

# Department of Homeland Security **Office of Inspector General**

FEMA Should Recover \$2.2 Million of Public  
Assistance Grant Funds Awarded to Memphis Light,  
Gas and Water Division - Severe Weather, June 2009



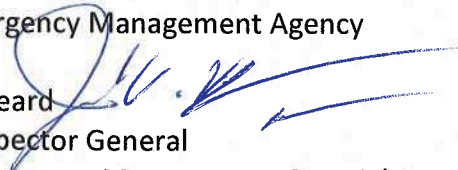


**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

NOV 20 2012

MEMORANDUM FOR: Major P. (Phil) May  
Regional Administrator, Region IV  
Federal Emergency Management Agency

FROM: D. Michael Beard   
Assistant Inspector General  
Office of Emergency Management Oversight

SUBJECT: *FEMA Should Recover \$2.2 Million of Public Assistance  
Grant Funds Awarded to Memphis Light, Gas and  
Water Division – Severe Weather, June 2009*  
FEMA Disaster Number 1851-DR-TN  
Audit Report Number DA-13-05

We audited Public Assistance (PA) funds awarded to Memphis Light, Gas and Water Division (Utility) in Memphis, Tennessee (FIPS Code 157-0464A-00). Our audit objective was to determine whether the Utility accounted for and expended Federal Emergency Management Agency (FEMA) grant funds according to Federal regulations and FEMA guidelines.

As of January 4, 2012, the Utility received a PA award of \$7.9 million from Tennessee Emergency Management Agency (State), a FEMA grantee, for damages resulting from severe storms, tornadoes, straight-line winds, and flooding that occurred in June 2009. The award provided 75 percent FEMA funding for debris removal, emergency protective measures, and permanent electrical repair work. The award included three large projects.<sup>1</sup>

We audited the \$7.9 million awarded under the three large projects. The audit covered the period June 12, 2009, to March 12, 2012, during which the Utility claimed \$7.9 million (see Exhibit A, Schedule of Projects Audited) and received \$5.9 million of FEMA funds. At the time of the audit, the Utility had completed work on all projects and had submitted a final claim to the State for project expenditures.

We conducted this performance audit between January and July 2012 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 by applying the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.

<sup>1</sup> Federal regulations in effect at the time of the disaster set the large project threshold at \$64,200.



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We judgmentally selected project costs (generally based on dollar value); interviewed Utility, State, and FEMA personnel; reviewed the Utility's procurement policies and procedures; reviewed applicable Federal regulations and FEMA guidelines; and performed other procedures considered necessary under the circumstances to accomplish our audit objective. We did not assess the adequacy of the Utility's internal controls applicable to its grant activities because it was not necessary to accomplish our audit objective. However, we gained an understanding of the Utility's method of accounting for disaster-related costs and its policies and procedures for administering activities provided for under the FEMA award.

### RESULTS OF AUDIT

FEMA should recover \$2,218,464 of PA funds awarded to the Utility. Although the Utility accounted for expenditures on a project-by-project basis, its claim included \$2,192,069 for contracts that were not procured according to Federal procurement requirements and \$26,395 of ineligible contract and force account charges.<sup>2</sup>

#### **Finding A: Improper Procurement Procedures**

The Utility did not comply with Federal procurement requirements and FEMA guidelines when awarding contracts valued at \$2,192,069 for electrical restoration work. Federal procurement regulations at 44 CFR 13.36 required the Utility, among other things, to—

- Conduct all procurement transactions in a manner providing full and open competition except under certain circumstances. One allowable circumstance is when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals, and there is a public exigency or emergency for the requirement that will not permit a delay resulting from competitive solicitation (44 CFR 13.36(c)(1) and (d)(4)(i)).
- Perform a cost or price analysis in connection with every procurement action, including contract modifications, to determine the reasonableness of the contractor's proposed price (44 CFR 13.36(f)(1)).
- Use time-and-material type contracts only after a determination that no other contract is suitable; and if the contract includes a ceiling price the contractor exceeds at its own risk (44 CFR 13.36(b)(10)).

In addition, FEMA's *Public Assistance Guide* (FEMA 322, June 2007, pp. 51–52) specifies that—

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<sup>2</sup> Force account refers to the Utility's personnel and equipment.



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- 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 applies: (1) the item is available only from a single source, (2) there is an emergency requirement that will not permit a delay for competition, (3) FEMA authorizes noncompetitive proposals, or (4) solicitation from a number of sources has been attempted and competition is determined to be inadequate.

FEMA may grant exceptions to Federal procurement requirements to subgrantees on a case-by-case basis (44 CFR 13.6(c)).

Under Project 38, the Utility awarded three noncompetitive time-and-material contracts for the restoration of electrical power lost during the disaster. The Utility selected the contractors from a list of potential sources it had compiled prior to the disaster. The contract work began on June 13, 2009, and continued until June 19, 2009, when all power was restored. The Utility claimed \$2,192,069 of contract costs for the work during this emergency period. We concluded that the lack of power constituted exigent circumstances that warranted the use of noncompetitive contracts during this period. However, the Utility (1) did not perform a cost or price analysis to determine the reasonableness of the contractors' proposed prices, and (2) did not establish ceiling prices that the contractors exceeded at their own risk. As a result, FEMA has no assurance that the \$2,192,069 of contract work was obtained at a fair and reasonable price. Therefore, we question the \$2,192,069.

Utility officials said that they receive rates from contractors annually and compile a list of potential sources (by location, availability, and expertise) in the event of an emergency. However, there was no evidence in the Utility's files that the prices were negotiated or reviewed for reasonableness. We noted that the overtime rates for similar positions varied considerably between the contractors. For example, one contractor's overtime rate for a general foreman was \$98 per hour, while the other contractor's overtime rate for a general foreman was \$133 per hour, or 35.7 percent higher.

Federal regulation 44 CFR 13.40(a) requires the State, as grantee, to manage the day-to-day operations of subgrantee activity and monitor subgrantee activity to ensure compliance with applicable Federal requirements. The costs in question were accepted by the State during closeout of the project in March 2012. However, the State's closeout documentation did not indicate that the costs were reviewed to ensure compliance with Federal procurement requirements and FEMA guidelines. In our view, the State should have done a better job of reviewing the eligibility of the costs claimed by the Utility.



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Utility Response: Utility officials disagreed with our finding and recommendation that the contract costs be disallowed. They contend, based on the *Robert T. Stafford Disaster Relief and Emergency Assistance Act*, that the Utility is not liable for reimbursement or any other penalty as long as the costs incurred were reasonable and the FEMA funds were used to mitigate losses from the disaster. Further, they said that our audit focused solely on the Utility's "perceived" failure to comply with 44 CFR 13.36 and never dealt with the issue of whether the costs were reasonable.

Office of Inspector General Response: On several occasions we requested evidence from the Utility that it performed a cost analysis to determine reasonableness of the contractor rates. However, such pertinent documentation was never provided to us during the audit. Therefore, our position remains unchanged.

### **Finding B: Ineligible Charges**

The Utility's claim included \$26,395 of ineligible contract and force account charges. We question the \$26,395 as follows:

- *Contract Equipment.* Under Project 36, the Utility claimed \$17,312 of contract equipment charges for three generators that were rented to be used at water pump stations in the event of extended power outages. However, power was restored sooner than anticipated and the generators were never used. A FEMA project officer disallowed the costs during final inspection of the project because they were for standby equipment time, which is ineligible under FEMA's *Public Assistance Guide* (FEMA 322, June 2007, p. 48). The project officer noted such disallowance on the inspection report, but did not prepare a deobligation document to remove the costs from the project worksheet. As a result, the Utility was reimbursed for the \$17,312 of ineligible costs.
- *Force Account Equipment.* Under Project 38, the Utility included \$8,141 of ineligible force account equipment charges as a result of data entry/mathematical errors made by Utility personnel. Federal regulation 2 CFR 225 (*Cost Principles for State, Local, and Indian Tribal Governments*, Appendix A, (C)(1)(j)), states that a cost must be adequately documented to be allowable under a Federal award.
- *Force Account Labor.* Under Project 38, the Utility inadvertently claimed \$942 of the same force account labor charges, resulting in duplicate charges under the project.



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### RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region IV:

**Recommendation #1:** Disallow \$2,192,069 (FEMA share \$1,644,052) of ineligible costs claimed for contracts that were not procured in accordance with Federal requirements, unless FEMA decides to grant an exception for all or part of costs as provided for in 44 CFR 13.36(c) (finding A).

**Recommendation #2:** Instruct the State to reemphasize to the Utility its requirement to comply with Federal procurement regulations and FEMA guidelines when acquiring goods and services under the FEMA award (finding A).

**Recommendation #3:** Reemphasize to the State its requirement, as grantee, to adequately review costs claimed by subgrantees for compliance with applicable Federal procurement requirements and FEMA guidelines (finding A).

**Recommendation #4:** Disallow \$26,395 (FEMA share \$19,796) of ineligible contract equipment and force account equipment and labor charges (finding B).

### DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed the results of our audit with Utility and State officials during our audit. We also provided a draft report in advance to FEMA, State, and Utility officials and discussed the results of our findings and recommendations at the exit conference held on July 9, 2012. Utility officials disagreed with finding A. Their comments, where appropriate, are included in the body of this report. FEMA and State officials withheld comments pending receipt of 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. We will post the report on our website for public dissemination.



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Major contributors to this report were David Kimble, Eastern Region Audit Director; William H. Johnson, Audit Manager; Nadine F. Ramjohn, Senior Auditor; and Jerry Aubin, Program Analyst.

Please call me with any questions at (202) 254-4100, or your staff may contact David Kimble, Eastern Region Audit Director, at (404) 832-6702.



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**EXHIBIT A**

**Schedule of Projects Audited**  
**June 12, 2009, to March 12, 2012**  
**Memphis Light, Gas and Water Division**  
**FEMA Disaster Number 1851-DR-TN**

| Project Number | Scope   | Amount Awarded | Amount Claimed | Amount Questioned |
|----------------|---|----------------|----------------|-------------------|
| 36             | Force account labor, contracts to man phone banks and rented generators | \$268,550      | \$268,550      | \$17,312          |
| 38             | Replace power poles, distribution lines, substation damage              | 6,527,094      | 6,527,094      | \$2,201,152       |
| 55             | Clear debris from electrical power lines                                | 1,113,077      | 1,113,077      | 0                 |
| Total          |   | \$7,908,721    | \$7,908,721    | \$2,218,464       |





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**EXHIBIT B**

**Report Distribution List**  
**Memphis Light, Gas and Water Division**  
**FEMA Disaster Number 1851-DR-TN**

**Department of Homeland Security**

Secretary  
Chief Financial Officer  
Under Secretary for Management  
Audit Liaison, DHS

**Federal Emergency Management Agency**

Administrator  
Chief of Staff  
Chief Financial Officer  
Chief Counsel  
Director, Risk Management and Compliance  
Audit Liaison, FEMA Region IV  
Audit Liaison, FEMA (Job Code DA-12-012)

**Grantee**

Director, Tennessee Emergency Management Agency

**State**

State Auditor, Tennessee

**Subgrantee**

Chief Financial Officer, Memphis Light, Gas and Water Division

## ADDITIONAL INFORMATION AND COPIES

To obtain additional copies of this document, please call us at (202) 254-4100, fax your request to (202) 254-4305, or e-mail your request to our Office of Inspector General (OIG) Office of Public Affairs at: [DHS-OIG.OfficePublicAffairs@oig.dhs.gov](mailto:DHS-OIG.OfficePublicAffairs@oig.dhs.gov).

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