

PUBLICATION

OIG Again Pressures FEMA to Enforce Procurement Rules

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March 26, 2021

In 2016, the U.S. Department of Homeland Security Office of Inspector General (the "OIG") issued a report entitled "FEMA Can Do More to Improve Public Assistance Grantees' and Subgrantee's Compliance with Federal Procurement Rules." Therein, the OIG noted that over a six year period it had questioned \$352.3 million in grant costs due to procurement non-compliance, but that FEMA had subsequently determined 91.3% of those questions costs eligible, often because FEMA excused noncompliance where it deemed costs reasonable. The OIG warned FEMA's enforcement of Federal regulations would fall short, without "financial consequences for noncompliance", including taking money back from grantees and subgrantees.

Many applicants for Public Assistances have felt the effects of the OIG's warning, as FEMA has grown increasingly strict about compliance with the procurement standards at 2 C.F.R. Part 200 at both the project approval stage and in deciding administrative appeals. Nonetheless, just last week the OIG came out with yet another [report](#) admonishing FEMA's enforcement of procurement regulations. The OIG noted that "noncompliance with procurement regulations was among the three findings OIG identified most often" in its review and stated plainly, "FEMA should not allow procurement-related questioned costs based solely on its determination of reasonableness." The OIG warned that FEMA's failure to address procurement deficiencies means applicants "may have less incentive to comply with procurement regulations and leave funds open to potential waste and abuse."

After another report like this, Public Assistance Recipients and Subrecipients should expect FEMA to take an even firmer stance on requiring compliance with procurement regulations. Indeed, concerns about procurement-related disallowances have slowed down the ability of FEMA and State Recipients to provide the assistance to communities when they need it most. In some cases, State Recipients are going so far as to conduct their own reviews of a subrecipient's procurements – sometimes with the assistance of third-party contractors – and declining to support requests for reimbursement or even to disburse obligated funds that the State Recipient perceives to be at higher risk of subsequent deobligation. Applicants for Public Assistance would be wise to take the time to review their procurement policies and procedures and their existing pre-position contracts to ensure that all procurements were conducted in compliance with applicable rules to avoid procurement-related delay or worse.