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**Tuesday, April 26, 2016**

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**Lyons and Colorado Officials  
Should Continue to Improve  
Management of \$36 Million  
FEMA Grant**





# DHS OIG HIGHLIGHTS

## *Lyons and Colorado Officials Should Continue to Improve Management of \$36 Million FEMA Grant*

April 20, 2016

### Why We Did This Audit

The Town of Lyons, Colorado (Town), received a \$36 million Public Assistance grant for damages from a September 2013 flood. We conducted this audit early in the grant process to identify areas where the Town may need additional technical assistance or monitoring to ensure compliance with Federal requirements.

### What We Recommend

The Federal Emergency Management Agency (FEMA) should direct Colorado to continue to provide technical assistance and monitoring frequently to ensure the Town follows Federal regulations and avoids mispending the \$27 million of remaining grant funds.

#### **For Further Information:**

Contact our Office of Public Affairs at (202) 254-4100, or email us at [DHS-OIG.OfficePublicAffairs@oig.dhs.gov](mailto:DHS-OIG.OfficePublicAffairs@oig.dhs.gov)

### What We Found

The Town has made significant improvements since the disaster to account for and expend FEMA grant funds according to Federal regulations and FEMA guidelines. However, the Town needs continued close and ongoing assistance from Colorado and FEMA to provide reasonable assurance that it properly manages its \$36 million FEMA grant. Specifically, the Town—

- did not consistently comply with Federal procurement rules when contracting for FEMA-funded work;
- incurred costs for leased equipment that it did not use consistently;
- has not selected a proper site and relocated its Public Works facility; and
- improperly initiated and completed work on a major parks redevelopment project before FEMA ensured compliance with all environmental requirements.

These findings occurred primarily because Town officials did not have experience with major, federally-declared disasters and were not sufficiently familiar with applicable Federal regulations and FEMA guidelines. In addition, the Colorado Division of Homeland Security and Emergency Management (Colorado), as FEMA's grantee, is responsible for ensuring that its subgrantee (the Town) is aware of and complies with these requirements, as well as for providing technical assistance and monitoring grant activities.

### FEMA Response

FEMA officials concurred with our findings and recommendations and have taken corrective actions. Therefore, we consider these recommendations resolved and closed.




## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

April 20, 2016

MEMORANDUM FOR: Robert Farmer  
Acting Regional Administrator, Region VIII  
Federal Emergency Management Agency



FROM: John V. Kelly  
Assistant Inspector General  
Office of Emergency Management Oversight

SUBJECT: *Lyons and Colorado Officials Should Continue to Improve Management of \$36 Million FEMA Grant*  
Audit Report Number OIG-16-67-D

We audited Federal Emergency Management Agency (FEMA) Public Assistance Program grant funds awarded to the Town of Lyons, Colorado (Town). We conducted this audit early in the Public Assistance program process to identify areas where the Town may need additional technical assistance or monitoring to ensure compliance with Federal regulations and FEMA guidelines. In addition, by undergoing an audit early in the grant cycle, grant recipients have the opportunity to correct noncompliance before they spend the majority of their grant funding. It also allows them the opportunity to supplement deficient documentation or locate missing records before too much time elapses.

The Colorado Division of Homeland Security and Emergency Management (Colorado), a FEMA grantee, awarded the Town \$36 million for damages resulting from severe storms, flooding, landslides, and mudslides that began in September 2013. The award provided 75 percent Federal funding for debris removal, emergency protective measures, and permanent work. To assess the policies and procedures the Town uses for this disaster, we audited 14 projects totaling \$33 million (see table 2, appendix A); however, the Town has not yet spent the majority of this funding.

### **Background**

A storm system, with record-breaking precipitation and without advance warning, caused severe damage in 18 Colorado counties, most significantly from September 11–12, 2013. The President signed a Major Disaster Declaration (DR-4145) on September 14, 2013, authorizing FEMA to support State and local response and begin recovery efforts. The Town of Lyons, Colorado, is located at the base of the Rocky Mountains, about 50 miles



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northwest of Denver. The disaster’s floodwaters significantly damaged the Town, washing out roads, bridges, trails, and streams; isolating residents from evacuation routes; and damaging the Town’s electrical, sewage, and potable water services. The flood also destroyed the Town’s Public Works facilities and equipment, the Town Hall, and Library.

**Figure 1: After the Flood; Town of Lyons, Colorado**



Source: Town of Lyons, CO

### **Results of Audit**

The Town has made significant improvements since the disaster to account for and expend FEMA grant funds according to Federal regulations and FEMA guidelines. However, the Town needs continued close and ongoing assistance from Colorado and FEMA to provide reasonable assurance that it properly manages its \$36 million FEMA grant. Specifically, the Town—

- did not consistently comply with Federal procurement rules when contracting for FEMA-funded work (finding A);
- incurred costs for leased equipment that it did not use consistently (finding B);
- did not select a site and relocate its Public Works facility, thus delaying the completion of a major project and the Town’s overall recovery (finding C); and



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- did not take mandatory steps for FEMA to ensure compliance with all environmental requirements (finding D).

These findings occurred primarily because Town officials did not have experience with major, federally-declared disasters and were not sufficiently familiar with applicable Federal regulations and FEMA guidelines. In addition, Colorado, as FEMA's grantee, is responsible for ensuring that its subgrantee (the Town) is aware of and complies with these requirements, as well as for providing technical assistance and monitoring grant activities (finding E).

### **Finding A: Procurement**

The Town did not consistently comply with Federal procurement rules when contracting for \$5.1 million in FEMA-funded work. This occurred because Town officials were not aware of Federal procurement standards. The Town has made significant improvements to its procurement practices since our field work; but it has only partially developed and implemented policies and procedures for contracting with Federal funding. As a result, FEMA has inadequate assurance that the Town will properly spend the remaining funds in its grant award.

Federal regulations at 44 Code of Federal Regulations (CFR) 13.36 require—

- the performance of procurement transactions in a manner providing full and open competition except under certain circumstances (13.36(c)(1)), such as during an emergency period (13.36(d)(4)(i)(B));
- taking affirmative steps to assure the use of small and minority firms, women's business enterprises, and labor surplus area firms when possible (13.36(e));
- avoiding the use of time-and-material type contracts unless no other contract is suitable and provided that the contract includes a ceiling price that the contractor exceeds at its own risk (13.36(b)(10));
- contracts to contain procurement provisions at 13.36(i);
- a cost or price analysis in connection with every procurement action, including contract modifications (13.36(f)(1));
- records to be maintained sufficiently to detail the significant history of the procurement, including the rationale for the method of procurement, the basis for contractor selection, and basis for the contract price (13.36(b)(9)); and
- subgrantees to maintain a contract administration system that ensures contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders (13.36(b)(2)).



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Town officials did not always comply with these criteria. FEMA obligated \$31,772,053 for the Town's estimated contract costs in the 14 projects in our audit scope.<sup>1</sup> We reviewed 17 contracts that the Town had already awarded for compliance with Federal procurement standards, with expenditures totaling an estimated \$5.1 million<sup>2</sup>—\$3,309,289 during the emergency (exigency) period and \$1,835,556 afterwards.<sup>3</sup> We determined that the Town's procurement practices did not consistently comply with governing Federal rules. The Town did not always:

- compete its contracts, when able;
- take affirmative steps to assure the use of small and minority firms, women's business enterprises, and labor surplus area firms, when possible;
- limit time-and-materials contracts and include cost ceilings;
- include mandatory contract provisions;
- perform cost or price analyses for each procurement;
- adequately document procurement actions;
- justify sole-source contracts;
- ensure contractors operated under valid agreements; and
- consistently monitor its contractors.

We are not questioning the \$5.1 million in contract costs the Town has already spent because the Town has started taking significant steps to bring its procurement practices in line with Federal requirements and is retroactively demonstrating the reasonableness of its procurements. In addition, FEMA assured us that it would review these costs and allow only those that are reasonable. Some of the improvements the Town has made include:

- conducting its procurement transactions with full and open competition;
- implementing a process to justify sole source procurements;
- taking affirmative steps when possible, such as using an online procurement solicitation system and requiring its contractors to complete a checklist related to these steps;<sup>4</sup>

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<sup>1</sup> This amount includes funding FEMA provided for mitigation measures that the Town will likely complete through contracting.

<sup>2</sup> This data is current as of July 7, 2015; however, the Town is still accounting for all its costs.

<sup>3</sup> According to the Town, its emergency (exigency) period ran parallel to its emergency procurement authority, as provided by its Board. These dates are from September 11, 2013, (the onset of the disaster) until January 12, 2014, when essentially all water and electric utilities were restored.

<sup>4</sup> The Town is now using an electronic solicitation system to provide notice to registered contractors, including those who self-certify as minority firms or women-owned businesses.



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- transitioning out of time-and-materials contracts;
- initiating cost and price analyses on new procurements and retroactively performing them on past contracts; and
- monitoring its contractors more consistently.

Nevertheless, the Town must develop and implement procurement policies and procedures that include all applicable Federal requirements, to ensure the consistent application of Federal rules and to avoid improperly spending the \$27 million (\$31,772,053 less \$5,144,845) that FEMA has awarded for contract costs the Town has yet to spend.

Town officials agreed with this finding. They told us that they were not previously aware of these Federal procurement requirements and did not receive enough detailed procurement assistance in a timely manner. They said that they needed the most guidance in the immediate aftermath of the disaster, yet, for example, did not have consistent meetings with Colorado until 6 months later and did not receive formal training on procurement until about a year after the disaster. They said that they have made additional improvements to the Town's procurement policies and procedures since our field work. They also told us that they are finalizing their new financial and grant management policies and procedures (including those related to procurement), standardizing business practices to align with applicable rules, and providing staff-wide training. Colorado officials agreed with this finding. They said that Town officials (particularly in the early stages) were overwhelmed with the severity of the disaster and had limited staff to manage the Public Assistance process properly. As a result, Colorado officials told us that they have increasingly provided a significant number of resources to the Town—for procurement and other grant issues—including technical assistance, subject matter experts, and disaster recovery information (see finding E). FEMA officials agreed with this finding. They told us that Colorado provided a significant number of resources as the recovery process developed and that Town officials should consistently avail themselves of these resources to ensure compliance with Federal requirements.

### **Finding B: Equipment Costs**

The Town has incurred \$334,644 for leased equipment—such as construction vehicles—that it did not consistently use. It leased this equipment on a long-term basis because of its expectations of cost-effectiveness. However, various project delays (e.g., weather, cash flow, Town events) caused the equipment to sit idle for extended periods, accruing costs that the Town will request FEMA to reimburse. For example, the Town incurred \$9,869 for the monthly use of a





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loader (tractor) that it used for only 9 hours. This rate averages about \$1,097 per hour.

Federal regulations at 2 CFR 225 state that costs must be reasonable to be allowable (Appendix A, C1(a)), and define a reasonable cost as one that, in nature and amount, does not exceed that which a prudent person would incur under the circumstances prevailing at the time the decision was made to incur the cost (Appendix A, C2).

Town officials told us that FEMA instructed them to rent the equipment on a long-term basis to promote cost-effectiveness. They said that they did not anticipate the extensive delays to the projects that have occurred and have since returned most of the equipment. They noted that Colorado officials are concerned about the costs of idle time and are considering allowing reimbursement only for actual hours used per FEMA's equipment rates. As a result, they are submitting cost/cost-savings analyses to Colorado for the equipment and will not submit a claim for ineligible costs. Colorado officials told us that they asked the Town to provide them cost analyses to enable them to determine the cost-effectiveness of the equipment rentals. They said that they will not pay for idle time. FEMA officials told us that it consistently expressed to the Town that long-term rentals may not be the most cost-effective option and that FEMA will not reimburse costs for equipment the Town did not use consistently.

### **Finding C: Relocation of Critical Facility**

The Town has not relocated its Public Works facility in a timely manner. This is delaying the progress of Project 800 and impeding the Town's overall recovery. This has occurred, in part, because—2 years after the disaster—the Town has not yet selected a proper location at which to build the new facility and has demonstrated an unfamiliarity with Federal rules on relocation.

The disaster undermined the foundation of the Town's Public Works facility, leading to its partial collapse. FEMA and the Town subsequently determined that it was more cost-effective to replace rather than repair the facility and obligated \$1,446,055 for the project. Because the location of the damaged facility was in a floodway, FEMA required the Town to relocate it elsewhere, outside of the floodplain.

Federal regulations at 44 CFR 9.11(d)(1) and 9.9(d)(1) stipulate that FEMA must not locate a facility in a floodplain if a practicable alternative exists outside the floodplain, nor can it fund substantial improvement to the facility in a floodway unless it is functionally dependent on that location.



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The Town worked with a contractor to analyze and rank the viability of 32 sites for the facility's relocation, and eventually determined in July 2015 that only 3 sites met the Town's criteria related to timing, cost, and goals. Of the three, it concluded that one site was superior to the others: the original location of the facility. This conclusion is problematic because it took the Town and its contractor about 2 years to decide to relocate/rebuild the facility in the exact same location—a location that FEMA consistently deemed ineligible because it is located within the current floodplain and floodway. Further, the two other top-rated alternate sites are also problematic because one is also in the floodplain and floodway, while the other is privately owned and not for sale.

Since our field work, Town officials told us that they have updated their selection of possible relocation sites. They said that they selected two different sites for which they performed a benefit-cost analysis. They told us that there were too many challenges with these two new sites because of the need for improvements, conservation easements, and extremely high purchase prices. Therefore, they have decided to make their temporary Public Works site permanent. As such, they would like FEMA to purchase this land on their behalf. They told us that part of the site is in the floodplain, and there are safety and accessibility issues, as well as those related to cost. They said, however, that if Colorado does not support—and FEMA does not approve—this site, then they will most likely have to select a site outside of the Town because of the scarcity of available sites within Town. They told us that locating the site outside of Town will increase the Town's daily operating costs.

These delays in selecting a proper relocation site have impacted the Town's recovery from the disaster and suggest that the Town may not be fully familiar with Federal relocation rules.

We informed FEMA and Colorado officials about this situation. FEMA officials told us that they had not received documentation or a decision regarding the Town's site selection, but have consistently emphasized to the Town and Colorado that FEMA will not fund this project in a floodway under any circumstance. They noted that if the Town does so, FEMA will deobligate funding for the project.<sup>5</sup> FEMA also noted that if the Town decides to move forward without FEMA funding, the Town may face challenges with flood insurance certification and flood mapping. They said that they will coordinate with Colorado to address this issue further. Colorado officials told us that they are aware of the Town's challenges with finding a viable relocation site and the

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<sup>5</sup> FEMA also told us that, even if the Town obtains a waiver to rebuild in the floodway, FEMA would still reject it because the Town improperly modified the elevation of the area by adding silt to the site after the disaster, which is a disqualifier for rebuilding.



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problems associated with the sites the Town is considering. They said that they have discussed these issues with various FEMA officials and subsequently advised the Town against rebuilding in the floodway. They told us that the Town needs to develop appropriate criteria for ranking available sites and timely select an appropriate and cost-effective site to enable the rebuilding process to move forward.

### **Finding D: Environmental Compliance**

Town officials improperly initiated and completed construction work on Project 1078 (Phase 1), a major parks redevelopment project, before FEMA ensured compliance with all Federal environmental requirements. This occurred primarily because the Town was not fully aware of the Public Assistance program process. As a result, the Town incurred about \$1.5 million in costs that FEMA may disallow.

When providing funds under the Public Assistance program, FEMA must consider a range of Federal laws, regulations, and executive orders. FEMA must review compliance with these laws *before* it approves funding and *before* work begins because the review may identify steps to be taken or conditions to be met before the project can begin (*FEMA Public Assistance Guide*, FEMA 322, June 2007, Chapter 4, *Special Considerations, Environmental/Historic Preservation Compliance*).

Town officials said that both FEMA and Colorado officials were involved in the planning and rebuilding process for this project and that these officials encouraged them to begin permanent work quickly. They said that they did not change the scope of the project and that the footprint remains the same. They told us that they complied with environmental rules but may not have documented this fully. They said that they obtained a *FEMA Record of Environmental Consideration* (a document explaining applicable environmental factors) from Colorado's database and took actions to satisfy the steps outlined in that document. Town officials also said that they worked with another Federal agency—the U.S. Fish and Wildlife Service—to ensure environmental compliance. They said that, going forward—for future phases of Project 1078 and other projects—they will coordinate with Colorado and FEMA more closely to ensure the Town has final approval to begin permanent work.

FEMA officials told us that they discussed the proper process with the Town officials during site visits and that they did not authorize the Town to begin construction on Project 1078 because it did not obtain environmental clearance. They said that Town officials did not inform FEMA and Colorado



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that they had initiated (permanent) work under Project 1078 or that the scope of work was different than originally approved.

FEMA's initial review indicated that this project could impact critical habitats of protected species (including eagles) and water/wetlands. They said that the *Record of Environmental Consideration* addresses only those issues known at the time the project is written and is subject to change with revisions to the project's scope of work.<sup>6</sup> FEMA told us that, as a result, the Town must now retroactively demonstrate compliance with environmental rules (which is difficult after the work is completed) and that noncompliance jeopardizes the Town's funding. FEMA officials said that they will perform a thorough review for environmental compliance and disallow any ineligible costs; therefore, we are not questioning these costs at this time.

Colorado officials told us that they authorized the Town to complete only emergency-related work, and that the Town initiated permanent work (with a different scope than previously discussed) without their knowledge or authorization. They said that they will continue to work with Town officials to assist them in satisfying environmental requirements.

### **Finding E: Grant Management**

Town officials did not always have an adequate understanding of Federal regulations and FEMA guidelines governing procurement standards, equipment costs, facility relocation and floodplains, and environmental considerations. However, Federal regulations require Colorado, as FEMA's grantee, to ensure that subgrantees are aware of requirements that Federal statutes and regulations impose on them (44 CFR 13.37(a)(2)). Federal regulations also require Colorado to manage the day-to-day operations of subgrant activity and monitor subgrant activity to assure compliance with applicable Federal requirements (44 CFR 13.40(a)). Further, Colorado's Administrative Plan for Federal Disaster Assistance stipulates that it is responsible for providing technical advice and assistance, providing support for damage assessment operations, supporting project identification activities, and submitting the necessary paperwork for grant awards.

Town officials agreed with this finding. They told us that they were one of the smallest, most affected communities in the disaster and needed—and continue to need—a significant amount of assistance. They said that Colorado officials,

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<sup>6</sup> The *Record of Environmental Consideration* itself states that any change to the approved scope of work will require reevaluation for compliance with Federal environmental laws and executive orders.



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especially early in the response and recovery process, did not provide sufficient and competent staff and guidance to the Town. They told us, for example, that they were not sufficiently aware of Federal regulations because they did not have consistent meetings with Colorado until 6 months after the disaster and did not receive formal training on procurement (which comprised the majority of their costs) until about a year after the disaster. They said that they will continue to reach out to Colorado for additional assistance.

FEMA officials told us that Colorado has provided the Town a significant amount of guidance and has made major improvements to its grant management operations since the time of the disaster. They said that Lyons would continue to benefit from a high level of oversight by Colorado.

Colorado officials told us that they have categorized Lyons as high-risk and have therefore been providing their highest level of oversight, including a dedicated liaison from their office. Colorado officials also said that they have provided the Town additional resources since early 2014 to ensure compliance with rules governing the FEMA grant, including \$6.5 million in short-term, no-interest advances of State funds to pay contractors for disaster-related activities, and \$1.7 million for staff hires. They told us that they have significantly improved their grant management operations over time and have—

- disseminated reference materials related to Federal rules across multiple platforms (e.g., websites, hardcopy, electronically);
- hired a private-sector contractor to assist subgrantees with the Public Assistance Program process;
- coordinated with FEMA's Disaster Procurement Assistance Teams to train subgrantees (and provided additional procurement-related information to subgrantees before these trainings);
- conducted conference calls monthly and onsite monitoring with subgrantees to discuss their challenges and offer solutions; and
- implemented a large project closeout documentation and certification process, insurance and closeout review, and analytical reviews of requests for reimbursements.

### Recommendations

We recommend that the Regional Administrator, FEMA Region VIII:

**Recommendation 1:** Direct Colorado to continue to monitor the Town's procurements for disaster work closely to ensure compliance with all Federal procurement requirements so the Town avoids improperly spending the



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estimated \$26,627,208 (Federal share \$19,970,406) that FEMA awarded for contract costs that the Town has yet to spend (finding A).

**Recommendation 2:** Review the Town's equipment costs and disallow any claimed costs that are not reasonable (finding B).

**Recommendation 3:** Direct Colorado to continue to work closely with the Town to select as soon as possible an appropriate relocation site that is outside of the floodway/floodplain for its Public Works facility, and to educate the Town further about restrictions on rebuilding in the floodway/floodplain (finding C).

**Recommendation 4:** Determine whether the Town complied with environmental requirements for Project 1078 (Phase 1), a major parks redevelopment project, and disallow any costs that are not eligible (finding D).

**Recommendation 5:** Direct Colorado to continue to monitor the Town's subgrant activities closely and consistently provide technical advice and assistance to provide reasonable assurance the Town will comply with all applicable Federal grant requirements (finding E).

### Discussion with Management and Audit Follow-Up

We discussed the results of this audit with FEMA, Colorado, and Town officials during our audit. We provided a draft report in advance to these officials, and discussed it at the exit conference with Colorado and FEMA officials on February 23, 2016; and with Town officials on March 10, 2016. We included these officials' comments, as applicable, in the body of this report, and included FEMA's written comments (provided to us on March 28, 2016) in their entirety in appendix B. Because FEMA agrees with our findings and recommendations and has taken corrective actions, we consider these recommendations resolved and closed. Therefore, we do not require any further actions by FEMA.

The Office of Emergency Management Oversight major contributors to this report are Humberto Melara, Director; Devin Polster, Audit Manager; Connie Tan, Senior Auditor; Willard Stark, Auditor; and Victor Du, Auditor.

Please call me with any questions at (202) 254-4100, or your staff may contact Humberto Melara, Director, Western Regional Office, at (510) 637-1463.



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### Appendix A

#### Objective, Scope, and Methodology

We audited FEMA Public Assistance Program grant funds awarded to the Town, Public Assistance Identification Number 013-47070-00. Our audit objective was to determine whether the Town's policies, procedures, and business practices are adequate to account for and expend FEMA grant funds according to Federal regulations and FEMA guidelines for FEMA Disaster Number 4145-DR-CO. As of April 2015, the award provided funding for 27 large and 8 small projects totaling \$35,904,088.<sup>7</sup> Our audit covered the period September 14, 2013, through December 16, 2015. As of August 26, 2015, the Town had received and allocated a total of \$3,748,287 in insurance proceeds towards disaster-related projects. We audited 14 large projects to assess the Town's policies and procedures in use for this disaster (see tables 1 and 2 below).

We interviewed FEMA, Colorado, and Town officials; assessed the adequacy of the policies, procedures, and business practices the Town uses or plans to use to account for and expend Federal grant funds and to procure and monitor contracts for disaster work; judgmentally selected and reviewed (generally based on dollar amounts) project costs and procurement transactions for the projects in our audit scope; reviewed applicable Federal regulations and FEMA guidelines; and performed other procedures considered necessary to accomplish our objective. We did not perform a detailed assessment of the Town's internal controls over its grant activities because it was not necessary to accomplish our audit objective.

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<sup>7</sup> Federal regulations in effect at the time of the disaster set the large project threshold at \$67,500 [Notice of Adjustment of Disaster Grant Amounts, 77 Fed. Reg. 61423 (Oct. 9, 2012)].



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**Appendix A (continued)**

**Table 1: Gross and Net Award Amounts**

	<b>Gross Award Amount</b>	<b>Insurance Reductions</b>	<b>Net Award Amount</b>
All Projects	\$35,904,088	(\$3,748,287)	\$32,155,801
Audit Scope	\$33,326,325	(\$1,443,243)	\$31,883,082

*Source:* Office of Inspector General (OIG) analysis of FEMA project worksheets

**Table 2: FEMA-Approved Projects Reviewed**

<b>Project Number</b>	<b>Category of Work<sup>8</sup></b>	<b>Gross Award Amount</b>	<b>Insurance Reductions</b>	<b>Net Award Amount</b>
8	B	\$708,369	\$0	\$708,369
13	B	224,135	0	224,135
29	B	720,266	0	720,266
30	B	636,830	0	636,830
41	B	510,245	0	510,245
613	C	2,842,635	0	2,842,635
800	E	2,253,689	737,123	1,516,566
879	C	2,221,461	0	2,221,461
1053	G	4,584,185	0	4,584,185
1078	G	14,720,057	283,574	14,436,483
1091	A	1,005,224	0	1,005,224
1094	F	1,121,576	422,546	699,030
1095	C	374,875	0	374,875
1101	C	1,402,778	0	1,402,778
<b>Total</b>		<b>\$33,326,325</b>	<b>\$1,443,243</b>	<b>\$31,883,082</b>

*Source:* OIG analyses of FEMA and Town documentation

We conducted this performance audit from June 2015 to February 2016, pursuant to the *Inspector General Act of 1978*, as amended, and according to 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 upon our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objective. In conducting this audit, we applied the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.

<sup>8</sup> FEMA identifies type of work by category: A for debris removal, B for emergency protective measures, and C–G for permanent work.





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**Appendix B**

**FEMA's Comments to the Draft Report**

U.S. Department of Homeland Security  
Region VIII  
Denver Federal Center, Building 710  
P.O. Box 25267  
Denver, CO 80225-0267




**FEMA**

R8-Recovery

9102 8

MEMORANDUM FOR: Humberto Melara  
Director, Western Regional Office  
Office of Inspector General (OIG)

FROM:   
Robert A. Farmer  
Acting Regional Administrator

SUBJECT: Management's Response to OIG Draft Report: "Lyons and Colorado Officials Should Continue to Improve Management of \$36 Million FEMA Grant"  
Job Code: G-15-027

Thank you for the opportunity to review and comment on the subject draft report. FEMA is pleased to note that the draft report makes reference to the work the State of Colorado (State) did in several areas to provide the Town of Lyons, Colorado (Town) with guidance and support. The Region also notes that both recipients and sub-recipients are responsible for complying with Federal grant management guidelines.

FEMA and the State have taken actions to ensure that the Town better understands and complies with Federal procurement requirements and other grant management requirements. FEMA has provided procurement training to the Town through the FEMA Procurement Disaster Assistance Team (PDAT) presentations. We recognize the extensive efforts initiated by the State to provide assistance to the Town during the disaster and the resulting response and recovery periods. We also recognize, however, that the Town continues to need assistance in several critical areas.

The OIG draft report contains five findings:

**Finding A: Procurement** – The Town did not consistently comply with Federal procurement rules.

**Finding B: Equipment Costs** – The Town incurred costs for leased equipment which it did not consistently use.

**Finding C: Relocation of Critical Facility** – The Town has not relocated its Public Works facility in a timely manner, thus delaying the progress of project worksheet (PW) 800 and impeding the Town's overall recovery.

[www.fema.gov](http://www.fema.gov)



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**Appendix B (continued)**

Management's Response to OIG Draft Report: "Lyons and Colorado Officials Should Continue to Improve Management of \$36 Million FEMA Grant"

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**Finding D: Environmental Compliance** – Town officials improperly initiated and completed construction work on a major parks redevelopment project, before FEMA ensured compliance with all Federal environmental requirements.

**Finding E: Grant Management** – Town officials did not always have an adequate understanding of Federal regulations and FEMA guidelines governing procurement standards, equipment costs, facility relocation and floodplains, and environmental considerations.

Associated with these findings, the OIG recommended that FEMA take the following actions:

**Recommendation 1:** "Direct Colorado to monitor the Town's procurements for disaster work to ensure compliance with all Federal procurement requirements so the Town avoids improperly spending the estimated \$26,627,208 (Federal share \$19,970,406) that FEMA awarded for contract costs that the Town has yet to spend (finding A)."

**Response:** Concur. FEMA and the State have taken actions to ensure that the Town better understands and complies with Federal procurement requirements. FEMA has provided procurement training to the Town through their participation in PDAT training, arranged by the State and delivered by FEMA Headquarters and Regional staff. FEMA will continue to reinforce messaging through the State that failure to comply with Federal procurement requirements jeopardizes Federal funding. Additionally, the State conducts a review of all sub-recipient costs to insure they are reasonable and properly documented prior to disbursement of any funding. FEMA will further review all documentation and costs per Large Project Closeout (LPC) doctrine, with specific emphasis on costs associated with properly awarded contracts. Based on actions taken, FEMA request that this recommendation be considered resolved and closed.

**Recommendation 2:** "Review the Town's equipment costs and disallow those costs that are not reasonable (finding B)."

**Response:** Concur. The State and FEMA have already notified the Town of the possibility that not all costs may be considered reasonable and eligible. Additionally, the State conducts a review of all sub-recipient costs to insure they are reasonable and properly documented prior to disbursement of any funding. FEMA will subsequently conduct an additional review and in cases where all costs cannot be supported, FEMA may exercise its discretionary authority under 44 C.F.R. § 13.43(a)(5) to allow reimbursement of the costs determined fair and reasonable. Based on actions taken, FEMA request that this recommendation be considered resolved and open.

The estimated completion date (ECD) will be at LPC.



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**Appendix B (continued)**

Management's Response to OIG Draft Report: "Lyons and Colorado Officials Should Continue to Improve Management of \$36 Million FEMA Grant"

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**Recommendation 3:** "Direct Colorado to work with the Town to select an appropriate relocation site as soon as possible for its Public Works facility that is outside of the floodway/floodplain, and to educate the Town about restrictions on rebuilding in the floodway/floodplain (finding C)."

**Response:** Concur. The Town, in coordination with the State, has continued its effort to identify an appropriate relocation site for the Public Works facility. FEMA has been notified that the Town expects to submit a report in the near future which will identify several alternate locations. FEMA will review and make a determination as appropriate under applicable regulation and guidance. Based on actions taken, FEMA requests that this recommendation be considered resolved and open.

The ECD is December 2016.

**Recommendation 4:** "Determine whether the Town complied with environmental requirements for Project 1078 (Phase 1), a major parks redevelopment project, and disallow any costs that are not eligible (finding D)."

**Response:** Concur. FEMA will work with the State to form a small interdisciplinary team consisting of Public Assistance (PA), Environmental and Historical Preservation (EHP), and the State to engage with the Town and review their past activities with the parks redevelopment project and to provide guidance for their next steps. Based on actions taken, FEMA requests that this recommendation be considered resolved and open.

The ECD is December 2016.

**Recommendation 5:** "Direct Colorado to increase monitoring of the Town's subgrant activities and provide technical advice and assistance to ensure the Town complies with all applicable Federal grant requirements (finding E)."

**Response:** Concur. FEMA agrees with the importance and value of the State providing technical assistance and monitoring to its sub-recipients. We recognize the extensive efforts initiated by the State to provide assistance to the Town during the disaster and the resulting response and recovery periods. As part of this effort, the State provided the Town with full access to a regional manager from the Department of Local Affairs to provide direct assistance and support.

In addition, the State gave the Town written resources dedicated to the Federal procurement process, including the OIG Audit Tips document and State-generated procurement aids. The State ensured the Town participated in FEMA-sponsored PDAT training sessions as they became



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available. Representatives of the Town attended two of these training sessions. To promote enhanced compliance with future procurement and contracting decisions, FEMA will remind the State to continue these efforts. FEMA also will ask the State to work with the Town to encourage a proactive review of all future contracting efforts. Based on the actions taken, FEMA requests that this recommendation be considered resolved and closed.

Again, thank you for the opportunity to review and comment on the subject draft report. Technical comments were previously provided under separate cover. Please contact Tom Bush at (303) 235-4860, should you have further questions or need additional information. We look forward to working with you in the future.



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**Appendix C**

**Potential Monetary Benefits**

**Table 2: Summary of Potential Monetary Benefits**

<b>Type of Potential Monetary Benefit</b>	<b>Total</b>	<b>Federal Share</b>
Questioned Costs – Ineligible	\$0	\$0
Questioned Costs – Unsupported	0	0
Funds Put to Better Use (Cost Avoidance)	26,627,208	19,970,406
<b>Totals</b>	<b>\$26,627,208</b>	<b>\$19,970,406</b>

Source: OIG analysis of findings in this report



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**Appendix D**

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**Appendix D (continued)**

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