198 in overpaid wages and \$2,689 in wages that may have been overpaid, and it did not identify \$544 in underpaid wages. As part of the normal audit resolution process, the City will need to provide documentation to (1) show that it reimbursed its program for overpaid wages, (2) support wages that may have been overpaid or reimburse its program, and (3) pay \$544 in underpaid wages to the subcontractors and submit evidence that the employees have been paid.
- Comment 6 The City contended that it did not rely solely on a review by its subrecipient prior to seeking Federal reimbursement. It indicated that as evidenced by its invoice review guidelines, the City performed a review of the invoices in question prior to submission for HUD reimbursement. However, the guidelines required the subrecipient to perform a detailed review of the invoice and invoice packages, and required the City to conduct only a subsequent pre-payment review of a sample of invoices. Further, our review found that the City had not performed a detailed review of the invoices sampled because under the Invoice Review Guidelines it was not responsible for doing so.
- Comment 7 The City contended that OMB performed an adequate review to ensure compliance with applicable cost principle, procurement, and Davis-Bacon requirements, as mentioned in this report. The City indicated that OMB met with its subrecipient to resolve recommendations related to Davis-Bacon requirements and provided documentation supporting its efforts. It also contended that OMB held frequent trainings, both internally and with City partners, on cost principle, procurement, and Davis-Bacon requirements. However, because the City had not yet implemented the recommendations issued by OMB and we found similar instances of noncompliance during our audit, we recommend that HUD require the City to provide training to its staff to help ensure compliance with cost principle, procurement, and Davis-Bacon requirements.
- Comment 8 The City contended that it has continuously had robust controls to review costs for eligibility and for supporting documentation. Since the completion of the Rockaway Boardwalk project, it added a pre-payment review process and clarified review responsibilities of different members of the review team. Further,

the City stated that it is open to adding additional controls if our office has specific recommendations. While we acknowledge that the City had some controls for eligibility and for supporting documentation, at the time of our review, the City did not ensure that the invoices contained sufficient documentation to show compliance with requirements. As part of the normal audit resolution process, the City will need to provide documentation showing that it has strengthened its invoice review process since then to ensure that costs are eligible and supported before disbursing Disaster Recovery funds.