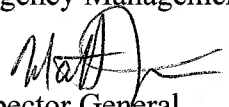




# Homeland Security

SEP 27 2011

MEMORANDUM FOR: Andrew Velasquez III  
Regional Administrator, Region V  
Federal Emergency Management Agency

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

SUBJECT: *FEMA Public Assistance Grant Funds Awarded to  
Henderson County, Illinois*  
FEMA Disaster Number 1771-DR-IL  
Audit Report Number DD-11-22

We audited public assistance grant funds awarded to Henderson County, Illinois (County) (Public Assistance Identification Number 071-99071-00). Our audit objective was to determine whether the County accounted for and expended Federal Emergency Management Agency (FEMA) grant funds according to federal regulations and FEMA guidelines.

The County received an award of \$4.8 million from the Illinois Emergency Management Agency (IEMA), a FEMA grantee, for damages caused by severe storms and flooding that began on June 1 and continued through July 22, 2008. As of February 28, 2011, the cutoff date of the audit, the County's grant award remained open. The award provided 90% FEMA funding for 2 large and 5 small projects and 75% FEMA funding for 3 other large and 82 small projects.<sup>1</sup> We audited 100% of the award (see Exhibit, Schedule of Questioned Costs). The audit covered the period June 1, 2008, to February 28, 2011.

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.

---

<sup>1</sup> Federal regulations in effect at the time of the disaster set the large project threshold at \$60,900.

We interviewed FEMA, IEMA, and County 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 County's internal controls applicable to grant activities because it was not necessary to accomplish our audit objective. However, we did gain an understanding of the County's methods of accounting for disaster-related costs and its procurement policies and procedures.

## RESULTS OF AUDIT

The County accounted for FEMA grant funds on a project-by-project basis, as required. However, it did not follow federal procurement standards for two contracts totaling \$3,645,431 and did not complete demolition work on 23 small projects totaling \$48,723. In addition, the County did not promptly disburse FEMA funds, as required by federal regulations.

### **Finding A: Contracting**

The County did not follow federal procurement standards for two contracts totaling \$3,645,431. The contracts were for dewatering and building a temporary levee and hazardous waste removal. Federal procurement standards at 44 Code of Federal Regulations (CFR) 13.36 required the County to, among other things—

- Perform procurement transactions in a manner providing full and open competition except under certain circumstances. 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. (13.36(c)(1) and (d)(4)(i))
- Not use time-and-materials 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)(i) and (ii))
- Maintain detailed records of the significant history of the procurements. (13.36(b)(9))
- Perform a cost or price analysis in connection with every procurement action, including contract modifications, and make independent estimates before receiving bids or proposals. (13.36(f)(1))
- Negotiate profit as a separate element of the price for each contract in which there is no price competition. (13.36(f)(2))
- Obtain a performance bond on the part of the contractor for 100% of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract. (13.36(h)(2))
- Obtain a payment bond on the part of the contractor for 100% of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. (13.36(h)(3))
- Include specific provisions listed in 13.36(i).

### *Dewatering and Temporary Levee*

The County claimed \$3,065,088 under a noncompetitive, time-and-materials contract without a ceiling price or other required contract provisions. Additionally, the County did not perform a cost or price analysis, negotiate profit as a separate cost element, maintain records of its procurement actions, or obtain required performance and payment bonds.

On June 17, 2008, a levee along the Mississippi River breached in Henderson County and flooded the area with 15 billion gallons of water. While FEMA and the United States Army Corps of Engineers (USACE) were developing a plan for dewatering the area and constructing a temporary levee, FEMA advised the County that it must follow federal procurement standards if it decided to hire a contractor to perform the work. Specifically, FEMA emphasized that it would only reimburse the County for a lump sum, unit price, or cost-plus-fixed-fee contract. On July 10, 2008, the County disregarded FEMA's guidance and executed a time-and-materials contract at an estimated cost of \$1.0 million per day. The County later attempted to justify its actions, stating that it felt its requests for assistance from FEMA "went unheard" and that it proceeded with a contract that was in the best interest of its citizens. Shortly after the County contracted the work, the USACE provided its dewatering cost proposal of \$2.4 million to FEMA. By August 11, 2008, the County's contractor had removed nearly all the water in the flooded area. Two days later, the County notified IEMA that it had terminated its contract and asked IEMA to arrange for the USACE to complete the remaining dewatering and levee repairs.

Before the County had filed its claim, FEMA program officials were prepared to disallow all costs related to this work because the County disregarded federal procurement standards. However, FEMA's Office of Chief Counsel advised FEMA's program officials that "since work was indeed performed, FEMA would determine reasonable costs pursuant to the standard in OMB Circular A-87." Approximately 1 year after the County completed the work, it submitted a claim for \$13,208,692. After reviewing the claim, FEMA determined that \$2,721,712 in dewatering costs was reasonable. Additionally, FEMA allowed \$343,376 for the temporary levee work. Regardless of the amounts FEMA allowed, we question the entire \$3,065,088 of improperly contracted costs as ineligible because the County did not comply with federal procurement standards.

### *Hazardous Waste Removal*

The County claimed \$580,343 in contract costs for hazardous waste removal; however, the County did not properly award the contract. Initially, the County properly solicited and awarded the work to a contractor that later backed out of the contract. The County resolicited the work and awarded it to another contractor for \$170,810. However, the selected contractor could not secure the required payment and performance bonds. As a result, County officials decided to circumvent the bonding requirements and split the original contract's scope of work into multiple small purchases. Then, using the same unit prices as awarded to the second contractor, they awarded the small-purchase contracts to a local contractor that had no experience in handling hazardous waste and had not submitted a bid to either of the previous solicitations. County officials said that they divided the work into small contracts because a FEMA representative told them to do so to get around the bonding requirements. The Federal Acquisition Regulation prohibits breaking down a proposed large purchase into multiple small purchases merely to

permit use of simplified acquisition procedures.<sup>2</sup> Further, although 44 CFR 13.36 does not include a specific prohibition against such circumvention, we believe that any action specifically designed to circumvent a federal regulation is not allowable.

Additionally, the local contractor's billings were more than three times the second successful bidder's total bid. We determined that the claimed costs were eligible, but that the County misrepresented the quantities of various types of hazardous waste and the number of properties affected. County officials said that a FEMA representative insisted that the County solicit for bids based on 35 properties, instead of changing the estimated quantities to reflect the nearly 100 flooded homes that required hazardous material removal. County officials said that the FEMA representative also assured them that FEMA would pay for these costs because he was going to monitor contractor operations. Had the County used accurate quantities during the bid solicitation process, only one of the four procurements would have been below the \$100,000 simplified acquisition threshold. Because the County manipulated the award process to circumvent the bonding requirements, we question the \$580,343 of improperly contracted costs.

### **Finding B: Small Projects Completion**

The County did not complete the approved work in 23 small projects for the demolition of private property totaling \$48,723. According to 44 CFR 206.205(a), failure to complete a small project may require the federal payment to be refunded. County officials stated that some property owners changed their minds about having their property demolished. Additionally, the County did not perform asbestos testing on 13 of the properties. Therefore, we question \$48,723 as ineligible costs.

### **Finding C: Cash Management**

The County did not promptly disburse \$2.45 million in FEMA funds. In September 2009, the County requested FEMA funding to pay for contract services for a project completed in August 2008. The County received the funds in May 2010, but did not disburse these funds until February 18, 2011, because of ongoing litigation with the general contractor and its subcontractor.

According to 44 CFR 13.21(c), Advances, "Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee." Additionally, according to 44 CFR 13.37(a)(4), Subgrants, "States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall: Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies."<sup>3</sup>

---

<sup>2</sup> Federal Acquisition Regulation (FAR) 13.003 Policy (c)(2)(i) states, "Do not break down requirements aggregating more than the simplified acquisition threshold ... into several purchases that are less than the applicable threshold merely to permit use of simplified acquisition procedures."

<sup>3</sup> 31 CFR 205.12(b)(4), Rules and Procedures for Efficient Federal-State Funds Transfers, requires a state to disburse federal funds within 3 business days after drawing the funds from a federal account.

In January 2010, before receiving the FEMA funds, the County notified IEMA that, when it eventually received the requested funds, it would not disburse them for “quite a while” because of ongoing contractor litigation. The County asked IEMA what it should do when it received the funds. IEMA officials told the County that, because it could not earn more than \$100 in interest, the funds should go into a non-interest-bearing account.<sup>4</sup>

After receiving the \$2.45 million advance in May 2010, the County reported in its July 2010 quarterly progress report to IEMA that the County still could not disburse these funds. IEMA took no action. Based on IEMA’s advice to deposit the advance into a non-interest-bearing account and because IEMA did not impose proper standards of timing on the County’s cash disbursements, the federal government lost interest on these funds for approximately 9 months.

## **RECOMMENDATIONS**

We recommend that the Regional Administrator, FEMA Region V:

**Recommendation #1:** Disallow \$3,645,431 (\$3,193,836 federal share) of ineligible costs related to improper contracting (finding A).

**Recommendation #2:** Disallow \$48,723 (\$36,542 federal share) of ineligible small project costs (finding B).

**Recommendation #3:** Require IEMA to develop and implement controls to ensure that it provides accurate guidance to subgrantees regarding advanced funds (finding C).

## **DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP**

We discussed the results of our audit with County 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, IEMA, and County officials and discussed them at exit conferences held with FEMA and IEMA officials on August 15, 2011, and with County officials on August 16, 2011. FEMA agreed with all the findings and with recommendations 2 and 3. FEMA did not agree with recommendation 1 regarding the dewatering and temporary levee contract costs, but did agree with the recommendation for the hazardous waste contract costs. IEMA did not agree or disagree with findings A and B and their recommendations, but did disagree with finding C and its recommendation. The County withheld its opinion on finding A and its recommendation, agreed with Finding B but withheld its opinion on recommendation 2, and agreed with Finding C and recommendation 3.

---

<sup>4</sup> 44 CFR 13.21(i), Interest earned on advances, states, “Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to \$100 per year for administrative expenses.”

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 Tonda Hadley, Moises Dugan, Sharon Snedeker, and Patricia Epperly.

Should you have questions concerning this report, please contact me at (202) 254-4100 or Tonda Hadley at (214) 436-5200.

cc: Administrator, FEMA  
Audit Liaison, FEMA Region V  
Audit Liaison, FEMA (Job Code G-11-012)  
Audit Liaison, DHS

**Schedule of Questioned Costs  
June 1, 2008, to February 28, 2011  
Henderson County, Illinois  
FEMA Disaster Number 1771-DR-IL**

<b><u>Project Number</u></b>	<b><u>Award Amount</u></b>	<b><u>Finding A</u></b>	<b><u>Finding B</u></b>	<b><u>Total Questioned</u></b>
1524	\$2,721,712	\$2,721,712	\$ 0	\$2,721,712
1623	604,392	580,343	0	580,343
1523	413,871	343,376	0	343,376
1584	15,695	0	5,138	5,138
1659	14,689	0	378	378
1556	13,855	0	3,267	3,267
1553	12,972	0	378	378
1607	12,618	0	378	378
1564	12,386	0	378	378
1579	10,688	0	378	378
1562	9,785	0	378	378
1559	9,730	0	9,480	9,480
1582	9,672	0	378	378
1557	9,019	0	378	378
1561	8,108	0	378	378
1586	8,026	0	378	378
1624	6,941	0	378	378
1563	6,574	0	1,899	1,899
1571	6,414	0	6,164	6,164
1660	5,922	0	378	378
1605	5,901	0	225	225
1566	5,728	0	5,478	5,478
1634	5,312	0	4,684	4,684
1555	4,570	0	4,320	4,320
1627	3,782	0	3,154	3,154
1603	3,328	0	378	378
<b>Totals</b>	<b>\$3,941,690</b>	<b>\$3,645,431</b>	<b>\$48,723</b>	<b>\$3,694,154</b>