




# Homeland Security

January 13, 2011

MEMORANDUM FOR: Nancy Ward  
Regional Administrator  
FEMA Region IX

FROM:   
Humberto U. Melara  
Western Regional Director

SUBJECT: *County of Santa Barbara, California*  
Public Assistance Identification Number 083-99083-00  
FEMA Disaster Number 1577-DR-CA  
Audit Report Number DS-11-04

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

The county received a public assistance subgrant award of \$14.6 million from the California Office of Emergency Services (OES),<sup>1</sup> a FEMA grantee, for debris removal, emergency protective measures, and permanent repairs to facilities damaged by severe storms beginning on December 27, 2004, and continuing through January 11, 2005. Of the \$14.6 million, FEMA provided 75% federal funding and non-federal sources funded the remaining 25% for 150 projects (53 large and 97 small projects<sup>2</sup>). The audit covered the period December 27, 2004, to June 4, 2010, and included a detailed review of 18 large projects with a total award of \$6.9 million (Exhibit). As of June 4, 2010, the county had completed the 18 large projects we audited, and had received \$13.9 million in partial reimbursements for the 53 large and 97 small projects but had not submitted a final claim.

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

We interviewed FEMA, Cal EMA, and county officials, reviewed judgmentally selected samples of cost documentation to support invoices and personnel charges, and performed other procedures

<sup>1</sup> OES became a part of the California Emergency Management Agency (Cal EMA) on January 1, 2009.

<sup>2</sup> At the time of the disaster, the large project threshold was \$55,500.

considered necessary to accomplish our objective. We did not assess the adequacy of the county’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 county’s method of accounting for disaster-related costs.

**RESULTS OF AUDIT**

The county’s project records include questionable costs of \$1,961,663 (the federal share of the costs questioned in this report total \$1,471,247). Table #1 below lists the areas in which we questioned amounts identified in county records as claimable.

<b>Table #1</b>		
<b>Finding</b>	<b>Subject</b>	<b>Amount Questioned</b>
A	Procurement Practices	\$1,243,850
B	Funding for Debris Removal Costs	457,475
C	Reasonableness of Project Costs	142,006
D	Support for Project Costs	89,357
E	Project Cost Eligibility	24,075
F	Accounting Error	4,900
		<b>\$1,961,663</b>

**Finding A – Procurement Practices**

The county’s incurred costs for \$1,243,850 with two contractors are questioned because they did not comply with FEMA’s required procurement practices in ensuring full and open competition as well as reasonable and non-duplicative prices. For the work performed on these contracts as identified in Table #2 below, county officials did not enter into formal written contracts that would describe pricing terms and contract types. Further, the officials could not provide any documentation that would identify the composition of the rates charged, such as overhead and profit, that was included in the unit prices.

<b>Table # 2</b>	
<b>Project (PW) Number</b>	<b>Contract Costs</b>
1829	\$310,337
344	201,136
909	149,157
347	135,210
1477	122,219
452	101,546
451	90,839
751	93,275
555	18,594
542	13,132
731	8,405
Total	\$1,243,850

Office of Management and Budget (OMB) Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*, Attachment A, Section C.2, says that a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. Among other factors to determine reasonableness, the Circular says that consideration should be given to the restraints or requirements imposed by federal, state, and other laws and regulations.

Federal procurement standards applicable to grantees and subgrantees are contained in Title 44, *Code of Federal Regulations* (hereinafter 44 CFR), Section 13.36. In the broadest sense, the regulations [44 CFR Section 13.36(a)] allow a state (i.e., grantee) to follow the same policies and procedures it uses for procurements from its non-federal funds as long as procurements using federal funds include clauses required by federal statutes, executive orders, and their implementing regulations. Subgrantees are allowed to use their own procurement procedures that reflect applicable state and local laws and regulations provided that the procurements conform to applicable federal laws and the standards identified in the regulations [44 CFR Section 13.36(b)(1)]. Among the standards required by federal regulations are the following:

- Require the performance of procurement transactions in a manner providing full and open competition except under certain circumstances [44 CFR Section 13.36(c)(1)].
- Allow procurement by noncompetitive proposals only when certain circumstances apply. One acceptable circumstance is when the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation [44 CFR Section 13.36(d)(4)(i)(B)].
- Require that subgrantees maintain records sufficient to detail the significant history of the procurement, including the rationale for the method of procurement and the basis for contractor selection and price [44 CFR Section 13.36(b)(9)].

- Require subgrantees to maintain a contract administration system that ensures contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders [44 CFR Section 13.36(b)(2)].
- Prohibit the use of time-and-material-type contracts unless a determination is made that no other contract is suitable and provided that the contract include a ceiling price that the contractor exceeds at its own risk [44 CFR Section 13.36(b)(10)].
- Require a cost or price analysis when adequate price competition is lacking [44 CFR Section 13.36(f)(1)].
- Require profit to be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed [44 CFR Section 13.36(f)(2)].
- Provide that failure to comply with applicable statutes or regulations can result in the disallowance of all or part of the costs of the activity or action not in compliance [44 CFR Section 13.43(a)(2)].

FEMA Debris Management Guide (FEMA 325), April 1999, provides that time-and-material contracts should be limited to a maximum of 70 hours of actual emergency debris clearance work and should be used only after all available local, tribal and State government equipment has been committed. Time-and-material contracts for debris clearing, hauling and/or disposal should be terminated once the designated not-to-exceed number of hours is reached.

The county hired two contractors, without formal written contracts, to perform disaster-related debris removal work on various projects. According to county officials, the work was performed on a “time-and-material” basis. By definition, time-and-material contracts provide for acquiring supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit and (2) materials at cost, including, if appropriate, material handling costs. Thus, the time- and-material rates of these two contractors were to be inclusive of profit and overhead, yet these contractors charged markups of 15% to 33% on top of their time-and-material rates. FEMA’s allowable contracting practices do not include the application of a markup percentage to a variable base that would not provide an incentive for the contractor to control the variable charges. These contractors had no incentive to contain the project costs, but to the contrary, the more they billed the county in labor, material and equipment usage, the more money they made in profit and overhead by adding these margins on the top of their billings.

The county did not perform any cost or price analysis for these procurements and did not negotiate cost ceilings or "not-to-exceed" contract provisions with its contractors, although officials said they were time-and-material contracts. County officials explained that subsequent to the disaster, contractors submitted their labor and equipment rate schedules, and because of the emergency, the county did not solicit any bids or proposals from any other contractors to ensure competition. However, in addition to the noncompliance with federal regulations, the county’s contracts exceeded the 70 hour period allowed under FEMA policy. In summary, the county did not comply with federal regulations or FEMA policy as stated above for time-and-material contracting.

Due to the county’s noncompliance with federal regulations and specific FEMA criteria for contract procurements, we question total project costs of \$1,243,850 under the provisions of 44 CFR Section 13.43(a)(2) as stated in the above criteria.

**Finding B – Funding for Debris Removal Costs**

The county’s accounting records for four PWs identified in Table #3 below included \$457,475 in ineligible debris removal costs that were incurred either as a result of deferred debris basin maintenance or were not related to this disaster (#1577). According to 44 CFR 206.223, an item of work must be required as a result of a major disaster to be eligible for financial assistance.

<b>Table #3</b>			
<b>Ineligible Debris Removal Costs</b>			
<b>Project Number</b>	<b>Deferred Maintenance</b>	<b>Costs not related to the Disaster</b>	<b>Totals</b>
334	\$11,381	\$132,628	\$144,009
1008	20,150	119,064	139,214
1201	9,925	86,703	96,628
1488	46,564	31,060	77,624
Totals	\$88,020	\$369,455	\$457,475

Deferred Maintenance. The county’s records included \$88,020 in project costs that were related to pre-disaster damages and were not incurred as a result of the disaster. They would not have been included in the disaster cleanup if the county had cleaned its debris basins regularly. For example, the county had not cleaned its Santa Monica Basin (PW 1008) since 1998. Similarly, the other basins funded under PWs 334, 1201, and 1488 had not been cleaned for over a year before the disaster event. The county had no historical records showing the amount of debris that accumulated annually in its basins as a result of normal rainfall. County officials said that visual inspections of the debris basins associated with the four PWs were conducted just prior to the disaster and the basins had no debris in them at that time. Thus, they asserted that all debris removal costs were eligible for FEMA reimbursement. However, the visual inspections were not documented by the county, and the PWs were written by FEMA after all the debris removal work had been completed.

The county generates some debris annually but, unlike one of the adjoining counties, did not have historical records that could be used to compute an average annual debris production. However, the county performs clean up of these basins every six years after the elevation of the sediments in the basins is about 30 percent full. Thus, we estimated that, on average, 5 percent (30 percent divided by 6 years) debris is generated in these basins every year due to non-disaster accumulation. Therefore, we estimated the average annual amount of debris generated based on records pertaining to when the basins were last cleaned, and applied the percentage of non-disaster debris estimated to be in the basins annually to the debris removal costs identified by the county as claimable. This methodology resulted in a questioned cost of \$88,020 related to non-disaster debris removed from the county's basins.

Debris Removal Costs not related to the Disaster. The county's accounting records also included \$369,455 (\$205,767+\$163,688) in debris removal costs that were not related to this disaster (#1577).

- Under PW numbers 1008 and 1201, the county started debris removal work after this disaster (# 1577) and a subsequent disaster (#1585) had occurred. Under the subsequent federal disaster declaration (#1585), the county was determined not to be eligible for funding on any damages. However, the county did not keep any records as to how much debris was generated from each disaster. All debris removal costs incurred by the county after both of these disasters were incorrectly charged to the first disaster (#1577) on which the county was eligible for federal assistance. Since the county did not have records as to how much debris was generated by each disaster, we prorated total debris removal costs between these two disasters using the percentage of rainfall that occurred during each disaster based on the total rainfall during the season. Thus, we determined that 34 percent of the debris removal costs, or \$205,767 (\$119,064 for PW 1008 plus \$86,703 for PW 1201), was attributable to the second disaster (#1585), and therefore not eligible for FEMA funding, and we questioned those costs as not a result of the disaster in which the county was eligible for FEMA assistance.
- Under PW numbers 334 and 1488, the county started debris removal soon after the first disaster occurred. While the debris removal work for the first disaster (#1577) was in progress, the second disaster (#1585) took place on February 16, 2005. However, the county was not designated as one of the counties affected by this disaster declaration and therefore FEMA informed the applicant that any debris removal costs incurred after February 15, 2005 will be considered ineligible. The county filed first and second appeals to FEMA for PW numbers 334 and 1488 claiming that all debris removal costs should be eligible under disaster #1577. FEMA denied the county's appeals and established that the debris removal costs incurred after February 15, 2005, were not allowable because these costs were not related to disaster #1577. Notwithstanding FEMA's appeal determinations, the county still identified \$163,688 (\$132,628 for PW 334 plus \$31,060 for project 1488) in claimable costs that were incurred subsequent to February 15, 2005. Thus, we questioned debris removal costs of \$163,688 incurred after February 15, 2005 that were not a result of the first disaster (#1577) in which the county was eligible for FEMA assistance.

### **Finding C – Reasonableness of Project Costs**

The county's records included excessive and unreasonable project costs totaling \$142,006 -- \$136,443 in force account engineering costs (PW 542), and, \$5,563 in overtime fringe benefits (\$3,742 for PW 1477 and \$1,821 for PW 1878).

The previously mentioned OMB Circular A-87, Attachment A, Section C provides that for an item to be allowed it must be reasonable and allocable to a particular cost objective. Furthermore, according to FEMA's *Public Assistance Guide* (FEMA 322, October 1999), a reasonable cost is “a cost that is both fair and equitable for the type of work being performed.” Reasonableness can be

established in several ways, including the use of historical documentation for similar work and average costs for the similar work in the area.

Force Account Engineering Costs. Under PW 542, the county identified claimable force account engineering and design costs of \$171,852. However, of that amount, we questioned \$136,443 as excessive and unreasonable. We did not question any of the \$16,103 for force account surveying costs or the \$11,808 paid to a design engineering consulting firm.

FEMA prepared PW 542 on April 5, 2005, with funding of \$355,390. On June 20, 2006, the county informed Cal EMA of an overrun on construction costs and requested engineering costs of about 7% of construction costs. On February 1, 2008, the subgrantee informed Cal EMA that actual project costs at closeout were \$709,431, and there was a significant increase in engineering costs using force account labor. In its closeout letter to Cal EMA, the county indicated they needed a minimum of 14% of construction costs for force account engineering costs due to the complexity of the project. According to the *Public Assistance Guide* (FEMA 322), October 1999, when engineering and design work is done by force account labor for roads and street construction projects of this size, cost curve B should be used, and the compensation for engineering and design should be about 7.25%. However, the engineering-related costs identified by the county as claimable were about 35% of the construction costs of \$488,398. Based on historical costs for similar work as represented in the *Public Assistance Guide* (7.25%), we considered 35% as excessive and unreasonable. Thus, we used FEMA Curve B percentage of construction costs (7.25%) to determine a reasonable cost of force account engineering. FEMA should require Cal EMA to allow \$35,409 and disallow the remaining force account labor engineering costs of \$136,443 if claimed by the county.

Force Account Labor Fringe Benefits Costs. Cost records for PW 1477 included \$3,742 in excessive overtime fringe benefits for force account labor. The county charged \$3,929 in fringe benefits costs on total overtime wages of \$4,266 which equated to a 92% fringe benefits rate. County officials explained that the normal fringe benefits cost on overtime labor is 7.65% but offered no explanation as to why the excessive fringe benefits costs were eligible for reimbursement. Thus, eligible overtime fringe benefits totaled \$187 (7.65% on eligible overtime wages of \$2,442)<sup>3</sup> and the excessive and unreasonable overtime fringe benefits costs totaled \$3,742 (\$3,929 less \$187). Similarly in PW 1878, the county charged a fringe benefit rate of 14.2% on overtime labor of \$27,808 instead of its actual overtime fringe benefit rate of 7.65%, thus overcharging fringe benefits costs of \$1,821 [\$27,808 times 6.55% (14.2% minus 7.65%)]. Excessive overtime fringe benefits for both PWs totaled \$5,563.

#### **Finding D – Support for Project Costs**

Cost records for five of the county's projects included \$89,357 in costs not supported by source documentation. According to 44 CFR 13.20(a)(2), the county must have fiscal and accounting procedures to permit the tracing of expenditures adequate to establish that such funds have not been

---

<sup>3</sup> Eligible overtime wages of \$2,442 are total overtime wages (\$4,266) less ineligible overtime labor discussed in Finding E (\$1,824).

used in violation of the restrictions and prohibitions of applicable statutes. To meet this financial management standard, the county, as a minimum, should maintain accounting records that identify how FEMA funds are used and ensure that its accounting records are supported by source documents such as cancelled checks, paid bills, and contracts.

PW 1878. The county did not maintain adequate records for force account equipment charges of \$63,802. While the county reported that it used its fleet of autos and other construction equipment during the disaster incident period, it did not maintain records, such as usage logs identifying the employees who used the equipment, where the force account equipment was used, and the number of hours the equipment was used. Consequently, we could not verify the accuracy of the county's force account equipment costs. We discussed this issue with county officials during the audit and they agreed that \$63,802 in force account equipment costs was not adequately supported.

PW 1488. The county's accounting records included \$51,396 in force account equipment costs against this PW but the county only had records supporting \$38,306. Therefore, we questioned \$13,090 (\$51,396 less \$38,306). County officials told us that no additional documentation could be found to support the \$13,090 we questioned.

PW 909 and PW 751. The county did not provide any supporting documents for \$7,709 in force account labor inspection fees identified as claimable under PW 909 and PW 751 (\$4,950 for PW 909 and \$2,759 for PW 751); therefore, we questioned \$7,709.

PW 1477. The county could not adequately support \$4,756 in force account overtime labor and fringe benefits costs. The county's accounting records identified overtime labor and fringe benefits costs of \$12,951; however, it provided us supporting documentation for only \$8,195. Thus, we questioned \$4,756 which was the difference between what the county identified as claimable and what was supported by its records (\$12,951 less \$8,195).

### **Finding E – Project Cost Eligibility**

The county's records for four PWs included \$24,075 in ineligible project costs. According to 44 CFR 206.223, an item of work must be required as a result of a major disaster to be eligible for financial assistance.

PW 1878. Cost documentation for this PW included \$6,522 in force account labor and \$5,535 in temporary employee costs that were not related to the declared disaster. While preparing PW 1878, FEMA informed the county that overtime hours directly related to disaster 1577 will be eligible under this project and any overtime hours incurred during and after the second storm (February 16 through February 23, 2005) should not be part of DR 1577. However, \$6,522 in overtime wages paid to its supervisory officials was incurred during and after the second storm. Similarly, \$5,535 was paid to an outside agency for temporary employees who performed accounting-related work during and after the second storm. The county did not provide us any documentation to support that the work was related to the PW scope of work. Thus, we question \$12,057.



PW 1418. The county's cost records included \$8,544 in force account surveyor costs that were not related to the declared disaster. The PW was written by FEMA on April 6, 2005, and according to county records, debris removal work included in the project scope of work was completed by February 3, 2005. However, force account labor surveyor charges continued through November 2005. While some eligible survey work may have been done in February 2005, costs from March 2005 to November 2005 were not related to the project scope of work.

PW 1477. Cost records for this PW included \$1,824 in force account overtime labor costs that were not related to disaster 1577. While debris removal activities under this PW were eligible for FEMA reimbursement for declared disaster 1577, costs incurred after February 15, 2005 pertained to the second storm (DR 1585) for which the county was not eligible. Thus, we questioned \$1,824 in costs that were incurred after February 15, 2005.

PW 542. The county's records for this PW included charges of \$1,650 for a micro measurement instrument (\$1,257) and other Department of Public Works charges (\$393) that were not related to the project scope of work. We discussed this issue with county officials who agreed that the \$1,650 was not an eligible project cost.

### **Finding F – Accounting Error**

The county's records for PW 1201 included a \$4,900 accounting error. The county inadvertently posted additional project costs of \$2,450 instead of reducing the costs by \$2,450. This occurred because the county did not properly account for a credit memo issued by one of its vendors.

## **RECOMMENDATIONS**

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

**Recommendation #1.** Inform the county of its regulatory requirement to strictly follow procurement procedures that reflect applicable State and local laws and regulations, provided that the procurement conforms to applicable federal law and standards identified in 44 CFR 13.36.

We also recommend that the Regional Administrator, FEMA Region IX, require Cal EMA to

**Recommendation #2.** Disallow \$1,243,850 in time-and-material contract costs that allowed markups that were tantamount to using a prohibited cost-plus-percentage-of-cost contracting method (Finding A).

**Recommendation #3.** Disallow \$457,475 in ineligible debris removal costs (Finding B).

**Recommendation #4.** Disallow \$142,006 in excessive and unreasonable project costs comprised of \$136,443 in project engineering costs and \$5,563 in overtime fringe benefits costs (Finding C).

**Recommendation #5.** Disallow \$89,357 in unsupported project costs (Finding D).

**Recommendation #6.** Disallow \$24,075 in ineligible project costs (Finding E).

**Recommendation #7.** Disallow \$4,900 in costs related to an accounting error (Finding F).

### **DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOW-UP**

We discussed the results of our audit with county, Cal EMA, and FEMA officials as needed 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 these officials and discussed them at exit conferences held with the county and Cal EMA on December 20, 2010 and with FEMA on January 10, 2011. County officials disagreed with finding A and B, partially agreed with Finding C, D, E, and agreed with Finding F. Cal EMA and FEMA withheld responses pending issuance of the final audit report. Please advise this office by March 14, 2011, of the actions planned or taken to implement the recommendations, including target completion dates for any planned actions. Significant contributors to this report were Jack Lankford, Ravi Anand, Montul Long, and John Richards. Should you have questions concerning this report, please call me at (510) 637-1482, or your staff may contact Jack Lankford, Audit Manager, at (510) 637-1462.

cc: Audit Liaison, FEMA Region IX  
Audit Liaison, FEMA (Job Code: G-09-078-EMO-FEMA)

Schedule of Audited Projects  
 County of Santa Barbara, California  
 Public Assistance Identification Number 083-99083-00  
 FEMA Disaster Number 1577-DR-CA

**Table # 4**

PW Number	PW Amount	Recorded Project Costs	Questioned Costs	Finding Reference
334	\$360,243	408,520	\$144,009	B
344	210,971	210,973	201,136	A
347	138,122	138,124	135,210	A
451	110,590	110,592	90,839	A
452	104,247	104,248	101,546	A
542	709,431	709,426	151,225	A, C, & E
555	794,863	850,284	18,594	A
731	1,024,876	1,062,468	8,405	A
751	96,034	96,034	96,034	A & D
909	174,781	154,107	154,107	A & D
1008	450,940	450,940	139,214	B
1201	203,401	203,401	101,528	B & F
1418	398,383	424,778	8,544	E
1477	145,270	145,270	132,541	A, C, D & E
1488	785,299	815,044	90,714	B & D
1493	766,440	766,440	0	
1829	316,878	317,199	310,337	A
1878	115,106	115,106	77,680	C, D, & E
<b>Totals</b>	<b>\$6,905,875</b>	<b>\$7,082,954</b>	<b>\$1,961,663</b>	

Finding reference:

- A Procurement Practices
- B Funding for Debris Removal Costs
- C Reasonableness of Project Costs
- D Support for Project Costs
- E Project Cost Eligibility
- F Accounting Error