

Department of Homeland Security Office of Inspector General

**FEMA Should Recover \$7.5 Million of the \$43.2 Million
Public Assistance Grant Awarded to Craighead Electric
Cooperative Corporation, Arkansas**





OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

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

SEP 20 2013

MEMORANDUM FOR: George A. Robinson
Regional Administrator, Region VI
Federal Emergency Management Agency

FROM: John V. Kelly 
Assistant Inspector General
Office of Emergency Management Oversight

SUBJECT: *FEMA Should Recover \$7.5 Million of the \$43.2 Million Public Assistance Grant Awarded to Craighead Electric Cooperative Corporation, Arkansas*
FEMA Disaster Number 1819-DR-AR
Audit Report Number DD-13-14

We audited Public Assistance grant funds awarded to Craighead Electric Cooperative Corporation (Cooperative) in Arkansas (Public Assistance Identification Number 000-UX154-00). Our audit objective was to determine whether the Cooperative accounted for and expended Federal Emergency Management Agency (FEMA) grant funds according to Federal regulations and FEMA guidelines.

The Arkansas Department of Emergency Management (ADEM), a FEMA grantee, awarded the Cooperative \$43.2 million for damages resulting from a severe winter storm, which occurred January 26 through 30, 2009. The award provided 75 percent funding for emergency protective measures (Category B) and permanent work (Category F) for eight large projects.¹ The audit covered the period January 26, 2009, to February 19, 2013, the cutoff date of our audit, and included a review of all projects totaling \$43.2 million, or 100 percent of the total award (see Exhibit, Schedule of Projects Audited and Questioned Costs). As of our cutoff date, the Cooperative had completed all of the projects, but FEMA had not closed them.

¹ Federal regulations in effect at the time of the disaster set the large project threshold at \$64,200.



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We conducted this performance audit between February and August 2013 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 by applying the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.

We interviewed FEMA, ADEM, and Cooperative officials; reviewed judgmentally selected 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 Cooperative'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 Cooperative's method of accounting for disaster-related costs and its procurement policies and procedures.

BACKGROUND

The Cooperative, a non-profit rural electric cooperative, began operations in 1937 with 75 miles of power lines. It currently has three offices, serves eight counties in northeast Arkansas, maintains more than 4,700 miles of power lines, and provides electricity to more than 27,000 customers. The 2009 winter storm coated power lines and trees with ice. The added weight of the ice on power lines and trees damaged or destroyed roughly 8,000 utility poles throughout the Cooperative's service area (see figure 1). These damaged or destroyed utility poles caused power outages to approximately 25,000 of the Cooperative's customers.



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Figure 1. Downed Power Lines after Arkansas' 2009 Winter Storm



Source: <http://craigheadelectric.coop>.

RESULTS OF AUDIT

The Cooperative generally accounted for and expended FEMA grant funds according to Federal regulations and FEMA guidelines. The Cooperative used open and free competition in awarding \$5.6 million in contracts for permanent work, but did not take required steps to ensure the use of small businesses, minority-owned firms, and women's business enterprises when possible and did not include federally required provisions in its contracts. In addition, the Cooperative claimed \$1.9 million in ineligible mutual aid costs. As a result, we question \$7.5 million of the Cooperative's \$43.2 million award.

Finding A: Contracting Considerations and Provisions

After the Cooperative restored power to its customers, it used open and free competition in awarding \$5.6 million in contracts for permanent work. However, the Cooperative did not take the required steps to assure that it used small businesses, minority-owned firms, and women's business enterprises when possible, and did not include federally required provisions in its contracts. As a result, FEMA has no assurance that the Cooperative provided small businesses, minority-owned firms, and women's business enterprises adequate opportunities to participate in federally funded work. Also, by not including all of the required provisions in its contracts, the Cooperative did not minimize the risk of contract misinterpretations and disputes. Therefore, we



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question \$5,563,004 (\$4,172,253 Federal share) for contract work that the Cooperative did not procure according to Federal regulations.

Federal regulation 2 CFR 215.44(b) requires subgrantees to take specific steps to ensure the use of small businesses, minority-owned firms, and women's business enterprises whenever possible. These steps include using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce to solicit and use these firms. Cooperative officials said that they were not aware of this requirement and that all businesses had an equal opportunity to bid because they advertised the projects in the newspaper. Cooperative officials also said that they were concerned about cost and contractor experience, rather than a contractor's business affiliation.

Federal regulation 2 CFR 215.48 requires subgrantees to include specific provisions in their contracts. However, the Cooperative did not include all of the required contracting provisions in any of the five contracts it awarded for permanent disaster work. These contract provisions specify the rights and responsibilities of the parties and minimize the risk of contract misinterpretations and disputes. For example, the termination provision (2 CFR 215.48(b)) gives the subgrantee the right to end an agreement with a contractor for non-performance; and the access to records provision (2 CFR 215.48(d)) gives the subgrantee, the grantee, and FEMA the right to examine the contractor's records. Cooperative officials said that they had received FEMA disaster assistance funds before, but had never been told that their contracts did not contain the required provisions.

We discussed these procurement deficiencies with ADEM officials who said that they provide contracting guidance through the resources that they provide applicants. In addition, ADEM provides comments on contract-related issues if the subgrantee requests it, but it does not approve or deny a subgrantee's contracts. However, according to 44 CFR 13.37(a)(2), the grantee is required to ensure that subgrantees are aware of requirements that Federal regulations impose on them; and 44 CFR 13.40(a) requires the grantee to manage the day-to-day operations of subgrant activity and monitor subgrant activity to ensure compliance with applicable Federal requirements.

Finding B: Mutual Aid

The Cooperative appropriately used mutual aid agreements to restore power to its customers and claimed \$1.9 million for the work. However, FEMA classified all the electrical work as permanent work (Category F); therefore, at the time of the disaster the mutual aid costs were ineligible. FEMA's Public Assistance Policy 9523.6, *Mutual Aid Agreements for Public Assistance and Fire Management Assistance*, section VII.F.1.b.(i), dated August 13, 2007, cites permanent recovery work as an example of mutual aid



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work that is not eligible. This policy also states in section 7.H.5 that “reimbursement for work beyond emergency assistance, such as permanent repairs, is not eligible for mutual aid assistance.”

FEMA officials said that they will request a waiver to FEMA’s mutual aid policy for this specific disaster (FEMA-1819-DR). However, as of our exit conference with FEMA Region VI on August 1, 2013, FEMA headquarters had not granted the waiver to its policy. FEMA revised its Public Assistance Policy 9523.6 on November 10, 2012 (after this disaster) to allow mutual aid work that is permanent in nature but that is necessary to restore emergency electrical power. However, this updated policy does not apply retroactively to Disaster 1819. Therefore, we question \$1,888,717 (\$1,416,538 Federal share) in mutual aid costs unless FEMA Region VI obtains a waiver from FEMA headquarters to allow these costs.

RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region VI:

Recommendation #1: Disallow \$5,563,004 (\$4,172,253 Federal share) of ineligible costs the Cooperative claimed for contract work that did not comply with 2 CFR 215.44(b) that requires subgrantees to take affirmative steps to use small businesses, minority-owned firms, and women’s business enterprises, and 2 CFR 215.48 that requires subgrantees to include specific provisions in its contracts, unless FEMA decides to grant an exception for all or part of the costs as provided for in 2 CFR 215.4 and Section 705(c) of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act*, as amended (finding A).

Recommendation #2: Require ADEM to develop, document, and implement procedures to ensure that subgrantees are aware of and follow Federal procurement standards (finding A).

Recommendation #3: Disallow \$1,888,717 (\$1,416,538 Federal share) of ineligible costs for mutual aid work, unless FEMA obtains a waiver to FEMA’s Public Assistance Policy 9523.6, dated August 13, 2007 (finding B).

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed the results of our audit with FEMA, ADEM, and Cooperative officials during our audit and included their comments in this report, as appropriate. We also provided a draft report in advance to these officials and discussed it at exit conferences



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held with FEMA officials on August 1, 2013, ADEM officials on August 6, 2013, and Cooperative officials on August 8, 2013. FEMA agreed with Finding B and Recommendation 3, withheld comment on Finding A and Recommendation 2, and disagreed with Recommendation 1. ADEM and Cooperative officials generally withheld comment on our findings and recommendations.

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 your response, we will consider the recommendations open and unresolved.

Consistent with our responsibility under the *Inspector General Act*, we will provide 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 are Christopher Dodd, Acting Director; Moises Dugan, Supervisory Program Analyst; DeAnna Fox, Auditor-in-Charge; Pat Epperly, Program Analyst; and Heather Hubbard, Auditor.

Please call me with any questions at (202) 254-4100 or your staff may contact Christopher Dodd, Acting Director, Central Regional Office, at (214) 436-5200.



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Exhibit

Schedule of Projects Audited and Questioned Costs

Project Number	Category of Work*	Award Amount	Finding A	Finding B	Total Questioned Costs
940	B	\$ 66,206	\$ 0	\$ 0	\$ 0
** 947	B	22,069	0	0	0
293	F	1,004,435	941,795	0	941,795
745	F	18,131,077	0	826,287	826,287
758	F	8,274,623	0	357,543	357,543
762	F	7,489,019	0	611,854	611,854
1099	F	2,690,429	1,121,700	93,033	1,214,733
1137	F	<u>5,505,448</u>	<u>3,499,509</u>	<u>0</u>	<u>3,499,509</u>
Totals		<u>\$43,183,306</u>	<u>\$5,563,004</u>	<u>\$1,888,717</u>	<u>\$7,451,721</u>

* FEMA classifies disaster-related work by type: debris removal (Category A), emergency protective measures (Category B), and permanent work (Categories C through G). Category F is for utility work.

** The award amount of \$22,069 represents the allowable amount of donated resources based on the non-Federal share of all other Category A and B projects. However, we determined the project size based on the original \$102,005 approved amount (per the D.1 Report in FEMA's Emergency Management Mission Integrated Environment (EMMIE), which represents eligible donated resources).



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