




# Homeland Security

July 7, 2008

MEMORANDUM FOR: Nancy Ward  
Regional Administrator  
FEMA Region IX

FROM:   
Robert J. Lastrico  
Western Regional Director

SUBJECT: *San Bernardino County, California*  
Public Assistance Identification Number 071-99071-00  
FEMA Disaster Number 1498-DR-CA  
Audit Report Number DS-08-04

The Office of Inspector General audited public assistance funds awarded to San Bernardino County, 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 grant award of \$6.57 million from the California Office of Emergency Services (OES), a FEMA grantee, for debris removal, emergency protective measures, and permanent repairs to facilities damaged by the Grand Prix Fire that started on October 21, 2003, and the Old Fire that started October 25, 2003. Both wildfires consumed a total of 150,729 acres and damaged or destroyed nearly 850 structures. The incident period was extended to March 31, 2004, to cover flooding, mudflows, and debris flows directly related to the wildfires.

The audit covered the period of October 21, 2003, to December 17, 2007, and included a review of four completed large projects<sup>1</sup> with a total project worksheet (PW) approved amount of \$3.76 million (see Exhibit A). FEMA had not performed a final inspection and closeout of the projects approved for this disaster, pending completion of one small project. As of December 17, 2007, the cut-off date of our review, the county had not submitted a final claim but had received \$2.09 million in partial reimbursements for costs of \$5.42 million it planned to claim under the four projects.

We conducted this 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 obtained during the audit

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<sup>1</sup> Federal regulations in effect at the time of the disaster set the large project threshold at \$54,100.

provides a reasonable basis for our findings and conclusions based on our audit objective. We interviewed FEMA, OES, and county officials; reviewed judgmentally selected samples (generally based on dollar value) of cost documentation to support invoices and personnel charges (force account labor); and performed other procedures considered necessary to accomplish our objective.

We did not assess the adequacy of the county's internal controls applicable to grant 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 \$5,417,334 that the county intends to claim for the four projects we reviewed, \$1,980,580 is not in compliance with criteria required for federal reimbursement. Specifically, the county plans to claim: (1) \$1,779,016 in unapproved cost overruns resulting from unanticipated cost increases or changes in scope of work; (2) \$200,480 for items of work not eligible for public assistance funding; and (3) \$1,084 for unsupported costs. Pending the results of FEMA's final inspection and closeout review, we question total costs of \$1,980,580 (federal share - \$1,485,435) as detailed in the subsections below.

### **Finding A – Cost Overruns**

The county plans to claim \$1,779,016 in cost overruns on PW #5 (\$1,486,995) and PW #714 (\$292,021). These overruns resulted from increased costs and changes in scopes of work. The county has not yet provided sufficient information and documentation to OES, as required by federal criteria to justify or establish the reasonableness of these increased costs. Consequently, OES has not provided the necessary information to FEMA.

### **Applicable criteria**

Title 44, Code of Federal Regulations, (44 CFR), contains provisions that address cost overruns. Sections 206.204(e)(1) and (2) state that during the execution of approved work, a subgrantee may find that actual project costs exceed the approved PW estimates due to variations in unit prices, changes in the scope of eligible work, delays in timely starts, or delays in completion of eligible work. The subgrantee must evaluate each cost overrun and, when justified, submit a request for additional funding through the grantee to the appropriate FEMA Regional Director<sup>2</sup> (RD). All subgrantee requests for the RD's approval will contain sufficient documentation to support the eligibility of all claimed work and costs and the grantee must include a written recommendation when forwarding the request. FEMA will notify the grantee in writing of the final determination.

According to the *Public Assistance Guide* (FEMA 322, October 1999), "...when a change in scope or a need for additional funding is discovered, the applicant should notify the State as soon as possible. The assumption should not be made that such costs can be reported at the end of the project and that the additional funds will be approved automatically. The request should contain justification for the eligibility of the additional work or costs. If additional damage to the facility is involved, it may be necessary to show how the damage is disaster-related. The State will forward the request to FEMA with a written recommendation. To determine eligibility, FEMA and the State,

<sup>2</sup> Regional Directors are currently designated as Regional Administrators. For the purposes of this report, we will use the terminology in effect at the time of the disaster, i.e., RD.

in cooperation with the local representatives, may conduct a site visit. The RD will render a decision and notify the State either with an amended PW for additional funding or a written denial of the request.”

Also, according to the *Public Assistance Guide*, reasonable cost is “... a cost that is both fair and equitable for the type of work being performed.” Reasonableness can be established in several ways, including: (1) the use of historical documentation for similar work; (2) average costs for similar work in the area; (3) published unit costs from national cost estimating databases; and (4) FEMA cost codes.

According to Attachment A of Office of Management and Budget Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*, a reasonable cost, by its nature and amount, “... 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 cost.” In determining reasonableness, consideration should be given to several things including whether:

- The cost is generally recognized as ordinary and necessary for performance of the federal award,
- The concerned individual acted with prudence in the circumstances considering his or her responsibilities to the governmental unit and its employees, the public at large, and the federal government, and
- Significant deviations from established practices of the governmental unit unjustifiably increased the federal award’s cost.

We used the above criteria to assess the cost overruns for two of the county’s PWs. The following paragraphs discuss the circumstances surrounding those overruns:

- **PW #5 –Debris Removal and Project Management.** The county completed PW #5 as of August 10, 2004; and as of December 17, 2007, plans to claim \$2,559,499 for asbestos sampling of debris, project management costs, and debris removal, or \$1,486,995 (139 percent) over the FEMA-approved estimate of \$1,072,504. The table below breaks out approved estimates, costs incurred, and overrun (underrun) amounts for the three categories of work:

	Approved Estimate	Costs the County Plans to Claim	Overrun/ (Underrun)
Asbestos Sampling <sup>3</sup>	\$300,000	\$280,423	\$(19,577)
Project Management and Field Monitoring	137,917	1,216,288	1,078,371
Debris Removal	634,587	1,062,788	428,201
Totals	\$1,072,504	\$2,559,499	\$1,486,995

**Project management and field monitoring costs.** The majority of the overrun was for project management and field monitoring costs of \$1,216,288 instead of the \$137,917

<sup>3</sup> Asbestos sampling costs came in under the approved estimate and were reasonable.

estimated and approved by FEMA in the PW. The county incurred project management and field monitoring costs primarily on three contracts that included debris removal work and substantial work on other projects -- some of which was eligible for FEMA reimbursement on other PWs and some that was not eligible for FEMA reimbursement. Contractor invoices allocated work and costs performed on different projects, but the cost allocations for project management and monitoring were not proportionate to the debris removal costs. The county plans to claim an overrun of 782 percent for the project management and monitoring costs initially estimated in the PW. In addition, the county plans to claim more for managing and monitoring the debris removal operation than for removing the debris -- or in other words, the county intends to claim about \$1.14 for managing and monitoring every \$1.00 of debris removed.

Exhibit B describes key events associated with the project management and field monitoring costs. As indicated in the exhibit, the county requested an increase of up to 50 percent from the 20 percent estimate approved by FEMA, but that request was denied because it was determined to be unreasonable.<sup>4</sup> Furthermore, in making its request for the increase, the county did not provide justification for the eligibility of additional work or costs as required under the federal criteria stated above. In the FEMA, OES, and county documentation and correspondence we reviewed, officials at all levels referred to reasonable cost criteria in arriving at estimates of eligible costs, but they neither specified which criterion of reasonableness they were using nor cited any data they used in making the "reasonableness" determination.

**Debris removal costs.** The county overran debris removal costs by \$428,201 or by 67 percent of the FEMA-approved estimate. As with project management and field monitoring overruns, the county has yet to provide specific justification for the eligibility or the reasonableness of the amount it plans to claim.

**Summary for PW #5.** The overruns identified above have not been reviewed by FEMA or OES because the county has not reported that it has completed all of the projects or submitted its final claim. However, the percentage of project management and monitoring costs in relation to the increased debris removal costs (114 percent) are substantially in excess of the 20 percent estimate previously approved by FEMA and OES. Also, the county's support and justification for the 67 percent increase in debris removal costs needs to be reviewed by OES and FEMA before these costs are reimbursed. Until OES and FEMA determine whether these additional costs are justified and reasonable, we question the total overrun of \$1,486,995.

During the exit conference, the county concurred that there were cost overruns on PW #5. However, they did not request additional funding for the overrun because previous practice has been for FEMA, OES, and the county to determine the eligibility of project costs during final inspection and project closeout. The OES official confirmed this information during the exit conference.

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<sup>4</sup> The 20 percent was not applicable to asbestos sampling, and was based on a debris removal estimate of \$689,586 that was subsequently reduced for a partial transfer of debris removal to PW #931.

- **PW #714 – Replacement of Four Concrete Culverts.** The county plans to claim \$1,386,969 for the replacement of four concrete culverts, or \$292,021 (27 percent) over the FEMA-approved estimate of \$1,094,948. Unlike a November 2005 county request for \$395,176 in supplemental funding that FEMA approved under Version 1 of this PW, the county has not submitted a timely request to OES, as required under federal criteria, for consideration of a change in scope or a need for additional funding. In that previous request, the county detailed by topic, such as asphalt placement, the quantity of additional asphalt needed, unit price increases, etc., and explained the reasons for increases in various costs and quantities of materials. The county has not provided similar information to OES to justify the eligibility or reasonableness of the latest overrun of \$292,021, and FEMA has not otherwise evaluated or approved the overrun. Therefore, we question the \$292,021 overrun until OES and FEMA determine whether these additional costs are justified and reasonable.

During the exit conference, the county's Department of Public Works, Transportation Division official concurred with the overrun amount and said they have prepared an analysis of the overrun and will present it to FEMA and the OES during the final inspection and closeout process.

### **Finding B – Cost Eligibility**

The county plans to claim \$200,480 in ineligible costs under PW #1167 and PW #722, due to work determined ineligible by FEMA, work not within the PW scope of work, and ineligible costs calculated for vehicle usage.

- **PW #1167 – Work eligibility.** Embankment fill costs of \$124,685 that the county intends to claim are ineligible for reimbursement because FEMA determined the work was beyond what was necessary to eliminate an immediate threat. According to 44 CFR 206.225(a)(3), emergency protective measures are not eligible if they do not eliminate or lessen immediate threats to life, public health, safety, or significant additional damage to property. Therefore, due to FEMA's determination of ineligibility, we question the county's plan to seek reimbursement of \$124,685.

During the exit conference, the county's Flood Control Division official said they would need to research the eligibility of this item further.

- **PW #1167 – Scope of work under the project.** Miscellaneous costs of \$39,668 are not eligible for reimbursement because the work performed was not specified or approved in the PW. The PW provided \$3 per cubic yard in emergency protective measures funding for floodway excavation and was the only item of work identified in the PW. The county intends to claim miscellaneous costs for unapproved items of work including mobilization, development of a water supply, topographic mapping, clearing and grubbing, and diversion and control of water. According to 44 CFR 206.202(d)(1), the county (applicant) is responsible for ensuring that all eligible work is identified on the PWs. Because FEMA did not include these items in the approved scope of work, we question the county's plan to seek reimbursement of \$39,668.

During the exit conference, the county's Flood Control Division official said they would need to research these items further, but planned to include them in their final claim.

- **PW # 722 – Vehicle mileage costs.** The county plans to seek reimbursement for \$36,127 in emergency response vehicle mileage costs that are not eligible for reimbursement because the mileage records did not indicate how the vehicles were used during the course of the day. Meanwhile, because the county also plans to claim hourly equipment rates for the use of these same vehicles during the same period, the county would be seeking reimbursement twice for essentially the same costs. Paying equipment expenses using both an hourly rate and based on mileage (assumes that mileage expenses were well documented) would constitute an unallowable duplication of benefits under Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288, as amended). Therefore, we question \$36,127 in vehicle mileage costs.

During the exit conference, the county said the Sheriff's Department concurred with this finding.

### **Finding C – Support for Costs Claimed**

For PW #722, the county plans to claim \$1,084 in police overtime costs that were not adequately supported. For example, the county plans to claim 12 hours of overtime (OT) for a Polygraph Examiner at the rate of \$48.77 per hour (\$585.24). However, the examiner's time sheet does not show that OT hours were worked and the associated payroll registers show that no OT payment was made. According to the *Public Assistance Policy Digest*, FEMA 321, eligible labor rates include actual wages plus fringe benefits paid or credited to personnel. Because there is no record that OT payments were made, we are questioning the \$1,084 to be claimed by the county.

During the exit conference, the county said the Sheriff's Department concurred with this finding.

## **OTHER ISSUES**

**Scope of Work Clarification.** FEMA did not ensure that the scope of work description on the PWs contained sufficient detail to enable an independent determination of eligible costs. For example, on PW #5, FEMA estimated the cost for "*Contract Services Project Management*" at 20 percent (\$137,917) of the total original estimate for debris operations. The 20 percent estimate consisted of 10 percent for project management and 10 percent for field monitoring. However, the PW did not specify such detail for these costs as how many personnel should be required to perform the management and monitoring, specific job functions that should be performed, and reasonable hourly cost ranges for each position. In addition, FEMA did not establish a ceiling for these costs.

In contrast to FEMA's 20 percent estimate on the PW, the county plans to claim project management and monitoring costs equal to about 114 percent (\$1,216,288) of the debris operations. Due to the lack of detail in the PW scope of work, the county may not have had adequate guidelines to determine a reasonable level of effort for this function.

**Timeliness of Overrun Review and Approval.** The PW process used by FEMA and OES did not ensure that overruns were reviewed and approved timely. For example, the county completed the work for PW#5 in August 2004 but as of December 2007, plans to claim an additional \$1,486,995 for debris removal, project management, and field monitoring costs that have not yet been reviewed or approved by OES or FEMA. During May 2004, the county requested a modification through

OES of the amount approved for project management and monitoring of debris removal for this project, and in March 2005, OES advised the county that actual costs would be approved after the project was completed. However, the county told us that OES separately advised them that cost reviews would only occur after all projects were completed. As of December 2007, the cut-off date for the audit, one small project had not been completed by the county and therefore, the final claim had not been submitted through OES to FEMA.

The delayed process for eligible cost determination as described by the county, could result in untimely reimbursements and therefore jeopardize completion of projects. Further, by examining the justifications and reasonableness of cost increases as projects progress, FEMA would be in a better position to assess the eligibility of additional costs prior to the performance of work by making site visits and determining if there is a need for the overrun based on the project complexity.

**Improvements in Contracting Procedures and Oversight.** The county's contracting procedures, as well as the guidance and oversight of those procedures by FEMA and OES, did not ensure compliance with all applicable federal criteria for contract procurement. For example, on PW #1167, FEMA approved floodway excavation work based on a unit price of \$3.00 per cubic yard that was derived from their cost analysis of similar work performed in the county by the U.S. Army Corps of Engineers. Contrarily, based on the lower of two bids received, the county awarded the contract based on a unit price of \$12.47 per cubic yard, or a 316 percent increase in the unit cost estimated by FEMA. Although the county requested approval for the unit price increase and FEMA approved it after the work was completed, the county did not comply with all federal criteria for procurements as outlined in 44 CFR 13.36. Specifically, the county awarded the contract more than 9 months after the disaster without performing a cost or price analysis and did not prepare independent estimates prior to receiving bids or proposals. In considering the request, FEMA recognized the county's competitive process but did not analyze other federal procurement requirements. In view of the substantial unit cost increase, FEMA should have administered additional scrutiny of the county's compliance with all applicable federal procurement criteria.

## RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region IX:

**Recommendation #1.** Analyze the \$1,779,016 in unapproved overruns; determine whether these costs were justified, reasonable, and within the approved scope of work; and obligate funding as supported by the analysis;

**Recommendation #2.** Review the \$200,480 of ineligible costs reported herein and recoup any overpayments;

**Recommendation #3.** Review the \$1,084 in unsupported costs reported herein and recoup any overpayments;

**Recommendation #4.** Assess current procedures for identifying and describing the scopes of work on Project Worksheets, and make improvements as necessary to ensure clarification of all eligible items of work;

**Recommendation #5.** Examine the process for reviewing overruns and make improvements where necessary to ensure that the additional costs are reviewed prior to performance of the work and that subgrantees are reimbursed timely for eligible costs; and

**Recommendation #6.** Advise the county of the requirement to comply with all federal procurement criteria, and establish a checklist for reviewing contract awards to ensure full compliance.

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

We discussed the results of this audit with county and OES officials on February 26, 2008. Those officials generally agreed with our findings or said they needed additional time to research the issues. Pertinent comments or information provided by those officials are contained at the conclusion of each finding. We also notified FEMA of the audit results on April 25, 2008, and they indicated that a formal exit conference to further discuss the issues was not necessary.

Please advise this office by September 5, 2008 of the actions taken to implement our recommendations. Should you have any questions concerning this report, please contact me at (510) 637-1482. Key contributors to this assignment are Jack Lankford and Antonio Fajardo.



Schedule of Audited Projects  
 San Bernardino County  
 San Bernardino, California  
 Public Assistance Identification Number 071-99071-00  
 FEMA Disaster Number 1498-CA-DR

PW Number	PW Amount	Costs the County Plans to Claim <sup>5</sup>	Questioned Costs	Finding Reference
5	\$1,072,504	\$2,559,499	\$1,486,995	A
714	1,094,948	1,386,969	292,021	A
722	993,112	993,112	37,211	B,C
1167	602,000	477,754	164,353	B
<b>Total</b>	<b>\$3,762,564</b>	<b>\$5,417,334</b>	<b>\$1,980,580</b>	

<sup>5</sup> As of 12/17/07, the county had not submitted a claim to FEMA through OES, pending the completion of a small project. In the interim, the county told us that these costs had been incurred and would be claimed.

**Key Events Surrounding Debris Removal  
Project Management and Field Monitoring – PW #5**

Date	Event
December 4, 2003	The county sent a Request for Proposal (RFP) to 10 companies for the coordination and monitoring of the debris cleanup in the unincorporated areas ravaged by the Grand Prix and Old Fires, but only received 1 proposal by the December 10, 2003 deadline. FEMA subsequently directed the county to reissue the RFP to ensure adequate competition for the work.
January 6, 2004	As of the deadline for the second RFP, the county had received two proposals. A committee of county representatives made the selection based on the contractor's experience, qualifications, and approach to service along with their personnel rates that were more in line with comparable county positions. The county awarded a time and materials contract with a not-to-exceed amount of about \$1.6 million.
February 3, 2004	FEMA met with officials from the grantee, county, and contractor and all agreed that the monitoring costs did not meet reasonable cost criteria and that these costs would be revised. Pending a submission and review of the revised costs, FEMA and the grantee estimated the monitoring costs in Version 1 of the PW at 20 percent of the debris removal costs.
May 21, 2004	The county requested a modification of the amount estimated for project management and monitoring to allow a reasonable "upper range" of 20 percent to 50 percent.
August 9, 2004	OES responded that 20 percent is a generous figure and they would not recommend that FEMA increase the amount. OES forwarded the county's request to FEMA and did not recommend an increase in project management and monitoring costs.
August 30, 2004	Final extension date for project completion.
January 31, 2005	FEMA told OES that the county's request to increase the current estimate for debris monitoring and field management was denied and that actual eligible costs would be approved after the project was completed.
March 25, 2005	OES advised the county that FEMA had denied the request for increased debris monitoring and management estimates, but that actual costs would be approved after the project was completed. Because the last approved date for work completion was August 30, 2004, OES reminded the county to make arrangements with them to closeout and provide financial reconciliation for this project as soon as possible.
December 17, 2007	As of the cut-off date for this audit, the county had not submitted documentation to OES of actual costs incurred for the project management and monitoring.