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Office of Inspector General

FEMA Should Recover $615,613 of Public Assistance Grant Funds Awarded to Orlando Utilities Commission under Hurricane Jeanne

OIG-14-08-D

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

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

SUBJECT: *FEMA Should Recover $615,613 of Public Assistance Grant Funds Awarded to Orlando Utilities Commission under Hurricane Jeanne*
FEMA Disaster Number 1561-DR-FL
Audit Report Number OIG-14-08-D

We audited Public Assistance grant funds awarded to the Orlando Utilities Commission, Florida, (Utility) (FIPS Code 000-UT15M-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.

The Utility received a Public Assistance award of $3.4 million from the Florida Department of Emergency Management (FDEM), a FEMA grantee, for damages resulting from Hurricane Jeanne, which occurred in September 2004. The award provided 90 percent FEMA funding for debris removal activities, emergency protective measures, repair of the electric transmission and distribution system, repair/replacement of buildings and equipment, and other disaster-related activities. The award consisted of 6 large projects and 11 small projects.[1]

We audited three large projects with awards totaling $2.7 million (see Exhibit, Schedule of Projects Audited and Questioned Costs). The audit covered the period September 24, 2004, to June 5, 2012, during which the Utility claimed $2.7 million under the projects reviewed. At the time of our audit, the Utility had submitted final claims on project expenditures to FDEM for the three projects in our audit scope.

We conducted this performance audit between January and August 2013 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 upon our audit objective. We believe that the evidence obtained provides a

[1] Federal regulations in effect at the time of Hurricane Jeanne set the large project threshold at $54,100.

reasonable basis for our findings and conclusions based on our audit objective. 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 and reviewed project costs (generally based on dollar value); interviewed Utility, FDEM, and FEMA officials; reviewed the Utility's procurement policies and procedures; reviewed applicable Federal regulations and FEMA guidelines; and performed other procedures considered necessary 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 the activities provided for under the FEMA award.

RESULTS OF AUDIT

The Utility's claim included $615,613 for nonemergency contract work that did not meet Federal procurement requirements and FEMA guidelines. As a result, full and open competition did not occur, and FEMA has no assurance that contract costs were reasonable or that minority firms, women's business enterprises, and labor surplus area firms had an opportunity to bid on the work. These conditions occurred because FDEM did not fulfill its duty as the grantee to ensure that subgrantees were aware of and followed Federal regulations.

Finding A: Contracting Procedures

The Utility did not comply with Federal procurement requirements when awarding five contracts valued at $615,613; two for nonemergency debris removal and three for permanent electrical repair 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. Subgrantees may use noncompetitive procurement under certain circumstances, one of which is when a contract award is infeasible under small purchase procedures, sealed bids, or competitive proposals, and the public exigency or emergency will not permit a delay resulting from competitive solicitation. (44 CFR 13.36(c)(1) and 44 CFR 13.36(d)(4)(i)(B))

- In connection with every procurement action, including contract modifications, perform a cost analysis when the offeror is required to submit the elements of his estimated cost or a price analysis, to determine the reasonableness of the proposed contract price. (44 CFR 13.36(f)(1))

- Take all necessary affirmative steps to assure the use of minority firms, women's business enterprises, and labor surplus area firms when possible during the procurement process. (44 CFR 13.36(e)(1))

- Maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. (44 CFR 13.36(b)(9))

In addition, FEMA's *Public Assistance Guide* (FEMA 322, October 1999, p.39) specifies that contracts "must be of reasonable cost, generally must be competitively bid, and must comply with Federal, State, and local procurement standards."

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

The Utility did not solicit competitive bids or take affirmative steps to use minority firms, women's business enterprises, and labor surplus area firms for nonemergency contract work valued at $615,613. Instead, the Utility solicited bids only from contractors that it had used before the storm or ones that it believed had the requisite knowledge, expertise, and work force to perform the required work. Table 1 identifies the projects and related scope of work.

Table 1. Projects with Non-Competitive Contracts

Project Number	Scope of Work	FEMA Category of Work	Total Value of Contracts
1109	Debris Removal	A	$125,460
2176	Electrical Repairs	F	490,153
Total			**$615,613**

In addition, the Utility did not have adequate documentation to show that it performed a cost or price analysis in connection with every procurement action. A cost or price analysis decreases the likelihood of unreasonably high or low prices, contractor misinterpretations, and errors in pricing relative to the scope of work. Utility officials said that they used the scope of work and prices they established with existing contractors to set prices for the new contractors. However, they could not provide us with documentation to show how they negotiated the prices with the existing contractors. Without adequate documentation, we could not validate that the Utility performed a proper cost or price analysis and that the prices the Utility paid for the contract work were reasonable.

Utility officials said that the Utility procured the contracts under exigent circumstances and that its emergency procurement procedures do not require it to consider procurement

opportunities for minority firms, women's business enterprises, and labor surplus area firms. However, we disagree that emergency conditions warranted the use of the noncompetitive contracts in question. Further, subgrantees may use their own procurement procedures, but those procedures, at minimum, must comply with Federal procurement standards at 44 CFR 13.36(b) through (i), unless excepted from the requirements by FEMA pursuant to 44 CFR 13.6.

The Utility restored electrical power to almost all of its customers by September 29, 2004, which we consider the end of the emergency period. We did not question about $1.8 million in contract costs the Utility claimed under Project 2176 for the emergency restoration of power during this period. The five contracts in question were for electrical repair and debris removal work that the Utility performed after September 29, 2004, and that it continued for several months. The Utility should have procured such work through open competition because exigent circumstances no longer existed to justify the use of noncompetitive contracts. Full and open competition increases the probability of reasonable pricing from the most qualified contractors, and helps discourage and prevent favoritism, collusion, fraud, waste, and abuse. It also allows the opportunity for minority firms, women's business enterprises, and labor surplus area firms to participate in federally-funded work. Therefore, we question the $615,613 the Utility claimed for the contract work that did not meet Federal procurement requirements and FEMA guidelines.

Utility Response. Utility officials generally disagreed with our finding. They said that it was infeasible for the Utility to use a competitive award process because of a shortage of viable contractors and the public emergency that widespread power outages created after the disaster. They also said that the emergency did not permit the Utility to use minority firms, women's business enterprises, and labor surplus area firms for the required services.

Office of Inspector General Response. As discussed in the body of this finding, we disagree that emergency circumstances existed to warrant the use of noncompetitive contracts for the contracts in question. Further, the Utility did not provide us with any evidence to support its assertion that viable contractors were not available to support a competitive award process. Finally, Federal regulations required the Utility to take all affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms were used when contracting for goods and services under a Federal grant.

Finding B: Grant Management

FDEM should have ensured that the Utility was aware of and followed Federal procurement standards. According to 44 CFR 13.37(a)(2), FDEM, as grantee, is required to ensure that subgrantees are aware of requirements that Federal regulations impose on them. Further, 44 CFR 13.40(a) requires the grantee to manage the day-to-day operations of subgrant activity and monitor subgrant activity to ensure compliance with applicable Federal requirements.

For the two projects where we questioned contract costs, FEMA and FDEM personnel reviewed and approved the contract costs during the closeout process that took place between January 2006 and July 2009. The closeout file documentation did not indicate that the closeout team reviewed the contracts for adherence to Federal procurement requirements and FEMA guidelines, or for cost reasonableness. The closeout team's procedures focused mainly on whether the Utility followed its own contracting procedures and whether contract invoices supported the costs. Therefore, we recommend that FEMA remind FDEM of the requirement to adequately review costs subgrantees claim for adherence to applicable Federal regulations and FEMA guidelines.

RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region IV:

Recommendation #1: Disallow $615,613 (Federal share $554,053) of ineligible contract costs the Utility claimed unless FEMA grants the Utility an exception for all or part of the costs as provided for in 44 CFR 13.6(c) and Section 705(c) of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act*, as amended, and determines the costs were reasonable.

Recommendation #2: Instruct FDEM to remind the Utility of the requirement to comply with applicable Federal procurement standards when acquiring goods and services under a FEMA award.

Recommendation #3: Reemphasize to FDEM the requirement to adequately review costs subgrantees claim for adherence to applicable Federal regulations and FEMA guidelines.

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed the audit results with Utility, FDEM, and FEMA officials during our audit. We also provided a written summary of our findings and recommendations in advance to these officials and discussed them at exit conferences with Utility officials on August 13, 2013, FDEM officials on August 15, 2013, and FEMA officials on August 20, 2013. We included Utility officials' comments, where appropriate, in the body of this 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 we receive and evaluate your response, we will consider the recommendations as 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 David Kimble, Director; Felipe Pubillones, Audit Manager; Salvador Maldonado-Avila, Auditor-in-Charge; and Larry Jones, Auditor.

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

Exhibit

Schedule of Projects Audited and Questioned Costs

Project Number	Category of Work	Amount Awarded	Amount Questioned	Federal Share
1109	A	$543,518	$125,460	$112,914
2185	E	114,757	0	0
2176	F	2,081,493	490,153	441,139
Total		**$2,739,768**	**$615,613**	**$554,053**

Appendix

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