

U.S. Department of Homeland Security
Central Regional Office
Office of Emergency Management
Oversight
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**Homeland
Security**

November 19, 2009

MEMORANDUM FOR: Arthur Freeman, Acting Regional Administrator
FEMA Region VII
Tonda L. Hadley

FROM: Tonda L. Hadley, Director
Central Regional Office

SUBJECT: *Pioneer Electric Cooperative, Inc., Ulysses, Kansas*
FEMA Disaster Number 1675-DR-KS
Public Assistance Identification Number 000-U1WWO-00
Audit Report DD-10-01

We audited public assistance funds awarded to Pioneer Electric Cooperative (PEC) located in Ulysses, Kansas. Our audit objective was to determine whether PEC accounted for and expended Federal Emergency Management Agency (FEMA) grant funds according to federal regulations and FEMA guidelines.

PEC received an award of \$79.3 million from the Kansas Division of Emergency Management (KDEM), a FEMA grantee, for damages caused by a severe winter storm that occurred December 28-31, 2006. The award provided 75% FEMA funding for one small and four large projects.¹ On May 13, 2009, the cut-off date of our review, PEC's projects were in various stages of completion. The audit covered the period December 28, 2006, to May 13, 2009, during which PEC claimed \$40.3 million, and KDEM disbursed \$30.2 million for direct program costs. We audited 100% of the projects under the award (see Exhibit).

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, 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.

¹ Federal regulations in effect at the time of the disaster set the large project threshold at \$59,700.

We interviewed FEMA, KDEM, and PEC officials; reviewed judgmentally selected samples (generally based on dollar value) of PEC's claimed costs; and performed other procedures considered necessary to accomplish our objective. We did not assess the adequacy of PEC's internal controls applicable to grant activities because it was not necessary to accomplish our audit objective. We did, however, gain an understanding of PEC's method of accounting for disaster-related costs and its procurement policies and procedures.

RESULTS OF AUDIT

PEC generally accounted for and expended FEMA grant funds according to federal regulations and FEMA guidelines. PEC's claimed cost documentation was well organized on a project-by-project basis as required by 44 CFR 13.20(b)(2) and the \$40.3 million claimed was fully supported. However, PEC did not always follow federal procurement standards in awarding contracts for disaster-related work, and its claim included \$391,707 for costs that were ineligible.

Background

The December 2006 severe winter storm caused widespread damage to more than 1,200 miles of line in PEC's service area. Freezing precipitation, strong winds with gusts in excess of 55 miles per hour, and blizzard conditions lasting nearly 72 hours, left 12,000 customers without power. Many mutual aid cooperatives along with eight line contractors assisted PEC with power restoration to residential customers and critical facilities.



Ice-loaded utility line
Source: PEC officials



Downed utility poles due to ice-loaded utility lines

Finding A: Contracting Procedures

PEC generally followed federal procurement standards in awarding and administering the majority of its \$23.5 million of contracts awarded for electrical utility work. PEC competitively bid most of its contracts, performed price analyses of contract costs, and maintained records sufficient to detail the significant history of its procurements.² However, PEC claimed \$8.3 million for work performed under non-competitive, time-and-material contracts (T&M) without ceiling prices or other required contract clauses (44 13.36(i)). Federal procurement standards require full and open competition except under certain circumstances. One allowable circumstance is when there is a public exigency or emergency that will not permit a delay resulting from competitive solicitation (44 CFR 13.36(c)(1) and (d)(4)(i)). Federal procurement standards also state that subgrantees shall not use T&M contracts unless a determination is made that no other contract is suitable and provided that the contract includes a ceiling price that the contractor exceeds at its own risk (44 CFR 13.36(b)(10)).

PEC restored power to its residential customers and critical facilities by January 19, 2007, which was 23 days after the winter storm began. We considered these 23 days to be the emergency period because the lack of power constituted exigent circumstances. Of the \$8.3 million in non-competitive, T&M contracts, PEC spent \$6.3 million during the emergency period and \$2.0 million after. During the emergency period, PEC did not have time to solicit competitive bids or develop clear scopes of work necessary for lump sum or fixed unit price contracts. After the emergency period, PEC released the higher-priced T&M contractors and carefully monitored the remaining contractors until the competitively awarded, fixed unit price contractor began work on February 25, 2007. We concluded that, under the circumstances, PEC put forth reasonable efforts to control costs; therefore, we did not question the T&M contract costs.

Finding B: Mutual Aid Costs

PEC claimed \$391,707 for mutual aid costs to complete work that FEMA classified as permanent work (Category F). FEMA Public Assistance Policy 9523.6, *Mutual Aid Agreements for Public Assistance*, section 7.E.1.b.(i) states, "Examples of mutual aid work that are not eligible include permanent recovery work." PEC used mutual aid cooperatives, contractors, and force account labor to restore power during the emergency period. However, because FEMA classified all the work as permanent rather than emergency protective measures (Category B emergency work), the costs were ineligible.

FEMA can classify electrical work as either permanent work or emergency work. We recognize that the majority of electrical work is often permanent, rather than temporary; however, FEMA should classify all work to restore power to residential customers and critical facilities as Category B emergency work because this work may save lives and property. Further, classifying power restoration work as emergency work clearly delineates the period of time when exigent circumstances exist, which sometimes justify using relaxed procurement procedures, such as non-competitive contracts and T&M contracts. When lives are at risk, there is often not enough

² 44 CFR 13.36(c)(1), (f)(1), and (b)(9), respectively.

time for full and open competition or for preparing scopes of work necessary for lump sum or unit price contracts.

If FEMA had classified power restoration work as Category B emergency work, the \$391,707 claimed for mutual aid costs would have been eligible. However, FEMA PA Policy 9525.7 states that regular-time force account labor is not eligible for emergency work; therefore, if FEMA had classified the work as Category B, the \$124,540 PEC claimed for regular-time labor would not have been eligible. We questioned the \$391,707 of mutual aid costs because it was ineligible for work classified as permanent.

RECOMMENDATION

We recommend that the Acting Regional Administrator, FEMA Region VII, disallow \$391,707 of ineligible costs for mutual aid work.

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOW-UP

We discussed the results of our audit with PEC officials on September 22, 2009, and with FEMA and KDEM officials on September 23, 2009. These officials agreed with our findings. Please advise this office by January 19, 2010, of the actions planned or taken to implement the recommendations, including target completion dates for any planned actions. Significant contributors to this report were Paige Hamrick, Sharon Snedeker, and Jennifer Burba. Should you have questions concerning this report, please contact me, or your staff may contact Paige Hamrick, Audit Manager, at (214) 436-5200.

Cc: Audit Liaison, FEMA Region VII
Audit Liaison, FEMA (Job Code DG9C04)

**Schedule of Audited Projects
Pioneer Electric Cooperative
FEMA Disaster Number 1675-DR-KS**

Project Number	Award Amount	Questioned Costs
296	\$ 7,509,920	\$ 66,431
493	22,956	0
524	62,572,320	310,640
532	1,271,488	0
536	<u>7,950,960</u>	<u>14,636</u>
Total	<u>\$79,327,644</u>	<u>\$391,707</u>