The State of New York, Governor's Office of Storm Recovery

Community Development Block Grant, Disaster Recovery Assistance, New York Tourism and Marketing Program

This report was re-issued on September 16, 2016, to remove draft report transmittal language.

Office of Audit, Region 2
New York – New Jersey

Audit Report Number: 2016-NY-1009
August 12, 2016

To: Stan Gimont
Acting Deputy Assistant Secretary for Grant Programs, DG

//signed//

From: Kimberly Greene
Regional Inspector General for Audit, 2AGA

Subject: The State of New York Had Weaknesses in Its Administration of the Tourism and Marketing Program

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of the New York State Governor's Office of Storm Recovery's administration of its New York State Tourism and Marketing program.

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

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

If you have any questions or comments about this report, please do not hesitate to call me at 212-264-4174.

Audit Report Number: 2016-NY-1009
Date: August 12, 2016

The State of New York Had Weaknesses in Its Administration of the Tourism and Marketing Program

Highlights

What We Audited and Why

We audited the New York State Community Development Block Grant Disaster Recovery (CDBG-DR) assistance-funded New York State Tourism and Marketing program based on the amount of funds drawn down to date and weaknesses identified in prior Office of Inspector General audits. State officials allocated $30 million in CDBG-DR funds to the Tourism and Marketing program, of which $22.4 million had been obligated and disbursed as of September 30, 2015. The objective of the audit was to determine whether State officials established and maintained financial and administrative controls to ensure efficient and effective program administration.

What We Found

State officials did not always establish and maintain financial and administrative controls to ensure efficient and effective program administration. Specifically, cost estimates were not always obtained for procurements so there was a lack of assurance that almost $22 million in CDBG-DR funds allocated and disbursed for the Tourism and Marketing program were for reasonable and necessary costs. In addition, State officials did not ensure subrecipient budgets were complete so that they could effectively monitor program progress and hold subrecipients accountable. We attribute these conditions to State officials not placing sufficient emphasis on ensuring compliance with all procurement requirements and not knowing how the entire CDBG-DR funds would be spent for the Tourism and Marketing program.

What We Recommend

We recommend that HUD direct State officials to (1) provide documentation showing that approximately $22 million disbursed for contracts complies with applicable procurement requirements and repay any amounts determined to be unsupported from non-Federal funds and (2) include complete budgets in written agreements with subrecipients to ensure that CDBG-DR funds are used for their intended purposes.

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Background and Objective

Congress made available $16 billion in Community Development Block Grant Disaster Recovery (CDBG-DR) assistance funds through the Disaster Relief Appropriations Act of 2013. This funding was for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization. In accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974, these disaster relief funds were intended for 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.

The State of New York requested a waiver to allow it to use CDBG-DR funds to support its tourism industry and promote travel to communities in the disaster-impacted areas. The State was granted a tourism waiver, effective April 24, 2013, only to the extent necessary to make eligible use of no more than $30 million for assistance to the tourism industry.

The New York State Tourism and Marketing program is an industrywide advertising and marketing campaign to provide immediate support to the State's tourism industry and promote travel to communities located in the 13 counties that received major disaster declarations as a result of Hurricanes Sandy and Irene and Tropical Storm Lee. The focus of the campaign was for the summer of 2013 (Memorial Day to Labor Day) in the 13 counties.

The State received an initial allocation of more than $1.7 billion on March 2013, a supplemental allocation of almost $2.1 billion on November 2013, and a second supplemental allocation of more than $600,000 on October 2014. More than $4.4 billion in CDBG-DR funds has been allocated to the State, as of October 21, 2014, of which $30 million was allocated to the Tourism and Marketing program. As of September 30, 2015, State officials had obligated and disbursed more than $22.4 million for the Tourism and Marketing program.

The audit objective was to determine whether State officials established and maintained financial and administrative controls to ensure efficient and effective program administration.

Results of Audit

Finding: There Were Control Weaknesses in The State's Tourism and Marketing CDBG-DR Program

State officials did not always establish and maintain adequate controls to ensure compliance with procurement requirements and complete budgets. Specifically, independent cost estimates were not conducted and program budgets in subrecipient agreements were not complete. We attributed this condition to State officials' not placing sufficient emphasis on ensuring compliance with all procurement requirements and not knowing how the entire CDBG-DR funds would be spent for the Tourism and Marketing program. As a result, there was a lack of assurance that almost $22 million allocated and disbursed for the Tourism and Marketing program was for reasonable and necessary costs. Also, the State's ability to effectively monitor program progress and hold subrecipients accountable was lessened.

Independent Cost Estimates Were Not Conducted

State officials did not have documentation to support compliance with all procurement requirements for the Tourism and Marketing program. There were two subrecipient agreements, one with Empire State Development Corporation (ESDC) and another with the City of Long Beach. The first subrecipient agreement was between the State and ESDC for conducting the Tourism and Marketing program. ESDC had two subcontracts, one with BBDO[1] and another with Dream Catcher (both executed before Hurricane Sandy). The State explained that the two subcontracts were open, valid, and in place at the time of Hurricane Sandy. Therefore, State officials determined that since these subcontracts already existed and had similar scopes, they could be paid for from Hurricane Sandy funds. Empire State executed two amendments, one with BBDO and another one with Dream Catcher.[2] The second subrecipient agreement was between the State and the City of Long Beach. The City of Long Beach applied for and was awarded CDBG-DR funds for the marketing and advertising campaign. The City of Long Beach executed two subcontracts, one with Zimmerman-Edelson, Inc. and another with Creative Advertising Concepts.[3]

Regulations at 24 CFR (Code of Federal Regulations) 85.36(f)(1) provide that grantees and subgrantees must perform a cost or price analysis in connection with every procurement action, to include contract modification. The method and degree of analysis depends on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. The Governor's Office of Storm Recovery certification states that units of general local government, State agencies and

[1] Batten, Barton, Durstine & Osborn
[2] The two amendments were executed on May 14 and July 9, 2013.
[3] The two subcontracts were executed on July 1 and August 2, 2013.

authorities, or subrecipients of State CDBG-DR assistance must demonstrate compliance with 24 CFR 85.36. However, State officials were not able to provide independent cost estimates that were completed prior to the execution of the contracts or after the October 29, 2012, date of Hurricane Sandy. The existing contracts had been amended to include promotional efforts related to Hurricane Sandy without any cost estimates or additional competitive procurement to determine if the costs were reasonable. We attributed this deficiency to State officials' not placing sufficient emphasis on ensuring compliance with all procurement requirements. As a result, there was no assurance that approximately $22 million in CDBG-DR funds allocated and disbursed for the Tourism and Marketing program was for reasonable and necessary costs.

Subrecipient Agreements Did Not Include Complete Program Budget Information

The subrecipient agreements did not contain complete program budgets for the two subrecipient agreements. The first subrecipient agreement, dated May 15, 2013, was not to exceed the CDBG-DR funding total of $40.5 million. This funding total was composed of several programs: $30 million to promote tourism, $7.5 million to promote State of New York recovery, and $3 million for small business mentorship and consulting. However, the agreement budget showed that $21 million would be used to promote tourism, $7.5 million to promote State of New York recovery programs, and $3 million for a small business mentorship and consulting program. Overall, the agreement budget did not agree with the funding and did not contain sufficient details. The second subrecipient agreement was dated June 19, 2013, for CDBG-DR funds of $500,000 and did not include a detailed budget. Regulations at 24 CFR 570.503(b)(1) provide that agreements must include a description of the work to be performed, a schedule for completing the work, and a budget. These items must be in sufficient detail to provide a sound basis for the recipient to effectively monitor performance under the agreement. We attributed these deficiencies to State officials not ensuring budgets had sufficient details to facilitate effective monitoring of performance. As a result of the deficiencies described above, there was a lack of assurance that the State could effectively monitor performance under the agreements and that the program was conducted in an efficient manner.

Conclusion

State officials did not comply with all procurement requirements and did not ensure subrecipient budgets were detailed and complete. Specifically, independent cost estimates were not conducted for all contracts and program budgets in subrecipient agreements were not complete or sufficiently detailed. We attributed these conditions to State officials' not knowing how the entire CDBG-DR funds would be spent for the Tourism and Marketing program and placing sufficient emphasis on ensuring compliance with all procurement requirements. As a result, State officials did not always have assurance that all CDBG-DR funds were necessary and the State was not always able to effectively monitor program performance.

Recommendations

We recommend that HUD's Deputy Assistant Secretary for Grant Programs direct State officials to

1A. 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. Obtain independent cost estimates before receiving bids or proposals for contract procurement.

1C. Include complete budgets in written subrecipient agreements to ensure that CDBG-DR funds are used for their intended purpose.

Scope and Methodology

The audit focused on whether State officials established and maintained financial and administrative controls to ensure efficient and effective program administration. We performed our audit fieldwork from November 2015 to April 2016 in the State's office at 25 Beaver Street, New York, NY. Our audit generally covered the period of January 29, 2013, through September 30, 2015, and was extended as necessary to meet the audit objective.

To accomplish our objective, we

- Reviewed relevant CDBG-DR program requirements and applicable Federal regulations to gain an understanding of CDBG-DR requirements.
- Obtained an understanding of the State's management controls and processes through analysis of its responses to a management control questionnaire.
- Obtained an understanding of the control environment and operations through review of the State's organizational chart for administration of its CDBG-DR grant and the CDBG-DR Tourism and Marketing program.
- Reviewed HUD's monitoring reports related to the Tourism and Marketing program for the period August 2013 to August 2015 to identify deficiencies requiring corrective action.
- Reviewed quarterly performance reports related to the Tourism and Marketing program for the period October 2013 to June 2015 to document the amount spent and activities accomplished.
- Reviewed the State's audited financial statements for the period ending March 31, 2014, and March 31, 2015.
- Selected and reviewed two drawdowns during the period January 2013 through September 2015, when more than $19.4 million was disbursed, representing approximately 87 percent of total disbursements for the Tourism and Marketing program. The results of the tests of the sampled drawdowns cannot be projected.
- Reviewed all six contracts, which included two subrecipient agreements and four subcontracts, related to the Tourism and Marketing Program for CDBG-DR funding. The total amount of the contracts related to CDBG-DR was $30 million.
- Reviewed reports from the Disaster Recovery Grant Reporting system[4] to obtain CDBG-DR disbursement information for the audit period. Assessment of the reliability of the data in the State's system was limited to the data sample, which were reconciled to

[4] The Disaster Recovery Grant Reporting system is used for the CDBG-DR program and other special appropriations. It is used by grantees to draw down funds, report program income, and submit their action plans.

the auditee records. While we used the data obtained from this system for informational purposes, our assessment of the reliability of the data in the system was limited to the data reviewed. Therefore, we did not assess the reliability of this system.

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 finding and conclusion based on our audit objective.

Internal Controls

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

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

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

Relevant Internal Controls

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

- 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:

- State officials did not have adequate controls to ensure that they obtained required cost estimates for procurements and complied with all requirements related to subrecipient budgets.

Appendixes

Appendix A

Schedule of Questioned Costs

Recommendation number	Unsupported 1/
1A	$21,958,549
Totals	**21,958,549**

1/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.

Appendix B

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation **Auditee Comments**

Governor's Office of Storm Recovery

NEW YORK STATE

Andrew M. Cuomo
Governor

Lisa Bova-Hiatt
Executive Director

July 25, 2016

Kimberly Greene
Regional Inspector General for Audit
U.S. Department of Housing and Urban Development
Office of Inspector General
26 Federal Plaza, Room 3430
New York, NY 10278-0068

Dear Ms. Greene:

This letter is in response to the Draft Audit Report on the New York Housing Trust Fund Corporation's ("HTFC") Governor's Office of Storm Recovery's ("GOSR") administration of its New York Tourism and Marketing Program.

Executive Summary

In June 2013, Governor Andrew M. Cuomo established GOSR to maximize the coordination of recovery and rebuilding efforts in storm-affected municipalities throughout New York State. GOSR was formed under the auspices of New York State's Office of Homes and Community Renewal's HTFC, a subsidiary public benefit corporation of the New York State Housing Finance Agency, which directs the administration of the CDBG-DR grant. GOSR has been assigned the responsibility of administering the disbursement of HUD's CDBG-DR funds stemming from the Public Law 113-2, as amended, as well as the HUD Appropriations Act, 2012 (P.L. 112-55) as a result of the considerable damage sustained by the State and its residents from Hurricane Sandy, and Hurricane Irene and Tropical Storm Lee, respectively.

After the destruction of Super Storm Sandy in 2012, the State of New York was deeply concerned that its tourism industry, a vital source of revenue, would be severely impacted in the seasons to follow. As part of its revitalization efforts, GOSR issued two subrecipient agreements for a tourism and marketing campaign: one to Empire State Development Corporation ("ESD") and one to the City of Long Beach ("City"). These two subrecipients are the subject of the below Finding. As further explained below, HTFC was able to take advantage and leverage pre-existing agreements that were negotiated with greater buying power, which is specifically encouraged under federal regulation. *See* 24 CFR § 85.36(b)(5) (encouraging the use of intergovernmental agreements "for procurement or use of common goods and services."). In particular, both subrecipients competed their contracts on the open market for these services, ESD in 2011 and the City on 2013. Per GOSR policy, each subrecipient has supported its costs in these contracts, engaging in significant reconciliation processes.

Pursuant to CDBG regulations, GOSR should be afforded the "***maximum feasible deference*** to [its] interpretation of the statutory requirements and the requirements of the [CDBG-DR] regulations, provided that [GOSR's] interpretations are not plainly inconsistent with the Act and the Secretary's obligation to enforce compliance with the intent of the Congress as declared in the Act."[1] 24 C.F.R. §570.480(c) (emphasis added). The regulations provide that HUD must not determine that GOSR has failed to carry out its certifications in compliance with requirements of the Act (and this regulation) unless the Secretary finds that procedures and requirements adopted by the state are

[1] The March 5, 2013 regulations made clear that this standard applies equally in the State's interpretation of these requirements as it does for the local governments that ordinarily distribute CDBG funds. 78 Fed. Reg. 14,329, 14,339 (Mar. 5, 2013) ("Pursuant to this waiver, the standard at section 570.480(c) and the provisions at 42 U.S.C. 5304(e)(2) will also include activities that the State carries out directly.").

25 Beaver Street | New York, NY 10004 | Recovery Hotline: 1-855-NYS-Sandy | www.stormrecovery.ny.gov
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Lisa Bova-Hiatt
Executive Director

insufficient to afford reasonable assurance that activities undertaken by units of general local government were not plainly inappropriate to meeting the primary objectives of the Act, this regulation, and the state's community development objectives.

Background and Objective

The funding provided to ESD and the City was made possible through a waiver granted by HUD to the State of New York, which allowed up to $30M in CDBG-DR funds to be used for the State tourism industry. The tourism waiver contained references to the fact that the initiative would be overseen by the Division of Tourism, Marketing & Advertising, a division of ESD. ESD was selected to administer the marketing campaign on the basis that it is the State agency responsible for the implementation of tourism and marketing efforts aimed at improving the State's economy. ESD was determined to be a natural and best fit to implement GOSR's tourism and marketing activities, as ESD's mission is "… to promote a vigorous and growing state economy, encourage business investment and job creation, and support diverse, prosperous local economies across New York State through the efficient use of loans, grants, tax credits, real estate development, marketing and other forms of assistance."[2] In addition, at the time GOSR needed tourism and marketing services, ESD allowed for more rapid delivery of marketing initiatives, as they were already in contract with BBDO (since 2011) to provide related services for ESD through the initiative known as "New York Open for Business," which aimed at promoting the virtues of doing business in New York State in order to attract, retain, and expand business activity throughout NY.

The City of Long Beach was awarded $500,000 for the City's marketing and advertising campaign. This award was approved by the board of the Housing Trust Fund Corporation in June of 2013 (see attached). The City of Long Beach was one of the most heavily damaged areas in Superstorm Sandy. The City requested funding from HTFC to assist in its recovery efforts. As part of the City's recovery efforts and in an attempt to improve the City's economy, a campaign to promote Long Beach and increase tourism and job opportunities was launched ("Long Beach is Open for Business"). CDBG-DR funds were awarded to assist in this effort.

In light of the below responses, GOSR believes each component of the HUD OIG's Finding should be rescinded.

(1) **HUD OIG FINDING 1: There Were Control Weaknesses in The State's Tourism and Marketing CDBG-DR Program**

a. **HUD OIG COMMENT: Independent Cost Estimates Were Not Conducted**

GOSR RESPONSE:

Empire State Development Corporation

Comment 1

As an organization, ESD is specifically charged with administering the State's tourism and marketing efforts. Therefore, when GOSR entered into a subrecipient agreement with ESD to provide an industry-wide advertising and marking campaign to attract tourists to New York, it did so with the understanding that ESD could leverage larger, existing State relationships to obtain the best value. In this way, GOSR met the requirements of 24 CFR § 85.36(b)(5) to use intergovernmental agreements "for procurement or use of common goods and services." 24 CFR § 85.36(b)(5). Further following the

[2] ESD "About Us," http://esd.ny.gov/AboutUs.html

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Governor

Lisa Bova-Hiatt
Executive Director

federal guidelines, ESD leveraged two existing, active contracts that were previously competed:[3] one with BBDO and one with Dream Catcher. Through competed rates, ESD performed a price analysis to determine the price of the contracts was reasonable.

<u>BBDO</u>

An Independent Price Analysis was Performed

Comment 1

The ESD/BBDO contract derived from a Request for Proposal that ESD issued on the New York State Contractor Reporter on August 25, 2011 for a business marketing campaign (the "Aug. 25, 2011 RFP," provided to the OIG during their audit). Through ESD's Aug. 25, 2011 procurement, BBDO was reviewed and rated by a committee of four people against five other competitive offerors. Cost was one of three factors considered. Each of the four panelists scored BBDO highest among all six offerors by significant margins. (The RFP score sheets were previously provided to the OIG).

Comment 1

The reasonableness of the cost was determined through the competition review process. ESD set a high, medium, and low budget and requested a budget for each price, as outlined in their RFP. BBDO then submitted specific staffing plans for each budgeted amount, giving specific hour estimates for 30 different staff members from the President of the company to media analysts. BBDO also submitted hourly rate sheets. . In this way, ESD created a detailed basis of comparison for determining the cost effectiveness of each applicant. ESD did not set an "estimate" prior to the solicitation because the creativity required for a marketing campaign meant that the solutions could vary widely on a project-by-project basis. Soliciting broader, more creative solutions was, in fact, the goal, and served the primary need of the State. However, ESD was able to form a basis of comparison for evaluating the reasonableness of the costs incurred by comparing the work (both in quality of people and level of staffing) that the State would receive at each price point.

Comment 1

Given the above, through competition, ESD performed a price analysis of BBDO's rates by comparing them across multiple proposals, which satisfies the federal requirements articulated in §85.36(c). A price analysis was all that was required of the federal requirements.

Comment 1

As the HUD OIG points out, the regulations provide that the type of price and cost analysis should be tailored to the circumstances. 24 CFR § 85.36(f)(1) ("The method and degree of analysis is dependent on the facts surrounding the particular procurement situation . . . ."). Here, a government estimate would have been counterproductive because it would have required ESD to develop a scope of work that limited the offeror's ability to creatively respond. The low, medium, and high budget restrictions in the RFP functionally acted as an estimate by creating a basis of comparison. GOSR has provided information to the OIG about the price comparison and budget breakdown. As such, GOSR respectfully asserts that any Finding regarding a failure to provide proper price and cost data is unfounded.

Comment 1

The original BBDO contract was executed on December 1, 2011, and valid through November 30,

[3] Consistent with federal regulation, ESD's procurement policy standards at the time required ESD to procure contracts on a "competitive basis to the maximum extent practicable." *Compare* ESD Procurement Policies effective 2013 (previously provided) at 3, *with* 24 CFR § 85.36(c).

Andrew M. Cuomo
Governor

Lisa Bova-Hiatt
Executive Director

2013. Therefore, when GOSR and ESD were contemplating contractors they could use to meet the urgent, real need to launch a tourism and marketing campaign, they decided to leverage the BBDO contract to perform work that it was already performing under its contract with ESD. ESD issued an amendment on July 9, 2013. The cost was similarly controlled by ESD, who set an amount not to exceed and then required a budget break down that included both number of hours and billing rates. (Second Amendment, provided to the OIG during their audit). These were the rates derived from the previously discussed competition, except for one labor category that was not previously needed. *Compare id.*, Sch. E, *with* Sch. D of original contract (provided to the OIG during their audit).

Dream Catcher

An Independent Price Analysis was Performed

Comment 1

ESD entered into a contract with Dream Catcher on June 15, 2012 from a competitive RFP advertised on the New York Contract Reporter. Seven firms responded to the RFP. Of the seven firms, Dream Catcher had the highest rated proposal in both technical ratings and cost. (Cost Evaluation and Pre-Interview Score Tally, previously provided to the OIG during their audit). In addition to being the best value for the advertising and marketing services, Dream Catcher is also a women-owned business enterprise ("WBE"), thereby helping ESD/GOSR demonstrate the effectiveness of its efforts to satisfy federal requirements to "take all necessary affirmative steps to assure that . . . women's business enterprises . . . are used when possible" and to meet its required state goals to use women and minority-owned businesses ("MWBEs"). 24 CFR § 85.36(e).

Comment 1

With regard to price, again, ESD ensured price reasonableness through a competitive price analysis. Dream Catcher's proposal, incorporated into the terms of the contract itself, included a budget breakdown with a total number of hours and a rate for each level of required personnel. Therefore, through competition, ESD was able to perform a price analysis by comparing multiple proposals that satisfied the federal requirements articulated in § 85.36(c). A price analysis was all that was required of the federal requirements. *See* 24 CFR § 85.36(c)(stating a grantee must perform a cost ***or*** price analysis" (emphasis added)). Indeed, the regulations express a preference for a price analysis, stating that a cost analysis is to be used when "adequate price competition is lacking" and for sole source contracts and modifications "unless price reasonableness can be established." *Id.* The regulations explicitly state that a "price analysis will be used ***in all other instances*** to determine the reasonableness of the proposed contract price." *Id.* (emphasis added).

Comment 1

The original Dream Catcher contract was valid at the time of the procurement and remained an active contract. Therefore, when seeking to meet an immediate, urgent need, as with the BBDO contract, ESD leveraged the Dream Catcher contract to perform work that it was already performing under its contract with ESD. ESD issued an amendment to the Dream Catcher contract on May 14, 2013. The cost was similarly controlled by ESD as with the BBDO contract, with ESD setting an amount not to exceed and then requiring a budget break down that included both number of hours and billing rates. (Second Amendment, provided to the OIG during their audit). These were the same rates derived from the previously discussed competition.

Comment 1

Finally, forcing ESD to separately procure BBDO's and Dream Catcher's services in post-Super Storm

Sandy RFPs so that specifically developed independent cost estimates could have been created would have slowed the State's ability to timely obtain these critical services and would have also likely cost more. As noted above, the ability of the State to leverage the buying power of ESD on contracts that were competitively procured years before likely resulted in significant costs saving as opposed to a stand-alone contract for limited services based current rates.

Therefore, in both the BBDO and the Dream Catcher contracts, ESD ensured price reasonableness by competitively awarding the contract, and by continuing to use the competed rates in an amendment to do the same type of work that the original contract required. GOSR's interpretation of § 85.36(f)(1), which is not plainly inconsistent with its terms, should be accorded maximum deference by the IG. 24 CFR § 570.480(c)(providing that HUD give the "maximum feasible deference to the state's interpretation of statutory requirements and the requirements of the [CDBG-DR] regulations, provided that these interpretations are not plainly inconsistent with the Act and the Secretary's obligation to enforce compliance with the intent of the Congress as declared in the Act"). For these reasons, GOSR respectfully requests that the Finding be rescinded.

<u>City of Long Beach</u>

An Independent Price Analysis was Performed

The City of Long Beach was among the localities most affected by the Storm whose tourism industry was significantly jeopardized. As GOSR has previously explained, the Storm had a huge, destructive impact on the City because it is located on a barrier island. During the summer, the popular 2.25 mile boardwalk and 3.5 mile beach make tourism a significant economic driver for the City. For example, on an average weekend summer day, the City may have over 25,000 people visit the beach. After Superstorm Sandy, it was widely known that the City had been hit very hard and its iconic boardwalk was totally destroyed. With local businesses rebuilding and preparing for the key 2013 summer season, it was critical that the public understood that the south shore of Long Island and Long Beach was open for business, although the Long Beach boardwalk was still being rebuilt. As such, this marketing campaign was critical for the business and the City's economic base. To meet this urgent need, GOSR entered into a subrecipient agreement with the City of Long Beach to oversee a marketing tourism campaign.

Comment 2

Consistent with the federal procurement policies, the City published an RFP on March 27, 2013. The City received four proposals. A selection committee composed of the City Manager, Assistant to the City Manager, and the Director of Communications ultimately chose the two companies that represented the best value, CAC and Zimmerman/Edelson, to provide a regional and marketing advertising campaign. Each of these firms offered different services and experience. Both had experience on Long Island, specifically in Long Beach. Zimmerman/Edelson offered overall promotion and marketing advice and experience in setting up key meetings and events, while CAC offered experience in marketing, development of advertisements and their placement in all medias (e.g., television, radio, print, social media, etc.).

Comment 2

Importantly, cost effectiveness was a factor in the City's decision-making. These two firms were close in overall scores but well ahead of the scores of the other two offerors. (Score sheets were provided to the

OIG during their audit). To further control cost, the CAC agreement included a not to exceed price of $700,000. It was competed through a formal competition, and, therefore, met the price analysis requirements of § 85.36(f).

Comment 2

The Zimmerman contract was for $42,000—below the simplified acquisition threshold—so full and open competition was not even required. *See* 24 CFR § 85.36(d)(1). Under HUD's small purchase procedures, for purchases under $100,000, grantees need only obtain price and rate quotation from an adequate number of sources. *Id.*

Comment 2

Therefore, the City did conduct an adequate price analysis through the competition process. Again, a cost analysis is not required where a price analysis is performed. *Id.* § 85.36(f) (requiring a cost ***or*** price analysis, not both). GOSR should be afforded maximum deference in interpreting these regulations. 24 CFR § 570.480(c). For these reasons, GOSR respectfully requests that the Finding be rescinded.

b. HUD OIG COMMENT: Subrecipient Agreements Did Not Include Complete Program Budget Information

Comment 3

GOSR RESPONSE: The fact that the detailed budget was less than the full subrecipient agreement did not limit the State's ability to monitor performance since the State disbursed less than the limit of the detailed budget. Both the ESD subrecipient agreement and the Long Beach subrecipient agreement contained descriptions of the work to be performed, a schedule for completing the work, and a budget that was sufficient to provide a sound basis for monitoring. The State's detailed review of ESD's requests for payment and the State's practice of requiring ESD to fully reconcile the payments of its subcontractor against advances made to the subcontractor provided a sufficient level of monitoring.

Comment 3

Similarly, the OIG has suggested that because the City of Long Beach subrecipient agreement contained a budget of $500,000 without a more detailed breakdown, that it was not sufficient. However, this subrecipient agreement contained only one program with a relatively small budget, which was expended in the course of a few months. A more detailed budget was not material to the State's ability to monitor the program.

Comment 3

In light of the foregoing, GOSR believes it had sufficient information to provide a sound basis to effectively monitor the subrecipients' performance under the subrecipient agreements, and, consequently this Finding should be rescinded.

Comment 3

The State respectfully submits that the OIG Recommendations 1A, 1B, and 1C are unwarranted in light of the above responses. The State believes that these issues have been addressed and no further action or documentation is required.

Governor's Office of
Storm Recovery

NEW
YORK
STATE

Andrew M. Cuomo
Governor

Lisa Bova-Hiatt
Executive Director

Should you require further information, please feel free to contact me via email at Lisa.BovaHiatt@stormrecovery.ny.gov or by phone at (212)480-4694.

Sincerely,

Lisa Bova-Hiatt
Executive Director

Cc: Daniel Greene, General Counsel, GOSR
Natalie Wright, Deputy Executive Director, GOSR
Robert Miller, Chief Financial Officer, GOSR
Jane Brogan, Policy Director, GOSR
Cassie Ward, Interim Director of Monitoring & Compliance/Senior Counsel, GOSR

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OIG Evaluation of Auditee Comments

Comment 1 State officials disagreed with the finding and explained that ESD performed a price analysis to determine the price of the contracts were reasonable. We disagree because for ESD, there was no independent cost estimate and cost or price analysis conducted for the Tourism and Marketing program funded with CDBG-DR funds. The price analysis referenced in the GOSR response refers to the 2011 procurement done prior to Hurricane Sandy. The State cannot ensure that the cost and price analysis were reasonable. We do not consider the use of cost proposals submitted by the proposing firms to be an independent analysis conducted before receiving bids or proposals. Regulations at 24 CFR 85.36 (f) (1) provide that grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modification. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals

Comment 2 State officials disagreed with the finding and explained the City published a request for proposal on March 27, 2013. The City received four proposals, and a selection committee chose the two companies that represented the best value, Creative Advertising Concepts and Zimmerman/Edelson, to provide a regional and marketing advertising campaign. The cost effectiveness was a factor in the City of Long Beach decision-making. We do not consider the use of cost proposals submitted by the proposing firms to be an independent analysis conducted before receiving bids or proposals. Regulations 24 CFR 85.36 (f) (1) provides that grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modification. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals.

Comment 3 State officials disagreed with the finding and explained that the fact that the detailed budget was less than the full subrecipient agreement did not limit the State's ability to monitor performance since the State disbursed less than the limit of the detailed budget. We disagree because the subrecipient agreements did not contain complete program budget information. The ESDC subrecipient agreement dated May 15, 2013, provided a budget of $21 million to promote tourism, $7.5 million to promote State of New York Recovery Programs, and $3 million for small business mentoring and consulting. The second subrecipient agreement dated June 19, 2013, provided CDBG-DR funds of $500,000. The budgets were not in sufficient detail to provide a basis for the recipient to effectively monitor performance with the agreement and did not agree with the total amount of funding. Regulations at 24 CFR 570.503 (b) (1) state that agreements shall include a description of the work to be performed, a schedule for completing the work, and a budget. These items shall be in sufficient detail to provide a sound basis for the recipient to effectively monitor performance under the agreement.