




Homeland Security

September 29, 2009

MEMORANDUM FOR: Nancy Ward
Regional Administrator
FEMA Region IX

FROM: 
Robert J. Lastrico
Western Regional Director

SUBJECT: *City of Oakland, California*
Public Assistance Identification Number 001-53000-00
FEMA Disaster Number I646-DR-CA
Audit Report Number DS-09-14

The Office of Inspector General audited public assistance funds awarded to the City of Oakland, California (City). The objective of the audit was to determine whether the City expended and accounted for Federal Emergency Management Agency (FEMA) funds according to federal regulations and FEMA guidelines.

The City received a public assistance subgrant award of \$4.7 million from the California Office of Emergency Services (OES),¹ a FEMA grantee, for the estimated costs of performing eligible work under 10 projects (seven large and three small).² Of the \$4.7 million award, FEMA agreed to provide 75% reimbursement of eligible costs incurred primarily for repair of roads damaged by severe storms, flooding, landslides, and mudslides during the period from March 29, 2006, to April 16, 2006. The City has received partial reimbursements of \$2.9 million from the grantee.

The audit covered the period from March 29, 2006, to March 19, 2009, and included a review of all seven large projects with a total award of \$4.6 million (Exhibit). The City completed all work on these projects and submitted a claim of \$4.5 million to the grantee on March 19, 2009, using FEMA's "Project Completion and Certification Report" (P.4). However, as of the conclusion of our fieldwork, CalEMA had not forwarded the City's P.4 claim to FEMA with its certification of the amount eligible under applicable public assistance criteria. Therefore, FEMA had not performed a final inspection or closeout of these 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

¹ Under a State of California reorganization, the grantee services formerly performed by the OES became the responsibility of the newly formed California Emergency Management Agency (CalEMA) as of January 1, 2009.

² At the time of the disaster, the large project threshold was \$57,500.

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 during the audit provides a reasonable basis for our findings and conclusions based on our audit objective.

We interviewed FEMA, CalEMA, and City officials; reviewed selected samples of cost documentation to support invoices; and performed other procedures considered necessary to accomplish our objective. We did not assess the adequacy of the City's internal controls applicable to grant activities because it was not necessary to accomplish our audit objective. We did, however, gain an understanding of the City's method of accounting for disaster-related costs.

RESULTS OF AUDIT

Of the \$4.5 million that the City claimed for the seven large projects, \$426,770 is not in compliance with criteria required for federal reimbursement (the federal share of the costs questioned in this report totals \$320,078). Pending the results of FEMA's final inspection and closeout review, we question the reimbursement of (a) \$280,421 in administrative allowance costs; (b) \$44,029 in scope of work change orders; (c) \$38,678 in environmental clearance costs; and (d) \$63,642 in cost overruns.

Finding A – Administrative Allowance

The City claimed costs of \$280,421 that are unallowable as direct costs because they are covered under the statutory administrative allowance. The activity logs and time sheets did not contain detail of work activity, but a City official said these costs were claimed primarily for their engineering staff to perform functions such as coordinating projects through the various City, state, and federal systems, and resolving environmental and public transparency issues. In addition, the payroll rates claimed included allocations for ineligible overhead costs, and also exceeded PW approved amounts for engineering and construction management.

According to Title 44, *Code of Federal Regulations* (hereinafter 44 CFR) Section 206.228(a)(2),³ the City's necessary costs of requesting, obtaining, and administering federal disaster assistance subgrants are covered by a percentage allowance of net eligible costs. No indirect costs of the City are separately eligible for federal reimbursement. CalEMA officials reviewed the above cited regulations in relation to available work activity information and concluded that the force account costs claimed were for employees who performed duties that are covered by that allowance. Therefore, a total of \$280,421, shown by project worksheet (PW) in the table below, is questioned:

³ All citations from the CFR are taken from the edition in effect at the time of the disaster (October, 1, 2005).

PW	Force Account Payroll	Administrative Expenses	Totals
295	\$ 29,795	\$1,472	\$ 31,267
315	25,268	1,702	26,970
417	11,642	88	11,730
429	3,084	0	3,084
557	178,835	457	179,292
584	14,782	0	14,782
647	13,208	88	13,296
Totals	\$276,614	\$3,807	\$280,421

Note: During our exit conference, City officials said they did not agree with this finding and believe that all costs claimed for force account labor and expenses were eligible direct project costs, and thus were not covered by the administrative allowance.

Finding B – Scope of Work Change Orders

The City claimed \$44,029 for contract change orders that were not submitted through CalEMA to FEMA for approval; and these change orders were dated subsequent to the contract performance period. The costs were primarily for a greater quantity of items than specified in the original contract. According to 44 CFR 206.202(d), the City is responsible for ensuring identification of all eligible work during PW preparation. In addition, 44 CFR 206.204(e) requires the City to evaluate each cost overrun during the execution of approved work and, when justified, to submit a request for additional funding through CalEMA to the FEMA Regional Administrator for a final determination.

Following is a detailed discussion of the change orders for the costs we are questioning:

- PW 295. The City's claim included \$18,095 for contract change orders that were not submitted through CalEMA to FEMA for approval. These change order additional costs were approved by the City in March 2008, well after the scheduled contract completion date of January 15, 2008, that included a retroactive time extension of 30 days. The additional costs were not associated with the original contract scope of work that formed the basis for FEMA's PW approval, and included significant overruns such as a 50% increase in square feet for asphalt concrete.

The original contract amount was awarded based on a negotiated bid for approved items to restore the roadway at Thornhill Drive near Heather Ridge. The contract was dated October 4, 2006, and the contractor received a notice to proceed with the work on October 2, 2007. The contract provided for the work to be completed within 25 working days of the notice to proceed. Subsequently, the City approved a change order that retroactively extended the date for completion to January 15, 2008.

The contract increases of \$18,095, as identified in change order numbers one and three, primarily were for additional quantities of line items over the quantity approved in the original contract. These items were not submitted through CalEMA to FEMA for approval, and were dated subsequent to the contract period of performance. Therefore, we question the \$18,095.

- PW 315. The claim included \$16,822 based on contract change order number one that was dated subsequent to the contract date for completion. The change order was approved by the City on December 23, 2008, whereas the required date for completion of the work based on the contract terms was August 22, 2008. The additional costs provided for increases of bid quantities for various items, resulting in a net increase of about 13% over the original contract price.

The original contract amount was awarded based on a negotiated bid for approved items to restore the roadway near 549 Dwight Place. The contract was dated May 8, 2008, and the contractor received a notice to proceed with the work on July 21, 2008. The contract provided for the work to be completed within 25 working days of the notice to proceed.

Since the contract change order was processed and approved subsequent to the contract period of performance, we question these additional costs of \$16,822.

- PW 647. The claim included \$9,112 based on two change orders that were dated subsequent to the contract date for completion. The change orders were approved by the City on August 28, 2008, and December 8, 2008, whereas the required date for completion of the work based on the contract terms was August 22, 2008. The additional costs provided for increases in installed quantities over the bid quantities that formed the basis for the contract, and resulted in an increase of about 15% over the original contract price.

The original contract amount was awarded based on a negotiated bid for approved items to restore the roadway near 7155 Marlborough Terrace. The contract was dated May 8, 2008, and the contractor received a notice to proceed with the work on July 21, 2008. The contract provided for the work to be completed within 25 working days of the notice to proceed.

Since the contract change order was processed and approved subsequent to the contract period of performance, we question these additional costs of \$9,112.

Note: During our exit conference, City officials said they did not agree with this finding and believe that all cost increases associated with the change orders are eligible. They said that although change orders were processed and approved subsequent to contract completion, verbal approval was given for the increases during the contract performance.

Finding C - Environmental Clearance

The City claimed \$38,678 for contract environmental clearance costs that we question because FEMA did not include this type of cost within the project approved scope of work. According to 44 CFR 206.202(d), the City is responsible for ensuring identification of all eligible work during PW preparation. In addition, 44 CFR 206.204(e) requires the City to evaluate each cost overrun during the execution of the approved work and, when justified, to submit a request for additional funding through CalEMA to the FEMA Regional Administrator for a final determination.

The City did not notify the grantee of these additional costs incurred, and therefore we question the \$38,678 as listed below:

PW	Environmental Costs Claimed
295	\$13,663
315	3,477
417	7,169
557	3,491
584	8,236
647	2,642
Total	\$38,678

Note: During our exit conference, City officials said these costs should be eligible, but agreed that the costs identified above exceeded the PW approved amounts.

Finding D – Cost Overruns

The City claimed \$63,642 in excess of amounts that FEMA approved for miscellaneous contract engineering and environmental costs not questioned elsewhere in this report. According to 44 CFR 206.202(d), the City is responsible for ensuring identification of all eligible work during PW preparation. In addition, 44 CFR 206.204(e) requires the City to evaluate each cost overrun during the execution of the approved work and, when justified, to submit a request for additional funding through the grantee to the FEMA Regional Administrator for a final determination.

Since FEMA has not approved these additional costs, we question these costs as shown in the table below:

PW	Description	Amount Claimed	Approved Amount	Cost Overrun
417	Geotechnical and engineering	\$36,463	\$ -0-	\$36,463
429	Environmental	8,247	3,715	4,532
584	Engineering	34,982	12,335	22,647
Totals		\$79,692	\$16,050	\$63,642

Note: During our exit conference, City officials said these costs should be eligible, but agreed that the costs identified above exceeded the PW approved amounts.

RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region IX:

Recommendation #1. Disallow \$280,421 in costs covered under the administrative allowance, if not excluded by CalEMA when it forwards the City's final claim (P.4) to the Region for closure.

Recommendation #2. Disallow \$44,029 in ineligible costs associated with change orders approved subsequent to contract completion dates, if not excluded by CalEMA when it forwards the City's final claim (P.4) to the Region for closure.

Recommendation #3. Disallow \$38,678 in unapproved environmental clearance costs, if not excluded by CalEMA when it forwards the City's final claim (P.4) to the Region for closure.

Recommendation #4. Disallow \$63,642 in unapproved cost overruns, if not excluded by CalEMA when it forwards the City's final claim (P.4) to the Region for closure.

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOW-UP

We discussed the results of this audit with CalEMA officials on September 10, 2009 and with FEMA Region IX officials on September 16, 2009. Those officials deferred final comment until they receive a copy of the audit report and review available documentation. We also discussed the audit results with City officials on September 23, 2009 and have included notes on their comments at the end of each finding within the report.

Please advise this office by November 30, 2009, of actions planned or taken to implement our recommendations. Please note that your responses should include target completion dates for actions planned and actual completion dates for actions taken. Should you have questions concerning this report, please call me at (510) 637-1482 or your staff may contact Jack Lankford, Supervisory Auditor, at (510) 637-1462. Key contributors to this assignment were Jack Lankford and Gloria Conner.

cc: Audit Liaison, FEMA Region IX
Audit Liaison, FEMA (Job Code: DG9W13/G-09-050-EMO-FEMA)

Schedule of Audited Projects
 City of Oakland, California
 Public Assistance Identification Number 001-53000-00
 FEMA 1646-DR-CA

PW	Amount Awarded	Amount Claimed by Applicant	Questioned Costs	Finding Reference
295	\$ 322,356	\$ 373,632	\$ 63,025	A, B, & C
315	208,689	193,444	47,269	A, B, & C
417	231,666	140,397	55,362	A, C, & D
429	163,447	110,372	7,616	A & D
557	3,417,548	3,397,297	182,783	A & C
584	162,842	200,849	45,665	A, C, & D
647	139,082	107,537	25,050	A, B, & C
Totals	\$4,645,630	\$4,523,528	\$426,770	

Finding Reference:

- A. Administrative Allowance
- B. Scope of Work Change Orders
- C. Environmental Clearance
- D. Cost Overruns