

Averting a Second Disaster:

Leading Financial Oversight Practices in Mitigation and Disaster Grant Programs – ASFPM 2017

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Introductions

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What We Will Discuss Today

- ▶ What programs are we talking about?
- ▶ What the IG is looking for and finding?
- ▶ What can you do?
- ▶ Fact, Myths and Legends
- ▶ Questions – PLEASE

Today We Will Focus on the Post Disaster Grants

▶ Which Grants?

- ▶ 406 Mitigation (Public Assistance)
- ▶ Hazard Mitigation Grant Program (HMGP a.k.a. “404 Mitigation”)

▶ Why?

- ▶ The majority of the Office of Inspector General Reports tend to focus on Post Disaster Grants
- ▶ Most, if not all of the grant management issues, that we will discuss are issues for all grant programs e.g. procurement.
- ▶ The Public Assistance program is probably one of the most difficult programs to administer because of the nature and timeline of the program.

Disaster Grants Are Different Than Other Grants - Why?

- ▶ Ad Hoc Public Works Program
- ▶ Ambiguous by design – “Flexibility”
- ▶ Much less guidance than other Federal grant programs
- ▶ Reliance on “oral history”
- ▶ Forgiveness vs. permission
- ▶ Temporary workforce
- ▶ Recipients and Sub recipients do not have time (this is for the long run)

Eligibility of Work

Public Assistance grants cover three “categories” of work

1. Debris removal (FEMA Category A)
2. Emergency protective measures (FEMA Category B)
3. Permanent restoration (FEMA Categories C – G)
 - ▶ Can be repairs or replacement

FEMA Public Assistance Permanent Work

Generally work is required to restore a damaged facility or equipment, through repair or replacement, to its pre-disaster design, function and capacity.

“Exceptions” to general rule above where you can make changes or improvements including those that reduce future risk:

- ▶ Codes and Standards
- ▶ Alternate Projects
- ▶ Improved Projects
- ▶ Mitigation

What's New? Section 428 (Sandy Recovery Improvement Act of 2013)

- ▶ Authorizes alternative procedures for the Public Assistance (PA) program under the Stafford Act
 - ▶ Reducing the costs to the Federal Government of providing Public Assistance
 - ▶ Increasing flexibility in the administration of such assistance
 - ▶ Expediting the provision of assistance to a State, tribal or local government, or nonprofit owner or operator of a private nonprofit facility
 - ▶ Providing financial incentives and disincentives for timely and cost-effective completion of projects with such assistance
- ▶ Two main provisions – Debris Removal and Permanent Work

Debris Removal Pilot - Sandy Recovery Improvement Act

▶ Pros

- ▶ Incentivizes faster debris removal and therefore faster recovery
- ▶ Particularly beneficial if you are using force account labor
- ▶ Higher Cost Share – starts at 85% for the first 30 days
- ▶ Incentives for having a debris removal plan in advance
- ▶ Should reduce costs for all parties

▶ Cons

- ▶ Time limited – begins with start of incident period
- ▶ No funding after 180 days
- ▶ Normal procurement rules apply
- ▶ Extensions permitted but “weather” specifically excluded
- ▶ May not be suitable for all disasters especially those where access to debris may be delayed (e.g. large scale flooding or extended incident periods for run on events)

Permanent Work Pilot – Sandy Recovery Improvement Act

▶ Pros

- ▶ Flexibility
- ▶ Waivers
- ▶ Set budget
- ▶ Consolidate projects
- ▶ No “hair cut” for alternate projects
- ▶ Can apply cost savings for other eligible purposes – including mitigation

▶ Cons

- ▶ Risk for cost overruns
- ▶ Still need to account for costs – same rules apply as traditional PA Program
- ▶ Must have very good cost estimates
- ▶ May not be suitable when estimates are hard to get or cost escalations likely
- ▶ Program subject to increased Congressional and Inspector General scrutiny

What's New? – Super Circular 2 CFR

- ▶ Found at 2 CFR Part 200
 - ▶ The Uniform Rules apply to all new grant awards under emergencies and major disasters declared on or after December 26, 2014 (79 Fed. Reg. at 75872 and §200.110)
- ▶ The Uniform Rules, where applicable, supersede the procurement standards formerly found at 44 C.F.R. § 13.36 and elsewhere
- ▶ Includes OMB Cost Circulars and A-133 (Audits)
- ▶ New terms
 - ▶ Now Recipients and Sub recipients
- ▶ But there is a “grace period” for procurement standards

What's New? - Federal Disaster Assistance “It is not just a FEMA Show” – Other Federal Grants

- ▶ Who provides Disaster Assistance?
- ▶ Different Culture
- ▶ Different Rules and Laws Apply
- ▶ Multiple IGs and Oversight Entities (e.g. Congressional Committees)
- ▶ Duplication of Benefit Issues
- ▶ Communication and Coordination seem to be getting better
- ▶ Congress seems to be trying to help (e.g. environmental reviews)

What's New? - Federal Disaster Assistance “It is not just a FEMA Show” – Non Government Organizations

- ▶ Rockefeller Foundation 100 Resilient Cities Initiative
 - ▶ Includes: Financial and logistical guidance for establishing an innovative new position in city government, a Chief Resilience Officer, who will lead the city’s resilience efforts
- ▶ EY a Platform Sponsor
- ▶ Evolving
- ▶ Stay tuned!!!

States Are Recipients – Implications

- ▶ For FEMA Public Assistance and HMGP, States are “recipients” (formerly grantees).
- ▶ Counties, local governments and eligible non-profits are “sub recipients”
- ▶ States are “pass-through entities”.
- ▶ Because states are the recipients, FEMA seeks any recoveries of grant funds directly from states.
- ▶ As a result, states are taking new steps to protect grant funds and monitor sub recipients.
- ▶ Why?

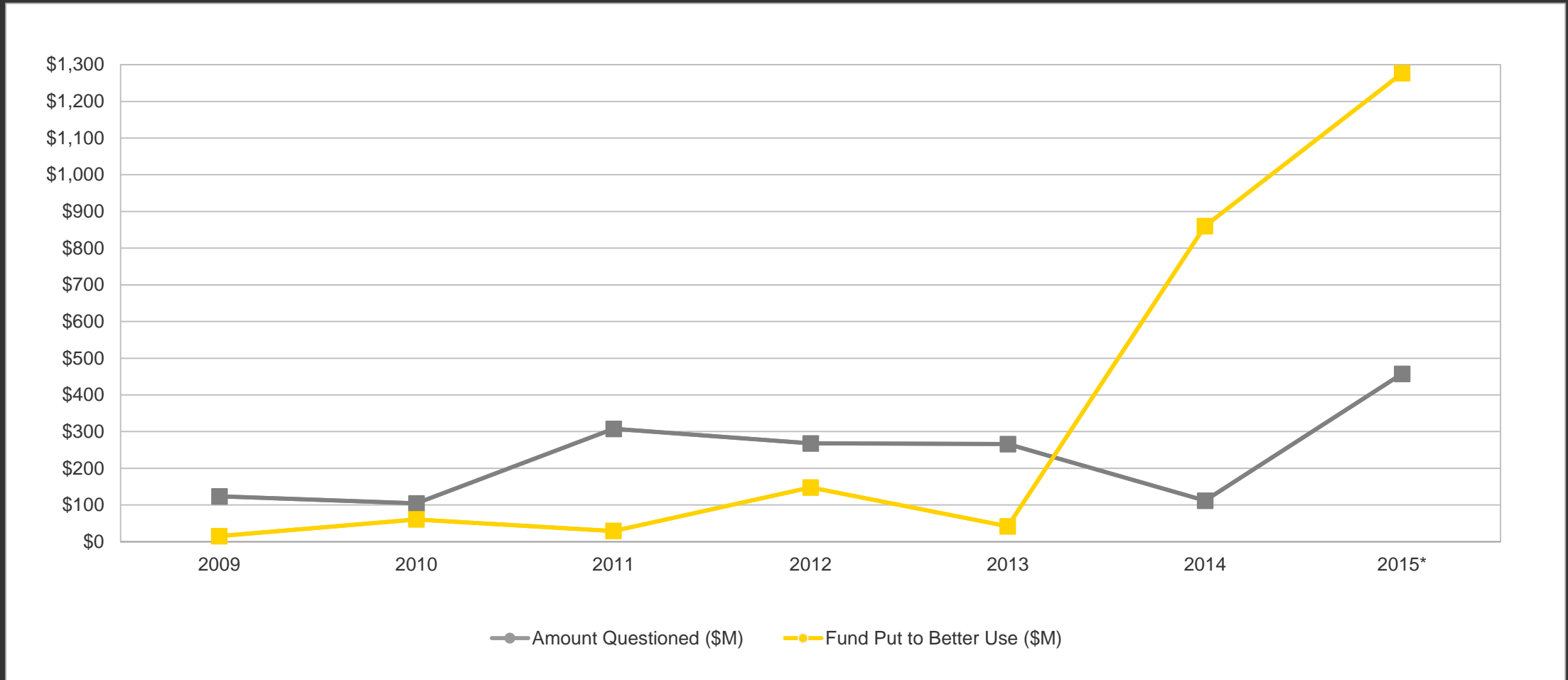
Why Comply?

OIG Audit Results – FEMA Grant and Subgrant Audits 2009 – 2015

Fiscal Year	Awarded Amount (\$B)	Amount Audited (\$B)	% Audited	Questioned Amount (\$M)	Funds Put to Better Use (\$M)
2015*	\$ 2.81	\$ 1.55	55%	\$ 457.46	\$ 1,276.85
2014	4.04	3.44	85%	111.62	860.14
2013	1.70	1.28	75%	266.22	41.60
2012	1.52	1.25	82%	267.89	147.70
2011	1.72	1.22	71%	307.80	29.09
2010	2.29	1.23	54%	104.48	60.77
2009	1.30	0.93	72%	123.38	15.06
Total	\$ 15.38	\$ 10.90	71%	\$ 1,638.85	\$ 2,431.21

Source: OIG-17-13-D Summary and Key Findings of Fiscal Year 2015 FEMA Disaster Grants and Program Audits

OIG Audit Results – FEMA Grant and Subgrant Audits 2009 through 2015



Inspector General Focus on Deobligations of Funds

Deobligating Disaster Recovery Funds

- ▶ As a result of ongoing audits by the Department of Homeland Security and the Federal Emergency Management Agency (FEMA), the federal government has deobligated roughly \$100 million in previously-approved disaster assistance funding from Florida local governments and other recipients.
- ▶ These entities are now required to pay back these funds have future disaster assistance withheld.

Source: Florida Association of Counties

What Happens When Things Go Wrong?

- ▶ Disputes
 - ▶ Applicant eligibility
 - ▶ Work/facility eligibility
 - ▶ Cost eligibility
 - ▶ Timing of FEMA determination matters

- ▶ Deobligations and Section 705(c)

- ▶ Appeals

- ▶ Arbitration

What are the Common Audit Findings?

- ▶ Improper contracting
- ▶ Inadequate source documentation
- ▶ Ineligible work performed and claimed
- ▶ Incorrect rates for equipment, labor and benefits
- ▶ Claims with duplicate benefits
 - ▶ Insurance
- ▶ Poor contracting practices result in excessive costs
- ▶ Improper contractor monitoring
- ▶ DAC
 - ▶ Allocations
 - ▶ Lacking sufficient documentation

Contracts – Just Because it is a Disaster Does Not Mean Contractual Rules Don't Apply

- ▶ Reasonable cost
 - ▶ One test – does it differ from what you normally do or pay?
- ▶ Competitively bid, with limited exceptions for exigent circumstances.
- ▶ Must comply with Federal, state, and local laws.
- ▶ Do not use:
 - ▶ Debarred contractors
 - ▶ Cost plus percentage of cost contracts
 - ▶ Contingency contracts
 - ▶ Time and materials generally after 70 hours

Contracts – Just Because it is a Disaster Does Not Mean Contractual Rules Don't Apply

- ▶ Supporting Documents for Contracts
 - ▶ Procurement history
 - ▶ Copy of contract and any modifications
 - ▶ Contractor invoices
 - ▶ Contract monitoring documents
 - ▶ Contractor timesheets for hours billed

Buy Boards

- ▶ Subreceptients are using buy boards for procurement
 - ▶ Common issue is subreceptients are improperly procuring services by selecting only one service provider from buy boards without obtaining bids or performing a price comparison
 - ▶ Even when a buy board is being utilized, multiple bids (minimum of 3) must be obtained
 - ▶ The bids must be reviewed and assessed prior to selecting a contractor to perform the work

Disaster and Mitigation Grants, Facts, Myths and Legends



The FEMA guy said it was OK, so it's OK.

If costs are reasonable, FEMA cannot deobligate.

The OIG has the final decision on deobligations and audit recommendations.

**FEMA capped grants (Section 428)
will not be audited because they are
based on estimates.**

No competition is required when purchasing from buy boards/intergovernmental vehicles.

Project Worksheets are final.

**Standby contracts are not eligible
under FEMA.**

FEMA personnel at the start of the project will be there for the duration of the project.

**Records must be maintained 3 years
after PW closeout.**

State and local governments can use the Federal GSA schedule.

FEMA pays for a project only once.

Questions?

