OFFICE OF INSPECTOR GENERAL

# Testimony of Deputy Assistant Inspector General for Audits Katherine Trimble

## Before the Committee on Homeland Security

## Subcommittee on Emergency Preparedness, Response, and Recovery

## Subcommittee on Oversight, Management, and Accountability

## U.S. House of Representatives

## "FEMA Contracting: Reviewing Lessons Learned from Past Disasters to Improve Preparedness"

Homeland Security

**May 9, 2019**
**10:00 AM**

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# Why We Did This

The inspections and audits discussed in this testimony are part of our ongoing oversight of FEMA's contracting practices in support of disaster response and recovery efforts.

# What We Recommend

We made numerous recommendations in these reports. Our recommendations are aimed at helping FEMA address management failures in overseeing procurements and reimbursing procurement costs.

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# What We Found

This testimony highlights the OIG's efforts at improving the efficiency and effectiveness of FEMA's disaster response and recovery contracting practices. In particular:

- *Lessons Learned from Prior Reports on Disaster-related Procurement and Contracting* – We published this report to remind FEMA of the challenges that arise during the disaster recovery phase. The report summarizes procurement concerns we reported from fiscal years 2015 through 2017.

- *Management Alert – Observations of FEMA's Debris Monitoring Efforts for Hurricane Irma* – We concluded that FEMA removed the Federal and state monitoring responsibilities for debris operations from its *Public Assistance Program and Policy Guide*, increasing the risk of fraud, waste, and abuse of taxpayer funds.

- *Management Alert – FEMA Did Not Safeguard Disaster Survivors' Sensitive Personally Identifiable Information* – FEMA exposed 2.3 million survivors' Personally Identifiable Information to its contractor, in violation of the *Privacy Act of 1974* and its own contract with the company.

- *FEMA Should Not Have Awarded Two Contracts to Bronze Star LLC* – FEMA inappropriately awarded two contracts due to management control weaknesses.

# FEMA Response

FEMA has generally concurred with our recommendations; however, over 100 recommendations, many addressing issues discussed in this testimony remain unimplemented.

Chairman Payne, Chairwoman Torres Small, Ranking Members King and Crenshaw, and Members of the Subcommittees, thank you for inviting me here today to discuss lessons learned from past disasters to improve Federal Emergency Management Agency (FEMA) contracting. My testimony today will focus on the Department of Homeland Security Office of Inspector General's (OIG) work to assess the efficiency and effectiveness of FEMA's contracting practices in support of disaster response and recovery efforts. It is important to continue addressing these challenges ahead of the 2019 hurricane season that begins on June 1.

Within 30 days in August and September 2017, three unprecedented, catastrophic hurricanes devastated areas of the United States and its territories, causing significant destruction. Immediately following these events, the most destructive wildfires in California's history devastated the northern parts of the state. In response to these hurricanes and wildfires, the President signed seven major disaster declarations, authorizing FEMA to provide Individual Assistance, Public Assistance, and Hazard Mitigation Assistance to affected communities within designated areas. In addition to the situational challenges FEMA faced from these disasters, longstanding procurement issues affected FEMA's ability to respond. Our work has highlighted some of these challenges, including the canceled Bronze Star roof tarp contracts and procurement issues related to debris removal in Florida, which I will discuss further in my testimony.

## Background

When disasters occur, state and local governments are typically responsible for disaster response efforts. When the magnitude of an incident exceeds the affected state, territorial, tribal, or local government capabilities to respond or recover, FEMA provides Federal assistance to aid their efforts, under the *Robert T. Stafford Disaster Relief and Emergency Assistance Act*, as amended (Stafford Act).

FEMA's Public Assistance (PA) program provides assistance to these government entities and certain types of private non-profit organizations so that communities can quickly respond to, and recover from, presidentially declared major disasters or emergencies. FEMA and PA grant recipients must comply with all applicable Federal regulations, including Title 44 of the Code of Federal Regulations (CFR) and 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, established by the Office of Management and Budget. Responsible entities are defined as:

- Recipient: A non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. Recipients typically include states, territories, and tribal governments.
- Subrecipient: A non-Federal entity that receives a subaward from a pass-through entity (i.e., the recipient) to carry out part of a Federal program. Subrecipients include local governments and certain not for profit organizations.

FEMA works in partnership with the grant recipient to assess damages, educate potential subrecipients, and formulate projects (subawards) for emergency or permanent work. The type of assistance available may vary among designated areas. FEMA determines project eligibility based on factors such as the applicant's legal responsibility, affected facility, type of work, and cost. In addition, FEMA categorizes all work as either emergency, (e.g., debris removal) or permanent (e.g., roadway and bridge repairs).[1]

FEMA's Role in Awarding Federal Contracts

In addition to the above responsibilities, FEMA also provides goods and services directly to safeguard disaster survivors and to assist state, local, territorial, and tribal governments with their response efforts. For example, during disaster response, FEMA may take immediate actions to save lives, protect property, and meet basic human needs, such as temporary roof repairs in the form of blue tarps and plastic sheeting.

According to FEMA guidance, it competes procurements whenever possible and practical, uses advance contracting for recurring disaster-related requirements, and at times uses other contracting methods.[2] FEMA is responsible for ensuring all contract activities comply with the Federal Acquisition Regulation (FAR), which requires agencies to carry out acquisition planning activities for all acquisitions to ensure that the Government meets its needs in the most effective, economical, and timely manner possible. According to FEMA, it obligated more than $4.9 billion in contracts in 2017 and 2018.[3]

[1] FEMA's *Public Assistance Program and Policy Guide* (PAPPG)
[2] Advance contracts are those contracts that are established prior to disasters and that are typically needed to quickly provide life-sustaining goods and services in the immediate aftermath of disasters.
[3] *FEMA Disaster Contracts Quarterly Report, Fiscal Years 2017-2018*. Note: FY 2018 Quarter 4 data has not yet been published.

FEMA's Role Overseeing State and Local Awarded Contracts

State, territorial, tribal and local governments, as FEMA grant recipients and subrecipients, use PA program grant funds to respond to and recover from major disasters. To help achieve these goals, these governments procure a range of goods and services following disasters, such as debris removal and debris monitoring services; water, food, and shelter; permanent repairs to roads and bridges; and repairs to critical public facilities like schools and hospitals.

States, territorial, tribal and local governments must comply with Federal procurement requirements outlined in 2 CFR Part 200, and are also required to comply with FEMA guidance. For instance, the *Public Assistance Program and Policy Guide* (PAPPG) combines all PA program policy into a single volume and provides an overview of the PA program implementation process with links to other publications and documents with additional process details.[4] The PAPPG also contains PA program policy to guide eligibility determinations, including Federal procurement and contracting requirements.[5]

FEMA is responsible for monitoring states, territories, and tribal governments to ensure they are properly administering grants. States, territories, and tribal governments, in turn, must manage local government and non-government entities to ensure grant fund expenditures comply with Federal procurement requirements. Noncompliance can result in high-risk contracts that may lead to excessive and ineligible costs. In addition, failure to follow these Federal requirements can hinder many of the socioeconomic goals Congress intended.[6]

To address some of the state and local concerns surrounding procurements, FEMA has implemented a Procurement Disaster Assistance Team to provide procurement-specific training and resources to state and local government officials, typically during response efforts, to achieve greater compliance with procurements under grants. Following the 2017 hurricanes, FEMA deployed staff to Texas, Florida, Puerto Rico, and the U.S. Virgin Islands, to provide real-time procurement support.[7, 8]

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[4] FEMA website, https://www.fema.gov/media-library/assets/documents/111781 (as of April 24, 2019)
[5] PAPPG, version 3.1, Chapter 2: Public Assistance, V. Cost Eligibility, G. Procurement and Contracting Requirements (March 2018)
[6] *Lessons Learned from Prior Reports on Disaster-related Procurement and Contracting* (OIG-18-29) (December 2017)
[7] OIG-18-29 and FEMA's 2017 After Action Report (December 2017)
[8] DHS OIG will discuss Procurement Disaster Assistance Team efforts in a report expected to be issued later this year.

## Results of OIG Audits and Our Recommendations

Following the 2017 disasters, the OIG initiated several audits related to FEMA's processes for awarding and administering contracts. Additionally, the OIG regularly audits PA grant awards, which include a review of state and local entities' procurements and related expenditures. Collectively, these reviews illustrate a pattern of FEMA management failures in overseeing procurements and reimbursing procurement costs.

OIG Audits of FEMA-Awarded Contracts

- **FEMA did not follow procurement requirements during Bronze Star contracting**. As noted in our May 2019 report, FEMA wasted personnel resources, time, and taxpayer money by issuing, canceling, and reissuing contracts for blue tarps for survivors in Puerto Rico to protect their homes from further damage after Hurricanes Irma and Maria.[9] FEMA did not follow all procurement laws, regulations, and procedures in awarding more than $30 million for two Bronze Star contracts. Specifically, FEMA did not fully determine Bronze Star's or its supplier's compliance with the contracts' terms, conducted inaccurate technical evaluations of proposals, used incorrect FAR clauses in its original solicitations, and did not consult the Disaster Response Registry. As a result, FEMA inappropriately awarded the two contracts to Bronze Star, which delayed delivery of crucial supplies and impeded Puerto Rican residents' efforts to protect their homes and prevent further damage. We recommended that FEMA take actions, including developing new or updating existing policies, to better ensure that future prospective contractors can meet the terms of FEMA's contracts. However, FEMA did not concur with any of our recommendations, maintaining that its existing processes adequately ensure that all contract terms and conditions are clearly defined and implemented.

- **FEMA risked PII of millions of survivors by not following specifications of a Transitional Sheltering Assistance (TSA) contract.** FEMA released to its contractor Personally Identifiable Information (PII) and Sensitive PII (SPII) of approximately 2.3 million disaster survivors of the 2017 hurricanes and wildfires. This was in direct violation of Federal and DHS requirements and the terms of the TSA contract. The contract identifies 13 data elements FEMA must send to its contractor to verify disaster survivor eligibility during the TSA check-in process at participating hotels. However, FEMA repeatedly released PII from 20 data

[9] *FEMA Should Not Have Awarded Two Contracts to Bronze Star LLC* (OIG-19-38) (May 2019)

fields, including survivors' bank account and electronic funds transfer numbers, even though the TSA contractor did not need this PII to administer the program on FEMA's behalf. This privacy incident occurred because FEMA lacked controls to ensure it shared only the data elements the contractor required to perform its official duties administering the TSA program.[10] We recommended that FEMA assess the extent of the privacy incident and implement a process to destroy the erroneously released data, as well as implement controls to ensure that only required data is released to contractors in the future. FEMA has already begun taking actions to address our recommendations, but estimates it will not complete implementing all recommendations until June 30, 2020. Given the sensitive nature of these findings, we urge FEMA to expedite this timeline.

OIG Audits of FEMA Grant Awards to Recipients and Subrecipients

Over the years, our work has shown that FEMA continues to face systemic problems and operational challenges and fails to manage disaster relief grants and funds adequately. As we noted in our December 2017 report on lessons learned from disaster-related contracting[11] and 11 subsequent audit reports on various state and local grant awards,[12] FEMA faces significant challenges in ensuring proper management of FEMA disaster funds — namely, ensuring disaster grant recipients and subrecipients understand and comply with Federal regulations and FEMA guidelines.

For example, from October 2014 through May 2019, we identified (and questioned) more than $363 million in ineligible contract costs because local entities did not follow Federal procurement regulations. Furthermore, we identified more than $207 million in ineligible costs that subrecipients may have incurred had we not identified the procurement problems before FEMA obligated disaster assistance grant funds.[13] These procurement-related deficiencies include:

- Failure to provide full and open competition, resulting in FEMA having limited assurance that incurred costs were reasonable, as well as an increased risk for fraud, waste, and abuse.

[10] *Management Alert – FEMA Did Not Safeguard Disaster Survivors' Sensitive Personally Identifiable Information* (Redacted) (OIG-19-32) (March 2019)
[11] OIG-18-29
[12] See Appendix A for a complete listing of these reports.
[13] OIG-18-29 and Appendix A

- Failure to take all affirmative steps to assure the use of disadvantaged businesses when possible, resulting in small and minority firms, women's business enterprises, and labor surplus area firms not always having sufficient opportunities to bid on federally funded work.

- Failure to include all required contract provisions, resulting in increased risk of misinterpretations, pricing errors, increased scope of work, and contract disputes.

- Failure to verify whether contractors were suspended, debarred, or otherwise excluded or ineligible, which can result in U.S. taxpayers bearing excessive and ineligible costs. Lack of compliance also increases the risk of favoritism, collusion, fraud, waste, and abuse.

Our prior reports contained recommendations to help FEMA address ongoing issues and improve its related controls. For example, we recommended FEMA:

- recover and de-obligate Federal grant funds awarded to or spent by local governments that did not follow appropriate acquisition standards and contracting procedures;

- debar organizations and individuals responsible for regulatory and ethical infractions or gross mismanagement of Federal funds;

- improve technical assistance provided to state and local governments to help ensure compliance with all laws, regulations, and grant guidance; and

- update and improve grant and disaster related guidance, policies, and procedures to help ensure that Federal funds are spent appropriately and receive proper monitoring.

Currently, there are 109 OIG recommendations to FEMA that remain open and unimplemented. Many are related to the procurement issues summarized above, and corrective action is needed in response to all of them to strengthen FEMA as a whole.

OIG 2017 Disaster Activities

Oversight of debris removal monitoring operations highlights one of the common state and local procurement challenges. By and large, FEMA grant recipients and subrecipients rely on contractors to collect and remove disaster debris after major disasters. Our September 2018 management alert on debris monitoring efforts following Hurricane Irma highlights the risks of contractors not being properly monitored.[14]

- **FEMA did not ensure subrecipients provided adequate oversight of debris removal operations in Georgia or Florida.** A majority of the municipalities in Florida we visited relied on contractors to collect and remove debris and to monitor debris operations.[15] However, local municipalities generally did not have their own personnel engaged in actively monitoring the contractors' debris removal capacities or contract execution.[16] We believe the lack of monitoring may have been due to FEMA's eliminating debris monitoring responsibilities in drafting its PAPPG. The PAPPG encourages, but does not require, the subrecipient to use its own employees to monitor debris removal operations. FEMA's change from the 2010 guidance to the PAPPG resulted in:

  - loss of specific guidance for FEMA, states, and local governments regarding debris monitoring and oversight responsibilities;
  - FEMA not directly overseeing debris operations, including monitoring and hauling; and
  - an increased risk of overstated debris loads.

  FEMA's current guidance provides little to no incentive for subrecipients to oversee the debris removal process as required by Federal regulations.[17] We recommended that FEMA implement clear and unambiguous guidance for debris removal operations, including guidance on managing and overseeing contractors, as well as how to determine the appropriate level of debris removal oversight. FEMA's estimated completion date for implementing clear guidance is August 30, 2019; but, as of April 2019, FEMA has not provided any updates. Given

[14] *Management Alert - Observations of FEMA's Debris Monitoring Efforts for Hurricane Irma* (OIG-18-85), September 2018)
[15] OIG-18-85
[16] FEMA refers to a subrecipient's permanently-employed personnel as "force account labor" (44 CFR § 206.228).
[17] 2 CFR § 200.318 (b) requires the applicant to assert a "high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls."

the importance of this information, we urge FEMA to expedite this timeline.

- **Increased Costs to Taxpayers.** Overstated debris loads occur when the percentage of debris collected by haulers is overestimated. Local governments pay haulers for the volume of debris collected in each truck, measured in cubic yards. For instance, if a monitor of the hauling activity determines a truck's total capacity is 10 cubic yards, and the truck is assessed as 75 percent full, then the "load call" for that truck is 7.5 cubic yards. To record the amount of estimated cubic yards actually dumped, monitors prepare load call tickets. Local governments use load call tickets to substantiate their claims for debris removal. When monitors overestimate debris loads or haulers collect unauthorized debris, local governments may incur and request reimbursement for unreasonable or ineligible costs. We recommended that FEMA require local governments identify quality control methods for verifying the amounts of debris collected and claimed for Federal reimbursement.

  Figure 1 depicts a load that includes large tree limbs and a stump. The truck driver convinced the monitor to estimate the load call at 95 percent full although more than half of the truck was empty.

**Figure 1. Disaster Debris Load Called at 95 Percent Full**

*Source:* DHS OIG

Figure 2 similarly depicts a load containing a large stump and tree branches. The monitor overstated the debris load at 50 percent of the truck's capacity when more than 75 percent of the truck was empty.

**Figure 2. Disaster Debris Load Called at 50 Percent Full**

*Source:* DHS OIG

The United States Army Corps of Engineers (USACE) visited one Georgia county and validated a 28,000 cubic yard overstatement for a single week of debris removal operations. At $16.43 per cubic yard, this equates to $460,040 in ineligible costs for just one subrecipient for only 1 week.

Figure 3 illustrates what USACE personnel observed throughout the week they shadowed contracted monitors in that Georgia county.

**Figure 3. Image of a Disaster Debris Hauler**


*Source*: USACE
*The photo information was redacted because it could be used to identify the subrecipient.

Debris removal is a common problem that occurs after most disasters across the country. Collectively, in our prior OIG audits we found a wide range of debris removal problems, including contracts awarded without proper competition; ineligible contracts, such as time and materials contracts used outside of the eligibility period; inadequate accounting and contractors overbilling local governments; and collection of ineligible debris from private or ineligible property.[18]

[18] *FEMA's Oversight and Management of Debris Removal Operations* (OIG-11-40), (February 2011)

## Looking Forward: Related Ongoing Work

The OIG has a number of ongoing audits and reviews that we initiated based on our observations during visits to disaster sites and post-disaster analyses. In most of our work we examine contracting issues similar to those highlighted in my testimony today. We will be reporting on these issues later this year. These audits include:

- An audit of FEMA's use of advance contracts in Puerto Rico and whether those contracts are sufficient to meet previously identified needs.
- Two follow-on reviews of debris procurement issues — one for the State of Florida following Hurricane Irma and another specifically involving Monroe County, Florida. These reviews will look at whether FEMA ensured state and local entities followed procurement requirements and whether taxpayer dollars could have been saved through better contracting practices.
- An audit of FEMA's PA grant awards to Puerto Rico Electric Power Authority (PREPA) to determine whether these grants, and subsequent contracts between PREPA and Whitefish Energy Holdings LLC and Cobra Acquisitions, comply with Federal laws and regulations, and FEMA guidelines.
- Additional work assessing FEMA's contracts to administer the Transitional Sheltering Assistance Program, and whether this program fully met disaster survivor needs.
- An audit of FEMA's supply chain management and distribution of commodities in Puerto Rico after Hurricanes Irma and Maria.
- An audit of FEMA contract award processes to assess whether its policies and procedures are sufficient to assess the capabilities of prospective contractors for disaster response commodities and services.
- An audit of the Sheltering and Temporary Essential Power program in Puerto Rico, being implemented under Tu Hogar Renace, to determine whether the program, including the use of contractor support, has complied with Federal regulations and internal policies and has achieved its overall goals.
- An audit of FEMA's oversight of state and local government spending in response to federally declared disasters.

## Conclusion

The massive scale of damage caused by seemingly more frequent disasters, as well as the large number of high dollar value contracts that FEMA and local communities will continue to award and FEMA will continue to reimburse pose grave concern. There is a significant risk of exposing billions of taxpayer dollars

to fraud, waste, and abuse. As we have found in our prior work, FEMA needs to improve its management of the contracting process to ensure staff adhere to the FAR and agency requirements, better protect survivor data, and avoid delays in the delivery of critical services and supplies. FEMA can also enhance its oversight of Federal funds by improving its guidance to local communities that apply for PA program reimbursement of disaster response and recovery costs. For these reasons, we will continue to review these areas, aiming to emphasize the need for positive change. We will advise you of the results of our work once it is completed.

Mr. Chairman, Ms. Chairwoman, this concludes my testimony. I am happy to answer any questions you or other members of the Subcommittees may have.

**Appendix A**
**List of OIG Audit Reports**

| Report Number | Report Title | Date Issued |
|---|---|---|
| **OIG Audits of FEMA Grant Awards** | | |
| OIG-18-09 | Management Alert - FEMA Should Recover $6.2 Million in Public Assistance Funds for Disaster Repairs That Are Not the Legal Responsibility of Richland County, North Dakota | October 2017 |
| OIG-18-17 | Napa State Hospital, California, Should Improve the Management of Its $6.7 Million FEMA Grant | November 2017 |
| OIG-18-25 | The Omaha Tribe of Nebraska and Iowa Mismanaged $14 Million in FEMA Disaster Grants | November 2017 |
| OIG-18-60 | The City of Waterloo, Iowa Jeopardizes $1.9 Million in Estimated FEMA Grant Funding | April 2018 |
| OIG-18-62 | Victor Valley Wastewater Reclamation Authority, California, Provided FEMA Incorrect Information for Its $33 Million Project | April 2018 |
| OIG-18-63 | FEMA Should Recover $20.4 Million in Grant Funds Awarded to Diamondhead Water and Sewer District, Mississippi | May 2018 |
| OIG-18-64 | Cache County, Utah, Needs Additional Assistance and Monitoring to Ensure Proper Management of Its FEMA Grant | May 2018 |
| OIG-19-05 | FEMA Should Disallow $9.1 Million in Public Assistance Grant Funds Awarded to Ascension Parish School Board, Louisiana | November 2018 |
| OIG-19-06 | FEMA Should Disallow $22.3 Million in Grant Funds Awarded to the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation, Montana | November 2018 |
| OIG-19-09 | FEMA Should Recover $413,074 of Public Assistance Grant Funds Awarded to Nashville-Davidson County, Tennessee, for a May 2010 Flood | November 2018 |
| OIG-19-12 | FEMA Should Recover $3,061,819 in Grant Funds Awarded to Jackson County, Florida | December 2018 |
| **OIG Summary Reports** | | |
| OIG-18-06 | Summary and Key Findings of Fiscal Year 2016 FEMA Disaster Grant and Program Audits | October 2017 |
| OIG-18-29 | Lessons Learned from Prior Reports on Disaster-related Procurement and Contracting | December 2017 |
| OIG-18-75 | Summary and Key Findings of Fiscal Year 2017 FEMA Disaster Grant and Program Audits | September 2018 |