




Homeland Security

March 12, 2009

MEMORANDUM FOR: Karen Armes
Acting Regional Administrator
FEMA Region IX

FROM: 
Robert J. Lastrico
Western Regional Director

SUBJECT: East Bay Regional Park District
Oakland, California
Public Assistance Identification Number 000-UH96N-00
FEMA Disaster Number 1628-DR-CA
Audit Report Number DS-09-02

The Office of Inspector General audited public assistance funds awarded to the East Bay Regional Park District, Oakland, California (District). The objective of the audit was to determine whether the District expended and accounted for Federal Emergency Management Agency (FEMA) funds according to federal regulations and FEMA guidelines.

The District received a public assistance subgrant award of \$3.1 million from the California Office of Emergency Services (now, the California Emergency Management Agency - Cal EMA), a FEMA grantee, for debris removal, emergency protective measures, and permanent repairs to facilities damaged by a severe winter storm and flooding that started on December 17, 2005. The subgrant award provided 75% federal funding for 10 large projects and 33 small projects¹.

The audit covered the period of December 17, 2005, to September 19, 2008, and included a review of eight large projects and two small projects with a total award of \$2.3 million (see Exhibit). As of September 19, 2008, the cut-off date of our review, the District had not completed all projects funded under the subgrant award and had not submitted a partial or final claim to Cal EMA.

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. The evidence

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

obtained during the audit provides a reasonable basis for our findings and conclusions based on our audit objective. We interviewed FEMA, Cal EMA, and District officials; reviewed judgmentally selected samples of cost documentation to support invoices and personnel charges; and performed other procedures considered necessary to accomplish our objective.

We did not assess the adequacy of the District's internal controls applicable to subgrant activities because it was not necessary to accomplish our audit objective. We did, however, gain an understanding of the District's method of accounting for disaster-related costs.

RESULTS OF AUDIT

Of the 10 projects selected for review, the District completed four and expended and accounted for FEMA funds according to federal regulations and FEMA guidelines for those projects. Since the District had not started the six remaining projects, we evaluated whether the proposed scope of work for these projects met federal eligibility requirements. The proposed scope of work for three projects met federal eligibility requirements; however, for the three projects identified below, the District included over \$1 million in estimated costs for work not eligible for federal reimbursement.

PW Number	PW Amount	District	
		Estimated Costs	Cost Not Eligible
3468	\$179,798	\$600,000	\$ 420,202
3444	195,906	626,800	430,894
3455	324,450	482,860	158,410
Total	\$700,154	\$1,709,660	\$1,009,506

Scope of Work and Budget Increases

The scope of work developed by the District for projects 3468 and 3444 included improvements that are in addition to repairs required to restore the facilities to pre-disaster condition. According to Title 44, Code of Federal Regulations, Section 206.203(d) [44 CFR 206.203(d)] 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 its pre-disaster design.

- Under project 3468, FEMA approved total estimated costs of \$179,798 to repair a damaged creek. The scope of work approved by FEMA included placing rock (riprap) along side the creek to reduce the erosion of the creek banks. The District's records identified that the scope of work developed for the project included site improvements and cost increases of \$420,202, for a total project cost of \$600,000 (\$179,798 plus \$420,202). The added work reflected the District's desire to implement a more natural solution to erosion that involved widening the floodplain and adding turns to the creek to reduce the flow of water and erosion.
- Under project 3444, FEMA approved total estimated costs of \$195,906 for repairs to a park cave that was being used as a visitor's center at the time of the disaster. The scope of work approved by FEMA included the use of steel support beams, the use of shot-crete to reinforce the walls, and repair of a 12-foot wide retaining wall. The District's records identified cost increases of \$430,894, for a total project cost of \$626,800 (\$195,906 plus \$430,894). The increase in costs pertained to project improvements consisting of construction of a larger and

higher retaining wall (112 feet wide x 14 feet high), replacing an existing wooden stairway with a concrete stairway, and relocating the tunnel entrance further into the hillside.

We discussed the revised scope of work for both projects with District officials. Those officials were not aware that the \$851,096 (\$420,202 plus \$430,894) in increased estimated project costs may not be eligible for federal reimbursement. District officials also stated that they had not notified FEMA about the project scope revisions and related costs increases as required by 44 CFR 13.30(c)(2) and 13.30(d)(1).

Public Assistance Program Hazard Mitigation

For project 3455, FEMA approved total estimated costs of \$324,450 for disaster repair work including the dredging and pumping of sand, and placing 20,600 cubic yards of sand over a 1.76-mile beach area. The District's records indicated that the damage had resulted from beach sand overtopping, but not damaging an existing beach groin.² As a result of the beach damage, the District requested an additional \$158,410 in Public Assistance Program hazard mitigation funding³ to enlarge the beach groin structure.

To support the mitigation project, the District completed a Benefit Cost Analysis (BCA) that showed that the project was cost effective -- a requirement for funding mitigation work. We evaluated the scope of the mitigation project and data used to calculate the favorable BCA ratio and determined that the primary purpose of mitigation was to reduce future and potential disaster damage to a natural conservatory area (conservatory). We verified that while in close proximity to the undamaged beach groin and likely to be affected by beach sand during a severe storm, the conservatory was not owned or maintained by the District, and did not suffer disaster damage. Therefore, we concluded that the BCA did not support federal funding for the mitigation project. According to 44 CFR 206.223, an item of work must be required as a result of the major disaster event and be the legal responsibility of an eligible applicant to be eligible for financial assistance.

District officials agreed with our observations. Those officials explained that the BCA was just completed and had not been provided to either Cal EMA or FEMA. They also noted that they would work with the contractor who completed the BCA to make the necessary corrections.

Summary

While initial scopes of work were jointly determined by FEMA and the District and total estimated costs were approved by FEMA, substantial scope and budget changes have been identified by the District but Cal EMA and FEMA Region IX have not been notified. Since work on the three projects identified above has not yet begun, FEMA, in coordination with Cal EMA, should reevaluate eligible scopes of work and associated estimated costs and if unchanged, inform the District (1) to adhere to the original scopes of work and (2) that actual costs beyond the approved scopes of work will not be reimbursed.

² A groin is a small jetty extending from the shore to protect a beach against erosion or to trap shifting sands.

³ Section 406 of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act* allows FEMA to use Public Assistance Program funds for hazard mitigation measures necessary to meet a need for governmental services and functions in the area affected by the major disaster.

RECOMMENDATIONS

We recommend that the Acting Regional Administrator, FEMA Region IX, in coordination with Cal EMA:

1. Inform the District 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)].
2. Disallow \$851,096 in scope and budget increases beyond what was originally approved in PWs 3468, and 3444 if: (a) the District cannot demonstrate that the additional work will restore the damaged facilities to their pre-disaster condition; and (b) if such costs are claimed by the District when the projects are completed.
3. If submitted by the District for funding, disallow \$158,410 in proposed PA funded hazard mitigation work since the additional work does not relate to a damaged District facility or mitigate future damage to a facility for which the District has legal responsibility.

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOW-UP

We discussed the results of this audit with Cal EMA and the District officials on October 23, 2008, and with FEMA Region IX officials on October 7, 2008. Both FEMA and Cal EMA agreed with our conclusions. The verbal responses of District officials has been incorporated into the Results of Audit Section of this report

Please advise us by May 11, 2009, of actions taken or planned to implement our three recommendations. Should you have questions concerning this report, please contact me at (510) 637-1482. Key contributors to this assignment were Humberto Melara and Carlos Feliciano.

Schedule of Audited Projects
 East Bay Regional Park District
 Oakland, California
 Public Assistance Identification Number 000-UH96N-00
 FEMA Disaster Number 1628-DR-CA

PW Number	PW Amount	Cost Increases	Cost Questionable	Work Status
Large Projects				
474	\$ 101,350	\$ 42,831	\$ 0	Completed
1055	453,498	\$0	0	Not Started
3444	195,906	430,894	430,894	Not Started
3455	324,450	158,410	158,410	Not Started
3456	171,715	\$0	\$0	Not Started
3463	401,329	\$0	\$0	Completed
3468	179,798	420,202	420,202	Not Started
3682	410,233	\$0	\$0	Not Started
Sub-total	\$2,238,279	\$1,052,337	\$1,009,506	
Small Projects				
3545	\$ 56,014	0	0	Completed
2050	5,174	0	0	Completed
Sub-total	\$ 61,188	0	0	
Total	\$2,299,467	\$1,052,337	\$1,009,506	