

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

FEMA Should Recover \$1.7 Million of Public Assistance Grant Funds Awarded to the City of Waveland, Mississippi – Hurricane Katrina





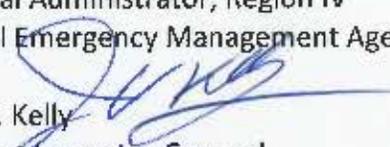
OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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

APR 15 2014

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

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

SUBJECT: *FEMA Should Recover \$1.7 Million of Public Assistance
Grant Funds Awarded to the City of Waveland, Mississippi
– Hurricane Katrina*
FEMA Disaster Number 1604-DR-MS
Audit Report Number OIG-14-63-D

We audited Public Assistance funds awarded to the City of Waveland, Mississippi (City) (FIPS Code 045-78200-00). Our audit objective was to determine whether the City accounted for and expended Federal Emergency Management Agency (FEMA) funds according to Federal regulations and FEMA guidelines.

The City received a Public Assistance grant award of \$130.2 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 activities, emergency protective measures, and permanent repairs to buildings and facilities. The award consisted of 85 large projects and 52 small projects.¹

This is our second audit of this subgrantee; the first audit resulted in OIG Audit Report DA-08-08: *Audit of Hurricane Katrina Activities for City of Waveland, Mississippi*, July 17, 2008. We conducted this audit because of a complaint that our Office of Investigations received in February 2011. The complainant alleged that the City's sewer system contractor had overcharged the City for installing temporary bladder tanks as a temporary sewer collection system. We did not audit these costs during our previous 2008 audit because, at the time, the City had not completed the work. Therefore, we limited this audit to \$5.2 million FEMA awarded the City under Projects 4916 and 4917 for the installation of a temporary sewer collection system (See Exhibit, Schedule of Projects Audited and Questioned Costs). The audit covered the period from August 29,

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



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

2005, to July 26, 2013, during which the City claimed \$5.2 million in FEMA funds for the two projects. At the time of our audit, the City had not completed work on some of its projects and; therefore, had not submitted a final claim to the State for all project expenditures.

We conducted this performance audit between February 2013 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. To conduct this audit, we applied the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.

We judgmentally selected and reviewed project costs (generally based on dollar value); interviewed City, State, and FEMA personnel; reviewed the City'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 also notified the Recovery Accountability and Transparency Board of all contracts the subgrantee awarded under the projects within our audit scope to determine whether the contractors were debarred or whether there were any indications of other issues related to those contractors that would indicate fraud, waste, or abuse. 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.

BACKGROUND

Hurricane Katrina severely damaged the City's sewer collection system. The City determined that it could not make repairs to the existing system in a timely or cost effective manner. Therefore, the City elected to replace the damaged portion of the sewer collection system. The City began replacement of the damaged portion in May 2007 and completed the work in December 2008.

Replacing the sewer system required the City to install temporary bladder tanks (see figure 1) to manage its sewer needs until it completed the new system. Bladder tanks, which are designed for installation above the ground, are temporary holding tanks for wastewater and sewage discharged from a dwelling. In the case of the City's temporary system, the City discharged wastewater into bladder tanks by one of two methods:



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

gravity flow or sewage ejector pumps. Gravity flow discharges sewage from an elevated structure to bladder tanks through a sewer line. Where conditions were not conducive to allow adequate flow by means of gravity, such as for houses built on slabs, the City used a sewer pump housed in a wet well to discharge sewage to bladder tanks (see figure 2). The City used wastewater sewer trucks to empty the bladder tanks.

Figure 1: Bladder Tank



Source: www.bing.com/images/polyportables

Figure 2: Wastewater and Sewer Pump System



Source: www.bing.com/images/9s/series/wastewater/pumps

RESULTS OF AUDIT

FEMA should recover \$1.7 million of the \$5.2 million grant funds it awarded to the City for installing a temporary sewer collection system. The City accounted for FEMA projects on a project-by-project basis as Federal regulations and FEMA guidelines require. However, the City (1) included in its claim \$1,419,000 that the contractor improperly billed the City for costs that did not comply with contract terms; (2) did not comply with Federal procurement requirements when awarding contracts totaling



\$248,586 for permanent sewer repair work; and (3) needs to remit \$21,440 of interest it earned on FEMA advances.

Finding A: Excessive Project Costs

The City's claim for installing a temporary sewer collection system (Project 4916) included \$1,419,000 that the contractor improperly billed the City for excessive contract costs because the costs did not comply with contract terms. According to Federal cost principles at 2 Code of Federal Regulations (CFR) Part 225, Appendix A, Section C.1.a., a cost must be necessary and reasonable to be allowable under Federal awards. Also, 44 CFR 13.36(b)(2) requires grantees and subgrantees to maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

The City claimed \$1,419,000 of excess contract costs under Project 4916 for installing pumps and bladder tanks. The unit cost of each bladder tank included all connections, hoses, piping and fittings, electrical service, pumps (if required), and servicing (suctioning) the unit for as long as the unit was in use. The contract terms for the pumps stated "if required" because some dwellings did not require a pump to operate because of a gravity-fed system. Additionally, according to Section 02540, Part 3.09, of the contract, the contractor would bill the City for only two bladder tanks per inhabited temporary dwelling.

The contractor installed bladder tanks at 812 dwellings and billed the City \$4,116,000, which included the unit cost of each bladder tank and other costs necessary for providing sewer collection services at the dwellings. The contractor included in its bill to the City an additional \$811,000 for 379 pumps that it installed at 341 of the 812 dwellings. However, the contract unit price for the bladder tanks included the costs of any required pumps. Therefore, the contractor should not have billed the pumps as a separate cost. We question the \$811,000 of excessive costs the City claimed for the 379 pumps.

The contractor also improperly charged the City for 290 more bladder tanks than the contract allowed at an additional cost of \$608,000. The contract allowed 1,624 bladder tanks (two per dwelling). However, the contractor billed the City for 1,914 bladder tanks, or 290 more than the allowed limit under the terms of the contract. Therefore, we question \$608,000 of costs the City claimed for the 290 bladder tanks.

We question \$1,419,000 of excessive contract costs the City claimed for bladder tanks and pumps that the sewer system contractor overbilled.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

City Response. City officials said that we should not question the costs because FEMA did not disallow the costs at project closeout. They said they reported the contractor to the Mississippi State Auditor's Office after an auditor they hired to perform the City's annual single audit identified problems with the number of bladder tanks for which the contractor billed. Therefore, the City should not receive punishment because it acted in good faith and cannot withstand such a financial impact.

Office of Inspector General (OIG) Response. We disagree. The City failed to enforce its own contract and should not have paid for items the contract did not authorize. Therefore, these costs were unnecessary and unreasonable, and FEMA should not fund the \$1,419,000 of excessive and unauthorized contract costs the City claimed. Further, according to Federal regulations at 44 CFR 13.51(a) the closeout of a grant does not affect the Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review.

Finding B: Contracting Procedures

The City did not comply with Federal procurement requirements when awarding contracts for permanent repair work valued at \$248,586. Federal procurement regulations at 44 CFR 13.36 required the City to conduct all procurement transactions in a manner providing full and open competition. Noncompetitive procurement is allowable 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 (c)(1) and 44 CFR 13.36(d)(4)(i)(B)).

In addition, FEMA's *Public Assistance Guide* (FEMA 322, *Public Assistance Guide*, 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. FEMA may grant exceptions to Federal procurement requirements to subgrantees on a case-by-case basis (44 CFR 13.6(c)).

Full and Open Competition

The City did not solicit competitive bids for architectural and engineering (A/E) contract work totaling \$248,586 under Project 4917. Full and open competition increases the probability of reasonable pricing from the most qualified contractors and helps discourage and prevent favoritism, collusion, fraud, waste, and abuse.

Project 4917 authorized the City to incur costs for A/E services (engineering and design and contract monitoring) for installing a temporary sewer collection system. Instead of seeking competitive bids for the A/E work, the City hired an A/E firm it had used for City projects before Hurricane Katrina to perform the disaster-related work valued at



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

\$248,586. City officials said that they did not seek competitive bids because the City had used the firm since 1997 or 1998 and they were familiar with the firm's work.

Further, City officials believed that Federal competition requirements did not apply to the contract work because the Governor of Mississippi had declared a state of emergency after the storm. Although Federal regulation 44 CFR 13.36(d)(4)(i)(B) allows procurements by noncompetitive proposals when the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation, the contract work in question was not for emergency work and did not occur during exigent circumstances. It was for permanent repair work that the City began in May 2007 (21 months after the disaster) and completed in December 2008. Therefore, we question \$248,586 for contract work the City procured without full and open competition.

City Response. City officials disagreed with our position that FEMA should disallow the contract costs. They said that FEMA closed out the project on November 10, 2009, which was more than 3 years before our audit began and; therefore, FEMA is statutorily barred from disallowing the costs as prescribed under 42 U.S.C. Section 5205 (*Robert T. Stafford Disaster Relief and Emergency Assistance Act*). Additionally, City officials said that FEMA should allow the noncompetitive contract costs because the A/E firm the City hired for the project was the City engineer at the time of Hurricane Katrina. Because of this business relationship, the firm was intricately familiar with the work the City needed to complete because it had performed the initial review and analysis of the sewer project. Finally, City officials said that FEMA should allow the costs because it reviewed the costs at project closeout, did not question the noncompetitive contract, and allowed the costs as reasonable.

OIG Response. We disagree with the City's assertions. According to the criteria at 42 U.S.C. Section 5205, "no administrative action to recover any payment made to a State or local government for disaster or emergency assistance under this chapter shall be initiated in any forum after the date that is 3 years after the date of transmission of the final expenditure report for the disaster or emergency." However, FEMA Disaster 1604, which relates to Hurricane Katrina for the State of Mississippi, remains open; and the State has not submitted its final expenditure report to FEMA. Therefore, this statute does not apply in this case. Further, Federal procurement regulations do not permit noncompetitive contracts because of a previous business relationship with a contractor. Finally, as previously discussed, 44 CFR 13.51(a) states that the closeout of a grant does not affect the Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review.



Finding C: Interest Earned on FEMA Advances

The City did not remit to FEMA \$21,440 in interest earned on grant advances. According to Federal regulation 44 CFR 13.21(i) grantees and subgrantees shall promptly, but at least quarterly, remit interest they earn on advances (less \$100 per year for administrative purposes) to the Federal agency. Further, 44 CFR 13.21(c) allows subgrantees to receive advance payments, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer and disbursement of the funds.

The City placed \$46,759,837 of FEMA funds it received for Projects 4916 and 4917 into an interest-bearing account. The State advanced funds to the City from 2007 to 2009. Our analysis of the account revealed that the City had earned \$21,740 in interest on the advanced funds at the time of project closeout, but had not remitted the interest to FEMA. Therefore, the City should remit \$21,440 (\$21,740 less \$300 for administrative purposes) of the earned interest to FEMA.

During our fieldwork, City officials remitted the earned interest to FEMA. Therefore, we consider this issue closed.

Finding D: Grant Management

Based on the nature and extent of ineligible costs we identified in this audit, the State should have done a better job of reviewing the City's contracting methods and project costs it submitted for reimbursement. According to 44 CFR 13.36(b)(2), the grantee is responsible for managing and monitoring each project to ensure compliance with applicable Federal requirements. Therefore, we recommend that FEMA remind the State of its grant management responsibilities for monitoring and reviewing costs that subgrantees claim.

RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region IV:

Recommendation #1: Disallow \$1,419,000 of contract costs the City claimed under Project 4916 that the contractor did not bill according to the contract terms unless the City provides additional evidence to show the costs are eligible (finding A).

Recommendation #2: Direct the City to comply with contract monitoring requirements for activities under the FEMA award (finding A).



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Recommendation #3: Disallow \$248,586 of ineligible costs the City claimed for contracts that it did not procure in accordance with Federal requirements, unless FEMA decides to grant an exception for all or part of the costs as provided for in 44 CFR 13.6(c) and Section 705(c) of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act*, as amended (finding B).

Recommendation #4: Direct the State to advise its subgrantees of their responsibility to comply with Federal procurement regulations and FEMA guidelines when acquiring goods and services with FEMA funds (finding B).

Recommendation #5: Direct the City to remit \$21,440 of interest earned on FEMA advanced funds so that FEMA can put those funds to better use (finding C).²

Recommendation #6: Direct the State to advise subgrantees of their responsibility to remit any interest earned on FEMA advanced funds at least quarterly (less \$100 allowed yearly for administrative costs), or reduce its requests to the State for reimbursement of project expenditures by any interest earned amount (finding C).

Recommendation #7: Remind the State that it is the grantee's responsibility to adequately review costs subgrantees claim for adherence to Federal regulations and FEMA guidelines (finding D).

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed the results of our audit with the 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 22, 2013. City officials disagreed with our findings and recommendations. We incorporated their comments, as appropriate, into 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 the contact information of 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, we will consider the recommendations as open and unresolved.

² During our fieldwork, the City returned \$25,878 in interest to the State; therefore, we consider this recommendation resolved and closed.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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 David Kimble, Director; Larry Arnold, Audit Manager; and Melissa Powe Williams, Auditor-In-Charge.

Please call me with any questions at (202) 254-4100, or your staff may contact David Kimble, Director, Eastern Regional Office, at (404) 832-6702.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Exhibit

Schedule of Projects Audited and Questioned Costs

Project Number	Category	Project Scope	Amount Awarded	Amount Claimed	Amount Questioned	Funds Put To Better Use	Finding
4916	F	Temporary Sewer Collection System	\$4,927,000	\$4,927,000	\$1,419,000	\$ 0	A
					0	21,354	C
4917	F	Temporary Sewer Collection System – A/E	248,586	248,586	248,586	86	B,C
Totals			\$5,175,586	\$5,175,586	\$1,667,586	\$21,440	



Report Distribution

Department of Homeland Security

Secretary
Chief of Staff
Chief Financial Officer
Under Secretary for Management
Chief Privacy Officer
Audit Liaison

Federal Emergency Management Agency

Administrator
Chief of Staff
Chief Financial Officer
Chief Counsel
Chief Procurement Officer
Director, Risk Management and Compliance
Audit Liaison, Region IV
Audit Liaison, (Job Code G-13-016)

State

Executive Director, Mississippi Emergency Management Agency
State Auditor, Mississippi

Subgrantee

City Clerk, City of Waveland

Office of Management and Budget

Chief, Homeland Security Branch
DHS OIG Budget Examiner

Recovery Accountability and Transparency Board

Director, Investigations, Recovery Accountability and Transparency Board

Congress

Senate Committee on Appropriations, Subcommittee on Homeland Security
Senate Committee on Homeland Security and Governmental Affairs
House Committee on Appropriations, Subcommittee on Homeland Security
House Committee on Homeland Security
House Committee on Oversight and Government Reform

ADDITIONAL INFORMATION

To view this and any of our other reports, please visit our website at: www.oig.dhs.gov.

For further information or questions, please contact Office of Inspector General (OIG) Office of Public Affairs at: DHS-OIG.OfficePublicAffairs@oig.dhs.gov, or follow us on Twitter at: [@dhsoig](https://twitter.com/dhsoig).

OIG HOTLINE

To expedite the reporting of alleged fraud, waste, abuse or mismanagement, or any other kinds of criminal or noncriminal misconduct relative to Department of Homeland Security (DHS) programs and operations, please visit our website at www.oig.dhs.gov and click on the red tab titled "Hotline" to report. You will be directed to complete and submit an automated DHS OIG Investigative Referral Submission Form. Submission through our website ensures that your complaint will be promptly received and reviewed by DHS OIG.

Should you be unable to access our website, you may submit your complaint in writing to:

Department of Homeland Security
Office of Inspector General, Mail Stop 0305
Attention: Office of Investigations Hotline
245 Murray Drive, SW
Washington, DC 20528-0305

You may also call 1(800) 323-8603 or fax the complaint directly to us at (202) 254-4297.

The OIG seeks to protect the identity of each writer and caller.