

**The Jackson County, Mississippi,  
Board of Supervisors Would  
Benefit from Technical Assistance  
in Managing Its \$14 Million FEMA  
Grant Award**



# DHS OIG HIGHLIGHTS



## *The Jackson County, Mississippi, Board of Supervisors Would Benefit from Technical Assistance in Managing Its \$14 Million FEMA Grant Award*

August 10, 2015

### Why We Did This

The County received a \$14 million grant for damages from Hurricane Isaac, an August 2012 disaster. We conducted this audit early in the grant process to identify areas where the County may need additional technical assistance or monitoring to ensure compliance with Federal requirements.

### What We Recommend

FEMA should disallow \$353,154 of unreasonable A/E contract costs and direct Mississippi to monitor the County and provide technical assistance to decrease the risk of losing additional FEMA funds.

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

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

### What We Found

At the time of our audit, the Jackson County, Mississippi, Board of Supervisors (County) had not established accounting procedures to account for disaster costs on a project-by-project basis, as Federal regulations and Federal Emergency Management Agency (FEMA) guidelines require. As a result, we had to rely on direct assistance from County officials to identify project costs and related supporting documentation. Additionally, although most of the County's contracts complied with Federal procurement standards, the County improperly procured an architectural and engineering (A/E) contract totaling \$1.3 million for dredging navigation channels. Inadequate competition increased the likelihood of fraud, waste, and abuse of Federal funds and resulted in at least \$353,154 of unreasonable costs. Further, in soliciting bids for the A/E contract, the County did not provide opportunities for disadvantaged firms, such as small and minority firms, to bid on federally funded work as Congress intended. Lastly, the contract included a clause making payment contingent upon FEMA funding, which Federal cost principles do not allow.

These issues occurred primarily because the County misunderstood Federal accounting and procurement requirements. However, the grantee (Mississippi) is responsible for ensuring that its subgrantee (the County) is aware of and complies with these requirements, as well as for providing technical assistance and monitoring grant activities.

### FEMA Response

FEMA's written response is due within 90 days.



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August 10, 2015

MEMORANDUM FOR: Gracia Szczech  
Regional Administrator, Region IV  
Federal Emergency Management Agency

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

SUBJECT: *The Jackson County, Mississippi, Board of Supervisors  
Would Benefit from Technical Assistance in Managing Its  
\$14 Million FEMA Grant Award*  
Audit Report Number OIG-15-123-D

We audited Federal Emergency Management Agency (FEMA) Public Assistance Program grant funds awarded to the Jackson County, Mississippi, Board of Supervisors (County) for Hurricane Isaac damages. The award provided 75 percent FEMA funding. We reviewed 12 projects totaling \$13.8 million (see appendix B, table 1), or about 98 percent of the total \$14.0 million award the County received from the Mississippi Emergency Management Agency (Mississippi), a FEMA grantee. At the time of our audit, the County had not completed work on all projects and, therefore, had not submitted a final claim to Mississippi for all project expenditures.

Hurricane Isaac occurred over 2 years ago. However, the County had only started some of the disaster-related work and had claimed only \$1.8 million, or about 13 percent of the \$13.8 million we reviewed. We conducted this audit early in the Public Assistance process to identify areas where the County may need additional technical assistance or monitoring to ensure compliance with Federal regulations and FEMA guidelines. In addition, the County has the opportunity to correct non-compliance before it spends the majority of its grant funding. It also allows the County the opportunity to supplement deficient documentation or locate missing records before too much time elapses after project completion.



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### **Background**

On August 29, 2012, the President issued a major disaster declaration for Hurricane Isaac, which made landfall in Mississippi on August 28, 2012. The County suffered major damages to buildings, piers, beaches, and other facilities with its navigation channels taking the biggest hit. The storm surge and run-off from overland flooding deposited sediment in the channels. The County must remove the sediment to restore normal depth and width to its bayous and waterways. At the time of our audit, the County had not started the navigation channels dredging work on most projects. Consequently, the County had claimed only about \$1.8 million of the \$13.8 million award we audited.

### **Results of Audit**

At the time of our audit, the County had not established procedures to account for disaster costs on a project-by-project basis, as Federal regulations and FEMA guidelines require. As a result, we had to rely on direct assistance from County officials to identify project costs and related supporting documentation. Additionally, although most of the County's contracts complied with Federal procurement standards, the County did not properly procure an architectural and engineering (A/E) contract totaling \$1.3 million for dredging navigation channels. The lack of competition increased the likelihood of fraud, waste, and abuse of Federal funds and resulted in at least \$353,154 of unreasonable costs. Further, in soliciting bids for the A/E contract, the County did not provide opportunities for disadvantaged firms, such as small and minority firms to bid on federally funded work as Congress intended. Lastly, the contract included a clause making payment contingent upon FEMA funding, which Federal cost principles do not allow.

These issues occurred because the County misunderstood Federal accounting and procurement requirements. However, the grantee (Mississippi) is responsible for ensuring that its subgrantee (the County) is aware of and complies with these requirements, as well as for providing technical assistance and monitoring grant activities. Therefore, FEMA should disallow \$353,154 of unreasonable costs and direct Mississippi to (1) monitor the County's grant activities and (2) provide technical assistance to aid the County in improving its accounting and procurement policies and procedures for federally funded work and thereby decrease the risk of the County losing additional FEMA funds.



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### **Finding A: Project Cost Accounting**

The County did not account for disaster costs on a project-by-project basis, as Federal regulations require. According to 44 Code of Federal Regulations (CFR) 206.205(b), grantees must account for large project expenditures on a project-by-project basis. FEMA's *Public Assistance Guide* (June 2007, p. 137) extends this requirement to subgrantees by stating:

“The importance of maintaining a complete and accurate set of records for each project cannot be over-emphasized. Good documentation facilitates the project formulation, validation, approval, and funding processes. All of the documentation pertaining to a project should be filed with the corresponding project worksheet and maintained by the applicant as the permanent record of the project.”

The County had not established an accounting method to separately account for project costs that identified project balances, receipts, and expenditures. Therefore, we had to rely on direct assistance from County officials to identify project costs and related supporting documentation.

County officials said they misunderstood Federal requirements for accounting for large projects. During our field work, the County began work on a detailed accounting system to track project cost data and reference such data to applicable source documents. The County finalized the system during our field work. Therefore, we consider this finding resolved and closed.

### **Finding B: Contracting Procedures**

The County awarded five contracts totaling \$13,447,676 for the 12 projects we reviewed. Generally, the County followed Federal procurement standards for four of the five contracts. However, the County improperly awarded one \$1,265,832 contract for A/E services supporting dredging of navigation channels. The contract included an estimated \$353,154 of unreasonable project A/E costs. Specifically, (1) full and open competition did not occur, (2) opportunities for minority firms, women's business enterprises, and labor surplus area firms to bid on federally funded work were not adequate; and (3) the contract included a clause making payment contingent upon FEMA funding, which Federal cost principles and the State-Local agreement do not allow.<sup>1</sup>

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<sup>1</sup> The State-Local agreement is between Mississippi and a subgrantee. The agreement is effective on the date Mississippi and the subgrantee signs it and applies to all assistance funds the subgrantee receives from or through Mississippi.



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Federal procurement standards at 44 CFR 13.36, in part, require the County, as a Federal subgrantee, to—

1. Conduct all procurement transactions in a manner providing full and open competition. Subgrantees may use noncompetitive procurement 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)).
2. Take all necessary affirmative steps to assure the use of minority firms, women's business enterprises, and labor surplus area firms when possible (44 CFR 13.36(e)(1)).
3. Be solely responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements (44 CFR 13.36(b)(11)).

Additionally, according to Federal cost principles at 2 CFR 225, Appendix B, §32.a, the costs of professional and consultant services are allowable “when not contingent upon recovery of the costs from the Federal Government.”

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 County did not competitively bid a contract for professional A/E services totaling \$1,265,832 that supported contract work valued at \$11,704,489 for dredging navigation channels.<sup>2</sup> 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.

Initially, we selected three projects for our audit scope related to dredging the navigation channels, but during the review, we determined the absence of competition for A/E professional services affected seven other dredging projects. Therefore, we expanded our audit scope to include all 10 projects, which included 16 dredging sites.

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<sup>2</sup> The County had not completed any of the dredging work as of our audit scope date; therefore, both the A/E and navigation channels dredging contracts are estimates we based on FEMA's project worksheet estimated costs.



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We determined that at least \$353,154 of A/E costs for the 10 projects were unreasonable (see appendix B). Instead of soliciting competitive proposals, the County awarded a noncompetitive A/E contract to a local firm it used before Hurricane Isaac, saying that the firm was proficient at A/E services related to dredging work. The County then negotiated a contract price of \$1,265,832. Of that amount, \$1,207,582 represented basic A/E fees and \$58,250 represented A/E special services. Therefore, the basic A/E fees comprised 10.3 percent of construction costs (\$1,207,582 divided by \$11,704,489).

FEMA's *Public Assistance Guide* (FEMA 322/June 2007, p. 60) allows 7.3 percent of construction costs for basic A/E services for construction projects of average complexity (curve B). Using the 7.3 percent guideline, we estimated that \$854,428 (\$11,704,489 total construction costs times 7.3 percent) is fair and reasonable compensation for A/E services the firm provided. Therefore, we question as unreasonable \$353,154, which is the difference between the \$1,207,582 at 10.3 percent and the \$854,428 at 7.3 percent.

County officials said they followed Mississippi State Purchase Laws, which did not require the County to compete contracts for A/E services. However, 44 CFR 13.36(b)(1) states that "subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section." Those standards require full and open competition for all procurement transactions including those for A/E services. Lastly, the County signed the State-Local agreement that certifies it will comply with all applicable provisions of Federal and State law and regulation regarding procurement of goods and services.

The County disagreed with this portion of the finding. County officials said that we calculated the A/E estimated contract cost percentage based on total construction costs for all 10 projects, rather than the 10 separate projects. The County understood that calculations of A/E fees should use *actual* construction costs because FEMA will only reimburse the eligible actual percentage at closeout of the project. In addition, because the County has not bid out or completed all 16 dredging sites, the County asserts that any ineligible or excessive costs are impossible to determine at this time.

We disagree with the County's methodology and reasoning. We calculated the basic A/E estimated contract cost percentage based on total construction costs of all 10 projects because the County selected and awarded the contract to only one A/E firm to perform basic A/E work on all 10 projects supporting all 16 dredging sites. Also, according to 44 CFR 13.36(d)(3)(v), after selecting a



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firm for A/E professional services based on qualifications, subgrantees must negotiate a fair and reasonable compensation. Although estimated and not final, the County negotiated a price that represented 10.3 percent of construction costs. Using FEMA's 7.3 percent as a guideline, the 10.3 percent fee the County negotiated is unreasonable. Therefore, our position remains unchanged.

### *The County Did Not Adequately Consider Minority Firms, Women Business Enterprises, and Labor Surplus Area Firms*

The County did not take all necessary affirmative steps to assure the use of minority firms, women's business enterprises, and labor surplus area firms when possible when it procured A/E work valued at \$1,265,832. As a result, these types of firms did not have the opportunity to bid on federally funded work as Congress intended. The steps that Federal procurement standards require 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 (44 CFR 13.36(e)(1) and (2)).

The County disagreed with this portion of the finding. County officials said they followed all local and State procurement laws as FEMA representatives advised during the kick-off meeting.

We disagree with the County's comments. The County did not follow Federal procurement laws. According to 44 CFR 13.36(b), subgrantees will use their own procurement procedures that reflect applicable State and local laws and regulations, if the procedures conform to applicable Federal law. Federal law requires the County to take all necessary affirmative steps to assure the use of minority firms, women's business enterprises, and labor surplus area firms when possible. Lastly, the County signed a State-Local agreement certifying that it would follow all State and Federal regulations and FEMA guidelines. Therefore, our position remains unchanged.

### *The County's Contract Included a Payment Contingency Clause*

The County's \$1,265,832 contract for A/E services included the following statement: "Final engineering fee shall be adjusted to reflect the final construction costs; payment shall not exceed FEMA reimbursements." Federal cost principles do not allow the costs of professional and consultant services when they are "contingent upon recovery of the costs from the Federal Government." In addition, the County signed a State-Local agreement that



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certifies they will not enter into contracts for which payment is contingent upon receipt of State or Federal disaster funds.

The County agreed with this portion of the finding. During field work, the County obtained approval from its Board to amend the contract for A/E services excluding the verbiage. We reviewed the amended contract and it complies with Federal cost principles and the State-Local agreement concerning contract contingency-based payment clauses. Therefore, we consider this portion of the finding resolved and closed.

#### Conclusion

Almost 2 years after Hurricane Isaac, the County still had not begun the contract work for most of its projects. Therefore, exigent circumstances no longer existed that might have warranted the County's use of noncompetitive contracting. It has been FEMA's practice not to disallow contracting costs based solely on a subgrantee's noncompliance with Federal contracting requirements. FEMA usually determines whether the contracting costs were reasonable under the circumstances, and allows only reasonable costs. Therefore, we are not questioning the entire \$1,265,832 of contract costs for A/E activities based on the County's noncompliance with Federal contracting requirements. Instead, we reviewed the contract costs for reasonableness using FEMA's A/E cost guidelines; and we question \$353,154 of the costs as unreasonable.

#### **Finding C: Grant Management**

Mississippi did not fulfill its grantee responsibility to ensure the County properly accounted for disaster costs by project and followed applicable Federal procurement regulations. Federal regulations require grantees to (1) ensure that subgrantees are aware of Federal regulations, (2) manage the day-to-day operations of subgrant activity, and (3) monitor subgrant activity to ensure compliance.<sup>3</sup> After we discussed the accounting deficiencies we identified (finding A) with County officials, they began to establish a detailed accounting system to track project cost data and reference such data to applicable source documents. The County finalized the system during our fieldwork. Additionally, for the portion of finding B that related to the payment contingency clause, the County amended its contract for A/E services to exclude the contract clause that contractor payments would not exceed FEMA reimbursements. Therefore, we consider finding A and the payment contingency clause portion of finding B closed. However, FEMA should direct Mississippi to monitor the County's

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<sup>3</sup> 44 CFR 13.37(a)(2) and 44 CFR 13.40(a).



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subgrant activities and provide technical assistance to assist the County in improving its procurement policies and procedures for federally funded work. Doing so should decrease the risk of the County losing additional FEMA funds.

FEMA and Mississippi officials withheld comments pending receipt of our final report.

### Recommendations

We recommend that the Regional Administrator, FEMA Region IV:

**Recommendation 1:** Disallow \$353,154 (Federal share \$264,866) of ineligible and unreasonable contract costs for basic A/E services that the County did not procure in accordance with Federal requirements, unless FEMA decides to grant an exception for all or part of the costs as 44 CFR 13.6(c) allows and determines that the costs are reasonable (finding B).

**Recommendation 2:** Direct Mississippi to remind the County of its requirement to comply with Federal procurement regulations and FEMA guidelines when awarding contracts for FEMA-funded work (finding B).

**Recommendation 3:** Direct Mississippi to provide additional technical assistance and monitoring to the County to correct the deficiencies we identified in this report and to ensure compliance with grant requirements to decrease the risk of losing additional FEMA funds (finding C).

### Discussion with Management and Audit Follow-up

We discussed the results of our audit with County, Mississippi, and FEMA officials during our audit. We also provided a draft report in advance to these officials and discussed it at the exit conference on May 27, 2015. We included the County's comments, as applicable, in the body of the report. Mississippi and FEMA officials elected to withhold comments until after we issue our final 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 for 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



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responses and closeout request to [Larry.Arnold@oig.dhs.gov](mailto:Larry.Arnold@oig.dhs.gov). Until we receive and evaluate your response, we will consider the recommendations as open and unresolved.

The Office of Emergency Management Oversight major contributors to this report are David Kimble, Director; Larry Arnold, Director; John Skrmetti, Acting Audit Manager; Mary James, Auditor-in-Charge; and Rickey Lynn Smith, Auditor.

Please call me with any questions at (202) 254-4100, or your staff may contact Larry Arnold, Director, Gulf Coast Regional Office, at (228) 822-0346.



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### Appendix A

#### Objective, Scope, and Methodology

We audited FEMA Public Assistance Program grant funds awarded to the County (Public Assistance Identification Number 059-99059-00). Our audit objective was to determine whether the County accounted for and expended FEMA funds according to Federal regulations and FEMA guidelines for FEMA Disaster Number 4081-DR-MS. The County received a Public Assistance grant award of \$14 million from the Mississippi Emergency Management Agency (Mississippi), a FEMA grantee, for damages resulting from Hurricane Isaac, which occurred in August 2012. The award consisted of 14 large projects and 9 small projects.<sup>4</sup>

We audited 12 large projects totaling \$13.8 million (Federal share \$10.4 million, see table 1). Our audit covered the period August 29, 2012, to November 17, 2014, during which the County claimed \$1.8 million (Federal share \$1.4 million) in costs for the 12 projects in our audit scope. For 5 of the 12 projects, we performed a full audit review that included eligibility, procurement, and support; however, we found a procurement issue with 1 contract that affected 7 additional projects. Therefore, we expanded our scope to include the 7 projects and only reviewed the procurement issue related to those projects. At the time of our audit, the County had not completed work on all projects and, therefore, had not submitted a final claim to Mississippi for all project expenditures.

To accomplish our objective, we interviewed FEMA, Mississippi, and County officials; gained an understanding of the County's method of accounting for disaster-related costs and its procurement policies and procedures; judgmentally selected and reviewed (generally based on dollar values) project costs and procurement transactions for the projects in our audit scope; reviewed applicable Federal regulations and FEMA guidelines; and performed other procedures considered necessary under the circumstances to accomplish our audit objective. As part of standard audit procedures, we also notified the Recovery Accountability and Transparency Board of all contracts the County 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.

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<sup>4</sup> Federal regulations in effect at the time of Hurricane Isaac set the large project threshold at \$66,400.



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### **Appendix A (continued)**

The Recovery Accountability and Transparency Board determined that none of the contractors was debarred and no other issues came to its attention related to those contractors that would indicate fraud, waste, or abuse. We did not perform a detailed assessment of the County's internal controls applicable to its grant activities because it was not necessary to accomplish our audit objective.

We conducted this performance audit between November 2014 and May 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. Unless stated otherwise in this report, to conduct this audit, we applied 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**

Project Number	Category of Work - Project Scope <sup>5</sup>	Amount Awarded	Amount Claimed	Questioned Costs
334	A-Debris	\$ 232,509	\$ 232,509	\$ 0
515	G-Three (3) Engineered Beaches	557,717	496,746	0
658	A-Navigation Channel	2,700,561	124,257	60,424
685	A-Navigation Channel-St Martin Bayou	2,469,721	138,588	59,523
689	A-Navigation Channels-3 Sites	3,549,346	634,795	91,840
663	A-Navigation Channel	325,189	3,426	14,193
668	A-Navigation Channels-3 Sites	730,798	39,752	31,370
675	A-Moreton Bayou	101,650	3,319	4,879
683	A-Navigation Channel-Graveline Bayou	1,525,221	37,562	33,657
687	A-Navigation Channels	141,656	6,160	6,264
688	A-Navigation Channel	1,098,544	54,068	36,290
690	A-Navigation Channel-Simmons Bayou	332,426	23,000	14,714
<b>Totals</b>		<b>\$13,765,338</b>	<b>\$1,794,182</b>	<b>\$353,154</b>

Source: Office of Inspector General (OIG) analysis of FEMA project worksheets and County records.

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

Type of Potential Monetary Benefit	Amounts	Federal Share
Questioned Costs – Ineligible	\$353,154	\$353,154
Questioned Costs – Unsupported	0	0
Funds Put to Better Use	0	0
<b>Totals</b>	<b>\$353,154</b>	<b>\$353,154</b>

Source: OIG Analysis of findings in this report.

<sup>5</sup> FEMA classifies disaster-related work by type: debris removal (Category A), emergency protective measures (Category B), and permanent work (Categories C through G).



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**Appendix C**

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