



Homeland Security

February 12, 2009

MEMORANDUM FOR: Major P. (Phil) May, Regional Administrator
FEMA Region IV

FROM: C. David Kimble, Director
Eastern Regional Office

A handwritten signature in black ink that reads "C. David Kimble".

SUBJECT: *Hurricane Ivan Activities for City of Gulf Shores, Alabama*
Public Assistance Identification Number: 003-32272-00
FEMA Disaster No. 1549-DR-AL
Report Number DA-09-10

We performed an audit of disaster costs associated with Hurricane Ivan activities for the City of Gulf Shores, Alabama. The objective of the audit was to determine whether the city properly accounted for and expended Federal Emergency Management Agency (FEMA) funds according to federal regulations and FEMA guidelines.

The city received an award of \$27.6 million from the Alabama Emergency Management Agency (AEMA), a FEMA grantee, for debris removal, emergency protective measures, repair of roads and buildings, and restoration of a beach damaged as a result of Hurricane Ivan in September 2004. The award provided 90% FEMA funding for 27 large projects and 20 small projects.¹ We reviewed 23 large projects totaling \$26.8 million (see Exhibit). The audit covered the period September 2004 to August 2007, during which the city received \$22.6 million of FEMA funds under the 23 large projects.

We conducted this performance audit under the authority of 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 on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We selected judgmental samples of project cost documentation (generally based on dollar value); interviewed city, AEMA, and FEMA personnel; reviewed the city's method of disaster-grant accounting and its procurement policies and procedures; reviewed applicable federal regulations and FEMA guidelines, and performed other procedures considered necessary under the circumstances. We did not assess the adequacy of the city's internal controls applicable to its grant activities

¹Federal regulations in effect at the time of Hurricane Ivan set the large project threshold at \$54,100.

because it was not necessary to accomplish our objective. We did, however, gain an understanding of the city's grant accounting system and policies and procedures for administering the activities provided for under the FEMA award.

RESULTS OF AUDIT

The city accounted for project expenditures on a project-by-project basis as required by federal regulations. However, the city did not comply with federal contracting procedures when awarding debris removal contracts totaling \$14 million. Furthermore, the city's claim included \$9,725,753 (FEMA share \$8,753,178) of questioned costs resulting from ineligible, excessive, and duplicate project charges. Lastly, we identified \$65,526 of unremitted interest earned on FEMA advances.

- A. Contracting Procedures. According to federal regulation 44 CFR 13.36(b)(10), a subgrantee may use time-and-material contracts only after a determination that no other form of contracting is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Moreover, according to FEMA's *Public Assistance Debris Management Guide* (FEMA Publication 325, April 1999), time-and-material contracts for debris removal activities (clearing, hauling, and disposal) should (1) generally not exceed 70 hours of actual emergency debris clearance work, and (2) be terminated once the not-to-exceed hours is reached.

Notwithstanding these restrictions, city officials awarded 26 time-and-material contracts for debris removal work that lasted for more than nine months and contained no ceiling prices. The city paid the contractors a total of \$14 million for the contract work. We were unable to determine whether a cost savings would have been realized had the city complied with federal contracting procedures. However, under the contracting method used by the city, FEMA has no assurance that the work performed under the contracts was obtained at a fair and reasonable price.

- B. Sand Removal from Private Property. FEMA's *Public Assistance Debris Management Guide* (FEMA 325, April 1999) states that debris removal from private property is the responsibility of the individual property owner, aided by insurance settlements and assistance from volunteer agencies. The guide also states that most insurance policies, such as homeowner, fire, and extended coverage policies, have specific coverage for debris removal. However, FEMA may provide assistance upon its determination that debris removal from privately owned lands is in the public interest (44 CFR 206.224). According to the regulation, such removal is in the public interest when it is to:

- eliminate immediate threats to life, public health, and safety; or
- eliminate immediate threats of significant damage to improved public property or private property; or
- ensure economic recovery of the affected community to the benefit of the community at large; or
- mitigate the risk to life and property by removing substantially damaged structures and associated appurtenances as needed to convert property acquired using FEMA hazard mitigation program funds to uses compatible to open spaces, recreation, or wetlands management practices.

The city's claim for debris removal activities included costs of reclaiming 401,603 cubic yards (CYs) of sand from private property. According to city officials, after the sand was collected from the private properties, it was sifted and a portion of it was placed on a non-engineered beach, which became the base for additional work the city had planned for that section of the beach. In addition, the city returned a portion of the sand to the private property owners to be used for restoring their property to its pre-disaster condition. However, city officials did not provide evidence to show that FEMA approved the removal of sand from private property, or that removal of the sand was in the public interest as defined by 44 CFR 206.224. City officials provided a September 23, 2004, letter from the Alabama Department of Public Health that addressed debris or unauthorized dumps along Alabama Gulf Coast public beaches resulting from Hurricane Ivan, which were "public nuisances per se menacing public health". However, the letter did not specifically address sand or other debris on private property within the city.

The city's use of time-and-material contracts for all debris removal activities, including removal of sand, precluded us from determining the actual costs associated with this activity. Nonetheless, after Hurricane Katrina (which occurred less than a year after Hurricane Ivan), we noted that the city's contract rate per CY for reclaiming/sifting sand was \$13.90. Using this rate, we estimate that the city's cost for removing the 401,603 CYs of sand from private property totaled \$5,582,282 (401,603 x \$13.90). Absent of documentation showing (1) FEMA's approval of such activity, and (2) that removal of the sand was in the public interest, we question the estimated \$5,582,282 of costs claimed to the FEMA award.

C. Beach Restoration. The city's claim of \$6,599,781, under Project 625 for beach restoration activities, contained excess costs of \$2,825,840. The excess costs occurred because the city replaced more sand on the beach than was required to restore it to its pre-disaster condition. The project's scope of work included dredging (from the offshore), placing, and shaping 1,340,000 CYs of sand on the beach. However, the city actually placed 2,004,904 CYs of sand on the beach, or 664,404 CYs more than was required. The 2,004,904 CYs, which was accomplished under several different projects, consisted of the following:

- 489,000 CYs obtained from upland sand reclamation activities from public rights-of-way²;
- 123,410 CYs placed on the beach to establish an emergency berm; and
- 1,392,494 CYs obtained from offshore dredging activities.

As shown above, the upland sand reclamation and emergency berm activities netted 612,410 of the 1,340,000 CYs of sand required for restoring the beach. Consequently, only 727,590 CYs of sand was needed from offshore dredging to complete the beach restoration project. However, the city dredged 1,392,494 CYs, or 664,404 more than was necessary, and placed it on the beach and charged the costs to the FEMA award. Using the city's contracted dredging price of \$4.25 per CY, we calculated that the excess 664,404 CYs resulted in additional costs of \$2,825,840 claimed to FEMA.

² The city removed 1,048,500 CYs of sand from private property and public right of ways, and placed 611,000 CYs of the sand on the beach. According to city officials, the 611,000 CYs of dry or "fluffy" sand equals to 489,000 CYs of wet, compacted sand, which was the type of sand used in the engineers' calculation.

City officials said that the costs should be allowed because the quantity of sand returned to the beach from the upland sand reclamation activities was not known before offshore dredging operations began. They said the 1,392,494 CYs of sand obtained from dredging was their best estimate of the quantity of sand needed to restore the beach. However, we disagree. Offshore dredging operations began on May 22, 2005. According to city's records, city officials were aware of the quantity of upland sand recovered by February 18, 2005, approximately three months earlier. In addition, construction of the emergency berm was completed on May 15, 2005, one week prior to the start of dredging operations. As a result, we conclude that the city had sufficient information to determine the actual quantity of sand needed from offshore dredging and could have issued a change order to its contractor before the dredging operation began. Therefore, we question the \$2,825,840.

- D. Contract Charges. The city's claim of \$13.9 million for debris removal work performed by time-and-material contractors (Finding A) contained \$501,218 of excessive hourly equipment costs. The city used the lowest quote received for each piece of equipment to establish an hourly rate to be reimbursed to the contractors. However, the contractors charged several pieces of equipment at rates higher than the rates established by the city, resulting in excessive contract charges of \$501,218. The city paid the contractor the higher rates and charged the costs to the FEMA claim. Therefore, we question the \$501,218 as follows:

Excessive Contract Charges			
Project Number	Amount Questioned	Project Number	Amount Questioned
2863	\$ 53,570	72	\$ 21,615
2864	34,330	458	26,470
2966	6,000	613	21,910
690	33,200	1634	27,370
556	4,880	601	27,350
75	78,850	6	26,963
3209	14,390	1637	32,050
73	41,170	855	15,860
236	18,710		
635	16,530		
Total			\$501,218

- E. Duplicate Charges. The city inadvertently charged 11 invoices totaling \$404,715 to both Project 3207 and Project 3209, as follows:

Duplicate Invoice Charges			
Invoice Number	Amount	Invoice Number	Amount
148667	\$ 9,250	J3123	\$ 35,000
148668	11,100	J3181	17,500
200418	12,425	1722	13,180
200419	12,495	13	105,200
691-20	55,660	16	40,645
691-19	50,820	17	41,440
Total			\$404,715

In addition, the city charged Invoice No. 1734 for \$12,610 twice to Project 3207. Therefore, we question the total duplicate charges of \$417,325.

- F. Duplicate Payment. According to federal regulation 44 CFR 206.223(a)(3), work eligible for financial assistance must be the legal responsibility of the applicant. Under beach restoration Project 825, the city claimed \$1,043,288 for construction of an emergency berm. The claim included \$399,088 for an area of the berm built in front of the city's hotel/convention center located in Gulf State Park. While the restoration of the area in front of the hotel/convention center is eligible for FEMA funding, the Alabama Department of Conservation and Natural Resources (ADCNR) is legally responsible for the area and, as such, is the appropriate applicant to claim the costs. On June 9, 2006, FEMA officials advised the city that the berm costs applicable to the area in front of the hotel/convention center should not be claimed. As a result, city officials requested and received payment from ADCNR in the amount of \$399,088. The city also requested that FEMA deobligate the \$399,088 of funding. However, at the conclusion of our fieldwork, the \$399,088 had not been deobligated.
- G. Interest Earned on FEMA Advances. According to federal regulation 44 CFR 13.21(c), subgrantees shall be paid in advance provided they maintain or demonstrate a willingness and ability to maintain procedures to minimize the time elapsing between the transfer of funds and their disbursement. Additionally, 44 CFR 13.21(g) requires that any interest earned on cash advances be promptly, but at least quarterly, remitted to the federal agency.³

While most of the payments to the city were on a reimbursable basis, the city received advances totaling \$10.9 million under Projects 852, 625, and 3213, which exceeded its immediate cash needs. For example, under Project 852, the city received advances totaling approximately \$4.4 million in March and May 2005. Although work under the project was completed in August 2005 for a total cost of approximately \$1 million, almost \$3.5 million of excess funding was held by the city until it was deobligated during project closeout in December 2006. According to city records, \$65,526 of interest was earned on the FEMA funds advanced under the three projects. However, at the time of our review, the interest had not been remitted to FEMA as required.

³ The subgrantee may keep interest amounts up to \$100 per year for administrative expenses.

RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region IV, in coordination with the AEMA:

Recommendation #1. Disallow the \$9,725,753 of questioned costs.

Recommendation #2. Instruct the city to remit the \$65,526 of interest earned on FEMA advances.

Recommendation #3. Inform the city that, for future FEMA awards, it must comply with federal procurement regulations and FEMA guidelines when awarding contracts for FEMA-funded activities.

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOW-UP

We discussed the results of our review with city, AEMA, and FEMA officials on February 20, 2008. City officials disagreed with Findings B and C. Their comments, where appropriate, have been incorporated into the report.

Please advise me by April 13, 2009 of action(s) taken to implement the recommendations contained in this report. Should you have any questions, please contact me at (404) 832-6702. Key contributors to this assignment were Mary Stoneham and Cal Flowers.

cc: Audit Liaison, FEMA Region IV

City of Gulf Shores, Alabama
 FEMA Disaster No. 1549-DR-AL
Schedule of Amount Awarded and Questioned

Project Number	Amount Awarded	Amount Questioned	Funds Put to Better Use
Debris Removal:			
6	\$1,039,645		
72	775,216		
73	873,997		
75	1,271,216		
236	608,145		
307	467,868		
458	982,042		
556	192,278		
601	756,550		
613	723,802		
635	330,500		
690	838,764		
2863	911,086		
855	537,814		
1634	891,393		
1637	923,231		
2864	988,104		
2966	460,301		
3207	1,366,037		
3209	932,057		
Sub-total Debris Removal ⁴	\$15,870,046	\$6,500,825	
852	1,043,287	399,088	\$65,526
625	6,599,781	2,825,840	
3213	3,287,561		
Total	\$26,800,675	\$9,725,753	\$65,526

⁴ We audited the debris removal projects (Category A) as one project. Therefore, the questioned costs of \$6,500,825 are applicable to all of the debris removal projects.