




**Homeland  
Security**

April 23, 2010

MEMORANDUM FOR: Nancy Ward  
Regional Administrator  
FEMA Region IX

FROM:   
Robert J. Lastrico  
Western Regional Director

SUBJECT: *County of Los Angeles, California*  
Public Assistance ID. No. 037-99037-00  
FEMA Disaster No. 1585-DR-CA  
Audit Report Number DS-10-07

We audited public assistance funds awarded to the County of Los Angeles, California (County). The objective of the audit was to determine whether the County expended and accounted for Federal Emergency Management Agency (FEMA) funds according to federal regulations and FEMA guidelines.

The County received a public assistance subgrant award of \$10.9 million from the California Office of Emergency Services (OES),<sup>1</sup> a FEMA grantee, for debris removal, emergency protective measures, and permanent repairs to facilities damaged by severe storms in February 2005. Of the \$10.9 million, FEMA provided 75% federal funding and non-federal sources funded the remaining 25% for 39 projects (36 large and 3 small projects<sup>2</sup>). The audit covered the period February 16, 2005, through January 23, 2009, and included reviews of 12 completed large projects with a total award of \$3.8 million. As of January 23, 2009, the County had been reimbursed \$3.5 million based on FEMA's approved estimate; however, for the same projects, the County plans to claim an additional \$3 million in cost overruns (see Exhibit A). The remaining 24 large projects were in various stages of repair.

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 and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. The evidence obtained during the audit fulfilled those requirements.

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<sup>1</sup> OES became a part of the California Emergency Management Agency (Cal EMA) on January 1, 2009.

<sup>2</sup> At the time of the disaster, the large project threshold was \$55,500.

We discussed audit issues with FEMA, Cal EMA, and County officials and corresponded with the U.S. Department of Transportation's Federal Highway Administration (FHWA). We 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 County'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 County's method of accounting for disaster-related costs.

**RESULTS OF AUDIT**

Of the \$6,835,689<sup>3</sup> the County plans to claim for the 12 large projects reviewed, \$2,459,974 does not comply with the criteria required for federal reimbursement (the federal share is \$1,844,980). The table below lists the areas in which we questioned the amounts to be claimed by the County.

<b>Finding</b>	<b>Subject</b>	<b>Amount Questioned</b>
A	Project Costs Overruns	\$2,337,470
B	Fringe Benefits Costs	87,295
C	Work on Federal-Aid Roads	35,209
Total		\$2,459,974

In addition, FEMA should reduce project funding by \$271,878 (the federal share is \$203,909). Six of 12 projects we reviewed have been completed and actual costs were less than the awarded amount (Finding D).

**Finding A – Project Costs Overruns**

The County received a public assistance award of over \$1.3 million for three project worksheets (PWs) and has requested \$2.3 million in additional funding for cost overruns incurred for repairs not approved by FEMA. We question the cost overruns because the related repairs pertain to work that was: 1) expressly disallowed by FEMA through FEMA's appeals process, 2) not included in the PWs approved scope of work (SOW), or 3) not related to disaster damage.

According to Title 44, *Code of Federal Regulations*, Section 206.223(a)(1), to be eligible for financial assistance, an item of work must be required as the result of a major disaster event. Office of Management and Budget (OMB) Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*, Attachment A, Section C provides that for an item of cost to be allowed, it must be reasonable and allocable to a particular cost objective. The following table identifies the three projects, the approved funding, the total cost the County has recorded for each PW, the costs overruns we question, and the nature of the costs overruns.

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<sup>3</sup> FEMA's National Emergency Management Information System (NEMIS) reflects an award of \$3,772,014 but does not include the additional \$3,063,675 in cost overruns the County has requested for reimbursement.

<b>PW Number</b>	<b>FEMA Award</b>	<b>Total Cost Recorded</b>	<b>Cost Overrun Questioned</b>	<b>Nature of Cost Overrun</b>
773	\$648,863	\$1,677,445	\$1,028,582	SOW not followed
832	448,467	1,426,751	978,284	Project Improvements
754	217,634	548,238	330,604	Not Disaster Work
<b>Total</b>	<b>\$1,314,964</b>	<b>\$3,652,434</b>	<b>\$2,337,470</b>	

Details regarding each of the three PWs are provided below:

- Under PW 773, FEMA provided \$648,863 in disaster funding to repair a slope failure on a section of outboard road embankment. During project formulation, the County provided FEMA with two proposals that included repair methodologies and estimated costs. Estimated costs totaled \$744,785 for Proposal #1 and \$1,493,300 for Proposal #2. Records supporting the funding for PW 773 identified that the County expressed preference for the repair methodology under Proposal #1. In approving the \$648,863 for the disaster work, FEMA considered the repair methodology for Proposal #1 and specified 12 repair items in returning the facility to its pre-disaster condition.

The County disagreed with FEMA’s final determination on the SOW and funding; and submitted a first appeal to FEMA requesting SOW modifications and \$384,230 in additional funding (for a total cost of \$1,033,093). FEMA denied the first appeal and informed the County that certain proposed changes to the SOW represented work for an improved project. FEMA further advised the County that any subsequent appeal would have to provide additional justification to support the work and funding required to return the facility to pre-disaster condition. The County did not submit a second appeal and completed the work using a repair methodology different from the one approved in the PW. In addition, the County has submitted a request for reimbursement for \$1,028,582 in cost overruns.

FEMA’s criteria recognize acceptable cost overruns as increased costs incurred in the performance of eligible work [44 CFR 206.204(e)(1) - *Cost Overruns*]. Furthermore, FEMA’s criteria specifically outline the various levels of appeals and the processes to be used when a difference exists between FEMA and the applicant on the SOW and approved dollar amounts [44 CFR 206.206 - *Appeals*]. Where an applicant recognizes significant cost overruns could occur, 44 CFR 206.204(f) requires the grantee to keep FEMA informed through quarterly progress reports. However, information included in quarterly reports we reviewed was not always supported with project documentation. For example, early quarterly reports properly reflected that FEMA had denied the County’s appeal due to “insufficient support, suggest improved project.” Subsequent reports noted FEMA’s approved project amounts and the greater costs incurred; however, the reports did not explain how the cost increases previously denied through the appeal process could now merit supplemental funding.

- Under PW 832, FEMA approved \$448,467 in disaster funding to repair 150 linear feet [LF] of slope failure along its 4 foot shoulder. The SOW included construction of a 150 LF soldier pile wall with pile spacing 8 feet on-center. FEMA’s final determination on the funding and SOW was determined after considering two appeals submitted by the County.

FEMA initially awarded \$329,714 to construct the soldier pile wall described above. The County appealed this SOW and funding decision and requested approval for an additional 30 LF of soldier pile wall and costs of \$1,102,204. FEMA denied this first appeal and informed the County that any improvements beyond the pre-disaster condition and function of the wall would be considered ineligible. As a result of a second appeal submitted by the County, FEMA increased project funding by \$118,753 to \$448,467 and informed the County that any increase in the dimensions beyond the 150 LF for the wall was still denied.

County records for PW 832 identified the construction of a substantially larger soldier pile wall. A copy of a formal invitation for bid proposals dated February 21, 2006,<sup>4</sup> described the SOW as a 216 LF retaining wall with a projected construction price ranging from \$1.1 million to \$1.5 million. The County awarded the contract on May 30, 2006, for about \$1.1 million and the work was completed at a total cost of \$1,426,751. Included in the final project costs is \$1,297,602 for a category of cost itemized as Contract Payment/Services. This category of cost included the \$1.1 million contract awarded by the County to construct the 216 feet long retaining wall.

While the County completed an improved project with a substantially larger soldier pile wall in excess of FEMA's approved SOW of 150 LF, the County did not request or obtain an improved project designation from FEMA. An improved project designation would have capped FEMA's funding obligation to the federal share of eligible project costs of \$448,467. The County has allocated all of the \$1.4 million in repair costs to PW 832 and is seeking supplemental funding from FEMA of \$978,284 (\$1,426,751 less \$448,467).

According to 44 CFR 206.203(d)(1), if a subgrantee desires to make improvements, but still restore the pre-disaster function of a damaged facility, federal funding for such improved projects shall be limited to the federal share of the approved estimate of eligible costs. The *Public Assistance Guide* [FEMA 322, October 1999, page 85] identifies that such improved projects can result in a significant change from the pre-disaster configuration (i.e., footprint, function, or size).

- Under PW 754, FEMA provided \$217,634 in disaster funding to repair eroded roadway shoulders, flow lines, and asphalt berms at various locations. The County completed repairs that exceeded disaster damage work and incurred a total cost of \$548,238. In addition to the FEMA-approved damage estimate of \$217,634, the County is seeking \$330,604 in cost overruns (\$548,238 less \$217,634).

While FEMA, Cal EMA, and the County performed a joint field inspection of the damage to develop the SOW, the description and dimensions of the damages in project funding records at FEMA and the County differed significantly. Those records identified that FEMA's dimensions of the required repairs were significantly lower than the County's, because the County's dimensions included pre-disaster damages. For instance, for Item 1, "Shoulder restoration", the County identified 122,250 square yards (SY), but FEMA identified only 47,748 SY or 61% less work. For Item 3, "AC asphalt required along roadway edge", the County identified 14,670 LF, but FEMA identified only 3,100 LF or 79% less work.

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<sup>4</sup> Dated prior to the County's first appeal of May 3, 2006.

In regards to pre-existing conditions, FEMA noted in the PW that the "...applicant wanted to include as disaster related damage berms with cracks and weeds growing through the cracks which from a detailed inspection, it was determined that they were not storm related" [44 CFR 206.223(a)(1)]. Project records did not include documentation showing that the County had appealed the SOW under PW 754 [44 CFR 206.206].

The County explained that the pre-disaster damage identified by FEMA was not included in the work performed for PW 754 and was completed as part of the County-wide maintenance program. The County however, did not provide us with reliable documented evidence in support of those assertions. For example, to support that the non-FEMA eligible work was completed as part of its maintenance program, the County provided us with a 30-page computer generated report of "Storm Damage – Other". This report placed September 19, 2007, as the earliest work start date for the maintenance work. Data in this report is inconsistent with after action photos taken by the County of the area that included both FEMA eligible and non-eligible work. Those photos identified that all work in the area was completed in December 2006 (10 months earlier than the work performed under the "Storm Damage – Other" program). The report also identified that materials used totaled \$15,890 – an amount unrealistically low when compared to the significant differences between the FEMA and County recorded work dimensions.

We discussed our observations with County officials during the audit exit conference held on August 10, 2009. Those officials disagreed with our conclusion that the \$2.3 million in cost overruns recorded under PWs 773, 832, and 754 was not eligible for reimbursement under FEMA's Public Assistance Program.

### **Finding B – Fringe Benefit Costs**

County accounting records for eight PWs included \$87,295 in overstated regular time fringe benefits costs for force account labor (see Exhibit A for the PWs with overstated fringe benefits costs and Exhibit B for the general methodology used to determine the overstated fringe benefits rate).

The County funds pension obligations for current employees using an actuarially determined "Annual Required Contribution" (ARC) that is based on mortality rates, salary increases, assumed rate of investment income, and other pertinent assumptions. In allocating fringe benefit costs to the PWs, the County used its ARC as part of the fringe benefits rate applied to force account labor hours. However, the ARC included three fringe benefits cost components that did not benefit County staff that performed work for disaster 1585.

- *Retirement Certificates of Participation*<sup>5</sup> [RCP] and *Pension Obligation Bonds* [POB]. Los Angeles County sold \$461 million in RCP in 1986 and sold approximately \$1.9 billion par value POB during 1994 and 1995 to address the County's unfunded accrued actuarial liability. The County's goal was to fund the amounts necessary, without further payments from the County, to pay benefits already earned by its then current and former employees covered by the pension system in 1986 and 1995. County records identified that the annual funding requirement to retire the outstanding POB and RCP extends through 2015.

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<sup>5</sup> The County's records also reference the RCPs as pension obligation certificates.

- Retiree Health Insurance [RHI]. This represents benefits paid to nearly 51,000 retirees plus their dependents enrolled in the program's medical plans and many retirees plus their dependents likewise enrolled in the program's dental and vision plans. The entry on the County's general ledger represents the County's portion of the premiums paid in conjunction with enrolled retirees.

According to 44 CFR 206.228(4), the straight-time salaries and benefits of a subgrantee's permanently employed personnel engaged in performing eligible permanent restoration under section 406 are eligible for federal assistance. Since the POB, RCP, and RHI costs do not relate to the fringe benefits for the workforce engaged in this disaster related work, we question their inclusion in the County's claim for federal reimbursement.

County officials disagreed with our conclusion that the POB, RCP, and RHI costs components cannot be included with their fringe benefits reimbursement claim since the OMB Circular 87 authorized the reimbursement of such cost components. We informed those officials that 44 CFR imposed limitations on the type of costs that applicants can claim for fringe benefits for employees engaged in disaster work. However, County officials believed that when a conflict exists between the OMB Circular A-87 and 44 CFR, the circular was the governing criteria<sup>6</sup>.

### **Finding C – Work on Federal-Aid Roads**

County records for PW 782 included \$35,209 in ineligible costs for disaster repairs because the costs were the responsibility of the FHWA, Federal-aid Highways Program. According to 44 CFR 206.226(a)(1), disaster assistance is not available under the Stafford Act when another federal agency has specific authority to restore facilities damaged or destroyed by an event which is declared a major disaster. FEMA's *Public Assistance Guide* (FEMA 322, October 1999, pages 20, 53, and 54) further clarifies that the Stafford Act specifically excludes funding from FEMA's Public Assistance Program for damaged facilities under the authority of FHWA.

PW 782 provided the County \$79,713 in disaster assistance for repairs at four damaged road sites. Our review of project documentation and discussions with County and FHWA officials identified that one of the four locations (Site No. 3) was the responsibility of FHWA and thus, not eligible for funding under FEMA's Public Assistance Program. The County's records showed that disaster repair costs for Site No. 3 totaled \$35,209 and that the County did not take necessary steps to secure reimbursement for the costs from FHWA. County officials agreed that disaster repairs for Site No. 3 were the responsibility of FHWA and not FEMA.

### **Finding D – Project Funding**

County records for the 12 projects we reviewed showed that 6 projects were completed under budget. Although the work has been completed, the County has not notified Cal EMA or FEMA

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<sup>6</sup> OMB Circular A-87, Attachment A, Section C provides that for a cost to be allowed, it must "conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award." Additionally, the Office of Audit Resolution and Cost Policy, in the OMB's Office of Grants and Acquisition Management noted in Section 1.4 of the brochure, *Relationship of Circular A-87 to Agency Regulations and Federal Statutes*, "... if a statute passed by Congress prescribes policies or procedures that differ from those in the Circular, the provisions of the statute govern. For example, it is not uncommon for Congress to enact legislation that restricts certain items of costs (i.e., limitations on indirect or administrative costs). When such a restriction exists, it is binding."

that \$271,878 in funds awarded to the projects shown below are not needed and available for deobligation.

<b>Project Number</b>	<b>Award Amount</b>	<b>Costs Incurred</b>	<b>Funds Not needed</b>
772	\$ 85,027	\$ 55,410	\$ 29,617
783	745,519	728,902	16,617
795	69,735	65,407	4,328
812	420,770	396,707	24,063
821	169,690	80,870	88,820
825	203,558	95,125	108,433
<b>Total</b>	<b>\$1,694,299</b>	<b>\$1,422,421</b>	<b>\$271,878</b>

County officials agreed that the scopes of work for the six projects<sup>7</sup> were completed under budget. Those officials planned to notify Cal EMA about the excess funds at project closeout, when all projects are completed. According to 44 CFR 206.205(b)(1), the grantee for this disaster, Cal EMA, shall make an accounting of eligible costs for each large project and certify to FEMA that the reported costs were for eligible disaster work as soon as practicable after the County has completed the approved work and requested for payment. Even though the County has not requested final payment and closure of its entire award, nothing in the regulations precludes the County from requesting final payment on a project-by-project basis.

According to 44 CFR 13.40(a), Cal EMA is also responsible for monitoring and reporting program performance to ensure compliance with federal requirements and achievement of performance goals. In addition, 44 CFR 13.40(d) requires that as soon as known, Cal EMA must inform FEMA of favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated.<sup>8</sup> Cal EMA, through its project monitoring system, should receive this information quarterly from the County.

This finding also indicates that Cal EMA's project monitoring should be improved. However, we are not making a recommendation in that regard because we recommended in a different subgrantee report<sup>9</sup> that the Regional Administrator require Cal EMA to strictly follow (a) the monitoring and program performance reporting requirements of 44 CFR 13.40 and (b) its Addendum to the State Administrative Plan to ensure that quarterly progress reports submitted by subgrantees are accurate, current, and complete and reflect significant developments in project execution.

## **RECOMMENDATIONS**

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

**Recommendation #1.** If claimed by the County, disallow \$2,337,470 in additional funding requested by the County for cost overruns related to PW 773 (\$1,028,582); PW 832 (\$978,284) and PW 754 (\$330,604) because these costs were 1) expressly disallowed by FEMA through FEMA's

<sup>7</sup> For project 795, the County has received reimbursements of \$67,288 or \$2,184 over actual costs incurred of \$65,407.

<sup>8</sup> This citation also requires the grantee to report problems, delays, and adverse conditions as soon as they become known.

<sup>9</sup> DS-09-05, *California Department of Parks and Recreation*, dated May 20, 2009.

appeals process, 2) not included in the PWs approved scope of work, and 3) not related to disaster damage, respectively.

**Recommendation #2.** Implement additional controls to ensure that subgrantees do not claim costs associated with ineligible work that was previously denied through FEMA's appeal process and ensure that costs associated with ineligible work are not subsequently funded as eligible cost overruns.

**Recommendation #3.** Disallow \$87,295 of straight time labor fringe benefits costs if claimed by the County since these costs are attributable to three fringe benefits cost components that did not benefit County staff that performed disaster-related work, and instruct the County to cease including such fringe benefit costs in their FEMA funding reimbursement claims.

**Recommendation #4.** If claimed by the County, disallow \$35,209 in cost relating to work on a federal-aid road identified by the County as FEMA-eligible costs.

**Recommendation #5.** Determine the eligibility of disaster costs to be claimed by the County for PWs 772, 783, 795, 812, 821, and 825, and if warranted, reduce project funding by \$271,878 since the funds are no longer needed to accomplish the FEMA approved scopes of work.

#### **DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOW-UP**

We discussed the results of this audit with County and Cal EMA officials on August 10, 2009. The County agreed with Finding C but did not agree with Findings A, B, and D. Where appropriate, verbal comments we received from County officials are included in the audit report. Cal EMA withheld comments pending issuance of the final report. We also notified FEMA of the audit results on August 13, 2009, and FEMA also withheld comments pending issuance of the final report.

Please advise this office by June 23, 2010, of actions planned or taken to implement our recommendations. Please note that your responses should include target completion dates for actions planned and actual completion dates for actions taken. Should you have questions concerning this report, please call me at (510) 637-1482, or your staff may contact Humberto Melara, Supervisory Auditor, at (510) 637-1463. Key contributors to this assignment were Humberto Melara, Curtis Johnson, and Jeff Flynn.

cc: Audit Liaison, FEMA Region IX  
Audit Liaison, FEMA (Job Code: DG9W17/G-09-064-EMO-FEMA)



**Schedule of Audited Projects  
County of Los Angeles, California  
FEMA Disaster Number 1585-DR-CA**

PW	Category of Work (1)	Award Amount	Cost overruns (2)	Questioned Costs			Finding Reference (3)
				Project overruns	Fringe Benefits	Federal-Aid Road	
754	C	\$ 217,634	\$ 330,604	\$ 330,604	\$16,169		A, B
755	C	479,169	701,763		20,494		B
772	B	85,027					
773	C	648,863	1,028,582	1,028,582	20,555		A, B
782	C	79,713	24,442		1,090	\$35,209	B, C
783	C	745,519			9,425		B
784	A	203,869					B
795	D	69,735			2,005		B
812	D	420,770			5,402		B
821	C	169,690					
825	B	203,558					
832	C	448,467	978,284	978,284	12,153		A, B
<b>Totals</b>		<b>\$3,772,014</b>	<b>\$3,063,675</b>	<b>\$2,337,470</b>	<b>\$87,295</b>	<b>\$35,209</b>	

(1) Category of Work Descriptions:

- A Debris Removal
- B Emergency Protective Measures
- C Roads and Bridges
- D Water Control Facilities

(2) Project overruns are not reflected in Award Amount because the County has not yet requested a PW revision.

(3) Finding Reference

- A Project Cost Overruns
- B Fringe Benefits Costs
- C Work on Federal-Aid Roads

**Methodology for Determining Applicable Straight Time Labor Fringe Benefit Rate**

We obtained the County’s fringe benefit analysis for the fiscal periods impacted and re-calculated the data adjusting for the RCP, POB, and RHI. The results appear in the following table.

Summary of Straight Time Labor Fringe Benefits Rate Adjustments by Fiscal Year			
Explanation	2004-5	2005-6	2006-7
Straight Time Labor Fringe Benefit per County	46.0190%	49.8350%	50.6750%
Less: Claimed Costs Attributed to RCP, POB, & RHI	13.5488	14.3487	14.7085
Applicable Fringe Benefit per 44 CFR Criteria	32.4702	35.4863	35.9665

We then obtained the County’s straight time force account labor analysis that listed by dates the hours worked and the total labor costs claimed for each employee. We applied the applicable fiscal year adjusted rate to each employee’s line data to achieve an adjusted fringe benefit claimed cost for the respective PW. The appropriate adjustments to correct the fringe benefit overstatements appear in Exhibit A by PWs in a column designated “Questioned Costs – Fringe Benefits.”