



# Office of Community Planning and Development, Washington, DC

## Community Development Block Grant Disaster Recovery Program

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

**Audit Report Number: 2017-PH-0002  
September 22, 2017**



**To:** Stanley A. Gimont, Deputy Assistant Secretary for Grant Programs, DGB  
//signed//

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

**Subject:** HUD Did Not Provide Sufficient Guidance and Oversight To Ensure That State Disaster Grantees Followed Proficient Procurement Processes

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of HUD's Community Development Block Grant Disaster Recovery procurement issues.

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

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

If you have any questions or comments about this report, please do not hesitate to call me at 215-430-6734.



Audit Report Number: 2017-PH-0002

Date: September 22, 2017

## HUD Did Not Provide Sufficient Guidance and Oversight To Ensure That State Disaster Grantees Followed Proficient Procurement Processes

# Highlights

## What We Audited and Why

We audited the U.S. Department of Housing and Urban Development's (HUD) oversight of disaster grantee procurement processes. We conducted the audit after prior audits identified procurement issues. Our objective was to determine whether HUD provided sufficient guidance and oversight to ensure that disaster grantees followed proficient procurement processes when purchasing products and services.

## What We Found

HUD did not provide sufficient guidance and oversight to ensure that State disaster grantees followed proficient procurement processes. Since HUD agreed to correct procurement issues from a previous audit,<sup>1</sup> we issued 17 audit reports on disaster grantees with questioned costs totaling nearly \$391.7 million related to procurement. These conditions occurred because HUD was so focused on providing maximum feasible deference to State grantees that it was unable to ensure that grantees followed proficient procurement processes. HUD also believed that State grantees were not required to have procurement standards that aligned with each of the Federal procurement standards. As a result, HUD lacked assurance that State grantees purchased necessary products and services competitively at fair and reasonable prices.

## What We Recommend

We recommend that HUD (1) clarify that if a State receives a disaster recovery grant and chooses to certify that its procurement process is equivalent to Federal procurement standards, “equivalent” means that its procurement process fully aligns with, or meets the intent of, each of the Federal procurement standards; (2) improve its controls to ensure that appropriate staff adequately evaluates the proficiency of State grantee procurement processes for States that select the equivalency option; (3) clarify and improve its guidance for State grantees to explain what it means to have a procurement process that fully aligns with, or meets the intent of, each of the Federal procurement standards; and (4) provide procurement training and technical assistance to State grantees to ensure that they understand the intent of each of the Federal procurement standards.

<sup>1</sup> Audit Report 2013-FW-0001, Generally, HUD’s Hurricane Disaster Recovery Program Assisted the Gulf Coast States’ Recovery; However, Some Program Improvements Are Needed, issued March 28, 2013

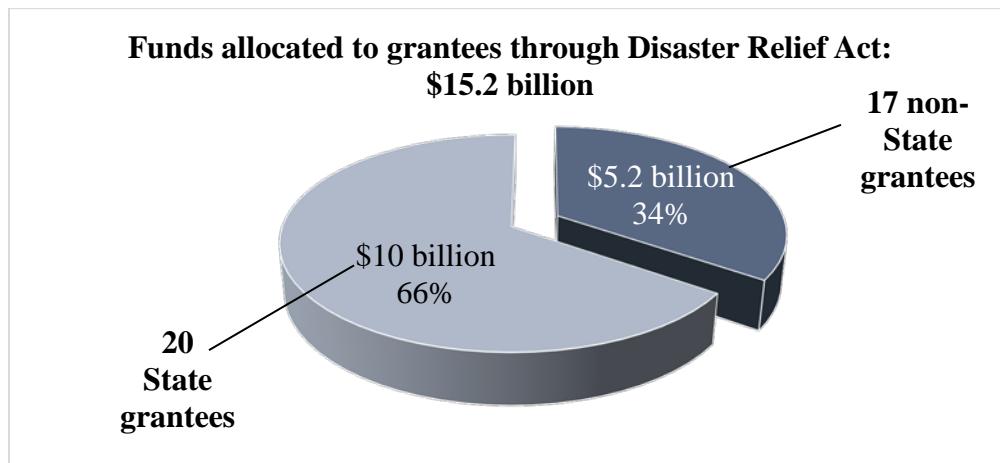
# Table of Contents

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<b>Background and Objective.....</b>	<b>3</b>
<b>Results of Audit .....</b>	<b>5</b>
<b>Finding: HUD Did Not Provide Sufficient Guidance and Oversight To Ensure     That State Disaster Grantees Followed Proficient Procurement Processes .....</b>	<b>5</b>
<b>Scope and Methodology.....</b>	<b>14</b>
<b>Internal Controls.....</b>	<b>15</b>
<b>Followup on Prior Audits.....</b>	<b>16</b>
<b>Appendixes.....</b>	<b>22</b>
<b>A. Auditee Comments and OIG's Evaluation .....</b>	<b>22</b>
<b>B. List of External Audit Reports That Identified Procurement Issues.....</b>	<b>29</b>
<b>C. Comparison of Federal Procurement Requirements.....</b>	<b>32</b>

# Background and Objective

Through the Disaster Relief Appropriations Act of 2013 (Disaster Relief Act),<sup>2</sup> Congress made available to the U.S. Department of Housing and Urban Development (HUD) \$16 billion<sup>3</sup> 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, 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. As of June 2016, HUD had allocated nearly \$15.2 billion in funds under the Disaster Relief Act to 37 grantees, including nearly \$10 billion to 20 State grantees and more than \$5.2 billion to 17 non-State grantees.<sup>4</sup> As shown in the chart below, State grantees accounted for 66 percent of the funds allocated to disaster grantees.



As a condition of making any grant under the Disaster Relief Act, the HUD Secretary was required to certify in advance that grantees had in place proficient financial controls and procurement processes. The Secretary was also required to provide grantees with technical assistance on contracting and procurement processes. On March 5, 2013, HUD issued a Federal Register notice,<sup>5</sup> which stated that grantees had a proficient procurement process in place if the grantee had either adopted the procurement standards at 24 CFR (Code of Federal Regulations) 85.36 or had a procurement process that was equivalent to those standards. HUD's definition of a proficient procurement process was in line with a prior Office of Inspector General (OIG) audit report,<sup>6</sup> in which we recommended that HUD include the procurement standards at 24 CFR 85.36 in its future Block Grant Disaster Recovery grant terms and provide procurement training and technical

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

<sup>3</sup> The \$16 billion made available through the Disaster Relief Act was reduced to \$15.2 billion due to sequestration.

<sup>4</sup> Non-State grantees included cities, counties, and parishes.

<sup>5</sup> 78 FR (Federal Register) 14336 (March 5, 2013)

<sup>6</sup> See footnote 1.

assistance to ensure that grantees were aware of and followed Federal procurement standards. HUD agreed to reference these standards in future grant agreements, include this topic in conferences and webinars, and post information on specific topics on its Block Grant Disaster Recovery website.

To establish a basis for the HUD Secretary to make the certifications required by the Disaster Relief Act, HUD created a certification checklist, which required State grantees and HUD staff to indicate whether the grantee had adopted the procurement standards at 24 CFR 85.36 or had a procurement process that was equivalent to those standards. Non-State grantees were required to adopt the procurement standards. As discussed in the Federal Register notice, grantees that elected to adopt the procurement standards at 24 CFR 85.36 were required to attach a copy of their procurement standards and indicate the sections of the standards that incorporated the procurement standards at 24 CFR 85.36. Further, States<sup>7</sup> that had a procurement process that was equivalent to the procurement standards at 24 CFR 85.36 were required to provide a crosswalk by attaching their procurement standards and indicating which sections of the standards aligned with each procurement provision of 24 CFR 85.36. After grantees submitted their certification checklists, HUD staff would complete the HUD side of the checklist, and then the Deputy Assistant Secretary for Grant Programs would sign a memorandum certifying on behalf of the Secretary<sup>8</sup> that the grantee had proficient financial control and procurement processes.

Our objective was to determine whether HUD provided sufficient guidance and oversight to ensure that disaster grantees followed proficient procurement processes when purchasing products and services.

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<sup>7</sup> Notice 78 FR 14336 (March 5, 2013) allowed only State grantees to elect the equivalency option, which was in line with the requirement in 24 CFR 85.36 that non-State grantees adopt the specific procurement standards at 24 CFR 85.36(b) through (i).

<sup>8</sup> Notice 77 FR 31972 (May 30, 2012) delegated authority from the Secretary to the Assistant Secretary for Community Planning and Development. Notice 77 FR 38854 (June 29, 2012) further delegated authority from the Assistant Secretary for Community Planning and Development to the Deputy Assistant Secretary for Grant Programs.

# Results of Audit

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## **Finding: HUD Did Not Provide Sufficient Guidance and Oversight To Ensure That State Disaster Grantees Followed Proficient Procurement Processes**

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HUD did not provide sufficient guidance and oversight to ensure that State disaster grantees followed proficient procurement processes when purchasing products and services. Since HUD agreed to correct procurement issues from a previous audit,<sup>9</sup> we issued 17 audit reports on disaster grantees with questioned costs totaling nearly \$391.7 million related to procurement. These conditions occurred because HUD was so focused on providing maximum feasible deference to State grantees that it was unable to ensure that grantees followed proficient procurement processes. HUD also believed that State grantees were not required to have procurement standards that aligned with each standard in the Federal procurement standards. As a result, HUD did not have assurance that State grantees purchased necessary products and services competitively at fair and reasonable prices.

### **Prior Audits Identified Procurement Issues**

Since HUD agreed to correct procurement issues from a previous audit, we have issued 15 audit reports on disaster grantees, which identified procurement issues related to the Disaster Relief Act and 2 additional audit reports related to disaster funds made available under previous appropriation acts.<sup>10</sup> The 17 audit reports<sup>11</sup> contained procurement findings that resulted in questioned costs totaling nearly \$391.7 million.<sup>12</sup> Some of the most common issues identified in these reports were related to the lack of independent cost estimates and analyses, competition, and documentation to support the procurement method used. As shown in the chart below, the lack of independent cost estimates or analyses accounted for nearly \$356.2 million, or 91 percent, of the total questioned costs.

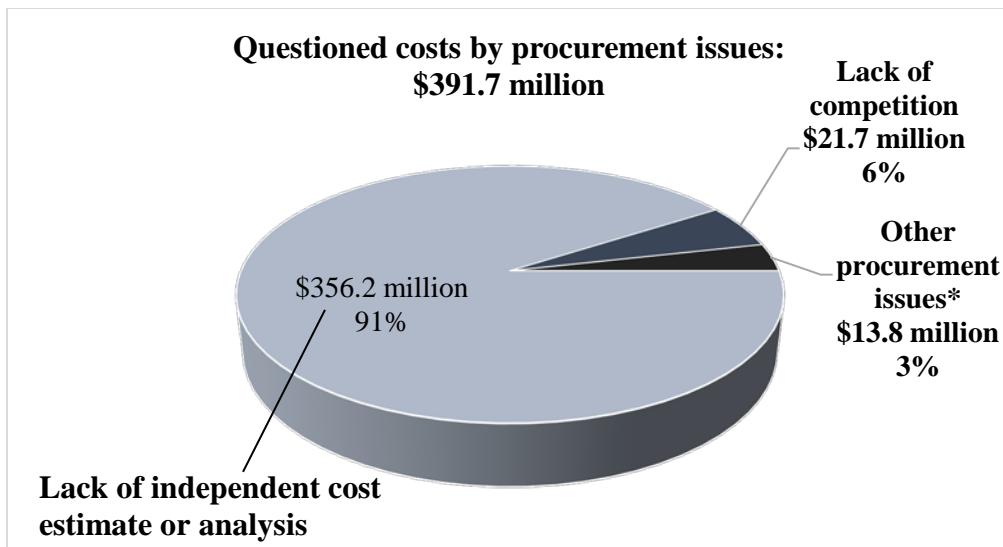
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<sup>9</sup> See footnote 1.

<sup>10</sup> Previous appropriation acts included Public Law 110-329, dated September 30, 2008, and Public Law 112-55, dated November 18, 2011.

<sup>11</sup> See appendix B for details.

<sup>12</sup> Of the nearly \$391.7 million in questioned costs, \$289.6 million was unsupported costs, \$101.7 million was funds to be put to better use, and \$445,840 was ineligible costs.



\* Other procurement issues included payments made for services outside the scope of work and contract terms, the use of an incorrect method of procurement, and a lack of a subrecipient agreement.

During a prior audit of HUD's certifications of State disaster grantee procurement processes,<sup>13</sup> we found that HUD did not always provide accurate and supported certifications of State disaster grantee procurement processes. Specifically, it (1) allowed conflicting information on its certification checklists, (2) did not ensure that required supporting documentation was included with the certification checklists, and (3) did not adequately evaluate the supporting documentation submitted by the grantees. Due to the weaknesses identified, HUD did not have assurance that State grantees had proficient procurement processes in place, and the Secretary's certifications did not meet the intent of the Disaster Relief Act. Further, we believe that the weaknesses identified in the certification processes for the State grantees may have contributed to the procurement findings identified in audit reports on grantees.

Of the 15 audit reports related to the Disaster Relief Act, 10 were reports on State grantees that contained deficiencies related to the lack of independent cost estimates or analyses. Those States included Connecticut, Louisiana, New Jersey, New York, Oklahoma, and Rhode Island. During a recent audit of HUD, we found that it did not provide accurate and supported certifications for these States' procurement processes. Specifically, the States of Connecticut and Oklahoma did not provide the required procurement crosswalks showing how their procurement standards aligned with each procurement provision of 24 CFR 85.36. The crosswalks and supporting documentation for the States of Louisiana, New Jersey, New York, and Rhode Island did not show that the States had a process that was equivalent to 24 CFR 85.36(f)(1), which required cost analyses in connection with every procurement action and an independent cost estimate before receiving bids or proposals.

We believe that the issues described above occurred because HUD was so focused on providing maximum feasible deference to State grantees that it was unable to ensure that grantees followed

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<sup>13</sup> Audit Report 2016-PH-0005, HUD Did Not Always Provide Accurate and Supported Certifications of State Disaster Grantee Procurement Processes, issued September 29, 2016

proficient procurement processes. For example, during the audit of HUD's certifications of State disaster grantee procurement processes,<sup>14</sup> HUD certified that State grantees had proficient procurement processes although we found that their procurement processes were not always equivalent to all of the provisions in 24 CFR 85.36. HUD also did not believe that State grantees were required to have procurement standards that aligned with each standard in the Federal procurement standards. As a result, HUD lacked assurance that State grantees purchased necessary products and services competitively at fair and reasonable prices.

### **HUD Disagreed With OIG Regarding the Applicability of Federal Procurement Standards**

In prior audits, HUD disagreed with OIG regarding the applicability of the Federal procurement standards. For example, HUD disagreed with OIG regarding the applicability of 24 CFR 85.36 related to an audit of the State of New Jersey's Sandy Integrated Recovery Operations and Management System.<sup>15</sup> Of the 17 audit reports that contained procurement issues resulting in questioned costs totaling nearly \$391.7 million, the New Jersey audit report accounted for nearly \$47.6 million, or 12 percent, of the total questioned costs. The following paragraphs summarize the disagreement.

#### State of New Jersey's Sandy Integrated Recovery Operations and Management System

The State 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. Also, the State did not ensure that software was purchased competitively. These deficiencies resulted in more than \$38.5 million in unsupported costs and more than \$9 million in funds that could be put to better use.

During the management decision process, HUD disagreed with OIG regarding the applicability of the procurement standards at 24 CFR 85.36 to State grantees. HUD contended that the requirements at 24 CFR 85.36, including the cost estimate requirement, did not apply to States unless a State elected to adopt the provisions at 24 CFR 85.36 as its procurement standards. Otherwise, the State was required to comply with regulations at 24 CFR 570.489 and follow its own procurement policies and procedures. Due to the disagreement, we referred this matter to the Deputy Secretary for a decision.

On January 10, 2017, the Deputy Secretary provided a final decision. The Deputy Secretary stated that since the State did not adopt the procurement standards at 24 CFR 85.36 and instead followed its own procurement standards, the standards at 24 CFR 85.36 did not apply to the State and could not be used as a basis for our findings and recommendations.

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<sup>14</sup> Ibid.

<sup>15</sup> Audit Report 2015-PH-1003, The State of New Jersey Did Not Comply With Federal Procurement and Cost Principle Requirements in Implementing Its Disaster Management System, issued June 4, 2015

We disagreed with the Deputy Secretary's decision. We continued to assert that 24 CFR 85.36 was applicable to the State because its procedures needed to be equivalent to these Federal standards based on its certification to HUD. Further, we asserted that the applicability of 24 CFR 85.36 was not the only basis for the recommendations in the audit report and believed that the Deputy Secretary's decision did not consider the other bases of the recommendations, such as regulations at 2 CFR Part 225 that address factors affecting the allowability of costs, including the need for costs to be reasonable and necessary.

We closed the recommendations with disagreement but maintained that the standards at 24 CFR 85.36 applied to the State because its procedures needed to be equivalent to these Federal standards and the Deputy Secretary's decision did not consider the other bases for the recommendations.

HUD also disagreed with OIG regarding the applicability of 24 CFR 85.36 as a result of an audit of HUD's certifications of State disaster grantee procurement processes. The following paragraphs summarize the disagreement.

#### HUD Certifications of State Disaster Grantee Procurement Processes

In the audit report,<sup>16</sup> we recommended that HUD perform a detailed review of the procurement procedures for each of the State grantees that received funds under the Disaster Relief Act. If the State did not show that its procedures incorporated the procurement standards at 24 CFR 85.36(b) through (i) or were equivalent to each procurement provision of 24 CFR 85.36(b) through (i), HUD should (1) require the grantee to update its procedures and provide an updated certification and (2) review the updated grantee certification to confirm that the State met requirements and had a proficient procurement process in place, thereby putting up to \$4.9 billion to better use. In cases in which HUD had not yet awarded all of the allocated funds to the State, HUD should complete these steps before executing additional grant agreements with the State.

During the management decision process, HUD asserted that it did not intend for grantees' procedures to conform to 24 CFR 85.36(b) through (i). Rather, HUD indicated that it would use the crosswalks provided by States to determine whether the effect of the State's policies would be the same as the effect of procurements under 24 CFR 85.36(b) through (i) – "in essence, whether the policies would result in fair and open competition." Going forward, HUD committed to focusing its monitoring on each State's compliance with the procurement policies and procedures stated in the States' certifications. However, it did not commit to performing a detailed review of the procurement procedures for each State to determine whether it had shown that its procedures incorporated the Federal procurement standards or were equivalent to them. Due to the disagreement, we referred this matter to the General Deputy Assistant Secretary for Community Planning and Development on February 6, 2017.

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<sup>16</sup> See footnote 13.

On February 21, 2017, the General Deputy Assistant Secretary responded to the referral. The General Deputy Assistant Secretary stated that our disagreement regarding the definition of a proficient procurement process related to State disaster grantees and the meaning of “equivalent” as it related to a State’s procurement policies and procedures being “equivalent to” or “aligned with” the Federal procurement standards was closed by the former Deputy Secretary in her decision regarding our audit of New Jersey’s Sandy Integrated Recovery Operations and Management System. The General Deputy Assistant Secretary asserted that the legal opinion for the prior audit applied to this audit. Based on this information, the General Deputy Assistant Secretary believed it was appropriate to close all of the recommendations.

We disagreed with the General Deputy Assistant Secretary’s request to close the recommendations in this audit based on the Deputy Secretary’s decision to resolve recommendations from its prior audit of New Jersey’s Sandy Integrated Recovery Operations and Management System. We had two main areas of disagreement with the decision: (1) we continued to assert that 24 CFR 85.36 was applicable to the State because its procedures needed to be equivalent to these Federal standards, and (2) we asserted that the applicability of 24 CFR 85.36 was not the only basis for the recommendations in the New Jersey audit report and believed that the decision failed to consider the other bases of the recommendations. Further, the Deputy Secretary’s decision did not address all of the issues with HUD’s process for certifying State disaster grantee procurement processes identified in the audit report. On March 31, 2017, we referred these recommendations to the Acting Deputy Secretary.

### **HUD Changed the Procurement Standards for Later Disaster Allocations Without Fully Addressing OIG’s Concerns**

Although prior audit reports continued to identify procurement issues, HUD changed the procurement standards for later disaster allocations without fully addressing the deficiencies identified during the departmental clearance process. Following the March 5, 2013, Federal Register notice related to the Disaster Relief Act,<sup>17</sup> HUD issued three notices related to later disaster allocations, which changed the procurement standards. The table below shows the procurement standards related to the Disaster Relief Act and the three later disaster allocations.

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<sup>17</sup> 78 FR 14336 (March 5, 2013)

<b>Public laws</b>	<b>Federal Register notices</b>	<b>Procurement requirements</b>
Public Law 113-2 (January 29, 2013)	78 FR 14336 (March 5, 2013)	Grantees have a proficient procurement process in place if either the grantee has adopted the specific procurement standards at 24 CFR 85.36 or the grantee's procurement standards are equivalent to the procurement standards at 24 CFR 85.36.
Public Law 114-113 (December 18, 2015)	81 FR 39689 (June 17, 2016)	Grantees have a proficient procurement process in place if either the grantee has adopted 2 CFR 200.318 through 200.326 or the effect of the grantee's procurement standards is equivalent to the effect of procurements under 2 CFR 200.318 through 200.326, meaning that the standards operate in a manner providing fair and open competition.
Public Law 114-223 (September 29, 2016)  Public Law 114-245 (December 10, 2016)	81 FR 83256 (November 21, 2016)  81 FR 5593 (January 18, 2017) <sup>18</sup>	Grantees have a proficient procurement process in place if either the grantee adopted 2 CFR 200.318 through 200.326 or the effect of the grantee's procurement standards is equivalent to the effect of procurements under 2 CFR 200.318 through 200.326, meaning that the standards, while not identical, operate in a manner that provides for full and open competition.

As shown in the table above, the notices for the later disaster allocations required only that the effect of a grantee's procurement standards be equivalent to the effect of procurements under 2 CFR 200.318 through 200.326.<sup>19</sup> In the latest notice, HUD defined this equivalency as the standards operating in a manner that provides for full and open competition. However, Federal procurement involves the acquisition of products and services at fair and reasonable prices, which we believe was a higher standard and supported the need to perform cost estimates and cost analyses. Specifically, regulations at 2 CFR 200.318 through 200.326 cover the following:

- general procurement standards;
- competition;

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<sup>18</sup> According to 81 FR 5593, grantees were subjected to the same requirements as in the prior notice (81 FR 83256).

<sup>19</sup> Before December 26, 2014, the relevant procurement requirements were found at 24 CFR 85.36. HUD has since transitioned its uniform administrative requirements, cost principles, and audit requirements for Federal awards to 2 CFR Part 200. Appendix C compares the requirements of 24 CFR 85.36 and 2 CFR Part 200.

- methods of procurement to be followed;
- contracting with small and minority businesses, women's business enterprises, and labor surplus area firms;
- procurement of recovered materials;
- contract cost and price;
- Federal awarding agency or pass-through entity review;
- bonding requirements; and
- contract provisions.

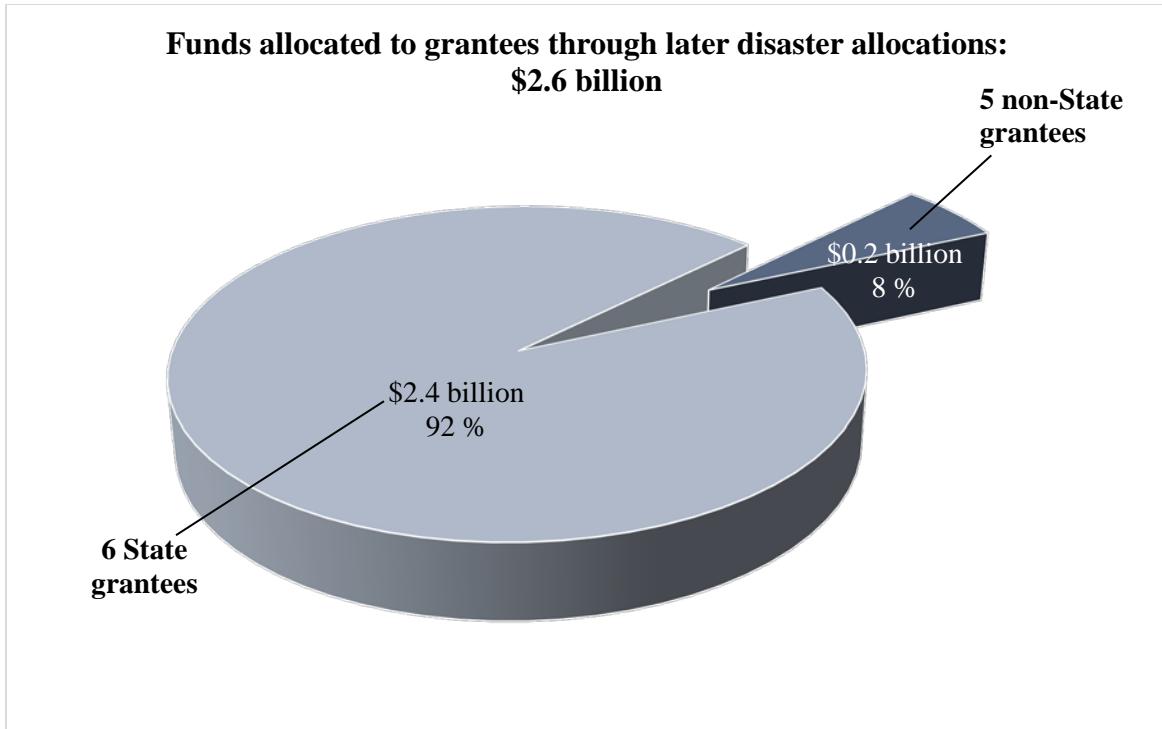
HUD did not follow its departmental clearance process when issuing the three 2016 and 2017 notices. Section D-2.4 of the HUD Directives Handbook 000.2, REV-3, required HUD to obtain clearance from at least six offices before issuing the notices, including OIG. As part of this required departmental clearance process, the reviewing offices document their response to the notices by signing form HUD-22 and indicating concurrence, nonconcurrence, or no position. If any required reviewing office nonconcurred, appropriate staff was to be made available for resolution to discuss and strive to reach an acceptable resolution to the nonconcurring comments. HUD referred to this as the "drop-dead" meeting. If the comments were not resolved at the appropriate level, the conflict was elevated to the Assistant Secretary or Deputy Secretary level if necessary before issuing the notices.

Before HUD issued the notices, we nonconcurred with them mainly because they did not address the need for acquiring products and services at fair and reasonable prices. HUD issued the notices without meeting with OIG to reach an acceptable resolution or elevating the conflict to the next higher level. According to a HUD official, the Deputy Secretary approved the issuance of the notices without meeting with OIG because grantees could not receive their allocations without issuing the notices. During an audit of HUD's process for making changes to Federal Housing Administration (FHA) programs and policies,<sup>20</sup> we found that HUD failed to follow required departmental clearance procedures when implementing changes to FHA programs. We recommended that the Chief Administrative Officer for the Office of Administration develop and provide training to appropriate staff and required reviewing officers regarding the departmental clearance process requirements. HUD agreed to develop and implement training for program office leadership on the revised guidance and procedures. HUD's implementation of this recommendation will help ensure that it addresses all OIG comments to draft notices and follows proper procedures for addressing our nonconcurrences.

We believe that the notices for the later disasters weakened the procurement requirements for State grantees. For the later disaster allocations, HUD allocated disaster funds to 11 grantees totaling more than \$2.6 billion, including more than \$2.4 billion to State grantees and nearly \$0.2 billion to non-State grantees. As shown in the chart below, State grantees accounted for 92 percent of the funds allocated to disaster grantees.

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<sup>20</sup> Audit Report 2017-LA-0002, HUD Failed To Follow Departmental Clearance Protocols for FHA Programs, Policies, and Operations, issued January 25, 2017



Since HUD weakened the procurement requirements, it lacked assurance that nearly \$2.4 billion in disaster funds to State grantees, related to later disasters, would be used to purchase necessary products and services competitively at fair and reasonable prices. Although our audits identified procurement issues with non-State grantees, the weakened procurement standards affected only State grantees because they had the choice to either adopt the Federal procurement standards or certify that their procurement process was equivalent to the Federal standards.

### **HUD Provided Inconsistent Guidance**

HUD provided inconsistent guidance to grantees and its employees regarding disaster certification requirements. HUD's guidance for the November 2016 Federal Register notice stated that State grantees could certify that their procurement standards were equivalent to 2 CFR 200.318 through 200.326, meaning that they operated in a manner providing fair and open competition. However, State grantees were also required to provide a crosswalk to show how their procurement procedures aligned with the Federal procurement provisions at 2 CFR 200.318 through 200.326. This guidance was inconsistent because the Federal procurement standards involve more than fair and open competition.

Further, the HUD staff assigned to review disaster grantees' procurement processes might lack the expertise to determine whether grantees had proficient procurement processes. HUD's guidance defined HUD reviewers of disaster grantees' procurement processes as staff assigned to HUD's Disaster Recovery and Special Issues Division or staff in the Office of Community Planning and Development field offices. We believe that staff that specializes in procurement should review the documentation to ensure that State processes fully align with, or meet the intent of, each Federal procurement standard.

## **Conclusion**

Due to the weaknesses identified, HUD did not provide sufficient guidance and oversight to ensure that State disaster grantees followed proficient procurement processes when purchasing products and services. Our audits found that State disaster grantees did not always purchase necessary products and services competitively at fair and reasonable prices. HUD changed the procurement standards for later disaster allocations, which weakened the procurement standards. These conditions occurred because HUD was so focused on providing maximum feasible deference to State grantees that it was unable to ensure that State grantees followed proficient procurement processes. HUD needs to improve its guidance for and oversight of State disaster grantee procurement processes in future disaster allocations to ensure that products and services are purchased competitively at fair and reasonable prices.

## **Recommendations**

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

- 1A. Clarify that if a State receives a disaster recovery grant and chooses to certify that its procurement process is equivalent to Federal procurement standards, “equivalent” means that its procurement process fully aligns with, or meets the intent of, each of the Federal procurement standards at 2 CFR 200.318 through 200.326.
- 1B. Improve its controls to ensure that appropriate staff adequately evaluates the proficiency of State grantee procurement processes for States that select the equivalency option. This includes ensuring that staff that specializes in procurement review the documentation to ensure that State processes fully align with, or meet the intent of, each of the Federal procurement standards at 2 CFR 200.318 through 200.326.
- 1C. Clarify and improve its guidance for State grantees to explain what it means to have a procurement process that fully aligns with, or meets the intent of, each of the Federal procurement standards at 2 CFR 200.318 through 200.326.
- 1D. Provide procurement training and technical assistance to State grantees to ensure that they understand the intent of each of the Federal procurement standards at 2 CFR 200.318 through 200.326.

# Scope and Methodology

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We conducted the audit from December 2016 through September 2017 at our office in Philadelphia, PA. The audit covered the period January 2013 through April 2017.

To accomplish our objective, we reviewed

- relevant background information;
- applicable regulations, Federal Register notices, and handbooks;
- Public Laws 110-329, 112-55, 113-2, 114-113, 114-223, and 114-245;
- prior HUD OIG audit reports;
- the certification checklist form created by HUD and guidance provided to its staff related to completion of the checklists; and
- correspondence related to management decisions on OIG recommendations.

We held discussions with staff from HUD's Disaster Recovery and Special Issues Division and Office of Legislation and Regulations.

Since we issued the 2013 audit report,<sup>21</sup> we have issued 45 audit reports related to disaster funding. We reviewed the 45 audit reports to determine whether they contained procurement issues. Of the 45 audit reports reviewed, 18 identified procurement issues. Of the 18 audit reports, 15 were related to the Disaster Relief Act with questioned cost totaling more than \$391.6 million, 2 were related to disaster funds made available under previous appropriation acts with questioned cost totaling \$59,600,<sup>22</sup> and 1 was an internal audit of HUD's certifications of State disaster grantee procurement processes with questioned cost totaling more than \$4.8 billion.

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.

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<sup>21</sup> See footnote 1.

<sup>22</sup> Previous appropriation acts included Public Law 110-329, dated September 30, 2008, and Public Law 112-55, dated November 18, 2011.

# Internal Controls

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

- effectiveness and efficiency of operations,
- reliability of financial reporting, and
- compliance with applicable laws and regulations.

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

## **Relevant Internal Controls**

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

- 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:

- HUD lacked controls to ensure that State disaster grantees had proficient procurement processes in place as required by the Disaster Relief Act.

# Followup on Prior Audits

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## **City of New Orleans, New Orleans, LA, Community Development Block Grant Disaster Recovery Assistance, Audit Report 2015-FW-1002, Issued June 26, 2015**

The following recommendations were still open at the time of this report:

- 1A. Require the City to support the cost reasonableness of the drainage cleaning contract and provide adequate support for payment of the contractor's invoices or repay its grant any of the \$1,611,143 that it cannot support. Repayment should be from non-Federal funds.
- 1B. Require the City to support the reasonableness of the cost increases for the demolition contract or repay \$616,529 to its grant from non-Federal funds.
- 1C. Require the City to support the reasonableness of the cost increases for the grant management contract or repay \$328,737 to its grant from non-Federal funds.

On September 29, 2015, we agreed with HUD's proposed management decisions for these recommendations. The final action target dates for completing the corrective actions for recommendations 1A, 1B, and 1C are April 28, 2018, March 31, 2018, and April 21, 2018, respectively.

## **State of New York, Governor's Office of Storm Recovery, Community Development Block Grant Disaster Recovery Assistance, New York Rising Enhanced Buyout Program, Audit Report 2015-NY-1010, Issued September 17, 2015**

The following recommendation was still open at the time of this report:

- 3E. Instruct State officials to provide documentation that the selection of the appraiser in Staten Island was consistent with the other State agency's contract provisions. If such documentation cannot be provided, the \$1,093,290 budgeted should be deobligated, thus ensuring that the funds will be put to better use.

On March 1, 2016, we agreed with HUD's proposed management decision for this recommendation. The final action target date for completing the corrective action was February 16, 2017. We will track HUD's resolution of this recommendation through the management decision process prescribed in HUD Handbook 2000.06, REV-4.

## **The State of New York, Governor's Office of Storm Recovery, Community Development Block Grant, Disaster Recovery Assistance, New York Rising Housing Recovery Program, Audit Report 2015-NY-1011, Issued September 17, 2015**

The following recommendation was still open at the time of this report:

- 3A. Direct State officials to provide documentation showing that the \$127.2 million budgeted for inspection-related construction management and environmental review services is fair and

reasonable in accordance with a cost or price analysis as required by regulations at 24 CFR 85.36.

On May 31, 2016, we agreed with HUD's proposed management decision for this recommendation. The final action target date for completing the corrective action was March 8, 2017. We will track HUD's resolution of this recommendation through the management decision process prescribed in HUD Handbook 2000.06, REV-4.

**St. John the Baptist Parish, State of Louisiana's Subrecipient, Community Development Block Grant Disaster Recovery Assistance Funds, Audit Report 2016-FW-1006, Issued August 31, 2016**

The following recommendations were still open at the time of this report:

- 1D. Require the State to ensure that the Parish supports the cost reasonableness of the grant management contract or repay \$1,534,629 to its CDBG [Community Development Block Grant] disaster assistance program from non-Federal funds.
- 1E. Require the State to provide assistance to the Parish regarding procurement requirements to ensure compliance with requirements for future procurement activities related to CDBG disaster assistance contracts.
- 1F. Require the State to review and evaluate the Parish's procurement policy to ensure compliance with 24 CFR 85.36 requirements and that the Parish amends its procurement policy to include clear language requiring that its staff perform independent cost estimates before receiving bids or proposals for every procurement.

On December 16, 2016, we agreed with HUD's proposed management decisions for these recommendations. The final action target date for completing the corrective actions is December 16, 2017.

**The State of New York, Governor's Office of Storm Recovery, Community Development Block Grant, Disaster Recovery Assistance, New York Tourism and Marketing Program, Audit Report 2016-NY-1009, Issued August 12, 2016, Reissued September 16, 2016**

The following recommendations were still open at the time of this report:

- 1A. Direct State officials to provide documentation showing that the approximately \$22 million disbursed for the identified procurements complied with the applicable procurement requirement at 24 CFR 85.36(f) and repay any amounts determined to be unsupported from non-Federal funds.
- 1B. Direct State officials to obtain independent cost estimates before receiving bids or proposals for contract procurement.

On December 9, 2016, we agreed with HUD's proposed management decisions for these recommendations. The final action target date for completing the corrective actions is

December 8, 2017.

**Office of Community Planning and Development, Washington DC, Certifications of State Disaster Grantee Procurement Processes, Audit Report 2016-PH-0005, Issued September 29, 2016**

The following recommendations were still open at the time of this report:

- 1A. Perform a detailed review of the procurement procedures for each of the State grantees that received funds under the Disaster Relief Act. If the State did not demonstrate that its procedures incorporated the specific procurement standards included in 24 CFR 85.36(b) through (i) or that its procedures were equivalent to each individual procurement provision of 24 CFR 85.36(b) through (i), HUD should (1) require the grantee to update its procedures and provide an updated certification and (2) review the updated grantee certification to confirm that the State meets requirements and has a proficient procurement process in place, thereby putting up to \$4,872,056,594 to better use. In cases in which HUD has not yet awarded all of the allocated funds to the State, HUD should complete these steps before it executes any additional grant agreements with the State.
- 1B. For each State grantee that did not meet the stated requirements to demonstrate that its procurement process was proficient, review procurement files for contracts that were paid with funds provided under the Disaster Relief Act and if the procurement did not comply with Federal procurement requirements, require the grantees to repay HUD from non-Federal funds for any amounts that (1) they cannot support or (2) were not fair and reasonable.
- 1C. Continue to improve the guidance that it provides to grantees to ensure that future grantee certifications are accurate and supported.
- 1D. Continue to improve its controls to ensure that its staff adequately understands and reviews future grantee certifications to ensure that they are accurate and supported before certifying that grantees have a proficient procurement process.
- 1E. Increase monitoring of State grantees that selected the equivalency option.

On January 11, 2017, HUD provided proposed management decisions for all five recommendations. On January 27, 2017, we rejected the proposed management decisions. On February 6, 2017, we referred the recommendations to the General Deputy Assistant Secretary for Community Planning and Development. On February 21, 2017, the General Deputy Assistant Secretary responded to the referral. For all of the recommendations, the General Deputy Assistant Secretary stated that our disagreement regarding the definition of a proficient procurement process as it related to State disaster grantees and the meaning of “equivalent” as it related to a State’s procurement policies and procedures being “equivalent to” or “aligned with” the Federal procurement standards was closed by the former Deputy Secretary in her decision regarding resolution of recommendations from our audit of New Jersey’s Sandy Integrated Recovery Operations and Management System. Based on the former Deputy Secretary’s decision, the General Deputy Assistant Secretary believed it was appropriate to close all of the

recommendations. We disagreed with the General Deputy Assistant Secretary's request to close the recommendations. We referred these recommendations to the Acting Deputy Secretary on March 31, 2017.

**The State of New Jersey, Trenton, NJ, Community Development Block Grant Disaster Recovery-Funded Superstorm Sandy Housing Incentive Program Contract, Audit Report 2016-PH-1009, Issued September 30, 2016**

The following recommendations were still open at the time of this report:

- 1B. Repay HUD from non-Federal funds for the \$128,990 in charges incurred before the contract effective date.
- 1C. Provide documentation to show that \$2,377,970 disbursed for other direct costs was supported and was for prices that were fair and reasonable or repay HUD from non-Federal funds any amount that it cannot support (excluding any amount repaid as a result of recommendation 1B).
- 1F. Provide documentation showing that the amount it paid under the contract was reasonable and necessary or repay HUD from non-Federal funds any amount that it cannot support.
- 1H. Implement policies and procedures to ensure that it adequately administers current and future contracts related to disaster funds and disburses funds for costs that are eligible, supported, reasonable, and necessary.
- 1I. Implement policies and procedures to ensure that it monitors contract performance related to disaster funds and takes appropriate action when contractors fail to meet performance goals contained in the contract terms.

On February 14, 2017, HUD provided proposed management decisions for recommendations 1B, 1C, and 1F. HUD agreed to take corrective action on the recommendations. However, HUD noted that the audit did not reflect applicable Federal procurement and cost principle requirements because States were not required to follow 24 CFR 85.36. HUD stated that if the State could not show that the amounts associated with the recommendations complied with requirements, it would take one or more actions to prevent a continuation of the deficiencies, as outlined in 24 CFR 570.496. Although we agreed with HUD's plan to review the documentation provided by the State, we did not agree with HUD's planned remedies. The remedies at 24 CFR 570.495 and 24 CFR 570.496 include several options that do not require repayment from non-Federal funds. We rejected the proposed management decisions on March 27, 2017, and referred them to the Acting Assistant Secretary for Community Planning and Development on March 31, 2017. Because the Acting Assistant Secretary for Community Planning and Development did not respond to our referral, we referred these recommendations to the Acting Deputy Secretary on July 14, 2017. On September 6, 2017, HUD provided revised proposed management decisions for recommendations 1B and 1C. HUD agreed to take corrective action on the recommendations. Although we agree with HUD's plan for corrective action, HUD needed to provide a suitable date to complete the corrective action. For recommendation 1F, HUD

indicated that its counsel was reviewing the recommendation before providing a revised proposed management decision. We will track HUD's resolution of these recommendations through the management decision process prescribed in HUD Handbook 2000.06, REV-4.

On January 27, 2017, we agreed with HUD's proposed management decisions for recommendations 1H and 1I. The final action target date for completing the corrective actions was September 1, 2017. We will track HUD's resolution of these recommendations through the management decision process prescribed in HUD Handbook 2000.06, REV-4.

**State of Oklahoma, Community Development Block Grant Disaster Recovery, Audit Report 2016-FW-1010, Issued September 30, 2016**

The following recommendations were still open at the time of this report:

- 1A. Require the State to develop and implement policies and procedures to document and perform detailed review and testing to establish eligibility, existence, disaster event qualifications, reasonableness of cost estimates, prioritization, and fund allocation, both retroactively and prospectively, which would put \$81,982,712 to better use.
- 1C. Require the State to review and document State determination of compliance with procurement, contract, and environmental requirements for its subrecipients.

On January 17, 2017, we agreed with HUD's proposed management decisions for these recommendations. The final action target date for completing the corrective actions is November 29, 2017.

**The State of Connecticut, Community Development Block Grant Disaster Recovery Assistance Funds, Audit Report 2017-BO-1001, Issued October 12, 2016**

The following recommendations were still open at the time of this report:

- 1A. Support that the \$13,333,151 awarded for the architect, engineer, and construction management services contracts was fair and reasonable in accordance Federal procurement requirements or repay to HUD from non-Federal funds any amounts not supported.
- 1B. Repay to HUD from non-Federal funds the \$316,850 in payments made for services outside the scope of the seven contracts.
- 1C. Strengthen controls over procurement to ensure that procurement activities meet Federal requirements.

On February 1, 2017, we agreed with HUD's proposed management decisions for these recommendations. The final action target date for completing the corrective actions is October 12, 2017.

**The City of Springfield, MA, Community Development Block Grant Disaster Recovery Assistance Funds, Audit Report 2017-BO-1002, Issued October 17, 2016**

The following recommendations were still open at the time of this report:

- 1A. Provide adequate documentation to support that \$1,448,663 in CDBG-DR [Community Development Block Grant Disaster Recovery] funds was spent for supported, necessary and reasonable costs. Any amount for which adequate support cannot be provided should be repaid from non-Federal funds.
- 1B. Obtain adequate support to document the reasonableness and necessity of \$472,246 or reprogram the funds to other allowable activities, thus ensuring that the funds will be put to their intended use.

On January 4, 2017, we agreed with HUD's proposed management decisions for these recommendations. The final action target date for completing the corrective actions is November 30, 2017.

# Appendices

## Appendix A

### Auditee Comments and OIG's Evaluation

#### Ref to OIG Evaluation

#### Auditee Comments

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

OFFICE OF COMMUNITY PLANNING  
AND DEVELOPMENT

SEP 12 2017

MEMORANDUM FOR: David E. Kasperowicz, Regional Inspector General for Audit, 3AGA

FROM:   
Stanley Gimont, Deputy Assistant Secretary  
for Grant Programs, DG

SUBJECT: Office of Inspector General Draft Audit Report 2017-PH-xxxx:  
Office of Community Planning and Development, Community  
Development Block Grant Disaster Recovery Program

These comments are submitted in response to the referenced draft audit report received August 23, 2017, regarding HUD's oversight of disaster grantee procurement processes. The Office of Inspector General (OIG) conducted the audit after prior audits identified procurement issues. The OIG's objective was to determine whether HUD provided sufficient guidance and oversight to ensure that disaster grantees followed proficient procurement processes when purchasing products and services.

**OIG Finding:** The OIG concluded that HUD did not provide sufficient guidance and oversight to ensure that State disaster grantees followed proficient procurement processes. The OIG indicated that, "HUD was so focused on providing maximum feasible deference to State grantees that it was unable to ensure that grantees followed proficient procurement processes". The OIG also notes that HUD also believed that State grantees were not required to have procurement standards that aligned with each of the Federal procurement standards. As a result, HUD lacked assurance that State grantees purchased necessary products and services competitively at fair and reasonable prices.

**OIG Recommendations:** The OIG recommends that HUD's Deputy Assistant Secretary for Grant Programs

1A. Clarify that if a State receives a disaster recovery grant and chooses to certify that its procurement process is equivalent to Federal procurement standards, "equivalent" means that its procurement process fully aligns with, or meets the intent of, each of the Federal procurement standards at 2 CFR 200.318 through 200.326.

1B. Improve its controls to ensure that appropriate staff adequately evaluates the proficiency of State grantee procurement processes for States that select the equivalency option. This includes ensuring that staff that specializes in procurement review the documentation to ensure that State processes fully align with, or meet the intent of, each of the Federal procurement standards at 2 CFR 200.318 through 200.326.

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## Auditee Comments and OIG's Evaluation

### Ref to OIG Evaluation

### Auditee Comments

2

1C. Clarify and improve its guidance for State grantees to explain what it means to have a procurement process that fully aligns with, or meets the intent of, each of the Federal procurement standards at 2 CFR 200.318 through 200.326.

1D. Provide procurement training and technical assistance to State grantees to ensure that they understand the intent of each of the Federal procurement standards at 2 CFR 200.318 through 200.326.

#### HUD Comments:

##### *Applicability of 2 CFR 200.318-326 to State CDBG-DR grantees*

#### Comment 1

As in prior OIG audits of State procurement under P.L. 113-2 and other subsequent grants, the audit conclusions are premised upon the inaccurate assumption that in order for HUD to certify that a State's procurement policies and procedures are "equivalent," to the requirements at 2 CFR 200.318-326 (formerly 24 CFR 85.36(b)-(i)), HUD would have to conclude that the State had adopted each of the specific requirements of 2 CFR 200.318-326 (or 24 CFR 85.36(b) through (i) at the time of the certification). As noted in a legal opinion from HUD's Office of General Counsel (OGC), with regard to the March 5, 2013, *Federal Register* Notice governing the procurement certification process, "...when State grantees adopt 24 CFR §85.36(b)-(i), paragraph 22 requires compliance with all elements of those provisions. When a State has not adopted these provisions, it is not required by HUD to conform to the standard in section 85.36(b) through (i)." As noted further in the OGC legal opinion, "HUD asked for the grantee to show the sections (of their procurement policies) that align with the provisions of 85.36 so that HUD could determine whether the systems were equivalent..." Equivalent' means having the 'same or similar effect as.' By reviewing how the State's procurement policies align with 24 CFR§85.36(b)-(i), HUD could determine whether the effect of the State's policies would be the same as the effect of procurements under 24 CFR§85.36(b)-(i) – in essence, whether the policies would result in fair and open competition" (emphases added).

#### Comment 1

The Department maintains its original position concerning the applicability of the procurement standards at 2 CFR 200.318-326 and State CDBG-DR grantees. This position is fully consistent with former Deputy Secretary Coloretti's decision in January 2017 on the OIG referral of audit 2015-PH-1003 where CPD's position was sustained. Two different legal opinions from OGC were offered in support of the CPD position and remain on point for the issues presented by this draft audit.

#### Comment 2

The OGC legal opinion and ruling from the former Deputy Secretary directly address this issue in the context of the OIG audit of the State of New Jersey's Sandy Integrated Recovery Operations and Management System (2015-PH-1003). In the January 10, 2017, memorandum addressing the issue of federal procurement requirements applicable to States under the March 5, 2013, *Federal Register* Notice, the Deputy Secretary found that:

## Auditee Comments and OIG's Evaluation

### Ref to OIG Evaluation

### Auditee Comments

#### Comment 1

Under longstanding Federal policy, States have been allowed to follow their procurement standards in their administration of Federal grants even if those policies vary from the government-wide procurement standards in 24 CFR §85.36(b)-(i). The State of New Jersey here opted to follow its own established policies, certified to their proficiency, and operated under the assumption that HUD agreed that its policies were proficient. The State's actions were consistent with existing law and established practice, and I therefore conclude that CPD's determination that the State's procurement policies were proficient and correct.

3

The memorandum by the former Deputy Secretary further notes that disposition of this issue was based on two legal opinions provided by OGC. The Deputy Secretary notes that "in both legal opinions, OGC concluded that 24 CFR §85.36(b)-(i) does not apply to States like New Jersey that follow their own State procurement standards, and, therefore, there is no legal basis for the OIG's Finding and associated Recommendations."

CPD also notes that the Senate Appropriations Committee report on the FY 2018 Transportation-HUD appropriations legislation (Senate Report 115-138, reported July 27, 2017) addresses this issue on pages 116-117:

Procurement Standards for Disaster Grantees. - Community Development Block Grant Disaster Recovery provides essential funding to States and localities recovering from natural disasters. In prior appropriations, Congress has directed HUD to provide thorough oversight of the auditing and procurement procedures implemented by grantees. In the Disaster Relief Appropriations Act of 2013 (Public Law 113-2), and in subsequent disaster recovery appropriations in fiscal years 2015 and 2016, Congress specifically required HUD to certify that the procurement processes employed by each grantee meet a standard of proficiency. On March 5, 2013, HUD published Notice FR-5696-N-01 clarifying that a proficient standard is one that is equivalent to and in alignment with Federal procurement standards. The Committee believes that as long as HUD provides consistent and rigorous oversight of the procurement processes employed by State and local recipients, an equivalent, though not identical procurement standard that upholds the principles of fair and open competition can prevent Federal dollars appropriated for disaster recovery from being spent irresponsibly. The Committee agrees that this approach provides maximum feasible deference to grantees, particularly States, which is consistent with the CDBG program design.

#### Comment 2

#### Comment 2

Based on the Senate report language, the OGC legal opinion and the former Deputy Secretary's decision, the Department considers the matter of the applicability of 2 CFR 200.318-326 and the requirements of the *Federal Register* Notice on procurement closed and addressed.

#### *Strengthening HUD's internal controls for procurement certifications*

The Department agrees with the OIG that there were instances where the procurement certifications submitted by States that initially received a CDBG-DR allocation under Public Law 113-2 were incomplete or inaccurate. In response to that, the Department instituted a two-tier review of procurement certifications – 1) the assigned HUD Community Planning and Development [CPD] Specialist reviews the procurement [and other financial documentation] submitted by the grantee

## Auditee Comments and OIG's Evaluation

### Ref to OIG Evaluation

### Auditee Comments

Comment 3

and 2) the CPD Field Office submitted all certifications to HUD Headquarters for a detailed review by a Financial Analyst within the Disaster Recovery and Special Issues Division. In addition, HUD committed that where the State's adherence to its procurement policies and processes had not been monitored since the Department's initial certification, HUD would direct its grant managers to include procurement policies and processes in the monitoring strategy for the next planned monitoring of the State's CDBG-DR grant under P.L. 113-2. In response to OIG Audit Report 2016-PH-0005, the OIG rejected the Department's proposed two-tier review and monitoring actions on the basis that the review would not include a re-review of the procurement certifications for 13 of the State grantees included in the audit.

4

#### *Clarifying procurement guidance for State CDBG-DR grantees*

The Department also agrees with the OIG that the guidance regarding proficient procurement processes and policies could be clarified. The Department, however, provided clarification when it published the subsequent *Federal Register* Notices allocating funds under Public Laws 114-113, 114-223, and 114-254 (81 FR 39689, 81 FR 83256, and 81 FR 5593). Each of the *Federal Registers*, as noted by the OIG, included revised language concerning the procurement certification. However, the OIG non-concurred with each of those proposed Notices on the basis that Federal procurement involves the acquisition of products and services at fair and reasonable prices, which the OIG believes was a higher standard and supported the need to perform cost estimates and cost analyses. The OIG's position is premised on the belief that HUD is requiring States to have procurement procedures that include the requirements of 2 CFR 200.318-326. Yet, as noted above, HUD maintains its position that the provisions of 2 CFR 200.318-326, including the requirement for cost estimates and analyses, do not apply to States. Further, HUD has not and is not requiring that a State's proficient procurement standards include cost estimates and analyses as a demonstration of whether the State's procurement policies are proficient and result in fair and open competition.

#### *Providing procurement training and technical assistance to State CDBG-DR grantees*

Additionally, the Department has drafted a procurement toolkit that provides an overview of each of the procurement provisions of 2 CFR 200.318-326. The toolkit is focused on the city and county CDBG-DR grantees who are required to adhere to those procurement standards and the States who choose to adopt those standards. The guidance will include a training webinar for CDBG-DR grantees and HUD staff, both products will be released by the end of the month.

#### **Summary:**

A fundamental disagreement exists between the Department and the OIG on this matter. The Department's position is framed by the former Deputy Secretary's clear decision on the basic issues presented. That decision was rendered consistent with the protocols governing resolution of Departmental/OIG disagreements on audit Findings but the OIG has refused to acknowledge the effect of that decision. Any path forward on this matter begins with the OIG accepting the decision already rendered.

Comment 4

Comment 1

## OIG Evaluation of Auditee Comments

- Comment 1    HUD contended that the audit conclusions were based on an inaccurate assumption that in order for HUD to certify that a State's procurement policies and procedures were "equivalent," to the requirements at 2 CFR 200.318 through 200.326 (formerly 24 CFR 85.36 (b) through (i)), HUD would have to conclude that the State had adopted each of the specific requirements of 2 CFR 200.318 through 200.326. It also contended that the requirements at 2 CFR 200.318 through 200.326 did not apply to States. It further contended that its position concerning the applicability of the Federal procurement standards and States was consistent with the former Deputy Secretary's decision and two legal opinions from HUD's Office of General Counsel.
- We disagree. As a condition of making any grant under the Disaster Relief Appropriations Act of 2013, the HUD Secretary was required to certify in advance that grantees had in place proficient procurement processes. To enable the Secretary to make the certification, HUD required States to either adopt the specific Federal procurement requirements or have a procurement process and standards that were equivalent to the Federal procurement standards. To demonstrate compliance with the equivalency option, HUD required State grantees to provide their procurement standards and indicate the sections of their procurement standards that aligned with each procurement provision of the Federal procurement standards. As stated in the report, during our internal audit of HUD's certifications of State disaster grantee procurement processes, we found that it did not adequately evaluate the supporting documentation submitted by the States. Specifically, two States did not provide the required procurement crosswalks showing how their procurement standards aligned with each procurement provision of the Federal standards. The crosswalks and supporting documentation for four States did not show that they had a process that was equivalent to the Federal standard which required cost analyses in connection with every procurement action and an independent cost estimate before receiving bids or proposals. Our audits found that purchases by States totaling nearly \$336 million lacked an independent cost estimate or cost analysis to help ensure that the prices paid for products and services were fair and reasonable.
- Comment 2    HUD asserted that by reviewing how the State's procurement policies align with the Federal procurement standards, it could determine whether the effect of the State's policies would be the same as the effect of procurements under the Federal standards in essence, whether the policies would result in fair and open competition. It also asserted that it had not and was not requiring States' procurement standards to include cost estimates and analyses to show that the State's procurement policies were proficient and resulted in fair and open competition. It further asserted that based on the Senate report language, the HUD Office of General Counsel legal opinion, and the former Deputy Secretary's

decision, it considered the matter of the applicability of the Federal procurement standards and the requirements of the March 5, 2013, Federal Register notice on procurement closed and addressed.

Federal procurement standards involve more than fair and open competition. We acknowledge the Senate Committee's belief that consistent and rigorous oversight of equivalent State procurement processes and standards that uphold the principles of fair and open competition can prevent Federal dollars from being spent irresponsibly. However, Federal procurement involves the acquisition of products and services at fair and reasonable prices, which we believe was a higher standard and necessitates the need to perform cost estimates and cost analyses. An independent cost estimate serves as a yardstick for evaluating the reasonableness of the contractor's proposed costs or prices. An independent cost analysis consists of evaluating the separate elements (for example, labor, materials, etc.) that make up a contractor's total cost proposal to determine whether they are allowable, directly related to the requirement, and reasonable. HUD's definition of a proficient procurement process in the March 5, 2013, Federal Register notice was in line with a recommendation from our 2013 audit report. We recommended that HUD include the Federal procurement standards in its future Block Grant Disaster Recovery grant terms and provide procurement training and technical assistance to ensure that grantees were aware of and followed Federal procurement standards. HUD agreed to reference these standards in future grant agreements, include this topic in conferences and webinars, and post information on specific topics on its Block Grant Disaster Recovery website. Although our audits continued to identify procurement issues, HUD weakened its interpretation of the Federal procurement standards for allocations of disaster funds after the Disaster Relief Appropriations Act of 2013.

- Comment 3 HUD asserted that in response to our audit report on its certifications of State disaster grantee procurement processes, we rejected its proposed two-tier review and monitoring actions on the basis that the review would not include a re-review of the procurement certifications for 13 of the State grantees included in the audit.

As stated in the audit report, we previously audited HUD's process for certifying State disaster grantee procurement processes and found that HUD did not always provide accurate and supported certifications of State disaster grantee procurement processes. Specifically, it (1) allowed conflicting information on its certification checklists, (2) did not ensure that required supporting documentation was included with the certification checklists, and (3) did not adequately evaluate the supporting documentation submitted by grantees. During the management decision process, HUD stated that it recently certified or was in the process of certifying the proficiency of the procurement policies and processes of 4 of the 17 State grantees that received funds under the Disaster Relief Appropriations Act of 2013 as a result of those States receiving an additional allocation of funds under the statute through the National Disaster Resiliency competition. However, HUD

did not commit to performing a detailed review of the procurement procedures for the remaining 13 States to determine if they had demonstrated that their procedures incorporated the specific Federal procurement standards or were equivalent to them. HUD's planned actions did not meet the intent of our recommendation because they would not allow HUD to identify all grantees with procurement processes that were not proficient.

- Comment 4    HUD stated that it drafted a procurement toolkit that provides an overview of each of the procurement provisions of the Federal procurement standards. The toolkit is focused on city and county disaster recovery grantees who are required to adhere to those standards and States that choose to adopt those standards. The guidance will include a training webinar for grantees and HUD staff. It plans to release both products by the end of September 2017. Although this guidance and training will be helpful, it does not include State grantees that chose to certify that their procurement processes and standards were equivalent to the Federal procurement standards. To meet the intent of recommendation 1D, HUD needs to include State grantees that chose the equivalency option in its presentation of this guidance and training.

## Appendix B

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**List of External Audit Reports That Identified Procurement Issues**

No.	Report number	Issue date	Audit report title	Appropriation (public law)	Questioned costs related to procurement issues
1	2015-NY-1011	9/17/2015	Program Control Weaknesses Lessened Assurance That New York Rising Housing Recovery Program Funds Were Always Disbursed for Eligible Costs	P.L. 113-2	\$127,200,000
2	2016-FW-1010	9/30/2016	The State of Oklahoma Did Not Obligate and Spend Its Community Development Block Grant Disaster Recovery Funds in Accordance With Requirements	P.L. 113-2	81,982,712
3	2015-PH-1003	6/4/2015	The State of New Jersey Did Not Comply With Federal Procurement and Cost Principle Requirements in Implementing Its Disaster Management System	P.L. 113-2	47,574,047
4	2016-PH-1009	9/30/2016	The State of New Jersey Did Not Disburse Disaster Funds to Its Contractor in Accordance With HUD, Federal, and Other Applicable Requirements	P.L. 113-2	43,080,932
5	2016-NY-1009	9/16/2016	The State of New York Had Weaknesses in Its Administration of the Tourism and Marketing Program	P.L. 113-2	21,958,549

No.	Report number	Issue date	Audit report title	Appropriation (public law)	Questioned costs related to procurement issues
6	2014-PH-1008	8/29/2014	The State of New Jersey Did Not Fully Comply With Federal Procurement and Cost Principle Requirements in Implementing Its Tourism Marketing Program	P.L. 113-2	19,499,020
7	2015-NY-1010	9/17/2015	New York State Did Not Always Administer Its Rising Home Enhanced Buyout Program in Accordance With Federal and State Regulations	P.L. 113-2	14,442,229
8	2017-BO-1001	10/12/2016	The State of Connecticut Did Not Always Comply With Community Development Block Grant Disaster Recovery Assistance Requirements	P.L. 113-2	13,650,001
9	2015-KC-1002	3/13/2015	The City of Minot, ND, Did Not Fully Comply With Federal and Local Procurement Requirements	P.L. 113-2 & P.L. 112-55	11,671,037
10	2015-FW-1002	6/26/2015	The City of New Orleans, LA, Did Not Always Comply With Requirements When Administering Its 2013 Disaster Relief Grant	P.L. 113-2	7,095,695
11	2016-FW-1006	8/31/2016	The State of Louisiana's Subrecipient Did Not Always Comply With Its Agreement and HUD Requirements When Administering Its Disaster Assistance Programs	P.L. 113-2	1,534,629
12	2017-BO-1002	10/17/2016	The City of Springfield, MA, Needs To Improve Its Compliance With Federal Regulations for Its Community Development Block Grant Disaster Recovery Assistance Grant	P.L. 113-2	1,135,339

No.	Report number	Issue date	Audit report title	Appropriation (public law)	Questioned costs related to procurement issues
13	2017-FW-1004	4/6/2017	St. Tammany Parish, Mandeville, LA, Did Not Always Administer its CDBG Disaster Recovery Grant in Accordance with HUD Requirements or as Certified	P.L. 113-2	451,894
14	2016-PH-1004	6/18/2016	Luzerne County, PA, Did Not Always Use Disaster Funds in Accordance With HUD and Federal Requirements	P.L. 113-2	227,413
15	2016-BO-1001	3/9/2016	The State of Rhode Island Generally Administered Its Community Development Block Grant Disaster Recovery Assistance Grant in Accordance With Federal Regulations	P.L. 113-2	127,750
16	2015-CH-1009	9/30/2015	The State of Illinois' Administrator Lacked Adequate Controls Over the State's CDBG Disaster Recovery Program-Funded Projects	P.L. 110-329	59,600
17	2013-KC-1002	5/6/2013	The State of Iowa Did Not Monitor the City of Cedar Rapids' Voluntary Property Acquisition Program in Accordance With Its Approved Disaster Recovery Action Plans	P.L. 110-329	0
				<b>Total</b>	<b>391,690,847</b>

## **Appendix C**

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**Comparison of Federal Procurement Requirements**

24 CFR 85.36 (b) – (i)		2 CFR 200.318 – 200.326	
Citation	Title	Citation	Title
24 CFR 85.36 (b)	Procurement standards	2 CFR 200.318	General procurement standards
24 CFR 85.36 (c)	Competition	2 CFR 200.319	Competition
24 CFR 85.36 (d)	Methods of procurement to be followed	2 CFR 200.320	Methods of procurement to be followed
24 CFR 85.36 (e)	Contracting with small and minority firms, women's business enterprise, and labor surplus area firms	2 CFR 200.321	Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms
N/A	N/A	2 CFR 200.322	Procurement of recovered materials
24 CFR 85.36 (f)	Contract cost and price	2 CFR 200.323	Contract cost and price
24 CFR 85.36 (g)	Awarding agency review	2 CFR 200.324	Federal awarding agency or pass-through entity review
24 CFR 85.36 (h)	Bonding requirements	2 CFR 200.325	Bonding requirements
24 CFR 85.36 (i)	Contract provisions	2 CFR 200.326	Contract provisions