



Homeland  
Security

July 18, 2005

MEMORANDUM FOR: Karen E. Armes  
Acting Regional Director  
FEMA Region IX

*Robert J. Lastrico*

FROM: Robert J. Lastrico  
Director, Grant Program Management Audit Division

SUBJECT: *Audit of the City of San Jose, California*  
*Public Assistance ID. No. 085-68000*  
*FEMA Disaster No. 1203-DR-CA*  
*Audit Report Number DS-13-05*

The Office of Inspector General (OIG) audited public assistance grant funds awarded to City of San Jose, California (City). The objective of the audit was to determine whether the City expended and accounted for Federal Emergency Management Agency (FEMA) funds according to federal regulations and FEMA guidelines.

The City received a public assistance grant award of \$3.23 million from the California Office of Emergency Services (OES), a FEMA grantee, for damage resulting from severe winter storms and flooding beginning on February 2, 1998 and continuing through April 30, 1998. The award provided 75 percent federal funding for 4 large projects and 11 small projects.<sup>1</sup> The audit covered the period February 2, 1998 to May 14, 2004, and included a review of the 4 large projects and 5 of the 11 small projects with a total award of \$3.20 million (see Exhibit).

The OIG performed the audit under the authority of the Inspector General Act of 1978, as amended, and according to *Government Auditing Standards* issued by the Comptroller General of the United States. The audit included a review of FEMA, OES, and City records, a judgmental sample of project expenditures, and other auditing procedures considered necessary under the circumstances.

---

<sup>1</sup> Federal regulations in effect at the time of the disaster set the large project threshold at \$47,100.

## RESULTS OF AUDIT

The City generally expended and accounted for public assistance funds according to federal regulations and FEMA guidelines for two large projects and five small projects reviewed. However, for two other large projects, the OIG questioned \$349,713 of unsupported, ineligible, and unallowable costs claimed by the City (FEMA's share of the questioned amount is \$262,285). In addition, as noted in Finding D, the audit identified instances where FEMA project records did not sufficiently support FEMA's funding decisions.

### **Finding A – Unsupported Costs**

The City's claim for project 58500 included \$264,216 in costs not supported with documentation showing the charges were eligible or disaster related. According to 44 CFR § 13.20(b), the City is required to maintain accounting records that identify how FEMA funds are used.

- The City did not adequately support \$256,720 in force account labor for project design and inspection. The accounting records documenting the costs claimed were comprised of computer-generated reports that identified by date: employee name, hours charged to disaster work, and a disaster code. However, the reports did not include information explaining how the hours claimed related to disaster work. Also, the City was not able to provide the OIG with any additional documentation proving the claimed hours were incurred on disaster-related efforts. In addition to not adequately supporting any of its \$256,720 claim for project design and inspection costs, the City could not explain or justify the significant deviation from the \$103,144 in project funding initially approved by FEMA for these costs.
- The claim also included \$7,496 in unsupported surveying costs. Records supporting project expenditures showed that the costs for survey services related to a City-wide contract. Invoices supporting the costs claimed detailed tasks and locations, but did not name the project scope (Alum Rock Park) as a location included in the charges. The invoices included hand written notes that identified that a portion of the cost was allocated to project 58500; however, project records did not include documented evidence proving the costs pertained to the project.

Since the City's records did not support the expenditures claimed for force account labor and surveying, the OIG questioned \$264,216.

### **Finding B – Ineligible Project Costs**

The City's claim for project 58500 included \$77,638 in costs not related to disaster damage. According to 44 CFR § 206.223(a)(1), to be eligible for financial assistance, an item of work must be required as the result of the major disaster event. The claimed costs pertained to the completion of the Alum Rock Park Stream - Riparian Management Plan (Plan) that the City was required to have in place,<sup>2</sup> irrespective of disaster work. The objective of the Plan was to assist the City in making informed decisions about maintenance, restoration, and capital improvements of its riparian and

---

<sup>2</sup> To comply with U.S. Army Corps of Engineers permit conditions

aquatic resources. FEMA project records showed that FEMA did not become aware of the Plan until the City submitted the claim for the project expenditures. The cost of completing the Plan was \$88,638, including \$11,000 relating to disaster work completed under project 58500. Therefore, the OIG questions \$77,638 (\$88,638 less \$11,000) because the additional costs claimed were not disaster related.

### **Finding C – Unallowable Force Account Labor Costs**

The City's claim for project 21582 included \$7,859 of unallowable force account labor charges. The unallowable costs consisted of \$3,405 for overtime charges associated to four management employees and \$4,454 in standby costs for eight employees. City records supporting the costs showed that the City did not pay the four management employees for disaster overtime, and the standby costs were not related to the performance of actual disaster work. In a letter to the OIG, dated April 11, 2005, the City agreed to remove the \$7,859 in unallowable force account labor charges from the claim.

According to 44 CFR § 206.223(a)(1), to be eligible for FEMA funding, an item of work must be required as the result of the major disaster event. OMB Circular A-87, Attachment B, paragraph 11, allows federal reimbursement for salaries paid to employees when the compensation is reasonable. The OIG questioned \$7,859 (\$3,405 plus \$4,454) because the claimed force account labor costs were not incurred or related to actual disaster work.

### **Finding D – Lack of FEMA Oversight for Managing and Monitoring of Project 58500.**

The City received approximately \$1.6 million in public assistance funding under large project 58500 for disaster related repairs to a public facility (Penitencia Creek within the City's Alum Rock Park). In reviewing project files maintained by FEMA, OES, and the City, the OIG determined that project records lacked adequate information supporting funding decisions. Specifically, records did not support FEMA's decision for 1) approving a change in the project scope, 2) approving project funding in excess of costs estimates provided by the City, and 3) awarding the project clearance under the National Environmental Policy Act. The OIG determined that except for the questioned costs identified in findings A, B, and C of this report, the City's claim for project 58500 were related to eligible disaster costs and work.

- FEMA records did not include documentation showing that changes in the project scope were adequately evaluated. In July 1998, FEMA approved project 58500 and awarded \$660,788 for the repair of channel linings (walls) at 32 sites and hazard mitigation measures at 5 sites along Penitencia Creek. In February 2000, FEMA approved supplemental funding of \$817,611<sup>3</sup> and increased total project funding to \$1.5 million<sup>4</sup>. While City records showed the City's request for additional disaster funds was due to revisions in the scope of the project, neither FEMA nor OES project records included documentation justifying the decision to approve the additional funds. Those records did not include documentation showing whether FEMA or OES had performed an

---

<sup>3</sup> Supplemental Damage Survey Report 02967

<sup>4</sup> \$660,788 plus \$817,611

analysis to determine the eligibility of the project scope changes and of the additional project costs. Except for the Damage Survey Report showing that the additional funds were approved, project records were silent as to how the funding decision was determined.

- FEMA records did not include documentation justifying the award of funds in excess of cost estimates provided by the City. The \$817,611 in supplemental funding approved by FEMA included \$308,685 in excess cost that was not based on the City's cost data<sup>5</sup> provided to OES and FEMA. The excess cost consisted of \$151,485 for repair work and \$157,200 for hazard mitigation. In funding repair costs, FEMA used the City Engineer's estimate that was higher than the low bid accepted by the City from a contractor. In addition, the hazard mitigation costs duplicated the task already included in the scope of work submitted with the low bid. The \$308,685 in excess funding allowed the City to spend disaster funds for additional contractual services<sup>6</sup> without first notifying FEMA and to claim force account labor costs for project design and inspection that exceeded FEMA's approved funding (see Finding A).
- FEMA's clearance under National Environmental Policy Act (NEPA) was based on incomplete information about the scope of the project. Project records showed that in February 2000, FEMA granted the project a "categorical exclusion" for a NEPA review; this decision was based on information provided by the City as part of a request for additional project funding<sup>7</sup>. In the letter waiving the NEPA requirement, FEMA informed the City that any further changes beyond the approved scope of work would require additional NEPA review.

On May 3, 2001, OES forwarded to FEMA the City's request for approval of changes in the project scope. In the request, the City disclosed that the changes primarily pertained to construction methods; for example, the construction method for four damaged locations was changed from rock slope protection to vegetation rock wall. On the cover letter accompanying the City's request, OES recommended that FEMA conduct a site visit to determine if historical resources and/or endangered species were affected and whether consultation with federal regulatory agencies was appropriate. In response to the OES recommendation, FEMA determined that the project was categorically excluded from the need to prepare either an Environmental Assessment or an Environmental Impact Statement. Therefore, based on the information provided by the City and FEMA's previous categorical exclusion determination, FEMA notified OES and the City that no further NEPA action was required.

City records showed that prior to FEMA granting the "categorical exclusion" for the project, the California Regional Water Quality Control Board (CRWQCB) and the U.S. Army Corps of Engineers (USACE) notified the City of a need to complete a Plan<sup>8</sup> of its riparian and aquatic resources by September 15, 1999.

---

<sup>5</sup> City's Engineer estimate and low bid accepted by the City from a contractor.

<sup>6</sup> This included the cost for the Alum Rock Park Stream - Riparian Management Plan that is questioned in Finding B.

<sup>7</sup> Supplemental Damage Survey Report 02967

<sup>8</sup> Alum Rock Park Stream – Riparian Management Plan. The Plan detailed projected maintenance, restoration, and capital improvements.

Also, City records showed that in December 2000, a City contractor, hired to monitor project compliance with the USACE permit requirements, issued an internal report to the City citing numerous permit violations under the Endangered Species Act and the Clean Water Act. The contractor informed the City about the need to address the problems in order to avoid repetition of such problems on future projects in the Park. The types of violations included initiating work without having biologists survey the site for endangered species, improper dewatering of the site prior to beginning of work, and allowing concrete slurry to contaminate the streambed.

For the FEMA funded disaster work, the Plan directed the City to use a repair method that was different from one initially approved by FEMA. The City did not provide FEMA with all pertinent issues and information affecting the project scope changes, and FEMA did not take action to properly monitor and evaluate the changes. Thus, FEMA did not have the opportunity to properly assess the City's compliance with NEPA requirements and did not have assurance that project 58500 met all eligibility requirements for federal funding. In a similar situation, FEMA denied funding for disaster repair costs where an applicant made substantial changes to the scope of a project and did not offer FEMA the opportunity for a NEPA review.

The Code of Federal Regulations (44 CFR § 206.200) requires FEMA to deliver eligible assistance as quickly and efficiently as possible consistent with federal laws and regulations. Specifically, the 44 CFR requires FEMA to:

- Review, approve, or take appropriate action on the Grantee's (i.e. OES) recommendations relating to subgrantees' requests for time extensions beyond the OES authority, large projects cost overruns, and budget and programmatic changes (i.e., revision to project scope or objectives) which require FEMA's approval prior to performance of work; and
- Obtain, review, and take appropriate action on large projects quarterly progress performance reports and final accounting of each large project submitted by OES.

Also, FEMA's *Public Assistance Guide* (FEMA 322, pages 80 to 82) requires FEMA to review the scope of work and cost estimate for large projects to ensure eligibility, accuracy, completeness, reasonableness, and compliance with federal laws and regulations.

On January 27, 2005, the OIG met with the FEMA official responsible for monitoring the public assistance grant to the City. At this meeting, the FEMA official stated that FEMA relies primarily on OES to monitor the City's disaster project activities, and to review requests for disaster funds and ensure that requests are eligible and in compliance with federal requirements. This official explained that generally, FEMA accepts OES funding recommendations when a project scope has not been altered and project costs are within budgeted amounts. Based on audit results, project 58500 warranted closer scrutiny by FEMA because the City materially changed the project scope and costs from FEMA's initial determination.

## **RECOMMENDATIONS**

The OIG recommends that:

1. The Acting Regional Director, FEMA Region IX, in coordination with OES, disallow questioned costs of \$349,713.
2. The Acting Regional Director, FEMA Region IX take necessary steps to improve internal procedures for reviewing, approving, and documenting changes in project scope and funding; and review and determine the effect of the City's non-compliance with the NEPA requirements.

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

The OIG discussed the results of this audit with City officials on March 11, 2005. Those officials agreed with finding C, and did not agree with finding A, B, and D. The OIG also notified FEMA and OES officials of the audit results on May 9, 2005.

Please advise this office by September 16, 2005 of any actions taken in response to the recommendations in this report. Should you have any questions concerning this report, please contact me at (510) 627-7011. Key contributors to this assignment were Mr. Humberto Melara, Mr. Arona Maiava and Mr. Gregory Suko.

Schedule of Audited Projects  
City of San Jose, California  
Public Assistance Identification Number 085-68000  
FEMA Disaster Number 1203-DR-CA

<u>Project Number</u>	<u>Amount Awarded</u>	<u>Questioned Costs</u>	<u>Finding Reference</u>
<u>Large Projects</u>			
21580	\$ 729,447	\$ -0-	
21582	558,269	7,859	C
20428	191,735	-0-	
58500	<u>1,567,718</u>	<u>341,854</u>	A, B
Sub-Total	<u>\$3,047,169</u>	<u>\$349,713</u>	
<u>Small Projects</u>			
20429	\$ 45,311	\$ -0-	
20434	46,620	-0-	
40241	13,336	-0-	
02184	23,784	-0-	
02185	<u>24,000</u>	<u>0-</u>	
Sub-Total	<u>\$153,051</u>	<u>\$ -0-</u>	
Total	<u>\$3,200,220</u>	<u>\$349,713</u>	

Finding Reference Legend

A - Unsupported Costs

B - Ineligible Project Costs

C - Unallowable Force Account Labor Costs