

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

**The City of Albuquerque, New Mexico, Needs
Assistance to Ensure Compliance with FEMA Public
Assistance Grant Requirements**





OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

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

SEP 10 2014

MEMORANDUM FOR: George A. Robinson
Regional Administrator, Region VI
Federal Emergency Management Agency

FROM: John V. Kelly
Assistant Inspector General
Office of Emergency Management Oversight

SUBJECT: *The City of Albuquerque, New Mexico, Needs Assistance to Ensure Compliance with FEMA Public Assistance Grant Requirements*
FEMA Disaster Number 4148-DR-NM
Audit Report Number OIG-14-136-D

We audited the capability of the City of Albuquerque, New Mexico (City) to manage Public Assistance grant funds (Public Assistance Identification Number 001-02000-00). Our audit objective was to determine whether the City's policies, procedures, and business practices are adequate to account for and expend Federal Emergency Management Agency (FEMA) grant funds according to Federal regulations and FEMA guidelines. We conducted this audit early in the Public Assistance process to identify areas where the City may need additional technical assistance or monitoring to ensure compliance. In addition, by undergoing an audit early in the grant cycle, grant recipients have the opportunity to correct non-compliance with Federal regulations before they spend the majority of their funding. It also allows them the opportunity to supplement deficient documentation or locate missing documentation before too much time elapses.

Our audit covered the period July 23, 2013, through March 7, 2014. At the time of audit fieldwork, the New Mexico State Department of Homeland Security and Emergency Management (New Mexico), a FEMA grantee, had awarded \$497,361 of the FEMA estimated \$2.6 million for damages resulting from severe storms and flooding, which occurred July 23, through 28, 2013. The award will provide 75 percent funding to the City for debris removal (Category A),¹ emergency protective measures (Category B), and

¹ Under the Public Assistance Alternative Procedures Pilot Program, the Federal cost share is 85 percent when debris removal is complete within 30 days from the start of the incident period.



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permanent work (Categories C–G) on both small and large projects.² The exhibit lists the amounts by project category that FEMA had obligated as of March 7, 2014 (totaling \$497,361), and the total estimated amount FEMA expects to obligate (\$2.6 million). At the time of our audit, the City had not submitted any claims to New Mexico for reimbursement. However, the City had begun work to repair disaster damages.

We conducted this performance audit between January 2014 and July 2014 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 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.

We interviewed FEMA, New Mexico, and City officials; gained an understanding of the City’s method of accounting for disaster-related costs and its procurement policies and procedures; reviewed judgmentally selected project costs and procurement transactions for the projects included in our review (generally based on type and dollar amount); reviewed applicable Federal regulations and FEMA guidelines; and performed other procedures considered necessary to accomplish our objective. As part of our standard audit procedures, we also notified the Recovery Accountability and Transparency Board of all contracts the City awarded under the grant to determine whether the contractors were debarred or whether there were any indications of other issues related to those contractors that would indicate fraud, waste, or abuse. As of the date of this report, the Recovery Accountability and Transparency Board’s analysis of contracts was ongoing. When it is complete, we will review the results and determine whether additional action is necessary. We did not perform a detailed assessment of the City’s internal controls over its grant activities because it was not necessary to accomplish our audit objective.

BACKGROUND

The storm’s wind driven rain and flooding caused extensive damage to the City’s infrastructure, including the City’s police station, government buildings, and schools. The storm also damaged traffic signals and street lights throughout the city (see figure 1).

² Federal regulations in effect at the time of the disaster set the large project threshold at \$67,500.



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Figure 1. Flooding in DR-4148



Source: City of Albuquerque

Previous OIG Audit

In 2010, we audited FEMA Public Assistance funds awarded to the City for a previous disaster.³ We reported that the City did not always follow Federal procurement standards and its claim included unsupported, ineligible, and duplicate costs. Regarding Federal procurement standards, the City did not (1) establish adequate competition; (2) determine whether time-and-material contracts were the only type of contract suitable for the work; (3) include a ceiling price in time-and-material contracts; (4) monitor contract work adequately; (5) prepare a cost or price analysis for each procurement; or (6) prohibit unallowable contractor markups.

RESULTS OF AUDIT

Except for procurement, the City has adequate policies, procedures, and business practices in place to account for and expend FEMA grant funds according to Federal regulations and FEMA guidelines. The City did not have adequate procurement policies and procedures in place to comply with all Federal procurement regulations when awarding contracts to repair disaster-related damages. Contracts the City awarded for disaster-related work included prohibited cost-plus-percentage of cost terms; time-and-material contracts that did not include a cost ceiling or determination that no other contract types were suitable; and did not include all required contract provisions. As a result, the City has improperly contracted for some disaster-related work and may

³ Report Number DD-10-03, *City of Albuquerque, New Mexico*, January 6, 2010.



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improperly contract for future disaster work of approximately \$2.6 million.⁴ Therefore, FEMA should direct New Mexico to provide assistance to the City to ensure it complies with Federal procurement regulations.

Accounting for Project Costs

The City has adequate policies, procedures, and business practices in place to ensure that it accounts for disaster costs and adequately supports project costs as Federal regulations require. We reviewed the City's policy on grant administration and assessed the City's accounting system that includes a grants management module to track disaster costs and revenues by an accounting cost center. The module interfaces with all disaster expenditures in the City's Purchasing, Contracts, and Payroll departments and appears adequate to account for disaster costs. We also reviewed documentation for costs the City intends to claim for building repairs. The project records we reviewed clearly identified the building repair costs as disaster related. Therefore, the City's administrative controls over project records provide reasonable assurance the City can track disaster costs on a project-by-project basis. As of our entrance conference, City officials had not submitted any claims to the State for reimbursement.

Procurement Practices

The City did not have adequate policies and procedures in place to comply with all Federal procurement standards. Therefore, the City may improperly contract for approximately \$2.6 million in disaster costs and has spent \$115,071 under six contracts without following Federal procurement standards. The City (1) included prohibited cost-plus-percentage-of-cost terms in four contracts, (2) did not determine that no other contract was suitable before using a time-and-material contract, (3) did not include a ceiling price in its time-and-material contract, and (4) did not include all required contract provisions in its contracts. The City's disaster-related expenditures at the time of our audit were not significant. However, the City may incorrectly award up to \$2.6 million in contract costs for the estimated disaster damages and therefore put those reimbursements at risk.

Federal procurement standards at 44 Code of Federal Regulations (CFR) 13.36 require subgrantees to, among other actions—

⁴ At the time of our audit, City officials could not estimate how much they would spend for contract costs. Therefore, we used FEMA's Preliminary Damage Assessment that estimated the City would spend approximately \$2.6 million in disaster recovery costs.



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- avoid the prohibited cost-plus-a-percentage-of-cost method of contracting (44 CFR 13.36(f)(4)),
- use time-and-material contracts only after a determination that no other contract is suitable and include a ceiling price that the contractor exceeds at its own risk (44 CFR 13.36(b)(10)), and
- include in all contracts applicable provisions listed in 44 CFR 13.36(j), such as those for records retention, legal remedies, and termination for cause.

Prohibited Contracts

The City awarded four disaster-related contracts using prohibited cost-plus-percentage-of-cost contracts. Additionally, another contract issued as a time-and-material contract was invoiced with cost-plus-percentage-of cost terminology. Federal regulations specifically prohibit this method of contracting, which provides a disincentive for contractors to control costs. We asked City officials whether they were aware of Federal procurement standards. They replied that FEMA officials went over the Federal procurement regulations with each of the City's departments. The City's procurement policy allows the use of cost-plus-percentage-of costs contracts for goods and services but prohibits them for construction work. Federal regulations at 44 CFR 13.36(f)(4) prohibit this method of contracting for all types of disaster work.

City officials agreed the contracts included cost-plus-percentage-of-cost pricing. We explained that Federal procurement standards do not allow cost-plus-percentage-of-costs contracts. City officials said they were not aware these were prohibited types of contracts in Federal procurement. To correct this issue, City officials said they would rebid the contracts that contained cost-plus payment terms and not include the cost-plus payment terms on any future FEMA contracts.

Time-and-Material Contracts

The City did not assess whether other contract types were suitable before using time-and-material contracts, and the contract they awarded did not include a cost ceiling. Federal regulations state that a subgrantee can use a time-and-material contract only after it determines that no other type of contract is suitable. Further, this type of contract must include a cost ceiling that the contractor exceeds at its own risk. City officials said their standard policy is to include cost ceilings in time-and-material contracts; but, in this instance, they did not realize the contract did not include a ceiling. Not using cost ceilings in this type of contract increases the likelihood of unreasonable contract costs. City officials said they did not check to ensure the contract included a cost ceiling or assess whether other contract types were suitable. To correct the



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problem, City officials said they would rebid the contracts that do not have a cost ceiling and will include a cost ceiling in all future contract work.

Contract Provisions

The City did not include all required provisions in any disaster contracts it awarded. Federal regulations at 44 CFR 13.36(i) require provisions for contracts and subcontracts, such as Equal Employment Opportunity compliance, compliance with labor laws, and prohibition of “kickbacks.” These contract provisions document the rights and responsibilities of the parties and minimize the risk of contract misinterpretations and disputes. City officials said they were unaware of this requirement and plan to include the required provisions in all future disaster contracts.

We discussed these procurement issues with New Mexico officials. They said they lack sufficient staff to closely assist applicants and explicitly review the procurement requirements Federal regulations impose on applicants. However, to address the issue, New Mexico officials plan to (1) update its Public Assistance subgrant agreement to address early monitoring of applicants’ project work, and (2) request additional assistance from FEMA for staffing resources. The City may contract for approximately \$2.6 million in disaster work and has not followed Federal procurement regulations in the past. Therefore, FEMA should direct New Mexico to provide City officials with technical assistance and to ensure it complies with Federal procurement standards for all contract disaster work.

RECOMMENDATION

We recommend that the Regional Administrator, FEMA Region VI, direct the New Mexico State Department of Homeland Security and Emergency Management to work closely with City officials to ensure they comply with Federal procurement regulations and to prevent the improper spending of approximately \$2.6 million in disaster damages.

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed the results of our audit with City officials during our audit and included their comments in this report, as appropriate. We also provided a draft report in advance to FEMA, New Mexico, and City officials and discussed it at exit conferences with FEMA officials on July 16, 2014, with New Mexico on July 10, 2014, and with City officials on July 17, 2014. FEMA and New Mexico officials generally agreed with our



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findings and recommendations. City officials, however, withheld comment with our findings but generally agreed with our recommendation.

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 the contact information of responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until we receive and evaluate your response, we will consider the recommendations open and unresolved.

Consistent with our responsibility under the *Inspector General Act*, we will provide 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.

Major contributors to this report are Christopher Dodd, Acting Director; Paige Hamrick, Audit Manager; Lori L. Smith, Auditor-in-Charge; Chiquita Washington, Senior Auditor; and Christina Sbong, Auditor.

Please call me with any questions at (202) 254-4100, or your staff may contact Christopher Dodd, Acting Director, Central Regional Office, at (214) 436-5200.



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Exhibit

Schedule of Obligated and Estimated Costs

*Project Category	Obligated Amounts	Estimated Amounts
A	\$ 96,295	\$ 928,653
B	16,758	144,300
C	60,707	588,051
D	0	0
E	320,938	962,010
F	0	20,000
G	<u>2,663</u>	<u>0</u>
Totals	<u>\$497,361</u>	<u>\$2,643,014</u>

Sources: FEMA Projects and FEMA Region VI preliminary damage estimates as of January 15, 2014.

*FEMA classifies disaster-related work by type: debris removal (Category A), emergency protective measures (Category B), and permanent work (Categories C through G).



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