




Homeland Security

August 21, 2009

MEMORANDUM FOR: Nancy Ward
Regional Administrator
FEMA Region IX

FROM: 
Robert J. Lastrico
Western Regional Director

SUBJECT: *California Department of Fish and Game*
Sacramento, California
Public Assistance Identification Number 000-UB8DQ-00
FEMA Disaster Number 1628-DR-CA
Audit Report Number DS-09-11

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

DFG received a public assistance subgrant award of \$5.0 million from the California Office of Emergency Services (OES is now the California Emergency Management Agency - CalEMA), a FEMA grantee, for emergency protective measures and permanent repairs to facilities damaged by severe storms beginning on December 17, 2005. Of the \$5.0 million, FEMA provided 75% federal funding and non-federal sources funded the remaining 25% for 31 projects (12 large projects and 19 small projects¹). The audit covered the period of December 17, 2005, to March 5, 2009, and included a review of nine large projects and one small project with a total award of \$4.5 million (see Exhibit). As of June 15, 2009, DFG had completed all projects and identified project costs, but had not submitted a final claim to CalEMA.

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 and 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, CalEMA, DFG, and North Coast Railroad Authority

¹ Federal regulations in effect at the time of the disaster set the large project threshold at \$57,500.

(NCRA)² officials; reviewed judgmentally 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 DFG’s internal controls applicable to subgrant activities because it was not necessary to accomplish our audit objective. We did, however, gain an understanding of DFG’s method of accounting for disaster-related costs.

RESULTS OF AUDIT

Of the \$6.1 million in costs that DFG intends to claim for the 10 projects, \$4,475,324 is not in compliance with criteria required for federal reimbursement (the federal share of the cost questioned in this report totals \$3,356,493). The table below lists the areas in which we questioned amounts to be claimed by DFG.

Finding	Subject	Amount Questioned
A	Procurement Practices	\$2,910,188
B	Scope of Work Changes	\$1,486,910
C	Allowable Costs	\$6,906
D	Eligible Costs	\$71,320
Total		\$4,475,324

In addition, we identified \$319,431 in unneeded project funding for 4 of the 10 projects reviewed (the federal share of the unneeded project funding is \$239,573; see Finding E).

Finding A – Procurement Practices

DFG did not ensure that NCRA followed federal, state, and DFG procurement standards when NCRA contracted for \$2.9 million in disaster work for DFG (\$2.7 million for project worksheet (PW) 2272 and \$162,289 for PW 3122). According to Title 44, *Code of Federal Regulations*, Section 13.36(c) [44 CFR 13.36(c)], DFG was required by federal and state regulations and its own procedures to ensure full and open competition when procuring property and services under the disaster grant. As discussed below, an agreement between DFG and NCRA required that NCRA follow DFG procurement procedures to ensure full and open competition.³ According to 44 CFR 13.43, if a grantee or subgrantee materially fails to comply with any term of an award, the awarding agency may disallow all or part of the cost of the activity or action not in compliance [44 CFR 13.43(a)(2)]. Since DFG did not monitor NCRA's procurement activities, there is no assurance that the \$2.9 million expended by NCRA for DFG's disaster repairs is fair and reasonable. Therefore, we question the entire \$2,910,188.

As a result of levee breaches and flooding caused by the disaster, FEMA awarded DFG public assistance funding for levee repairs under PW 2272 and for repairs to a pump house under PW 3122. The following table identifies the FEMA award amounts under each PW, the amount paid to a contractor for services provided under the PW, and the amount of contract costs questionable.

² NCRA, a quasi private-public entity, was formed by the State of California in 1989 to create policy and oversee regional railroad activities. In June 2007, DFG and NCRA entered into an agreement whereby NCRA would manage the completion of two FEMA funded projects for DFG.

³ DFG's procurement procedures met the requirements of 44 CFR 13.36.

PW Number	FEMA Award	Work Completed Under Contract	Contract Costs Questionable
2272	\$1,193,654	\$2,747,899	\$2,747,899
3122	135,386 ⁴	162,289	\$162,289
Totals	\$1,329,040	\$2,910,188	\$2,910,188

DFG records identified that due to delays in arriving at the federally eligible scopes of work and FEMA's requirement that disaster related costs be incurred before seeking reimbursement, the State of California made \$3.1 million available to DFG to initiate repairs. The records also included an agreement between DFG and NCRA whereby NCRA, acting on DFG's behalf, would manage the completion of both FEMA projects since it was also completing railroad track repairs in the vicinity. The June 2007 agreement provided NCRA the \$3.1 million in state funding and specified that NCRA (1) generate bid documents and solicitations for bids, (2) organize and attend pre-bid meetings, (3) review bids and identify the most responsible, responsive, and qualified bidder for DFG work, and (4) provide bid solicitations to DFG for review prior to NCRA advertising the work.

We reviewed NCRA's records and held discussions with responsible officials to obtain an understanding of contracting practices used by NCRA for PWs 2272 and 3122. We determined that over \$2.9 million of contract costs that DFG plans to submit for federal reimbursement does not comply with federal regulations and DFG's own procedures. Contract services procured by NCRA for DFG were neither publicly advertised nor procured through full and open competition. For example, over \$1.6 million of the \$2.9 million in disaster repairs was contracted out sole source. Subsequently, the same contractor received an additional \$910,000 for disaster related work. For the latter award, NCRA did not publicly advertise the work but requested and received quotes from two contractors. In addition, the \$2.9 million in contract costs included about \$242,000 in fees for FEMA funded project management and engineering services that were not procured competitively. These services were provided by contractor staff already performing these types of services for NCRA. Project records did not include written justification to explain NCRA's procurement actions related specifically to FEMA funded work.

NCRA officials tasked their existing project management and engineering services contractors with finding construction contractors able to complete the scope of work for PWs 2272 and 3122. However, the project management contractor official we interviewed told us he was not aware of procurement requirements applicable to the FEMA funded repairs. This official further explained that NCRA had previous experience with the contractor engaged to perform the FEMA disaster work and the contractor had the necessary equipment for the tasks. DFG officials were not aware that NCRA had not publicly advertised the FEMA disaster work. However, those officials defended NCRA's procurement actions and noted that: 1) Northern California lacked qualified contractors for the dewatering and levee repairs, and 2) the few contractors available often provided competitive prices. Neither NCRA nor DFG officials provided us with documented evidence to support their explanations for not complying with federal or DFG procurement requirements.

Since contracting practices for disaster related work did not comply with federal requirements and with DFG procedures agreed to by NCRA, we question the \$2.9 million in contract related costs that

⁴ FEMA's award amount for PW 3122 excludes \$41,000 in public assistance hazard mitigation funding that was not completed (see Finding E).

DFG plans to submit to FEMA for reimbursement for work accomplished under PWs 2272 and 3122.

Finding B - Scope of Work Changes

DFG did not request FEMA’s approval for changes to the scopes of work (SOW) to two PWs that had significant cost increases. According to 44 CFR 206.204(e), subgrantees may find during project execution that actual project costs exceed approved PW estimates because of changes in the scope of eligible work. According to 44 CFR 206.204(e)(2), DFG must evaluate each cost overrun and, when justified, submit a request for additional funding through the state to FEMA Region IX for a final determination. This request must be submitted to FEMA during the execution of the approved work and before the project is completed [see 44 CFR 13.30(c)(2) and 13.30(d)(1)]. The table below identifies the two PWs, the FEMA approved estimates, cost increases due to the unapproved changes to the SOWs, costs DFG plans to submit for federal reimbursement, and the percentage increases over the approved estimates. In both cases, the percentage increases over the FEMA approved estimates were significant and should have been justified and approved prior to completing the work.

PW Number	FEMA Approved Estimate	Cost Increases	Final Costs	Percentage Increase Over FEMA Estimate
2272	\$1,193,654	\$1,588,718	\$2,782,372 ⁵	133.1%
3014	151,100	1,486,910	1,638,010	984.1%
Totals	\$1,344,754	\$3,075,628	\$4,420,382	228.7%

Because we questioned all of DFG's contract costs for PW 2272 (\$2,747,899) in Finding A, the \$1,588,718 in cost increases is not questioned in this finding. However, if FEMA determines that contract costs for the FEMA approved scope of work under PW 2272 are fair and reasonable despite DFG's failure to ensure that NCRA followed federal procurement regulations, the \$1,554,245 (\$1,588,718 - \$34,473 see footnote #5) in contract costs should be disallowed. In addition, we are questioning the \$1,486,910 in cost increases applicable to PW 3014. Details regarding the scope of work increases for the two projects are provided below.

PW 2272. In August 2006, 8 months after the disaster, FEMA approved \$1,193,654 in public assistance funding for permanent repairs (Category D – Water Control Facilities) to seven levee breaches and an access road. DFG records identified significant scope of work changes and \$1,588,718 in increased repair costs that had not been approved by FEMA. DFG added emergency repairs (Category B – Emergency Work) to the five levee breaches and work items not identified in FEMA’s damage assessment. Examples of the additional work include:

- Installing sheet piling and dewatering a location identified as Railroad Slough. This levee location was not identified as FEMA eligible.
- Installing sheet piling and dewatering at all five locations identified in FEMA’s damage assessment. However, sheet piling was not identified as an item of work at these five locations and FEMA funded dewatering efforts under PW 3122.

⁵ The \$2,782,372 in final cost includes \$34,473 of materials purchased by DFG

- Mitigating the dust caused by dewatering activities. DFG officials told us that the dewatering activities discussed above resulted in dry soil and dust and in complaints from nearby property owners which required DFG to re-flood the area.

In December 2008, 1 month prior to completing the FEMA approved repairs, CalEMA submitted to FEMA a PW version request with estimated costs of about \$2.5 million. However, CalEMA's request did not provide written justification for the added work or for the increased costs of over \$1.5 million. Neither CalEMA nor DFG provided FEMA notification before initiating the additional work and incurring the related expenses. As of July 24, 2009, FEMA had not obligated funding for the additional \$1.5 million in repair costs.

NCRA's project management and engineering services contractors were tasked with managing this project for DFG and explained to us that the additional work facilitated repairs to rail road tracks damaged by the disaster. While DFG's claim did not include charges specifically for rail road track repairs, in our opinion, the additional scope of work primarily benefited NCRA. According to 44 CFR 206.223(a)(3), an item of work must be the legal responsibility of an eligible applicant in order to qualify for disaster assistance. More importantly, the additional work was well beyond the scope of work approved by FEMA and was not justified as disaster repair work associated with the levee breaches and access road.

PW 3014. In May 2006, 5 months after the disaster, FEMA prepared the PW, and in December 2006, approved this PW with a SOW that consisted of clearing debris, performing grub work⁶ and repairing a road at one levee site, and making repairs to one side of the levee walls at two other sites. FEMA's estimated repair cost for disaster work at the three levee sites was \$151,100.

In September 2006, DFG revised the SOW and estimated costs at \$1,630,024. However, DFG did not obtain FEMA's approval prior to incurring the costs as required by the previously cited federal regulations. On April 28, 2007, 2 days prior to the completion of the work,⁷ CalEMA submitted a PW version request to FEMA that reflected SOW changes and cost increases. In July 2007, CalEMA followed up on its request for additional funding by providing FEMA cost information that included a bid summary, a contract agreement, and a final invoice totaling \$1,638,010. However, CalEMA did not provide written justification demonstrating that the additional work was disaster related. Using information provided by CalEMA, FEMA (1) inspected the work performed at the locations indicated in the PW, (2) confirmed that repair work had been completed, and (3) approved the funding request on November 17, 2008, without determining that the work was required as a result of the disaster (44 CFR 206.223). FEMA's funding determination was not supported with any documented analysis or comparison of FEMA's initial damage assessment, the original SOW, and the work completed by DFG. Our review of project documentation found that:

- FEMA's PW approved clearing debris, performing grub work, and repairing a road at only one levee site but DFG performed these same tasks at all three levee sites.

⁶ Digging up roots and stumps.

⁷ Per FEMA's records, the project was completed on April 30, 2007.

- For the Montezuma Slough levee, FEMA’s damage assessment identified three breaches and recommended disaster repairs to one side of the levee wall. However, DFG performed work on both sides of the levee wall and on an adjacent maintenance road.
- DFG's repairs at the Volanti Slough levee site were not identified in 1) FEMA’s damage assessment, 2) FEMA’s approved PW, or 3) DFG’s revision to the SOW. Repair costs associated to this work totaled \$503,688 and included clearing debris, performing grub work, and making levee repairs.
- Construction materials exceeded the contract agreement amounts and resulted in material costs that exceeded the accepted low bid. Using a contingency reserve in the contract, DFG paid the contractor \$116,305 for the additional material. However, this construction contract change was not supported with records identifying the amount (units) of material delivered to the work site. Thus, we could not determine if these costs were incurred as a result of the disaster.
- Work included repairs to a bridge with no associated disaster damage.

The repairs DFG completed under this PW included work that was not disaster related and improvements that were not eligible for funding under FEMA’s Public Assistance Program. 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. In addition, 44 CFR 206.203 provides that federal funding for improved projects is limited to the federal share of the approved estimate of eligible costs associated with repairing the damaged facility components (eligible costs) to pre-disaster design.

We discussed the results of our review of PWs 2272 and 3014 with DFG officials. Those officials explained that CalEMA was aware of the additional work performed under PW 2272 and thus, the work should be eligible for federal disaster assistance. For PW 3014, DFG officials explained that the discrepancies between the work completed and FEMA’s approved SOW were due to errors in FEMA’s damage assessment; however, they provided no further explanations or documentation to show the inadequacy of FEMA’s damage assessment. DFG officials also noted that the one levee site omitted from FEMA’s and DFG’s revised SOW was an oversight because the location was damaged by the disaster and was eligible for federal assistance. They stated that the increase in material costs was based on engineering estimates, and records supporting the actual number of units delivered to the job site, such as truck weight tickets, were not maintained. DFG officials agreed that repairs to a bridge were not disaster related.

Since DFG did not request and obtain FEMA approval for about \$3.0 million in SOW changes under PWs 2272 and 3014, and much of the work could not be identified as disaster related or was identified as improved project costs, the increased SOW costs should be disallowed.

Finding C – Allowable Costs

DFG’s accounting records for two PWs included \$148,889 in unallowable 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. In addition, 44 CFR 13.20(b) requires subgrantees to maintain accounting records that identify how FEMA funds are used.

- PW 3757 included \$6,906 in a recording error. A contractor submitted a change order of \$65,235 due to increased fuel and labor costs. DFG recorded the expense as \$72,141 and erroneously overstated the transaction by \$6,906 (\$72,141 - \$65,235).
- PW 2272 included \$141,983 in ineligible interest charges. To compensate NCRA for delays in obtaining state reimbursement for disaster costs, DFG agreed to reimburse NCRA for the cost of short term borrowing. According to Office of Management and Budget Circular A-87, Attachment B, Section 26, federal reimbursement is not allowed for costs relating to interest payments.

DFG officials agreed to research the issues further and stated that the interest charges would not be submitted for reimbursement. Since we questioned the entire contract costs DFG plans to claim for PW 2272 in Finding A, we are not questioning the \$141,983 in ineligible interest charges under this finding. However, if FEMA determines that contract costs for the FEMA approved scope of work under PW 2272 are fair and reasonable despite DFG's failure to ensure that NCRA followed federal procurement regulations, the \$141,983 in interest charges should be disallowed if submitted for reimbursement. This finding also questions the \$6,906 in disaster costs DFG recorded for PW 3757.

Finding D – Eligible Costs

DFG’s accounting records for PW 3757 included \$71,320 in ineligible 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. The costs to be claimed by DFG included unapproved improvements and other work not specified in the SOW. This work consisted of \$66,360 for the installation of rock slope protection fabric and \$4,960 in repairs to two sink holes.

DFG officials agreed with our results and said that the above costs will not be submitted for federal reimbursement. Nonetheless, we question the \$71,320 in disaster costs that DFG has recorded for PW 3757.

Finding E - Obligated Funds Not Needed For Completed Projects

DFG completed the four projects identified in the table below over 1 year ago but did not notify CalEMA or FEMA that over \$319,431 in funds awarded to those projects were no longer needed and could be deobligated.

Project Number	Date Work Completed	Award Amount	Costs Incurred	Funds Not Needed
3334	7/16/07	\$ 76,154	\$ 31,705	\$ 44,449
3317	7/30/07	283,315	121,330	161,985
2276	6/29/07	169,132	97,135	71,997
3122 ⁸	3/15/08	41,000	0	41,000
Totals		\$569,601	\$250,170	\$319,431

⁸ The FEMA award included funding for public assistance hazard mitigation work that DFG did not complete. The funding not needed is in addition to the amount questioned for this PW in Finding A. The federal share of the \$319,431 in unneeded funding is \$239,573.

According to 44 CFR 206.205(b)(1), CalEMA shall make an accounting of eligible costs for each large project and certify to FEMA that the reported costs were for eligible disaster work as soon as practicable after DFG has completed the approved work and requested payment. Even though DFG has not requested final payment and closure of its entire award, nothing in the regulations precludes DFG from requesting final payment on a project-by-project basis.

According to 44 CFR 13.40(a), CalEMA is responsible for monitoring and reporting program performance to assure compliance with federal requirements and achievement of performance goals. In addition, 44 CFR 13.40(d)(2) requires that as soon as known, CalEMA must inform FEMA of favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated.⁹ CalEMA, through its project monitoring system, should receive information quarterly from DFG that identifies project completion information and unneeded funds that FEMA should deobligate. While the objective and scope of this audit did not include a review of CalEMA's project monitoring system, its *Final Draft State Administrative Plan for Disaster Assistance* dated May 20, 2004 says,

To monitor the progress of projects, sub-grantees must submit a quarterly report by the 15th of each month following the end of the previous quarter. Subgrantees should include the status of each funded project or any problems or circumstances that may adversely affect project completion dates, scope of work or costs.

For the four projects identified above, the CalEMA and FEMA officials we spoke to said they were unaware that the projects had been completed at \$319,431 under budget. DFG officials were not aware of requirements for quarterly reporting or specific guidance requiring timely notification to CalEMA or FEMA about completed projects or unneeded project funding. Those officials submitted the first quarterly report for the grant in January 2009; over a year after projects 3334, 3317, and 2276 were completed. DFG officials told us that disaster costs for these three projects would be adjusted to actual costs at project closeout.

This finding also implies that CalEMA's project monitoring should be improved. However, we are not making a recommendation in that regard because we recommended in a different subgrantee report¹⁰ that FEMA require CalEMA to strictly follow (a) the monitoring and program performance reporting requirements of 44 CFR 13.40 and (b) its Addendum to the State Administrative Plan to ensure that quarterly progress reports submitted by subgrantees are accurate, current, and complete and reflect significant developments in project execution.

RECOMMENDATIONS

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

Recommendation #1. Inform DFG of its regulatory requirement to obtain prior written approval for (a) budget revisions resulting in the need for additional funds [44 CFR 13.30(c)(2)], and (b) any revision in the scope or objective of a project [44 CFR 13.30(d)(1)] (Finding B).

⁹ 44 CFR 13.40(d)(1) also requires the grantee to report problems, delays and adverse conditions as soon as they become known.

¹⁰ DS-09-05, *California Department of Parks and Recreation*, dated May 20, 2009.

We also recommend that the Regional Administrator, FEMA Region IX require CalEMA to:

Recommendation #2. Disallow \$2.9 million in questionable contract costs for PW 2272 and PW 3122 identified by DFG as claimable costs (Finding A).

Recommendation #3. Disallow \$1,486,910 in questionable costs for PW 3014 identified by DFG as claimable costs.¹¹ (Finding B).

Recommendation #4. Disallow \$6,906 in unallowable costs for PW 3757 if such costs are included in DFG's final claim¹² (Findings C).

Recommendation #5. Disallow \$71,320 in ineligible costs for PW 3757, if these costs are included in DFG's final claim (Findings D).

Recommendation #6. De-obligate \$319,431 in funds awarded for projects 3334, 3317, 2276 and 3122, since the funds are no longer needed to accomplish the FEMA approved scopes of work (the federal share of unneeded project funding is \$239,573) (Finding E).

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOW-UP

We discussed the results of this audit with DFG officials on March 5, 2009, and with FEMA Region IX officials on July 24, 2009. We also notified CalEMA of the audit results on July 23, 2009. Both FEMA and CalEMA withheld response pending issuance of the final audit report. The verbal responses of DFG officials have been incorporated in the report.

Please advise us by October 20, 2009, of actions planned or taken to implement our recommendation. 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 contact me at (510) 637-1482. Key contributors to this assignment were Humberto Melara and Arona Maiava.

¹¹ An additional \$1,554,245 in unjustified scope of work increases should be disallowed if FEMA determines that contract costs for the approved scope of work under PW 2272 are fair and reasonable despite DFG's failure to ensure that NCRA followed federal procurement regulations (see Finding A and Recommendation #1).

¹² An additional \$141,983 in unallowable costs should be disallowed if FEMA determines that contract costs for the approved scope of work under PW 2272 are fair and reasonable (see Finding A and Recommendation #1).

**California Department of Fish and Game
Sacramento, California
Public Assistance Identification Number 000-UB8DQ-00
FEMA Disaster Number 1628-DR-CA**

PW Number	PW Award Amount	Cost Increases	Costs DFG Plans to Claim	Questionable Costs	Funds Available for Deobligation	Finding Reference
Large Projects						
3122	\$ 176,386		\$ 162,289	\$ 162,289	\$ 41,000	A,E
2272	1,193,654	\$1,588,718	2,782,372	2,747,899		A,B,C
3186	120,050	63,780	183,830	0		
3289	243,827	76,730	320,557	0		
3317	283,315		121,330		\$161,985	E
3757	584,765	208,786	793,551	78,226		C,D
3014	1,638,010		1,638,010	1,486,910		B
3334	76,154		31,705		44,449	E
2276	169,132		97,135		71,997	E
Sub-total	\$4,485,293	\$1,938,014	\$6,130,779	\$4,475,324	\$319,431	
Small Project						
3333	12,001	0	12,001	0	0	
Sub-total	\$12,001	\$0	\$12,001	\$0	\$0	
Total	\$4,497,294	\$1,938,014	\$6,142,780	\$4,475,324	\$319,431	

Project listing and award amount obtained from the National Emergency Management Information System as of February 23, 2009.