
# The State of New Jersey, Trenton, NJ

## Community Development Block Grant Disaster Recovery-Funded Sandy Integrated Recovery Operations and Management System

**Office of Audit, Region 3**
**Philadelphia, PA**

**Audit Report Number: 2015-PH-1003**
**June 4, 2015**

**To:** Marion M. McFadden, Deputy Assistant Secretary for Grant Programs, DG
**//signed//**

**From:** David E. Kasperowicz, Regional Inspector General for Audit, Philadelphia Region, 3AGA

**Subject:** The State of New Jersey Did Not Comply With Federal Procurement and Cost Principle Requirements in Implementing Its Disaster Management System

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

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

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

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

**Audit Report Number: 2015-PH-1003**
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**The State of New Jersey Did Not Comply With Federal Procurement and Cost Principle Requirements in Implementing Its Disaster Management System**

# Highlights

## What We Audited and Why

We audited the State of New Jersey's Community Development Block Grant Disaster Recovery-funded Sandy Integrated Recovery Operations and Management System. We conducted the audit based on the significant amount of funds associated with the system and the importance of the system to the successful implementation of the State's Disaster Recovery grant. Our objective was to determine whether the State procured services and products for its system in accordance with Federal procurement and cost principle requirements.

## What We Found

The State did not procure services and products for its system in accordance with Federal procurement and cost principle requirements. Specifically, it did not prepare an independent cost estimate and analysis before awarding the system contract to the only responsive bidder. Further, it did not ensure that option years were awarded competitively and included provisions in its request for quotation that restricted competition. It also did not ensure that software was purchased competitively and that the winning contractor had adequate documentation to support labor costs charged by its employees. These issues show that the State's process was not equivalent to Federal procurement standards; therefore, its certification to the U.S. Department of Housing and Urban Development (HUD) was inaccurate. These conditions occurred because the State was not fully aware of the applicable requirements. As a result, it did not demonstrate that the overall contract price of $38.5 million and option years totaling another $21.7 million were fair and reasonable and that the $1.5 million it disbursed was adequately supported.

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

## What We Recommend

We recommend that HUD determine whether corrective actions and documentation the State provided are adequate to show that the $38.5 million contract price for the initial 2-year period was fair and reasonable and that $1.5 million disbursed for software and labor costs was allowable and supported or direct the State to repay HUD from non-Federal funds. Further, HUD should determine whether the documentation provided is adequate to show that the contract price for the three additional option years was fair and reasonable or direct the State to rebid for the additional option years, thereby putting $9.1 million to better use.

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# Background and Objective

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

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

On March 5, 2013, HUD issued a Federal Register notice,[2] which advised the public of the initial allocation of $5.4 billion in Block Grant funds appropriated by the Disaster Relief Appropriations Act for the purpose of assisting recovery in the most impacted and distressed areas declared a major disaster due to Hurricane Sandy.[3] The notice[4] allowed preaward costs to be reimbursable as long as the costs were incurred after the date of the storm. HUD awarded the State of New Jersey $1.8 billion from this initial allocation of funds. On April 29, 2013, HUD approved the State's action plan. The action plan identified the purpose of the State's allocation, including criteria for eligibility, and how its uses addressed long-term recovery needs. On May 13, 2013, HUD approved a grant agreement that obligated more than $1 billion in funding from the $1.8 billion allocation. The Disaster Relief Act required the State to spend obligated funds within 2 years of the date of obligation.

The governor of New Jersey designated the State's Department of Community Affairs as the responsible entity for administrating its Disaster Recovery grant. The State decided to retain a contractor that would deliver a fully functional information technology solution, which would allow it to quickly deploy its Block Grant Disaster Recovery program to assist State residents impacted by Hurricane Sandy. The purpose of the system was to collect and manage reports and data to make payments under the Disaster Recovery program, file reports with the Federal

[1] Public Law 113-2, dated January 29, 2013
[2] 78 FR 14330, dated March 5, 2013
[3] Areas impacted by Hurricane Sandy included New York City, New York State, New Jersey, Connecticut, Rhode Island, and Maryland.
[4] 78 FR 14342, dated March 5, 2013

Government, and provide the source data to State transparency sites. The system was also supposed to support the staff that operates, manages, and monitors the program, including program managers, fiscal staff, auditors, and accountants. On May 24, 2013, the State entered into a $38.5 million contract with CGI Federal, Inc., to develop and manage the Sandy Integrated Recovery Operations and Management System. As of February 2015, the State had disbursed $25.7 million for the system.

The Federal Register notice[5] required the State to either adopt the specific procurement standards identified in 24 CFR (Code of Federal Regulations) 85.36 or have a procurement process and standards that were equivalent to the procurement standards at 24 CFR 85.36.[6] The State acknowledged in its procurement policy for Block Grant Disaster Recovery grants that it was required as a grantee to follow the requirements of 24 CFR 85.36 and that its procurement process and standards were equivalent to the procurement standards at 24 CFR 85.36. Accordingly, the State certified to HUD that its policies and procedures were equivalent to the procurement standards at 24 CFR 85.36.

Our objective was to determine whether the State procured services and products for its system in accordance with applicable Federal procurement and cost principle requirements.[7]

[5] 78 FR 14336, dated March 5, 2013

[6] In audit report 2013-FW-0001, dated March 28, 2013, we recommended that HUD include the procurement standards at 24 CFR 85.36 in its future Disaster Recovery grant terms and provide procurement training and technical assistance to ensure that future Disaster Recovery grantees are aware of and follow Federal procurement standards. HUD agreed to specifically reference these standards in future grant agreements, include this topic in future conferences and webinars, and post information on specific topics on the Block Grant Disaster Recovery Web site.

[7] In audit report 2014-PH-1008, dated August 29, 2014, we reported on the State's procurement of services and products for its tourism marketing program. We discuss the recommendations in the Followup on Prior Audits section of this report.

# Results of Audit

## Finding: The State Did Not Comply With Federal Procurement and Cost Principle Requirements in Implementing Its Disaster Management System

The State did not procure services and products for its system in accordance with Federal procurement standards or comply with all Federal cost principle requirements for supporting salary and wage compensation. Specifically, it did not prepare an independent cost estimate and analysis before awarding the system contract to the only responsive bidder. It also did not ensure that option years were awarded competitively and included provisions in its request for quotation that restricted competition. Further, it did not ensure that software was purchased competitively and that the winning contractor had adequate documentation to support labor costs charged by its employees. These issues show that the State's process was not equivalent to Federal procurement standards; therefore, its certification was inaccurate. These conditions occurred because the State was not fully aware of Federal procurement and cost principle requirements. It (1) mistakenly believed that it was not required to complete an independent cost estimate and analysis before awarding the system contract, (2) was not fully aware of Federal procurement standards, (3) mistakenly believed that the contractor was not required to obtain price quotes for software purchases, and (4) was unaware of the Federal cost principle requirements for supporting time charges. As a result, the State did not demonstrate that the initial contract price of $38.5 million and option years totaling another $21.7 million were fair and reasonable and that the $1.5 million it disbursed under the contract was adequately supported.

### The State Did Not Prepare an Independent Cost Estimate and Analysis Before Awarding the System Contract

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

To satisfy the requirement for a cost estimate before receiving bids, the State initially estimated a need for 45 to 50 full-time employees and $1.5 to $2 million per month based on the State of Louisiana's experience in the aftermath of Hurricanes Katrina and Rita in 2005. The State did

not provide detail comparing its information technology needs to those of Louisiana, showing how much Louisiana paid for its system, or discussing how technology and costs had changed since 2005. This estimate of basic information did not satisfy the requirement of performing an independent cost estimate.

To satisfy the requirement for a cost analysis before awarding a contract, the State indicated that it compared labor category rates from CGI Federal's proposal to the rates for equivalent labor categories from a random sampling of five other contractors.[8] The State's cost analysis did not satisfy the requirement to perform a cost analysis because it did not determine whether the pricing of all of the separate elements that made up the total costs in the contractor's proposal were fair and reasonable.

The need for an independent cost estimate and analysis was illustrated by the lack of competition and by a prior audit,[9] which showed a large variance in similar system costs. The State received bids from only two contractors as shown below.

| Contractor | Total bid for the initial 2-year period | Total bid for the 3-year maintenance period | Date received |
|---|---|---|---|
| CGI Federal, Inc. | $38,812,267 | $21,771,075 | 05/14/2013 |
| International Technologies, Inc. | $6,695,520 | n/a[10] | 05/07/2013 |

The State established an evaluation committee to perform a technical review and price comparison of the bids it received, based on the bidder's personnel, experience, and ability to complete the scope of work.[11] The committee deemed the lower bid as nonresponsive due to its lack of required forms and a detailed proposal. Therefore, it evaluated only the higher bid. While the State solicited a best and final offer from CGI Federal before awarding the contract, it should have performed a detailed cost estimate and analysis to ensure that the contract amount was fair and reasonable.

This condition occurred because the State mistakenly believed that it was not required to

[8] The contractors were listed on the U.S. General Services Administration's (GSA) Web site, known as "eBuy."

[9] In audit report 2013-FW-0001, dated March 28, 2013, we discuss three States that used Disaster Recovery grant funds to create an information system at great expense. The costs varied widely, ranging from one State's budget of $1.2 million to another State's expenditures of more than $295 million.

[10] International Technologies' bid did not include a quote for the 3-year maintenance period.

[11] Regulations at 24 CFR 85.36(d)(3)(iii) required the State to have a method for conducting technical evaluations of the proposals it received and selecting awardees. The State established an evaluation committee consisting of six members: five voting members and one nonvoting member. The committee was responsible for performing a technical review and price comparison of the quotes received. The request for quotation indicated that the evaluation criteria would include the following factors: strategy to meet the request for quote requirements, strategy to perform services required by the scope of work, experience, and ability to successfully complete the project according to the proposed schedule.

complete an independent cost estimate and analysis. Because it did not perform an adequate independent cost estimate and cost analysis, HUD and the State had no assurance that the contract amount was fair and reasonable.

*The State Had Begun To Take Action To Resolve Deficiencies Regarding the Cost Estimate*
After we notified the State of this problem, it provided us an independent cost estimate report related to its contract award. The report, dated May 16, 2014, was prepared by ICF International, a technology, policy, and management consulting firm.[12] The report provided estimates for the total cost of the initial 2-year contract and for the 3 additional option years for system maintenance. The estimates from the report are presented in the schedule below, along with a comparison to the pricing from CGI Federal's best and final offer.[13]

| Period | CGI's best and final offer | Independent cost estimate | Difference |
|---|---|---|---|
| Initial 2-year period | $38,512,267 | $38,696,356 | ($184,089) |
| Optional 3-year maintenance period | $21,674,307 | $12,612,527 | $9,061,780 |
| **Total** | **$60,186,574** | **$51,308,883** | **$8,877,691** |

The report estimated a total cost of $51.3 million. CGI Federal's best and final offer for the initial 2-year period was $184,089 less than the estimate. However, CGI Federal's best and final offer for the 3 option years was $9.1 million more than estimated. The State should have used information such as this to evaluate the bids before awarding a contract. We have provided the documentation to HUD. It needs to assess the appropriateness of the documentation.

## The State Did Not Ensure That Option Years Were Awarded Competitively

Contrary to regulations at 24 CFR 85.36(c), the State did not ensure that option years were awarded competitively. The regulations required that all procurement transactions be conducted in a manner providing full and open competition. The State's request stated that the term of the contract was required to be for a period of 2 years and could be extended for all or part of three 1-year periods by mutual written consent. The request did not initially require potential bidders to price out their projected costs for the option years. However, the State later added an addendum to the request, stating that bidders shall provide a cost component for the 3 option

[12] The State executed a contract modification in February 2014, raising the cost for the initial 2-year period to $45.2 million. The modification was related to additional responsibilities given to CGI Federal after the State terminated its contract with another contractor for the administration of several of its disaster programs. While the modification took place before the State obtained the May 16, 2014, cost estimate report, the report did not address the modification because it was intended to estimate costs before the State received bids or proposals.

[13] CGI Federal's best and final offer included pricing for the initial 2-year period totaling more than $38.5 million, which was $300,000 less than CGI Federal's initial offer. The best and final offer also included pricing for the 3-year maintenance period totaling more than $21.6 million, which was $96,768 less than the initial offer.

years. While CGI Federal provided pricing for the option years in its proposal, the State's evaluation committee did not consider the pricing as part of its technical review and price comparison process. As a result, HUD had no assurance that the option years were awarded competitively. This deficiency was illustrated by the independent cost estimate obtained by the State during our audit, which provided an estimate for the option years that was $9.1 million less than CGI Federal's best and final offer of $21.7 million. Because the option years were included in the contract language, the State could exercise them without additional competition when the initial 2-year period expired on May 24, 2015.

### The State Included Provisions That Restricted Competition

Contrary to regulations at 24 CFR 85.36(c), the State included provisions in its request for quotation that restricted competition. The regulations required that all procurement transactions be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition included but were not limited to (1) placing unreasonable qualification requirements on firms and (2) requiring unnecessary experience and excessive bonding. The State's request required that each bidder document experience in implementing disaster recovery projects exceeding $500 million and describe in detail at least three contract engagements of a 2-year duration or greater for which it was responsible as the primary information technology shared services provider. In addition, (1) one of the three engagements should have been undertaken within the past 3 years; (2) one of the clients should have been a State or local government with an annual information technology budget of at least $10 million (including a Block Grant Disaster Recovery or State disaster recovery effort); and (3) all three engagements needed to be production systems or environments, not initiatives in development. While Federal procurement standards did not prohibit requirements for experience, the level of detail in the State's requirements for experience may not have been necessary to retain a qualified contractor.

The State also required potential contractors to complete a rate schedule that had predetermined labor categories matching those of CGI Federal and had predetermined labor hours, which restricted competition. Of the 26 predetermined labor categories included in the State's schedule, 22 of them matched the exact wording of labor category titles from CGI Federal's authorized pricelist on the U.S. General Services Administration's (GSA) Web site. Instructions for completing the schedule directed bidders to select the labor categories that most closely matched their proposed group of employees for the contract. Further, bidders were asked to use predetermined labor hours to estimate their labor costs. These requirements restricted competition because otherwise qualified contractors may not have had employees who fit within the predetermined labor categories and may have been discouraged from bidding. While asking bidders to use predetermined labor categories and hours was not prohibited under Federal procurement standards, the practice may not have resulted in the most advantageous bids or proposals for the contract.

This condition occurred because the State mistakenly believed that all of the provisions were necessary to retain a qualified contractor. Also, the State believed that providing predetermined labor hours would establish a ceiling of hours for the life of the contract and promote more aggressive price competition for the labor rates. As a result of the restrictive provisions, HUD

had no assurance that the procurement transaction was conducted in a manner providing full and open competition. Without full and open competition, HUD and the State had no assurance that the contract amount was fair and reasonable. The effect of the restrictive provisions may be illustrated by the fact that the State received only one responsive bid despite soliciting 3,599 contractors.[14]

### The State Did Not Ensure That Software Purchases Were Procured Competitively

The State could not demonstrate that software totaling $1.1 million was acquired competitively. The State's contract with CGI Federal required the contractor to provide copies of at least three quotes when submitting invoices for payment of direct costs. CGI Federal's proposal indicated the price and vendors that it planned to use for the software purchases. However, the State did not modify the contract language to waive the three-quote requirement when submitting invoices for payment. If the State did not intend for CGI Federal to follow the contract requirement, it should have formalized the change and issued a contract modification because regulations at 24 CFR 85.36(b)(9) required the State to maintain records sufficient to detail the significant history of the procurement. Regulations at 24 CFR 85.36(c) required the State to conduct all procurement transactions in a manner providing full and open competition. Also, regulations at 24 CFR 85.36(d) required the State to obtain bids from an adequate number of sources, regardless of the procurement method, unless the noncompetitive proposal method was selected. The State could not provide adequate documentation to show that it met the intent of these standards. This condition occurred because the State was not fully aware of procurement standards. As a result, HUD had no assurance that the software was acquired competitively and that the associated disbursements totaling $1.1 million were supported.

#### *The State Had Begun To Take Action To Resolve Deficiencies Regarding Procurement of Software*

After we notified the State of this problem, it began providing additional documentation that it believed demonstrated that prices it paid for software were fair and reasonable. HUD needs to assess whether the documentation the State provided during the audit and any additional documentation it provides after the audit are sufficient to demonstrate that the prices the contractor paid for marketing services and products were fair and reasonable.

### The State Did Not Ensure That Contract Labor Costs Were Fully Supported

When submitting invoices for payment, the contract required the contractor to provide copies of weekly timesheets for employees assigned to do the work referenced in the invoice. The State did not have timesheets to support $1.5 million in labor costs charged by the contractor's employees. Instead, it provided billing worksheets that identified the employee, the number of hours worked by date and activity, the hourly rate, and the total amount due.

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[14] Regulations at 24 CFR 85.36(d)(3)(i) required the State to publicize requests for proposals. Also, 24 CFR 85.36(d)(3)(ii) required the State to solicit proposals from an adequate number of qualified sources. The State met these requirements by using GSA's Web site, known as "eBuy," to issue a request for quotation to 3,599 contractors.

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

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

The problem noted occurred because the State was unaware of the Federal cost principle requirements and believed that documents it accepted to support contractor employee time charges were subject to its discretion rather than the contract requirements. As a result, HUD had no assurance regarding how much time the contractor's employees spent working on the program, and the $1.5 million that the State disbursed to the contractor for labor costs was unsupported.

*The State Had Begun To Take Action To Resolve Deficiencies Regarding Labor Costs*

After we notified the State of this problem, it contacted the contractor and provided us reports from the automated timekeeping systems of CGI Federal and its subcontractors. The timekeeping reports satisfied the requirements of the contract and Federal cost principles for some but not all of the employees who charged time to the contract. After reviewing this additional documentation provided by the State, we determined that the State had not provided adequate timesheets to support $467,659 disbursed for wages and salaries charged under the contract by the contractor's employees. These timesheets were not signed by the employee as required by 2 CFR Part 225.

## The State Did Not Ensure the Accuracy of Its Certification to HUD

The State did not ensure that its procurement policies and procedures were fully equivalent to Federal procurement standards. The HUD Federal Register notice[15] required the State to either adopt the specific procurement standards identified in 24 CFR 85.36 or have a procurement process and standards that were equivalent to the procurement standards at 24 CFR 85.36. The State acknowledged in its procurement policy for Block Grant Disaster Recovery grants that it

[15] 78 FR 14336, dated March 5, 2013

was required as a grantee to follow the requirements of 24 CFR 85.36 and that its procurement processes and standards were equivalent to the procurement standards at 24 CFR 85.36. Accordingly, the State certified to HUD that its policies and procedures were equivalent to the procurement standards at 24 CFR 85.36. While the State accurately portrayed its policies and procedures on the certification, the issues identified above show that the State's process was not equivalent to Federal procurement standards; therefore, its certification was inaccurate.

## Conclusion

The State did not procure services and products for its disaster management system in accordance with Federal procurement and cost principle requirements. This condition occurred because the State was not fully aware of applicable requirements. As a result, HUD had no assurance that the $38.5 million initial contract amount was fair and reasonable, the option years totaling another $21.7 million were awarded competitively, provisions in the request for quotation did not restrict competition, software purchases were acquired competitively, and labor costs were supported.

Although the State had begun taking corrective action to resolve some of the deficiencies, HUD needs to assess whether the State's corrective action and related documentation are adequate to ensure that all disbursements were reasonable and supported. Further, because the State's process was not equivalent to Federal procurement standards, HUD should direct the State to update its procurement processes to ensure that they are fully aligned with applicable requirements.

## Recommendations

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

1A. Determine whether the documentation the State provided is adequate to show that the $36,992,675[16] contract price for the initial 2-year period was fair and reasonable and if not, direct the State to repay HUD from non-Federal funds any amount that it cannot support (excluding any amount repaid as a result of recommendations 1C and 1D).

1B. Determine whether the documentation the State provided is adequate to show that the price for the 3 additional option years is fair and reasonable and if not, direct the State to rebid for the additional option years, thereby putting $9,061,780[17] to better use.

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[16] To avoid double-counting, we reduced the contract price shown for recommendation 1A by the amounts discussed in recommendations 1C and 1D. The $36,992,675 is the full $38,512,267 contract price for the initial 2-year period less the amounts cited in recommendations 1C ($1,051,933) and 1D ($467,659).

[17] The $9,061,780 is the difference between CGI Federal's best and final offer for the 3 additional option years ($21,674,307) and the cost estimate obtained by the State after awarding the contract ($12,612,527). If HUD directs the State to rebid for the additional option years, it could reduce the price by as much as $9,061,780.

1C. Determine whether the documentation the State provided is adequate to show that the $1,051,933 disbursed for software was a fair and reasonable price and if not, direct the State to repay HUD from non-Federal funds any amount that it cannot support.

1D. Determine whether the documentation the State provided is adequate to support the $467,659 disbursed for wages and salaries charged to the program by contractors' employees and if not, direct the State to repay HUD from non-Federal funds any amount that it cannot support.

1E. Direct the State to update its procurement processes and standards to ensure that they are fully aligned with applicable Federal procurement and cost principle requirements.

# Scope and Methodology

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

To accomplish our objective, we reviewed

- Relevant background information;
- Applicable regulations, HUD notices, and the State's policies and procedures;
- The Disaster Relief Appropriations Act, Public Law 113-2;
- The State's Block Grant Disaster Recovery action plan as approved by HUD on April 29, 2013;
- The funding agreement between HUD and the State, dated May 13, 2013;
- The State's request for quotation;
- Bids, proposals, and other supporting documentation submitted by contractors;
- The State's bid evaluation documentation;
- The State's contract with CGI Federal;
- Contractor invoices and supporting documentation;
- Weekly progress reports prepared by the contractor;
- Reports from the contractor's automated timekeeping systems;
- A contractor-prepared independent cost estimate report related to the State's contract award;
- Contractor analyses conducted by the Federal Recovery Accountability and Transparency Board; and
- A HUD management review, dated June 10, 2014.

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

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

As of November 2013, the beginning of the audit, the State had made eight disbursements to the contractor totaling $3.2 million. That amount included costs for labor and project materials, such as software licensing. We selected for review the five disbursements with the highest dollar amounts. The value of the five disbursements was $2.6 million (about 81 percent of the total disbursed), including $1.5 million for labor costs and $1.1 million for project materials. We reviewed the disbursements to determine whether they were eligible and supported by adequate

documentation. During the period December 2013 to February 2015, the State made additional disbursements to the contractor, bringing the total amount disbursed to $25.7 million.

As of January 2014, there were 350 completed funds requests in the system. We selected and reviewed the first 25 completed funds requests to determine whether they went through all levels of review and approval.

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:

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

We assessed the relevant controls identified above.

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

### Significant Deficiency

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

- The State did not establish and implement procedures to ensure that it complied with all applicable procurement and cost principle requirements.

# Followup on Prior Audits

### The State of New Jersey, Trenton, NJ, Community Development Block Grant Disaster Recovery-Funded Tourism Marketing Program; Audit Report 2014-PH-1008; Issued August 29, 2014

The following recommendations were still open at the time of this report: 1A. Determine whether the documentation the State provided is adequate to show that the overall contract price was fair and reasonable and if not, direct the State to repay HUD from non-Federal funds for any amount that it cannot support; 1B. Determine whether the documentation the State provided is adequate to show that the $19,499,020 disbursed for marketing costs was fair and reasonable and if not, direct the State to repay HUD from non-Federal funds for any amount that it cannot support; 1C. Determine whether the documentation the State provided is adequate to support $3,487,461 disbursed for wages and salaries charged to the program by the contractors' employees and if not, direct the State to repay HUD from non-Federal funds for any amount that it cannot support; and 1D. Direct the State to update its procurement processes and standards to ensure that they are fully aligned with applicable Federal procurement and cost principle requirements. We are working through the management decision process with HUD as prescribed in HUD Handbook 2000.06, REV-4.[18]

[18] This process will determine what corrective actions HUD will require of the State.

# Appendixes

## Appendix A

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

| Recommendation number | Unsupported 1/ | Funds to be put to better use 2/ |
|---|---|---|
| 1A | $36,992,675[19] | |
| 1B | | $9,061,780 |
| 1C | $1,051,933 | |
| 1D | $467,659 | |
| **Total** | **$38,512,267** | **$9,061,780** |

1/ 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.

2/ Recommendation 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 instance, implementation of our recommendation to direct the State to rebid for the additional option years if the documentation is not adequate to show that the price is fair and reasonable could reduce the price by as much as $9.1 million. This is the difference between the contractor's best and final offer and the cost estimate obtained by the State after awarding the contract.

[19] To avoid double-counting, we reduced the amount shown as unsupported for recommendation 1A by the amounts discussed in recommendations 1C and 1D. The $36,992,675 is the full $38,512,267 contract price for the initial 2-year period less the amounts cited in recommendations 1C ($1,051,933) and 1D ($467,659).

# Appendix B

## Auditee Comments and OIG's Evaluation

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|---|---|
| Comment 1 | |
| Comment 2 | |
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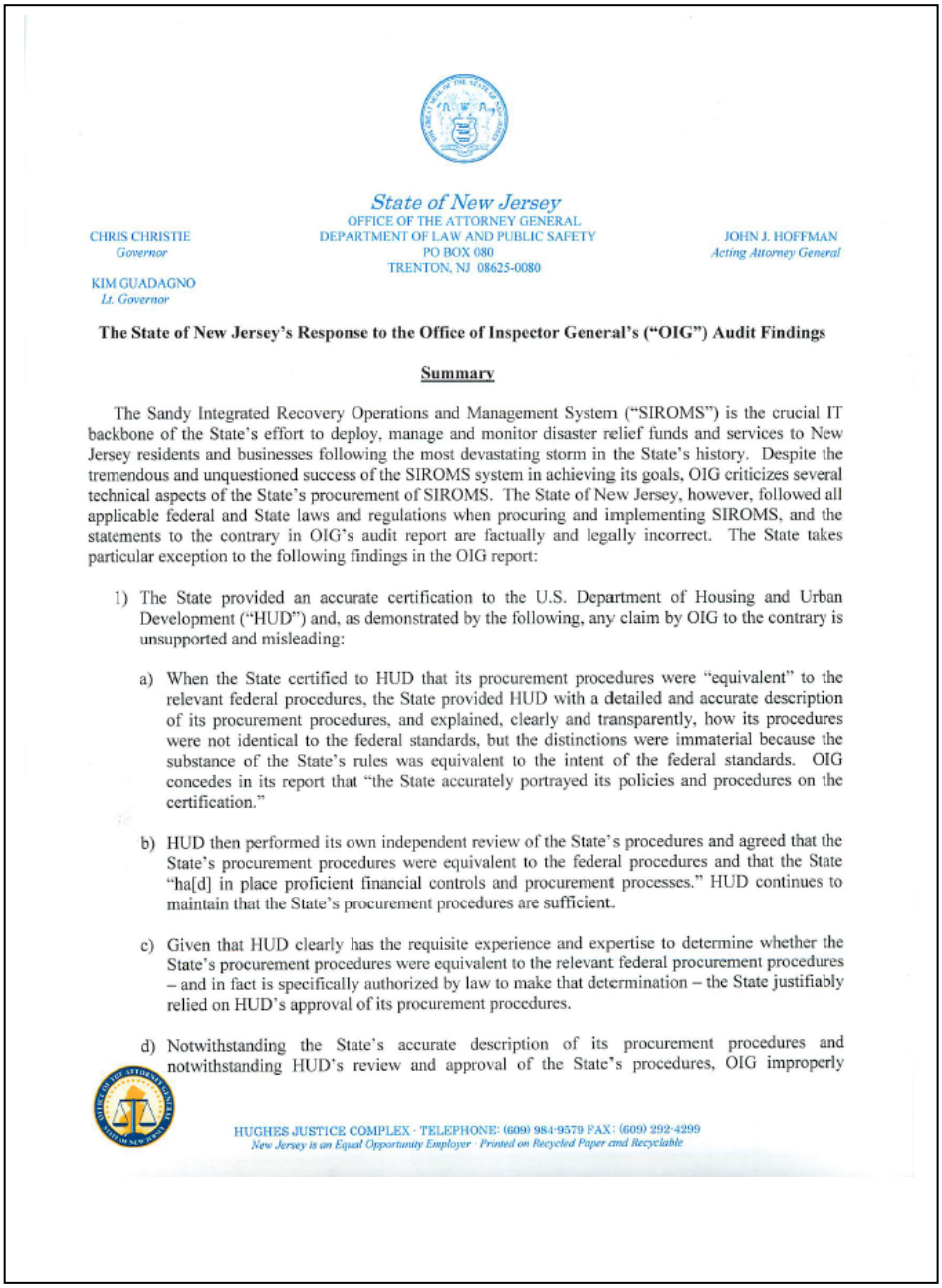
| Comment 2 | |



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**The State of New Jersey's Response to the Office of Inspector General's ("OIG") Audit Findings**

**Summary**

The Sandy Integrated Recovery Operations and Management System ("SIROMS") is the crucial IT backbone of the State's effort to deploy, manage and monitor disaster relief funds and services to New Jersey residents and businesses following the most devastating storm in the State's history. Despite the tremendous and unquestioned success of the SIROMS system in achieving its goals, OIG criticizes several technical aspects of the State's procurement of SIROMS. The State of New Jersey, however, followed all applicable federal and State laws and regulations when procuring and implementing SIROMS, and the statements to the contrary in OIG's audit report are factually and legally incorrect. The State takes particular exception to the following findings in the OIG report:

1) The State provided an accurate certification to the U.S. Department of Housing and Urban Development ("HUD") and, as demonstrated by the following, any claim by OIG to the contrary is unsupported and misleading:

   a) When the State certified to HUD that its procurement procedures were "equivalent" to the relevant federal procedures, the State provided HUD with a detailed and accurate description of its procurement procedures, and explained, clearly and transparently, how its procedures were not identical to the federal standards, but the distinctions were immaterial because the substance of the State's rules was equivalent to the intent of the federal standards. OIG concedes in its report that "the State accurately portrayed its policies and procedures on the certification."

   b) HUD then performed its own independent review of the State's procedures and agreed that the State's procurement procedures were equivalent to the federal procedures and that the State "ha[d] in place proficient financial controls and procurement processes." HUD continues to maintain that the State's procurement procedures are sufficient.

   c) Given that HUD clearly has the requisite experience and expertise to determine whether the State's procurement procedures were equivalent to the relevant federal procurement procedures – and in fact is specifically authorized by law to make that determination – the State justifiably relied on HUD's approval of its procurement procedures.

   d) Notwithstanding the State's accurate description of its procurement procedures and notwithstanding HUD's review and approval of the State's procedures, OIG improperly

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substitutes its judgment for that of HUD. Whether or not OIG and HUD can reconcile their differing opinions on how to interpret "equivalence," the State never provided an "inaccurate" certification to HUD. The State should not be faulted for acting in accordance with a valid determination by HUD that the procedures the State intended to use – and did in fact use – were proficient and equivalent to those in the federal regulations.

Comment 4

2) Despite OIG's claim to the contrary, the State was not required to conduct a pre-bid cost estimate or post-bid cost analysis in strict compliance with certain federal regulations. Instead, federal law required New Jersey to follow its own procurement practices. Further, the State's efforts to estimate and evaluate costs met both State requirements and the intent of the federal standards.

Comment 5

3) OIG's claim that the State already has executed the SIROMS option years, and that it has overpaid by as much as $9.1 million for the option years, is factually incorrect. The option years have not yet been awarded, the State has made no payments (much less overpayments), and the State is currently under no contractual obligations as to the SIROMS option years. If and when the State does award the SIROMS option years, it will ensure that the costs are competitive.

Comment 6

4) Including estimated labor hours and labor categories in a solicitation for bids is a widely accepted federal procurement practice that is routinely utilized by numerous federal agencies, including HUD, as a legitimate way to perform cost comparisons of competing bids. Thus, OIG's determination that the State somehow restricted competition by including estimated labor hours and labor categories in its SIROMS solicitation is not legally supported and is at odds with generally accepted federal and state procurement practices.

Comment 7

5) The contractor experience requirements contained in the SIROMS RFQ were appropriately tailored to meet the State's need to retain a qualified IT firm without unduly restricting the pool of potential bidders. It would have been irresponsible, and likely harmful to New Jersey's vital disaster recovery efforts and its obligation to safeguard HUD CDBG-DR funding, for the State to consider a vendor without any experience implementing an IT system of this magnitude. This is particularly true given the expedited timeline under which HUD required the State to distribute funding and the State's duty to quickly provide relief to citizens in need. Further, not one prospective vendor protested the State's SIROMS criteria or the contract award. Thus, OIG's assertion that the experience requirements in the State's RFQ "may not have been necessary to retain a qualified contractor" is unfounded.

Comment 8

## Ref to OIG Evaluation

## Auditee Comments



**The State of New Jersey's Response to HUD OIG's Audit Findings Concerning SIROMS**

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**Auditee Comments**

Comment 1



**1. INTRODUCTION**

The SIROMS IT system is a critical component in the State's effort to deploy, manage and monitor Community Development Block Grant Disaster Recovery ("CDBG-DR") funds and services to New Jersey residents, businesses and communities following the most devastating storm in the State's history. As set forth herein, we are confident that in procuring and implementing the SIROMS IT system, the State acted reasonably, appropriately and fully in accordance with applicable laws and regulations.

**a. The Devastating Effect of Superstorm Sandy on New Jersey**

Superstorm Sandy was the largest and most ferocious storm to ever hit New Jersey. After making landfall in southern New Jersey on the evening of October 29, 2012, the storm battered the State between October 29 and 30, 2012. Thirty-four (34) New Jersey citizens lost their lives, and the storm also caused catastrophic and unprecedented damage to the State's housing, business and infrastructure sectors.

Hundreds of thousands of homes throughout the State were damaged or destroyed, and more than a million households lost power. Numerous residents were displaced from their homes in the aftermath of the storm.

The State also suffered severe business losses and economic damage. New Jersey businesses incurred an estimated $382 million in commercial property damages coupled with $64 million in business interruption losses. As businesses were forced to shut their doors, unemployment claims in the State more than doubled in November 2012, the first full month after the disaster.

The damage to New Jersey's infrastructure was equally devastating. Water and wastewater treatment facilities were unable to sustain operations. Every school in the State was closed, including six schools that were severely damaged. Vital transportation corridors became impassable as widespread flooding and sustained winds covered roadways with water and debris. Nearly six-hundred (600) New Jersey roads and tunnels had to be shut down. Compounding the problem, New Jersey rail lines and public transportation systems also suffered significant damage, further hindering evacuation and relief efforts throughout the State.

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

On October 30, 2012, the President of the United States declared all 21 New Jersey counties as major disaster areas, making federal disaster assistance available to the State. Thereafter, on January 28, 2013, the U.S. Congress passed the Disaster Relief Appropriations Act, which provided $50.6 billion to fund short and long-term relief and recovery efforts in areas of the nation, including New Jersey, impacted by major disasters between 2011 and 2013. Disaster Relief Appropriations Act of 2013, Pub. L. No. 113-2, January 29, 2013 ("the Disaster Relief Act"). The Disaster Relief Act included an allocation of $16 billion to HUD's Community Development Fund for use towards disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization. The President signed the Disaster Relief Act on January 29, 2013.

**Ref to OIG Evaluation**

**Auditee Comments**



Approximately one week later, on February 6, 2013, HUD announced that it would initially allocate $1.83 billion in CDBG-DR funds to New Jersey to help the State recover from Superstorm Sandy's devastation.[1] Notably, pursuant to the Disaster Relief Act, the State was required to expend these funds within two years of the date of the obligation, creating additional urgency for the State to stand-up its disaster relief programs on an expedited basis.

**c. The State's Action Plan**

On March 5, 2013, HUD published a Notice in the Federal Register ("March 5, 2013 Federal Register Notice") which set forth certain requirements the State had to meet before HUD would fully obligate the CDBG-DR funds. See 78 Fed. Reg. 14329-14349 (March 5, 2013). Among other things, the State was required to submit an Action Plan to HUD detailing its proposed use of the CDBG-DR funds, including its criteria for eligibility and how the use of the funds would address disaster relief, long-term recovery, restoration of infrastructure, and housing and economic revitalization in the most impacted and distressed areas of the State. See id. at 14330. Notably, the Secretary of HUD was required to approve the Action Plan after reviewing the extensive supporting documentation provided by the State in compliance with the March 5, 2013 Federal Register Notice. Id. at 14331.

The New Jersey Department of Community Affairs ("DCA"), which was designated as the State entity responsible to HUD for administering CDBG-DR funds, submitted the State's Action Plan on March 27, 2013. The Action Plan demonstrated the extreme magnitude and scope of the devastation suffered by New Jersey by identifying billions of dollars in critical unmet needs in the State's housing, economic, and infrastructure sectors as a result of Superstorm Sandy.

As discussed in greater detail herein, the Secretary of HUD, through his authorized representative, certified New Jersey's Action Plan on April 29, 2013. In that certification, HUD affirmed that, in connection with its disaster relief efforts, the State of New Jersey "ha[d] in place proficient financial controls and procurement processes" and "ha[d] established adequate procedures" to: (1) prevent duplication of benefits; (2) ensure timely expenditure of funds; (3) maintain comprehensive websites concerning its disaster recovery activities; and (4) detect and prevent waste, fraud, and abuse of funds. Id. at 14331.

**d. Procuring SIROMS**

In the aftermath of Superstorm Sandy, the State was faced with the monumental challenge of quickly and effectively implementing programs to deliver critical relief to families, businesses and communities in New Jersey that were harmed by the storm. After evaluating the impact of the storm and New Jersey's diverse economic, environmental, and social needs, the State launched more than fifty programs and initiatives in the eighteen-month period following the disaster.

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[1] HUD has since allocated additional sums of approximately $1.46 billion in "second round" and $500 million in "third round" CDBG-DR funds to the State. The State of New Jersey is extremely grateful to the people of the United States and HUD for this expedient and critical assistance during one of the worst disasters the State has ever experienced.

Comment 9



The breadth of New Jersey's disaster relief programs necessitated a highly sophisticated, centralized IT system to successfully manage the complex series of IT interactions necessary to support each program and to help coordinate and prioritize its overall disaster recovery resources. Therefore, on April 25, 2013, pursuant to applicable federal and State procurement statutes and regulations, the New Jersey Department of Treasury, Division of Purchase and Property ("DPP"), issued an RFQ on behalf of DCA to solicit quotes from prospective contractors to develop and implement SIROMS. The estimated value of the two-year contract was approximately $38 million.

**e. The State's Approach to Requesting Quotes for SIROMS Was Shaped by the Experiences of Other States and by the Complexity of Building a New IT System Tailored to the State's Unique Disaster Relief Needs**

To procure a robust IT system of sufficient capacity, flexibility, and ease of use to support the array of New Jersey's Superstorm Sandy recovery efforts, the State sought the advice of experts and government representatives with experience in disaster recovery. The State initially hired a disaster recovery consultant, CDM Smith, and also engaged one of HUD's recommended CDBG-DR technical assistance providers, ICF International ("ICF"), for assistance. Through its consultants, the State identified and contacted government officials from multiple states and cities that had previously received CDBG-DR grants. These included officials from the states of Mississippi, Iowa, New York, Indiana, Illinois, Texas, and Louisiana, and the cities of Nashville, Tennessee and Joplin, Missouri. CDM Smith first solicited input from these government officials as to which IT system they used for disaster relief operations and its effectiveness, and then compared these systems to New Jersey's needs. Each of these specialists provided important anecdotal information and additional helpful guidance concerning the implementation and performance of their own IT systems following similar natural disasters. This provided New Jersey with insight into the challenges it would likely face at the outset of the procurement. Louisiana's post-Katrina experience was particularly informative because the magnitude of Katrina and the diversity of the resulting recovery needs were similar to what New Jersey faced following Sandy.

Thereafter, the State, CDM Smith, ICF, and disaster recovery specialists from Louisiana formed a working group to help draft the SIROMS RFQ. This SIROMS working group discussed and reached consensus on many issues including : the project's Scope of Work; estimated total costs; contractor experience requirements; estimated labor hours; the contractor's staffing requirements; and the types of labor or "labor categories" needed to complete the IT system. Much of this information was then included in the State's SIROMS RFQ.

**f. RFQ Requirements**

New Jersey's RFQ called for SIROMS to be a comprehensive and "fully functional turnkey" IT system tailored to the State's CDBG-DR program needs. SIROMS RFQ, section 1.1. As explained in the RFQ, New Jersey needed SIROMS to help the State deploy CDBG-DR funds and disaster recovery services to the victims of the storm in a rapid, flexible, and efficient manner. Id. Additionally, it was noted in the RFQ that SIROMS was intended to enhance the State's capacity to manage and monitor contractors, as well as State agencies and departments that were expending CDBG-DR funds. Id. The

RFQ further required the contract awardee to design SIROMS to comply with all CDBG-DR program regulations. Id. § 3.2.3.4.7.[2]

**g. SIROMS Contract RFQ Awarded to CGI Federal, Inc. ("CGI")**

The State issued its RFQ on April 25, 2013, in anticipation of receiving the initial allocation of HUD CDBG-DR funds in May 2013. As set forth in the RFQ, any questions from prospective contractors were due on May 2, 2013, and quotations were due by May 14, 2013. Three firms, including CGI, submitted questions concerning the RFQ. Thereafter, CGI and one other firm ("second firm") submitted quotes on the project.

As required by State law and consistent with procurement best practices, DPP formed an experienced evaluation committee to analyze responsive bids. From the outset, it was apparent that the second firm's bid was not responsive to the RFQ. For example, although the second firm provided hourly rates for most of the labor categories listed in the SIROMS RFQ, its bid did not explain how it would implement the complex SIROMS IT system or meet any of the other bid requirements, aside from providing a basic pricing sheet. As a result, the evaluation committee determined that the second firm's bid was "non-responsive."

The evaluation committee then focused on conducting an in-depth review of CGI's proposal and solicited and reviewed CGI's subsequent "best and final offer." In particular, the SIROMS evaluation committee compared CGI's proposed hourly labor rates to those publicly listed by five other pre-approved General Services Administration ("GSA") IT contractors to determine whether CGI had proposed competitive market rates. CGI's proposed prices were compared to twenty-seven (27) different price points offered by other GSA firms. Of these twenty-seven (27) comparable price points, twenty-two (22) were priced higher than the CGI proposal. Based on this rate comparison, the evaluation committee concluded that CGI's hourly rates were fair and reasonable.

The evaluation committee also recognized that CGI was offering a fixed rate for each labor category for the life of the contract, as opposed to including an industry-standard rate escalation clause that raises rates each year by more than 2%. The evaluation committee determined that this fixed-rate mechanism would reduce costs to the State of New Jersey by almost $500,000 when compared with CGI's standard GSA rates.

On May 24, 2013, the SIROMS contract was awarded to CGI based on CGI's technically responsive proposal and cost-reasonable rates. Notably, no firms or taxpayers[3] protested the award.

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[2] To win the SIROMS contract, a vendor had to commit to include a portal in SIROMS that would allow the State to perform essential CDBG-DR specific tasks including: (1) making payments under the various CDBG-DR programs; (2) monitoring the use of CDBG-DR funds and otherwise tracking CDBG-DR expenditures; (3) determining CDBG-DR program performance and effectiveness; (4) monitoring and tracking CDBG-DR grant applications; (5) maintaining audit trails and assuring quality control and compliance with CDBG-DR grant requirements; (6) filing required reports with HUD and other federal agencies concerning the State's CDBG-DR expenditures; and (7) providing source data concerning the CDBG-DR programs to State transparency sites and reporting dashboards. Id. § 1.1.

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**h. The Success of the SIROMS IT System**

The development and implementation of the SIROMS IT system has been a resounding success. SIROMS has enabled the State to effectively: (1) implement its Action Plan; (2) disburse vital CDBG-DR funds to individuals and communities in New Jersey in desperate need of aid; (3) manage the flow of CDBG-DR funds; and (4) provide necessary monitoring and oversight as required by HUD.[4]

Notably, HUD has repeatedly recognized the high-level of functionality and effectiveness that the SIROMS IT system provides. For example, in its January 8, 2015 Management Review Report, HUD commented that SIROMS significantly improved the management of housing program applications because it more effectively tracked individual case files. See HUD Management Review Report, DCA 4 (2015). Additionally, HUD noted that SIROMS offers an efficient electronic filing system which "plays a valuable role in demonstrating DCA's financial management and provides a clear audit trail for CDBG-DR funds that are drawn." Id. at 17. Indeed, the State understands that HUD has pointed to the SIROMS IT system as a model for other states to consider when implementing complex disaster relief programs.

Comment 1

OIG now disputes whether the State properly procured services and products for the SIROMS IT system. As fully set forth herein, OIG's assertions are incorrect because the State procured the SIROMS contract in compliance with all relevant State *and* federal requirements, and ensured that all costs associated with building the SIROMS IT system were properly documented.

**2. THE STATE PROCURED THE SIROMS CONTRACT IN ACCORDANCE WITH ALL LEGAL REQUIREMENTS**

Comment 1

The State's procurement of SIROMS does not implicate the technical concerns identified by OIG. Rather, the State complied with applicable federal and State laws and regulations in connection with the SIROMS procurement.

**a. The State Appropriately Followed New Jersey Procurement Rules as Required by 24 C.F.R. § 85.36(a) and Accurately Represented Its Procurement Standards in a Certification to HUD**

Comment 4

The State was not required to conduct a pre-bid independent cost estimate ("ICE") or post-bid cost analysis in strict compliance with federal standards because federal law requires New Jersey, like all other states, to follow the State's procurement practices. Nonetheless, the State's efforts to estimate and evaluate costs were sufficient to meet both State and federal standards.

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[3] Under New Jersey law, taxpayers have standing to protest contract awards.

[4] The success of SIROMS can be attributed primarily to the development of essential modules that support the State's recovery programs. For example, the SIROMS Financial module, which allows DCA to create budgets and track expenditures for all CDBG-DR activities and programs, enabled DCA to process over $619 million in CDBG-DR funding within one year of program implementation. The SIROMS Grant Management module tracks and manages applicant data in a single virtual file, thus maintaining consistent records for auditing and reporting purposes.

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**i. The State Followed Its Own Policies and Procedures as Required by Federal Law**

Comment 10

Comment 3

Comment 10

In its audit report, OIG asserts that because the State did not follow the procurement procedures set out in subsections (b)-(i) of 24 C.F.R. § 85.36, the State's process for awarding SIROMS was deficient. This position is based on a misunderstanding of federal law. States (including New Jersey) are required under section 85.36(a) to follow their own procedures in procurements when using federal grant funds; the standards enumerated in sections (b)-(i) apply only to other, non-state grantees. Because the State has not adopted the procedures of sections (b)-(i) as its own standards, it was legally bound to follow its own processes where those processes diverged from the standards in section (b)-(i). This is not merely the State's opinion, but was confirmed by HUD in 2013 when it certified that the State "has in place proficient financial controls and procurement processes." It is entirely unclear why OIG continues to rely on inapplicable rules in evaluating the State's procurement processes.

The legal analysis is straightforward. The plain language of the procurement standards at 24 C.F.R. § 85.36(a) unambiguously provides that "a State *will* follow the same policies and procedures it uses for procurements from its non-federal funds" (emphasis added). The use of "will" indicates that the obligation is mandatory, and not discretionary, for states to follow their own policies and procedures. See A-G-E- Corp. v. United States, 752 F. Supp. 836, 851 (D.S.D. 1990) ("[b]y the very wording set forth [], states are required to follow their own policies and procedures that are followed for procurements from its nonfederal funds."), aff'd, 968 F.2d 650 (8th Cir. 1992). Additionally, the last sentence of section 85.36(a) states that "*[o]ther grantees* and subgrantees will follow paragraphs (b) through (i) in this section" (emphasis added), indicating that the specific standards and procedures in section 85.36(b)-(i) apply only to grantees and subgrantees that are *not* states.

Comment 11

The requirement that states use their own procedures is reiterated in the regulations governing the State CDBG program – specifically 24 C.F.R. § 570.489(g) – which again unambiguously declares that when procuring goods and services using CDBG funds (as here), "the state *shall* follow its procurement policies and procedures" (emphasis added). Absent notice and comment rule making amending sections 85.36(a) and 570.489(g), OIG cannot base its findings on a requirement (i.e., in 78 Fed. Reg. 14329, 14336) that is contrary to those regulations' plain requirements, which mandate that states follow their own procurement procedures and do not require that those procedures be equivalent to federal standards. See Nat'l Envtl. Dev. Ass'n's Clean Air Project v. E.P.A., 752 F.3d 999, 1009 (D.C. Cir. 2014) ("[i]t is 'axiomatic,' however, 'that an agency is bound by its own regulations.'") (quoting Panhandle Eastern Pipe Line Co. v. FERC, 613 F.2d 1120, 1135 (D.C. Cir. 1979)); Lewis v. United States, 114 Fed. Cl. 682, 689 (2014) ("[i]t is, of course, a fundamental tenet of our legal system that the government must follow its own regulations. Actions by an agency of the executive branch in violation of its own regulations are illegal and void.") (quoting VanderMolen v. Stetson, 571 F.2d 617, 624 (D.C. Cir. 1977)).

Comment 12

The conclusion that states are bound by federal law to follow their own procedures is confirmed by HUD's own guidance. Noting that states have "considerable latitude in establishing [their] own administrative procedures and requirements," a HUD Handbook explains that states are not bound by certain regulations, including 85.36(b)-(i), which "*do not* apply to states *unless they choose* to adopt all or parts of these requirements." HUD Handbook 6509.2 REV-5 CHG-2 § 4-9 (G)(1). As the Handbook

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Comment 3

further explains, when a state has not formally adopted its provisions, "variances from part 85 . . . are not" a proper basis for findings of non-compliance with the administration of CDBG funds. Id. at Exh. 4-7, at p. 4-2. In conformity with this Handbook guidance, HUD confirmed that the State "has in place proficient financial controls and procurement processes" to properly manage and distribute CDBG-DR funds when it allocated $1.83 billion to New Jersey in 2013. HUD has never reversed this decision, but OIG continues to base several of its audit findings about asserted deficiencies on a contention that the State acted contrary to federal procurement regulations. How can the State act "contrary" to regulations that do not apply to its procurements?

Moreover, audits of New Jersey's procedures by other federal agencies have also reached the same determination. When evaluating the State's procurements using Department of Homeland Security – Federal Emergency Management Agency ("DHS") funds for statewide debris removal, the DHS OIG audit report explained that the State complied with applicable federal and State procurement standards by following the same policies and procedures it uses for State procurements. Although DHS's regulations are codified at a different place in the Federal Code than 24 C.F.R. § 85.36, they are functionally identical to section 85.36. Thus, not only does OIG's understanding of federal rules run counter to HUD's understanding, it also runs counter to the understanding of other federal agencies. It would be illogical and unduly onerous to have the State follow one set of procurement rules for DHS funds and an entirely different set of rules for HUD funds.

Comment 13

Portions of OIG's audit report acknowledge that the State "did not adopt the procurement procedures" of 24 C.F.R. § 85.36(b)-(i) – which appears to be a concession that, as a matter of federal law, the State cannot be held to strict compliance with the substance of those provisions. Nonetheless, the only metric OIG uses to assess the proficiency of various State procedures is whether the State strictly complied with the policies of section 85.36(b)-(i). Notably, several sections of OIG's audit report start by explaining what "the regulations required the State" to do, and then those sections proceed to fault the State on the sole basis that it did not do exactly what a given regulation required. This approach to evaluating the State's procurement process is contrary to federal law, as section 85.36(a) requires that the State follow its own State policies and procedures, as it indisputably did.[5]

**ii. The State Explained from the Start that Its Own Statutory Procedures were Not Identical to the Procedures of Section 85.36, but were Equivalent because they Satisfied the Same Procurement Goals**

Comment 14

OIG's apparent basis for holding the State to strict compliance with the procedures of section 85.36(b)-(i) is the State's certification to HUD that its policies and procedures were "equivalent" to the

[5] Although it was not required to comply with 24 C.F.R. § 85.36(f), the State engaged ICF to prepare an ICE for SIROMS in response to the concerns raised by OIG. This ICE was provided to OIG and is referenced throughout OIG's audit report. The ICE report provided estimates for the initial two year period of the SIROMS contract and the three option years for system maintenance. OIG concedes that the report indicates that CGI's proposal for the initial contract period is $184,089 less than the ICE. However, OIG incorrectly claims that the ICE indicated that the State awarded the option year contract to CGI at more than $9.1 million above the estimated value. OIG's misinterpretation of the ICE is more fully discussed herein.

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Comment 14

Comment 3

Comment 10

federal standards. The State has been clear from the outset, however, that New Jersey procedures – which the State is bound to follow under both State and federal law – are not identical to the standards of 85.36(b)-(i). Rather, the State fully explained to HUD in writing that they are "equivalent" because they achieve the same procurement goals as 85.36(b)-(i) and therefore meet the overall intent of those regulations, despite differences in the particular rules used to achieve those aims. HUD reviewed the State's explanation, evaluated the State's procedures – including the differences from the protocols under 85.36(b)-(i) – and certified that the State's procedures met applicable standards. The equivalency requirement and the history of the exchange between the State and HUD are detailed below.

Prior to signing a grant agreement, the Disaster Relief Act requires HUD to "certify in advance that such grantee has in place proficient financial controls and procurement processes . . . ." Disaster Relief Act. The March 5, 2013 Federal Register Notice indicates that a state's procurement procedures will be certified as proficient if the state can show that they are equivalent to the federal procurement requirements set forth in 24 C.F.R. § 85.36. See 78 Fed. Reg. 14366.

To comply with the March 5, 2013 Federal Register Notice, the State submitted its procurement policies to HUD, accompanied by a certification checklist. The checklist detailed various requirements for controls and procurement, and required, at the end, that a State official certify to their "adequacy and proficiency." Certification Checklist for CDBG-DR Grantees under the Disaster Relief Appropriations Act, 2013 (Public Law 113-2), March 2013 (signed on March 25, 2013). The State answered "yes" to all of the questions except whether it had "adopted the specific procurement standards identified in 24 C.F.R. § 85.36," to which the State answered in the negative. In the next question, the State answered "yes" to whether its procurement process/standards were "equivalent to the procurement standards at 24 C.F.R. § 85.36," and further indicated in response to the following question that its specific procurement standards were attached. Id.

Comment 10

Comment 14

Along with the checklist, the State provided its procurement policies accompanied by a description of how its policies aligned with the federal procurement provisions set forth in section 85.36(b)-(i).[6] In this description, the State made it clear that although it considered its policies equivalent to those in the federal regulations, they were not identical. The State readily acknowledged that it could not provide an "apples-to-apples" comparison between its policies and each subsection of 24 C.F.R. § 85.36, but it explained in detail where its policies diverged from the rules of section 85.36, and how its procurement rules contained procedures and controls that met the intent, and were therefore "equivalent" to, the federal provisions. NJ Procurement Policy – CDBG-DR at 5. For example, the State acknowledged that it did not have an identical provision to section 85.36(f), but explained in several paragraphs why its procedures met the intent of that federal standard and were therefore equivalent. Id. Overall, the State conveyed to HUD that its procurement policies adequately guaranteed that contracts would be procured in a manner ensuring cost reasonableness, full and open competition, and an advantageous result for the State.

[6] The New Jersey Department of Treasury, pursuant to its authority under State law, sent the procurement policies which apply to all State contracts to HUD for its review. In fact, these procurement policies were specifically attached to the State's Action Plan as required by the March 5, 2013 Federal Register Notice. HUD ultimately reviewed and certified the relevant State policies that were submitted with the State's Action Plan.

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Comment 3

On April 29, 2013, Yolanda Chávez, the Deputy Assistant Secretary for Grant Programs, CPD at HUD, indicated that HUD had "reviewed the financial control materials submitted by the State" and reached a determination that "the State of New Jersey has demonstrated adequate financial controls, procedures and processes." HUD Memorandum signed by DAS Chávez (Apr. 29, 2013). Ms. Chávez also certified that "the State of New Jersey has in place proficient financial controls and procurement processes . . . ." Thus, not only did the State explain to HUD that it had proficient procurement processes as required by the Disaster Relief Act and the March 5, 2013 Federal Register Notice, but HUD's Deputy Assistant Secretary for Grant Programs certified that HUD's review of the State's procedures reached the same conclusion.

Comments 10 and 14

Comment 3

In sum, the State has always been clear that its procurement procedures are not identical to 24 C.F.R. § 85.36. Rather, as the State explained to HUD, the State's procedures are equivalent because they meet the intent of those federal provisions and achieve the same salutary goals. It would be improper to measure the State's procedures against the specific requirements of 24 C.F.R. § 85.36 when it was permitted by HUD to use its own procurement processes (and in fact was actually required to do so under section 85.36(a)), and when those process were analyzed by HUD and certified as both proficient and equivalent to the federal regulations.

Comment 15

**iii. The State's Certification to HUD was Accurate and Certified as Such by HUD**

The State strenuously disagrees with OIG's finding that its certification to HUD was inaccurate, and takes exception to the suggestion that it acted deceptively or disingenuously in making its certification. The State certified to HUD in good faith that its procurement policies were equivalent to 24 C.F.R. § 85.36 and were adequate and proficient. As detailed above, the State provided all required documents to HUD and explained, point-by-point, how its procedures diverged from the standards of section 85.36(b)-(i) but nonetheless met the intent of the federal regulations and were therefore equivalent. HUD, after performing its own review, agreed with the accuracy of the State's submissions.

Comment 14

OIG appears to believe that the State's certification was inaccurate on the sole basis that the State declared its procedures to be "equivalent" to those in section 85.36(b)-(i) when its procedures were not identical to those provisions. But "equivalent" does not mean "identical," and the State was forthright in its submissions, explaining why it believed that its procedures, while not identical to those in section 85.36, were nonetheless equivalent and achieved the same intent. OIG's position that the State's submission was inaccurate is based essentially on OIG's opinion about what qualifies as "equivalent," even when that opinion is in direct conflict not only with the State's reasonable position, but also with HUD's own previous determination that the State relied upon.

Comment 14 and 15

Comment 3

More importantly though, OIG's assertion suggests that the State was not straightforward in providing the assumptions underlying its certification. This suggestion is without any basis. The State explained to HUD that its procedures were not identical to those in section 85.36(b)-(i), and it provided sufficient information about its own procedures for HUD to conduct an independent review of whether the State's policies were or were not "equivalent." The result of that review was HUD agreeing with the State that its procedures – though not identical to the procedures of section 85.36(b)-(i) – met the equivalency requirement and were adequate and proficient. The Deputy Assistant Secretary for Grant Programs at HUD herself certified as much. Thus, whether or not OIG independently disagrees with the conclusion

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reached by the State and HUD on the meaning of "equivalent," it has no basis whatsoever to suggest that the State provided an inaccurate certification.

Comment 3

HUD's determination that the State's procurement procedures were equivalent to the federal standards is due deference and should not be second-guessed by HUD. HUD has the expertise and experience to interpret its own rules and is authorized by law to do so. Indeed, the Supreme Court has long recognized that an administrative agency is entitled to interpret the laws it is charged with implementing. See Chevron, U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837, 843-844 (1984). Yet, here, OIG appears to give HUD's determination no deference. Instead, OIG simply substitutes its own judgment in place of HUD's without having provided any justification for reaching a totally different interpretation of what constitutes "equivalence." Therefore, OIG's conclusion that the State failed to comply with the March 5, 2013 Federal Register Notice is an improper intrusion upon HUD's agency decision-making authority and should be rejected.

**b. OIG's Findings Concerning the SIROMS Option Years are Inaccurate**

Comment 5

The SIROMS option years have not yet been awarded and the State is under no contractual obligation to exercise the contract options. Thus, contrary to OIG's assertion, the State clearly has not awarded or overpaid for the option years.

Comment 16

Moreover, if and when the State does award the SIROMS option years, it will ensure that the price is reasonable. The terms of the SIROMS RFQ ensure competitive labor rates for any contract extension without requiring an unnecessary bidding process for the option years. As an additional measure of cost reasonableness, the State will also secure an updated ICE to review proposed option year costs.

Comment 17

The audit report also misinterprets the ICE and incorrectly concludes that CGI's option year pricing is not competitive. Comparing the *total* price estimated in the ICE against CGI's *total* option year bid estimate is not an apples-to-apples comparison due to the widely differing assumptions that each estimate makes regarding the level of staffing required during the option years. Rather, a comparison of these two estimates is more meaningful as to the proposed *hourly* labor rates and *annual* other direct costs ("ODCs"). Notably, CGI's proposed hourly labor rates and annual ODCs are substantially lower than the ICE. Accordingly, any suggestion by OIG that the State has already executed the SIROMS option years, much less overpaid by as much as $9.1 million for the option years, is simply incorrect.

**i. OIG Incorrectly Suggests that the State Awarded the SIROMS Contract Extension Option for $21.7 Million**

Comment 5

OIG's audit report incorrectly claims that "[t]he State did not ensure that option years were awarded competitively," see Audit Report, p. 7, 8, 11, 12, thus suggesting that the State has already awarded the SIROMS contract option years at the price listed in CGI's initial proposal in 2013. This is simply not true.

Regarding the option years, the SIROMS RFQ specifically provides the following:

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> The Contract may be extended for all or part of three (3) one-year periods, by the mutual written consent of the Contractor and the Director at the same terms, conditions, and pricing at the rates in effect in the last year of the Contract or rates more favorable to the State.
>
> SIROMS RFQ, section 5.2, "Contract Term and Extension Option" (emphasis added.)

Comment 5

The RFQ makes clear that only the initial two year term of services for SIROMS is being awarded, and that the State merely reserves its right to extend the services beyond that period at a later date. Indeed, the State has not yet executed any extension of the SIROMS contract and has no contractual obligations to CGI for the option years.

Comment 16

In certain portions of its audit report, OIG appears to acknowledge that the State has not yet agreed to the optional contract extensions; the audit report notes that the SIROMS contract *could* be extended by mutual written consent of the parties. See Audit Report, p. 7-8. OIG also concedes that the RFQ did not require bids for option years. Id. at 8. But OIG's audit report is inaccurate and misleading to the extent that it suggests that "the State did not ensure that option years were awarded competitively" and agreed to award option years to CGI at its 2013 "best and final offer of $21.7 million." Id. at 7-8. In fact, the State has never committed to paying CGI any money based on the 2013 CGI proposal. Rather, before the State commits any funds to the SIROMS option years, it will first determine the Scope of Work for each option year, perform an updated ICE based on this Scope of Work, and negotiate a fair and reasonable price for each option year. Thus, the State requests that HUD reject OIG's conclusion that the SIROMS option years have been exercised.

**ii. OIG Incorrectly Relies on the Total Price Listed in the ICE to Conclude that the CGI Option Years Proposal was not Competitive**

Comment 18

As noted above, the State engaged ICF to perform an ICE to evaluate the estimated costs for the initial SIROMS contract period in addition to the extension option years. In its audit report, OIG misinterprets both the terms of the SIROMS RFQ regarding the option years, as well as the significance of the total cost estimate for the option years reported in the ICE.

The RFQ did not require CGI to provide price proposals as to the discretionary option years in the solicitation. Nonetheless, CGI included in its bid proposal its best estimate of the cost for each of the three option years. In doing so, CGI would have obviously been hindered in its efforts to project option year pricing because, at the time of its bid, it could not forecast staffing needs for the SIROMS project some two years after the contract was awarded. Indeed, at the time of the proposal, it was unclear whether the option years would even be required or exercised.

Nonetheless, without providing any empirical bases for its assumption, CGI estimated, in a non-binding manner on the State, that it would hypothetically require a total of fifteen (15) employees during the discretionary option years. See "CGI Proposal, Volume II, Price Proposal, Figure 2.2.5-1." Similarly, when conducting its ICE on the unexercised option years, ICF was also required to estimate hypothetical labor needs for the option years. Like CGI, ICF had to estimate hypothetical labor needs, and assumed that the option years would require a total of three employees. See "ICE Report and Supporting Tables."

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Again, like CGI's bid proposal, the ICE did not provide any empirical data or bases for this staffing assumption.

Comment 17

Comparing the option year estimates in the ICE and CGI's bid proposal is hardly an "apples-to-apples" comparison. In fact, given the acute disparity in the two reports as to the hypothetical numbers of employees needed during the option years (three employees versus fifteen (15)), there was naturally a wide gap ($9.1 million) in the respective cost analyses conducted by CGI and ICF. As a result, a comparison of the ICE and CGI's proposal on the basis of total estimated cost is far less meaningful as to the option years.

Comment 5

Nonetheless, OIG now claims that this disparity somehow reflects a commitment by the State to overpay CGI for the option years by $9.1 million. This logic is flawed. The State has never contractually committed to pay CGI for any option year, and the State also never agreed to pay for fifteen (15) employees. Rather, the State has discretion, when the time comes, to reject any proposal that CGI submits. In sum, OIG's conclusion that the State has already agreed to pay $9.1 million above its ICE to extend the SIROMS contract is inaccurate.

Comment 19

Most importantly, irrespective of any hypothetical staffing needs, the RFQ provides that the SIROMS contract may only be extended at the same or lower rates than those agreed upon in the contract and not at a predetermined total price as suggested by OIG. So regardless of what, if any, additional employees may be needed during the option years, the State is ensured of getting a fair and reasonable price.

Comment 16

It should also be noted that the level of staffing needed to complete and maintain SIROMS will be evaluated based on the State's needs if and when the contract is extended. Again, in order to assure that the proposed hourly labor rates and ODCs are competitive, the State will perform an updated ICE to evaluate the remaining SIROMS requirements before extending the contract.

Comment 20

Despite OIG's claims to the contrary, the ICE, which OIG appears to fully endorse as a reasonable estimate of costs, actually confirms that CGI offered the State substantially below-market hourly labor rates and annual ODCs. For instance, CGI's proposal provides average hourly labor rates of $140.57 per hour, see "CGI Proposal, Volume II, Price Proposal, Figure 2.2.5-1," whereas the ICE estimates average hourly labor rates of $149.31 per hour, see "ICE Report - Maintenance Period Details," representing a 6% market rate discount to the State for hourly rates. Likewise, CGI's proposal estimates annual ODCs of $3,006,188, see "CGI Proposal, Volume II, Price Proposal, Figure 2.2.5-1," whereas the ICE estimates ODCs at $3,362,086, see "ICE Report - Maintenance Period Details," representing an 11% market rate discount to the State for ODCs.

Because SIROMS is a task order contract driven by hourly rates by labor category and ODCs, the ICE confirms that the proposed SIROMS contract extension costs are fair and reasonable. Indeed, the ICE confirms that CGI's bid proposal is significantly below market. As a result, the State obtained an exceptional IT product for a fair price and will continue to ensure that any extension of CGI's services will again be obtained at competitive market rates.

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Comment 19

Comment 10

Comment 21



**iii. The State Should not be Required to Re-Bid the SIROMS Contract Extension Option Because the State Ensured that the Option Year Pricing Would be Fair and Reasonable**

The costs proposed by CGI for the SIROMS option years were analyzed for reasonableness as part of the evaluation process and prior to the contract award. As OIG acknowledges, the State performed a price analysis of the labor category rates to market rates offered by CGI in the initial term of the SIROMS contract to ensure cost reasonableness before awarding the contract. The terms of the SIROMS RFQ provide that the contract may be extended "at the same terms, conditions, and pricing at the rates in effect in the last year of the Contract or rates more favorable to the State." SIROMS RFQ, section 5.2. Thus, the option year hourly rates are merely extensions of the original costs, at equal or lower prices. Because the rates for the initial term of the contract were already deemed reasonable when the contract was awarded to CGI, it logically follows that any proposed option year hourly rates at equal or lower rates would also be fair and reasonable.[7]

Additionally, neither State nor federal procurement laws require a re-bid of option year contracts. For example, the State's "Standard Terms and Conditions" include a clause that the initial term of the contract may be extended by mutual consent of the parties and that the "terms and conditions including pricing of the original contract shall apply unless more favorable terms for the State have been negotiated." See, e.g., SIROMS RFQ, Standard Terms and Conditions, section 5.3. Therefore, the State's procurement rules, which the State is required to follow pursuant to 24 C.F.R. § 85.36(a), do not require automatic re-bidding of the contract's option years.

Federal procurement law also does not support OIG's call for a re-bid of the option years. Pursuant to the Federal Acquisition Regulation ("FAR"),[8] option years are not required to be re-bid in every circumstance. In pertinent part, FAR provides that contract extension options may be exercised without re-bidding when:

a) The contractor's performance on the contract has been acceptable;
b) An informal analysis of prices or an examination of the market indicates that the option price is better than prices available in the market or that the option is the more advantageous offer;
c) Re-bidding would adversely affect continuity of operations and would result in costs associated with a disruption in operations; and
d) The option was evaluated as part of the initial competition and is exercisable at an amount specified in or reasonably determinable from the terms of the basic contract.

[7] Again, because CGI's proposed rates were fixed for the initial term of the contract and not made subject to an industry-standard escalation clause, the rates will be the same (or better) for the option terms.
[8] The FAR, codified in Title 48 of the Code of Federal Regulations (C.F.R.), is a set of rules governing the federal government's purchasing process. See Federal Deposit Insurance Corporation, Introduction to the Federal Acquisition Regulation (FAR), at 4-5. The purpose of the FAR is to ensure that the purchasing procedures of federal agencies are standard and consistent, and that procurements are conducted in a fair and impartial manner. Id.

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See 48 C.F.R. § 17.207, "Exercise of Options."

Although the SIROMS contract has not yet been extended, the State's decision to do so would be supported by FAR since: a) CGI's performance has been exemplary; b) the State analyzed the costs for the original contract and the option years, and will conduct an updated ICE for the option years before an extension is exercised; c) New Jersey's disaster recovery operations would likely be severely disrupted by a delay in extending the contract or by bringing in a new IT vendor; and d) CGI's option year pricing was evaluated as part of the State's initial award since the extension provides for the same or lower pricing to the State for the option years. Thus, in addition to complying with standard New Jersey procurement practices, the State will also be compliant with federal procurement standards if it chooses to extend the SIROMS contract without re-bidding the option years.

Comments 16 and 19

In sum, OIG's criticisms of the purported option year costs are based on pure speculation. HUD should reject OIG's recommendation that the State re-bid the SIROMS option years contract because: the extension year costs were subject to full and open competition; the costs were analyzed for reasonableness when the contract was awarded; and the State will perform its own cost analysis prior to making the decision whether to exercise the options.

**c. The State Appropriately Included Estimated Labor Hours and Categories in the SIROMS RFQ**

The State did not "predetermine" labor hours that it was willing to pay as claimed by OIG. Instead, consistent with its obligation under relevant procurement law, the State properly *estimated* requisite labor hours and categories as a means of conducting a meaningful "apples-to-apples" comparison of various anticipated proposals to build its large and complex SIROMS IT system. Notably, this same method of conducting cost comparisons, known as the "estimated cost method," is routinely employed by multiple federal agencies *including HUD*. Moreover, despite OIG's claim to the contrary, these estimated labor costs are *not* contractual commitments to pay those cost elements. Instead, the purpose of providing estimated cost elements (i.e., estimated labor hours and labor titles) to potential bidders is to provide the agency with a uniform pricing template for the fair evaluation of competing bids, while allowing vendors to bid intelligently and compete equally for the contract.

Comment 22

**i. Task Order RFQ Background**

In connection with its solicitation to develop and build the SIROM's IT system, the State's RFQ anticipated the award of a contract to the IT service provider whose proposal conformed to the requirements of the RFQ and "was most advantageous to the State, price and other factors considered." SIROMS RFQ, section 1.1. The RFQ contemplated that task orders for services would include both a pricing arrangement and a delivery arrangement. Id. § 4.2.5.

The State's RFQ had a pricing arrangement that included both fixed-price and cost reimbursement elements. First, the solicitation called for contractors to provide the State with a "not to exceed price" for labor rates, thereby providing a fixed-price component for labor rates associated with developing SIROMS. Id. § 4.2.5. The contract also provided for a cost-reimbursement component as to other direct

Comment 23



costs including travel and training expenses, and costs associated with purchasing IT hardware and software. Id.

Separate and distinct from the contract's pricing arrangement, the RFQ also included a delivery arrangement. See SIROMS RFQ, sections 3.1.1, 3.1.2 and 4.2.5. Given the complexity of building the SIROMS system, the State was unable, at the time it issued its RFQ, to predetermine the exact quantity of services (including labor categories and hours) that it would need during the contract period to complete its critical IT infrastructure. The RFQ thus provided for the award of a "task order contract" to the winning bidder. Id. § 5.14. This meant that instead of procuring or specifying a firm quantity of services at contract inception, the State would instead issue task orders for services as needed during the contract period. Id. § 3.1.1; see also 10 U.S.C. § 2304d.

The RFQ further set forth that as each of the various task orders was issued during the contract period, the contract awardee would be required to submit a plan that included the proposed labor categories and hours needed to complete the particular task order. See SIROMS RFQ, sections 3.1.1, and 4.2.5. Notably, the RFQ also expressly provided that the contractor's plan for completing each task order, including its proposed labor categories and hours, had to be pre-approved by the State Contract Manager. Id.

**ii. The State's Solicitation was Similar to an Indefinite Delivery Contract**

As noted above, the State's solicitation explicitly provided that task orders for services would be issued as needed pending completion of the SIROMS system. The State's SIROMS RFQ was thus substantially similar to a procurement mechanism widely used by various federal agencies known as an indefinite delivery contract ("IDC"). For that reason, it is helpful to understand IDCs and basic federal and State requirements concerning cost evaluations of IDCs.

IDCs are a well-recognized procurement tool typically used by federal and state agencies and other government entities to acquire supplies or services from vendors when the exact times or quantities of future deliveries are uncertain at the time the contract is awarded. See 48 C.F.R. § 16.501-2; see also RALPH C. NASH, JR. ET AL., THE GOVERNMENT CONTRACTS REFERENCE BOOK 319 (3d ed. 2007); FAR, Subpart 16.5. Rather than procure a fixed quantity of services or supplies with fixed delivery times at contract inception, IDCs permit agencies to place task orders for individual requirements as needed. See 48 C.F.R. § 16.501-1.[9] IDCs are favored by government agencies because they give the agencies flexibility to order services as specific requirements materialize, thus avoiding potential waste. See LIEUTENANT COLONEL RALPH J. TREMAGLIO, III ET AL., GOVERNMENT CONTRACT LAW: THE DESKBOOK FOR PROCUREMENT PROFESSIONALS 100 (3d ed. 2007).

There are three main types of IDCs: (1) definite-quantity contracts; (2) indefinite-quantity contracts; and (3) requirements contracts. See 48 C.F.R. § 16.501.

[9] IDCs, which are often referred to as "task-order contracts," are thus distinguishable from conventional contracts which call for the delivery of a specified quantity of supplies or services by a certain date. See UNITED STATES ARMY, ACQUISITION CORPS, ARMY CONTRACTING AGENCY CONTRACTING OFFICER'S REPRESENTATIVE (COR) HANDBOOK 20.

Definite-quantity contracts provide for the delivery of a definite quantity of specific services or supplies for a fixed period, with performance to be scheduled upon order. See 48 C.F.R. § 16.502. A definite-quantity contract is thus only appropriate for use by a government agency when, unlike the situation here, it can determine in advance the exact quantity of services or supplies it will require during the contract period. Id.

By contrast, indefinite-quantity contracts provide for an indeterminate quantity of services or supplies to be furnished during a fixed time period.[10] As such, indefinite-quantity contracts (as well as requirements contracts) are appropriate for use by government agencies when they are unable to predetermine the precise quantities of services or supplies they will require for a particular project at the time the contract is awarded.

Comment 23

Here, the State's SIROMS RFQ is similar (but not identical) to an indefinite-quantity contract because the State's solicitation for services did not provide for a set quantity of services to be purchased by the State.[11] Instead, like an indefinite-quantity contract, the State's RFQ provided that the State would procure services as needed through the use of task orders.

Comment 6

Given that the State's RFQ (similar to a typical federal indefinite-quantity contract) did not provide for a set quantity of services or supplies to be purchased at contract inception, the State faced the same challenges typically faced by federal agencies in properly evaluating and comparing the relative costs of various competing bid proposals on a contract. As discussed herein, this required the State to develop and include in its RFQ estimates of labor types and labor hours associated with SIROMS for purposes of performing a meaningful and required cost comparison of bid proposals. Notably, the State's actions in developing and using these labor estimates in its RFQ were both appropriate and consistent with federal and State procurement practices. In fact, HUD and many other federal agencies routinely use a nearly identical method of cost comparison when procuring services.

**iii. Required Use of Estimates for Evaluating Proposal Costs**

Notably, the estimated cost elements (labor categories and labor rates) that the State and other federal agencies typically provide on the annual pricing spreadsheets are *not* contractual commitments to pay that cost element, and are not intended to represent the actual expected experience of any given contractor. Rather, the purpose of the pricing spreadsheet is only to provide government agencies with a uniform

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[10] Requirements contracts also do not specify a definite quantity of services or supplies to be purchased, but instead require only that the government fill all of its requirements for specified services or supplies from a particular contractor. Id. § 16.503; see also Medart, Inc. v. Austin, 967 F.2d 579, 581 (Fed. Cir. 1992). Here, the SIROMS RFQ was dissimilar from a federal requirements contract because the State was not contractually obligated to purchase all of its SIROMS needs from the contract awardee.

[11] Although similar, indefinite-quantity contracts are not identical to the State's RFQ because they typically obligate a government agency to purchase a stated minimum quantity of services or supplies from the contract awardee. Id. § 16.504(a)(1). In contrast, here, the State was not contractually obligated to purchase a minimum amount of services from the contract awardee.

Comment 23



pricing template for the fair evaluation of competing bids, while also allowing vendors to bid intelligently and compete equally on these items.

In connection with procurements of services and supplies, government agencies are obligated to perform a meaningful comparison between and among competing proposals submitted in response to any RFQ. See Glenn Def. Marine (Asia), PTE Ltd. v. United States, 97 Fed. Cl. 568 (2011). Pursuant to both federal and New Jersey procurement law, government agencies must include some reasonable basis for evaluating or comparing the relative price or costs of proposals to establish whether one offeror's proposal would be more or less costly than other proposals. See Competition in Contracting Act, 10 U.S.C. § 2305(a)(3)(A)(ii);[12] 48 C.F.R. § 15.304(c)(1)(2011).[13] See also N.J.S.A. 52:34-6.1; Treasury Circular 13-15-DPP §VI(1)(e), *available at* http://www.state.nj.us/infobank/circular/cir1315.pdf.

It is well recognized that for indefinite-quantity contracts, it may be difficult for government agencies to evaluate price or cost given that the quantity of work will not be known until task orders are issued. See Ralph C. Nash, *Evaluating Price or Cost in Task Order Contracts*, 19 NASH & CIBINIC REP. ¶ 52 (2005); see also Linc Gov't Servs., LLC v. United States, 96 Fed. Cl. 672 (2010) ("[i]n a solicitation for an [IDC], where an agency's needs are indeterminate at the time of contracting, a competitive price evaluation of competing proposals presents a particular challenge"); Lockheed, B-248686, 92-2 CPD ¶ 180 (Comp. Gen. Sept. 15, 1992) ("[u]ncertainty is inherent in the use of indefinite quantity, indefinite delivery contracts"). Nonetheless, in connection with solicitations involving indefinite-quantity contracts, there still must be some binding price that can be evaluated to provide a meaningful comparison of bidders' proposals. Magnum Opus Techs., Inc. v. United States, 94 Fed. Cl. 512 (2010); see also Lockheed, B-248686, 92-2 CPD ¶ 180 (Comp. Gen. Sept. 15, 1992) ("[u]ncertainty over what ultimately would be needed is not itself a reason to ignore cost, particularly when the cost of the indefinite services is expected to be significant.").

Agencies thus employ different methods for evaluating price when soliciting services under an indefinite-quantity contract and "when the level-of-effort and specific tasks that may ultimately be required during performance are not known." Lockheed, B-248686, 92-2 CPD ¶ 180 (Comp. Gen. Sept. 15, 1992). This typically includes the use by various agencies of the "estimated quantities method" of cost comparison, in which the agencies appropriately develop an estimate of the cost of various labor categories required under the contract. Id.

Under the estimated quantities method, agencies typically use historical information garnered from past projects of a similar nature to calculate certain cost elements, such as the estimated types and quantities of labor hours by job position, that the agency will require over the life of the contract. See S. J. Thomas Co., Inc., B-283192, 99-2 CPD ¶73 (Comp. Gen. Oct. 20, 1999). These estimates are then presented in the solicitation in the form of annual pricing spreadsheets. Id. Offerors develop their annual

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[12] In the Competition in Contracting Act,10 U.S.C. § 2305(a)(3)(A)(ii) (2006), Congress mandated that in prescribing the evaluation factors for competitive proposals, an agency "shall include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals."

[13] FAR 15.304(c)(1)(2011) provides that, although the evaluation factors applying to an acquisition are within the broad discretion of agency officials, "[p]rice or cost to the Government shall be evaluated in every source selection." 48 C.F.R. § 15.304(c)(1)(2011).

contract prices by multiplying the agency provided amounts (e.g., the estimated labor hours to complete the project) by the offeror's ceiling costs for each of the specified cost elements (e.g., the proposed hourly rate by job position) in the spreadsheet. Id. The total proposed contract price is the sum of all annual prices. Id. Using the estimated quantities method "allows an agency to see the effect, in the context of the historical ordering pattern, of offerors' differing cost elements such as labor rates." Id. at note 4.

Notably, the GAO has long accepted the estimated quantities method as a viable and permissible means of cost comparison. See Eagle Home Medical Corporation, B-298478 (Comp. Gen. Oct. 13, 2006) ("[i]t has [always been] the rule that comparison of prices to a government estimate is a legitimate means of determining price reasonableness."); Cantu Services, Inc., B-408012; B-408012.2 (Comp. Gen. May 23, 2013) ("[a]s a general matter, comparison of prices to a government estimate is a legitimate means of determining price reasonableness" and, indeed, it is "generally reasonable for an agency to rely on data from an incumbent's performance on a predecessor contract in formulating its estimate."). The estimated quantities method allows an agency to simply multiply offerors' proposed labor rates by estimated quantities of labor hours for each labor category. Lockheed, B-248686, 92-2 CPD ¶ 180 (Comp. Gen. Sept. 15, 1992) (specifically approving the use of the estimated quantities method). Consistent with this GAO precedent, multiple federal agencies, including HUD, typically use the estimated quantities method and annual pricing spreadsheets to make meaningful (and required) comparisons between vendors' proposals.

Comments 6 and 24

For example, in its recent solicitation for services associated with a Broadcast Operations Center in its Washington, D.C. office, HUD required that competing bidders complete a "pricing worksheet." See "HUD Request for Proposals, Solicitation No. DU203NP-15-R-0001." Notably, on the pricing worksheet, HUD provided the vendors with, among other things, a list of eighteen (18) full-time job positions that it anticipated would be needed to complete the project, as well as specific estimates of the quantities of labor hours by job position that HUD would require over the life of the contract. Vendors were required to complete the pricing worksheet by providing: (1) proposed hourly rates for each job category; and (2) the total price for each labor category, calculated by multiplying the estimated hours provided by HUD with the vendor's proposed hourly rate. As was made clear in the solicitation, HUD included the estimated labor hours and labor categories not as a contractual commitment to pay those hours, but merely as a means of obtaining a uniform pricing template that permitted a fair, "apples-to-apples" comparison of competing bids. Id.

Comments 6 and 25

Recently, the DHS employed the estimated quantities method in connection with its solicitation for an indefinite quantity contract to design a major IT system. See "DHS Request for Proposals for EAGLE II." Similar to HUD, DHS required bidders to complete a "pricing template," in which DHS provided prospective bidders with pre-designated labor categories and estimated quantities of labor hours. Like HUD, DHS required vendors to provide both a proposed hourly rate per labor category, and a total price as calculated by multiplying DHS's estimated hours by the vendor's proposed hourly rate.

Comments 6 and 26

The Department of the Interior ("DOI") also used the estimated quantities method when soliciting services to design and build an IT infrastructure for its Bureau of Indian Affairs. In connection with its solicitation, DOI attached a "price schedule" which included DOI's estimate of the labor hours needed for the project "per labor position." See "DOI Request for Proposals for BIA IT System." To evaluate various price proposals, bidders on the project were required to complete the price schedule by

Comment 27

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multiplying DOI's estimated hours by the bidder's proposed hourly rate to determine a total price per labor position. Again, providing the estimated hours was not a commitment by DOI to pay the contract awardee for the estimated hours, but only a means of conducting a fair comparison of competing bids.

**iv. The State Properly Used Estimated Labor Hours and Labor Categories to Satisfy its Obligation to Conduct a Fair Evaluation of Competing Bids**

Here, like HUD and multiple other federal agencies that regularly procure services, the State of New Jersey employed the estimated quantities method in its SIROMS solicitation. The State provided prospective bidders with a "rate schedule" which included estimated hours for twenty-six (26) labor categories. Bidders were then required to "communicate labor rates" for each labor category.

The State appropriately and reasonably relied upon historical data from Louisiana *and other states* to develop estimates of necessary labor categories and labor hours. Moreover, and as detailed above, while developing its labor estimates, the State engaged in extensive discussions with both consultants from CDM Smith and officials from states that had implemented software programs for use in disaster relief efforts. The purpose of these efforts obviously was not to to establish a specific amount or type of labor that the State was willing to pay at contract inception. Instead, the estimated labor categories and labor rates that the government included on its annual pricing spreadsheets were solely intended to accomplish two goals: (1) provide the State with a uniform pricing template for a fair, apples-to-apples method of comparing quotes for an assignment of great complexity; and (2) provide vendors with a benchmark that would enable them to bid intelligently on the project and compete equally on the solicitation. As such, the State acted appropriately and completely in accordance with both State and federal procurement law.

**d. The SIROMS Contractor Experience Requirements Were Necessary and Did Not Unduly Restrict Competition**

Consistent with GAO federal procurement guidance, the contractor experience requirements contained in the SIROMS RFQ were appropriately tailored to meet the State's need to retain a qualified IT firm without overly restricting the pool of potential bidders. It would have been irresponsible, and likely harmful to New Jersey's vital disaster recovery efforts and its obligation to responsibly administer CDBG-DR funding, for the State to consider a vendor without any experience implementing an IT system of this magnitude, particularly in light of the expedited timeline under which the State must distribute funding. Thus, OIG's assertion that the experience requirements in the State's RFQ "may not have been necessary to retain a qualified contractor" is unfounded.[14]

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[14] In the Audit Report, OIG references 24 C.F.R. § 85.36(c) for its claim that "[s]ome of the situations considered to be restrictive of competition included . . . (2) requiring *excessive* experience and excessive bonding." See Audit Report, p. 8 (emphasis added). It should be noted that OIG does not include the correct language from this regulation. The regulation states as follows: "Some of the situations considered to be restrictive of competition include but are not limited to: . . . (ii) Requiring *unnecessary* experience and excessive bonding[.]" 24 C.F.R. § 85.36(c)(1)(ii) (emphasis added). OIG appears to arbitrarily replace the word "unnecessary" with the word "excessive." Regardless, here, the State did not include excessive or unnecessary requirements in its RFQ. Moreover, the SIROMS RFQ makes no mention of "bonding" and OIG fails to explain how the State required "excessive bonding."

**Ref to OIG Evaluation**

**Auditee Comments**



**i. Relevant GAO Procurement and Contracting Guidance**

In determining whether the State properly included experience restrictions in its solicitations, relevant guidance from the GAO is particularly enlightening. GAO is an independent, non-partisan agency headed by the Comptroller General of the United States. 31 U.S.C. § 712(1). It has concurrent jurisdiction with the U.S. Court of Federal Claims to preside over disputes concerning the award of federal contracts. See 31 U.S.C. §§ 3551 – 3556. Although GAO's decisions are "recommendations" and lack the force and effect of law, 31 U.S.C. § 3554, it is "exceedingly rare" for an agency to disregard a GAO recommendation given GAO's experience and special expertise with procurements and government contracting. CMS Contract Mgmt. Servs. v. United States, 745 F.3d 1379, 1384 (Fed. Cir. 2014). The U.S. Court of Federal Claims routinely "give[s] due weight and deference" to recommendations issued by GAO "given GAO's long experience and special expertise in" government procurement and quote matters. Id. at 1384 (internal citations and quotations omitted). Thus, actions in accordance with GAO guidance should carry great weight in analyzing the propriety of the RFQ at issue.

The GAO requires agencies, when preparing a quote for solicitation, to specify its needs in a manner designed to achieve full and open competition. GlobaFone, Inc., B-405238, 2011 CPD ¶ 178 (Comp. Gen. Sept. 12, 2011) (citing U.S.C. § 2305(a)(1)). However, an agency may include specifications in its procurement that have the effect of restricting competition, to the extent those specifications are reasonably necessary to satisfy the agency's legitimate needs. Id.

Determinations of what constitutes an agency's needs, and the best methods to accommodate those needs, are within the broad discretion of the agency and are entitled to deference. See Savantage Fin. Servs., Inc. v. United States, 595 F.3d 1282, 1286 (Fed. Cir. 2010) ("competitors do not dictate an agency's minimum needs, the agency does"); JRS Mgmt., B-402650.2, 2010 CPD ¶ 147 (Comp. Gen. June 25, 2010) ("determinations of a contracting agency's needs and the best method of accommodating them are matters primarily within the agency's discretion"); Innovative Refrigeration Concepts, B-272370, 96-2 CPD ¶ 127 (Comp. Gen. Sept. 30, 1996) (because an agency "is most familiar with its needs and how best to fulfill them," it alone "must make the determination as to what its minimum needs are in the first instance," and the GAO "will not question that determination unless it has no reasonable basis"); Urban Masonry Corp., B-213196, 84-1 CPD ¶ 48 (Comp. Gen. Jan. 3, 1984) ("agency logically is in the best position to assess responsibility since it must bear the major brunt of any difficulties experienced in obtaining required performance"). The fact that a procurement specification may be burdensome or even impossible for a particular firm to meet does not make it objectionable if the requirement properly reflects the agency's needs. Eisenhower Real Estate Holdings, LLC, B-402807, 2010 CPD ¶ 172 (Comp. Gen. July 27, 2010). The proper legal inquiry is whether the challenged RFQ requirements are reasonably necessary to meet the State's needs without unduly restricting competition. *Cf.* Keeson, Inc.; Ingram Demolition, Inc., B-245625; B-245655 92-1 CPD ¶ 108 (Comp. Gen. Jan. 24, 1992) (experience requirement found to be unduly restrictive because agency failed to provide a "rational explanation" for its need for the requirement).

Moreover, even though particular vendors on a government contract may possess unique advantages and capabilities due to prior experience, the GAO has recognized that the government is not required to attempt to equalize competition to compensate for this competitive advantage. Crux Computer Corp., B-

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234143, 89-1 CPD ¶ 422 (Comp. Gen. May 3, 1989).[15] In fact, the GAO has stated that it would be "both illogical and unreasonable to presume" that an agency would pay no attention to the size and similarity of past contracts performed by prospective contractors given that prior experience is "germane" to the procurement process. J.A. Jones Group de Servicios, SA, B-283234, 99-2 CPD ¶ 80 (Comp. Gen. Oct. 25, 1999). Thus, in addressing their procurement needs, agencies reasonably can consider the advantage of prospective contractors' past performances of contracts of similar size and scope of work. Birdwell Bros. Painting & Refinishing, B-285035, 2000 CPD ¶ 129 (Comp. Gen. July 5, 2000). Indeed, both GAO and the Court of Federal Claims have allowed agencies to use definitive experience criteria in their quote solicitations as a means of measuring a vendor's ability to perform the contract, thus limiting vendors "to those meeting specified qualitative and quantitative qualifications necessary for contract performance." Chas. H. Tompkins v. United States, 43 Fed. Cl. 716 (1999); see also Birdwell Bros. Painting & Refinishing, B-285035, 2000 CPD ¶ 129 (Comp. Gen. July 5, 2000).[16]

As discussed herein, a careful review of GAO guidance demonstrates that the experience specifications listed in the RFQ were reasonably necessary to meet the State's legitimate needs and did not unduly restrict competition. Thus, any claim by OIG that the State "may" have unnecessarily restricted competition is unfounded.

**ii. Requiring Experience in Implementing Disaster Recovery Projects Exceeding $500 Million was Reasonable and Did Not Overly Limit the Pool of Prospective Bidders**

The State's RFQ required vendors to have experience implementing an IT system for a disaster relief effort exceeding $500 million in total funding. The $500 million threshold in the State's RFQ was reasonably necessary given the unprecedented magnitude of Superstorm Sandy's devastation and the fact

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[15] The existence of an advantage to one prospective contractor, by itself, does not constitute preferential treatment by the contracting agency, nor does it otherwise represent an unfair competitive advantage. See Gov't Bus. Servs. Group, B-287052 et al., 2001 CPD ¶ 58 (Comp. Gen. Mar. 27, 2001); Navarro Research and Eng'g, Inc., B-299981, B-299981.3, 2007 CPD ¶ 195 (Comp. Gen. Sept. 28, 2007).

[16] The efficacy of using experience criteria is also recognized in the FAR, which provides in relevant part as follows:

> (c) The award of a contract to a supplier based on lowest evaluated price alone can be false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs. While it is important that Government purchases be made at the lowest price, this does not require an award to a supplier solely because that supplier submits the lowest offer. A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors.
>
> FAR Section 9.103(c)

that HUD initially allocated $1.83 billion in CDBG-DR funding to New Jersey.[17] In fact, this $500 million threshold was less than 30% of the State's initial CDBG-DR grant, and a mere 13% of the State's total CDBG-DR allocation to date, well within the experience thresholds expressly approved by GAO. See AMI-ACEPEX, B-401560 (Comp. Gen. Sept. 30, 2009) ("we find nothing inherently unreasonable in a threshold of approximately one-half the value of the current requirement"); Capital Drywall Supply, Inc., B-400721; B-400722, 2009 CPD ¶ 17 (Comp. Gen. Jan. 12, 2009) (bid protest denied because challenger failed to demonstrate that the contracts it referenced for review "encompassed work of similar size, scope, or complexity (or met the dollar value threshold required) compared to the word requirements" in the solicitation). The State's massive Sandy disaster recovery effort demanded an IT contractor with experience implementing and working on similar large disaster recovery projects. It would have been irresponsible, and likely harmful to New Jersey's vital disaster recovery efforts, for the State to consider a vendor with little or no experience in implementing an IT system of this magnitude, particularly considering the expedited timeline under which the State is required to distribute funding. Accordingly, the State acted appropriately by requiring SIROMS bidders to demonstrate experience implementing an IT system for a disaster recovery effort exceeding $500 million in total funding.

Also, the RFQ's $500 million threshold requirement did not overly restrict the pool of potential SIROMS bidders. See SIROMS RFQ, section 4.2.4.5(d). A disaster recovery project exceeding $500 million includes any allocation of funding from a federal agency[18] for disaster relief, recovery, or restoration. Past disasters include hurricanes as well as earthquakes, floods, tornados, fires, winter storms and mudslides. Even a cursory search reveals multiple other states that recently received CDBG-DR grants of more than $500 million. For example, Iowa, Louisiana, and Texas all received allocations of more than $500 million in CDBG-DR funding in the aftermath of Hurricane Ike.[19] Following Hurricanes Katrina, Rita, and Wilma, Louisiana and Mississippi were allocated over $1 billion in CDBG-DR funding.[20] Additionally, from 1996 to 2013 (not including Superstorm Sandy) there have been 15 hurricanes and specific incidents of flooding in the Midwest where FEMA expended over $500 million for

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[17] Since the initial allocation of $1.83 billion in February 2013, the State has received a second allocation of $1.46 billion in CDBG-DR funds, and HUD has announced a forthcoming third round of CDBG-DR funding of approximately $500 million. Given this increased allocation of HUD funds, the State now has an even greater need for SIROMS to function as an efficient and effective IT system for the management of CDBG-DR money.

[18] For example, in addition to HUD, the Federal Emergency Management Agency, the Small Business Administration, the Department of Health and Human Services and the Department of Labor's Employment and Training Administration all administer federal disaster assistance programs, or programs that may be used in disaster situations. See CAROLYN V. TORSELL, CONG. RESEARCH SERV., RL31734, FEDERAL DISASTER RECOVERY PROGRAMS: BRIEF SUMMARIES (2012), *available at* https://fas.org/sgp/crs/homesec/RL31734.pdf.

[19] See U.S. Dept. of Housing and Urban Development, *CDBG-DR Active Disaster Grants and Grantee Contact Information*, HUD EXCHANGE, https://www.hudexchange.info/cdbg-dr/cdbg-dr-grantee-contact-information/ (last visited April 4, 2014).

[20] See U.S. Dept. of Housing and Urban Development, *CDBG-DR Active Disaster Grants and Grantee Contact Information*, HUD EXCHANGE, https://www.hudexchange.info/cdbg-dr/cdbg-dr-grantee-contact-information/ (last visited April 4, 2014).

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disaster assistance.[21] A brief, non-exhaustive search reveals that the following companies would have had experience implementing an IT system for disaster relief projects[22] in excess of $500 million: ICF, Worley, ACS, CBI SHAW, CohnReznick, Horne, URS, CGI, CDM, STR, HDS, Haggerty, Louis Berger, IEM, URS, Dewberry, Witt O'Brien, CH2M Hill, and Atkins. Clearly, this requirement would not have significantly limited the pool of IT vendors capable of bidding on SIROMS.

**iii. Requiring Contractors to Describe Three Prior Contract Engagements of a Two Year or Greater Duration Was Also Reasonable and Did Not Significantly Limit the Pool of Qualified Bidders**

Next, the RFQ appropriately required contractors to describe three implemented IT contract engagements, including one undertaken within the past three years. See SIROMS RFQ, section 4.2.4.5(d). OIG's claim that these reasonable requirements somehow restricted competition is simply incorrect. In fact, similar requirements are commonly used in federal contract procurements and are necessary to measure and ensure a contractor's ability to perform. For example, the GAO has repeatedly denied challenges based on analogous or more restrictive specifications in other quotation solicitations. See, e.g., Urban Masonry Corp., B-213196, 84-1 CPD ¶ 48 (Comp. Gen. Jan. 3, 1984) (installer required to have minimum five years regular experience in the erection of units similar to those required for the project); M & M Welding & Fabricators, Inc., B-271750 (Comp. Gen. Mar. 26, 1997) (prospective contractors required to show documentation of at least three previously completed projects of similar scope); D.H. Kim Enters., Inc., B-255124, 94-1 CPD ¶ 86 (Comp. Gen. Feb. 8, 1994) (bidders required to have ten years of general contracting experience in projects of similar size and nature and have successfully completed at least two contracts of similar scope, size, quantity and type within the past two years; Roth Bros., Inc., B-235539, 89-2 CPD ¶ 100 (Comp. Gen. Aug. 2, 1989) (prospective contractors required to provide documentation of at least three previously completed projects of similar scope); J.A. Jones Center Constr. Co., B-219632 (Comp. Gen. Dec. 9, 1985) (bidders required to have performed similar construction services within the United States for three prior years).

Moreover, these experience requirements were properly tailored to New Jersey's specific IT needs. SIROMS was intended to be the State-wide, centralized IT system responsible for managing all of New Jersey's CDBG-DR programs. The successful management and oversight of the State's CDBG-DR disaster relief programs was wholly dependent on the effective operation of a sophisticated and timely delivered IT system. Initially, the term of the SIROMS contract was for a period of two years; therefore, requiring experience in three prior engagements of the same length was clearly necessary. See SIROMS RFQ, section 5.2. Also, the State needed details of at least three prior contract engagements as an established IT provider to ensure contractors had recognized track records of successful IT contract engagements. Through these requirements, the State would be assured that contractors had already timely implemented and maintained an IT system as complex as SIROMS.

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[21] See BRUCE R. LINDSAY, WILLIAM L. PAINTER, FRANCIS X. MCCARTHY, CONG. RESEARCH SERV., R42352, AN EXAMINATION OF FEDERAL DISASTER RELIEF UNDER THE BUDGET CONTROL ACT 4 (2013), *available at* https://fas.org/sgp/crs/misc/R42352.pdf.

[22] Either on individual or multiple programs.

The additional requirement that at least one of the three contract engagements was undertaken within the past three years was intended to satisfy the State's legitimate need to have an up-to-date IT system. Technology is constantly becoming obsolete, and the State was procuring an IT system to manage and support the State-wide distribution of billions of dollars of CDBG-DR funds. Therefore, the State needed a contractor who could timely implement leading edge technology, software, and data processing and storage techniques, and who would hire the most qualified and experienced personnel.

The State also required all three contract engagements to be production systems or environments and not simply initiatives in development because the State needed a firm that was capable of implementing a complex IT system. The State simply could not jeopardize the success of its CDBG-DR disaster relief programs by implementing an IT system that had not yet been tested or developed. Moreover, the State could not risk hiring an unqualified or inexperienced company that was "cutting its teeth" to the detriment of New Jersey citizens and the integrity of the management of the CDBG-DR grant funds.

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**iv. The SIROMS RFQ Appropriately Required Prior Experience in State or Local Government IT Contracts**

Perhaps of most importance, the RFQ properly required one of the clients from the three contract engagements to have been a state or local government with an annual IT budget of at least $10 million. See SIROMS RFQ, section 4.2.4.5(d). Obviously, contracting for IT services with public entities is vastly different than contracting with private entities. Unlike private entities, government entities have statutorily defined procurement rules and must comply with all other relevant laws, regulations, and public accounting requirements. Additionally, the State needed a contractor that had experience with federal cost principles in order to ensure a verifiable audit trail. By including this requirement, the State reasonably sought to limit the risk of a de-obligation due to a contractor's insufficient internal controls. Accordingly, it was appropriate for the State to find a contractor who had previously worked on a state or local government contract.

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**v. The Totality of the Circumstances Shows that the SIROMS RFQ Contractor Experience Requirements were Reasonably Necessary and did not Restrict Competition**

The State respectfully submits that the SIROMS RFQ experience requirements must be viewed collectively in the context of the entire SIROMS procurement process. There is no bright-line rule that determines when RFQ experience requirements are too restrictive. Instead, that determination should involve the collective review of agency needs, its exercise of business judgment, and the procurement process as a whole. Here, this global review of the SIROMS procurement demonstrates that the experience requirements were fair and reasonable.

First, and as fully described above, the experience requirements were necessary to satisfy the State's legitimate needs for the expedited development of an IT system to manage billions of dollars of CDBG-DR grant funds and were not overly restrictive.

Second, the State's took significant steps to solicit proposals for the SIROMS contract from as many contractors as possible. For example, the State posted the SIROMS RFQ through the "ebuy" system on

GSA to guarantee that it would reach all relevant GSA Schedule contractors. The State posted the RFQ on three different GSA Schedules with notifications to all schedule vendors. RFQ notices were sent to a multitude of vendors. Moreover, DCA posted the RFQ on its website at the same time as the posting on the GSA ebuy system to expose the RFQ to the widest possible contractor audience. By sending and making available the RFQ to so many contractors, the State sought to secure the best product at the best price.

Finally, the SIROMS RFQ enabled prospective contractors to meet the prior CDBG-DR experience requirements by partnering with other GSA approved firms. See SIROMS RFQ, section 1.4.4. This option gave prospective contractors significant flexibility to satisfy the SIROMS experience requirements. See GlobaFone, Inc., B-405238, 2011 CPD ¶ 178 (Comp. Gen. Sept. 12, 2011) (a solicitation is not unduly restrictive of competition when the agency "reasonably identifies its needs and allows offerors the opportunity to meet those needs.").

Considering each of these additional factors and examining the SIROMS procurement process as a whole, it is clear that the SIROMS experience requirements were reasonable and did not unduly restrict competition. Accordingly, HUD should reject OIG's claim to the contrary.

**e. The State's use of Industry-Standard Labor Categories Promoted Full and Open Competition**

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The inclusion of labor categories in solicitations for technical services is common in government contracting. Numerous federal agencies, including HUD, use standard labor categories when procuring technical services for task order contracts similar to SIROMS. Furthermore, a comparison of the labor categories in the SIROMS RFQ to the labor categories commonly used by other GSA Schedule 70 IT firms reveals that the titles listed and the experience and education required are often identical to or closely track one another. Thus, any experienced GSA IT firm could easily map[23] its labor categories to the standard labor categories listed in the SIROMS RFQ. Accordingly, OIG incorrectly concludes that the State unduly restricted competition by including standard IT labor categories in the SIROMS RFQ.

**i. The State's Procurement Strategy Ensured that the SIROMS RFQ Contained Standard Staffing Criteria for an Effective IT System While Also Exposing the RFQ to the Maximum Number of Potential Vendors**

When the State drafted the SIROMS RFQ, it sought to include industry standard labor categories that would not only anchor a bidder's expectations of the quality of product required for New Jersey's disaster recovery IT system, but also allow a large number of vendors to engage in the bidding process. To accomplish this goal, the State worked with consultants and government representatives with disaster recovery experience to draft an RFQ to procure a robust IT system of sufficient strength to support the New Jersey Action Plan.

[23] "Mapping" labor categories is a common procurement practice that typically involves building a matrix of a company's internal labor categories and matching them with the comparable labor categories listed in an RFQ. Labor categories are matched based on similarities between job functions and experience/education requirements.

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The State's primary concern was contracting with an IT systems operator who could supply qualified personnel capable of meeting a short delivery timeframe, particularly because the State was required to expend the recently obligated CDBG-DR funds within two years. With the need to quickly implement a fully-functional IT system, the State and its working group reviewed the labor categories from the vendor utilized in Louisiana's "Road Home" program. The State began with a list of forty-two (42) labor categories common to the IT industry and, as discussed fully above, conferred with CDM Smith and Louisiana officials to determine which specific categories would be suitable for the SIROMS project. The working group selected twenty-four (24) critical IT-related labor categories that were used in Louisiana, added additional language to broaden the minimum experience, and added two non-IT labor categories that were specific to New Jersey's CDBG-DR needs. The specific labor category titles listed in the RFQ contained common IT industry titles, accompanying job descriptions and minimum education/experience requirements that were industry standard. The list of twenty-six (26) staffing categories necessary to fulfill New Jersey's SIROMS needs was included in the RFQ. See "SIROMS RFQ Labor Categories."

**ii. Including Labor Categories in an RFQ is a Standard Procurement Practice**

Although OIG appears to suggest otherwise in its audit report, the State's decision to include suggested labor categories in the SIROMS RFQ was proper. As an initial matter, the inclusion of labor category titles, job descriptions and minimum education/experience requirements in an RFQ is a standard procurement practice for task order contracts like SIROMS. Federal procurements for technical services commonly include estimated labor categories for task order contracts. See, e.g., "HUD Request for Proposals, Solicitation No. DU203NP-15-R-0001," "DOI Request for Proposals for BIA IT System," and "DHS Request for Proposals for EAGLE II." In fact, GSA lists estimated labor categories and hourly rates for IT vendors competing for certain federal contracts. See U.S. General Services Administration, "Government Wide Acquisition Contracts - Alliant Contractors Pricing," available at http://www.gsa.gov/portal/content/103877. This practice intuitively makes sense in the context of task order contracts like SIROMS, which do not specify a firm quantity of services but, instead, call for the issuance of orders for the performance of specific tasks to be completed by a specific labor category or group of labor categories.

**iii. The State Used Standard IT Industry Labor Category Titles**

Many IT vendors use common terms to describe labor categories, such as: System Analyst/Programmer; Projector Director/Manager; Database Administrator; Network Engineer; and Software/Application Developer. A brief, non-exhaustive search of publicly available GSA IT vendor labor categories reveals that nineteen (19) of the twenty-six (26) SIROMS RFQ IT labor category titles are identical or nearly identical to the GSA-listed labor category titles of other firms. A copy of this list was provided to OIG. These IT firms include large companies like Booz Allen, KPMG and BAE Systems, as well as numerous boutique and mid-size IT firms that also contract for services through the GSA Schedules. Moreover, when preparing an ICE for the State, ICF was able to map every single one of the SIROMS RFQ labor categories to those provided by BAE Systems, Northrop Grumman, and Booz Allen. See "ICE Mapping of SIROMS Labor Categories." Thus, the titles used in the SIROMS RFQ could easily be - and in fact were - easily matched to the labor category titles commonly used by other GSA IT vendors.

**Ref to OIG Evaluation**

**Auditee Comments**



Likewise, all but three SIROMS labor categories are identical to or closely match the labor categories listed on the GSA's Government-Wide Acquisition Contracts ("GWACs") site.[24] A cross-comparison of the GWACs firms' forty (40) labor category titles to the twenty-six (26) SIROMS labor category titles reveals that fifteen (15) are either identical or contain virtually synonymous terms. The remaining non-identical SIROMS labor categories contain such standard titles and descriptions that any experienced IT company could easily match its own labor category titles and descriptions to the GWAC labor category titles and descriptions. The similarities between the SIROMS and the GWACs labor categories further demonstrates that GSA IT vendors would have no issue mapping their firms' labor categories to those listed in the SIROMS RFQ.

**iv. The State Used Industry-Standard Job Descriptions for Each IT Labor Category**

The labor category job descriptions that the State used in its RFQ are substantially similar throughout the industry. Lists of sample IT labor categories with functional responsibility descriptions and minimum experience/education are readily available for review on the GSA website[25] and are easily mapped to the SIROMS labor categories. For instance, the SIROMS RFQ defines the functional responsibility of a "Senior Project Director Level II" as follows:

> Senior member of management with ability to commit the firm and with extensive experience in systems development. Responsible for highest-level client liaison. Ability to secure necessary professional resources within the firm to meet requirements of project.

Four other GSA firms, GiniCorp, DRT Strategies, Aurotech, and Osack & Assoc., include the *exact* same descriptions in their list of publicly available labor categories. Two other firms, Unique Comp and APG Intel, also list *virtually identical* descriptions in their GSA-listed labor categories.

Likewise, labor category descriptions are readily available for review on the GWACs website[26] and are easily mapped to the SIROMS RFQ. For instance, the SIROMS RFQ defines the functional responsibility of an "Analyst/Programmer" as follows:

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[24] GSA offers GWACs as a service that allows government agencies to buy cost-effective, innovative solutions for IT requirements such as systems design, software engineering, information assurance, and enterprise architecture solutions. See U.S. General Services Administration, "GWACs Homepage," *available at* http://www.gsa.gov/portal/category/25281. The GWAC program allows government agencies to procure these services at cost effective rates by standardizing labor category titles, descriptions and hourly rates across fifty-eight (58) IT vendors. Among other things, GWAC firms provide predetermined hourly rate ceilings for forty (40) common labor category titles and descriptions. Notably, the list of GWACs firms includes large IT solutions firms such as Accenture, BAE Systems, Booz Allen, CGI, Deloitte, IBM, Lockheed Martin, MacAulay-Brown and Northrop Grumman, as well as numerous other small- and mid-scale IT vendors.

[25] GSA ADVANTAGE, https://www.gsaadvantage.gov/advantage/main/start_page.do (last visited April 6, 2015).

[26] *Governmentwide Acquisition Contracts (GWACs)*, U.S. GENERAL SERVICES ADMINISTRATION, http://www.gsa.gov/portal/category/25281 (last visited April 6, 2015).

> Designs, codes, and tests software. Performs software troubleshooting and corrects errors in software and operating procedures. Conducts system analysis and programming tasks. Prepares test data, and tests and debugs programs. Prepares documentation of programs and user procedures. Assists in installing and operating system. May have demonstrated experience in configuration management, maintenance planning, supply management, outfitting/fitting out, data management, training, or logistics/configuration information systems.
>
> See SIROMS RFQ, Exhibit B.

Similarly, fifty-eight (58) GWACs IT vendors define the functional responsibilities of an "Applications Developer" as follows:

> Designs, develops, enhances, debugs, and implements software. Troubleshoots production problems related to software applications. Researches, tests, builds, and coordinates the conversion and/or integration of new products based on client requirements. Designs and develops new software products or major enhancements to existing software. Addresses problems of systems integration, compatibility, and multiple platforms. Consults with project teams and end users to identify application requirements. Performs feasibility analysis on potential future projects to management. Assists in the evaluation and recommendation of application software packages, application integration and testing tools. Resolves problems with software and responds to suggestions for improvements and enhancements. Acts as team leader on projects. Instructs, assigns, directs, and checks the work of other software developers on development team. Participates in development of software user manuals.

A cursory review of these descriptions reveals that several of the key terms (e.g., "designs," "tests," "debugs software", "troubleshoots") are identical in both the SIROMS RFQ and the standard proposals of the fifty-eight (58) vendors listed on GSA's GWAC list. Although the exact definitions vary slightly, the common responsibilities of designing, testing, evaluating and analyzing software to meet the specifications of a client are common to both the SIROMS definition of "Programmer/Analyst" and the GWACs definition of "Applications Developer." The similarities between the SIROMS "Analyst/Programmer" and GWACs "Applications Developer" descriptions are provided merely as one example. A non-exhaustive review of the remaining SIROMS labor category descriptions reveals that twenty-one (21) of the twenty-six (26) descriptions resemble descriptions provided by GWACs.

Locating other identical labor category descriptions does not require a significant amount of effort. For example, the SIROMS description for "Senior Technologist" is *identical* to job descriptions listed by two other GSA firms, and is indistinguishable from the descriptions listed by two more GSA firms. The SIROMS description for "Project Manager" is *identical* to three other GSA firms, and is virtually identical to those listed by two more firms. The SIROMS description for "Senior Business Systems Consultant" is *identical* to two other GSA firms, and is *virtually identical* to those listed by two more firms. Indeed, the SIROMS job description comparisons listed here are not unique and represent just a small sample of the numerous identical and similar job descriptions that the State was able to find and present to OIG. These

similarities demonstrate that the SIROMS RFQ labor category descriptions were defined using standard IT industry terms that numerous IT vendors would have recognized and could have easily mapped to their own indistinguishable labor categories.

Similarities amongst GSA IT vendors' labor categories should be expected, considering the type of competition that the GSA Schedules promote. Numerous government agencies repeatedly procure IT services through the GSA Schedules. The tasks sought and technical support required for government IT projects thus became standardized over the course of time, and contracting officers need to be able to compare bids on an equal basis. Thus, vendors are likely to use substantially similar, if not identical, terms in order to best respond to a solicitation. An IT vendor with unique labor titles and descriptions would be disadvantaged because those unique labor categories would not match the standardized terms contained in government contracts that would be matched by virtually every other GSA IT firm. It should also be noted that GSA has expressly approved of this practice by creating the GWAC program that includes forty (40) standard labor category titles and descriptions. OIG's audit report fails to recognize this practice and incorrectly concludes that the State unduly restricted competition by including these labor categories. In fact, the State appropriately included industry-standard and GSA approved labor categories in the SIROMS RFQ that could easily be mapped by potential bidders. Accordingly, OIG's findings in this regard should be rejected.

It appears that OIG would have preferred the State to rewrite the various labor categories and job descriptions "in its own words" as a means of avoiding the appearance that any particular contractor may have been favored. However, such a requirement would have held the State to an unfair level of originality not otherwise required or even expected of other customers for services, or even GSA contractors. Given the prolific level of "sharing" done by GSA contractors and the commonality of use of similar labor titles and descriptions, requiring states like New Jersey and other government agencies to draft original labor category language in their solicitations will likely make it more difficult for GSA approved firms to map their services to various RFQs, and will also likely decrease the number of potential contractors willing to expend the significant money and hours typically needed to respond to a solicitation.

**v. The Experience and Education Requirements for Each Labor Category Were Similar to the Requirements of Other GSA IT Firms**

The State also defined a minimum level of experience and education for each position, again following industry standards for professional services in the IT field. For example, the SIROMS RFQ required a Project Manager to have a minimum of five years of experience and a BS/BA degree or equivalent experience. See SIROMS RFQ, Exhibit B. This is a typical requirement within GSA Schedule 70. For instance, Deloitte requires an IT Manager to possess a minimum of five years of IT experience and a Bachelor's degree or equivalent. See GSA FSS Contract Number GS-35-F0617Y. PWC requires an IT Project Manager to possess between four and seven years of experience in "IT consulting, system and application development, design and implementation…" and hold a four-year degree from an accredited college/university. See GSA FSS Contract number GS-35F-0263P. International Technologies requires a Project Manager to possess between three and seven years of experience and an Associate's or Bachelor's degree (dependent on manager level). See GSA FSS contract number GS-35F-0407N. A further comparison of the identical and similar education and experience requirements was provided to OIG.

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Similar to the labor category titles and descriptions, the minimum experience and education requirements for each labor category contained in the SIROMS RFQ would have been recognized as industry-standard requirements that would not have deterred competition.

**f. The State Did Not Receive Any Objections or Challenges to the SIROMS RFQ Specifications**

The complete absence of objections to the SIROMS RFQ further demonstrates that the solicitation did not unduly restrict competition. At no point during the RFQ posting process, question and answer period, or post-award period did any of the thousands of potential SIROMS bidders, many of which are large, sophisticated entities with substantial experience in responding to government-issued RFQs, raise any objection or file a challenge to the contractor experience requirements, labor hours, labor categories, or any other aspect of the RFQ even though there were multiple opportunities to do so.

The RFQ process permitted contractors to submit questions and receive answers from the State regarding any aspect of the RFQ. Ultimately, thirty-one (31) questions were submitted. None of the submitted questions raised concerns about the labor categories, functional responsibilities or experience/education requirements contained in the RFQ. See "Questions Posed During SIROMS Solicitation."[27]

Moreover, potential bidders had a readily accessible means to protest any aspect of the SIROMS RFQ under State laws and regulations, yet none of the prospective vendors challenged any aspect of the RFQ. This is particularly notable in New Jersey because the State's procurement procedures actually facilitate appropriate specification challenges and award protests. See N.J.A.C. § 17:12-3.2 (specification challenges) and -3.3 (award protests). For example, bidders who are not selected receive a Notice of Intent to Award which specifically directs their attention to the applicable State regulations detailing the protest timeline and procedures. See N.J.A.C. 17:12-3.3. New Jersey also permits contractors to protest contract awards at no cost to the vendor as a means of encouraging valid challenges to an award. See N.J.A.C. § 17:12-3.1, et seq. Additionally, New Jersey permits a taxpayer, an association that simply includes a taxpayer, or a potential subcontractor to protest bids as a means of further encouraging challenges to the award of public contracts.[28] The challenging or protesting party has the right to appeal the challenge or protest decision directly to New Jersey's appellate court. See N.J.A.C. § 17:12-3.1(b).

Likewise, federal procurement rules also facilitate bid protests. The FAR provides a simple mechanism for any bidder to file a protest to a contract posted through GSA, if any aspect of an RFQ is objectionable. See F.A.R. Part 33, "Protests, Disputes and Appeals," codified at 48 C.F.R. § 33.000 et seq. Indeed, bid contests have become so routine that federal agencies expect them and often build the inevitable delays associated with bid protests into their procurement timelines. See Andy Medici & Jim

[27] The only question raised by a vendor concerning staffing under section 3.1.2 sought guidance on the State's approval of substitute or replacement staff assigned to the contract.
[28] See JEN Elec. v. Essex County, 197 N.J. 627, 631-32, 46 (N.J. 2008); In Re Challenge of a Contract Award of Solicitation # 13-X-22694 Lottery Growth Management Services, 436 N.J. Super. 350, 359 (App. Div. 2014); In re Protest of Award of New Jersey State Contract A71188 for Light Duty Automotive Parts, 422 N.J. Super. 275, 289 (App. Div. 2011).

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McElhatton, *How bid protests are slowing down procurements*, FEDERAL TIMES (July 21, 2013, 6:00 AM), http://archive.federaltimes.com/article/20130721/ACQUISITION03/307210001/How-bid-protests-slowing-down-procurements ("[bid protests are] so common that agencies expect them, build them into their contracting timelines, and regularly train their procurement staffs on how to minimize them."). See also MOSHE SCHWARTZ, KATE M. MANUEL, & LUCY P. MARTINEZ, CONG. RESEARCH SERV., R40227, GAO BID PROTESTS: TRENDS AND ANALYSIS (2013), *available at* http://fas.org/sgp/crs/misc/R40227.pdf (noting a dramatic increase in bid protests since 2008).

Yet here, not one protest was made at the State or federal level. This, in and of itself, demonstrates that the terms of the SIROMS RFQ did not create a barrier to bidding for GSA IT vendors.

**g. The State Confirmed that CGI's Software Purchases were Reasonable**

The steps taken by CGI to purchase SIROMS software not only ensured that the costs were in line with GSA Schedule rates that were pre-approved as fair, reasonable and competitive, but CGI further ensured cost reasonableness by negotiating additional discounts for the State which saved nearly one million dollars. Moreover, the State also performed a post-award price quote comparison which confirmed that the State received a reasonable and fair price on the software.

**i. CGI Initially Obtained Baseline Software Prices from the GSA Schedule and then Negotiated a Discount**

The State ensured that CGI obtained software purchases at competitive, reasonable, and fair prices. The SIROMS RFQ indicated that prospective contractors would be responsible for providing copies of at least three solicited price quotations when making ODC purchases. See SIROMS RFQ, section 3.5.2. Other than reimbursable administrative expenses, (e.g., travel, hotel, etc.), software[29] was the only other item purchased by CGI. Instead of waiting to procure software after the contract was awarded, CGI selected the software (OpenText Metastorm and SAP Business Objects) and included the software prices in its proposal to the State. The prices listed in the proposal were reasonable because CGI obtained the software from the GSA Schedule and utilized the services of two GSA Schedule vendors.[30]

Federal agencies regularly purchase goods through GSA Schedules, which ensures fair and reasonable rates. Any contractor listed on a GSA Schedule must qualify and be pre-approved by the GSA. During this approval process, a contractor's prices are examined and negotiated to ensure that they are fair, reasonable, and competitive with other Schedule contractors. A contractor's commercial stability and past performance are also reviewed. The fact that GSA Schedule contractors and their prices have been vetted for quality and reasonableness by the federal government is one of the many benefits of procuring contracts through the GSA. Because CGI priced its software purchases based on pre-approved GSA Schedule rates, the State was provided adequate assurances of cost reasonableness. Furthermore, when

[29] Specifically, the RFQ required that the contractor deliver a Business Processing Management ("BPM") System as well as a data warehouse and reporting tool to build SIROMS. See SIROMS RFQ, Sections 3.2.3.1. and 3.2.3.2.

[30] In response to the State's request, CGI provided documentation showing the due diligence performed to ensure cost reasonableness.

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CGI was preparing its quote, it was instructed not to include "open market items"[31] with its offer. Thus, all software purchases were restricted to GSA vendors.

Although GSA Schedule prices are pre-determined to be reasonable, CGI further compared and confirmed GSA Schedule prices for the software through other GSA re-sellers, and secured lower prices for the State through direct negotiations with vendors. CGI's successful efforts resulted in the State saving close to one million dollars on the software purchases. As a result of these efforts, the State was assured that the SIROMS software expenditures were fair and reasonable. Consequently, CGI was not required to include three solicited price quotations when submitting invoices after purchase because it had already competitively procured these items.

**ii. The State Took Further Action to Demonstrate that the Software Prices were Reasonable**

Although the SIROMS software purchases were procured at competitive prices, the State recently took additional steps to ensure that the software prices were reasonable. The State obtained a quote from another IT vendor ("IT vendor") for the same software purchased by CGI for SIROMS. The State compared the IT vendor's price quote with the price actually paid by CGI, and found that CGI's cost for this software was more than $50,000 lower than the IT vendor's quote. Hence, the State was further assured of the reasonableness of the software prices provided by CGI by this post-bid analysis.

**h. The State Obtained Sufficient Documentation Justifying all Contractor Labor Costs Consistent with the Terms of the SIROMS Contract and Federal Cost Principles**

OIG has expressed concerns that CGI's labor costs were not fully supported with signed weekly timesheets that accounted for the total activity for which each employee was compensated. However, as demonstrated herein, the State was in accord with the SIROMS contract and federal requirements, and the timekeeping system and procedures utilized by CGI ensured that appropriate timekeeping data was maintained.

**i. The State Possessed Sufficient Documentation to Support Labor Costs Consistent with the Terms of the SIROMS Contract**

The State's comprehensive review of the documentation submitted by CGI in support of labor costs fully complied with the terms of the SIROMS contract. In pertinent part, the contract for the development and implementation of the SIROMS system states that CGI shall provide the State with the following in support of labor costs:

> Copies of weekly timesheets for employees assigned to do the work referenced in the invoice[.]
>
> SIROMS RFQ, section 5.19.

[31] Open Market Items are products or services that are not listed on a GSA Schedule. See Id.

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The import of this language is explained by the "Standard Terms and Conditions" of the contract, which, in pertinent part, provides the following:

> [T]he State Contract Manager or designee shall monitor and approve the hours of work and the work accomplished by contractor and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed can be found at www.nj.gov/treasury/purchase/forms/ Vendor_Timesheet.xls.
>
> SIROMS RFQ, "Standard Terms and Conditions," section 6.3.

In compliance with the terms of the SIROMS contract, the State utilized a thorough timesheet evaluation process involving multiple levels of review to verify the accuracy and reasonableness of CGI's timesheets. Initially, CGI submits its timekeeping documentation to the State Contract Manager. The State Contract Manager monitors the SIROMS project on a daily basis and is fully familiar with the services provided by CGI employees. Based on first-hand knowledge of the SIROMS project, the State Contract Manager reviews the labor cost records for accuracy and general reasonableness. Upon the State Contract Manager's satisfaction that the timekeeping statements are accurate, he submits the documents to the Sandy Recovery Division, Budget and Finance Department, for a further review of the bills for issues such as overbilling, mistakes, and budget comparisons, as well as for general record keeping. Each monthly invoice for labor costs goes through this evaluation process before it is signed and approved for payment by the State Contract Manager. This multi-level review process ensures the accuracy and general reasonableness of labor costs invoiced for the SIROMS project.

Likewise, the documents submitted by CGI provide a comprehensive report of the services provided. CGI submits its timekeeping documentation on a monthly basis to the State Contract Manager. This package of information includes: (a) a statement showing line-item categories of services that tie directly to the budgeted charges for expected labor categories and budgeted dollar amounts; (b) a statement of gross monthly labor costs that describes the type of services provided by each individual employee; and (c) detailed timesheets that show the number of hours that a specific employee worked on the SIROMS project on a particular day, week and month. Importantly, this timekeeping documentation also contains two signed declarations by a CGI representative attesting to the accuracy of the timekeeping statements and labor charges.

Moreover, CGI's weekly timekeeping statements provide more detailed, granular timekeeping information than is required by the terms of the State contract. The State provides contractors with a sample timesheet as a general template to demonstrate the type of information required in employee timesheets. See www.nj.gov/treasury/purchase/forms/Vendor_Timesheet.xls. A comparison of this sample timesheet to CGI's timekeeping documents shows that CGI's records exceed the minimum contract requirements, as the State's recommended timesheet merely seeks information on an employee's daily hours on a bi-weekly basis, whereas CGI's timesheets provide this base information in addition to monthly totals, descriptions of the services performed by labor category, and a comparison of the hours/dollars invoiced against the budgeted amounts.

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**ii. CGI's Timekeeping Process and Fully-Automated Timekeeping System are Consistent with Federal Requirements**

CGI's method of timekeeping satisfies federal cost principle requirements. Pursuant to those requirements, when employees work on more than one activity or cost objective, the State must support the distribution of those employees' salaries or wages with personnel activity reports or other equivalent documentation that meet the following standards: (1) the reports reflect an after-the-fact distribution of the actual activity of each employee; (2) the reports account for the total activity for which the employee will be compensated; (3) the reports are prepared at least monthly; and (4) the reports are signed. 2 C.F.R. Part 225, Appendix B (8)(h)(4) and (5).

In compliance with these federal cost requirements, the timekeeping module used by CGI to calculate and invoice labor costs contains all pertinent data to fully support the labor costs it invoices to the State. CGI utilizes the web-based "Peoplesoft" system to track employee time. This system allows the preparation of reports on a monthly (or daily, weekly or annual) basis with electronic signatures, as required by federal cost principles. The Peoplesoft system also captures the labor cost data called for by federal cost principles, including an after-the-fact distribution of the actual activity of each employee and an accounting of the total activity for which the employee will be compensated.

The fully-automated Peoplesoft timekeeping system ensures that timesheets are verified by an employee using unique login and password information. When hired, each CGI employee is assigned a unique username and password that the employee must use to access the Peoplesoft system. CGI employees then enter their time records on a weekly basis by date, project and specific services provided. Each employee's time records are reviewed by a supervisor for accuracy, and the system maintains an auditable record of any supervisory level changes to timesheets. At the end of each week, CGI's timekeeping module therefore contains the total number of hours that each employee worked each day for each client, as well as the number of hours the employee worked on each particular project for each client. Thus, the fully-automated Peoplesoft system allows CGI to produce timesheets sorted by employee, project and/or time period.

The accuracy of CGI's timekeeping module is further bolstered by the company's official, public timekeeping policy. CGI is a publicly traded company that files its company policies with the Securities and Exchange Commission. See Groupe CGI Inc./CGI Group Inc., SEC Form 40-F, "Annual Information Form," (December 13, 2013), *available at* http://www.cgi.com/sites/default/ files/pdf/cgi-2013-form-40f.pdf. Among other requirements, the company's official timekeeping policy mandates that employees "must record all time worked daily and submit reports weekly, accurately reflecting all time worked on both direct and indirect projects" and must "obtain the correct charge code before starting work on any new direct or indirect project." Id. Any CGI employee who knowingly enters inaccurate or falsified timekeeping records violates company policy and federal disclosure rules. Id. These policies ensure that CGI accurately invoices labor costs to the State.

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**iii. Nothing in the State or Federal Rules Requires CGI's Fully-Automated Timekeeping Statements to Contain "Wet" Signatures**

The timesheets created by CGI employees use unique employee identifiers and therefore fully comply with the federal guidelines concerning employee signatures on personnel activity reports. As indicated above, 2 C.F.R. Part 225, appendix B(8)(h)(5)(d) requires personnel activity reports or equivalent documentation to be "signed" by the employee. However, the guidance document that supports implementation of those federal cost principles instructs that a digital signature may be utilized if the personnel activity reports are fully computerized and paperless. See Implementation Guide for Office of Management and Budget Circular A-87, § 3-16. Further, a unique personal identification number (PIN) or password can constitute a valid electronic signature. See IRS Pub. 1345, at 19-20 (explaining that the Internal Revenue Service accepts a PIN as an electronic signature in lieu of a hand-written signature).

This growing de-emphasis on wet signatures is exemplified by the newly enacted Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("Uniform Guidance"), adopted by HUD on December 26, 2014, which supersedes the federal cost principles detailed in 2 C.F.R Part 225. See 2 C.F.R. Part 200.104; 2 C.F.R. Part 200.110; 2 C.F.R. Part 2400.101. The Uniform Guidance streamlined and consolidated several regulations under Title 2 of the Code of Federal Regulations (including 2 C.F.R. Part 225) into one set of guidance. See 2 C.F.R. Part 200.104; Uniform Guidance, 78 Fed Reg. 78590. These changes were intended to "make government more accountable to the American people while eliminating requirements that are unnecessary and reforming those requirements that are overly burdensome." Uniform Guidance, 78 Fed. Reg. 78591. In achieving these goals, the signature requirement relied upon by OIG in the superseded 2 C.F.R. Part 225, Appendix (B)(8)(h)(4), was evidently deemed unnecessary and not included in the Uniform Guidance. Now, federal cost requirements only demand that timekeeping records:

> [s]upport the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one federal award; a federal award and a non-federal award; an indirect cost activity and a direct cost activity; two or more indirect activities which are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.
>
> 2 C.F.R. Part 200.430(i)(1)(vii).

Thus, the newest guidance on this issue clearly does not require a wet signature on timekeeping records. As the Uniform Guidance is now in effect and its adoption was imminent when HUD allocated CDBG-DR funds, CGI's method of timekeeping should be reviewed in light of these new cost principles.

The timesheets submitted by CGI met the federal requirements in their original format because CGI employees used unique, confidential identifiers to enter their time into computerized timekeeping systems. Those unique electronic signatures identify and authenticate a particular person as the source of the timesheet. Moreover, any subcontractor timesheets that were initially drafted outside the Peoplesoft system were electronically recorded and reviewed for accuracy by CGI and the State prior to payment. These methods of verification ensure that costs are reasonably supported and comply with both the new and the superseded federal cost principles.

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**iv. Based on the Totality of Information Provided, the State had Adequate Documentation to Support CGI's Labor Costs**

The documentation that CGI submitted to the State in support of labor costs was sufficient to allow the State to: (1) review specific project labor costs for inaccuracies (e.g., overbilling or double billing); (2) compare on-going labor costs/hours against the budgeted amounts; and (3) confirm the reasonableness of the labor costs. In compliance with the State contract, CGI's time and expense reports were submitted monthly to the State along with the company's invoices for payment. The time and expense reports allowed the State to examine labor costs at an even more detailed level (daily, weekly, monthly and by service) than called for by the SIROMS contract (weekly). Thus, the State fully complied with the terms of the SIROMS contract and complied with federal cost requirements.

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Thank you for your consideration of our position. As always, we look forward to continuing our close partnership with HUD and OIG as we address these important disaster recovery issues.

Respectfully submitted,

David C. Woll, Jr.
Director
Superstorm Sandy Compliance Unit

## OIG Evaluation of Auditee Comments

**Comment 1** The State contended that its disaster management system was implemented in compliance with applicable laws and regulations and that statements to the contrary in the audit report were factually and legally incorrect. We found, however, that the State did not comply with Federal procurement and cost principle requirements. The State did not prepare an independent cost estimate and analysis before awarding the system contract to the only responsive bidder. It did not ensure that option years were awarded competitively and included provisions in its request for quotation that restricted competition. Also, the State did not ensure that software was purchased competitively and that the winning contractor had adequate documentation to support labor costs charged by its employees. 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. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

**Comment 2** The State contended that it provided an accurate certification to HUD and that any claim by OIG to the contrary was unsupported and misleading. However, we found that the State did not ensure that its procurement policies and procedures were fully equivalent to Federal procurement standards. While the State accurately portrayed its policies and procedures on the certification, the issues identified in the report show that the State's process was not equivalent to Federal procurement standards. For example, the State's policy did not require it to prepare an independent cost estimate and analysis before awarding the system contract to the only responsive bidder.

**Comment 3** The State contended that HUD performed its own independent review of the State's procedures and agreed that the State's procurement procedures were equivalent to the Federal procedures and that the State had in place proficient financial controls and procurement processes. The State also contended that HUD continued to maintain the position that the State's procurement procedures were sufficient. However, HUD relied on the State's certification that its policies and procedures were equivalent to the Federal procurement standards at 24 CFR 85.36. The State was responsible for the accuracy of its certification.

Further, OIG's mission is independent and objective reporting to the HUD Secretary and Congress to bring about positive change in the integrity, efficiency, and effectiveness of HUD operations. As an autonomous provider of oversight, it is not unusual for program elements within HUD and our office to have differing views. That is why Congress placed inspectors general in an objective role to assess the facts and come to conclusions based on such disinterested analysis.

**Comment 4** The State contended that it was not required to conduct a prebid cost estimate or postbid cost analysis for its disaster management system because Federal law required it to follow its own procurement practices. However, it also contended that its efforts to estimate and evaluate costs were sufficient to meet State requirements and the intent of the Federal standards. For this disaster recovery effort, unlike previous disaster recovery efforts, HUD required the State to either adopt the specific procurement requirements identified in 24 CFR 85.36 or have a procurement process and standards that were equivalent to the procurement standards at 24 CFR 85.36. As stated in the audit report, although the State did not adopt the Federal procurement standards, it certified that its policies and procedures were equivalent to the Federal standards. Therefore, it needed to demonstrate that it had developed a yardstick for evaluating the reasonableness of the contractors' proposed costs or prices and evaluated the separate elements that made up the contractors' total costs. However, its actions did not achieve the same procurement goals or meet the overall intent of 24 CFR 85.36(f).

For example, to satisfy the requirement for a cost estimate before receiving bids, the State provided an email, which estimated a need for 45 to 50 full-time employees and $1.5 to $2 million per month based on the State of Louisiana's experience. This was not equivalent because it did not estimate all of the separate elements (labor, materials, etc.) to determine whether they were allowable, directly related to the requirements, and reasonable. To satisfy the requirement for a cost analysis before awarding a contract, the State indicated that it compared labor categories from CGI Federal's proposal to the rates for equivalent labor categories from a random sampling of five other contractors. This was not equivalent because it did not determine whether the pricing of all of the separate elements that made up the total costs in the contractor's proposal were fair and reasonable.

As stated in the report, the need for an independent cost estimate and analysis was illustrated by the lack of competition and by a prior audit, which showed a large variance in similar system costs.

**Comment 5** The State contended that the option years had not been awarded because it had not yet extended the system contract. The State also contended that it had no contractual obligation to CGI Federal for the option years. Further, the State noted that it had not overpaid for the option years because they had not yet been awarded. We agree that the State had not yet extended the system contract with CGI Federal at the time of our review. However, as noted in the report, because the option years were included in the contract language, the State could exercise them without additional competition when the initial 2-year period expired on May 24, 2015. An independent cost estimate obtained by the State during our audit estimated the cost of the 3 option years to be $9.1 million less than CGI Federal's best and final offer of $21.7 million. If HUD follows our

recommendation and, if necessary, directs the State to rebid for the additional option years, it could reduce the price for the option years by as much as $9.1 million.

**Comment 6** The State contended that it appropriately included labor hours and categories in the request for quotation and that this method is routinely employed by a number of Federal agencies, including HUD. We acknowledge that this method is employed by some Federal agencies. However, the examples provided by the State at the exit conference were not relevant to the system contract. Further, while asking bidders to use predetermined labor categories and hours was not prohibited under Federal procurement standards, the practice may not have resulted in the most advantageous bids or proposals for the contract, and when considered with all other provisions, it may have restricted competition. The State's request was for an information technology solution, not for standard information technology support services. However, the State did not allow bidders to be creative and innovative in their approaches to the solution. For example, bidders could not propose different combinations of labor categories and hours based on their experience and the expertise of their staff. Instead, the only aspects of the contract cost that the bidders could control and the State could analyze were the labor rates and other indirect costs.

**Comment 7** The State contended that it would have been irresponsible and likely harmful to the State's disaster recovery efforts to consider a vendor without any experience in implementing a similar system. We agree. However, the State was not able to show that the level of detail in the requirements for experience was necessary to retain a qualified contractor. The State could have used the degree of experience as a weighting factor when evaluating bids instead of preventing contractors that lacked certain specific experience from bidding. Further, our finding that the State included provisions that restricted competition was based on the combination of several provisions pertaining to the request, not one specific provision. The specific experience requirements may have discouraged qualified contractors from bidding. The effect of this may be illustrated by the fact that the State received only one responsive bid despite soliciting 3,599 contractors.

**Comment 8** The State contended that no prospective vendors had protested the request for quotation criteria or the award. However, the lack of protests from prospective vendors does not mean that the level of detail in the State's requirements for experience was necessary to retain a qualified contractor. Further, the State provided no documentation to support its contention.

**Comment 9** The State contended that its consultants, CDM Smith and ICF International, contacted government officials from a number of States and cities that had previously received Disaster Recovery funds. Further, the State contended that after determining that its needs were similar to those of Louisiana, it formed a working group with CDM Smith, ICF International, and disaster recovery

specialists from Louisiana. The State indicated that the working group discussed the project's scope of work, estimated costs, and staffing requirements. However, while the State had several opportunities throughout the audit and after the exit conference to provide documentation related to the working group and its discussions with other government officials, it did not provide any documentation regarding discussions concerning the project's scope of work, estimated costs, and staffing requirements.

**Comment 10** The State contended that it was not required to follow the specific procurement standards at 24 CFR 85.36(b-i) because 24 CFR 85.36(a) required the States to follow their own procurement policy. The State further contended that it was bound to follow its own procurement policy in instances in which its processes diverged from the procurement standards at 24 CFR 85.36(b-i). We disagree. For this disaster recovery effort, unlike previous disaster recovery efforts, HUD required the State to either adopt the specific procurement requirements identified in 24 CFR 85.36 or have a procurement process and standards that were equivalent to the procurement standards at 24 CFR 85.36. The reason for this requirement was our recommendation to HUD in audit report 2013-FW-0001, dated March 28, 2013, on HUD's State Community Development Block Grant Hurricane Disaster Recovery program for hurricanes that hit the Gulf Coast States from August 2005 through September 2008. Based on our prior audits and a review of the program's data, we identified several lessons to be learned, including in the area of procurement. To improve the effectiveness and efficiency of the program, we recommended that HUD include the procurement standards at 24 CFR 85.36 in its future disaster recovery grant terms and provide procurement training and technical assistance to ensure that future disaster recovery grantees are aware of and follow Federal procurement requirements. HUD agreed with our recommendation.

For this disaster, the Federal Register notice required the State to either adopt the specific procurement standards identified in 24 CFR 85.36 or have a procurement process and standards that were equivalent to the procurement standards at 24 CFR 85.36. Therefore, the State was allowed to follow its own procurement policies if they were equivalent to the specific procurement standards at 24 CFR 85.36(b-i). The State acknowledged in its procurement policy for Block Grant Disaster Recovery grants that it was required as a grantee to adhere to the requirements at 24 CFR 85.36. Accordingly, it certified to HUD that its policies and procedures were equivalent to the specific procurement standards at 24 CFR 85.36(b-i).

**Comment 11** The State contended that 24 CFR 570.489(g) provides that States are required to use their own procedures. However, this regulation is related to the regular Block Grant program. For this disaster, the Federal Register notice required the State to either adopt the specific procurement standards identified in 24 CFR 85.36 or have a procurement process and standards that were equivalent to the

procurement standards at 24 CFR 85.36. The Federal Register notice supplemented existing guidance and allowed the State to follow its own procurement policy if its process was equivalent to the specific procurement standards at 24 CFR 85.36(b-i).

**Comment 12** The State contended that a HUD handbook noted that States were not bound by 24 CFR 85.36(b-i) unless they chose to adopt all or parts of these requirements. This handbook is related to HUD monitoring of its community planning and develop programs, which include its regular Block Grant program. However, for this disaster, the Federal Register notice required the State to either adopt the specific procurement standards identified in 24 CFR 85.36 or have a procurement process and standards that were equivalent to the procurement standards at 24 CFR 85.36.

**Comment 13** The State contended that several sections of the report started by explaining what the regulations required the State to do, despite acknowledging that the State did not adopt the procurement procedures of 24 CFR 85.36(b-i). While sections of the audit report began by explaining what the specific procurement standards of 24 CFR 85.36(b-i) required, we maintain that the State's process was not equivalent to these procurement standards. The last detailed section of the finding discussed the State's certification and explained that the issues identified in the report show that the State's process was not equivalent to the specific procurement standards at 24 CFR 85.36(b-i).

**Comment 14** The State contended that its own procurement procedures were not identical to standards at 24 CFR 85.36(b-i) but achieved the same procurement goals and were equivalent because the procedures met the overall intent of those regulations. We disagree. As explained in the report, the State did not have procedures that were equivalent to an independent cost estimate and analysis. As a result, the State was unable to demonstrate that the initial contract price of $38.5 million and option years totaling another $21.7 million were fair and reasonable. The State's own procurement procedures did not achieve the same procurement goals or meet the overall intent of 24 CFR 85.36.

The State contended that it made clear in the documentation it provided with its certification to HUD that although it considered its policies equivalent to those in the Federal regulations, they were not identical. Further, the State contended that it explained in detail where its policies diverged from the rules in 24 CFR 85.36 and how its procurement rules contained procedures and controls that met the intent and were, therefore, equivalent to the Federal procurement standards. While the documentation provided by the State sometimes explained how its procedures and controls met the intent of the standards, there were many cases in which it provided only a vague reference to State rules without explaining what its policies required or how the procedures were equivalent. For example, there are 16 instances in which the State cited section 17:12 of the New Jersey

Administrative Code without detailing which subsection it was referring to or how the relevant procedure met the intent of the specific Federal standards. Further, our review of the documentation the State provided with its submission did not identify any instances in which it clearly explained how its policies differed from the Federal procurement standards at 24 CFR 85.36(b-i).

For 24 CFR 85.36(f), the State contended that it explained in several paragraphs why its procedures met the intent of the Federal standards and were, therefore, equivalent. As noted in the report, 24 CFR 85.36(f)(1) required an independent cost estimate before receiving bids and a cost analysis before awarding the contract. However, in the documentation supporting the State's certification of equivalency, the State indicated only that cost analysis was a component part of GSA's Disaster Recovery Purchase Program and that the State's adoption of this program as a part of its procurement process complied with the requirements of 24 CFR Part 85.36(f)(1). The State also included three citations: New Jersey Administrative Code 17:12, et seq.; New Jersey Statutes Annotated 52:34-1, et seq.; and GSA's Disaster Recovery Purchase Program. However, the State did not identify to HUD which portions of these citations were relevant to the requirements for an independent cost estimate and cost analysis. For example, when we obtained a copy of Section 17:12 of the State's Administrative Code from its Web site, the document was 32 pages long. Further, the State did not explain how the procedures cited were equivalent to or differed from the Federal rules. For 24 CFR 85.36(f)(2-4), the State included short explanations of how it would meet the requirements but did not indicate which sections of its policies and procedures were equivalent.

**Comment 15** The State contended that we suggested that it acted deceptively or disingenuously in making its certification to HUD. We disagree. The report did not suggest that the State acted deceptively or disingenuously when making its certification to HUD. Rather, the report states that while the State accurately portrayed its policies and procedures on the certification, the issues identified during the audit show that the State's process was not equivalent to Federal procurement standards; therefore, its certification was not accurate.

**Comment 16** The State contended that if and when the State awards the option years, it will ensure that the price is reasonable and will secure an updated independent cost estimate to review the proposed option year costs. We agree with the State that further steps should be taken to ensure the reasonableness of the price for the 3 additional option years. Thus, our report recommended that HUD determine whether the documentation the State provided is adequate to show that the price for the 3 additional option years is fair and reasonable and if not, direct the State to rebid for the additional option years, thereby putting $9,061,780 to better use.

**Comment 17** The State contended that comparing the total price estimate in the independent cost estimate to CGI Federal's total option year bid estimate was not an apples-to-

apples comparison due to the widely differing assumptions that each estimate makes regarding the level of staffing required during the option years. We agree that the independent cost estimate and CGI Federal had widely differing assumptions regarding the amount of staffing required during the option years. This difference demonstrates the need for HUD to determine whether the documentation the State provided is adequate to show that the price for the 3 additional option years is fair and reasonable. Further, the widely differing assumptions regarding the amount of staffing underscore the importance of performing an independent cost estimate before soliciting bids.

**Comment 18** The State contended that the request for quotation did not require CGI Federal to provide price proposals for the option years. However, in an addendum to the request for quotation, the State explicitly stated that bidders shall provide a cost component for the 3 additional option years in their proposals, which could be exercised by the State.

**Comment 19** The State contended that because the contract provides that option year rates must be equal to or less than the rates for the initial contract term, it will get a fair and reasonable price for the option years. However, as noted in the report, the State did not perform an independent cost estimate and analysis before awarding the contract. An independent cost estimate serves as a yardstick for evaluating the reasonableness of the contractor's proposed costs or prices. An independent cost analysis consists of evaluating the separate elements (labor, materials, etc.) that make up a contractor's total cost proposal to determine whether they are allowable, directly related to the requirement, and reasonable. The State did not perform an independent cost estimate and cost analysis and, therefore, did not evaluate all of the separate elements that made up the contractor's total cost proposal. Additionally, the State's evaluation committee report did not show that the State considered the pricing for the option years as a part of its technical review and price comparison process. As a result, HUD and the State had no assurance that the contract amount, including the option years, was fair and reasonable.

**Comment 20** The State contended that we appeared to fully endorse the independent cost estimate that it obtained during our audit as a reasonable estimate of cost. We did not endorse the independent cost estimate. We referenced the independent cost estimate to show that the option years may not be reasonably priced. However, the report recommended that HUD determine whether the documentation the State provided is adequate to show that the price for the 3 additional option years is fair and reasonable.

**Comment 21** The State contended that Federal Acquisition Regulation indicates that option years may be exercised without rebidding when certain requirements are met, including that the options were evaluated as part of the original competition. While these requirements do not apply to the State, it should be noted that the

State's evaluation committee report did not show that it considered the pricing for the option years as a part of its technical review and price comparison process. Further, as noted in the report, the State did not perform an independent cost estimate and analysis before awarding the contract. As a result, HUD and the State had no assurance that the contract amount, including the option years, was fair and reasonable.

**Comment 22** The State contended that its request for quotation provided that task orders for services would be used and that for each task order issued, the contractor would be required to submit a plan that included the proposed labor categories and hours needed to complete the particular task order. However, during our audit, when we asked the State to provide task orders related to disbursements for labor costs, a State official informed us that the system contract was not operated by task order and did not provide any related task orders. Further, the request for quotation did not discuss the use of task orders for quantities of specific services. Rather, it used the phrase "task order" to refer to a series of tasks that the contractor must have completed within a certain number of days after the contract was signed. While the State provided signed acceptance sheets documenting that the each task had been completed, these sheets listed only the title of the task completed rather than a quantity of services provided. For example, the tasks included "Gap Solution," "Cloud Computing," "Meet with DCA [Department of Community Affairs] and ARMS [Automated Records Management System Committee]," "Provide training plan," and "Provide standardized reports and ad hoc reporting capabilities." Further, while the request for quotation included a rate schedule with predetermined hours, which CGI Federal used for its proposal, the State did not provide any plans submitted by CGI Federal showing proposed labor categories and hours needed to complete a particular task order. Instead, the hours shown on the rate schedule were intended to cover the full 2-year period.

**Comment 23** The State contended that its request for quotation provided that task orders for services would be used. However, during our audit, when we asked the State to provide task orders related to disbursements for labor costs, a State official informed us that the system contract was not operated by task order and did not provide any related task orders.

**Comment 24** The State contended that HUD recently used a pricing worksheet with labor categories and estimated labor hours in a solicitation for services associated with a broadcast operation center. However, according to the statement of work included in the solicitation, the services to be provided were more clearly defined. For example, while the system contract required the development of a complex, fully functional turnkey information technology solution, the HUD solicitation required technical staff and professional services to operate, maintain, and update an already fully functional broadcast operations center. The titles of the labor categories were more exclusive and clear cut, such as a camera operator, video editor, script writer, narrator, makeup artist, and court reporter. Based on the

statement of work and the labor categories included in HUD's solicitation, this example is not relevant to the system contract.

**Comment 25** The State contended that the U.S. Department of Homeland Security recently used pricing templates with labor categories and estimated labor hours when soliciting to design a major system. However, according to the solicitation and other publicly available information, this solicitation was used for the award of multiple contracts and included provisions for competitive awarding of individual task orders. Further, the solicitation was for a variety of services, including support services and testing of information technology products. Based on the information reviewed, this example is not relevant to the system contract.

**Comment 26** The State contended that the U.S. Department of the Interior recently used a pricing worksheet with labor categories and estimated labor hours in a solicitation related to services to design and build an information technology infrastructure system. However, the statement of work provided by the State, along with other publicly available information, indicated that the solicitation was for support services, such as a help desk call center, not for designing and building an information technology infrastructure system. Based on the information reviewed, this example is not relevant to the system contract.

**Comment 27** The State contended that it appropriately and reasonably relied upon historical data from Louisiana and other States to develop estimates necessary for labor categories and labor hours. However, the State did not supply documentation to support this claim, nor did it perform an independent cost estimate before soliciting bids. Also, a change made by the State during the open comment period illustrated that the State was not confident that its initial estimate of labor hours was sufficient. When a contractor requested that the State supplement the rate schedule with 38,000 additional labor hours to accommodate three different labor categories, the State fulfilled the contractor's request. The State did not provide documentation to justify this change, which increased the total hours in the rate schedule by more than 17 percent, or approximately 9 full-time contractor employees for 2 years. Thus, it is clear that the State did not have a sufficient measure for estimating costs for the system before soliciting bids. As a result, HUD and the State had no assurance that the contract price, including option years, was fair and reasonable.

**Comment 28** The State contended that the experience specifications listed in the request for quotation were necessary to meet the State's legitimate needs and did not unduly restrict competition. However, the detailed experience requirements included that each bidder have all of the following:

- Experience with Block Grant Disaster Recovery program and financial requirements;

- Experience in implementing disaster recovery projects exceeding $500 million; and
- Experience with at least three contract engagements of a 2-year duration or greater for which it was responsible as the primary information technology shared services provider, including one engagement that was undertaken within the past 3 years and one engagement in which the client was a State or local government with an annual information technology budget of at least $10 million.

The State was not able to show that the level of detail in its requirements for experience was necessary to retain a qualified contractor. For example, while it may have been reasonable to require experience with projects of a certain size and some level of disaster recovery experience, the State could not demonstrate that experience in implementing disaster recovery projects exceeding $500 million was necessary.

Further, while the State contended that at least 19 contractors would have met its requirement for experience in implementing disaster recovery projects exceeding $500 million, it did not establish whether these contractors met its other requirements. When one prospective vendor asked whether it would qualify if it had significant past experience but did not have the Block Grant Disaster Recovery experience, the State restated its requirement for specific Block Grant Disaster Recovery experience. This action demonstrated that the specific experience requirements may have discouraged qualified contractors from bidding. The effect of this may be further illustrated by the fact that the State received only one responsive bid despite soliciting 3,599 contractors.

**Comment 29** The State pointed out that we did not include the correct language from the regulations at 24 CFR 85.36(c) and failed to explain how the State required "excessive bonding." We have updated the report and changed "excessive" experience to "unnecessary" experience. We did not find that the State required excessive bonding.

**Comment 30** The State contended that Federal agencies use labor categories in solicitations when procuring technical services for task order contracts similar to its system contract. However, during our audit, when we asked the State to provide task orders related to disbursements for the system, a State official informed us that the system contract was not operated by task order. Further, while we agree that the use of labor categories in the request for quotation was not explicitly prohibited, our finding that the State included provisions that restricted competition was based on the combination of several provisions pertaining to the request, not one specific provision.

**Comment 31** The State contended that its working group reviewed the labor categories from the vendor used for Louisiana's "Road Home" program and began with a list of 42

labor categories common to the information technology industry. The contractor used by Louisiana was CGI Federal. CGI Federal was the only firm to submit a responsive bid, and the State awarded the system contract to CGI Federal.

**Comment 32** The State contended that many vendors use common terms to describe labor categories. While we acknowledge this fact, our finding that the State included provisions that restricted competition was based on the combination of several provisions pertaining to the request, not one specific provision.

**Comment 33** The State contended that CGI Federal purchased software at competitive, reasonable, and fair prices because the costs were in line with GSA Schedule rates and because CGI Federal negotiated additional discounts. However, as noted in the report, the State's contract with CGI Federal required the contractor to provide copies of at least three quotes when submitting invoices for payment for direct costs, such as software. CGI Federal did not include at least three quotes when submitting invoices for the software. Without the required quotes, CGI Federal failed to follow contract requirements, and HUD had no assurance that the software was acquired competitively.

**Comment 34** The State contended that CGI Federal included the software prices in its proposal to the State and that the prices were reasonable because they were obtained from the GSA Schedule and used the services of two GSA Schedule vendors. However, the State chose not to enforce the terms of its own contract by allowing CGI Federal to purchase software based on the proposal without providing copies of at least three quotes when submitting invoices for payment.

**Comment 35** The State contended that CGI Federal was not required to include three price quotations when submitting invoices because the process it used already assured the State that the software expenditures were fair and reasonable. We disagree. The contract between the State and CGI Federal stated that the contractor must submit three price quotations when submitting invoices for direct costs. If the State did not intend for CGI Federal to follow the contract requirement, it should have formalized the change and issued a contract modification because regulations at 24 CFR 85.36(b)(9) required the State to maintain records sufficient to detail the significant history of the procurement.

**Comment 36** The State contended that it took additional steps to ensure that software prices were reasonable by recently obtaining one additional quote from an information technology vendor for the same software purchased by CGI Federal and comparing the prices. We agree with the State that further steps need to be taken to ensure the reasonableness of the software prices. However, the quote was obtained after the software was purchased and did not document what the price would have been at the time of the purchase. Our report recommended that HUD determine whether the documentation the State provided is adequate to show that the more than $1 million disbursed for software was fair and reasonable.

**Comment 37** The State contended that it possessed sufficient documentation to support labor costs consistent with the terms of the contract. We disagree. As stated in the audit report, the contract required the bidder to have weekly timesheets when submitting invoices for payment. The State, however, did not have the required timesheets at the time of the audit. Instead, it initially provided billing worksheets that identified the employee, the number of hours worked by date and activity, the hourly rate, and the total amount due. These billing worksheets did not meet the terms of the contract. After we notified the State of this problem, it contacted the contractor and provided us reports from the automated timekeeping systems of CGI Federal and its subcontractors. The timekeeping reports satisfied the requirements of the contract and Federal cost principle requirements for some but not all of the employees who charged time to the contract. The timesheets provided from CGI Federal's timekeeping system contained digital signatures. Some of the subcontractor timesheets contained "wet" signatures. However, timesheets supporting $467,659 in disbursements for subcontractor labor costs were not signed by employees with a digital or "wet" signature and, therefore, did not meet the Federal cost principle requirements.

**Comment 38** The State contended that CGI Federal's method of timekeeping satisfied Federal cost principle requirements. As noted in the report, the State did not initially have timesheets to support $1.5 million in labor costs charged by the contractor's employees. Instead, the State provided billing worksheets that identified the employee, the number of hours worked by date and activity, the hourly rate, and the total amount due. After we notified the State of this problem, it contacted the contractor and provided us reports from the automated timekeeping systems of CGI Federal and its subcontractors. The timekeeping reports satisfied the requirements of the contract and Federal cost principles for some of the employees who charged time to the contract. This documentation included the timekeeping reports provided for CGI Federal, which contained digital signatures.

**Comment 39** The State contended that nothing in the State or Federal rules required CGI Federal's fully automated timekeeping statements to contain "wet" signatures. We agree. As stated in the audit report, after we notified the State of problems with the billing worksheets provided, it contacted the contractor and provided us reports from the automated timekeeping systems of CGI Federal and its subcontractors. The timekeeping reports satisfied the requirements of the contract and Federal cost principles for some of the employees who charged time to the contract. This documentation included the timekeeping reports provided for CGI Federal, which contained digital signatures.

**Comment 40** The State contended that any subcontractor timesheets that were initially drafted outside CGI Federal's timekeeping system were electronically recorded and reviewed for accuracy by CGI Federal and the State before payment. However, we found that not all of these timesheets were signed by the employees (digitally

or with a “wet” signature) as required by 2 CFR Part 225. Our report recommended that HUD determine whether the documentation the State provided is adequate to support the $467,659 disbursed for subcontractor wages and salaries.