

**FEMA Should Recover
\$312,117 of \$1.6 Million Grant
Funds Awarded to the Pueblo
of Jemez, New Mexico**





DHS OIG HIGHLIGHTS

FEMA Should Recover \$312,117 of \$1.6 Million Grant Funds Awarded to the Pueblo of Jemez, New Mexico

March 21, 2016

Why We Did This Audit

The Pueblo of Jemez, New Mexico (Pueblo), received a Public Assistance grant award of \$1.6 million from the New Mexico Department of Homeland Security and Emergency Management (New Mexico), a Federal Emergency Management Agency (FEMA) grantee, for damages from severe storms, flooding, and mudslides that occurred in September 2013.

What We Recommend

FEMA should disallow \$312,117 as ineligible contract costs and direct New Mexico to work with Pueblo officials to ensure their understanding and compliance with Federal procurement standards.

For Further Information:

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

What We Found

The Pueblo accounted for disaster costs on a project-by-project basis. However, the Pueblo did not follow Federal procurement standards in awarding five contracts totaling \$312,117. As a result, full and open competition did not occur and FEMA has no assurance that small and minority businesses and women's business enterprises had sufficient opportunities to bid on federally funded work. In some instances, FEMA also has no assurance that costs were reasonable.

These findings occurred, in part, because the Pueblo believed its procurement policy permitted it to waive bidding requirements by Tribal resolution. Further, New Mexico should have done more as FEMA's grantee to ensure the Pueblo was aware of and complied with Federal procurement standards.

FEMA Response

FEMA officials generally agreed with our findings and recommendations. Appendix C includes FEMA's written response in its entirety. FEMA also provided documentation of actions it took subsequent to its response that addressed the recommendations. FEMA's actions were sufficient to resolve and close all recommendations. Therefore, we consider this report closed and require no further action from FEMA.



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Department of Homeland Security

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

03/21/2016

MEMORANDUM FOR: George A. Robinson
Regional Administrator, Region VI
Federal Emergency Management Agency

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

SUBJECT: *FEMA Should Recover \$312,117 of \$1.6 Million Grant
Funds Awarded to the Pueblo of Jemez, New Mexico*
Audit Report Number OIG-16-52-D

We audited Public Assistance grant funds awarded to the Pueblo of Jemez, New Mexico (Pueblo). The New Mexico Department of Homeland Security and Emergency Management (New Mexico), a Federal Emergency Management Agency (FEMA) grantee, awarded the Pueblo \$1.6 million for damages from severe storms, flooding, and mudslides that occurred in September 2013. The award provided 75 percent Federal funding. We audited six projects totaling \$919,546 or about 58 percent of the total award (see appendix B, table 2). As of June 17, 2015, the cutoff date of our audit, the Pueblo had not completed most of its projects.

Background

The Pueblo of Jemez is one of 19 pueblos located in New Mexico. It is a federally recognized American Indian tribe with 3,400 tribal members. From September 9, to 22, 2013, record-breaking rains caused significant damage to many of the Pueblo's canals, ditches, roads, and irrigation systems. In addition, heavy rains damaged many of the Pueblo's structures including its historic 300-year old adobe San Diego Church.



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Figure 1: Damaged Road after Heavy Rains



Source: Pueblo of Jemez

Results of Audit

The Pueblo accounted for disaster costs on a project-by-project basis. However, the Pueblo did not always expend FEMA grant funds according to Federal regulations and FEMA guidelines. The Pueblo did not follow Federal procurement standards in awarding five contracts totaling \$312,117. As a result, full and open competition did not occur, and FEMA has no assurance that small and minority businesses and women's business enterprises had sufficient opportunities to bid on federally funded work. In some instances, FEMA also has no assurance that costs were reasonable.

The improper procurements occurred, in part, because the Pueblo believed its procurement policy permitted it to waive bidding requirements by Tribal resolution. Further, New Mexico should have done more as FEMA's grantee to ensure the Pueblo was aware of and complied with Federal procurement standards.



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Finding A: Improper Contracting

The Pueblo did not follow Federal procurement standards in awarding five disaster-related contracts totaling \$312,117. As a result, full and open competition did not occur, which increased the risk for fraud, waste, and abuse and decreased the opportunities for small businesses, minority-owned firms, and women’s business enterprises to compete for federally funded work. In addition, because competition was inadequate, FEMA has no assurance that costs were reasonable. Therefore, we question \$312,117 as ineligible.

Federal procurement standards at 44 Code of Federal Regulations (CFR) 13, in part, require that subgrantees—

1. conduct procurement transactions in a manner providing full and open competition (44 CFR 13.36(c)(1));
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. perform a cost or price analysis in connection with every procurement action including contract modifications (44 CFR 13.36(f)(1)); and
4. include required provisions in all their contracts (44 CFR 13.36(i)).

As table 1 shows, the Pueblo awarded all five contracts without following these four standards.

Table 1: Violations of Procurement Standards 1–4 Listed Above

Contract and Scope of Work	Number of Contracts	Contract Award Amount	Amount Questioned*	Violations			
				1	2	3	4
Ditch & Irrigation System	1	\$ 20,433	\$ 20,433	x	x	x	x
Roads & Geothermal Well**	1	36,275	28,775	x	x	x	x
Waste Water Treatment Plant	1	19,994	19,994	x	x	x	x
Project Management & Consulting**	<u>2</u>	<u>242,915</u>	<u>***242,915</u>	x	x		x
Totals	5	\$319,617	\$312,117				

Source: Pueblo procurement records and Office of Inspector General (OIG) analysis

* We questioned only those contract costs incurred for disaster-related work; therefore, these amounts differ from the total contract award amount.

** The Pueblo awarded three contracts to minority firms and women’s business enterprises.

*** FEMA has not yet obligated these costs; therefore, we classify these questioned costs as cost avoidance (see appendix B, table 2).



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Full and Open Competition — The Pueblo awarded all five of its contracts totaling \$312,117 without full and open competition or without obtaining an adequate number of quotes.¹ Instead of soliciting competitive proposals, the Pueblo waived its bidding requirements through various Tribal resolutions and awarded five sole-source contracts.² In limited circumstances, Federal regulations permit procurements by noncompetitive proposals.³ However, this method of contract award is allowable *only* when other methods of procurement are infeasible *and* (1) the item is available only from a single source, (2) a public exigency or emergency exists, (3) FEMA authorizes it, or (4) soliciting bids from a number of sources does not produce adequate competition.⁴

As justification for one of its sole-source contracts, Pueblo officials said the contractor had first-hand knowledge of their sanitary sewer system and worked with the Pueblo on the solution for repair. Although the rationale for the subgrantee's noncompetitive procurement may have met the requirements of state and local procurement laws and regulations, it did not meet the Federal procurement standards at 44 CFR 13.36(d)(4). Consequently, a prior working relationship between the Pueblo and a contractor, or the Pueblo's assertion that a particular contractor was familiar with the work, is not sufficient to meet Federal procurement requirements for single-source noncompetitive procurements.

Without full and open competition (or obtaining an adequate number of quotes for applicable small acquisitions), FEMA has little assurance that contract costs are reasonable. Full and open competition usually increases the number of bids received and thereby increases the opportunity for obtaining reasonable pricing from the most qualified contractors. It also allows greater opportunity for small businesses, minority firms, and women's enterprises to compete for federally funded work. Full and open competition also helps discourage and prevent favoritism, collusion, fraud, waste, and abuse. Therefore, we question \$312,117 of contract costs as ineligible.

Small, Minority, and Women-Owned Businesses — The Pueblo did not take required steps to ensure the use of small and minority firms and women's

¹ For procurements less than the simplified acquisition threshold (currently \$150,000), subgrantees must obtain price or rate quotations from an adequate number of qualified sources (44 CFR 13.36(d)(1)).

² Section 5.D(x)(e)2 of the *Pueblo of Jemez Procurement Policy* states, "[t]he Pueblo of Jemez reserves the right to non-competitively purchase any item up to \$20,000 dollars [sic] with written approval from the Governor and any expenditure or contract in excess of \$20,000 from the Tribal Council." *Walatowa, Pueblo of Jemez, Procurement Policy* (POJ resolution 2010-46), September 29, 2010, p. 10.

³ 44 CFR 13.36(d)(4).

⁴ 44 CFR 13.36(d)(4)(i)(A)-(D)



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business enterprises whenever possible. Pueblo officials said that, while it is not overtly apparent, they actively and affirmatively try to issue all contracts to Jemez-owned, Native American-owned, and minority- and women-owned businesses, in that order, when possible. Regardless, as a condition of the grant, Federal regulations require the Pueblo to take affirmative steps to solicit these types of businesses when procuring goods and services under federally funded work. The required steps include using the services and assistance of the Small Business Administration (SBA) and the Minority Business Development Agency of the Department of Commerce to solicit and use these firms. Although the Pueblo did not take affirmative steps to consider these types of businesses, it nonetheless awarded more than half its contracts totaling \$271,690 to women- and minority-owned businesses.

Cost or Price Analysis — The Pueblo did not perform the federally required cost or price analysis for three of the five contracts. The absence of a cost or price analysis increases the risk of unreasonable contract costs and misinterpretations or errors in pricing relative to scopes of work. Pueblo officials said that they normally do not perform a cost or price analysis but instead rely on cost estimates Federal granting agencies prepare and documentation they receive from individual bidders. However, Pueblo officials did not provide support for how they used FEMA estimates or bidder documentation to assess the reasonableness of the cost bids, especially for those contracts awarded using noncompetitive procurement procedures.

Required Contract Provisions — The Pueblo did not include all required provisions in any of its five contracts. Federal regulations require specific provisions for contracts and subcontracts, such as those for Equal Employment Opportunity, compliance with labor laws, and prohibitions of “kickbacks.” These provisions document the rights and responsibilities of the parties and minimize the risk of misinterpretations and disputes. Pueblo officials said they normally require contractors to use a standard contract that Tribal legal counsel approves. However, as we pointed out previously, following normal state, local or tribal procedures does not negate the requirement to follow Federal regulations when using Federal funds.

FEMA has the authority to waive administrative requirements, which include Federal procurement standards, on a case-by-case basis (44 CFR 13.6(c)). Remedies for noncompliance available to FEMA include disallowance of “all or part of the cost of the activity or action not in compliance” (44 CFR 13.43(a)(2)).

On January 8, 2016, and again on January 14, 2016, FEMA provided documentation that supported the Pueblo’s subsequent withdrawal of its request for FEMA reimbursement for the \$20,433 ditch and irrigation contract (see table 1). In addition, FEMA provided an analysis of the Pueblo’s remaining



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\$291,684 of contract costs and concluded the Pueblo's contract costs were reasonable. We reviewed FEMA's detailed analysis and agree with its determination that the Pueblo's contract costs are reasonable. Consequently, we consider this finding and recommendation 1 to be resolved and closed and require no further action by FEMA.

Finding B: Grant Management

The nature and extent of ineligible costs we identified demonstrate that New Mexico, as grantee, should have been more thorough in monitoring the Pueblo on Federal grant contracting requirements. In its FEMA-State Agreement, New Mexico agreed to "comply with the requirements of laws and regulations found in the Stafford Act and 44 CFR." Further, Federal regulations at 44 CFR 13.37(a)(2) and 13.40(a) require grantees to (1) ensure that subgrantees are aware of Federal regulations, (2) manage the operations of subgrant activity, and (3) monitor subgrant activity to ensure compliance. It was New Mexico's responsibility to ensure the Pueblo complied with applicable Federal regulations and FEMA guidelines. It is FEMA's responsibility to hold New Mexico accountable for proper grant administration. Therefore, we recommend that FEMA remind New Mexico of its grant management responsibilities for monitoring and reviewing costs that subgrantees claim.

We discussed this issue with FEMA officials who, on January 4, 2016, directed New Mexico to work with Pueblo officials to ensure their understanding of applicable Federal procurement standards. Based on FEMA's actions, we consider this finding and recommendation 2 to be resolved and closed and require no further action by FEMA.

Recommendations

We recommend that the Regional Administrator, FEMA Region VI:

Recommendation 1: Disallow \$312,117 (\$234,088 Federal share) 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 the costs are reasonable (finding A). We consider this recommendation to be resolved and closed and require no further action by FEMA because—

- FEMA provided documentation to support the Pueblo's subsequent request to withdraw its request for FEMA reimbursement for its \$20,433 ditch and irrigation contract, and
- FEMA provided documentation to support its determination that the Pueblo's remaining \$291,684 of contract costs are reasonable.



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Recommendation 2: Direct the New Mexico Department of Homeland Security and Emergency Management officials to work with Pueblo officials to ensure their understanding and compliance with the Federal procurement standards (finding B). We consider this recommendation to be resolved and closed and require no further action by FEMA because, on January 4, 2016, FEMA Region VI directed New Mexico to work with Pueblo officials to ensure their understanding of applicable Federal procurement standards.

Discussion with Management and Audit Follow-up

We discussed the results of our audit with Pueblo officials during and after our audit and included their comments in this report, as appropriate. We provided a draft report to FEMA, New Mexico, and Pueblo officials and discussed it at exit conferences with FEMA officials on December 1, 2015, and with New Mexico and Pueblo officials on December 4, 2015. We considered their comments in developing our final report and incorporated their comments as appropriate.

We received FEMA's written response to this report on January 13, 2016 (see appendix C). As discussed under findings A and B, we determined that FEMA's actions were sufficient to resolve and close our two recommendations. Therefore, we consider this report closed and require no further action from FEMA.

The Office of Emergency Management Oversight major contributors to this report are Christopher Dodd, Director; Paige Hamrick, Director; and David B. Fox, Acting Audit Manager.

Please call me with any questions at (202) 254-4100, or your staff may contact Paige Hamrick, Director, Central Regional Office - North, at (214) 436-5200.



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Appendix A Objective, Scope, and Methodology

We audited FEMA Public Assistance grant funds awarded to the Pueblo, Public Assistance Identification Number 000-35180-00. Our audit objective was to determine whether the Pueblo accounted for and expended FEMA grant funds according to Federal regulations and FEMA guidelines. The Pueblo received a grant award of \$1.6 million from New Mexico for damages resulting from FEMA Disaster Number 4152-DR-NM. The award provided 75 percent FEMA funding for 4 large projects and 56 small projects.⁵

We audited five projects (three large and two small) totaling \$851,693, or 53 percent of the total award (see table 2, appendix B). Because our initial review of the Pueblo's contracting methodology identified potential problems, for contract and procurement purposes only, we expanded the scope of our audit to include an additional project totaling \$67,853.⁶ The audit covered the period September 9, 2013, to June 17, 2015, the cutoff date of our audit. Table 2 in appendix B describes the initial five projects and additional project we audited and the amounts we questioned under each project.

We interviewed FEMA, New Mexico, and Pueblo officials; gained an understanding of the Pueblo's method of accounting for disaster-related costs and its procurement policies and procedures; judgmentally selected (generally based on dollar value) and reviewed 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 to accomplish our objective. We did not assess the adequacy of the Pueblo's internal controls applicable to grant activities because it was not necessary to accomplish our audit objective.

We conducted this performance audit between June 2015 and December 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. To conduct this audit, we applied the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.

⁵ Federal regulations in effect at the time of the disaster set the large project threshold at \$68,500 [*Notice of Adjustment of Disaster Grant Amounts*, 78 Fed. Reg. 64,232 (October 28, 2013)].

⁶ Because there were no findings regarding the Pueblo's inability to substantiate its costs, we did not perform a detailed testing of costs associated with the expanded audit scope.



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Appendix B Potential Monetary Benefits

Table 2: Projects Audited, Questioned Costs, and Cost Avoidance

Project Number	Category of Work*	Award Amount	Questioned Costs (Finding A)	Cost Avoidance (Finding A)
438	D	\$ 82,048	\$ 20,433	\$ 0
548	E	29,337	28,775	0
597	F	364,724	0	0
600	C	351,679	0	0
672	E	23,905	0	0
Various**		Unknown	0	\$ 242,915
Subtotal		\$ 851,693	\$ 49,208	\$ 242,915
598	F	\$ 67,853	\$ 19,994	\$ 0
Subtotal		\$ 67,853	\$ 19,994	\$ 0
Totals		\$919,546	\$69,202	\$ 242,915

Source: FEMA project worksheets, Pueblo records, and OIG analysis

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

** The amount of cost avoidance represents consulting and engineering services relative to multiple unknown projects FEMA officials said they have not yet obligated.

Table 3: Summary of Potential Monetary Benefits

Type of Potential Monetary Benefit	Amounts	Federal Share
Questioned Costs – Ineligible	\$ 69,202	\$ 51,902
Questioned Costs – Unsupported	0	0
Cost Avoidance	242,915	182,186
Totals	\$312,117	\$234,088

Source: OIG analysis of report findings



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Appendix C
FEMA's Response to Draft Report


U.S. Department of Homeland Security
FEMA Region 6
Federal Regional Center
800 North Loop 288
Denton, TX 76209-3698



FEMA

January 13, 2016

MEMORANDUM FOR: Christopher Dodd, Director
OIG Central Region Office - South

FROM: 
George A. Robinson
Regional Administrator

SUBJECT: Management Response to Draft Report
*FEMA Should Recover \$312,117 of \$1.6 Million Grant
Funds Awarded to the Pueblo of Jemez, New Mexico*
FEMA Disaster: DR-NM-4152
Job Code: G-15-024

Thank you for the opportunity to review and comment on the referenced draft report. The Federal Emergency Management Agency (FEMA) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report. We are pleased that your draft report references the work FEMA is doing to reduce disaster damage under the Public Assistance Program in the State of New Mexico.

FEMA concurs with both recommendations of the draft report. Specifically, the OIG recommended that FEMA Region 6 take the following actions:

Recommendation 1: *Disallow \$312,117 (\$234,088 Federal share) 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 the costs are reasonable (finding A).*

Response: Concur. While FEMA Region 6 agrees with the recommendation that all applicants should adhere to Federal procurement standards, FEMA will evaluate the procurement action for cost reasonableness and possible exception.

Estimated Completion Date: To be Determined

Recommendation 2: *Direct New Mexico's Department of Homeland Security and Emergency Management officials to work with Pueblo officials to ensure their understanding and compliance with the Federal procurement standards (finding B).*

Response: Concur. FEMA Region 6 agrees with this recommendation. FEMA Region 6 issued a letter to the New Mexico Department of Homeland Security and Emergency Management (NMDHSEM) on November 26, 2013, to ensure awareness of the Federal procurement

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Appendix C (continued)

Christopher Dodd
January 13, 2016
Page Two

requirements as the grantee. In this letter, we also requested NMDHSEM take appropriate measures to implement policies and procedures for their subgrantees to minimize the potential for violations in future disaster declarations. In addition, on January 4, 2016, FEMA Region 6 provided additional direction to NMDHSEM regarding procurement practices applicable to the Pueblo of Jemez. We believe this recommendation should be considered resolved and closed.

Estimated Completion Date: To be Determined

Again, thank you for the opportunity to comment. If you have any questions, please contact Kent Baxter, Audit Coordinator, at (940) 898-5399. We look forward to working with you in the future to resolve the recommendations and close this audit.

cc: Jay Mitchell, NMDHSEM
Moises Dugan, R6-ORA
Gregory W. Eaton, R6-REC
Mark Price, R6-REC
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Appendix D (continued)

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