



Homeland Security

September 25, 2009

MEMORANDUM FOR: Nancy Ward
Regional Administrator
FEMA Region IX

FROM: 
Robert J. Lastrico
Western Regional Director

SUBJECT: *California Department of Water Resources*
Public Assistance Identification Number 000-U0FD2-00
FEMA Disaster Number 1529-DR-CA
Audit Report Number DS-09-13

The Office of Inspector General audited public assistance funds awarded to the California Department of Water Resources, Sacramento, California (Department). The objective of the audit was to determine whether the Department expended and accounted for Federal Emergency Management Agency (FEMA) funds according to federal regulations and FEMA guidelines.

The Department received a public assistance subgrant award of \$17.5 million from the California Office of Emergency Services (OES),¹ a FEMA grantee, for the estimated costs of performing eligible work under seven large projects.² Of the \$17.5 million award, FEMA agreed to provide 75% reimbursement of eligible costs incurred for emergency protective measures in response to flooding in the upper and lower Jones Tract in San Joaquin County. These measures were necessitated as a result of a breach that developed in the Middle River Levee, resulting in the flooding of both the upper and lower Jones Tracts, and threatening the potable water supply for over 23 million people. The flooded area was 37.6 square miles and up to 15 feet deep. The Department has received partial reimbursements of \$8.4 million from CalEMA for FEMA's share of the project costs.

The audit covered the period from June 3, 2004, to October 8, 2008, and included a review of all seven projects (see Exhibit). The Department completed work on all of the projects and submitted its final claim of \$17.5 million to CalEMA on October 8, 2008, using FEMA's "Project Completion and Certification Report" (P.4). However, as of the conclusion of our fieldwork on May 29, 2009, CalEMA had not forwarded the Department's P.4 claim to FEMA with its certification of the amount eligible under applicable public assistance criteria. Therefore, FEMA had not performed a

¹ Under a State of California reorganization, the grantee services formerly performed by the OES became the responsibility of the newly formed California Emergency Management Agency (CalEMA) as of January 1, 2009.

² At the time of the disaster, the large project threshold was \$54,100.

final inspection and closeout of the projects to determine the amount of funding the Department is eligible to receive as a final award.

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, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained during the audit provides a reasonable basis for our findings and conclusions based on our audit objective.

We interviewed FEMA, CalEMA, and Department officials; reviewed judgmentally selected samples (generally based on dollar value) of cost documentation to support invoices and personnel charges (force account labor); and performed other procedures considered necessary to accomplish our objective. We did not assess the adequacy of the Department’s internal controls applicable to grant activities because it was not necessary to accomplish our audit objective. We did, however, gain an understanding of the Department’s method of accounting for disaster-related costs.

RESULTS OF AUDIT

Of the \$17,522,088 the Department claimed for the seven projects, \$4,099,908 is not in compliance with criteria required for federal reimbursement. Specifically, the Department claimed \$3,093,172 for ineligible costs and \$1,006,736 in unsupported costs. Pending the results of FEMA’s final inspection and closeout review, we question \$4,099,908 (federal share - \$3,074,931) as detailed in the subsections below.

Finding A – Cost Eligibility

The Department claimed \$3,093,172 for documented costs that are not eligible according to applicable federal criteria. A description of the ineligible costs, the amount we are questioning, and the applicable Project Worksheet (PW) are provided in the table below and discussed in detail following the table.

Description of Ineligible Costs	Amount Questioned	Applicable PW(s)
Work performed subsequent to the contract performance period	\$468,291	4
Work not included in the scope of work approved by FEMA	339,935	5
Costs incurred that did not meet the required emergency work criteria	1,911,736	7
Costs incurred subsequent to the allowed time limit for project performance	102,596	8
Excess administrative costs	148,937	19 and 27
Unallowable personnel costs for interagency personnel	121,677	27
Total	\$3,093,172	

- **Contract Performance Period.** For work to close a levee breach, the Department's claim for PW 4 included \$468,291 that was incurred subsequent to the contract performance period, and after the construction inspector reported no work crew was at the site, closure signs had been removed, and boaters were unrestricted. The contract performance period for

emergency levee breach closure was a 60-day period from June 7, 2004, to August 6, 2004, with work continuing 24 hours a day, 7 days a week until the levee breach was completely closed. According to Title 44, *Code of Federal Regulations* (hereinafter 44 CFR), 206.225(a), emergency protective measures to save lives, to protect public health and safety, and to protect improved property are eligible. In order to be eligible, emergency protective measures must eliminate or lessen immediate threats.

The Department's claim was based on FEMA's PW estimate of \$8,000,000 for emergency protective measures to close the breach, but the actual costs through the end of the contract performance period (August 6, 2004) was \$7,531,709. Based on the Department's construction inspection report of August 7, 2004, the emergency phase of the work had been completed as of that date. Therefore, we question the \$468,291 for costs claimed after the emergency protective measures were concluded.

- Scope of Work. The Department claimed \$339,935 for road repairs not included in the approved scope of work on PW 5. FEMA approved this PW at an estimated cost of \$1,800,000 to protect against slope failure with the placement of rip-rap (rock) on the slope.

The Department submitted documentation of \$1,543,050 to support its claimed costs of \$1,800,000. The undocumented costs are questioned in Finding B of this report. Of the \$1,543,050 documented, only \$1,203,115 was for the rock slope protection provided in FEMA's approved PW. The difference of \$339,935 was for work that FEMA did not approve as emergency measures and included work items such as repairing a road, re-grading roads, and re-grading rip-rap. As such, we question the \$339,935 for costs claimed outside the approved scope of work.

- Emergency Criteria. For emergency dewatering activities approved on PW 7, the Department claimed \$1,911,736 for costs that were incurred subsequent to the date that FEMA determined the immediate threat was abated.

The Department submitted a claim for \$4,238,300 that included \$1,911,736 in dewatering performed subsequent to August 17, 2004. FEMA previously determined, based on the U.S. Army Corps of Engineers' evaluation, that the threat to the Jones Tract levee no longer constituted an immediate threat after August 17, 2004. Therefore, we question the \$1,911,736. During the exit conference, the Department concurred with the finding that the \$1,911,736 is ineligible.

- Time Extension Requirement. The Department claimed \$102,596 for emergency levee support activities that were provided subsequent to the time period allowed for PW 8. According to 44 CFR 206.204, the completion deadline for emergency work is set at 6 months from the date that a major disaster or emergency is declared, unless the grantee imposes lesser deadlines or extends the deadlines due to extenuating circumstances or unusual project requirements.

The total claimed by the Department was \$500,000 for costs incurred through February 28, 2005. However, the costs incurred during the 6-month time period allowable through December 31, 2004 was \$397,404. The Department did not provide any documentation that

indicated CalEMA extended the deadline based on the criteria cited. Therefore, we question the \$102,596 claimed for work performed after the completion deadline.

- Excess Administrative Costs. The Department claimed \$148,937 in excess administrative costs billed under interagency work agreements for PWs 19 and 27. These costs were billed to the Department by the California Department of Forestry and Fire Protection (CDF) and the California Conservation Corps (CCC). According to OMB Circular A-87, Section G, that pertains to interagency services, the cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro rata share of indirect costs. Further, the Circular states, that a standard indirect cost allowance equal to 10% of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs.

CDF and CCC included in their billings to the Department administrative costs of \$143,836 and \$39,722, respectively. The administrative fees were calculated by charging a percentage based on total labor costs plus other direct costs, instead of the straight-time labor costs as provided in the federal criteria. As a result, the CDF and the CCC billed excessive administrative fees of \$126,516 and \$22,421, respectively. Therefore, we question the \$148,937 in administrative fees that are not in compliance with federal criteria limitations for these costs.

- Personnel Costs for Interagency Personnel. The Department claimed \$121,677 for unallowable personnel charges billed under an interagency work agreement for emergency protective measures on PW 27. These costs were billed to the Department by CDF for straight-time labor costs for their permanent personnel. According to the *Memorandum of Understanding* between the Department and CDF, the supporting agency will be reimbursed by the supported agency for all *added* expenditures attributable to the incident or work activity (including, but not limited to, overtime, applicable differentials, employee benefit costs, travel, and subsistence related to the response). Since the straight-time labor costs of permanent personnel are not added expenses to CDF, these costs of \$121,677 are questioned.

Finding B – Supporting Documentation

The Department claimed \$1,006,736 for costs not supported with source documentation showing the date expenses were paid or supporting that the costs were actually incurred. The questioned costs consist of \$256,949 for PW 5; \$59,409 for PW 27; and \$690,378 for PW 51. According to 44 CFR 13.20 (b)(6), accounting records must be supported by source documentation such as canceled checks, paid bills, payrolls, time and attendance records, and contract award documents. The Department's claimed amounts for these three projects exceeded the total costs incurred based on the documentation provided. Details regarding these unsupported costs are discussed below:

- PW 5. The Department claimed the not-to-exceed amount of \$1,800,000 for the contract that was the basis for the PW estimate. However, the documentation for the work performed by the contractor, and paid by the Department, totaled only \$1,543,051. Therefore, the \$256,949 claimed over the actual costs is questioned.

- PW 27. The Department claimed the total PW estimate of \$1,325,786 for emergency services provided by the CDF. However, the documentation of the work performed by CDF, and paid by the Department, totaled only \$1,266,377. The excess claimed is attributed to an underrun of the operating expenses from the amount that was estimated on FEMA's PW. The \$59,409 claimed over the actual costs for operating expenses is questioned.
- PW 51. The Department claimed the total PW estimate of \$1,142,000 for work performed in stabilizing damage to a levee. However, the actual costs documented for this work totaled only \$451,622. The \$690,378 claimed over the actual costs documented is questioned.

RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region IX, in coordination with the California Emergency Management Agency:

Recommendation #1. Disallow the ineligible costs of \$468,291 for PW 4 that were incurred after the contract period of performance, and recoup any overpayments;

Recommendation #2. Disallow the ineligible costs of \$339,935 for PW 5 that were not within the PW scope of work, and recoup any overpayments;

Recommendation #3. Disallow the ineligible costs of \$1,911,736 for PW 7 that did not meet the regulatory requirements for emergency work, and recoup any overpayments;

Recommendation #4. Disallow the ineligible costs of \$102,596 for PW 8 that were incurred subsequent to the 6-month time limit for emergency protective measures, and recoup any overpayments;

Recommendation #5. Disallow the ineligible costs of \$148,937 for PWs 19 and 27 that were excess administrative fees, and recoup any overpayments;

Recommendation #6. Disallow the ineligible costs of \$121,677 for PW 27 that were for straight-time labor costs of permanent personnel for emergency protective measures, and recoup any overpayments;

Recommendation #7. Disallow unsupported costs of \$256,949 for PW 5, and recoup any overpayments;

Recommendation #8. Disallow unsupported costs of \$59,409 for PW 27, and recoup any overpayments; and

Recommendation #9. Disallow unsupported costs of \$690,378 for PW 51, and recoup any overpayments.

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOW-UP

We discussed the results of this audit with Department and CalEMA officials on August 10, 2009. Those officials concurred with the finding for Recommendation #3, but did not concur with the other

findings, and will attempt to locate documentation to address these other issues. We also discussed the audit results with FEMA Region IX officials on August 12, 2009, and they generally concurred with our findings.

Please advise this office by November 24, 2009, of actions planned or taken to implement our recommendations. Please note that your responses should include target completion dates for actions planned and actual completion dates for actions taken. Should you have questions concerning this report, please call me at (510) 637-1482 or your staff may contact Jack Lankford, Supervisory Auditor, at (510) 637-1462. Key contributors to this assignment were Jack Lankford and Tony Fajardo.

cc: Audit Liaison, FEMA Region IX
Audit Liaison, FEMA (Job Code: DG9W14/G-09-051-EMO-FEMA)

Schedule of Audited Projects
 California Department of Water Resources
 Sacramento, California
 Public Assistance Identification Number 000-U0FD2-00
 FEMA Disaster Number 1529-DR-CA

Project Number	Amount Awarded	Amount Claimed by Applicant	Questioned Costs	Finding Reference
4	\$8,000,000	\$8,000,000	\$468,291	A
5	1,800,000	1,800,000	596,884	A and B
7	4,238,300	4,238,300	1,911,736	A
8	500,000	500,000	102,596	A
19	516,002	516,002	22,421	A
27	1,325,786	1,325,786	307,602	A and B
51	<u>1,142,000</u>	<u>1,142,000</u>	<u>690,378</u>	B
Totals	\$17,522,088	\$17,522,088	\$4,099,908	

Finding Reference:

- A. Cost Eligibility
- B. Supporting Documentation