



Homeland Security

AUG 2 2011

MEMORANDUM FOR: Nancy Ward
Regional Administrator
FEMA Region IX

FROM: Matt Jadacki *Lisa M. Douglas-Naytkon for*
Assistant Inspector General
Office of Emergency Management Oversight

SUBJECT: *FEMA Public Assistance Funds Awarded to
County of Humboldt, California*
FEMA Disaster Number 1628-DR-CA
Public Assistance Identification Number 023-99023-00
Audit Report Number DS-11-10

We audited public assistance (PA) grant funds awarded to the County of Humboldt, California (County). Our audit objective was to determine whether the County accounted for and expended Federal Emergency Management Agency (FEMA) grant funds according to federal regulations and FEMA guidelines.

The County received a PA award of \$5.8 million from the California Emergency Management Agency (Cal EMA),¹ a FEMA grantee, for emergency protective measures and permanent repairs to facilities and roads damaged as a result of flooding that occurred from December 17, 2005, through January 3, 2006. The award provided 75% FEMA funding for 23 large projects and 42 small projects.² The audit covered the period from December 17, 2005, to April 21, 2011. We audited seven large projects and one small project totaling \$3.1 million, or 53% of the award (see Exhibit, Funds Not Used). Additionally, we reviewed the remaining large projects to identify unused funds that should be put to better use.

We conducted this performance audit 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. We conducted this audit based upon the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.

We discussed issues related to this audit with FEMA, Cal EMA, and County officials; reviewed judgmentally selected samples of cost documentation (generally based on dollar value); and performed

¹ At the time of the disaster, the grantee's name was the California Office of Emergency Services, which became a part of Cal EMA on January 1, 2009.

² Federal regulations in effect at the time of the disaster set the large project threshold at \$57,500.

other procedures considered necessary to accomplish our objective. We did not assess the adequacy of the County's internal controls applicable to subgrant activities because it was not necessary to accomplish our audit objective. We did, however, gain an understanding of the County's methods of accounting for disaster-related costs and its procurement policies and procedures.

RESULTS OF AUDIT

County officials did not account for and expend \$895,535 according to federal regulations and FEMA guidelines, and have unused funds that should be deobligated. Specifically, we identified (1) \$740,000 in improper procurement costs, (2) \$234,013 of funds not used, (3) \$139,382 in ineligible contract overpayments and improper procurement costs, and (4) \$16,153 in ineligible force account labor costs. This report also addresses ineligible force account equipment charges and the County's net small project overrun.

Finding A: Procurement

The County did not comply with federal procurement regulations and FEMA guidelines for two permanent roadway repair contracts (at two worksites) for Project 1999, totaling \$879,382. As a result, full and open competition did not occur, and FEMA had no assurance that the County paid reasonable prices.

Federal procurement standards at 44 Code of Federal Regulations (CFR) 13.36 require the County to—

- Perform procurement transactions in a manner providing full and open competition except under certain circumstances. One allowable circumstance is when there is a public exigency or emergency for the requirement that will not permit a delay resulting from competitive solicitation. (13.36(c)(1) and (d)(4)(i))
- Include in its contracts specific provisions listed in 44 CFR 13.36(i).
- Prepare a cost or price analysis in connection with every procurement action, including contract modifications. (13.36(f)(1))
- Take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor enterprise surplus area firms are used when possible. (13.36(e))

In addition, FEMA's *Public Assistance Guide* (FEMA 322, October 1999), page 39, specifies that—

- Contracts must be of reasonable cost, generally must be competed, and must comply with federal, state, and local procurement standards.
- Noncompetitive proposals should be used only when the award of a contract is not feasible under small purchase procedures, sealed bids, or competitive proposals, and one of the following circumstances apply: (1) the item is available only from a single source; (2) there is an emergency requirement that will not permit a delay; (3) FEMA authorizes noncompetitive

proposals; or (4) solicitation from a number of sources has been attempted, and competition is determined to be inadequate.

The County did not follow these federal procurement requirements, as illustrated in Table 1:

Table 1: Noncompetitive Procurement: Project 1999						
FEMA Project Number	Work Site	Full and Open Competition?	Included Mandatory Contract Provisions?	Prepared Contract Cost/Price Analysis?	Took All Necessary Affirmative Steps?	Total Questioned Contract Costs
1999	1	No	No	No	No	\$825,437
	2	No	No	No	No	53,945
TOTAL:						\$879,382

County officials told us that, after the disaster, they hired a local contractor with whom they were familiar to perform *permanent* roadway repairs, instead of competing the work. Contractor invoices showed that this permanent work generally started after the County’s own workers determined that the repairs were necessary. Contractors performed this work up to 6 months after the disaster. Because the work performed by the contractor was permanent in nature and lasted as long as it did, the County should have used full and open competition, particularly because exigent circumstances were no longer present. Full and open competition increases the number of available contracting sources and thereby increases the opportunity to obtain reasonable pricing from the most qualified contractors. It also provides the opportunity for minority firms, women’s business enterprises, and labor enterprise surplus area firms to participate in federally funded work. In addition, full and open competition helps discourage and prevent favoritism, collusion, fraud, waste, and abuse.

Further, County officials did not include mandatory provisions within the contracts and did not prepare cost/price analyses on each procurement action and modification, as required. This was especially important because the contract *not-to-exceed value*, as established by County officials, significantly increased in cost by 600% in less than 3 months, from \$100,000 to \$700,000, as shown in Table 2. In addition, County records did not include documentation supporting or explaining the significant increases in the contract costs.

Table 2: Contract Cost Modification						
FEMA Project Number	Date Contract Awarded (Site 1)	Initial Contract Ceiling	Modified Contract Ceiling	Date Contract Modified	Total Modification Amount	Percentage of Contract Modified
1999	1/5/2006	\$100,000	\$700,000	3/28/2006	\$600,000	600%

Because County officials did not follow federal contracting requirements, we question \$879,382 in ineligible contract costs. This amount includes \$139,382 in contract costs also questioned in Finding C as ineligible overpayments. Therefore, to avoid duplication, the net amount recommended for disallowance for this finding is \$740,000 (\$879,382 less \$139,382). County officials disagreed with this finding, specifically regarding full and open competition, contending that their procurement actions were reasonable because they were based on being able to use a local contractor, with whom they were already familiar, soon after the disaster.

Finding B: Funds Not Used

The amount FEMA estimated and approved for five large projects exceeded the amount the County charged to the projects by \$234,013 (see Exhibit, Funds Not Used). Therefore, FEMA should deobligate \$234,013 and put those funds to better use. County officials agreed with this finding.

Finding C: Contract Overpayment

County officials (over)charged \$139,382 in contract costs to Project 1999 that exceeded the County’s authorized *not-to-exceed value*. Table 3 illustrates the overpayments.

Table 3: Construction Contract Overpayments				
FEMA Project Number	Work Site	Contract Ceiling	Actual Amount Charged to Project	Amount of Overpayment
1999	1	\$700,000	\$825,437	\$125,437
	2	40,000	53,945	13,945
TOTAL:				\$139,382

Federal regulations require County officials to maintain a contract administration system that ensures that contractors perform according to the terms, conditions, and specifications of their contracts or purchase orders (44 CFR 13.36(b)(2)). Because the County did not comply with this criterion, it allowed its contractor to bill costs over the contract ceiling amounts and paid the contractor \$139,382 more than was contractually authorized. Therefore, we question \$139,382 in ineligible project charges.³ County officials chose not to comment on this finding.

Finding D: Force Account Labor

The County charged \$16,153 in ineligible regular labor costs (for budgeted employees) to projects 725 and 751. However, FEMA’s approved scope of work for these projects consisted of emergency protective measures (Category B work).

According to federal regulations and FEMA policy for emergency protective measures, only *overtime* labor [as opposed to regular-time labor] is eligible for federal disaster assistance (44 CFR 206.228(a)(4) and FEMA 322, October 1999, page 36). Therefore, we question \$16,153 in regular force account labor charges as ineligible. County officials agreed with this finding.

Finding E: Force Account Equipment

The County charged \$42,928 in force account equipment costs that, in part, were ineligible. When accounting for equipment costs, the County used FEMA’s equipment rates, which were higher than the County’s locally established rates. However, according to federal regulations, where local guidelines are used to establish equipment rates, reimbursement will be based on either those rates or FEMA’s Schedule of Equipment Rates, whichever is *lower* (44 CFR 206.228(a)(1)(ii)). Therefore, a

³ These project charges, although questioned in Finding A based on noncompliance with federal procurement regulations and FEMA guidelines, are not included in Finding A’s recommendation for disallowance. To avoid duplication, we recommend disallowance of these charges in Finding C.

portion of \$42,928 in force account charges was ineligible. County officials agreed with this finding and said that they would thoroughly analyze the project's equipment costs and adjust them to the lowest rates before submitting a final claim for federal reimbursement.

Finding F: Net Small Project Overrun

The County's request for a net small project overrun (NSPO), submitted to FEMA on May 5, 2010, for \$123,763, should be adjusted to remove charges we identified as ineligible as a result of this audit. These ineligible charges consist of regular force account labor for emergency protective measures (Finding D) and excessive force account equipment charges (Finding E). County officials disagreed with this finding and told us that the NSPO does not require adjustment.

RECOMMENDATIONS

We recommend that the FEMA Region IX Administrator, in coordination with Cal EMA:

Recommendation #1: Disallow \$740,000 (federal share \$555,000) in ineligible contracting costs incurred without compliance with federal procurement regulations and FEMA guidelines (Finding A). This amount is net of the \$139,382 recommended for disallowance in Recommendation #3, below.

Recommendation #2: Deobligate \$234,013 (federal share \$175,510) and put those funds to better use (Finding B).

Recommendation #3: Disallow \$139,382 (federal share \$104,537) in ineligible, excessive contract charges (Finding C) and incurred without compliance with federal procurement regulations and FEMA guidelines (Finding A).

Recommendation #4: Disallow \$16,153 (federal share \$12,115) in ineligible force account labor costs (Finding D).

Recommendation #5: Ensure that County officials claim the lowest eligible rates for force account equipment charges (Finding E).

Recommendation #6: Ensure that County officials claim only eligible costs in their net small project overrun (Finding F).

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOW-UP

We discussed the results of this audit with County officials during our audit, and included their comments in this report, as appropriate. We also provided written summaries of our findings and recommendations in advance to FEMA and Cal EMA on June 9, 2011. We discussed these findings and recommendations at an exit conference with County officials on February 4, 2011, and with Cal EMA on June 10, 2011. County officials disagreed with Findings A and F; agreed with Findings B, D, and E; and did not comment on Finding C. FEMA and Cal EMA officials withheld further comment until after we issue our final report.

Within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until your response is received and evaluated, the recommendations will be considered open and unresolved.

Consistent with our responsibility under the *Inspector General Act*, we are providing copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. To promote transparency, this report will be posted to our website, with the exception of sensitive information identified by your office. Significant contributors to this report were Humberto Melara, Devin Polster, Connie Tan, Renee Gradin, and Arona Maiava.

Should you have questions concerning this report, please contact me at (202) 254-4100 or Humberto Melara at (510) 637-1463.

cc: Audit Liaison, FEMA Region IX
Audit Liaison, FEMA (Job Code G-11-017)
Audit Liaison, DHS

**Schedule of Audited Projects
County of Humboldt, California
Public Assistance Identification Number 023-99023-00
FEMA Disaster Number 1628-DR-CA**

Project Number	Project Award Amount	Project Charges	Costs Questioned				Funds Not Used (Finding B)
			Procurement (Finding A)	Contract Overpayments (Finding C)	Force Account Labor (Finding D)	Total (Findings A+C+D)	
238	\$444,413	\$366,022					\$ 78,391
725	163,126	186,496			\$ 6,298	\$ 6,298	
751	237,105	247,985			9,855	9,855	
1290	342,102	37,005					
1595	228,126	146,365					81,761
1999	939,112	930,805	\$740,000	\$139,382		879,382	8,307
2065	10,077	15,829					
2078	717,154	828,544					
Subtotal	\$3,081,215	\$2,759,051	\$740,000	\$139,382	\$16,153	\$895,535	\$168,459
1147*	\$88,338	\$47,962	N/A	N/A	N/A	N/A	\$40,376
1288*	148,351	123,173	N/A	N/A	N/A	N/A	25,178
Subtotal	\$236,689	\$171,135	N/A	N/A	N/A	N/A	\$65,554
Total	\$3,317,904	\$2,930,186	\$740,000	\$139,382	\$16,153	\$895,535	\$234,013

* We reviewed these two completed large projects only to identify unused funds that should be put to better use.