



Homeland  
Security

June 1, 2006

MEMORANDUM FOR: David I. Maurstad, Regional Director  
FEMA Region VIII  
*Tonda L. Hadley*

FROM: Tonda L. Hadley  
Field Office Director

SUBJECT: University of North Dakota  
Grand Forks, North Dakota  
FEMA Disaster Number DR-1174-ND  
Public Assistance Identification Number 000-92004  
Audit Report Number DD-08-06

The Office of Inspector General (OIG) audited public assistance funds awarded to the University of North Dakota (UND), Grand Forks, North Dakota. The objective of the audit was to determine whether UND accounted for and expended Federal Emergency Management Agency (FEMA) funds according to federal regulations and FEMA guidelines.

UND received an award of \$43.90 million from the North Dakota Division of Emergency Management (NDDEM), a FEMA grantee, for damages caused by severe flooding, severe winter storms, heavy spring rain, rapid snowmelt, high winds, ice jams, and ground saturation due to high water tables that occurred in February through May 1997. The award provided 100 percent FEMA funding, for emergency protective measures (Categories A and B) and 90 percent FEMA funding for permanent work (Categories C through G) on 54 large projects and 62 small projects.<sup>1</sup> The audit covered the period February 28, 1997, to July 22, 2005, during which UND claimed \$43.90 million and UND received \$37.33 million in FEMA funds for direct program costs.

In a previous audit of this award to UND, we reviewed costs claimed for two large and four small projects totaling \$4.19 million; and issued our report on December 9, 2003 (*University of North Dakota*, Audit Report Number DD-03-04). We had begun auditing costs claimed under Project 59315 for the repair of UND's steam lines, but decided to postpone auditing that project because FEMA Region VIII had not completed its final closeout review and was reviewing additional costs UND submitted that were not included in its initial claim for this project. Our preliminary audit work indicated that UND had made improvements to its steam lines that were not in the original scope of the project; therefore, we requested FEMA Region VIII evaluate the scope of the steam line project.

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<sup>1</sup> Federal regulations in effect at the time of the disaster set the large project threshold at \$46,000.

FEMA's evaluation confirmed the out-of-scope work; and, on July 22, 2005, FEMA de-obligated \$861,780 of ineligible costs from Project 59315. Therefore, \$861,780 in FEMA funds were put to better use.

In this audit, we reviewed costs claimed totaling \$28.42 million, consisting of \$25.40 million for repairs to UND steam lines plus \$1,836,658 for associated project management fees (both claimed under Project 59315), and \$1.17 million for project management fees associated with the reconstruction of 79 buildings claimed under various project numbers. (See Exhibit).

We performed the audit under the authority of the Inspector General Act of 1978, as amended, and according to generally accepted government auditing standards. The audit included interviews of UND, NDDEM, and FEMA Region VIII staff; reviews of UND's contract files; tests of UND's accounting records, including a judgmental sample of the five largest dollar invoices billed by the project management firm; and other auditing procedures considered necessary under the circumstances.

## **RESULTS OF AUDIT**

Overall, UND accounted for and expended \$25.40 million for repairs to its steam lines according to federal regulations and FEMA guidelines. However, UND did not comply with federal regulations and FEMA guidelines in awarding contracts for project management services totaling \$3,005,823. As a result, full and open competition did not occur and FEMA has no assurance that the contract costs were fair and reasonable. Therefore, we are questioning \$3,005,823 as ineligible contract costs.

### **Improper Contracting**

UND did not follow applicable federal procurement standards in awarding \$3,005,823 of contracted management service costs. UND procured non-competitive time-and-material cost type contracts for management of the steam line replacement project (\$1,836,658) and for the management of reconstruction of 79 buildings (\$1,169,165) on the UND campus. We questioned the entire \$3,005,823 because UND awarded the contracts without full and open competition and included cost plus a percentage of cost provisions.

Procurement standards at 44 CFR 13.36:

- Require the performance of procurement transactions in a manner providing full and open competition. (13.36(c)(1)) except under certain circumstances. ((13.36(d)(4)(i) Noncompetitive procurement may be used only under certain circumstances such as when the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. (13.36(d)(4)(i)(B))
- Require that subgrantees maintain records sufficient to detail the significant history of the procurement, including the rationale for the method of procurement, the basis for contractor selection, and basis for the contract price. (13.36(b)(9))
- Require a cost or price analysis in connection with every procurement action, including contract modifications. (13.36(f)(1))
- Prohibit the use of cost plus a percentage of cost and percentage of construction cost methods of contracting. (13.36(f)(4))

- Prohibit the use of time-and-material type contracts unless no other contract is suitable and the contract includes a ceiling price that the contractor exceeds at its own risk. (13.36(b)(10))
- Require negotiation of profits as a separate element for contracts in which there is no price competition and in all cases where cost analysis is performed. (13.36(f)(2))

UND awarded two contracts totaling \$3,005,823 for project management services of the steam line replacement and reconstruction projects. The contracts were non-competitive, time-and-material type contracts that contained cost-plus-a-percentage-of-cost provisions. The contractor billed for services at hourly rates plus an 80 percent mark-up of \$1,104,667 on program management services and a 10 percent mark-up of \$45,237 on reimbursable expenses.

UND's contract files did not contain documentation required to identify the method of procurement, the rationale for the procurement, or the selection of the contractor. The contract files also contained no evidence to justify the use of non-competitive, time-and-material type contracts. We requested documentation from UND officials to identify the method, rationale, and selection of the contractor but they did not provide any of the requested documentation.

In addition to not contracting properly, UND did not require the contractor to adequately support invoices for labor and other expenses. According to 44 CFR 13.20(b)(2), a subgrantees must maintain records that adequately identify the source and application of funds. Additionally, 44 CFR 13.20(b)(6) states, "Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc." We reviewed five invoices totaling \$492,285 for project management services on the steam line project. The invoices consisted of costs for labor (\$340,776), fringe benefits (\$92,662), and other reimbursable expenses (\$58,847). We identified the following deficiencies in the documents provided to support the invoices:

- Documentation for three of the five invoices did not reconcile to the invoiced amounts.
- Documentation for labor charges consisted of summaries of hours worked and total dollars without associated timesheets to support the number of hours billed or the type of work performed.
- Invoices did not explain how fringe benefits were applied to labor charges.
- Invoices included allocated costs for cell phones, supplies, shipping, and general liability insurance to the steam line project without explaining the method of allocation.
- Documentation for employee meals, and travel did not explain the purpose of the travel or how the expenses related to the steam line project.

According to 44 CFR 13.37(a)(2), states are responsible for ensuring "that subgrantees are aware of requirements imposed upon them by Federal statute and regulation". Further, 44 CFR 13.40 (a) requires states to monitor subgrant supported activities to assure compliance with applicable federal requirements. UND's lack of compliance with federal procurement standards indicates that UND either ignored or was not aware of federal statutes and regulations and that State officials did not adequately monitor UND's subgrant activities.

Under 44 CFR 13.43(a)(2), *Remedies for noncompliance*, failure to comply with applicable statutes or regulations can result in the disallowance of the costs of all or part of the activity or action not in compliance. Federal procurement standards exist to ensure full and open competition and fair and reasonable pricing. Because UND did not follow federal procurement regulations, full and open competition did not occur and FEMA has no assurance that contract costs claimed were fair and reasonable. Accordingly, we question the \$3,023,868 of contracted management service costs.

### ***Recommendations***

We recommend that the Regional Director, FEMA Region VIII:

1. Disallow \$3,005,823 of ineligible contract costs claimed for project management services; and
2. Require the North Dakota Division of Emergency Management to develop, document, and implement procedures for future disasters to (a) provide subgrantees timely guidance on federal regulations, standards, and guidelines related to procurement and (b) monitor subgrantees to ensure compliance with those federal regulations, standards, and guidelines.

### **DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOW-UP**

We discussed the results of the audit with UND, NDDEM, and FEMA officials on May 23, 2006. UND, NDDEM and FEMA officials agreed with the findings and recommendations.

Please advise this office by August 31, 2006, of the actions taken or planned to implement the recommendations, including target completion dates for any planned actions. If you have questions concerning this report, please call Paige Hamrick at (940) 891-8900. Major contributors to this report were Paige Hamrick, Charles Riley, and Jerry Meeker.

**EXHIBIT**

**Schedule of Audited Projects  
University of North Dakota  
FEMA Disaster Number 1174-ND**

<u>Project Number</u>	<u>Description Of Work</u>	<u>Amount Claimed</u>	<u>Questioned Costs</u>
59315	Steam Lines Repair	\$25,399,080	\$ 0
59315	Project Mgmt	1,836,658	1,836,658
Various	Project Mgmt Services	<u>1,169,165</u>	<u>1,169,165</u>
Totals		<u>\$28,422,948</u>	<u>\$3,005,823</u>