

TEXAS DEPARTMENT OF PUBLIC SAFETY

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October 17, 2018

George A. "Tony" Robinson
Regional Administrator, Region VI
U.S. Department of Homeland Security
Federal Emergency Management Agency
800 N. Loop 288
Denton, TX 76209-3698

**RE: FEMA-1791-DR-TX - Chambers County, PA ID 071-99071-00
Restoration of Funds as Required by Sec. 1237 of the DRRR
Project Worksheets 0004, 1152, 4663, and 6623**

Dear Regional Administrator Robinson:

The Texas Division of Emergency Management (TDEM) hereby requests that FEMA Region VI restore previously deobligated funding to the above-referenced Project Worksheets (PWs) in accordance with the newly enacted Disaster Recovery Reform Act of 2018 (the "DRRA"), Section 1237, Certain Recoupment Prohibited. Specifically, in 2012, FEMA deobligated \$9,125,566.31 of assistance previously provided to Chambers County, Texas following audit by the Department of Homeland Security - Office of Inspector General (OIG). TDEM has reviewed the amounts per PW and determined that the below should be restored in accordance with Section 1237:

PW#	Total Amount Requiring Restoration per PW
0004	\$24,547.50
1152	\$394,285.57
4663	\$2,312,087.75
6623	\$5,920,993.20
TOTAL	\$8,651,914.07

TDEM currently carries the above amounts as a negative balance on the Chambers County account and appreciates FEMA's prompt attention to this issue so that we may move forward with full reconciliation of these and other PWs. Please let us know if FEMA requires additional information or would like to discuss this request further.

FEMA-1791-DR-TX
Request for Application of DRRA, Section 1274
Chambers County - #071-99071-00
PWs 0004, 1152, 4663, and 6623
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Requirements of Section 1237

The President signed the DRRA into law on October 5, 2018 as part of the Federal Aviation Administration Reauthorization Act of 2018. Section 1237 of the DRRA requires that, “*Notwithstanding any other provision of law, FEMA shall deem any covered disaster assistance to have been properly procured, provided, and utilized, and shall restore any funding of covered disaster assistance previously provided but subsequently withdrawn or deobligated.*”

Section 1237 defines “covered disaster assistance” as:

1. provided to a local government pursuant to section 403, 406, or 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 10 U.S.C. 5170b, 5172, or 5173); and
2. with respect to which the inspector general of the Department of Homeland Security has determined, after an audit, that—
 - A. the Agency deployed to the local government a Technical Assistance Contractor to review field operations, provide eligibility advice, and assist with day-to-day decisions;
 - B. the Technical Assistance Contractor provided inaccurate information to the local government; and
 - C. the local government relied on the inaccurate information to determine that relevant contracts were eligible, reasonable, and reimbursable.

TDEM has determined that the \$8,651,914.07 specified above meets the statutory definition of “covered disaster assistance” for purposes of Section 1237.

First, Chambers County, Texas is a “local government” as defined by Section 102 of the Stafford Act, and the work and costs under PWs 0004, 1152, 4663, and 6623 were provided to reimburse Chambers County for necessary costs incurred to complete debris removal efforts following FEMA-1791-DR-TX, Hurricane Ike:

- PW 0004 was prepared for right-of-way and public property debris removal. FEMA previously reviewed the County’s actual cost documentation and approved eligible funding of \$11,262,114.05, of which the full amount was paid by TDEM to the County as of September 2009.
- PW 1152 was prepared to reimburse the County for primarily force account costs to complete eligible work associated with removal of a large amount of hazardous debris. Final eligible costs were approved on March 16, 2010, and FEMA/TDEM provided the entire payment amount to the County on April 5, 2010. At this time, FEMA had approved total eligible costs of \$755,933.38.

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PWs 0004, 1152, 4663, and 6623

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- PW 4663 was prepared to reimburse the County for eligible contract costs incurred to remove hazardous debris, including eligible costs of materials and rental equipment needed for this work. FEMA previously obligated funding of \$13,689,280.64, the total of which was paid to the County as of July 2009.
- PW 6623 was prepared to reimburse the County for additional costs required to complete the hazardous debris removal operations initially funded by PW 4663. Including final approved disposal fees, FEMA's approved obligated amount for PW 6623 totaled \$19,921,617.42, as fully paid to the County as of March, 2010.

The disaster assistance provided was to a "local government" and was provided under Stafford Act Sections 403 and 407. Assistance provided under PWs 0004, 1152, 4663, and 6623 therefore meets the first condition to be considered "covered disaster assistance" under Section 1237.

Second, PWs 0004, 1152, 4663, and 6623 were the subject of an OIG Audit Report dated December 10, 2010 (Audit Report Number DD-11-05). This Audit Report made each of the determinations required to confirm these PWs meet the definition of "covered disaster assistance."

First, the OIG determined, on page 3 of the Audit Report, that:

FEMA deployed an experienced Technical Assistance Contractor (TAC) to the County to review debris field operations and provide debris eligibility advice. FEMA's TAC helped the County establish an Incident Command System management structure and assumed a key leadership role in the debris field operation. The TAC also helped the County and its contractors make day-to-day decisions.

This meets the first statutory test, which required that the OIG have determined, after an audit that "the Agency deployed to the local government a Technical Assistance Contractor to review field operations, provide eligibility advice, and assist with day-to-day decisions."

Second, the OIG determined, on page 4 of the Audit Report, that:

FEMA's TAC did provide inaccurate information to County officials....

This meets the second of statutory test, which requires that the OIG have found, after an audit, that "the Technical Assistance Contractor provided inaccurate information to the local government."

Finally, the OIG determined, on page 5 of the Audit Report, that:

County officials relied on the advice of FEMA's TAC who told County officials all contracts had "been deemed eligible, reasonable, and reimbursable" by FEMA.

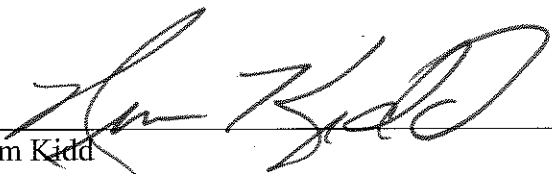
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This meets the final prong of the statutory definition of “covered disaster assistance,” which requires that the OIG have determined, after an audit, that “the local government relied on the inaccurate information to determine that relevant contracts were eligible, reasonable, and reimbursable.”

Conclusion

The funding provided to Chambers County under PWs 0004, 1152, 4663, and 6623 meets the definition of “covered disaster assistance” as provided in DRRA Section 1237. The amount of assistance that was previously provided to the County under these PWs but later deobligated by FEMA was for debris removal under Stafford Act Sections 403 and/or 407. The OIG determined in its Audit Report Number DD-II-05 that FEMA had deployed a TAC Specialist to assist Chambers County, the TAC provided inaccurate information, and Chambers County relied on that information to its detriment. FEMA has never disputed providing the TAC Specialist, the County’s reliance on this TAC Specialist, and now has argued through two levels of appeal that the information provided by the TAC Specialist was incorrect.

Pursuant to DRRA Section 1237, FEMA “shall deem” the prior assistance provided to Chambers County to have been properly procured, provided, and utilized, and “shall restore” the previously deobligated amounts. The statute confirms these actions are required “notwithstanding any other provision of law.” TDEM respectfully asks that FEMA promptly reinstate the previously deobligated funding to PWs 0004, 1152, 4663, and 6623. If you have any questions or need further information on this matter, please do not hesitate to contact me.



W. Nim Kidd
Chief, Texas Division of Emergency Management
Texas Governor’s Authorized Representative

Attachment:

OIG Audit Report No. DD-11-05, December 13, 2010.