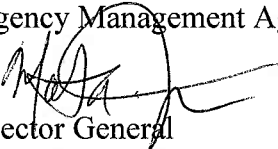




Homeland
Security

SEP 13 2011

MEMORANDUM FOR: Nancy Ward
Regional Administrator
Federal Emergency Management Agency, Region IX

FROM: Matt Jadacki 
Assistant Inspector General
Office of Emergency Management Oversight

SUBJECT: *FEMA Public Assistance Grant Funds Awarded to
City of Paso Robles, California*
FEMA Disaster Number 1505-DR-CA
Public Assistance Identification Number 079-56056-00
Audit Report Number DS-11-12

We audited public assistance (PA) grant funds awarded to the City of Paso Robles, California (City). Our audit objective was to determine whether the City accounted for and expended Federal Emergency Management Agency (FEMA) grant funds according to federal regulations and FEMA guidelines.

The City received a PA award of \$6.6 million from the California Emergency Management Agency (Cal EMA),¹ a FEMA grantee, for debris removal, emergency protective measures, and permanent repairs to facilities damaged as a result of the San Simeon earthquake of December 22, 2003. The award provided 75% FEMA funding for 6 large and 14 small projects.² The audit covered the period from December 22, 2003, to July 14, 2011. We audited project charges for four large projects (three of which were closed) and two small projects, totaling \$5.8 million, or 88% of the total award (see Exhibit, Schedule of Audited Projects).

We conducted this performance audit pursuant to 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 upon our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objective. We conducted this audit according to the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.

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

² Federal regulations in effect at the time of the disaster set the large project threshold at \$54,100.

We discussed issues related to this audit with FEMA, Cal EMA, and City officials; reviewed judgmentally selected samples of project costs (generally based on dollar value); and performed other procedures considered necessary to accomplish our objective. We did not assess the adequacy of the City’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 City’s method of accounting for disaster-related costs and its procurement policies and procedures.

RESULTS OF AUDIT

City officials accounted for FEMA grant funds on a project-by-project basis, as required. However, they did not comply with federal regulations and FEMA guidelines for \$1,110,952 in project charges. Table 1 summarizes our questioned costs.

Table 1: Summary of Questioned Costs		
Finding	Subject	Questioned Costs
A	Procurement	\$559,788
B	Construction Management, A&E, and Design Services / Procurement	456,157
C	Scope of Work Eligibility	43,125
D	Unsupported Costs	51,882
TOTAL		\$1,110,952

Finding A: Procurement

City officials did not comply with federal procurement regulations and FEMA guidelines in the solicitation and award of contracts totaling \$1,015,945 for construction management, architectural and engineering (A&E), and design services for Projects 194 and 249 (see table 2). As a result, full and open competition did not occur, and FEMA had no assurance that the City paid reasonable prices.

Federal procurement standards at 44 CFR 13.36 require the City to—

- Perform procurement transactions in a manner providing full and open competition except under certain circumstances when procurement by noncompetitive proposal is permitted. One allowable circumstance is when there is a public exigency or emergency for the requirement that will not permit a delay resulting from competitive solicitation. (44 CFR 13.36(c)(1) and (d)(4)(i)(B))
- Take all necessary affirmative steps to assure that minority firms, women’s business enterprises, and labor surplus area firms are used when possible. (44 CFR 13.36(e)(1))
- Maintain records sufficient to detail the significant history of the procurement, including the rationale for the method of procurement, basis for contractor selection, and basis for the contract price. (44 CFR 13.36(b)(9))
- Prepare a cost or price analysis in connection with every procurement action, including contract modifications. (44 CFR 13.36(f)(1))

- Include mandatory contract provisions detailed in 44 CFR 13.36(i).

In addition, FEMA’s *Public Assistance Guide* (FEMA 322, October 1999, p. 39) specifies that—

- Contracts must be of reasonable cost, generally must be competed, and must comply with federal, state, and local procurement standards.
- Noncompetitive proposals should be used only when the award of a contract is not feasible under small purchase procedures, sealed bids, or competitive proposals, and one of the following circumstances applies: (1) the item is available only from a single source, (2) there is an emergency requirement that will not permit a delay, (3) FEMA authorizes noncompetitive proposals, or (4) solicitation from a number of sources has been attempted and competition is determined to be inadequate.

Table 2: Construction Management, A&E, and Design Services Contracts						
FEMA Project Number	Competitively Procured?	Took All Necessary Affirmative Steps?	Maintained Sufficient Procurement Records?	Prepared Cost/Price Analyses?	Included Mandatory Contract Provisions?	Questioned Contract Costs
194	No	No	No	No	No	\$321,062
249	No	No	No	No	No	694,883
TOTAL						\$1,015,945

City officials did not solicit competitive bids in awarding contracts for work for Projects 194 and 249. Further, they could not reasonably justify why full and open competition did not occur. For example, federal regulations allow for flexible—in this case, noncompetitive—contracting under exigent circumstances. However, exigency was not a factor for this work; the work was permanent in nature and not emergency-oriented. City officials awarded these contracts noncompetitively to the same contractor they employed before the disaster. Full and open competition increases the opportunity for obtaining reasonable pricing from the most qualified contractors and allows the opportunity for minority firms, women’s business enterprises, and labor surplus area firms to participate in federally funded work. In addition, full and open competition helps discourage and prevent favoritism, collusion, fraud, waste, and abuse.

In addition to awarding the contracts without competition, City officials did not follow other mandatory federal procurement criteria, as shown in table 2. They did not (1) take all necessary affirmative steps to assure that minority firms, women’s business enterprises, and labor surplus area firms were used when possible; (2) maintain records including the rationale why the procurement was not competed; (3) prepare a cost or price analysis for each procurement action; or (4) include the required provisions within their contracts.

Therefore, we question \$1,015,945 in ineligible contract costs associated with Project 194 (\$321,062) and Project 249 (\$694,883). This amount includes \$456,157 in costs that we also question as ineligible in finding B because they were excessive. To avoid duplicate total questioned costs, the net amount recommended for disallowance for this finding A is \$559,788 (\$1,015,945 less \$456,157).³ However, if FEMA does not disallow the \$456,157 questioned in finding B, it should

³ The \$559,788 recommended for disallowance is comprised of \$140,211 (Project 194) and \$419,577 (Project 249).

add back that sum to increase the amount recommended for disallowance for finding A to the gross amount questioned of \$1,015,945.

City officials disagreed with this finding, stating that it was not cost effective to compete the procurement when the contractor was already performing work for the City before the disaster.

Finding B: Construction Management, A&E, and Design Services

City officials charged \$456,157 in excessive costs for construction management, A&E, and design services for Projects 194 and 249. Instead of limiting the charges for these services to 12.4% of construction costs, which would have been reasonable based on FEMA's calculations, the City charged as much as 63%.

Federal rules and FEMA guidelines stipulate that a cost is reasonable if the cost—

- In 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. (Office of Management and Budget (OMB) Circular A-87, Revised; Attachment A; section C.2)
- Is both fair and equitable for the type of work being performed. (FEMA 322, October 1999, p. 34)
- Can be established through the use of historical documentation for similar work and average costs for similar work in the area. (FEMA 322, October 1999, p. 34)

Using FEMA guidelines and FEMA officials' Cost Estimating Format (CEF) calculations, we determined that the reasonable percentage of construction costs that could be charged for these services was 12.4%. This percentage was calculated by accounting for historical costs for similar A&E work (7.4%), as represented in FEMA's *Public Assistance Guide*, as well as additional costs for Project Management Construction (4%) and Project Management Design (1%), as calculated by the CEF.⁴

However, for construction management, A&E, and design services, the City charged—

- Twenty-eight percent of construction costs for Project 194, for an excess of \$180,851.⁵
- Sixty-three percent of construction costs for Project 249, for an excess of \$275,306.

⁴ FEMA's *Cost Estimating Format* is a uniform method of estimating costs incurred across the entire spectrum of eligible work for large projects. It is a forward pricing methodology that applies to all types of infrastructure damages resulting from a major disaster, and provides an estimate of the total eligible funding at the beginning of the project. The intent of the CEF is to minimize any potential underestimation of claimed costs eligible for reimbursement.

⁵ We did not accept FEMA's approved costs for Project 194 because FEMA's CEF-based criteria allowed us to readily determine that those approved costs were excessive. However, we did accept FEMA's approved costs on Project 249 as reasonable because the project was so complex—taking several years to complete and involving various federal agencies—that calculating reasonable costs would have taken an unreasonable amount of time.

Therefore, we question \$456,157 in excessive, ineligible costs for these services. City officials disagreed with this finding, contending that the complexity of these projects warranted the unusually high costs for services. However, they stated that they are still in the process of accounting for eligible costs to support project closeout.

Finding C: Scope of Work Eligibility

City officials charged a total of \$43,125 in costs not included in the FEMA-approved scope of work for Project 224. Although the general scope of work for this project was to restore and retrofit a library, City officials charged ineligible improvement costs to the project.

Federal requirements stipulate that—

- To be eligible for financial assistance, an item of work must be required as the result of the major disaster event. (44 CFR 206.223(a)(1))
- Work performed must derive from the project’s FEMA-approved scope to be eligible for federal funding. (FEMA 322, October 1999, pp. 73 and 115–116 and FEMA 323, September 1999, pp. 21–22, 32, and 52)

We determined that City officials did not comply with these criteria because the \$172,500 fixed-price project management contract for Project 224 included \$43,125 in construction management costs for library improvements, which were not part of the approved scope of work. Therefore, we question the \$43,125 as ineligible. City officials disagreed with this finding, but told us that they understand and acknowledge our position.

Finding D: Unsupported Costs

City officials charged a total of \$51,882 in unsupported costs to Projects 189 and 224. Federal regulations, rules, and FEMA guidelines require that (1) costs be adequately documented to be allowable under a federal award (OMB Circular A-87, Revised, Attachment A, section C.1 (j)), and (2) subgrantees have fiscal controls and accounting procedures that permit the tracing of funds to a level of expenditure adequate to establish that such funds are not used in violation of applicable statutes. (44 CFR 13.20(a)(2))

For Project 189, the City charged a total of \$28,003 in unsupported costs, as follows:

- \$23,640 in contract charges for an engineering company’s “plan checking” services. The engineering contractor billed the City for 197 hours at \$120 per hour for public consultations. However, the contractor’s billings, and timesheets maintained by the City, did not include details of the disaster-related work performed.
- \$2,984 in force account labor costs. FEMA, at project closeout, approved force account labor costs of \$67,334. However, City officials could provide support for only \$64,350 of this amount.

- \$1,379 in project costs related to the removal of disaster-related equipment. FEMA, at project closeout, approved \$3,500 for removal of a trailer used for disaster-related work. However, the City's actual costs incurred for the removal of the trailer were only \$2,121.

For Project 224, the City charged a total of \$23,879 in unsupported costs, as follows:

- \$8,879 for project construction costs. City officials, at project closeout, claimed contracted construction costs of \$1,902,090, yet could provide support for only \$1,893,211.
- \$15,000 as a result of an accounting error. City officials inadvertently added an extra "6" to their claim, and thus charged \$16,660 in disaster-related costs, instead of \$1,660.

Therefore, we question \$51,882 in unsupported costs for Projects 189 and 224. City officials generally agreed with this finding.

RECOMMENDATIONS

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

Recommendation #1: Disallow \$559,788 (federal share \$419,841) in ineligible contract costs charged to Projects 194 and 249 (finding A). This amount is net of the \$456,157 recommended for disallowance in recommendation #2.

Recommendation #2: Disallow \$456,157 (federal share \$342,118) in ineligible costs for construction management, A&E, and design services for Projects 194 and 249 that were unreasonable (finding B) and noncompliant with federal procurement regulations and FEMA guidelines (finding A).

Recommendation #3: Disallow \$43,125 (federal share \$32,344) in ineligible project costs not included in the FEMA-approved scope of work for Project 224 (finding C).

Recommendation #4: Disallow \$51,882 (federal share \$38,912) in unsupported costs for Projects 189 and 224 (finding D).

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed the results of this audit with City 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 FEMA on June 1, 2011, and to Cal EMA on June 7, 2011. We discussed these findings and recommendations at exit conferences held with Cal EMA on June 10, 2011, and City officials on July 14, 2011. City officials disagreed with findings A, B, and C, and generally agreed with finding D. FEMA and Cal EMA officials withheld further comment until after we issue our final report.

Within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion

date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until your response is received and evaluated, the recommendations will be considered open and unresolved.

Consistent with our responsibility under the *Inspector General Act*, we are providing copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. To promote transparency, this report will be posted to our website. Significant contributors to this report were Humberto Melara, Devin Polster, Ravi Anand, and Bill Stark.

Should you have questions concerning this report, please contact me at (202) 254-4100 or Humberto Melara at (510) 637-1463.

cc: Administrator, FEMA
Audit Liaison, FEMA Region IX
Audit Liaison, FEMA (Job Code G-11-018)
Audit Liaison, DHS

EXHIBIT

Schedule of Audited Projects
 City of Paso Robles, California
 Public Assistance Identification Number 079-56056-00
 FEMA Disaster Number 1505-DR-CA

Project Number	Project Award Amount	Costs Questioned				
		Procurement (Finding A)	Engineering (Finding B)	Scope of Work Eligibility (Finding C)	Unsupported Costs (Finding D)	Total (Findings A-D)
84 ⁶	\$62,621					
90	39,882					
189	290,933				\$28,003	\$28,003
194	1,269,847	\$140,211	\$180,851			321,062
224	1,949,869			\$43,125	23,879	67,004
249 ⁷	2,209,677	419,577	275,306			694,883
Total	\$5,822,829	\$559,788	\$456,157	\$43,125	\$51,882	\$1,110,952

⁶ Although Project 84 exceeded the large project threshold (\$54,100), FEMA approved funding for this small project as part of the City's net small project overrun.

⁷ At the conclusion of our fieldwork, City officials had completed Project 249 and had charged \$1,974,505 to it, but had not yet finalized the claim for the project.