



Federal Emergency Management Agency

Office of Inspector General – Audits Division
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January 15, 2003

MEMORANDUM FOR: Jeff Griffin
Regional Director, Region IX

Robert J. Lastrico

FROM: Robert J. Lastrico
Western District Audit Manager

SUBJECT: Los Angeles County Department of Public Works
Alhambra, California
FEMA Disaster Number 1046-DR-CA
Public Assistance Identification Number 037-91012
Audit Report Number W-08-03

The Office of Inspector General audited public assistance funds awarded to the Los Angeles County Department of Public Works, Alhambra, California (Department). The objective of the audit was to determine whether the Department expended and accounted for FEMA funds according to Federal regulations and FEMA guidelines.

The Department received an award of \$3.3 million from the California Office of Emergency Services (OES), a FEMA grantee, for damage resulting from severe winter storms, mud and land slides, and flooding that occurred from February 13, 1995, to April 19, 1995. The award provided for 75 percent FEMA funding for 16 large projects and 90 small projects.¹ The audit covered the period February 1995 to April 2000. We judgmentally selected and audited nine large projects with an award of \$2,047,060, including costs associated with employee benefits. For the remaining seven projects, we limited our review to determining the reasonableness of the \$464,697 claimed by the Department for employee benefits costs. We also reviewed Federal, State, and local compliance with grants and program management requirements. The attached exhibit provides details of the 16 large projects audited.

¹ According to Federal regulations in effect at the time of the disaster, a large project was defined as a project costing \$43,600 or more and a small project was defined as one costing less than \$43,600.

We performed the audit under the authority of the Inspector General Act of 1978, as amended, and according to generally accepted government auditing standards. The audit included tests of the Department's accounting records, a judgmental sample of project expenditures, and other auditing procedures we considered necessary under the circumstances.

RESULTS OF AUDIT

The Department's claim contained \$162,735 in questionable costs (FEMA share - \$122,051) consisting of \$148,522 of costs beyond the scope of an approved project and \$14,213 of unsupported costs.

A. Work Beyond the Scope of an Approved Project. The Department's claim under project 11441 included \$148,522 for work that was beyond the scope of the approved project. In July 1995, an OES/FEMA inspection team (including a FEMA geotechnical engineer) accompanied a Department representative to the affected area and conducted an inspection of the site to determine the damage. In December 1995, the Department completed a geotechnical investigation of the road failure and recommended a retaining wall structure with pile installation procedures complying with the County's Standard Specifications for Public Works Construction. The report stated that the structure should consist of soldier piles with wood or concrete lagging. In January 1996, FEMA and OES agreed on the required repair as documented in the project narrative. The narrative indicated the following scope of work:

The County [Department] proposes to construct a pre-drilled bulkhead H-pile retaining wall with tie-back system and concrete lagging. In our opinion, the tie-back system is not required. The proposed wall will be about 10 feet high and piles will be imbedded in the bedrock. Therefore, the wall should have adequate capacity without the need for a tie-back system. This is also discussed in the Geotechnical narrative attached to this narrative. A treated timber lagging should also be adequate instead of the concrete lagging. The scope of this DSR [project] is therefore limited to 95 feet by 10 feet high H-pile retaining wall with timber lagging and no-tie-backs. Approximately 1,235 square feet of pavement will be replaced. Pile spacing is assumed to be 6 feet.

In February 1996, FEMA approved the scope of work described in the project narrative and estimated the costs at \$43,604. In January 1997, nearly 2 years after the disaster, the Department's Design Division provided justification to the Road Maintenance Division for proposed project construction costs and indicated that the estimate of the contract price was higher than the FEMA project estimate because certain items were not included in the estimate (e.g., structural concrete to install piles) and some unit prices were different (e.g., structural excavations costs in the project estimate (\$32/cubic yard) versus a contract

estimate (\$75/cubic yard)). Regarding design and engineering costs, the Design Division indicated that the complexity of the project warranted a higher engineering cost. Despite the Department's knowledge of budget increases and design changes to the original scope of work, there was no indication in FEMA or OES files that these budget or program changes were communicated to FEMA or OES until project completion and closure.

In October 1997, the Department reported to the County Supervisors that the project was complete. We noted that the Department changed the design and specifications of the project and essentially constructed a steel and concrete retaining wall at a significant increase in cost. In May 1999, FEMA closed the project and, in July 1999, supplemented the project by approving \$148,522 in additional project costs, including total engineering costs of \$63,358.² The narrative for the supplemental funding provided by FEMA recognized that the Department constructed the retaining wall with a different design than that specified in the original project, and a significant portion of the overrun was attributed to design and engineering costs. In spite of the significant cost overruns, the Region determined that the completed retaining wall constituted a reasonable approach to the restoration of the damaged roadway. Further, the Region stated that, although assistance is limited to the work necessary to restore the pre-disaster function of the facility, FEMA does not normally limit work to a specific repair scheme. We agree that FEMA does not normally specify a repair scheme when approving construction projects but disagree that the additional funding should have been provided for the following reasons:

- The Department did not request additional funding prior to incurring the additional costs. According to Federal regulation 44 CFR 13.30(c)(2), the Department is required to obtain prior written approval for any budget revision which would result in the need for additional funds. In January 1997 and prior to construction, the Department was aware of the need for additional funds when the Design Division informed the Roads Maintenance Division of the proposed construction cost increases.
- The Department did not obtain prior FEMA approval for changes in the scope of work. According to Federal regulation 44 CFR 13.30(d)(1), the Department is required to obtain prior written approval from the awarding agency whenever any revision of the scope or objectives of a project is anticipated (regardless of whether there is an associated budget revision requiring prior approval). While the FEMA approved scope of work was specific as to nature of the construction project, the Department changed and improved the design and construction method without seeking Region approval. According to Federal regulation 44 CFR 206.203(d)(1), if a subgrantee desires to make improvements, but still restore the pre-disaster function of a damaged facility, the

² The project estimate for engineering costs was \$4,321 whereas the Department claimed \$63,358 for these same costs.

grantee's approval must be obtained, and funding for such improved projects will be limited to the Federal share of the approved estimate of eligible costs.

- The Department did not request OES approval of a budget/project revision. According to Federal regulation 44 CFR 13.30(f)(3), any Department requests for prior approval will be addressed in writing to OES, and OES will obtain FEMA's approval before approving the Department's request.
- According to Federal regulation 44 CFR 206.204(e), subgrantees may find during project execution that cost overruns, due to such things as variations in unit prices and change in scope of eligible work, are necessary. In such cases, subgrantees are required to evaluate each overrun, and, when justified, submit a request for additional funding through the grantee to the Region for a final determination. While the Department may have considered the project as being underway due to its earlier design efforts (even though actual construction did not begin until after April 1997), it did not request additional funding until project closure in May 1999, even though proposed project cost were over 4 times the FEMA project estimate.
- Time extensions required by Federal regulation 44 CFR 206.204(c) and (d) were not requested, justified, or approved by FEMA until the project was completed and closed in May 1999, over 4 years after the disaster occurred. We found no extenuating circumstances or unusual project requirements beyond the control of the Department that were brought forward to OES, or a justification from OES to the Region detailing reasons for a construction delay and project completion. Contrary to Federal regulation, FEMA retroactively approved a time extension when it closed the project.

In addition to OES and Department non-compliance with the provisions of Federal regulations, we considered other aspects of this project to assess whether additional FEMA funding was justified. Those considerations are discussed below:

- It was not apparent from FEMA, OES, or Department files that the additional costs of designing, engineering, and constructing the retaining wall were "triggered" by existing codes and standards. In fact, the geotechnical investigation of the area stated that the Department should comply with Section 305-1.3 of the Standard Specifications for Public Works Construction for pile installation only and that wood or concrete lagging would be appropriate. According to Federal regulation 44 CFR 206.226(b), codes and standards must: (1) apply to the type of repair or restoration required, (2) be appropriate to the pre-disaster use of the facility, (3) be in writing and formally adopted before project approval, (4) apply uniformly to all similar types of facilities, and (5) be enforced during the time any existing code or standard was in effect.

- The steel and concrete retaining wall may have been constructed to stabilize/mitigate a landslide area. The geotechnical investigation completed by the Department in December 1995, nearly 2 months before the project was approved, stated that the retaining wall proposed in its report would stabilize the outboard edge of affected site but because it was located upslope of the landslide that caused the road failure, the landslide mass will not be stabilized. In addition, the report noted that the affected roadway was underlain by a larger, ancient landslide complex that was not investigated, and therefore, mitigation efforts were unknown. FEMA's landslide policy, dating back as far as March 1984, states that if a site is unstable, the applicant must first stabilize the site, after which the most cost-effective method of restoring the facility to its pre-disaster condition is eligible for FEMA funding. It was not apparent from the geotechnical investigation that the landslide area was sufficiently stable to allow for permanent repairs or that any cost/benefit analysis had been accomplished to determine the cost-effectiveness of the Department's retaining wall design.

The foregoing discussion highlights grants and program management non-compliance at the subgrantee (Department) and State (OES) levels. In addition, the Region's retroactive approval of budget/scope revisions and time frames for project completion does not hold the Department or OES responsible for adhering to Federal regulations. Further, there is no indication that the Region considered other aspects of the project (e.g., landslide stability) or sufficiently assessed the revised scope of the improved project before awarding supplemental funding. As such, we are recommending that claimed costs be limited to the original project estimate because we could not determine what the actual design, engineering, and construction costs would have been if the scope of the project had been accomplished as approved. (This is consistent with Federal regulation 44 CFR 206.203(d)(1) which limits funding on an improved project to the original damage estimate.) Therefore, we are questioning \$148,522 (\$192,126-\$43,604).

- B. Unsupported Fringe Benefits Costs on Overtime Labor. The Department claimed fringe benefits costs on its force account overtime labor that were not supported with sufficient documentation. The Department used fringe benefits rates of 44.85 percent on its regular pay and 18.81 percent on the overtime pay. We determined that the fringe benefits rate for regular pay was reasonable, however, the rate for the overtime labor was overstated because it included costs for retirement, sick leave, and unemployment insurance. Normally, these costs are based on the regular salaries of employees and do not vary with the payment of overtime costs. Based on records provided by the Department, we determined that, at the time of the disaster, the actual fringe benefits rate for overtime, excluding retirement, sick time, and unemployment insurance, was 3.36 percent. The Department did not provide us any additional documentation to support that these costs were eligible for FEMA reimbursement. The unsupported fringe benefits costs for overtime applicable to each project we reviewed is shown below:

<u>DSR No.</u>	<u>Force Account Overtime</u>	<u>Fringe Benefits Costs Claimed For Overtime (18.81%)</u>	<u>Actual Costs of Fringe Benefits For Overtime (3.36%)</u>	<u>Unsupported Fringe Benefits Costs For Overtime</u>
06254	\$ 820.40	\$ 154.32	\$ 27.57	\$ 126.75
26046	23,161.36	4,356.65	778.22	3,578.43
75877	5,834.73	1,097.51	196.05	901.46
95460	23,252.03	4,373.71	781.27	3,592.44
20297	12,575.99	2,365.54	422.55	1,942.99
95403	2,591.76	487.51	87.08	400.43
95407	2,717.02	511.07	91.29	419.78
95425	9,894.86	1,861.23	332.47	1,528.76
95482	<u>11,144.46</u>	<u>2,096.27</u>	<u>374.45</u>	<u>1,721.82</u>
Total	<u>\$91,992.61</u>	<u>\$17,303.81</u>	<u>\$3,090.95</u>	<u>\$14,212.86</u>

According to Federal regulation 44 CFR 13.20(b)(6), accounting records must be supported by source documentation such as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents. Also, according to Office of Management and Budget Circular A-87, Attachment B, paragraph 11d(1), the costs of fringe benefits are allowable to the extent that the benefits are reasonable and are required by law, governmental unit-employee agreement, or an established policy of the governmental unit. Because the fringe benefits rate applied to overtime labor was not supported by source documentation and was not reasonable, we question \$14,213.

RECOMMENDATIONS

We recommend that the Regional Director, in coordination with OES, disallow \$162,735 of questionable costs.

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOW-UP

We discussed our audit results with Department officials on September 12, 2002. Those officials disagreed with our findings. On September 12, 2002, and again on December 12, 2002, we discussed our audit results with OES officials and those officials withheld comment pending receipt of the final report. We discussed our audit with Region IX officials on January 9, 2003.

Pursuant to FEMA Instruction 1270.1, please advise this office by March 17, 2003, of actions taken to implement our recommendation. Should you have any questions concerning this report, please contact me at (510) 627-7011. Key contributors to this audit were Ravinder Anand and Gloria Conner.

Los Angeles County Department of Public Works
Alhambra, California
FEMA Disaster Number 1046-DR-CA

<u>Project Number</u>	<u>Amount Awarded</u>	<u>Amount Claimed</u>	Costs		<u>Finding Reference</u>
			<u>Disallowed By FEMA</u>	<u>Questioned Costs</u>	
06254	\$ 368,766	\$ 368,766	\$ 0	\$ 127	B
11441	192,126	192,126	0	148,522	A
26046	327,970	327,970	0	3,578	B
48549	185,350	185,350	0	0	
75877	129,492	129,492	0	902	B
95460	253,036	253,036	0	3,592	B
95469	306,353	872,402	(566,049)	0	
95486	148,177	972,708	(824,531)	0	
98603	135,790	135,790	0	0	
20260	52,500	87,715	(35,215)	0	
20297	95,509	95,509	0	1,943	B
75884	81,757	82,414	(657)	0	
95403	54,152	54,152	0	400	B
95407	61,842	61,842	0	420	B
95425	67,867	67,867	0	1,529	B
95482	51,070	51,070	0	1,722	B
Totals	<u>\$2,511,757</u>	<u>\$3,938,209</u>	<u>(\$1,426,452)</u>	<u>\$162,735</u>	

Legend: A - Work Beyond the Scope of an Approved Project
 B - Unsupported Costs