

**The City of Napa, California,
Needs Additional Technical
Assistance and Monitoring to
Ensure Compliance with Federal
Regulations**





DHS OIG HIGHLIGHTS

The City of Napa, California, Needs Additional Technical Assistance and Monitoring to Ensure Compliance with Federal Regulations

August 20, 2015

Why We Did This

On August 24, 2014, a magnitude 6.0 earthquake struck northern California. FEMA expects eligible damages in the City of Napa, California (City) from the earthquake and aftershocks to exceed \$8 million. We conducted this audit early in the grant process to identify areas where the City may need additional technical assistance or monitoring to ensure compliance with Federal requirements.

What We Recommend

FEMA should disallow about \$1 million in ineligible contract costs and direct California, as the grantee, to provide the City additional technical assistance and monitoring, and review contracts for compliance with Federal requirements.

For Further Information:

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

What We Found

The City has adequate policies, procedures, and business practices to account for Public Assistance grant funds according to Federal regulations and Federal Emergency Management Agency (FEMA) guidelines. The City can account for disaster costs on a project-by-project basis and is able to support disaster-related costs adequately. Additionally, the City's insurance procedures and practices are adequate to assure FEMA that the City can properly manage anticipated insurance proceeds and obtain and maintain insurance to mitigate the cost of future damages.

The City also has adequate procurement policies and procedures that are consistent with Federal procurement standards. However, the City did not follow Federal procurement standards or its own contracting requirements when it awarded, without competition, a non-emergency grant management contract for \$994,224. Therefore, we question \$994,224 as ineligible contract costs.

The procurement finding in this report occurred because the City failed to follow its own procurement policies and procedures, and California did not ensure that the City fulfilled its responsibility to comply with all Federal procurement regulations.

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

August 20, 2015

MEMORANDUM FOR: Karen Armes
Acting Regional Administrator, Region IX
Federal Emergency Management Agency



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

SUBJECT: *The City of Napa, California, Needs Additional
Technical Assistance and Monitoring to Ensure
Compliance with Federal Regulations*
Audit Report Number OIG-15-126-D

We audited Federal Emergency Management Agency (FEMA) Public Assistance grant funds awarded to the City of Napa, California (City). We conducted this audit early in the Public Assistance process to identify areas where the City may need additional technical assistance or monitoring to ensure compliance with Federal regulations and FEMA guidelines. In addition, by undergoing an audit early in the grant cycle, grant recipients have the opportunity to correct non-compliance before they spend the majority of their grant funding. It also allows them the opportunity to supplement deficient documentation or locate missing records before too much time elapses.

As of March 5, 2015 (the cut-off date for our audit), FEMA and the California Governor's Office of Emergency Services (California), a FEMA grantee, were still in the process of drafting the City's project worksheets to estimate damages resulting from an earthquake that occurred in August 2014. The award provides 75 percent funding for debris removal, emergency protective measures, and permanent work. FEMA, California, and City officials estimate that disaster-related costs may exceed \$8 million. However, because FEMA was in the process of approving project worksheets, we reviewed source documentation for the \$6 million that the City had incurred in disaster-related costs as of our cut-off date (March 5, 2015) to assess the City's policies and procedures (see table 1 in appendix A). At that time, the City had not submitted any claims for disaster costs to California for review.

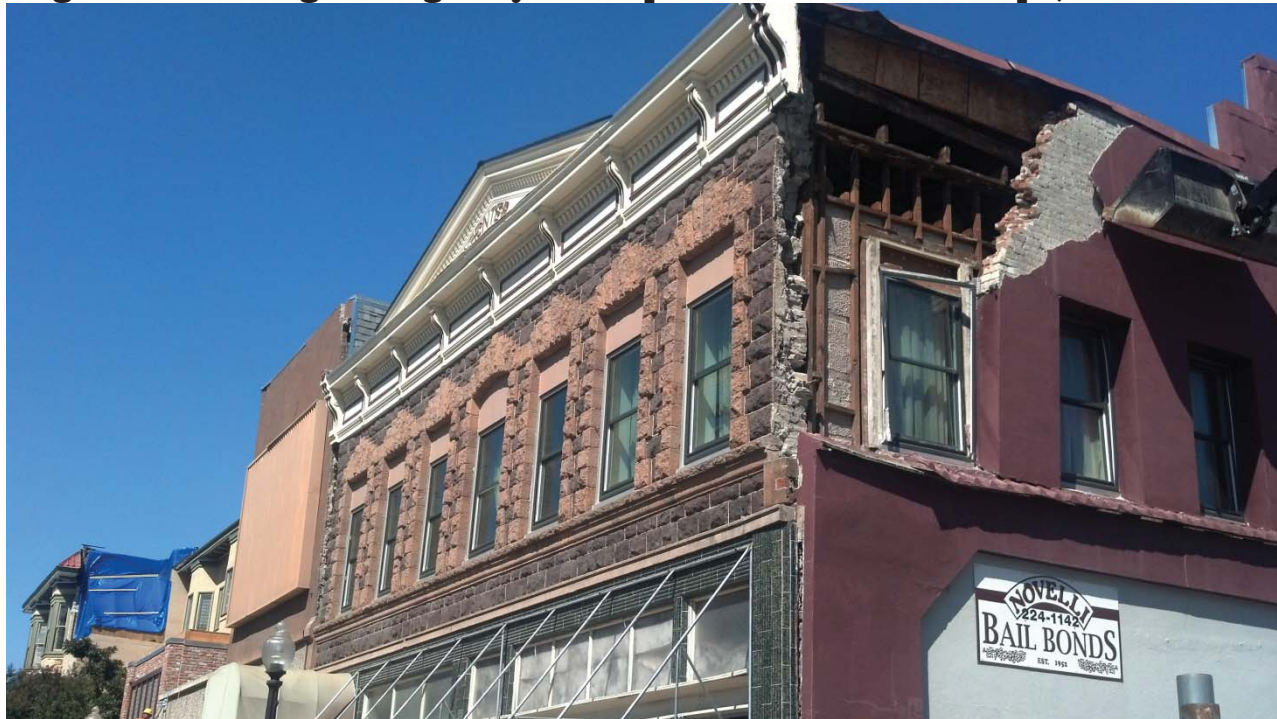


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Background

The City of Napa, located in Northern California, is home to almost 80,000 residents and encompasses 17.84 square miles. On August 24, 2014, a magnitude 6.0 earthquake, as measured on the Richter scale, struck the northern San Francisco, California area. It was the largest earthquake to affect the area in nearly 25 years. The southern Napa region received the most seismic activity, and for days following the earthquake, the area continued to experience aftershocks of 1 to 3.9 magnitudes. The earthquake and aftershocks caused damages to buildings, roads, and bridges throughout the City (see figure 1).

Figure 1: Building Damaged by Earthquake in Downtown Napa, California



Source: Office of Inspector General (OIG)

As a whole, the disaster partially damaged 1,988 structures, destroyed an additional 18 structures, and injured more than 280 people. The President signed a major disaster declaration (DR-4193-CA) on September 11, 2014, to provide California and local governments assistance with recovery efforts for the incident period of August 24, to September 7, 2014. The declaration authorized Federal assistance for Public Assistance in the designated areas and Hazard Mitigation throughout California.



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Results of Audit

The City has adequate policies, procedures, and business practices to account for Public Assistance grant funds according to Federal regulations and FEMA guidelines. The City can account for disaster costs on a project-by-project basis and is able to support disaster-related costs adequately. Additionally, the City's insurance procedures and practices are adequate to ensure that the City can properly manage anticipated insurance proceeds.

The City also has adequate procurement policies and procedures that are consistent with Federal procurement standards. However, the City did not follow Federal procurement standards or its own contracting requirements when it awarded, without competition, a non-emergency grant management contract valued at \$994,224. Therefore, we question \$994,224 as ineligible contract costs.

The procurement finding in this report occurred because the City failed to follow its own procurement policies and procedures, and California did not ensure that the City fulfilled its responsibility to comply with all Federal procurement regulations.

Finding A: Policies, Procedures, and Business Practices

Project Cost Accounting

The City has adequate policies, procedures, and business practices in place to account for disaster-related costs as the following Federal regulations and FEMA guidelines require:

- (1) Grantees must account for large project expenditures on a project-by-project basis (Title 44 Code of Federal Regulations (CFR) 206.205(b)). FEMA requires subgrantees to keep records for all projects on a project-by-project basis (*Public Assistance Guide*, FEMA 322, June 2007, p. 137).
- (2) Subgrantees must maintain accounting records that adequately identify the source and application of Federal funds and maintain source documentation to support those accounting records (44 CFR 13.20(b)(2) and (6)).

We reviewed the City's standard administrative and financial procedures for tracking costs and they appear adequate. We observed City officials apply these procedures to track expenditures they intend to claim for disaster-related costs. City officials explained that their administrative and accounting systems



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track disaster-related costs by assigning a unique identifying activity code to each project. These officials further explained that they hold project managers and finance supervisors responsible for ensuring that employees properly code all disaster-related expenditures to the correct FEMA project, and that expenditures do not exceed contract award or purchase order amounts.

To evaluate the policies and procedures the City used for tracking expenditures, we reviewed source documentation such as purchase orders, invoices, and timesheets from the \$6 million the City has incurred in disaster-related costs. We determined that these records clearly identified the work performed as disaster-related and adequately supported the costs.

Insurance

The City's insurance procedures and practices are adequate to ensure that the City deducts anticipated insurance proceeds from eligible projects in accordance with Federal regulations. As of the end of our field work, the City had not received any insurance recoveries because the City and the insurance company were still estimating repair costs of damaged eligible facilities. The City's insurance policy provides that a damaged facility must sustain estimated repair costs of more than 15 percent of the total value of the facility to qualify for insurance recoveries. Damages to the City's insured facilities had not yet reached this threshold, but the City plans to continue revising repair cost estimates as new information becomes available. However, based on insurance records and interviews with City officials, the City can properly deduct anticipated insurance recoveries from eligible project costs, as 44 CFR 206.250(c) requires.

In our discussions, we also confirmed that City officials are aware that obtaining and maintaining insurance on insurable facilities is a condition of current and future FEMA funding. The City must obtain and maintain insurance that is reasonable and necessary to protect facilities repaired or replaced using Federal funds against future loss from the types of hazard that caused the major disaster (44 CFR 206.253(b)(1) and (f)).

Finding B: Procurement

The City had established procurement policies and procedures that meet Federal procurement standards at 44 CFR 13.36. However, the City violated its own procurement policies and Federal procurement standards by awarding, without competition, a contract valued at \$994,224 for non-emergency grant management services. Specifically, the City did not use full and open competition when awarding the grant management service contract. Because the City used a sole source procurement, the City did not provide minority



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firms, women's business enterprises, and labor surplus area firms the opportunity to compete for federally funded work as required (when possible). Consequently, FEMA has no assurance that these contract costs are reasonable, or that the City fulfilled socioeconomic goals of providing disadvantaged firms the opportunity to bid on federally-funded work as Congress intended. Therefore, we question \$994,224 in contract costs as ineligible.

Federal regulations at 44 CFR 13.36, in part, require the City to—

- (1) conduct procurement transactions in a manner providing full and open competition (44 CFR 13.36(c)(1)). Exceptions should occur only under certain circumstances, one of which is when the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (44 CFR 13.36(d)(4)(i)(B)); and
- (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)).

The City did not comply with these Federal procurement standards when awarding non-exigent work for professional grant management services (professional services). The City (1) bypassed full and open competition and awarded the work as sole source and (2) did not take any affirmative steps to solicit minority firms, women's business enterprises, or labor-surplus area firms (when possible).

City officials disagreed with our conclusion and noted that they complied with Federal procurement standards when awarding the contract for professional services. They explained that they hired the same contractor Napa County had acquired through a purchasing consortium (Consortium).¹ Officials also explained that the contractor assured them "the City" that the Consortium's process for selecting contractors for professional services followed Federal procurement standards. City officials also noted that they hired the contractor during emergency circumstances, which allowed them to bypass formal contracting procedures. The City supported its assertions by providing us with documentation detailing the process they used to procure the professional services.

¹ The Consortium is a purchase consortium located in the Houston-Galveston, Texas area headed by a public agency. It advertises available contractors with specific disaster recovery skills. In February 2013, the Consortium requested and collected proposals from companies that provide "All Hazards Preparedness, Planning, Consulting, & Recovery Services" and prepared a list of 20 qualified companies available for contracting.



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We considered the City officials' comments and reviewed the documentation they provided, along with other records we collected. We disagree that the City followed Federal procurement standards when awarding the contract for professional services. Primarily, the City considered only one contractor from the pool of 20 contractors the Consortium approved for such services. In addition, the City did not take any affirmative steps to solicit minority firms, women's business enterprises, or labor-surplus area firms (when possible).

City officials also contend that they hired the contractor during an emergency period, which allowed them to use informal contracting procedures. We also disagree with City officials on this issue. We typically consider an exigency or emergency as the period when risks to life and property require immediate actions to protect life and property; thus, a valid reason to bypass competition. However, we do not consider hiring a contractor for professional grant management services an exigency or emergency circumstance in which immediate action is necessary to protect life and property. Lastly, City officials should have known what acceptable procurement practices conform to Federal standards, because OIG, FEMA, and California informed the City of such standards during the applicant briefing and kick-off meetings. Additionally, FEMA and California had informed the City of required procurement practices during their participation in previous FEMA Public Assistance grants.²

Regardless, the City's actions in awarding this professional services contract not only violated Federal requirements, but also bypassed the City's own procurement requirements. Federal standards at 44 CFR 13.36(b)(1) allow the City to use its own procurement procedures providing that, at a minimum, they conform with applicable Federal regulations. The City's procurement policies require it to—

- (1) procure all purchases for goods and services through open competition to the maximum extent feasible, or identify a justifiable emergency or exigent circumstance when awarding sole source contracts;
- (2) evaluate all bid prices; and
- (3) ensure that all prime contractors provide an opportunity in a "good faith effort" to subcontract with small and disadvantaged businesses (when possible).

² The City received a \$4 million FEMA Public Assistance grant award for a flood event that occurred in December 2005 (DR 1628).



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The City, however, did not comply with any of these procurement requirements. Therefore, because the contract did not meet Federal or City procurement requirements, we question \$994,224 in contract costs as ineligible.

Finding C: Grant Management Issues

While the City generally had adequate policies and procedures in place, the procurement issues we identified resulted because (1) the City failed to comply with its own and Federal procurement requirements, and (2) California, as the grantee, has not monitored subgrant activities sufficiently to ensure that the City complies with all applicable Federal procurement standards. Federal regulations at 44 CFR 13.37(a)(2) require California to ensure that subgrantees are aware of requirements that Federal regulations impose on them. Further, 44 CFR 13.40(a) requires California to monitor subgrant activities to ensure compliance with applicable Federal requirements.

California officials said they were not aware that the City did not follow Federal or City procurement regulations when it awarded a non-emergency grant management service contract without competition. California noted that, during the applicant's briefing and kick-off meetings, it informed the City of its responsibility to comply with all requirements of FEMA's Public Assistance Program or risk losing Federal funding. Although California informed the City of its subgrantee responsibilities, it needs to increase monitoring of subgrant activities to ensure the City complies with all required Federal standards.

Further, on September 23, 2014, three of our OIG staff members attended the applicants briefing where we provided a presentation to State and local officials. We explained to them about typical audit findings and the need to follow Federal regulations and FEMA guidelines, with specific emphasis on findings related to procurement issues. We informed the audience that to comply with Federal procurement standards, they must (1) bid their contracts competitively; (2) include specific provisions within their contracts; (3) take affirmative steps to include certain disadvantaged businesses in contract solicitations; and (4) maintain documentation to support all their claimed costs, including those related to their procurement process.



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Recommendations

We recommend that the Regional Administrator, FEMA Region IX:

Recommendation 1: Disallow \$994,224 (Federal share \$745,668) of ineligible contract costs the City plans to claim for professional grant management services because the City did not comply with Federal procurement standards, 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 B).

Recommendation 2: Direct California to monitor the City's performance to ensure compliance with Federal procurement standards (finding B).

Recommendation 3: Direct California, as grantee, to provide the City any additional technical assistance it may need to comply with all applicable Federal procurement standards (finding C).

Discussion with Management and Audit Follow-Up

We discussed the results of our audit with FEMA, California, and City 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 with FEMA officials on May 27, 2015, and with City and California officials on June 4, 2015. FEMA officials generally agreed with 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 the recommendations. 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 request to Humberto Melara, Director, Western Regional Office, Office of Emergency Management Oversight, at Humberto.Melara@oig.dhs.gov. Until we receive 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; Renee Gradin, Auditor-In-Charge; Paul Sibal, Auditor; Victor Du, Auditor; and Lance Louie, Auditor.



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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 City, Public Assistance Identification Number 055-50258-00. Our audit objective was to determine whether the City's policies, procedures, and business practices are adequate to account for and expend FEMA grant funds according to Federal regulations and FEMA guidelines for Disaster Number 4193-DR-CA. As of our audit cut-off date, March 5, 2015, FEMA and California were still in the process of drafting the City's project worksheets to estimate damages resulting from an earthquake that occurred in August 2014. FEMA, California, and City officials estimate that disaster-related costs may exceed \$8 million. The award provides 75 percent funding for debris removal, emergency protective measures, and permanent.

Our audit covered the period of August 24, 2014 (first day of the incident period), through March 5, 2015 (our audit cut-off date). As of March 5, 2015, FEMA, California, and City officials estimated that FEMA-eligible damages may exceed \$8 million. However, these officials were still in the process of drafting project worksheets. Therefore, to assess the policies and procedures the City used to account for and expend FEMA funds, we reviewed source documentation for the \$6 million that the City had incurred in disaster-related costs as of March 5, 2015 (see table 1). At that time, the City had not submitted any claims for disaster costs to California for review.

We interviewed FEMA, California, and City officials; assessed the adequacy of the policies, procedures, and business practices the City uses or plans to use to account for and expend Federal grant funds and to procure and monitor contracts for disaster work; judgmentally selected and reviewed (generally based on dollar amounts and type of costs) costs the City had incurred and its procurement actions as of March 5, 2015; reviewed applicable Federal regulations and FEMA guidelines; and performed other procedures considered necessary to accomplish our objective.



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Appendix A (continued)

As part of our standard auditing procedures, we also notified the Recovery Accountability and Transparency Board of the contract the City awarded under the grant that we reviewed to determine whether the contractor was debarred, or whether there were any indications of other issues related to the contractor that would indicate fraud, waste, or abuse. As of the date of this report, the Recovery Accountability and Transparency Board’s analysis of contract was ongoing. When it is complete, we will review the results and determine whether additional action is necessary. We did not perform a detailed assessment of the City’s internal controls over its grant activities because it was not necessary to accomplish our audit objective.

Table 1: City’s Incurred Disaster-Related Costs

FEMA Project Number*	FEMA Category of Work	Costs Incurred as of March 5, 2015
TBD	A: Debris Removal	\$ 1,676,008
TBD	B: Emergency Protective Measures	2,079,405
TBD	C: Roads and Bridges	5,403
TBD	D: Water Control Facilities	32,639
TBD	E: Buildings and Equipment	132,119
TBD	F: Utilities	757,487
TBD	G: Parks, Recreational, and Other	78,683
TBD	Uncategorized	1,247,463
Total		\$6,009,207

Source: OIG analysis of the City’s records

* At the time of our audit, the City was in the process of accounting for disaster costs by FEMA’s category of work but had yet to account for the costs by FEMA approved worksheet (project).

We conducted this performance audit between March and June 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 2: Summary of Potential Monetary Benefits

Type of Potential Monetary Benefit	Total	Federal Share
Questioned Costs – Ineligible	\$ 994,224	\$ 745,668
Questioned Costs – Unsupported	0	0
Funds Put to Better Use	0	0
Totals	<u>\$994,224</u>	<u>\$745,668</u>

Source: OIG analysis of findings in this report



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Appendix C

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