



Homeland Security

July 27, 2010

MEMORANDUM FOR: Major P. (Phil) May, Regional Administrator
FEMA Region IV

FROM: C. David Kimble, Director
Eastern Regional Office

SUBJECT: *South Mississippi Electric Power Association*
FIPS Code: 000-UOWI9-00
FEMA Disaster No. 1604-DR-MS
Report No. DA-10-15

We audited public assistance funds awarded to South Mississippi Electric Power Association (SMEPA). The objective of the audit was to determine whether SMEPA accounted for and expended Federal Emergency Management Agency (FEMA) funds according to federal regulations and FEMA guidelines.

As of September 29, 2009, SMEPA had received a public assistance award of \$11.9 million from the Mississippi Emergency Management Agency (MEMA), a FEMA grantee, for damages related to Hurricane Katrina. The award provided 100% FEMA funding for debris removal, emergency protective measures, and permanent repairs to SMEPA's power plants and transmission lines. The award included 42 large projects and 43 small projects.¹ At the time of our audit, SMEPA had received \$11.9 million of FEMA funds under the projects. Our audit focused primarily on \$2 million claimed under 4 large projects identified in the table below.

Project Number	Amount Awarded	Amount Claimed
89	\$822,268	\$822,268
101	209,861	209,861
7061	369,312	369,312
10054	594,393	594,393
Total	\$1,995,834	\$1,995,834

During our fieldwork, we expanded our audit scope to include limited reviews of contractor equipment charges and force account labor costs for 28 additional projects based on conditions

¹ Federal regulations in effect at the time of Hurricane Katrina set the large project threshold at \$55,500.

identified during our review of the initial 4 projects. Projects that are impacted by our expanded scope are identified in findings C, D, and E. The audit covered the period August 29, 2005, to September 29, 2009.

We conducted this performance audit under the authority of the *Inspector General Act of 1978*, as amended, and according to generally accepted government audit 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. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We judgmentally selected project cost documentation (generally based on dollar value); interviewed SMEPA, MEMA, and FEMA personnel; reviewed SMEPA's disaster grant accounting system and procurement policies and procedures; reviewed applicable federal regulations and FEMA guidelines; and performed other procedures considered necessary under the circumstances. We did not assess the adequacy of SMEPA's internal controls applicable to its grant activities because it was not necessary to accomplish our audit objective. We did, however, gain an understanding of SMEPA's grant accounting system and its policies and procedures for administering activities provided for under the FEMA award.

RESULTS OF AUDIT

SMEPA's grant accounting system did not account for expenditures on a project-by-project basis as required by federal regulation. In addition, SMEPA did not always comply with federal procurement procedures. SMEPA's claim also contained \$1,542,153 of questionable costs resulting from ineligible equipment idle time and force account labor, and unreasonable costs billed by debris removal contractors.

- A. Project Accounting. According to 44 CFR 206.205(b), large project expenditures must be accounted for on a project-by-project basis. SMEPA established a single work order account to capture all Katrina-related disaster costs. The account was not further sub-divided to segregate costs by project. Consequently, we had to rely on records maintained by MEMA and FEMA to identify costs claimed by projects.
- B. Procurement Procedures. SMEPA did not properly follow applicable federal procedures when awarding contracts for \$5.6 million of debris removal work.
 - 1. *Type of Contract*. SMEPA entered into time-and-materials contracts with contractors to perform all Hurricane Katrina-related work. According to 44 CFR 13.36(b)(10), time-and-materials contracts should be used only when other types of contracts are not suitable. SMEPA was unable to demonstrate that other types of contracts were not suitable to perform the work. SMEPA personnel told us that unit price or lump sum contracts would have been more expensive, but provided no additional evidence to support their statement. Although SMEPA did not comply with the rules governing the use of time-and-materials contracts, we are not questioning any contract costs because we could not quantify if any cost savings would have been realized had other contracting methods been used to procure the services.

2. *Non-Competitive Procurement Process.* According to 44 CFR 13.36(c), all procurement transactions will be conducted in a manner providing full and open competition. Non-competitive procurement may be used under certain circumstances, one of which is when the public exigency or emergency will not permit a delay resulting from competitive solicitation (44 CFR 13.36(d)). In October 2005, after the emergency period had ended, FEMA notified SMEPA that remaining disaster debris removal work should be competitively procured.

On October 28, 2005, SMEPA provided Requests for Proposals (RFP) to the five contractors it was using to perform disaster debris removal work. All five contractors responded to the request and SMEPA continued using the same contractors for the debris removal work. However, SMEPA's procedures did not provide full and open competition because SMEPA did not publicly advertise the work as required by 44 CFR 13.36(d)(2)(ii)(A). SMEPA defended their procedures by stating that RFPs were provided to all contractors on their approved vendor list that perform this type of work. However, 44CFR 13.36(c)(4) provides that "grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period."

- C. Equipment Idle Time. According to FEMA's *Public Assistance Policy Digest* (FEMA 322, October 1999, p.37), standby time for equipment is not eligible for FEMA reimbursement. We reviewed invoices from 14 contractors that performed debris removal work for SMEPA and determined that equipment hours exceeded labor hours by 38,181 hours. Equipment billed included such items as crew, service, and transport trucks; 4-wheelers; bulldozers; chainsaws; and other equipment requiring an operator. Because all the equipment required an operator, the number of equipment hours billed should not exceed the number of labor hours billed. Equipment time in excess of labor time represents idle or standby time.

The *Public Assistance Policy Digest* also states that if an applicant uses equipment intermittently for the majority of the day, use for the entire day may be claimed if adequate documentation is submitted. SMEPA officials said that this guidance should allow certain billed equipment hours in excess of labor hours to be eligible costs. We requested that SMEPA provide documentation to support a level of equipment usage comparable to what was billed and claimed. However, such documentation was not provided to us prior to conclusion of our fieldwork. Therefore, we question the excess equipment hours over labor hours billed by the contractors as standby time.

To calculate questioned cost for the standby time, we allocated the 38,181 excess hours to equipment rates using a weighted average formula based on total hours billed for each piece of equipment, for each contractor. The sum of these individual calculations by contractor totaled \$1,148,829. We question the \$1,148,829 as shown in the following table.

Standby Equipment Time			
Project Number	Amount Questioned	Project Number	Amount Questioned
87	\$28,689	9954	\$92,465
88	77,509	9958	54,066
89	185,482	10054	117,151
90	64,492	10055	16,084
92	66,948	10056	10,619
93	36,983	10057	1,609
94	106,689	10061	1,836
95	200,571	10063	5,283
96	50,661	11171	22,844
9466	8,848		
Total			\$1,148,829

- D. Force Account Labor. According to 44 CFR 206.228 (a)(4), straight or regular-time salaries and benefits of a subgrantee’s permanently employed personnel are not eligible costs when the personnel are performing emergency work — debris removal (Category A) or emergency protective measures (Category B). However, when such employees are performing eligible permanent restoration work (Categories C through G), straight time salaries and benefits are eligible costs.

SMEPA claimed and was paid \$291,131 of force account labor on Category F permanent projects. In reviewing these costs, we determined that \$93,667 of regular-time labor costs for emergency protective measures and debris removal activities were claimed under the projects. This occurred because FEMA identified September 6, 2005, as the end of the emergency period, which was the date SMEPA had restored power to all of its substations. Based on that determination, SMEPA claimed all disaster-related force account labor costs occurring on or after September 7, 2005, regardless of activity, on Category F projects. However, emergency protective measures and debris removal activities actually continued through September 20, 2005, as evidenced in the description of work performed on SMEPA’s force account labor schedules, and in a letter from SMEPA’s general manager dated August 17, 2006. As a result, SMEPA’s claims for the Category F projects included \$93,667 of regular-time labor costs applicable to emergency work and debris removal, which are not eligible for FEMA reimbursement.

There was also a formula error in the spreadsheet that SMEPA used to support Category F force account labor claims for exempt employees, which caused \$42,170 of eligible overtime costs for exempt employees to be omitted from SMEPA’s claim. In addition, force account labor costs of \$68,099 claimed for permanent work was not supported by adequate documentation, as required by 44 CFR 13.20(b)(6). SMEPA could neither demonstrate that the hours were incurred for permanent work nor identify the specific permanent work that was performed. Based on the above conditions, we question net labor costs of \$119,596 claimed for the Category F permanent projects. The applicable projects and related questioned costs are shown in the following table.

Ineligible Force Account Labor			
Project Number	Amount Questioned	Project Number	Amount Questioned
6916	\$4,832	7065	\$ 2,416
6920	1,208	7066	3,624
6928	7,248	7068	3,624
7051	25,369	7069	24,161
7061	19,328	7070	8,457
7062	13,289		
7064	6,040		
Total			\$119,596

E. Contractor Labor and Equipment Rates. OMB Circular A-122, Attachment A, section 3, addresses reasonable costs for not-for-profit organizations. According to the Circular, a cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs. In determining the reasonableness of a given cost, the Circular requires that consideration be given to:

- The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the award.
- Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large, and the Federal Government.

We concluded that SMEPA's claim contained \$273,728 of unreasonable charges billed by three debris removal contractors.

1. *Contractor A.* SMEPA hired Contractor A shortly after the disaster in September 2005 under an emergency non-competitive contract. We noted the contractor charged labor rates that were significantly higher than comparable rates charged by 13 other contractors performing similar work, exceeding some by more than 100%. In February 2006, the contractor revised the labor rates it was charging SMEPA to rates that were comparable to the rates that other contractors were charging. Based on the above conditions, we concluded the rates charged by Contractor A from September 2005 to November 2005 were unreasonable. Therefore, we question \$54,634 of unreasonable charges as detailed in the following table.

Unreasonable Contractor A Rates					
Position	Initial Rate	Revised Rate	Rate Difference	Hours Billed	Excessive Amount
Supervisor	\$80	\$30	\$50	428.5	\$21,425
Supervisor - OT	120	45	75	185.0	13,875
Equip Operator	50	22	28	413.0	11,564
Equip Operator - OT	75	33	42	185.0	7,770
Total					\$54,634

2. *Contractor B.* Contractor B billed equipment at a time-and-a-half rate for hours used in excess of 40 hours in a week. There was no provision in the contract for such increased rate. Therefore, we question \$14,549 for costs associated with the additional half-time charged.

3. *Contractor C.* Contractor C performed similar right-of-way debris clearing work for another electric power association (EPA) in the same geographical area during the same time period (September 2005 to April 2006). However, the labor and equipment rates charged to SMEPA were significantly higher than the rates charged to the other EPA. Additionally, this contract was awarded under emergency non-competitive procedures without a price analysis as required by federal procurement regulation (44 CFR 13.36(d)(4)(ii)). Based on these conditions, we concluded that the labor and equipment rates charged by the contractor are unreasonable. Therefore, we question \$204,545 of charges billed by the contractor as shown in the following table.

Unreasonable Contractor C Rates					
Position / Equipment Item	Rate charged SMEPA	Rate charged other EPA	Difference	Hours Billed ²	Excessive Amount
Foreman - Reg	\$28.00	\$21.50	\$6.50	1,120	\$7,280
Foreman - OT	42.00	32.25	9.75	297	2,896
Operator - Reg	26.00	14.66	11.34	3,439	38,998
Operator - OT	39.00	21.99	17.01	529	8,998
Groundman - Reg	24.00	13.73	10.27	4,528	46,503
Groundman - OT	36.00	20.60	15.40	1,246	19,188
Jarraff	85.00	54.29	30.71	1,466	45,021
Tractor	42.00	16.52	25.48	707	18,014
Crew Truck	10.00	7.24	2.76	2,208	6,094
Chain Saw	5.00	2.25	2.75	4,201	11,553
Total					\$204,545

² Equipment hours are net of the idle equipment hours questioned in Finding C

The following table shows total unreasonable contract costs of \$273,728 identified under this finding by project.

Project Number	Amount Questioned	Project Number	Amount Questioned
87	\$3,522	96	\$16,201
88	7,650	9466	477
89	63,208	9954	51,510
90	955	9958	24,114
92	4,696	10054	29,114
93	8,218	10055	2,348
94	23,204	10063	1,174
95	23,789	11171	13,548
Total			\$273,728

RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region IV, in coordination with MEMA:

Recommendation #1. Instruct SMEPA to develop an accounting system that accounts for large projects on a project-by-project basis and allows for project expenditures to be readily traced to source documents (Finding A).

Recommendation #2. Instruct SMEPA to comply with federal procurement regulations when acquiring goods and services under the FEMA award (Finding B).

Recommendation #3. Disallow \$1,148,829 of ineligible equipment idle time billed by contractors (Finding C).

Recommendation #4. Disallow \$119,596 of ineligible force account labor cost (Finding D).

Recommendation #5. Disallow \$273,728 of unreasonable debris removal contractor charges (Finding E).

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOW-UP

The audit results were discussed with SMEPA, FEMA, and MEMA officials on June 7, 2010. SMEPA officials concurred with the Contractor B component of Finding E, but disagreed with the other findings. Comments provided by SMEPA officials, where appropriate, are included in the body of this report.

Please advise me by September 24, 2010, of the actions planned or taken to implement the recommendations contained in this report, including target completion dates for planned actions. Should you have any questions concerning this report, please call me at (404) 832-6702, or Larry Arnold, Audit Manager, at (228) 822-0346. Key contributors to this assignment were Larry Arnold, James Miller, and Charles McGowan.

cc: Mary Lynne Miller – Deputy Regional Administrator
Jesse Munoz—Director Recovery
Valerie Rhoads—Branch Chief of PA
Denise Harris—Regional Audit Coordination
Dennis Kizziah—MS Recovery Office Director
Audit Liaison, FEMA

South Mississippi Electric Power Association
FEMA Disaster No. 1604-DR-MS
Schedule of Findings and Questioned Costs

Finding	Amount Questioned ³	Finding No.
Contract Equipment Idle Time	\$1,148,829	C
Force Account Labor	\$119,596	D
Contract Labor and Equipment	\$273,728	E
Total	\$1,542,153	

³ The questioned amount by specific project can be found under each finding section in the body of this report.