

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

FEMA Should Recover \$701,028 of Public Assistance
Grant Funds Awarded to Memphis Light, Gas and
Water Division – Severe Weather February 2008



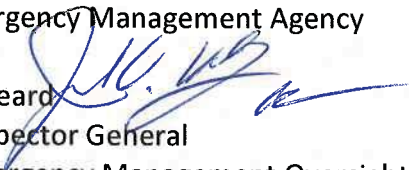


OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

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 \$701,028 of Public Assistance Grant Funds
Awarded to Memphis Light, Gas and Water Division – Severe
Weather February 2008*
FEMA Disaster Number 1745-DR-TN
Audit Report Number DA-13-07

We audited Public Assistance (PA) grant 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 \$3.2 million from the Tennessee Emergency Management Agency (State), a FEMA grantee, for damages resulting from severe storms, tornadoes, straight-line winds, and flooding, which occurred in February 2008. The award provided 75 percent FEMA funding for emergency protective measures and electrical repair work. The award included three large projects and two small projects.¹

We audited three large projects and one small project with awards totaling \$3.2 million. The audit covered the period of February 5, 2008, to March 10, 2010, during which the Utility claimed \$3.2 million (see Exhibit A, Schedule of Projects Audited) and received \$2.4 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

¹ Federal regulations in effect at the time of the disaster set the large project threshold at \$60,900.



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findings and conclusions. To conduct this audit we applied the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.

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 \$701,028 of PA funds awarded to the Utility. Although the Utility accounted for expenditures on a project-by-project basis, its claim included \$692,390 for contracts that were not procured according to Federal procurement requirements and \$8,638 for ineligible force account labor and equipment charges.

Finding A: Improper Procurement Procedures

The Utility did not comply with Federal procurement requirements and FEMA guidelines when awarding contracts valued at \$692,390 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)).



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In addition, FEMA's *Public Assistance Guide* (FEMA 322, June 2007, pp. 51–52) 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 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 200, the Utility awarded two 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 before the disaster. The contract work began on February 6, 2008, and continued until February 10, 2008, when all power was restored. The Utility claimed \$692,390 of contract costs for the work during this emergency period. We concluded that the need for electrical power constituted exigent circumstances that warranted the use of noncompetitive contracts. 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 \$692,390 of contract work was obtained at a fair and reasonable price. Therefore, we question the \$692,390.

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 \$85 per hour, while the other contractor's overtime rate for a general foreman was \$133 per hour, or 56.4 percent more.

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 State accepted the costs in question during closeout of the project in March 2010. However, the State's closeout documentation did not indicate that the costs were reviewed to ensure compliance with Federal procurement requirements and



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

FEMA guidelines. In our view, the State should have done a better job of reviewing the eligibility of the costs claimed by the Utility.

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 \$8,638 of ineligible force account labor and equipment charges.² We question the \$8,638 as follows:

- *Force Account Labor.* Under Project 211, the Utility claimed \$4,488 of ineligible force account regular-time labor and fringe benefits for Utility personnel who performed emergency work. FEMA Recovery Policy 9525.7 (*Labor Cost-Emergency Work*, November 16, 2006, pp. 188–189) specifies that the costs of straight-time salaries and benefits of an applicant's permanently employed personnel are not eligible in calculating the costs of emergency work. Utility officials said that a FEMA Project Officer advised them to claim the costs. However, FEMA policy is clear that such costs are ineligible for reimbursement.
- *Force Account Equipment.* Under Project 200, the Utility included \$4,150 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.

² Force account refers to the Utility's personnel and equipment.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region IV:

Recommendation #1: Disallow \$692,390 (FEMA share \$519,292) 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 a 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 \$8,638 (FEMA share \$6,478) of ineligible force account labor and equipment 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 did not comment.

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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Department of Homeland Security

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
February 5, 2008, to March 10, 2010
Memphis Light, Gas and Water Division
FEMA Disaster Number 1745-DR-TN**

Project Number	Scope	Amount Awarded	Amount Claimed	Amount Questioned
200	Electrical distribution system repair	\$3,011,601	\$3,011,601	\$696,540
206	Mutual aid used to repair damage to distribution system	93,734	93,734	0
210	Crews dispatched to turn off water to sprinkler systems	34,187	34,187	0
211	Emergency Operations Center costs and generator rental	80,081	80,081	4,488
Total		\$3,219,603	\$3,219,603	\$701,028



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EXHIBIT B

Report Distribution List
Memphis Light, Gas and Water Division
FEMA Disaster Number 1745-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.

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Should you be unable to access our website, you may submit your complaint in writing to: DHS Office of Inspector General, Attention: Office of Investigations Hotline, 245 Murray Drive, SW, Building 410/Mail Stop 2600, Washington, DC, 20528; or you may call 1 (800) 323-8603; or fax it directly to us at (202) 254-4297.

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