

U.S. Department of Homeland Security
Eastern Region
Office of Emergency Management Oversight
10 Tenth Street, Suite 750
Atlanta, Georgia 30309



Homeland
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May 26, 2010

MEMORANDUM FOR: Lynn Gilmore Canton, Regional Administrator
FEMA Region II

FROM: C. David Kimble, Director
Eastern Region Office

A handwritten signature in black ink that reads "C. David Kimble".

SUBJECT: *City of Buffalo, New York*
Public Assistance Identification Number: 029-11000-00
FEMA Disaster No. 1665-DR-NY
Report Number DA-10-10

We performed an audit of public assistance funds awarded to the City of Buffalo, New York (City). The audit objective was to determine whether the City accounted for and expended Federal Emergency Management Agency (FEMA) funds according to federal regulations and FEMA guidelines.

The City received a public assistance grant award of \$31 million from the New York State Emergency Management Office (NYSEMO), a FEMA grantee, for damages resulting from severe storms in October 2006. The award provided 75% FEMA funding for 30 large projects and 25 small projects for debris removal, emergency protective measures, and repairs to City facilities and buildings.¹ We reviewed costs totaling \$29.1 million claimed under 18 large projects (see Exhibit). The audit covered the period October 12, 2006 to September 28, 2009. During this period, the City received \$21.9 million of FEMA funds under the projects reviewed.

We conducted this performance audit under the authority of 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 and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We reviewed the City's disaster grant accounting system and contracting policies and procedures; judgmentally selected project cost documentation (generally based on dollar value); interviewed City, grantee, and FEMA personnel; reviewed applicable federal regulations and FEMA guidelines; and performed other procedures considered necessary to accomplish our audit objective. We did not assess the adequacy of the City's internal controls applicable to its grant activities because it was not

¹ Federal regulations in effect at the time of the disaster set the large project threshold at \$59,700.

necessary to accomplish our audit objective. We did, however, gain an understanding of the City's method of grant accounting and its policies and procedures for administering the activities provided for under the FEMA award.

RESULTS OF AUDIT

The City accounted for FEMA funds on a project-by-project basis according to federal regulations for large projects. However, the City's claim included \$4,351,956 of charges that we concluded were excessive and unsupported. Also, the City did not maintain adequate documentation for the removal of hazardous trees and limbs.

- A. Contract Charges. Federal regulation 44 CFR 13.36(d)(4) allows procurement by non-competitive proposals under certain conditions, one of which is during times of public exigency or emergency. Under such procurements, a cost/price analysis is required to determine reasonableness of the proposed contract price. In addition, federal regulation 44 CFR 13.36(b)(9) requires grantees and subgrantees to maintain records sufficient to detail the significant history of a procurement. Those records should include, but are not limited to, the rationale for the method of procurement, selection of contract type, contractor selection, and basis of contract price.

Additionally, Office of Management and Budget Circular A-87 (*Cost Principles for State, Local, and Tribal Governments*), Attachment A, Paragraph C.1.a, states that costs under federal awards must be both reasonable and necessary. The Circular defines a reasonable cost as a cost that does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining reasonableness, the Circular requires grant recipients to consider sound business practices, federal regulations and guidelines, and market prices for comparable goods and services.

The City awarded two non-competitive contracts totaling \$21 million for costs associated with debris removal work (debris hauling and monitoring, removal of hanging branches, and removal of leaning trees) under several projects. However, the City did not provide evidence that it performed a cost/price analysis of the contractors' proposed prices to ensure that it obtained a fair and reasonable price for the work required, or document its rationale for selection of the contractors. Work under the contracts was performed from October 13, 2006 to December 18, 2006.

To determine cost reasonableness for the debris removal work, we analyzed prices paid for debris hauling and monitoring, and removal of hanging branches and leaning trees by neighboring locales under the same disaster. Using this analysis, we concluded that the City's contract charges claimed for debris hauling and debris monitoring were reasonable. However, we concluded the contract costs claimed for removing hanging branches and leaning trees contained unreasonable charges of \$3,320,635, as discussed below.

1. *Hanging Branches*. The City claimed \$8.2 million for removing hanging branches, which was based on rates that ranged from \$140 to \$145 per hanger. We determined neighboring locales had contractors perform comparable work at an average cost of \$96.88 per hanger, or \$43.12 less per hanger than what the City paid its contractor. Using the average rates, we concluded that the City's claim was overstated by \$2,614,226 as shown in the table below.

Project Number	No. of Hangers	Unit Cost per Hanger	Avg. Unit Cost per hanger	Difference	Questioned Amount
336	13,207	\$140.00	\$96.88	\$43.12	\$569,486
521	27,793	\$145.00	\$96.88	\$48.12	\$1,337,399
572	15,972	\$140.00	\$96.88	\$43.12	\$688,713
593	432	\$140.00	\$96.88	\$43.12	\$18,628
Total					\$2,614,226

2. *Leaning Trees.* The City claimed \$1.3 million for removal of hazardous leaning trees, which was based on rates that ranged from \$165 to \$2,100 per tree depending upon tree size. We determined that neighboring locales had contractors perform comparable work at much lower rates, averaging from \$101 to \$780 per tree. Using these average rates, we concluded that the City's claim was overstated by \$706,409 as shown in the table below.

Project Number	No. of Trees	Size of Tree (Inches)	Rate per Tree	Avg. Rate per Tree	Difference	Questioned Amount
642	625	6 - 10	\$ 195	\$ 101.13	\$ 93.87	\$ 58,669
	887	10.01 - 24	\$ 495	\$ 208.67	\$ 286.33	\$ 253,975
	148	24.01 - 36	\$ 875	\$ 380.33	\$ 494.67	\$ 73,211
	30	36.01 - 48	\$1,195	\$ 558.67	\$ 636.33	\$ 19,089
	18	48.01 - 56	\$1,825	\$ 780.00	\$ 1,045.00	\$ 18,810
Subtotal						\$423,754
336, 572, 593	181	6 - 11.99	\$ 165	\$101.13	\$63.87	\$11,560
	415	12- 23.99	\$ 475	\$ 208.67	\$ 266.33	\$ 110,527
	201	24- 35.99	\$ 800	\$ 380.33	\$ 419.67	\$ 84,354
	71	36 - 47.99	\$1,000	\$ 558.67	\$ 441.33	\$ 31,334
	37	48 & up	\$2,100	\$ 780.00	\$1,320.00	\$44,880
Subtotal						\$282,655
Total						\$706,409

City Response. City officials did not concur with our finding. They said federal and state emergencies were declared and the emergency conditions required immediate action. Therefore, to avoid delays, they did not solicit bids. The City selected two contractors that were able to mobilize and perform the work and had experience working with FEMA. The two contractors were similar in price and, although the City received inquiries or information from other contractors who were interested in doing the work, those contractors did not include cost data and told the City they needed additional time to prepare and submit bids. Therefore, the City's cost analysis was based upon the available pricing at the time the contracts had to be awarded. Furthermore, they said the OIG cost analysis did not consider the different and costlier logistics of storm repair in a 19th century City (Buffalo) as opposed to the logistics of performing such work in a post World War II suburb. Wide right-of-ways, widely spaced development, and

underground electric and telephone utilities in the suburbs made the work easier and reduced the hazard of fallen cables that delayed progress in the City environment.

OIG Response. While exigent circumstances may justify the use of non-competitive contracts, they do not justify ignoring other procurement standards designed to ensure the reasonableness of contract costs. The City did not provide documentation that it analyzed the proposed prices submitted by the contractors for reasonableness although such documentation was requested several times during the audit. Prior to awarding the two non-competitive contracts, the City hired several time-and-material contractors to remove snow and debris. The City had adequate time to collect cost data from the contractors and perform a cost analysis while the time-and-material contractors performed emergency work, thereby ensuring that the best price was obtained and emergency work was performed. In many cases, the City paid over 200% more for the tree and limb removal work than neighboring locales paid for similar work.

B. Labor and Equipment Charges. According to federal regulation 44 CFR 13.20(b)(6), expenditures under a federal award must be supported by adequate source documentation such as cancelled checks, paid bills, payroll, time and attendance records, contract award documents, etc. Office of Management and Budget Circular A-87 (*Cost Principles for State, Local, and Indian Tribal Governments*), Attachment A, Paragraph C.1, also requires that costs be adequately documented to be allowable under a federal award. The City's claim under Project 607 included \$969,517 of unsupported and ineligible labor and equipment charges², as follows:

- The City claimed \$683,377 of labor charges for City workers who performed disaster-related activities. However, the City did not maintain activity logs or equivalent records to support disaster-related activities performed by such individuals and the eligibility of the City's claim. Therefore, we question \$683,377.
- The City claimed \$233,637 for force account equipment used by the engineering, bridges, and sanitation departments. However, the City did not have adequate documentation (i.e., equipment activity logs, utilization records, or comparable records) to support whether equipment was used for disaster-related activities. Therefore, we question \$233,637.
- The City claimed \$622,036 for force account equipment used by the streets department but did not have equipment logs or comparable records that demonstrated that the equipment was used for disaster-related activities. However, the director of the streets department advised us that all available personnel and equipment were used to clear debris and fallen and leaning trees. During our review, the City identified errors and recalculated its claim. We reviewed this additional information and determined that actual eligible costs should have been \$569,533 or \$52,503 less than the amount claimed. Therefore, we question \$52,503.

² Project 607 reflected total incurred costs, however the incurred costs were reduced by \$52,501 for costs applicable to the City's Federal Highway Administration (FHWA) program. Our questioned costs have been adjusted (reduced) to account for FHWA costs and include only the FEMA-related costs.

- C. Project Charges. The City’s claim under Projects 18 and 217, which was \$977,173 and \$1,732,464, respectively, included excessive costs because the City’s actual payments to the contractors were less than the amount claimed. The difference in the amount claimed and paid is shown in the table below.

Purchase Order No.	Amount Claimed/Purchase Order	Amount Paid to Contractors	Difference
18004463	\$ 159,874	\$ 158,068	\$ 1,806
18004462	\$ 984,635	\$ 963,845	\$20,790
18004464	\$ 74,830	\$ 73,895	\$ 935
18005294	\$ 83,100	\$ 82,705	\$ 394
18004462	\$ 929,005	\$ 879,091	\$49,915
Total	\$2,231,444	\$2,157,604	\$73,840

The difference of \$73,840 included \$12,036 of FHWA costs that were previously reduced by FEMA. Therefore we question only \$61,804— \$26,639 under Project 18 and \$35,165 under Project 217.

- D. Documentation for Tree Removal. Under Project 527, the City claimed \$1.1 million to remove disaster damaged trees from public rights-of-way. The City properly bid this contract and supported its claim with invoices and payment records. The City records included approximately 5,350 certified arborist’s reports that identified the size and the type of damage to each tree and included pictures. The reports did not identify the reason the trees were to be removed.

FEMA *Debris Management Guide* (FEMA 325) allows removal of trees when such activity is necessary to eliminate (1) immediate threats to lives, public health and safety, or (2) immediate threats of significant damage to improved public or private property. FEMA issued *Disaster Specific Guidance #2* under this disaster to clarify public assistance eligibility of removal of hazardous trees and limbs from public rights-of-way and public use areas. The guidance stated (1) the removing of hanging limbs must be done in an efficient manner, and (2) removing hanging limbs from a tree that will be later removed is not eligible for FEMA reimbursement. Moreover, Office of Management and Budget Circular A-87 states that to be allowable under federal award, costs must be necessary and reasonable for proper and efficient performance and administration of the federal award.

We reviewed the City’s documentation maintained for the trees removed after the disaster. However, such documentation did not indicate that the trees were removed because they posed an immediate threat to lives or property. We also noted that the City’s contractors trimmed hazardous limbs from some trees that were subsequently identified for removal by the arborists. City officials stated that some of the trees had been trimmed to eliminate a public threat prior to their removal. However, this method of tree removal is contrary to FEMA guidance and is not cost effective.

City records did not indicate which trees were initially trimmed and later removed. Therefore, questioned costs could not be quantified. For future disasters, the City's documentation for FEMA reimbursement for tree removal should clearly support that removal of the trees is to eliminate an immediate threat to lives, public health and safety, or to improved property. There should also be a determination of which trees should be removed prior to trimming the trees.

RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region II, in coordination with NYSEMO:

Recommendation # 1. Disallow \$3,320,635 of excessive contract costs for removal of trees and limbs (Finding A).

Recommendation # 2. Disallow \$969,517 of unsupported labor and equipment charges and ineligible disaster charges (Finding B).

Recommendation # 3. Disallow \$61,804 of excessive disaster charges (Finding C).

Recommendation # 4. Instruct the subgrantee, for future disasters, to comply with FEMA guidance regarding the removal of hazardous trees and limbs. (Finding D).

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOW-UP

The audit results were discussed with City officials on February 18, 2010. The audit results were also provided to FEMA and NYSEMO officials on February 15, 2010. City officials did not concur with Finding A. Their comments are included in the body of this report.

Please advise me by July 26, 2010, of the actions planned or taken to implement our recommendations, including target completion dates for any planned actions. Should you have any questions concerning this report, please contact Modupe Akinsika, Audit Manager, at (404) 832-6704 or me at (404) 832-6702. Key contributors to this assignment were Modupe Akinsika, Mary Stoneham, Harold Simpson, and John Schmidt.

cc: Michael Moriarty, Deputy Regional Administrator
Audit Liaison, FEMA Region II
Audit Liaison, FEMA

City of Buffalo, New York
FEMA Disaster No. 1665-DR-NY
Schedule of Amount Awarded, Claimed and Questioned
Audit Period October 12, 2006 to September 28, 2009

Project Number	Amount Awarded	Amount Claimed	Amount Questioned
5/339	\$4,204,841	\$4,204,841	
18	977,174	977,174	\$26,639
77	1,697,795	1,697,795	
217	1,290,685	1,290,685	35,165
240	5,053,510	5,053,510	
336	2,331,240	2,331,240	816,740
369	1,312,953	1,312,953	
434	104,447	104,447	
495	1,311,019	1,311,019	
521	4,029,985	4,029,985	1,337,399
527	1,148,245	1,148,245	
572	2,283,500	2,283,500	713,655
592	584,249	584,249	
593	80,900	80,900	29,087
598	431,869	431,869	
607	1,545,610	1,545,610	969,517
642	759,140	759,140	423,754
Total	\$29,147,162	\$29,147,162	\$4,351,956