




# Homeland Security

March 2, 2011

MEMORANDUM FOR: Nancy Ward, Regional Administrator  
FEMA Region IX

FROM:   
Humberto U. Melara, Director  
Western Regional Office

SUBJECT: *County of Sonoma, California*  
Public Assistance ID. No. 097-99097-00  
FEMA Disaster No. 1628-DR-CA  
Audit Report Number DS-11-07

We audited public assistance (PA) funds awarded to the County of Sonoma, 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 PA award of \$11.6 million from the California Emergency Management Agency (Cal EMA),<sup>1</sup> a FEMA grantee, for debris removal, emergency protective measures, and permanent repairs to facilities damaged by severe storms beginning on December 17, 2005. The award provided 75% FEMA funding for 35 large projects and 119 small projects.<sup>2</sup> The audit covered the period of December 17, 2005, through January 11, 2011. We audited six large projects totaling \$5.3 million, or 45.7% of the total award (see Exhibit). Of these six large projects, the County had completed five.

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.

<sup>1</sup> At the time of the disaster, the grantee's name was the California Office of Emergency Services, which became a part of Cal EMA on January 1, 2009.

<sup>2</sup> At the time of the disaster, the large project threshold was \$57,500.

We discussed issues related to this audit with FEMA, Cal EMA, and County officials; reviewed judgmentally selected cost documentation (generally based on dollar value); 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 \$5,310,066 of FEMA funds we reviewed, the County did not expend and account for \$2,082,885 (\$1,562,164 federal share) according to federal regulations and FEMA guidelines. Further, FEMA should deobligate \$804,996 (\$603,747 federal share) of funds not used and put those funds to better use.

Finding Reference	Finding Title	Total Questioned Costs / Recommended Deobligations
A	Procurement Practices	\$1,499,363
B	Dates of Work Completed	67,264
C	Funds Not Used	804,996
D	Pre-Disaster Damages	516,258
Total		\$2,887,881

This report also addresses: (1) \$660,175 in funding for which an accounting of eligible labor rates is in process; (2) the County’s system for documenting its projects’ scope of work; and (3) the need for a final, approved State Administrative Plan.

### **Finding A – Procurement Practices**

The County did not follow federal procurement standards for contracts totaling \$1,499,363 (\$846,154 under Project 2770 and \$653,209 under Project 3245). As a result, full and open competition did not occur, and FEMA has no assurance that contract costs were reasonable. Federal procurement standards at 44 CFR 13.36 require, in part, that:

- Performance of procurement transactions occur in a manner providing full and open competition except under certain circumstances, such as when there are circumstances that will not permit a delay resulting from competitive solicitation. (13.36(c)(1) and (d)(4)(i)(B))
- Subgrantees shall not use time-and-material (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. (13.36(b)(10))
- Subgrantees maintain a contract administration system that ensures contractors perform according to the terms, conditions, and specifications of their contracts or purchase orders. (13.36(b)(2))

FEMA also provides additional procurement guidelines in its own publications. FEMA’s *Public Assistance Applicant Handbook* (FEMA 323, September 1999), Page 29, states:

- T&M contracts should be limited to a maximum of 70 hours of actual emergency work, such as debris clearance work, and should be used only after all available local, tribal and State government equipment has been committed. These contracts should be terminated once the designated dollar ceiling or not-to-exceed number of hours is reached.
- T&M contracts may, on occasion, be extended for a short period when absolutely necessary, for example, until appropriate Unit Price contracts have been prepared and executed.

In addition, FEMA's *Public Assistance Guide* (FEMA 322, October 1999), Page 40, states:

- FEMA provides reimbursement for three types of contracts: lump sum, unit price, and cost-plus-fixed-fee contracts.
- T&M contracts should be avoided, but may be allowed for work that is necessary immediately after the disaster has occurred when a clear scope of work cannot be developed.
- Applicants must carefully monitor and document contractor expenses.

To perform project repairs, the County selected a construction contractor from an on-call list instead of competitively bidding the projects and paid the contractor on a self-described T&M basis without formal written contracts. Further: (1) the circumstances did not warrant the award of a non-competitive contract; (2) there was no evidence that no other type of contract would be suitable; (3) the contracts did not include cost ceilings; (4) the County did not carefully monitor and document contract charges; and (5) contract invoices included markups on costs. Notably, the invoices for these projects included markups of 15%-33% on labor, equipment, and materials rates. These markups on costs were not only prohibited, but also represented duplicate costs because T&M labor rates, for example, by definition include profit and overhead. In fact, T&M contracts and markups on costs provide a disincentive to save federal funds because the higher the costs, the higher the contractor's profit.

FEMA recognized that the County did not comply with federal contracting requirements for both projects, but approved the funding after concluding that the County's contracts met the general intent of the applicable criteria, and that the costs incurred were reasonable for the work performed. FEMA documents noted that this decision was based on additional information provided by the County.

FEMA's practice has been to allow contract costs it considers reasonable regardless of whether the contracts comply with federal procurement regulations. We do not agree with this practice unless lives and property are at risk, because the goals of proper contracting relate to more than just cost. Without full and open competition, FEMA has little assurance that contract costs are reasonable. Full and open competition increases the number of available contracting sources, and thereby increases the opportunity for obtaining reasonable pricing from the most qualified contractors. Full and open competition also helps discourage and prevent favoritism, collusion, fraud, waste, and abuse.

Because the County did not comply with federal procurement standards and FEMA guidelines, we question \$1,499,363 claimed for improper and ineligible contract costs (\$846,154 under Project 2770 and \$653,209 under Project 3245).

### **Finding B – Dates of Work Completed**

The County did not provide adequate supporting documentation to determine the eligibility of \$67,264 claimed under Project 3273. *Cost principles for State, Local and Indian Tribal Governments* require that costs be adequately documented to be allowable under a federal award (2 CFR 225 Appendix A, C.1.j).

County documentation indicated that work began on Project 3273 on March 8, 2006, and County officials said that the project was substantially completed as of May 16, 2006. However, according to project documentation, a FEMA project officer inspected the project on May 18, 2006, and determined that *no* work had been completed.

We were unable to resolve this inconsistency through our discussions with FEMA and County officials, as well as our review of other relevant documentation. Further, the cost documentation did not contain enough detail to determine whether the work performed was within the scope of work FEMA approved for the project. As such, we requested a work order or similar documentation from the County to provide clarification, but the County did not prepare work orders for its projects (Finding F discusses this issue further). Therefore, we question \$67,264 as unsupported.

### **Finding C – Funds Not Used**

The amount FEMA estimated and approved for Projects 2770 and 3273 exceeded the amount the County charged to the project by \$804,996. Specifically, FEMA approved:

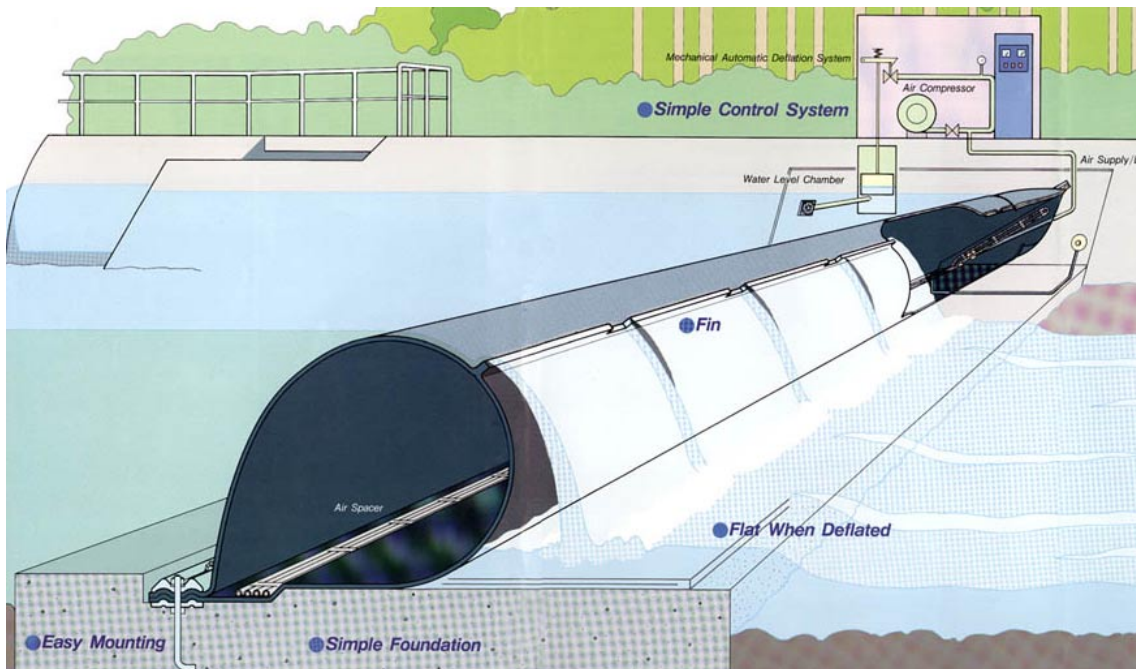
- \$481,083 under Project 2770 for hazard mitigation work that the County chose not to perform.
- \$391,177 under Project 3273, for which the County will claim only \$67,264, leaving a balance of \$323,913.

Therefore, FEMA should deobligate \$804,996, and put those federal funds to better use (\$481,083 under Project 2770 and \$323,913 under Project 3273).

### **Finding D – Pre-Disaster Damages**

FEMA approved \$516,258 to repair the Mirabel River Diversion Structure System (dam) under Project 1764 (Version 1). However, this work was not eligible because the damages were not the direct result of the disaster. The County did not repair the dam before the disaster to ensure proper performance during emergency periods, leaving it susceptible to additional damages during the disaster. According to 44 CFR 206.223(a)(1) and (e), to be eligible for financial assistance, an item of work must be required as the result of the major disaster event, and no assistance will be provided to an applicant for damages caused by its own negligence.

FEMA initially denied funding for this project, but later determined that the costs were eligible because the damage to the dam was a direct result of the disaster. FEMA based its determination on the pre-disaster condition of the dam as described in County documentation. However, FEMA did not sufficiently address the lack of repairs to the dam and its functional state, as identified about a decade before the disaster.



**Figure: Cross section of an inflatable dam.**

Source: Bridgestone Industrial via U.S. Army Corps of Engineers, Cold Regions Research & Engineering Laboratory; *Performance Survey of Inflatable Dams in Ice-Affected Waters*; Number 30; October 2001.

The County’s maintenance logs documented problems with dam drainage and deflation starting in 1996—enough to warrant consideration of two structural modifications to address these problems. However, the County chose not to perform these structural modifications, and did not provide evidence that it took alternative corrective actions or made repairs to the dam before the disaster. As a result of these problems, the County could not deflate the dam as quickly as required to prevent additional damage during the flooding incident in 2005.

FEMA’s records indicated that the dam’s manufacturer attributed the damage to the river’s flooding condition, as well as to the dam being *partially* inflated. The manufacturer informed the County that the dam must be completely deflated to avoid damage during high water levels. (See figure above for an example of an inflatable dam.)

Therefore, we question \$516,258 approved for Project 1764 as ineligible.

### **Finding E – Accounting for Labor Rates**

The County is in the process of accounting for \$660,175 in charges under Project 1764 because it included an ineligible indirect overhead cost component in its labor rates. According to 44 CFR 206.228(a)(2)(ii) and (b)(2), a subgrantee's indirect costs are not separately eligible for reimbursement because FEMA's statutory administrative allowance covers indirect costs.

County officials were aware that the overhead component included in the labor rate is not eligible for federal funding as a direct project cost. When our field work concluded, these officials were in the process of segregating the indirect overhead component from the labor rate, and said they needed additional time to complete their claim for force account labor charges. Therefore, we could not quantify the amount of ineligible indirect costs incurred under Project 1764.

## **Finding F – Scope of Work Documentation**

At the time of the disaster, the County had not established a system of defining and documenting the scope of work to be performed, and therefore could not always provide assurance that the charges for disaster projects were within the FEMA-approved scope of work. Therefore, the County did not comply with the following criteria:

- 44 CFR 13.20(a)(2) requires subgrantees to have fiscal controls and accounting procedures that permit the tracing of funds, and to maintain records that adequately identify the source and application of funds provided for financially-assisted activities.
- *Cost Principles for State, Local, and Indian Tribal Governments* require that costs be adequately documented to be allowable under a federal award (2 CFR 225 Appendix A, C.1.j).
- The *FEMA Public Assistance Guide* (FEMA 322, October 1999), pp. 73 and 115-116) and the *FEMA Applicant Handbook* (FEMA 323, September 1999), pp. 21-22, 32, and 52) require that work performed must derive from the project's FEMA-approved scope to be eligible for federal funding.

County officials said they did not use work orders to document the scope of work and did not consistently use other types of documentation as a substitute. Without work orders or a similar system of defining the scope of work for projects, the County could not meet FEMA criteria.

County personnel said that at least one department had recently installed new software to track work orders from a project's beginning to its completion, as well as provide performance measures. However, the County had not yet fully implemented the software.

## **Finding G – State Administrative Plan**

FEMA and grantee officials did not provide a final, approved State Administrative Plan (Plan) for the year of the disaster, as required by federal regulations. FEMA did not approve the grantee's original Plan because it required revision. Several times we requested a copy of the approved Plan from FEMA and the grantee, but they only provided a draft. Without an approved plan, FEMA had no assurance that the grantee could effectively administer and manage the PA grant program.

According to 44 CFR 206.207, states (as grantees) are required to have a FEMA-approved plan that identifies staffing functions in the PA program and documents procedures for administering the PA program. This plan must be incorporated into the state emergency plan and must be revised annually.

In addition to federal requirements, the approved Plan is necessary because it documents the agreement between the state and FEMA to:

- Organize and manage recovery and mitigation efforts according to Executive Order 13132, which strengthened the state's authority in managing federal programs.
- Allocate personnel in a manner that reduces state, federal, and local overlap of personnel and responsibilities, wherever possible.
- Commit to expediting the recovery process.

The Plan also details the state's important obligations to:

- Prepare and submit declaration-specific appendices to FEMA upon a Presidential declaration, including: fact sheets, staffing and management plans, program implementation schedules, FEMA-state agreements, and applicable policies and procedures.
- Update the Plan annually and as necessary to incorporate changes to state and federal requirements.

The absence of a FEMA-approved plan can negatively affect the FEMA-state coordination that is essential during emergency periods.

## RECOMMENDATIONS

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

**Recommendation #1:** Disallow \$1,499,363 of ineligible contract costs (\$846,154 for Project 2770 and \$653,209 for Project 3245) (Finding A).

**Recommendation #2:** Disallow \$67,264 of unsupported costs for Project 3273 (Finding B).

**Recommendation #3:** Deobligate \$804,996 and put those federal funds to better use (\$481,083 for Project 2770 and \$323,913 for Project 3273) (Finding C).

**Recommendation #4:** Disallow \$516,258 approved under Project 1764 (Version 1) to repair ineligible damages that were not directly related to the disaster (Finding D).

**Recommendation #5:** Ensure that labor-weighted rate charges for Project 1764—as well as all approved projects—comply with federal criteria; are accurate with respect to base salary, fringe, and overhead; and are associated with applicable and eligible projects (Finding E).

**Recommendation #6:** Advise County officials to consistently use work orders or a similar system of defining the scope of work for FEMA projects (Finding F).

**Recommendation #7:** Ensure that the State Administrative Plan is completed and approved in a timely manner each year and is accessible for reference and distribution (Finding G).

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

We discussed the results of our audit with County, Cal EMA, and FEMA officials during our audit, and included their comments in this report, as appropriate. We also provided written summaries of our findings and recommendations in advance to these officials and discussed them at exit conferences held with FEMA on January 10, 2011, and the County and Cal EMA on January 11, 2011. County officials agreed with Findings C, E, F, and G, and disagreed with Findings A, B, and D. FEMA and Cal EMA officials withheld further comment until after we issue our final report.

Please advise this office by May 31, 2011 of the actions planned or taken to implement the recommendations, including target completion dates for any planned actions. To promote transparency, this final report and your response to this report, including your corrective actions planned, will be posted to our website, with exception of sensitive information identified by your office.

Significant contributors to this report were Jack Lankford and Devin Polster. Should you have any questions concerning this report, please contact me at (510) 637-1463, or your staff may contact Jack Lankford, Audit Manager, at (510) 637-1462.

cc:     Audit Liaison, FEMA Region IX  
        Audit Liaison, FEMA (Job Code: G-10-029-EMO-FEMA)  
        Audit Liaison, DHS



**EXHIBIT**

Schedule of Questioned Costs and Recommended Deobligations  
County of Sonoma, California  
Public Assistance Identification Number 097-99097-00  
FEMA Disaster Number 1628-DR-CA

<b>Project Number</b>	<b>Award Amount</b>	<b>Questioned Costs</b>	<b>Recommended Deobligation</b>	<b>Finding Reference</b>
1764	\$1,176,433	\$ 516,258		D
2770	1,392,023	846,154	\$481,083	A & C
3245	699,901	653,209		A
3273	391,177	67,264	323,913	B & C
3512	716,096			
3524	934,436			
<b>Total</b>	<b>\$5,310,066</b>	<b>\$2,082,885</b>	<b>\$804,996</b>	