

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





DHS OIG HIGHLIGHTS

Napa County, California, Needs Additional Technical Assistance and Monitoring to Ensure Compliance with Federal Regulations

August 28, 2015

Why We Did This

On August 24, 2014, a magnitude 6.0 earthquake struck northern California. FEMA expects eligible damages in Napa County, California (County), from the earthquake and aftershocks to exceed \$6 million. 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 about \$1 million in ineligible contract costs and direct California, as the grantee, to provide the County 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 County 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 County can account for disaster costs on a project-by-project basis and is able to adequately support repair costs. Additionally, the County's insurance procedures and practices are adequate to ensure that the County can properly manage anticipated insurance proceeds.

The County also has adequate procurement policies and procedures that are consistent with Federal procurement standards. However, the County did not follow Federal procurement standards or its own contracting requirements when it awarded, without competition, a non-emergency grant management contract for \$973,778. Therefore, we question \$973,778 as ineligible contract costs.

The procurement findings in this report occurred because the County failed to follow its procurement policies and procedures and California did not ensure that the County 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 28, 2015

MEMORANDUM FOR: Robert J Fenton
Regional Administrator, Region IX
Federal Emergency Management Agency

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

SUBJECT: *Napa County, California, Needs Additional
Technical Assistance and Monitoring to Ensure
Compliance with Federal Regulations*
Audit Report Number OIG-15-135-D

We audited Federal Emergency Management Agency (FEMA) Public Assistance grant funds awarded to Napa County, California (County). 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, 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 2015, FEMA and the California Governor's Office of Emergency Services (California), a FEMA grantee, were in the process of drafting the County's project worksheets to estimate damages resulting from the August 2014 earthquake. Although County officials estimate that damages will exceed \$93 million, FEMA and California officials estimate that only about \$6 million in repair costs will be eligible for FEMA reimbursement.¹ The award provides 75 percent funding for debris removal, emergency protective measures, and permanent work. At the time of our audit, FEMA had not finalized any large projects and had only approved project worksheets for two small projects. Additionally, the County was in the process of accounting for disaster costs but had not submitted a cost claim to California for reimbursement. Therefore, to assess the policies and procedures the County used to account for and expend FEMA funds, we reviewed the \$3.8 million the County had incurred in disaster-related costs at the time of our audit.

¹ The County's \$93 million estimate includes costs for improvements to damaged elements and other costs that are not eligible for FEMA reimbursement, such as business interruption.

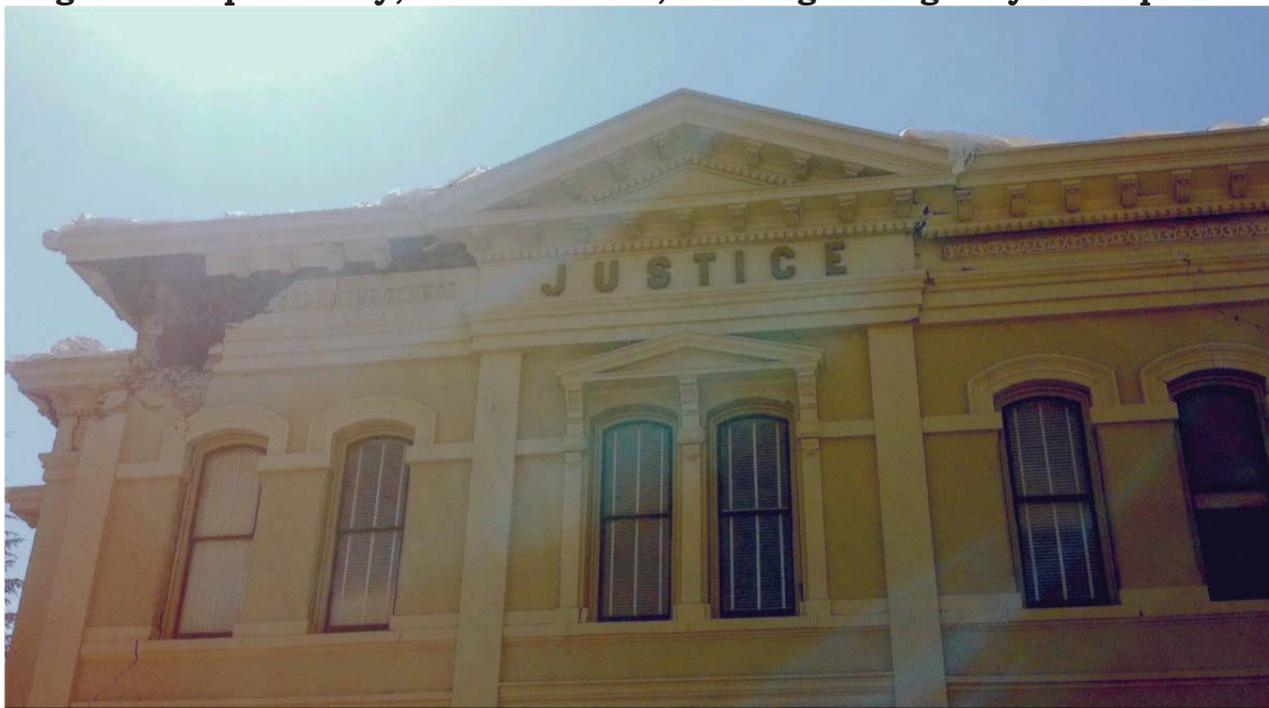


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Background

Napa County, located in Northern California, is home to over 140,000 residents and encompasses 748 square miles. The County is known for its grape and wine industry, which has an annual economic impact of \$9.5 billion. 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 County (see figure 1).

Figure 1: Napa County, Hall of Justice, Building Damaged by Earthquake



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

The County also has adequate procurement policies and procedures that are consistent with Federal procurement standards. However, the County did not follow Federal procurement standards or its own contracting requirements when it awarded, without competition, a non-emergency grant management contract valued at \$973,778. Therefore, we question \$973,778 as ineligible contract costs.

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

Finding A: Policies, Procedures, and Business Practices

Project Cost Accounting

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

- (1) Account for large project expenditures on a project-by-project basis (Title 44 Code of Federal Regulations (CFR) 206.205(b)), and
- (2) 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 County's standard administrative and financial procedures for tracking costs and they appear adequate. We observed County officials using these procedures to track expenditures they intend to claim for disaster-related costs. County officials explained that their administrative and accounting systems 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



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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 County used for tracking expenditures, we reviewed source documentation such as purchase orders, invoices, and timesheets from the \$3.8 million the County had incurred in disaster-related costs. We determined that these records clearly identified the work as disaster-related and adequately supported the costs.

Insurance

The County's insurance procedures and practices are adequate to ensure that the County deducts anticipated insurance proceeds from eligible projects in accordance with Federal regulations. As of the end of audit fieldwork, the County had received insurance proceeds of approximately \$4.2 million and anticipated total proceeds to be about \$9.5 million for its insurable facilities. The County has not allocated any of the insurance recoveries because FEMA has not yet finalized project worksheets. However, based on insurance records and interviews with County officials, the County can properly deduct anticipated insurance recoveries from eligible project costs, as 44 CFR 206.250(c) requires.

In our discussions, we also confirmed that County officials are aware that obtaining and maintaining insurance on insurable facilities is a condition of current and future FEMA funding. The County 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 County had established procurement policies and procedures in place that meet Federal procurement standards at 44 CFR 13.36. However, the County violated its own procurement policies and Federal procurement standards by awarding, without competition, a contract valued at \$973,778 for non-emergency grant management services. Specifically, the County failed to (1) promote full and open competition when awarding the grant management service contract, (2) conduct a cost or price analysis, or (3) allow minority firms, women's business enterprises, and labor-surplus area firms to compete for federally funded work (when possible). Consequently, these types of disadvantaged firms did not have the opportunity to bid on federally funded work as Congress intended, and FEMA has no assurance that these contract costs are reasonable. Therefore, we question \$973,778 in contract costs as ineligible.



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Federal regulations at 44 CFR 13.36, in part, require the County 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));
- (2) perform a cost or price analysis in connection with every procurement action including contract modifications (44 CFR 13.36(f)(1)); and
- (3) 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 County did not comply with these Federal procurement standards when awarding non-emergency work for professional grant management services (professional services). The County (1) bypassed full and open competition and awarded the work as sole source; (2) did not perform a cost or price analysis; and (3) did not take any affirmative steps to solicit minority firms, women’s business enterprises, or labor-surplus area firms (when possible).

County officials disagreed with our conclusion and noted that they complied with Federal procurement standards when awarding the contract for professional services. They stated that the County’s procurement process includes promoting full and open competition, cost analyses, and provides for encouragement of minority firms, women’s business enterprises, and labor-surplus area firms. They explained that they awarded the contract under emergency conditions and used the services of a purchasing consortium (Consortium) to procure the work and ensure compliance with Federal requirements.² To support its assertions, the County provided us documents detailing the process they followed to procure the professional services.

We considered the County officials’ comments and reviewed the documentation they provided, along with other records we collected. We disagree that the County followed Federal procurement standards when awarding the contract for professional services. First, the County only considered one contractor from the pool of 20 contractors the Consortium approved for such services. In addition, the County did not take any affirmative steps to solicit minority firms,

² The Consortium is a purchase consortium located in the Houston-Galveston, Texas area headed by a public agency in which 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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women's business enterprises, or labor-surplus area firms (when possible). Second, County officials did not perform a price analysis until March 2015, which was 6 months after the date they signed the agreement with the contractor and after we brought this discrepancy to their attention.³ County records indicate that it initially relied on the contractor's representations regarding best price. Also, the County's delayed price analysis did not provide clear and convincing evidence that the County secured the best price for the professional services. We identified at least two other contractors the Consortium approved with proposed lower rates for comparable services. We also determined that the contractor the County hired has billed for out-of-state travel costs, an expense the County could have avoided because the County contends that the contractor has a local office and was able to mobilize immediately.

In addition, County officials contend that they hired the contractor during emergency circumstances, which allowed them to bypass formal contracting procedures. We also disagree with County officials on this issue. We typically consider exigent circumstances to be a valid reason for bypassing competition; however, we generally consider exigency or emergency as the period when risks to life and property require immediate action. We do not consider hiring a contractor for professional grant management services an action necessary to protect life and property. In fact, the County's own records describe the required work as consulting services related to maximizing FEMA's reimbursement of the County's disaster costs.⁴

Lastly, County officials should have known what acceptable procurement practices conform to Federal standards, because OIG, FEMA, and California informed the County of such standards during the applicant briefing on September 23, 2014. Moreover, FEMA and California also informed the County of required procurement practices during kick off meetings for this disaster and a previous disaster.⁵

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

³ The County signed an agreement with the contractor on August 27, 2014; and on March 11, 2015, the County confirmed that it had not performed an independent cost and price analysis of the professional services contract rates.

⁴ Napa County Board of Supervisors, Board Agenda, September 23, 2014.

⁵ The County received a \$7 million FEMA Public Assistance grant award for a flood event that occurred in December 2005 (DR 1628).



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emergency/exigent circumstance when awarding sole source contracts;⁶ (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). The County, however, did not comply with any of these procurement standards.

Therefore, because the contract did not meet Federal or County procurement requirements, we question \$973,778 in contract costs as ineligible.

Finding C: Grant Management Issues

Although the County generally had adequate policies and procedures in place, the procurement issues we identified resulted because (1) the County did not comply with its own and Federal procurement requirements; and (2) California, as the grantee, has not adequately monitored subgrant activities to ensure that the County 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 manage the operations of subgrant activity and monitor those activities to ensure compliance with applicable Federal requirements.

California officials said they were not aware that the County did not follow Federal or County procurement regulations when it awarded a non-emergency professional grant management service contract without competition. These officials also noted that during the applicant’s briefing and kick-off meetings, California informed disaster grant applicants of their responsibility to comply with all requirements of FEMA’s Public Assistance Program or risk losing Federal funding. Federal regulations require the County, as recipient of a FEMA grant award, to comply with all Federal requirements, including procurement, when awarding disaster-related work. Although California informed the County of its subgrantee responsibilities, it does not relieve it of its obligation of ensuring that the County 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

⁶ County Code 2.80.020 states that "emergency" means the actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within the County resulting from such conditions as air pollution, fire, flood, storm, epidemic, riot, or earthquake.



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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; and (4) maintain documentation to support all their claimed costs, including those related to their procurement process.

Recommendations

We recommend that the Regional Administrator, FEMA Region IX:

Recommendation 1: Disallow \$973,778 (Federal share \$730,334) of ineligible contract costs the County plans to claim in professional grant management services because the County did not comply with Federal procurement standards, unless FEMA grants an exception for all or part of the costs as provided for in 44 CFR 13.6(c) and determines that the contract costs are reasonable (finding B).

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

Recommendation 3: Direct California, as grantee, to provide the County 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 County 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 County and California officials on June 17, 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



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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.

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.



Appendix A

Objective, Scope, and Methodology

We audited FEMA Public Assistance grant funds awarded to the County, Public Assistance Identification Number 055-99055-00. Our audit objective was to determine whether the County'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 31, 2015, FEMA and California were still in the process of drafting the County's project worksheets to estimate damages resulting from an earthquake that occurred in August 2014. FEMA and California officials estimate that the County's eligible damages will exceed \$6 million, and the County estimates that damages will exceed \$93 million. The award provides 75 percent funding for debris removal, emergency protective measures, and permanent work for large and small projects.⁷

Our audit covered the period of August 24, 2014, through March 31, 2015. During that time, FEMA had approved project worksheets for two small projects. Additionally, the County was in the process of accounting for disaster costs and had not submitted a cost claim to California for reimbursement, and FEMA had not yet finalized any large project worksheets. Therefore, to assess the policies and procedures the County used to account for and expend FEMA funds, we reviewed source documentation such as purchase orders, invoices, and timesheets from the \$3.8 million the County has incurred in disaster-related costs.

We interviewed FEMA, California, and County officials; assessed the adequacy of the policies, procedures, and business practices the County 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) project costs and procurement transactions the County has incurred; reviewed applicable Federal regulations and FEMA guidelines; and performed other procedures considered necessary to accomplish our objective.

⁷ Federal regulations in effect at the time of the disaster set the large project threshold at \$120,000.



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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 County 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 County's internal controls over its grant activities because it was not necessary to accomplish our audit objective.

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 1: Summary of Potential Monetary Benefits

Type of Potential Monetary Benefit	Total	Federal Share
Questioned Costs – Ineligible	\$ 973,778	\$ 730,334
Questioned Costs – Unsupported	0	0
Funds Put to Better Use	0	0
Totals	<u>\$973,778</u>	<u>\$730,334</u>

Source: OIG analysis of findings in this report



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Appendix C

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