



Texas General Land Office, Austin, TX

Community Planning and Development Community Development Block Grant Disaster Recovery

**Office of Audit, Region 6
Fort Worth, TX**

**Audit Report Number: 2018-FW-1003
May 7, 2018**





To: Jessie Handforth Kome, Acting Director, Office of Block Grant Assistance, DGB

From: *//signed//*
Kilah S. White, Regional Inspector General for Audit, 6AGA

Subject: The Texas General Land Office, Austin, TX, Should Strengthen Its Capacity To Administer Its Hurricane Harvey Disaster Grants

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 Texas General Land Office.

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 817-978-9309.



Audit Report Number: 2018-FW-1003

Date: May 7, 2018

The Texas General Land Office, Austin, TX, Should Strengthen Its Capacity To Administer Its Hurricane Harvey Disaster Grants

Highlights

What We Audited and Why

We reviewed the Texas General Land Office in accordance with the U.S. Department of Housing and Urban Development, Office of Inspector General's (HUD OIG) goal to review disaster funding and based on a congressional request for HUD OIG to conduct capacity reviews for Hurricanes Harvey, Irma, and Maria grantees. Our audit objectives were to determine whether the State of Texas had the capacity to follow Federal procurement regulations when procuring contracts with Community Development Block Grant Disaster Recovery (CDBG-DR) funds and to spend its CDBG-DR funds in accordance with applicable requirements.

What We Found

The Texas General Land Office should strengthen its capacity to follow Federal procurement regulations when procuring contracts with CDBG-DR funds and to spend those funds in accordance with applicable requirements. Specifically, it could strengthen its capacity by (1) reviewing and updating its procurement and expenditure policies and procedures to ensure that they are implemented and working as designed, (2) increasing staffing to ensure that appropriate resources are available to administer the disaster funds, and (3) improving its processes for preventing duplication of benefits. It should also ensure that false statement and false claim warnings are included in all of its contract-related forms. These challenges exist because the agency will have responsibility for administering significantly more disaster grant funding than it has managed in the past. Further, the agency could benefit from a standard set of basic disaster recovery guidelines, established by HUD, to assist it in providing needed relief to affected communities. Strengthening its capacity to administer disaster funds would help ensure that the agency properly spends more than \$5 billion in CDBG-DR funding in accordance with applicable requirements.

What We Recommend

We recommend that HUD's Acting Director for the Office of Block Grant Assistance require the Texas General Land Office to (1) ensure that its procurement and expenditure policies and procedures are implemented and working as designed, (2) fill vacancies to ensure that staffing levels remain adequate and its staff is properly trained to administer disaster funds, (3) take steps to mitigate potential duplication of benefit risks, and (4) ensure that false statement and false claim warnings are included in all of its contract-related forms.

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Background and Objectives

On August 25, 2017, Hurricane Harvey made landfall as a Category 4 hurricane in southeast Texas, with sustained winds of more than 130 miles per hour. The hurricane stalled over southern Texas for days, causing catastrophic flooding and damage. It was the Nation's first major hurricane landfall since 2005 and broke all-time U.S. tropical rain records. In response, Congress passed Public Law 115-56 on September 8, 2017, which appropriated \$7.4 billion to the U.S. Department of Housing and Urban Development's (HUD) Community Planning and Development fund for necessary expenses for activities related to disaster relief, long-term recovery, restoration of infrastructure, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared in 2017.¹

On November 17, 2017, HUD issued a press release announcing that it had awarded \$5.024 billion to help hard-hit areas in Texas recover from Hurricane Harvey.² The funds were provided through HUD's Community Development Block Grant Disaster Recovery (CDBG-DR) program, and grantees were required to address unmet housing recovery needs. The Texas General Land Office is the agency responsible for the administration of disaster recovery funds in Texas.³ The agency's Community Development and Revitalization division manages its disaster programs.

In December 2017, HUD allocated \$57.8 million from its 2015 disaster appropriations⁴ to the State of Texas in response to Hurricane Harvey. Congress appropriated \$28 billion in additional disaster funding in February 2018.⁵ On April 10, 2018, HUD announced a \$4.7 billion allocation to the State of Texas from the \$28 billion appropriation to address unmet needs from Hurricane Harvey and to support mitigation activities. As of April 26, 2018, the Texas General Land Office had received no CDBG-DR funds related to Hurricane Harvey recovery.

Because of the devastating damage caused by Hurricane Harvey, the Texas General Land Office will be responsible for administering substantially more funding than it has previously administered.⁶ As shown in the table below, from 2011 until the Hurricane Harvey event, HUD had allocated nearly \$350 million⁷ to the Texas General Land Office in four CDBG-DR grants. As of February 21, 2018, for the 2015 and 2016 flood disaster grants, none of the funds had been

¹ Forty-one counties in Texas were designated as disaster counties.

² The \$5.024 billion award was from the \$7.4 billion appropriated under Public Law 115-56. On February 9, 2018, HUD issued implementing guidance for the appropriated funds through Federal Register Docket No. FR-6066-N-01.

³ On July 1, 2011, the governor of Texas reassigned responsibility for the administration of disaster recovery funds to the Texas General Land Office.

⁴ This allocation was the remaining amount from \$400 million appropriated under Public Law 115-31.

⁵ The President signed Public Law 115-23 on February 9, 2018.

⁶ These funds will remain unspent until the award process is completed and HUD releases the funds.

⁷ The Texas General Land Office took over administration of the in-progress \$3 billion 2008 Hurricane Ike disaster grant when it assumed responsibility for Texas disaster grants in 2011.

drawn down except for administrative and planning costs, and the 2011 wildfire grant had an unspent balance of \$10 million.

Texas General Land Office CDBG-DR funding status as of February 21, 2018

| Disaster event | Grant amount | Disbursed amount | Balance remaining |
|--|----------------------------------|-------------------|----------------------|
| 2011 multiple disasters (Bastrop wildfires) | \$31,319,686 | \$21,253,169 | \$10,066,517 |
| 2011-2013 Hurricane Sandy & other events (Bastrop II wildfires) | 5,033,377 | 5,033,377 | 0 |
| Total 2011-2013 wildfire events | 36,353,063 | 26,286,546 | 10,066,517 |
| 2015 Hurricanes Joaquin & Patricia & other events | 74,568,000 | 589,816 | 73,978,184 |
| 2016 floods and other events | 238,895,000 | 0 | 238,895,000 |
| Total 2015-2016 events | 313,463,000 | 589,816 | 312,873,184 |
| Texas General Land Office disaster grants before Hurricane Harvey | 349,816,063 | 26,876,362 | 322,939,701 |
| 2015 grant - Hurricane Harvey allocation | 57,800,000 | 0 | 57,800,000 |
| 2017 Hurricane Harvey | 5,024,215,000 | 0 | 5,024,215,000 |
| Hurricane Harvey grants | 5,082,015,000⁸ | 0 | 5,082,015,000 |
| Total disaster grant funding | 5,431,831,063 | 26,876,362 | 5,404,954,701 |

On October 10, 2017, the U.S. Senate’s Committee on Homeland Security and Governmental Affairs sent a letter to the Acting Inspector General of HUD, requesting immediate and intensive oversight by HUD’s Office of Inspector General (OIG) to protect taxpayer interests and to ensure that hurricane relief funds reached victims of Hurricanes Harvey, Irma, and Maria. The Committee wanted to ensure that appropriate oversight mechanisms were in place and encouraged HUD OIG to conduct capacity audits to evaluate grantees’ and subgrantees’ ability to properly manage CDBG funding and to follow Federal procurement regulations. Additionally, the Committee asked HUD OIG to report evidence of wasteful spending, fraud, or poor contract management as it occurred so that Congress could intervene as needed. This capacity audit is an initial step in our commitment to oversee the Texas General Land Office’s efforts to administer its Hurricane Harvey CDBG-DR funds in an effective and efficient manner. The fieldwork for this assignment was completed before HUD’s \$28 billion disaster allocations on April 10, 2018; therefore, this report focused only on the agency’s capacity to administer \$5 billion in Hurricane Harvey disaster funding. Nearly doubling the State’s Hurricane Harvey disaster funding magnifies the concerns identified in this capacity audit report.

Our audit objectives were to determine whether the State of Texas had the capacity to follow Federal procurement regulations when procuring contracts with CDBG-DR funds and to spend its CDBG-DR funds in accordance with applicable requirements.

⁸ HUD’s April 10, 2018 allocation of \$4,726,631,000 to the State of Texas will make the agency responsible for more than \$10 billion in disaster funding.

Results of Audit

Finding: The Texas General Land Office Should Strengthen Its Capacity To Administer Its Hurricane Harvey Disaster Grants

The Texas General Land Office should strengthen its capacity to follow Federal procurement regulations when procuring contracts with CDBG-DR funds and to spend those funds in accordance with applicable requirements. Specifically, to address potential challenges, it could strengthen its capacity by (1) reviewing and updating its procurement and expenditure policies and procedures to ensure that they are implemented and working as designed, (2) increasing staffing to ensure that appropriate resources are available to administer the disaster funds, and (3) improving its processes for preventing duplication of benefits. It should also ensure that false statement and false claim warnings are included in all of its contract-related forms. These challenges exist because the agency will have responsibility for administering significantly more disaster grant funding than it has managed in the past. Further, the agency could benefit from a standard set of basic disaster recovery guidelines, established by HUD, to assist it in providing needed relief to affected communities. Strengthening its capacity to administer disaster funds would help ensure that the agency properly spends more than \$5 billion in CDBG-DR funding in accordance with applicable requirements.

The Texas General Land Office Must Remain Diligent To Ensure That Its Disaster Procurement Policies and Procedures Are Implemented as Designed

The Texas General Land Office's policies and procedures included internal controls that were adequate for meeting Federal requirements for procuring contracts with CDBG-DR funds. However, since the Texas General Land Office had spent only administrative costs for its 2015 or later grants, we were unable to test the effectiveness of those internal controls. While the agency appeared prepared to manage its Hurricane Harvey procurements effectively, it needs to remain aware of the potential challenges it could face in responding to such a catastrophic event. As part of the certification process for its 2015 disaster grant, the Texas General Land Office self-certified to HUD that its procurement policies and procedures were equivalent to 2 CFR (Code of Federal Regulations) 200.318 through 200.326.⁹ However, the agency referenced entire chapters of the State code¹⁰ as support but did not identify which sections of the State code aligned with 2 CFR 200.318 through 200.326. The Federal Register¹¹ notice that governs the agency's use of \$5.024 billion in Hurricane Harvey funds allows the Texas General Land Office to choose among three options to show that it has proficient procurement procedures. Public Law 115-56 states that before making any grant, HUD must certify in advance that the grantee has in place proficient procurement processes. As of February 13, 2018, that certification

⁹ While the applicable Federal Register notice (FR-5938-N-01) required grantees to show only that proficient procurement processes were in place, HUD's Risk Analysis Documentation Checklist required the agency to certify whether its procurement policies and procedures were equivalent to Federal standards.

¹⁰ Texas Government Code 2155 and 2156

¹¹ Federal Register Docket No. FR-6066-N-01, issued February 9, 2018

process had not been completed. Before it submits its procurement process certifications to HUD for approval, the Texas General Land Office needs to ensure that its processes fully comply with requirements and that it can support the compliance. Further, the agency must consider whether the option it chooses to show proficient procurement procedures complies with requirements for its other Federal disaster grants.¹²

The Texas General Land Office Had Prior Procurement Issues

The Texas General Land Office had prior audit findings regarding its procurements. For its Bastrop II wildfires grant, HUD OIG reported¹³ that the Texas General Land Office did not show how its procurement process was equivalent to the Federal requirements for a cost estimate and cost analysis in connection with every procurement action. The report also showed that the agency's process allowed for the cost plus percentage of cost method of contracting when Federal regulations prohibited its use. Additionally, another HUD OIG report¹⁴ found that the State of Texas' contracts and contract amendments included prohibited cost plus provisions and other procurement deficiencies. As the reassigned agency responsible for managing the State's disaster grant, the Texas General Land Office took corrective actions to address the findings in that report.

The agency's independent auditor also reported a lack of documentation of bids or quotes from additional vendors.¹⁵ Since the agency was still in the planning phase for managing its CDBG-DR Hurricane Harvey disaster funds, it could use insights gained from previous procurement reviews of its program, such as those described above, to strengthen its capacity for responding to the disaster. Paying attention to potential risks could help the agency avoid future procurement issues and prevent repeat audit findings.

The Texas General Land Office Needs To Keep Abreast of Changes

The Texas General Land Office needs to keep abreast of changes and updates that could affect its disaster program. For example, the Federal Register notice,¹⁶ issued on February 9, 2018, requires grantees to provide a legal opinion stating that they have proficient procurement policies and procedures. Another Federal Register notice that governs Hurricane Harvey activities, issued on December 27, 2017,¹⁷ did not contain that requirement. If the agency receives additional Hurricane Harvey disaster funding, the Federal requirements for that grant could also include different provisions about procurements or other aspects of the grant. Accounting for the differences in requirements for multiple grants that regulate the same disaster event and effectively responding to them could be a difficult challenge to navigate. Agency staff discussed the challenges associated with understanding and keeping informed of guidance with rules that varied, and dealing with different requirements for each disaster. These examples show how a

¹² The Texas General Land Office's agreement with the Federal Emergency Management Agency (FEMA) requires compliance with 2 CFR 200.317 through 200.326.

¹³ HUD OIG audit report 2016-PH-0005, issued September 29, 2016, reported on the agency's 2011 wildfire grant.

¹⁴ HUD OIG audit report 2012-FW-1005, issued March 7, 2012

¹⁵ Independent Auditor's Report – Federal Portion of Statewide Single Audit Report for the Year Ended August 31, 2015

¹⁶ See footnote 10.

¹⁷ Federal Register Docket No. FR-6074-N-01, issued December 27, 2017

standard set of disaster requirements, established by HUD, could benefit the agency because it could concentrate on administering the program instead of reconciling competing requirements.

These potential risks and examples show why the Texas General Land Office must remain diligent and review and update its internal controls throughout the grant cycle to ensure that the procurement policies and procedures are implemented and working as designed, including the Federal prohibition of cost plus percentage of cost contracts. The agency will also need to provide its subrecipients with timely, accurate and complete procurement guidance and adequately monitor them to ensure that the disaster funds are used for their intended purposes.

The Texas General Land Office Needs More Staff Resources To Administer More Than \$5 Billion in Hurricane Harvey Funding

The Texas General Land Office's staffing resources were inadequate to administer \$5 billion in Hurricane Harvey funding. The agency created new positions in its Community Development and Revitalization division in anticipation of responding to upcoming disaster projects. According to its February 2018 organization chart, the agency had 34 vacancies out of 92 full-time positions (37 percent), including 5 in leadership. These

Inadequate staff resources could adversely affect disaster recovery.

vacancies, if not filled, could adversely affect the agency's ability to provide proper oversight of its disaster grants. An agency manager stated that the positions would be filled as funding became available. As of February 21, 2018, the Texas General Land Office had four open HUD disaster grants, including the three that were granted after the agency took over responsibility for disaster recovery in Texas. In addition, the U.S. Department of Homeland Security's (DHS) OIG reported¹⁸ the Texas General Land Office's concerns over its hiring, training, and contracting for additional staff to administer Federal Emergency Management Agency (FEMA)¹⁹ disaster grants. Staff members assigned to HUD grants worked primarily on grants related to Hurricane Ike, which hit Texas in September 2008, and indicated that they were overwhelmed. Adding a \$5 billion grant to a department that is overwhelmed by its current workload will present challenges that the agency will need to address to operate an effective and efficient disaster program. To manage its disaster program successfully, the agency must ensure that it fills its vacant positions as it prepares to manage the more than \$5 billion Hurricane Harvey grant.

Further, the Procurement division at the Texas General Land Office consisted of five employees, who performed procurements for all divisions of the agency. Procurements for the Community Development and Revitalization division are expected to significantly increase with more than \$5 billion in Hurricane Harvey funding. The resulting workload may be overwhelming for a procurement division of five.

¹⁸ DHS OIG report, OIG-17-121-MA, issued September 29, 2017

¹⁹ FEMA is part of DHS.

The Texas General Land Office Had Subrecipient Monitoring Issues

A review of the Texas General Land Office's monitoring reports identified an agency weakness. Specifically, a monitoring report from 2017²⁰ showed that the Texas General Land Office did not use due diligence when following up with a subrecipient on findings related to procurement. It verified corrective actions for five of six contracts that did not include required contract provisions. The agency did not follow up on the sixth contract because it concluded that retaining the amendment in the subrecipient's local files and relying on the subrecipient's statement of intent provided reasonable evidence to close the finding. If the agency hired additional staff members, there could be additional resources available to allow it to adequately follow up on monitoring findings and concerns.

Further, the 2015 and 2016 independent auditor's reports²¹ stated that the Texas General Land Office's monitoring of subrecipients was insufficient to address the risk of potential issues at the subrecipient level. The agency's Community Development and Revitalization division had 14 positions in the Monitoring and Quality Assurance department; however, 6 of those positions were vacant.²² A significant funding increase in this environment raises concerns that monitoring will continue to be insufficient or possibly become unmanageable. Effective management of the agency's Hurricane Harvey grants will require diligent oversight of its subrecipients to ensure that the disaster funds will be used for their intended purposes. Filling these critical vacancies will also require attention to the training needs of new hires or reassigned staff.

The Texas General Land Office Needs To Improve Its Processes for Preventing Duplication of Benefits

A duplication of benefits occurs when an agency provides assistance, which was the primary responsibility of another agency, and the agency with primary responsibility later provides assistance.²³ The Federal duplication of benefits prohibition ensures that Federal assistance serves only to supplement insurance and other forms of disaster assistance.²⁴ Under the generally accepted hierarchy of delivery,²⁵ FEMA and Small Business Administration (SBA) assistance is provided to individuals before CDBG-DR assistance can be delivered. The Texas General Land Office's processes for preventing duplication of benefits needs to be improved by updating agreements with applicable agencies and ensuring that warnings regarding false statements and false claims are included on all contract-related forms.

The Texas General Land Office had data-sharing agreements with FEMA and SBA. According to Texas General Land Office staff, the agency had no issues accessing required data from the two Federal agencies when ensuring the prevention of duplication of benefits. On January 5, 2017, the Texas General Land Office executed a data-sharing agreement with SBA for the 2015

²⁰ League City Monitoring Report, issued April 6, 2017

²¹ See footnote 14 and Independent Auditor's Report – Comprehensive Annual Financial Report 2016 for the State of Texas for the Fiscal Year Ended August 31, 2016

²² These 6 vacancies were included in the overall 34 vacancies.

²³ 44 CFR 206.191(d)

²⁴ Federal Register Docket No. FR-5582-N-01, issued November 16, 2011

²⁵ 44 CFR 206.191(d)(2)

floods. The term of the agreement was effective for only 18 months, meaning that it should expire on July 5, 2018. However, as of February 21, 2018, the Texas General Land Office had drawn down no program funds. In this case, it appeared that the agreement would expire before it could provide useful information to prevent duplicate benefits. The Texas General Land Office should negotiate with SBA to extend its data-sharing agreements, including the agreement it negotiates for its Hurricane Harvey grants, for the term of the expenditure requirements set forth in public laws or the Federal Register.

The Texas General Land Office stated that it was unable to obtain data from the Texas Department of Insurance regarding private insurance payments to potential grant recipients. However, the agency was unable to provide documentation to support either a request or denial to share information. The lack of data sharing increases the risk of duplication of benefits because the Texas General Land Office must rely on applicant self-certifications. It also increases the risk of the agency's violating Federal law. The agency should initiate negotiations with the Texas Department of Insurance to establish data-sharing agreements for the Hurricane Harvey disaster, any open CDBG-DR grants, and future disasters to prevent duplication of benefits.

The Texas General Land Office Should Mitigate Risks of Fraud, Waste, and Abuse

Incorporating warnings in information provided to potential applicants could mitigate instances of fraud, waste, and abuse in the agency's disaster programs, including duplication of benefits. A form in the Texas General Land Office's application packet did not contain a false statement and false claim warning.²⁶ Further, one of the sample contracts provided by the agency did not include a false statement and false claim warning. Without false statement and false claim warnings on all of its contract forms, applicants could defraud the agency or abuse its program, and the Texas General Land Office and HUD could be unable to hold the responsible party accountable for civil or criminal penalties. The Texas General Land Office should ensure that false statement and false claim warnings are included in all of its contract-related forms to help ensure that only eligible applicants benefit from the agency's limited resources.

The Texas General Land Office Faces Challenges Due To a Substantial Increase in Disaster Funding

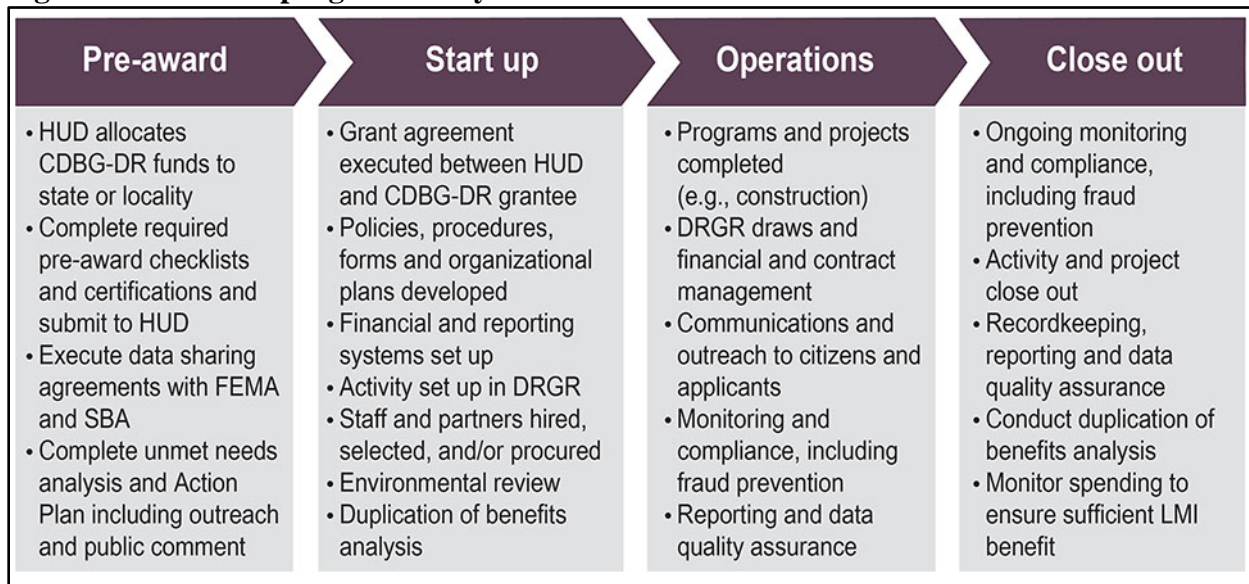
Because of the catastrophic scale of the disaster,²⁷ the Texas General Land Office will have responsibility for administering significantly more disaster recovery grant funding than it has managed in the past. Before Hurricane Harvey, HUD allocated \$350 million to the Texas General Land Office for disaster activities. It will receive more than \$5 billion to respond to Hurricane Harvey, which will substantially affect the agency's operations. The agency faces significant pressure to get recovery funds into the affected communities. Its successful response is dependent on quick action, which includes establishing a solid foundation that will support the agency's efforts over the long term. However, the agency must go through an extensive and complex process to deliver funding to the communities, which affects how long it takes for relief

²⁶ 18 U.S.C. (United States Code) 1001 provides for false statement criminal penalties. 31 U.S.C. 3729 provides for false claim civil penalties.

²⁷ The Texas General Land Office estimated the Hurricane Harvey damages at \$160 billion, making it the costliest disaster event in U.S. history.

to get to people in need. The figure below shows the program life cycle of a typical CDBG-DR grant.²⁸ The agency cannot begin disbursing funds until it gets to the operations phase, which can be well after the disaster event occurred.

Figure: CDBG-DR program life cycle



The Texas General Land Office must also coordinate with other agencies to prioritize needs which are far greater than available funds. These coordination efforts, along with other considerations outside the agency’s control, such as having to wait until it receives implementation guidance and approvals from HUD to get through segments of the CDBG-DR life cycle, impacts how quickly funds can be distributed to impacted individuals and communities. According to HUD, disaster recovery activities are largely completed after approximately 6 years. Because the agency will be receiving substantially more disaster funds than it has administered in the past, this process could take significantly longer.

The Texas General Land Office Could Benefit From a Standard Set of Disaster Recovery Requirements

The Texas General Land Office had improved its processes for providing funding to affected communities by being prepared to act once HUD provided guidance. For example, before HUD issued Harvey-related Federal Register notices,²⁹ the Texas General Land Office had draft plans in progress.³⁰ Just over 3 weeks after HUD issued the December 27, 2017, Federal Register notice,³¹ the Texas General Land Office posted its Action Plan on its website. The agency expressed interest in the ability to have a general framework, established by HUD, which could be changed easily with specific funding requirements. Management stated that with multiple

²⁸ This figure was included in the CDBG-DR toolkit that HUD made available to its grantees.
²⁹ Federal Register Docket No. FR-6066-N-01, issued February 9, 2018, and Federal Register Docket No. FR-6074-N-01, issued December 27, 2017
³⁰ The Texas General Land Office’s draft Action Plan was based on Federal Register notices for previous disasters.
³¹ This notice allocated \$57.8 million to Texas in response to Hurricane Harvey.

Federal Register notices being issued for disaster events, it would be ideal for repetitive grantees to have one place to get standard requirements and that a standard set of requirements would make the Action Plan process easier. The agency also stated that a standard set of requirements would be beneficial to speed up the disaster recovery process. With a standard set of disaster requirements, the Texas General Land Office could expedite assistance to affected communities and provide for unmet recovery needs in the most impacted and distressed areas affected by the disaster without unnecessary delay.

The Texas General Land Office Had Plans To Receive Hurricane Harvey Funds

A review of the Texas General Land Office's policies and procedures showed that it had extensive and detailed plans for managing its Hurricane Harvey grant funds. The agency's policies and procedures covered many aspects of its program, including procurement, financial management,³² subrecipient monitoring, duplication of benefits, reporting systems and requirements, contract management, action plans, and website processes. These policies and procedures, if followed, could assist the agency in administering its disaster grant funds in an effective and efficient manner.

In addition, the Texas General Land Office had a comprehensive website regarding its disaster recovery activities. The website detailed the agency's disaster recovery plans and had multiple web pages with information concerning housing, infrastructure, and other disaster topics. The agency published all of its Action Plans, quarterly reports, and amendments on its website, which allowed affected communities to stay informed of the Texas General Land Office's Hurricane Harvey plans and activities.

Conclusion

The Texas General Land Office had extensive and detailed plans to manage more than \$5 billion in Hurricane Harvey grant funds. However, it should strengthen its capacity to manage its CDBG-DR funds by implementing proactive measures to address potential risks, including those identified in this report. Disaster recovery is still relatively new to the Texas General Land Office as it has been fully responsible for nearly \$350 million only since the governor assigned this responsibility to the agency in 2011. Administering more than \$5 billion could present significantly more challenges than the Texas General Land Office is accustomed to managing. If the agency proactively addresses potential vulnerabilities, its capacity to follow Federal procurement requirements and spend its CDBG-DR funds in accordance with rules and regulations could be improved. Further, diligent oversight by the Texas General Land Office could mitigate the risks of waste, fraud, and abuse in its Hurricane Harvey programs and provide greater assurance that its disaster funds are used for their intended purposes.

Recommendations

We recommend that HUD's Acting Director for the Office of Block Grant Assistance require the Texas General Land Office to

³² The agency's expenditure policies and procedures were included in its financial management standard operating procedures.

- 1A. Review and update its internal controls throughout the grant cycle to ensure that the procurement and expenditure policies and procedures are implemented and working as designed, including the Federal prohibition of cost plus percentage of cost contracts.
- 1B. Fill vacancies, ensuring that staffing levels remain adequate to administer Hurricane Harvey disaster grant funds.
- 1C. Negotiate with SBA to extend its data-sharing agreements for the term of the expenditure requirements set forth in public laws or the Federal Register.
- 1D. Initiate negotiations with the Texas Department of Insurance to establish data-sharing agreements for the Hurricane Harvey disaster, any open disaster recovery grants, and future disasters.
- 1E. Ensure that false statement and false claim warnings are included in all of its contract-related forms.

Scope and Methodology

We performed our fieldwork at the Texas General Land Office's offices located at 1700 North Congress Street, Austin, TX, and 3429 Executive Center Drive, Austin, TX, and our offices in San Antonio, TX, New Orleans, LA, and Fort Worth, TX, from December 2017 through March 2018. This report focused on the agency's capacity to administer the \$5 billion in disaster funding announced on November 17, 2017. Our audit generally covered the period August through December 2017 but included a review of prior disaster activities as applicable to our audit objectives. On April 10, 2018, after our fieldwork was completed, HUD announced an additional \$4.7 billion in Hurricane Harvey funding to the State of Texas.

To accomplish our audit objectives, we

- Reviewed relevant criteria, including Appropriations Acts that affected Hurricane Harvey funding, Federal Register notices, and State of Texas procurement requirements.
- Interviewed program staff at HUD and the Texas General Land Office.
- Met with representatives from DHS OIG.
- Communicated with a representative from SBA.
- Reviewed the grant agreement between HUD and the Texas General Land Office for the 2015 floods as this was the most recent executed grant agreement available.
- Reviewed the most recent HUD OIG audit report on the Texas General Land Office.
- Reviewed two relevant HUD OIG internal audit reports that addressed procurement issues.
- Reviewed the two most recent independent auditor's reports.
- Reviewed three relevant DHS OIG reports that involved the Texas General Land Office, Texas disaster recovery efforts, and overall procurement and contracting activities.
- Reviewed Texas General Land Office policies and procedures, organization charts, checklists, and published Action Plans.
- Reviewed HUD monitoring reports and checklists.
- Reviewed the Texas General Land Office's preaward checklists for the 2015 floods that were submitted to HUD.
- Reviewed data-sharing agreements among the Texas General Land Office, DHS, and SBA.
- Reviewed self-certifications required of subgrantees by the Texas General Land Office.
- Tested a representative sample of two Texas General Land Office monitoring reports on its subgrantees, issued in fiscal year 2017, to determine whether the Texas General Land Office conducted adequate monitoring reviews and followed up on findings. Although our sampling approach did not allow us to project the results to the population of 16 monitoring reports, it was sufficient to meet the audit objectives.
- Tested a representative sample of 27 employee timesheets during the review period to determine whether employees who charged time to CDBG-DR activities worked on these activities or on other activities. Although our sampling approach did not allow us

to project the results to the population of 315 timesheets, it was sufficient to meet the audit objectives.

- Observed operations and work space at the Texas General Land Office.
- Discussed our preliminary findings with the Texas General Land Office.

Computer-processed data generated by the Texas General Land Office were not used to materially support our audit finding. We used information that HUD provided regarding the agency's CDBG-DR funding status for background purposes only. Thus, we did not assess the reliability of the data.

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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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 objectives:

- Compliance with Federal procurement and expenditure requirements.
- Subrecipient monitoring.
- Preventing duplication of benefits.

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:

- The Texas General Land Office should strengthen its capacity to administer its Hurricane Harvey disaster grants.


Appendix

Appendix A

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation

Auditee Comments



TEXAS GENERAL LAND OFFICE
GEORGE P. BUSH, COMMISSIONER

April 17, 2018

Kilah S. White
Regional Inspector General for Audit
Office of Audit (Region 6)
819 Taylor Street, Suite 13A09
Fort Worth, TX 76102


Re: Responses to HUD OIG Audit Report (April 2018)

Dear Ms. White:

Thank you for the opportunity to respond to HUD OIG's draft audit report detailing the findings of the December 2017 through March 2018 audit of Texas General Land Office CDBG-DR program activities specific to Hurricane Harvey. Attached, please find our responses to HUD OIG's issues.

We appreciate the opportunity to work with your staff, and will continue to strengthen our existing program structure based on the audit report provided by HUD OIG. Please feel free to contact me at 512-475-5081 with any questions or concerns.

Sincerely,


Martin Rivera, Jr., Deputy Director
Monitoring and Quality Assurance
Community Development and Revitalization

1700 North Congress Avenue, Austin, Texas 78701-1495
P.O. Box 12873, Austin, Texas 78711-2873
512-463-5001 glo.texas.gov

Auditee Comments



MEMORANDUM

TEXAS GENERAL LAND OFFICE • GEORGE P. BUSH • COMMISSIONER

Date: 17 April 2018
To: George P. Bush, Land Commissioner
Mark Havens, Chief Clerk and Deputy Land Commission
From: Martin Rivera, Jr., Deputy Director, Monitoring and Quality Assurance, CDR
Through: Pete Phillips, Senior Deputy Director – CDR
Heather Lagrone, Deputy Director – CDR
Subject: Responses to HUD OIG Audit Report (April 2018)

The Texas General Land Office (GLO) appreciates the opportunity to respond to the issues identified in the report. The GLO began working diligently before, during, and after Hurricane Harvey devastated the Texas coast to review and update its internal controls, fill vacancies, and ensure agreements were updated to strengthen our existing processes to meet all Federal program requirements.

The GLO is currently revising its staffing plan to meet the challenges of a \$5 billion recovery grant. In the absence of specific deficiencies, the GLO will continue to modify and implement this plan to ensure the successful administration of CDBG-DR grants allocated to meet the disaster recovery needs of affected Texas residents.

The GLO appreciates third-party audits and welcomes the opportunity to strengthen our existing processes.

HUD OIG Audit Report Issues and the GLO's Responses

1A. Review and update its internal controls throughout the grant cycle to ensure that the procurement and expenditure policies and procedures are implemented and working as designed, including the Federal prohibition of cost plus percentage of cost contracts.

Issue

As part of the certification process for its 2015 disaster grant, the Texas General Land Office self-certified to HUD that its procurement policies and procedures were equivalent to 2 CFR (Code of Federal Regulations) 200.318 through 200.326.8.

Response

The GLO submitted a procurement memo as part of the certification process indicating Texas Government Code 2155 and 2156 meet the general specifications outlined in 24 CFR 570.489.

Comment 1

Ref to OIG Evaluation

Auditee Comments

Comment 2

State code requires goods and services be acquired by the *most cost-effective method of acquisition available*, which is equivalent to the full and open competition standards of 24 CFR 570.489(g).

The GLO, in accordance with FR-6066-N-01, adopted 2 CFR 200.317 allowing the GLO to follow its own state procurement policies and procedures for the 2015 and 2016 flood grants, as well as the Harvey grant.

Issue

The Texas General Land Office Had Prior Procurement Issues.

Response

HUD OIG's Audit Report Number 2016-PH-0005 identified a lack of equivalency between the CFR and state statutes. We identified corresponding state statutes; however, our N/A response to the cost-plus percentage of cost methodology was to indicate that there is no state prohibition on the use of cost-plus methodology.

The GLO is fully aware that the cost-plus percentage of cost is an unallowable contracting method under Federal requirements; therefore, the contents of the certification checklist should not be misinterpreted to indicate that the GLO uses the cost-plus contracting methodology when issuing CDBG-DR contracts. The GLO would welcome an opportunity to clarify its certification checklist submission.

Comment 3

On July 1, 2011, the GLO became the lead state agency for the Disaster Recovery Program. HUD OIG audit report 2012-FW-1005 covered the period from October 2008 through June 2011, and reflected the procurement and contracting actions of the predecessor agency prior to the Disaster Recovery Program transitioning to the GLO. As the new responsible agency for the Disaster Recovery Program, the GLO took immediate corrective actions that included the addition of benchmarks, deliverables, and the restructuring and reduction of project management services contracts.

The Texas Multiple Award Schedule (TXMAS) contracts program is an alternative purchasing method that includes contracts awarded by the Federal government or other governmental entities using a competitive process, and whose contracts are adaptable to the laws of Texas. The 2015 independent auditor's report identified 1 out of 18 procurement files reviewed (6 percent error rate) did not have bids or quotes from additional vendors outside of the TXMAS program. Since then, the GLO's procurement process was modified to include soliciting quotes in addition to utilizing TXMAS contracts.

The GLO will continue to assess, strengthen, and improve its existing procurement function, and remains confident that our existing solicitation process complies with state and Federal procurement standards.

1B. Fill vacancies, ensuring that staffing levels remain adequate to administer Hurricane Harvey disaster grant funds.

**Ref to OIG
Evaluation**

Auditee Comments

Comment 4

Issue

The Texas General Land Office's staffing resources were inadequate to administer \$5 billion in Hurricane Harvey funding.

Response

As part of our planning, the GLO has been actively determining optimal staffing levels and hiring timeframes for each of its program functions (i.e., procurement, contracting, program, finance, etc.). However, in the absence of a reserve budget to fund administrative (staff) costs prior to the \$5 billion grant allocation, the GLO has been posting employment positions as close as possible to the approval of the Action Plan. Additionally, the staffing plan continues to evolve to correspond with changes to program delivery.

Comment 5

We strongly object to the inclusion of the U.S. Department of Homeland Security's (DHS) OIG report. The Federal Emergency Management Agency (FEMA) program was new to the GLO and has no bearing on CDBG-DR program activities or the significant CDBG-DR experience held by our current staff.

Issue

The Texas General Land Office Had Subrecipient Monitoring Issues.

Response

The approach for closing out monitoring reports considers the magnitude and corrective action taken by subrecipients to mitigate risks identified in the report. In the case of the contract provision finding, corrective action and supporting documents were provided on five of six requested amendments. Given the administrative nature of the finding and the risk the excluded provision had to the overall contract, we exercised professional judgment and allowed the last amendment be retained at the subrecipient level. Relying on the subrecipient's statement of intent was reasonable and sufficient to close the review.

Comment 6

Furthermore, HUD OIG's comment on hiring additional staff members to perform adequate follow-up on reportable issues would not have impacted the action taken, as that was a matter of professional judgment and not staff resources.

Issue

...the 2015 and 2016 independent auditor's reports stated that the Texas General Land Office's monitoring of subrecipients was insufficient to address the risk of potential issues at the subrecipient level.

Response

The GLO provided the independent auditor's report for the year ending August 31, 2017, that substantially resolved the 2015 and 2016 subrecipient monitoring finding identified in the previous

**Ref to OIG
Evaluation**

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Comment 7

independent auditor's report. There is a remaining issue with our existing software categorized under subrecipient monitoring; however, that is independent of the monitoring function.

Given the significance of the monitoring and oversight function, the GLO requested a meeting with HUD OIG to discuss our monitoring framework; however, HUD OIG staff were unable to accommodate our request. As a result, the GLO was not allowed an opportunity to provide HUD OIG with an understanding of the processes in place to identify the improvements made over the last several years to our existing monitoring structure.

With respect to monitoring staffing levels, the GLO will also be increasing staff resources to correspond with the implementation of the program and its lifecycle.

1C. Negotiate with SBA to extend its data-sharing agreements for the term of the expenditure requirements set forth in public laws or the Federal Register.

Response

Comment 8

We agree with the assertions noted in the report. The GLO has begun planning for updating data sharing agreements as well as coordinating with the Texas Department of Insurance. Our electronic file retention system will be used to document our efforts with all entities providing data for assessing Duplication of Benefits (DOB).

We will also revise our forms and contracts to ensure that they include the necessary false claim warnings. Given that some information may be captured electronically, certifications will likely be moved to an electronic platform.

1D. Initiate negotiations with the Texas Department of Insurance to establish data-sharing agreements for the Hurricane Harvey disaster, any open disaster recovery grants, and future disasters.

Response

Comment 8

Reference response identified in 1C.

1E. Ensure that false statement and false claim warnings are included in all of its contract-related forms.

Response

Comment 8

Reference response identified in 1C.

OIG Evaluation of Auditee Comments

- Comment 1 The Texas General Land Office explained that for its 2015 disaster grant, it submitted a memo as part of the self-certification process indicating that Texas Government Code 2155 and 2156 met the general specifications outlined in 24 CFR 570.489. State Code requires goods and services be acquired by the most cost effective method of acquisition available, which is equivalent to full and open competition standards of 24 CFR 570.489(g).
- We did not revise the audit report because the Texas General Land Office's response did not identify which sections of the State code aligned with 2 CFR 200.318 through 200.326, which is what HUD requested in its required certification. Further, procurement standards from which the overall effect is to provide for full and open competition are not equivalent to the overall effect of the Federal procurement standards found in 2 CFR 200.318 through 200.326.
- Comment 2 The Texas General Land Office discussed its response to HUD OIG audit report 2016-PH-0005 and explained its position regarding equivalency and the use of cost plus percentage of cost contracting.
- We acknowledge the Texas General Land Office's awareness that cost plus percentage of cost contracting is prohibited under Federal requirements. This capacity audit report pointed out previous audit findings that the agency should avoid repeating. We encourage the agency to work with HUD to clarify its certification checklist and resolve the recommendation during the audit resolution process.
- Comment 3 The Texas General Land Office stated that the procurement findings cited in the OIG's audit report 2012-FW-1005 covered the period from October 2008 through June 2011, and reflected the procurement actions of the predecessor agency. As the new responsible agency for the Disaster Recovery program, the Texas General Land Office took immediate corrective actions.
- We acknowledge that the Texas General Land Office assumed responsibility for the State's disaster program from a predecessor agency and made improvements. We revised the report.
- Comment 4 The Texas General Land Office presented its plans for increasing its staff.
- We acknowledged in the draft report that the Texas General Land Office planned to fill positions as funding became available. We encourage the Texas General Land Office to continue filling the positions needed to adequately administer its disaster funding.
- Comment 5 The agency strongly objected to the inclusion of the DHS OIG report.

We included the DHS OIG report because it described some of the same staffing concerns identified during our review. The goal to cultivate positive internal and external stakeholder relations is an integral part of our strategic plan. Specifically, we regularly initiate and participate within the Inspector General community to further our ability to enhance Federal government performance in service to the taxpayer. Further, the congressional request that initiated this review specifically asked that we engage in information sharing with other OIGs through the Disaster Assistance Working Group, which HUD OIG leads. In addition, the U.S. Senators who authored the request sent similar requests for reviews to other Offices of Inspector General. Meeting with other OIG stakeholders, reviewing their published reports, and including relevant findings in this report achieves these objectives. For these reasons and because the agency's assertion to the DHS OIG illustrates that it was aware that its staffing resources were inadequate, we did not remove our references to the DHS OIG report.

Comment 6 The Texas General Land Office asserted that it exercised its professional judgment in relying on the subrecipient's statement of intent and considered this decision reasonable and sufficient. Furthermore, the addition of staff members would not have affected its decision.

The agency's decision illustrated a lack of due diligence when following up on findings. The Texas General Land Office, as the grantee, was still responsible for ensuring that CDBG funds were used in accordance with all program requirements. The use of subrecipients or contractors did not relieve the State of this responsibility.³³ The State was also required to monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes and in compliance with Federal statutes and regulations."³⁴ Thus, we determined that further review of the contract was warranted since the contract expended Disaster CDBG (Hurricane Ike) funds. Additionally, HUD's May 9, 2017 monitoring report had 3 open findings and 2 open concerns which indicated that the Texas General Land Office historically did not always adequately monitor its subrecipients in the areas of financial management, payroll, duplication of benefits, procurement, and recordkeeping.

Comment 7 The Texas General Land Office stated that it was not allowed an opportunity to provide us with an understanding of the processes in place to identify improvements made over the last several years.

We met with the Texas General Land Office's Deputy Director of the Monitoring and Quality Assurance division on several occasions during our fieldwork, which afforded him the opportunity to discuss any matters of concern to the agency, or

³³ 24 CFR 570.501(b)

³⁴ 2 CFR 200.331(d)

resolve any potential misunderstandings. Additionally, the 2016 independent auditor's report explained the history of the monitoring framework at the Texas General Land Office. Therefore, we were able to obtain an adequate background and understanding of the Quality Assurance division, including the changes made since the 2016 independent auditor's report.

Comment 8 The Texas General Land Office agreed with recommendations 1C, 1D, and 1E, and had begun making changes to address the issues in the audit report.

We acknowledge the Texas General Land Office's efforts in addressing the issues identified in the audit report. It will need to continue working with HUD to address the recommendations.