

Department of Homeland Security **Office of Inspector General**

FEMA Public Assistance Grant Funds
Awarded to the Long Beach Port Commission,
Long Beach, Mississippi





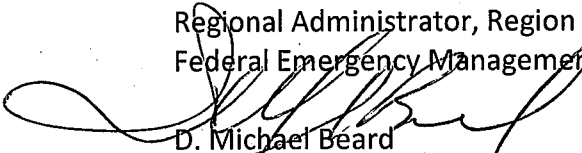
OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

July 18, 2012

MEMORANDUM FOR: Major P. (Phil) May
Regional Administrator, Region IV
Federal Emergency Management Agency

FROM: 
D. Michael Beard
Assistant Inspector General
Office of Emergency Management Oversight

SUBJECT: *FEMA Public Assistance Grant Funds Awarded to the
Long Beach Port Commission, Long Beach, Mississippi*
FEMA Disaster Number 1604-DR-MS
Audit Report Number DA-12-22

We audited public assistance funds awarded to the Long Beach Port Commission (Port) in Long Beach, Mississippi (FIPS Code 047-UDKVR-00). Our audit objective was to determine whether the Port accounted for and expended Federal Emergency Management Agency (FEMA) funds according to Federal regulations and FEMA guidelines.

As of September 15, 2011, the Port had received a public assistance award of \$4.3 million from the Mississippi Emergency Management Agency (State), a FEMA grantee, for damages resulting from Hurricane Katrina, which occurred in August 2005. The award provided 100 percent FEMA funding for debris removal, replacement of buildings, and repairs to the harbor and parking areas damaged as a result of the disaster. The award included five large projects.¹

We audited four large projects with awards totaling \$4.1 million. The audit covered the period of August 29, 2005, to September 15, 2011, during which the Port claimed \$3.5 million for the four projects included in our audit scope (see Exhibit A, Schedule of Projects Audited). At the time of our audit, the Port had not completed work on all projects and, therefore, had not submitted a final claim to the State for project expenditures.

We conducted this performance audit between September 2011 and March 2012 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

¹ Federal regulations in effect at the time of Hurricane Katrina set the large project threshold at \$55,500.



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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 by applying the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.

We judgmentally selected project costs (generally based on dollar value); interviewed Port, State, and FEMA personnel; reviewed the Port's procurement policies and procedures; reviewed applicable Federal regulations and FEMA guidelines; and performed other procedures considered necessary under the circumstances to accomplish our audit objective. We did not assess the adequacy of the Port's internal controls applicable to its grant activities because it was not necessary to accomplish our audit objective. However, we gained an understanding of the Port's method of accounting for disaster-related costs and its policies and procedures for administering activities provided for under the FEMA award.

RESULTS OF AUDIT

The Port accounted for expenditures on a project-by-project basis, as required by Federal regulations and FEMA guidelines. However, the Port did not follow Federal procurement procedures when awarding contracts valued at \$1,734,397.

Federal procurement regulations at 44 CFR 13.36 required the Port, among other things, to—

- Take all necessary affirmative steps to ensure that minority firms, women's business enterprises, and labor surplus area firms are used, when possible, during the procurement process. (44 CFR 13.36(e)(1).)
- Conduct all procurement transactions in a manner providing full and open competition. (44 CFR 13.36(c)(1).) Noncompetitive procurement may be used under certain circumstances, one of which is when the public exigency or emergency will not permit a delay resulting from competitive solicitation. (44 CFR 13.36(b).)
- Perform a cost or price analysis in connection with every procurement action, including contract modifications, to determine the reasonableness of the proposed contract price. (44 CFR 13.36(f)(1).)

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



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- 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.

FEMA may grant exceptions to Federal procurement requirements to subgrantees on a case-by-case basis (44 CFR 13.6(c)).

Minority Firms, Women's Business Enterprises, and Labor Surplus Area Firms Not Adequately Considered

The Port did not take affirmative steps to include minority firms, women's business enterprises, and labor surplus area firms in its bid process for contract work totaling \$1,734,397 (Projects 5079, 5852, and 6860). There was no documentation in the Port's procurement records to show that it did so. Port officials said that they were not aware of this Federal procurement requirement. As a result, such business enterprises were not given opportunities available to them under Federal regulations. Therefore, we question the \$1,734,397 awarded for the contract work. Because this amount includes \$213,467 of contracts awarded for project management and professional architectural and engineering (A/E) services (discussed below) that were not properly competed, the net amount we are questioning is \$1,520,930.

Procurement Process and Price/Cost Analysis

The Port did not properly procure contracts valued at \$213,467 for professional A/E work and project management services. In addition, the Port did not perform a price or cost analysis to determine the reasonableness of the contractors' proposed prices for such work.

- Under Projects 5079, 5852, and 6860, the Port hired an A/E firm it had used prior to Hurricane Katrina to perform A/E services valued at \$158,970 instead of competing the work.
- Under Projects 5079 and 5852, the Port did not properly procure project management services valued at \$54,497. The Port solicited bids from A/E firms



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and selected one firm using a qualifications-based selection process. However, this method of contracting, where price is not used as a selection factor, may be used only in procurement of A/E professional services (44 CFR 13.36(d)(3)(v)). It may not be used to purchase other types of services, such as project management services, from A/E firms.

We question the \$213,467 claimed for contract work that was not procured in accordance with Federal contracting requirements.

Port Response. Port officials disagreed with the finding, saying that they advertised all of their contracts in local and surrounding newspapers. They also said that they believed the advertisements had been coordinated through the Mississippi Development Authority, a state agency, which has a process to ensure the use of minority firms, women's business enterprises, and labor surplus area firms. They believed that the process they used to award the contracts satisfied the requirements of 44 CFR 13.36(e)(1).

Port officials also said they thought the process used to procure project management and professional A/E services for Projects 5079, 5852, and 6860 was correct. They believed they were not required to compete the A/E professional services contract since they had a relationship with the A/E firm prior to Hurricane Katrina. They said they were not aware of the requirement that an A/E firm must be performing A/E services in order to use a qualifications-based procurement process.

OIG Response. We disagree that the Port properly competed all contracts. Also, the Mississippi Development Authority could not confirm that the Port coordinated with it during the procurements in question. Federal procurement standards require that procurement transactions be conducted in a manner providing full and open competition. The regulations also require that additional steps be taken, beyond competition, to ensure the use of minority firms, women's business enterprises, and labor surplus area firms.

RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region IV:

Recommendation #1: Disallow \$1,734,397 of ineligible costs claimed for contracts that were not procured in accordance with Federal requirements, unless FEMA decides to grant an exception for all or part of the costs as provided



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for in 44 CFR 13.6(c) and Section 705(c) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended.

Recommendation #2: Instruct the State to reemphasize to the Port its requirement to comply with Federal procurement regulations and FEMA guidelines when acquiring goods and services under a FEMA award.

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed the results of our audit with Port, State, and FEMA officials during our audit. We also provided a draft report in advance to these officials and discussed it at the exit conference held on March 20, 2011. Port officials disagreed with our findings and recommendation #1. Their comments, where appropriate, are included in the body of the 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. We will post the report on our website for public dissemination.

Major contributors to this report were David Kimble, Eastern Region Audit Director; Larry Arnold, Audit Manager; and Emma Peyton, Auditor-in-charge.

Please call me with any questions, or your staff may contact David Kimble, Eastern Region Audit Director, at (404) 832-6702.



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EXHIBIT A

**Schedule of Projects Audited
August 29, 2005, to September 15, 2011
Long Beach Port Commission
FEMA Disaster Number 1604-DR-MS**

Project Number	Scope	Amount Awarded	Amount Claimed	Amount Questioned
5079	City of Long Beach (MS) Harbor	\$2,359,606	\$2,320,778	\$983,203
5852	Long Beach (MS) Harbor Master's Structure	954,005	777,501	720,437
6860	City of Long Beach (MS) Harbor Parking/Roadway	431,426	431,426	30,757
6588	Mississippi Gulf Coast Chamber of Commerce Building	386,582	0	0
Total		\$4,131,619	\$3,529,705	\$1,734,397



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Exhibit B

**Report Distribution List
Long Beach Port Commission
FEMA Disaster Number 1604-DR-MS**

Department of Homeland Security

Secretary
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Under Secretary for Management
Audit Liaison, DHS

Federal Emergency Management Agency

Administrator
Chief of Staff
Chief Financial Officer
Chief Counsel
Chief Procurement Officer
Director, Risk Management and Compliance
Audit Liaison, FEMA Region IV
Audit Liaison, FEMA (Job Code G-11-069)

Grantee

Director, Mississippi Emergency Management Agency

State

State Auditor, Mississippi

Subgrantee

Comptroller, Long Beach Port Commission

ADDITIONAL INFORMATION AND COPIES

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