

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

FEMA Should Recover \$7.7 Million of Public
Assistance Grant Funds Awarded to the City of
Lake Worth, Florida - Hurricane Wilma





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Department of Homeland Security

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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 Should Recover \$7.7 Million of Public Assistance Grant
Funds Awarded to the City of Lake Worth, Florida –
Hurricane Wilma*
FEMA Disaster Number 1609-DR-FL
Audit Report Number DA-13-04

We audited Public Assistance (PA) funds awarded to the City of Lake Worth, Florida (City) (FIPS Code 099-39075-00). 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.

As of December 13, 2011, the City received a PA award of \$12.4 million from the Florida Division of Emergency Management (State), a FEMA grantee, for damages resulting from Hurricane Wilma, which occurred in October 2005. The award provided 100 percent FEMA funding for debris removal, emergency protective measures, and permanent repairs to buildings and other facilities. The award consisted of 15 large projects and 31 small projects.¹

We reviewed costs claimed under 6 large projects and 23 small projects with awards totaling \$10.4 million (see Exhibit A, Schedule of Projects Audited). Our review of small projects was limited to project completion and insurance coverage. The audit covered the period October 24, 2005, to December 13, 2011, during which the City received \$10.4 million of FEMA funding under the projects reviewed. At the time of our audit, the City had completed work under all large projects included in our scope and had submitted a final claim of expenditures to the State for those projects.

We conducted this performance audit between January and August 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 perform the audit to obtain

¹ Federal regulations in effect at the time of Hurricane Wilma set the large project threshold at \$57,500.



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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. To conduct this audit we applied the statutes, regulations, and FEMA policies in effect at the time of the disaster.

We judgmentally selected project costs (generally based on dollar value); interviewed City, State, and FEMA officials; reviewed the City's procurement policies and procedures; reviewed applicable Federal regulations and FEMA guidelines; and performed other procedures considered necessary to accomplish our audit objective. We did not assess the adequacy of the City'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 City'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

FEMA should recover \$7,682,532 of PA funding awarded to the City. The City generally accounted for FEMA funds on a project-by-project basis, but it did not comply with Federal procurement requirements when awarding contracts valued at \$6,998,095 for repairs to its electrical distribution system. We also identified \$684,437 of ineligible costs claimed by the City, consisting of \$476,455 that were not adequately supported, \$180,626 of costs covered by insurance, \$8,624 of costs for small project activities that were not completed, and \$18,732 of excessive labor costs.

Finding A: Contracting Procedures

The City did not comply with Federal procurement requirements when awarding \$6,998,095 of time-and-equipment contracts under several projects for repair of the City's electrical distribution system. Federal regulations at 44 CFR 13.36 required the City, among other things, to—

- Perform procurement transactions in a manner providing full and open competition except under certain circumstances. One allowable circumstance is when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals, and 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)).
- Perform a cost or price analysis in connection with every procurement action, including modifications, to determine the reasonableness of the contractor's proposed contract price (44 CFR 13.36(f)(1)).



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- Use time-and-material contracts only after a determination that no other contract is suitable; and the contract contains a ceiling price that the contractor exceeds at its own risk (44 CFR 13.36(b)(10)).

In addition, FEMA's *Public Assistance Guide* (FEMA 322, October 1999, pp. 39–40) 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 for competition, (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)).

Hurricane Wilma struck the City on October 23, 2005, and caused widespread damage to the City's electrical distribution system. Using its emergency contracting procedures, the City hired multiple electrical contractors under noncompetitive contracts to repair damages caused by the storm. The City hired the contractors without performing a cost or price analysis to determine the reasonableness of their proposed prices, and without establishing ceiling prices that the contractors exceeded at their own risk.

According to the City's utility department, electrical power was restored to all of the City's customers by November 7, 2005. However, additional work was required to complete permanent repairs necessitated by the storm. The City did not solicit competitive bids for the permanent work. Instead, it continued to use the contractors hired under the noncompetitive contracts for the contract work, which was completed March 6, 2006.

We concluded that the immediate need for electrical power constituted exigent circumstances that warranted the use of noncompetitive contracts through November 7, 2005, because lives and property were at risk. However, the City should have performed a cost/price analysis and established contract ceiling prices for the time-and-equipment work awarded under exigent circumstances. In addition, the City should have openly competed the permanent repair work after such date because exigent circumstances no longer existed to justify the use of



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noncompetitive contracts. The City claimed contract costs totaling \$6,998,095 for work performed from October 23, 2005, to March 6, 2006, as shown in table 1.

Table 1. Electrical Repair Contract Work

Project Number	Period of Work	Time-and-Equipment Contract Costs Claimed
7679	10-23-05 to 03-06-06	\$ 5,169,967
7676	10-24-05 to 11-13-05	1,649,769
7671	10-26-05 to 11-11-05	178,359
Total		\$ 6,998,095

In September 2011, FEMA reviewed and approved the contract costs during project closeout. FEMA noted that the City followed its own emergency contracting procedures rather than Federal procurement standards and FEMA guidelines. However, the documentation did not indicate that FEMA reviewed the costs for reasonableness. Therefore, we question the \$6,998,095.

Finding B: Supporting Documentation

The City's claim included \$476,455 of force account² labor and equipment that was not supported by adequate documentation. Cost Principles at 2 CFR 225, *Cost Principles for State, Local, and Indian Tribal Governments*, Appendix A, Section (C)(1)(j), states that a cost must be adequately documented to be allowable under Federal awards. We question the \$476,455, as follows:

- The City claimed \$123,144 under Project 4921 for labor costs incurred by police officers from October 27 to November 5, 2005. We reviewed the City's payroll and time attendance records supporting the claim and identified 40.5 hours of overtime (\$1,410) that were claimed to FEMA but not paid to the police officers. We also identified several instances where the City used incorrect hourly rates to calculate overtime costs (\$1,149). These unsupported costs totaled \$2,559.
- The City did not have equipment activity logs or equivalent documentation that provided specific periods of use (i.e., dates of use, along with beginning and ending times) for \$473,896 of equipment costs claimed. Instead, the City used timesheets of employees who were assigned pieces of equipment on a daily basis to calculate its claim. For instance, if an employee worked an 8-hour day and was assigned a piece of equipment, the City claimed 8 hours of use for that piece of equipment. However, such methodology and documentation

² Force account refers to the City's personnel and equipment.



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were insufficient for us to validate the accuracy and eligibility of equipment costs claimed because they are based on the assumption that employees continuously used the equipment throughout their work period, without any idle time. Therefore, we question the \$473,896, as shown in table 2.

Table 2. Unsupported Equipment Costs

Project Number	Activity	Costs Claimed	Amount Questioned
6477	Debris Removal	\$288,034	\$288,034
8398	Electrical Distribution Repairs	185,862	185,862
Total		\$473,896	\$473,896

City officials disagreed with our finding that equipment costs were unsupported. They believed that the force account labor timesheets that identified the piece of equipment an individual was assigned were sufficient documentation to support equipment use.

Finding C: Losses Covered by Insurance

The City’s claim included \$180,626 of project costs that were covered by insurance. Section 312(a) of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act*, as amended, states that no entity will receive assistance for any loss for which financial assistance has already been received from any other program, from insurance, or from any other source. We question \$180,626 as follows:

- FEMA approved a total of \$156,738 under several small projects for the repair of various facilities. However, the City received \$221,110 of insurance proceeds to cover \$119,318 of the repair costs, but failed to reduce project costs by that amount. Therefore, we question the \$119,318, as shown in table 2.

Table 2. Insurance Recoveries

Project No.	Facility Name	Amount Approved	Insurance Recoveries	Questioned Costs
8472	Casino Pool and Beach Complex	\$ 46,341	146,102	\$ 46,341
5166	Pinecrest Cemetery/Vehicle #44	31,738	27,008	27,008
3651	Memorial Park	2,633	4,664	2,633
3429	Multi-Space and Park Meters	21,755	14,555	14,555
3830	Old Landfill—fences	10,905	7,905	7,905
4536	Bryant Park	11,376	3,949	3,949
5590	Sunset Park	31,990	16,927	16,927
Total		\$ 156,738	\$ 221,110	\$ 119,318



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- FEMA awarded the City \$18,354 under Project 5192 (Memorial Golf Course) and \$42,954 under Project 8279 (Howard Park) to repair facilities damaged by the disaster. The facilities were fully insured, and the City was responsible for pursuing full insurance recoveries for damages to the two facilities. However, the City did not submit a claim to its insurance carrier for the damages. Therefore, we question the \$61,308 of costs covered by insurance.

Finding D: Small Project Work Not Completed

The City could not provide evidence that \$8,624 of permanent repair work under two small projects had been completed. According to 44 CFR 206.205(a), failure to complete work under a small project may require that the Federal payment be refunded. In addition, FEMA's *Public Assistance Guide* (FEMA 322, April 1999, p. 114) states that a grant recipient has 18 months from disaster declaration date to complete work under permanent repair projects. The State, as grantee, has the authority to grant extensions for an additional 30 months under extenuating circumstances, and FEMA may grant extensions beyond the State's authority appropriate to the situation.

The City received \$56,297 of FEMA funding to make various repairs to facilities damaged by the disaster in October 2005. However, as of August 2012, the City could not provide evidence to show that the work had been completed or that time extensions had been granted by the State or FEMA to complete work under the projects. Therefore, we question the \$8,624 shown in table 3.

Table 3. Small Project Activities Not Implemented

Project Number	Amount Received	Activities Not Implemented	Amount Questioned
8443	\$ 4,531	Exterior Pool Filter House	\$ 4,531
8511	51,766	Office repairs	4,093
Total	\$ 56,297		\$ 8,624

Finding E: Excessive Labor Charges

The City's claim under Project 8398 included excess force account labor costs totaling \$18,732 for employees whose compensation was not based on the City's written compensation policy in effect prior to the disaster. According to 2 CFR 225, *Cost Principles for State, Local and Indian Tribal Governments*, Appendix A, Section (C)(1)(a), costs under Federal awards must be both reasonable and necessary. FEMA policy (*Response and Recovery Directorate Policy Number: 9525.7*, July 2000) states that straight time and overtime will be determined according to the applicant's written policies and labor union contracts in effect before the disaster.



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The \$18,732 of excessive costs occurred because the City paid double time for all hours worked, including regular hours, when an employee worked 16 consecutive hours during a work period. According to the City's compensation policy and labor union contract, employees who work between 8 and 16 consecutive hours during a work period would be paid at time-and-a-half rates, and all hours over 16 would be paid at double-time rates. We question the \$18,732 of excessive labor costs claimed for employees whose compensation was not consistent with the City's compensation policy.

Office of Inspector General Comments. City officials responsible for making key decisions regarding costs claimed to the State under the grant were no longer employed by the City at the time of our audit. Therefore, we were unable to determine, through interviews, the reasons certain ineligible costs were claimed. Nonetheless, Federal regulation 44 CFR 13.37(a)(2) requires the State to take steps to ensure that subgrantees are aware of requirements imposed on them by Federal regulations. Further, under Federal regulation 44 CFR 13.40(a), the State, as grantee, is required to manage the day-to-day operations of subgrant activity and monitor subgrant activity to ensure compliance with applicable Federal requirements. The costs in question were accepted by the State during its periodic reviews of reimbursement claims submitted by the City. Based on the nature of our findings, we believe that the State needs to improve its management controls over monitoring subgrantee project activities.

RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region IV:

Recommendation #1: Disallow \$6,998,095 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 costs as provided for in 44 CFR 13.36(c), and determines the costs were reasonable (finding A).

Recommendation #2: Instruct the State to remind the City that it is required to comply with Federal procurement standards when acquiring goods and services under FEMA awards (finding A).

Recommendation #3: Disallow \$476,455 of unsupported project costs (finding B).

Recommendation #4: Disallow \$180,626 of ineligible cost for activities covered by insurance (finding C).



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Recommendation #5: Disallow \$8,624 of ineligible costs for small project work not completed (finding D).

Recommendation #6: Disallow \$18,732 of ineligible labor costs (finding E).

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed the results of our audit with City, 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 August 15, 2012. City officials agreed with findings C and E and partially agreed with finding B. They also said that they will continue to research documentation to resolve finding D. However, City officials disagreed with finding A and said that they plan to appeal if FEMA disallows the costs. Their comments, where appropriate, are included in the body of the report. FEMA and State officials withheld comments pending receipt 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 we receive and evaluate your response, the recommendations are considered open and unresolved. An appeal of a closed recommendation that allows costs previously disallowed would constitute a revised management decision and reopen the recommendation, necessitating further audit resolution.

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 contribution to this report were David Kimble, Eastern Region Audit Director; Adrienne Bryant, Audit Manager; Vilmarie Serrano, Auditor-in-charge; and John Schmidt, Program Analyst.

Please call me with any questions at (202) 254-4100, 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
October 23, 2005, to December 13, 2011
City of Lake Worth
FEMA Disaster No. 1609-DR-FL
Large and Small Projects**

Project Number	Project Scope	Amount Awarded	Amount Claimed	Amount Questioned	Finding
6477	Citywide debris removal	\$ 1,529,699	\$ 1,529,699	\$ 288,034	B
4921	Emergency protective measures	131,948	131,948	2,559	B
7676	Citywide electrical distribution repair	1,649,769	1,649,769	1,649,769	A
7679	Citywide electrical distribution repair	5,169,967	5,169,967	5,169,967	A
8398	Citywide electrical distribution repair	1,370,965	1,370,965	204,594	B,E
7671	Citywide electrical distribution repair	178,359	178,359	178,359	A
Large Projects Total		\$10,030,707	\$10,030,707	\$7,493,282	
2430	Field Service Complex site work	\$ 12,960	\$ 12,960	\$ -	
5166	Pincrest Cemetery Building site work	31,738	31,738	27,008	C
8511	Casino Beach and Pool Complex site work	51,766	51,766	4,093	D
8472	Casino Ballroom site work	46,341	46,341	46,341	C
7743	City Hall – Museum site work	14,997	14,997	-	
7434	Public Works Utilities Administration Building site work	29,944	29,944	-	
2857	Public Works Complex fence repair	1,151	1,151	-	
7316	Solid Waste Washing Station site work	2,126	2,126	-	
8507	South E Street shed replacement	12,800	12,800	-	
8505	Public Works site work	8,735	8,735	-	
8284	Lucerne Fire Station site work	7,367	7,367	-	
7742	City Hall Cultural Annex site work	6,620	6,620	-	
3651	Memorial Park fence work	2,633	2,633	2,633	C
5192	Municipal Golf Course site work	18,354	18,354	18,354	C
8279	Howard Park site work	42,954	42,954	42,954	C
4749	Casino Complex – Beach Facility site work	9,431	9,431	-	
3429	Citywide parking meter repair	21,755	21,755	14,555	C
3830	Old Landfill fence repair	10,905	10,905	7,905	C
8276	Harrison Bridge site work	3,453	3,453	-	
8443	Casino Complex – Exterior Pool Filter House site work	4,531	4,531	4,531	D
4536	Bryant Park site work	11,376	11,376	3,949	C
5590	Sunset Park and Northwest Ball Fields site work	31,990	31,990	16,927	C
4840	Memorial and Spillway Parks site work	5,488	5,488	-	
Small Projects Total		\$ 389,415	\$ 389,415	\$ 189,250	
Grand Total		\$10,420,122	\$10,420,122	\$7,682,532	



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EXHIBIT B

Distribution List
City of Lake Worth, Florida
FEMA Disaster 1609-DR-FL

Department of Homeland Security

Secretary
Chief Financial Officer
Under Secretary for Management
Audit Liaison, DHS

Federal Emergency Management Agency

Administrator
Chief of Staff
Chief Financial Officer
Chief Counsel
Director, Risk Management and Compliance
Audit Liaison, FEMA Region IV
Audit Liaison, FEMA (Job Code G-12-053)

Grantee

Public Assistance Coordinator, Florida Division of Emergency Management

State

State Auditor, Florida

Subgrantee

City of Lake Worth, Finance Director

ADDITIONAL INFORMATION AND COPIES

To obtain additional copies of this document, please call us at (202) 254-4100, fax your request to (202) 254-4305, or e-mail your request to our Office of Inspector General (OIG) Office of Public Affairs at: DHS-OIG.OfficePublicAffairs@oig.dhs.gov.

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