

**FEMA Should Disallow over  
\$4 Million Awarded to Mountain  
View Electric Association,  
Colorado, for Improper  
Procurement Practices**





# DHS OIG HIGHLIGHTS

## ***FEMA Should Disallow over \$4 Million Awarded to Mountain View Electric Association, Colorado, for Improper Procurement Practices***

July 16, 2015

### **Why We Did This**

The Mountain View Electric Association (Association) received a \$7.1 million award of Federal Emergency Management Agency (FEMA) Public Assistance grant funds to repair facilities damaged in the Colorado Black Forest Fire. We audited \$7.4 million in disaster-related costs, which included \$322,417 in costs overruns.

### **What We Recommend**

FEMA should disallow over \$4 million in ineligible contract costs. The Colorado Division of Homeland Security and Emergency Management (Colorado) should provide the Association with any additional assistance it may need to comply with Federal requirements.

#### **For Further Information:**

Contact our Office of Public Affairs at (202) 254-4100, or email us at [DHSOIG.OfficePublicAffairs@oig.dhs.gov](mailto:DHSOIG.OfficePublicAffairs@oig.dhs.gov)

### **What We Found**

The Association did not always account for and expend FEMA Public Assistance grant funds in accordance with Federal regulations. Specifically, the Association did not follow all applicable Federal procurement standards in awarding FEMA-approved work valued at over \$4 million for utility repairs and debris removal. As a result, FEMA has no assurance that costs are reasonable or that disadvantaged firms had sufficient opportunities to bid on Federal work as Congress intended. In addition, the lack of open and free competition increased the risk of favoritism, collusion, fraud, waste, and mismanagement of Federal resources. Therefore, FEMA should disallow over \$4 million in contract costs claimed as ineligible for Federal funding, unless FEMA grants the Association an exception for all or part of the ineligible contract costs.

The findings in this report occurred in part because Colorado did not always fulfill its grantee responsibilities to manage day-to-day operations of the Association's subgrant activities and did not notify Association officials that they needed to follow Federal procurement standards.

### **FEMA Response**

FEMA officials generally agreed with our findings and recommendations. FEMA's written response is due within 90 days.




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Department of Homeland Security

Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

July 16, 2015

MEMORANDUM FOR: Sharon Loper  
Acting Regional Administrator, Region VIII  
Federal Emergency Management Agency



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

SUBJECT: *FEMA Should Disallow over \$4 Million Awarded to Mountain View Electric Association, Colorado, for Improper Procurement Practices*  
Audit Report Number OIG-15-113-D

We audited Federal Emergency Management Agency (FEMA) Public Assistance grant funds awarded to the Mountain View Electric Association (Association), Colorado. The Colorado Division of Homeland Security and Emergency Management (Colorado), a FEMA grantee, awarded the Association \$7.1 million for two large projects for damages resulting from the Black Forest Fire that occurred from June 11, to June 21, 2013. The award provided 75 percent FEMA funding for two large projects.<sup>1</sup> We reviewed both large projects totaling \$7.4 million, including \$322,417 in costs overruns (see appendix B). At the time of our audit, the Association had completed both projects, but had not yet submitted a final claim to FEMA.

### Background

The Association, established in 1941 and organized under the laws of the State of Colorado, operates on a cooperative non-profit basis.<sup>2</sup> The Association serves eight counties, covering 5,000 square miles.<sup>3</sup> The June 2013 Black Forest Fire, concentrated in El Paso County, burned 14,280 acres, damaged 25 miles of overhead power lines, and damaged or completely destroyed 500 homes. This disaster, the most destructive in Colorado history, also resulted in two fatalities.

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<sup>1</sup> Federal regulations in effect at the time of the disaster set the large project threshold at \$67,500.

<sup>2</sup> According to the *FEMA Disaster Operations Legal Reference*, Version 2, dated June 1, 2013, electric cooperatives are private companies owned by their customer members. The Association, as a non-profit cooperative that provides electric service, is owned and run by the members it serves.

<sup>3</sup> The eight counties include Arapahoe, Crowley, Douglas, Elbert, El Paso, Lincoln, Pueblo, and Washington.





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**Figure 1: Aerial view of the Black Forest Fire, El Paso County, Colorado (June 11, 2013)**



*Source: Mountain View Electric Association.*

The President signed a major disaster declaration (4134-DR-CO) on July 26, 2013, which authorized FEMA to provide assistance to the Association to restore electrical power including the repair of power lines and the trimming and removal of hazardous trees and broken limbs.

### **Results of Audit**

The Association did not always account for and expend FEMA Public Assistance grant funds in accordance with Federal regulations. Specifically, the Association did not follow all applicable Federal procurement standards in awarding two contracts for FEMA-approved work valued at over \$4 million for utility repairs and debris removal. As a result, FEMA has no assurance that costs were reasonable or that disadvantaged firms had sufficient opportunities to bid on federally funded work as Congress intended. In addition, the lack of open and free competition increased the risk of favoritism, collusion, fraud, waste, and mismanagement of Federal resources. Therefore, FEMA should disallow over \$4 million in contract costs as ineligible for Federal funding, unless FEMA decides to grant the Association an exception for all or part of the ineligible contract costs.

Specifically, the Association (1) did not conduct procurement transactions in a manner providing open and free competition for one contract under Project 03; (2) did not take specific steps to use small businesses, minority firms, and women's business enterprises, whenever possible for both contracts; and



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(3) did not establish written procurement policies and procedures as Federal procurement standards require.

The findings in this report occurred in part because Colorado did not fulfill its grantee responsibilities to manage day-to-day operations of the Association's subgrant activities and did not notify the Association of its responsibility to follow Federal procurement regulations.

**Finding A: Improper Procurement Practices**

The Association did not comply with Federal procurement standards in awarding contract work valued at \$4,010,222 for utility repairs and debris removal (see table 1 in Appendix B). As a result, FEMA has no assurance that costs were reasonable. Therefore, we question \$4,010,222 in contract costs under Projects 03 (\$1,076,007) and 14 (\$2,934,215).

The Association awarded—

- \$1,425,750 for utility repair work under Project 03 using a labor price contract to restore 25 miles of overhead power lines and electric service to the 500 homes the fire damaged. Although the Association had an emergency (exigent) need to restore power to 1 school, and to 250 of the 500 homes the fire damaged, the remaining homes (250) required reconstruction and, therefore, did not need immediate service. The Association completed the emergency repairs within 4 weeks of the fire at a cost of \$349,743. The Association substantially completed the non-emergency work, at a cost of \$1,076,007, on the remaining 250 homes by October 2014—or more than a year after completing the emergency repairs. The Association sole-sourced the contract to a contractor that was performing capital improvements to the Association's utility lines before the disaster.<sup>4</sup>
- \$2,934,215 under Project 14 using a unit price contract to trim or remove 19,367 hazardous trees. The Association awarded the contract under open and free competition for work the contractor performed from October 2013 to June 2014. However, the Association did not take any of the required affirmative steps to ensure that small and disadvantaged business enterprises could participate in the bidding process, if possible.

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<sup>4</sup> As of the end of field work, the Association issued more than \$10 million in work orders from the labor price contract under Project 03, of which \$1,425,750 (\$349,743 in emergency work and \$1,076,007 in non-emergency work) was for FEMA-approved work.



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Federal procurement standards at 2 Code of Federal Regulations (CFR) Part 215 require that subgrantees—<sup>5</sup>

- perform procurement transactions in a manner to provide, to the maximum extent practical, open and free competition, and make awards to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality, and other factors considered (2 CFR 215.43); [We generally consider exigent circumstances to be a valid reason for bypassing competition; however, we define exigency or emergency as the period when immediate actions are required to protect life and property.]
- take specific steps to ensure the use of small businesses, minority firms, and women’s business entities, whenever possible (2 CFR 215.44(b)); and
- establish written procurement policies and procedures (2 CFR 215.44(a)).

The Association however, did not comply with these Federal procurement standards. Specifically, the Association—

- awarded the FEMA-approved work under Project 03 as sole source, although the exigent period had passed. Open and free competition increases the probability of reasonable pricing from the most qualified contractors and helps discourage and prevent favoritism, collusion, fraud, waste, and mismanagement of Federal resources;
- did not comply with Federal requirements by taking affirmative steps to ensure the use of small and minority firms, women’s business enterprises, and labor surplus area firms when possible. As a result, FEMA has no assurance that these types of firms had sufficient opportunities to bid on federally funded work as Congress intended. The required affirmative steps should include using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- did not have written procurement policies and procedures.

FEMA, under 44 CFR 13.6(c), has the authority to grant exceptions on a case-by-case basis to certain administrative requirements, including Federal procurement standards. However, FEMA did not grant this exception. Although the Association did not comply with Federal procurement standards when awarding work under Project 03, we did not question \$349,743 in

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<sup>5</sup> The applicable *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations* are located at 2 CFR 215 (formerly known as Office of Management and Budget (OMB) Circular A-110).



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contract costs incurred during the 4-week emergency period. We considered the 4-week period after the start of the fire (June 11, 2013) an exigent circumstance that warranted the use of sole source procurement, because the Association would not have had time to develop a clear scope of work. However, we did question the \$1,076,007 (\$1,425,750 costs claimed less \$349,743 of emergency repairs) of contract costs the Association incurred after the emergency period. After the emergency period, the Association had sufficient time to solicit competitive bids for the remaining non-emergency work. In addition, while the Association competitively awarded the \$2,934,215 contract to trim or remove 19,367 hazardous trees, it did not take any of the required affirmative steps to ensure that small and disadvantaged business enterprises could participate in the bidding process. Therefore, FEMA should disallow \$4,010,222 (\$1,076,007 from Project 03 and \$2,934,215 from Project 14) as ineligible contract costs.

FEMA concurred with the administrative aspects of the finding in that the Association did not follow Federal procurement standards. FEMA, however, does not concur that it should disallow the contract costs because they relate to FEMA-approved work. FEMA explained that it will thoroughly review the Association's claim for cost reimbursement for Project 03 and will reimburse costs that are reasonable, supported, and disaster related. We discussed these procurement issues with Colorado and Association officials who did not agree or disagree with the finding.

### **Finding B: Grant Management Issues**

Generally, the procurement issues we identified occurred because Colorado, as grantee, did not adequately monitor subgrant activities to ensure that the Association complied with all applicable Federal procurement standards. Federal regulations at 44 CFR 13.37(a)(2) require Colorado to ensure that subgrantees are aware of requirements that Federal statutes and regulations impose on them. Further, 44 CFR 13.40(a) requires Colorado to manage the day-to-day operations of subgrant activity and monitor those activities to ensure compliance with applicable Federal requirements.

FEMA officials, however, told us that FEMA and Colorado provided the Association with many opportunities and resources to understand all Public Assistance Program requirements, including procurement, during applicants' briefings and kick-off meetings. Specifically, Colorado informed disaster grant applicants of their responsibility to comply with all Federal requirements as a condition of receiving the grant, or risk losing Federal funding. Nevertheless,



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this does not relieve Colorado of its responsibility to monitor the Association and ensure it complies with all Federal procurement standards.

### **Recommendations**

We recommend that the Acting Regional Administrator for FEMA Region VIII:

**Recommendation 1:** Disallow \$4,010,222 (Federal share \$3,007,666) as ineligible contract costs, unless FEMA grants an exception for all or part of the costs as 44 CFR 13.6(c) allows, and determines that the contract costs are reasonable (finding A).

**Recommendation 2:** Direct Colorado, as grantee, to provide the Association any additional technical assistance it may need to comply with all applicable Federal regulations, specifically Federal procurement standards (finding B).

### **Discussion with Management and Audit Follow-up**

We discussed these findings with Association officials during the course of this audit and included their comments in this report, as appropriate. We also provided a draft report in advance to FEMA, Colorado, and the Association, and discussed it at exit conferences with FEMA officials on April 29, 2015, and with Colorado and Association officials on May 28, 2015.

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 status of the recommendations.

Please email a signed pdf copy of all responses and closeout requests to Humberto Melara, Director, Western Regional Office, Office of Emergency Management Oversight, at [Humberto.Melara@oig.dhs.gov](mailto:Humberto.Melara@oig.dhs.gov). Until we receive and evaluate your response, we will consider the recommendations open and unresolved.

The Office of Emergency Management Oversight major contributors to this report are Humberto Melara, Director; Louis Ochoa, Audit Manager; Arona Maiava, Auditor-In-Charge, and Auditors Renee Gradin and Willard Stark.





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Please call me with any questions at (202) 254-4100, or your staff may contact Humberto Melara, Director, Western Regional Office, at (510) 637-1463.



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## Appendix A

### Objective, Scope, and Methodology

We audited FEMA Public Assistance grant funds awarded to the Association, Public Assistance Identification Number 041-05567-00. Our audit objective was to determine whether the Association accounted for and expended FEMA grant funds according to Federal regulations and FEMA guidelines for FEMA Disaster Number 4134-DR-CO. Colorado awarded the Association \$7.1 million for damages resulting from the Black Forest Fire that occurred from June 11, to June 21, 2013. The audit covered the period June 11, 2013, to March 5, 2015. Insurance policies did not cover any of the costs of responding to or recovering from this disaster.

We interviewed FEMA, Colorado, and Association officials; reviewed judgmentally selected project costs (generally based on dollar value); and performed other procedures considered necessary to accomplish our objective. As part of our normal audit procedures, we also notified the Recovery Accountability and Transparency Board of all contracts the Association awarded under the grant 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. As of the end of our fieldwork, the Recovery Accountability and Transparency Board's analysis of contracts was ongoing. When it is complete, we will review the results and determine whether additional action is necessary.

We did not assess the adequacy of the Association'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 Association's method of accounting for disaster-related costs and its procurement policies and procedures.

We conducted this performance audit between December 2014 and April 2015, 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.



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## Appendix B

### Potential Monetary Benefits

**Table 1: Projects Audited and Questioned Costs**

FEMA Project Number	FEMA Category of Work*	Gross Award Amount	Project Costs Incurred**	Questioned Costs (Contract Costs)
03	F	\$ 3,837,992	\$ 4,027,407	\$ 1,076,007
14	B	3,233,862	3,366,864	2,934,215
<b>Total</b>		<b><u>\$7,071,854</u></b>	<b><u>\$7,394,271</u></b>	<b><u>\$4,010,222</u></b>

*Source:* Office of Inspector General (OIG) analyses of FEMA and Association project documentation.

\*FEMA identifies type of work by category: A for debris removal, B for emergency protective measures, and C–G for permanent work.

\*\*Project costs incurred include \$322,417 in costs overruns (costs that exceed awards).

**Table 2: Summary of Potential Monetary Benefits**

Type of Potential Monetary Benefit	Amounts	Federal Share
Questioned Costs – Ineligible	\$ 4,010,222	\$ 3,007,666
Questioned Costs – Unsupported	0	0
Funds Put to Better Use	0	0
<b>Totals</b>	<b><u>\$4,010,222</u></b>	<b><u>\$3,007,666</u></b>

*Source:* OIG Analyses of findings in this report.



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**Appendix C**

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**Appendix C (continued)**

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