



# Homeland Security

December 2, 2010

MEMORANDUM FOR: William L. Carwile III  
Associate Administrator, Response and Recovery  
Federal Emergency Management Agency

FROM: Matt Jadacki   
Assistant Inspector General  
Office of Emergency Management Oversight

SUBJECT: *Capping Report: FY 2009 Public Assistance Grant  
and Subgrant Audits*  
Report DS-11-01

This report summarizes the results of Public Assistance (PA) program grant and subgrant audits performed during fiscal year (FY) 2009. We reviewed audit findings and recommendations made to Federal Emergency Management Agency (FEMA) officials as they related to PA program funds awarded to state, local, and tribal governments, and eligible nonprofit organizations. The objectives of this capping report were to identify frequently reported audit findings, quantify the financial impact of these findings, and offer actions FEMA can take to mitigate recurrence.

In FY 2009, we issued 51 audit reports on grantees and subgrantees awarded FEMA PA funds between September 1998 and February 2007 as a result of 26 presidentially declared disasters in 13 states and 1 U.S. Territory.<sup>1</sup> The objective of 50 of those audits was to determine whether the grantees and subgrantees expended and accounted for FEMA funds according to federal regulations and FEMA guidelines. We also conducted one limited scope audit of the West Virginia Division of Homeland Security and Emergency Management to determine whether the Division's controls over PA subgrantee cash advances, cash disbursements, and monitoring were adequate and consistent with federal regulation requirements. Exhibit A, *Schedule of Public Assistance Grant and Subgrant Audits Issued in FY 2009*, lists all of our FY 2009 PA-related audit reports and provides a link to our web page where these audit reports can be obtained.

Our subgrant audits included recipients that had (1) completed all work approved by FEMA and reported final costs to the grantee that in turn had requested final FEMA payment, (2) completed all work and reported final costs to the grantee that had not yet requested final FEMA payment, (3) completed selected projects but had not reported final project costs to the grantee, or (4) projects in progress or projects that had not yet started. The subgrantees were awarded \$1.3 billion in project funding for debris removal; emergency protective measures; or permanent repair, restoration, and

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<sup>1</sup> Of the 51 audits, 31 were audits of subgrantees that suffered damage from hurricanes Katrina, Rita, and Wilma (August through October 2005).

replacement of damaged facilities. We audited \$933 million of the \$1.3 billion, or 72.3% of the awarded amounts.

We conducted the 51 performance audits 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 audits to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. The evidence obtained during those 51 audits provided a reasonable basis for our findings and conclusions based on our audit objective.

Our review included analyses of (1) findings and recommendations in our FY 2009 grant audit reports and (2) applicable federal regulations, Office of Management and Budget (OMB) grant and audit guidance, and FEMA PA guidance applicable to the conditions noted.

## RESULTS

Of the 51 audits performed in FY 2009, 47 reports contained 139 recommendations regarding 208 findings or reportable conditions.<sup>2</sup> The 208 findings or reportable conditions resulted in a potential monetary benefit of \$138.4 million. Our audit results can be categorized in four broad categories listed in the following table.

| Type of finding/reportable                        |            |                      |
|---|------------|----------------------|
| A. Ineligible Work or Costs                       | 134        | \$ 93,992,781        |
| B. Unsupported Costs                              | <u>19</u>  | <u>29,383,646</u>    |
| Subtotals   | 153        | \$123,376,427        |
| C. Collections/Deobligations <sup>3</sup>         | 16         | 15,059,654           |
| D. Grants Management and<br>Administrative Issues | <u>39</u>  | <u>0</u>             |
| Totals  | <u>208</u> | <u>\$138,436,081</u> |

The findings and reportable conditions identified in our FY 2009 audits are listed in Exhibit B, *Findings and Reportable Conditions by Type and Subtype*, and detailed below. Criteria applicable to each type of finding and reportable condition are provided in Exhibit C, *Criteria Applicable to the Findings and Reportable Conditions Reported in FY 2009*.

### **A. Ineligible Work or Costs**

As illustrated in the following table, we considered nearly \$94.0 million in work or costs claimed or to be claimed by the subgrantees as ineligible for FEMA reimbursement.

<sup>2</sup> Four FY 2009 audit reports had no findings or reportable conditions.

<sup>3</sup> Collections are typically the result of interest earned by subgrantees on FEMA funds; and deobligations are available because project funds are no longer needed by subgrantees.

| Category of ineligible work or costs        | Number of instances reported | Amounts questioned in our reports |
|---|------------------------------|-----------------------------------|
| 1. Contracting practices                    | 15                           | \$29,929,094                      |
| 2. Contract monitoring                      | 21                           | 8,691,683                         |
| 3. Other ineligible work or project charges | 62                           | 25,895,004                        |
| 4. Miscellaneous ineligible costs           | <u>36</u>                    | <u>29,477,000</u>                 |
| Totals                                      | <u>134</u>                   | <u>\$93,992,781</u>               |

1. **Contracting practices.** We reported 28 instances where subgrantees awarded \$105.6 million in contracts that were inconsistent or not in compliance with federal regulations. Although we questioned only \$29.9 million related to the contracts (15 instances), we made several administrative recommendations regarding noncompliant contracting practices. We reported instances of (1) noncompetitive contractual efforts continuing after emergency periods, (2) the absence of cost or price analyses for noncompetitive contracts, (3) verbal contracts, (4) the absence of procurement history detailing the method of procurement, the basis for contractor selection, and price, and (5) unreasonable contract prices. Some subgrantees continued to use time and material (T&M) type contracts after the emergency period when unit price or lump sum contracts may have been more appropriate. In some cases, subgrantees inappropriately awarded cost-plus-percentage-of-cost contracts, awarded T&M contracts without required ceiling prices, or allowed markups on costs that constituted a strictly prohibited cost-plus-percentage-of-cost contracting methodology. In addition to recommending the disallowance of questionable contract costs claimed by subgrantees, we made recommendations that included FEMA informing subgrantees to (1) comply with federal procurement regulations, (2) refrain from using cost-plus-percentage-of-cost contracts, and (3) solicit competitive bids for significant contract modifications. We also recommended that FEMA perform a technical review to determine cost reasonableness and eligibility of \$9.9 million of costs claimed for repair work performed under T&M contracts (Audit Report DA-09-07) and evaluate the reasonableness of another \$968,526 in T&M contract costs (Audit Report DA-09-17). Other examples of audits addressing contracting practices that we considered inconsistent or not in compliance with federal regulations are provided below.

- Audit Report DD-09-08, *Jefferson Davis and Beauregard Electric Cooperatives in Jennings and DeRidder, Louisiana*, questioned more than \$9.1 million for base camp operations because the prices paid were more than twice those charged by other base camp contractors in Louisiana providing similar services during the same period. The cooperatives did not perform cost or price analyses to determine whether the agreed-upon rates and prices were reasonable or how they compared with current or recent prices charged for the same or similar services.
- Audit Report DA-09-06, *Hurricane Wilma Activities for the City of Boca Raton, Florida*, questioned nearly \$5.3 million for debris removal and disposal services because the city did not perform a cost or price analysis to ensure that it obtained the best price.
- Audit Report DA-09-10, *Hurricane Ivan Activities for the City of Gulf Shores, Alabama*, noted that the city awarded \$14.0 million in debris removal T&M contracts without ceiling prices. We did not question the costs claimed under these contracts because we were unable to determine whether a cost savings would have been realized had the subgrantee complied with federal contracting procedures. However, because of the contracting method used,

FEMA had no assurance that the work performed under these contracts was obtained at a fair and reasonable price.

- In Audit Report DD-09-04, *Hurricane Katrina Debris Removal Activities in the City of Kenner, Louisiana*, we reported that the city awarded nearly \$30.0 million in debris removal and monitoring contracts without competition. We did not question contract costs because the rates charged for these activities appeared reasonable based on FEMA's maximum acceptable rates and our experience with other subgrantees in Louisiana that received debris removal awards.

Subgrantee contracting practices that do not comply with federal procurement regulations result in high-risk contracts that potentially cost the taxpayers millions of dollars in excessive costs. We considered the exigencies often arising early after a disaster occurs, and as a general rule did not question contracting practices or costs associated with those exigencies. However, subgrantee noncompliance after bona fide exigencies no longer exist is a major concern to us.

FEMA expects the grantee and subgrantee to adhere to the regulations, including those that deal with contracting practices, and it has remedies available when a grantee or subgrantee activity or action is not in compliance with applicable statutes or regulations. Until FEMA holds grantees and subgrantees accountable for noncompliance with federal procurement practices by disallowing all or a part of contracts that are not in compliance, there is little incentive for grantees or subgrantees to follow the regulations. In addition, FEMA's policy of separately evaluating and reimbursing cost-plus-percentage-of-cost contract costs that it finds fair and reasonable is contrary to the strict regulatory prohibition against using this contracting methodology in any circumstance and can cause FEMA substantial additional workload that could have been avoided had the subgrantees followed appropriate contracting practices.

2. **Contract monitoring.** We reported 22 instances of inadequate subgrantee contract monitoring relating to \$9.8 million in contract costs, and we questioned \$8.7 million of those costs (21 instances). Subgrantees claimed costs when their contractors (1) billed at rates higher than those specified in the contracts, (2) did not perform work specified in contracts, (3) performed and billed work not specified in contracts, (4) included billing errors and duplicate charges in their invoices, and (5) charged unreasonable contract costs. Examples of audits addressing inadequate contracting monitoring are provided below.

- In Audit Report DA-09-10, *Hurricane Ivan Activities for the City of Gulf Shores, Alabama*, we reported that T&M contractors charged several pieces of equipment at rates higher than the rates established by the city, resulting in excess contract charges of \$501,218.
- In Audit Report DA-09-03, *Hurricane Ivan, Dennis, and Katrina Activities for Baldwin County, Alabama*, we reported that the county claimed \$2.4 million in contract costs for tree stump removal and disposal. However, the contractor did not extract the stumps. Instead, homeowners extracted the stumps and placed them curbside for pickup and disposal by the contractor. We computed contract costs for picking up and hauling the stumps of \$807,705 and questioned the overcharge of \$1.6 million.
- Audit Report DS-09-13, *California Department of Water Resources, Sacramento, California*, noted that the department claimed \$468,291 in costs incurred by the contractor after the contract performance period.

- In Audit Report DA-09-21, *Hurricane Georges Activities for the Puerto Rico Electric and Power Authority*, we determined that the authority's contractors billed and the authority claimed more than \$1.8 million in excessive administrative and general expenses, labor overhead, and other charges.
- In Audit Report DD-09-16, *Licking Rural Electrification Inc., Utica, Ohio (LRE)*, we reported that LRE awarded a debris removal contract based on a fixed unit price per mile, but the contractor billed a portion of its cost on a T&M basis (\$233,434) and for an unspecified number of hours and miles (\$31,740). The contractor's invoices did not include sufficient documentation to support the work accomplished or mileage information necessary to determine whether the rate was comparable to the agreed-upon fixed unit price.

Inadequate contract monitoring by subgrantees can result in FEMA disbursements that are not fair and reasonable. Without increased emphasis on contract monitoring, these conditions will continue. Grantees should determine the reasonableness of contractor costs claimed by subgrantees before seeking reimbursement from FEMA on behalf of those subgrantees.

3. **Other ineligible work or project charges.** The table below lists other ineligible work we reported and project charges we questioned in FY 2009.

| <b>Findings/reportable conditions<br/>by subtype</b> | <b>Number of<br/>instances<br/>reported</b> | <b>Amounts<br/>questioned in our<br/>reports</b> |
|--|---|--|
| Ineligible work and project charges                  | 38  | \$20,199,785                                     |
| Other federal agency funding available               | 5   | 1,872,947  |
| Ineligible force account equipment rates             | 9   | 758,225  |
| Ineligible force account labor and fringe benefits   | <u>10</u>                                   | <u>3,064,047</u>                                 |
| Totals   | <u>62</u>                                   | <u>\$25,895,004</u>                              |

We reported instances of (1) ineligible debris removal activities and other ineligible charges, (2) work that was not the legal responsibility of the subgrantee, (3) work performed and costs incurred outside the scope of various FEMA-approved projects, and (4) work performed and costs claimed (or to be claimed) that were not disaster related. We also identified instances where other federal agencies were responsible for disaster work and instances when force account equipment and labor charges were ineligible for FEMA reimbursement. Examples of audits addressing these conditions are provided below.

- Audit Report DA-09-05, *Hurricane Katrina Activities for Jasper County, Mississippi*, questioned \$353,300 in costs incurred to clear trees that did not meet FEMA's criteria to be considered eligible hazardous debris. Likewise, in Audit Report DD-09-01, *Louisiana Department of Agriculture and Forestry*, we reported that the department claimed fuel costs totaling \$858,338 for fuel provided to ineligible recipients.
- In Audit Report DS-09-02, *East Bay Regional Park District, Oakland, California*, we reported that the district intended to claim \$851,096 in costs for improvements beyond those required to restore the damaged facility to predisaster condition and \$158,410 for mitigation work on an undamaged facility for which it had no legal responsibility. Similarly, Audit Report DD-09-17, *City of New Orleans Community Correctional Center*, identified \$573,992

in costs that were the legal responsibility of another entity or related to the inmates' personal belongings.

- Audit Report DS-09-11, *California Department of Fish and Game, Sacramento, California*, reported that at least \$1.5 million was incurred for work beyond the scope approved by FEMA. These costs related to work that could not be identified as disaster related or was identified as improved project costs.
- In Audit Report DA-09-13, *Hurricane Wilma Activities for the City of Hollywood, Florida*, we questioned \$1.3 million for removing debris from federal aid roads -- the responsibility of the Federal Highway Administration.
- In 13 audits, we reported 19 instances where we questioned the eligibility of force account labor and equipment charges. We questioned regular time charges for emergency work, excessive overtime and fringe benefits costs, and the use of incorrect equipment rates. Two examples follow. (1) Audit Report DA-09-22, *Orange County, Florida*, questioned nearly \$1.3 million in regular time salaries and benefits for the county's permanently employed staff who performed emergency protective measures and excessive charges resulting from incorrect pay rates and data entry errors. (2) Audit Report DA-09-15, *Hurricane Ivan Activities for Escambia County Sheriff's Office, Pensacola, Florida*, questioned the Sheriff's Office use of an \$11 hourly rate for stationary police vehicles with the engine running versus the \$.41 mileage rate for vehicles on patrol, as well as costs claimed for the use of privately owned vehicles (questioned costs totaled \$132,889).

The nature of the findings and reportable conditions discussed above is indicative of the subgrantees' inadequate knowledge or disregard of federal regulations and FEMA's policies and guidelines. Moreover, FEMA grantees must account for eligible costs for each approved large project and certify that (1) reported costs were incurred in the performance of eligible work, (2) approved work was completed, (3) projects complied with the FEMA-State Agreement, and (4) payment methods and procedures are in place that minimize the time elapsing between the transfer of funds and disbursement by the grantee and subgrantee. In addition, grantees and subgrantees must adhere to sound financial and project management principles when administering FEMA's PA grants. Our findings and recommendations indicate that this was not always the case.

4. **Miscellaneous ineligible costs.** The table below lists miscellaneous ineligible costs we questioned in FY 2009.

| <b>Findings/reportable conditions<br/>by subtype</b> | <b>Number of<br/>instances reported</b> | <b>Amounts questioned<br/>in our reports</b> |
|--|---|--|
| Excessive or unreasonable costs                      | 11                                      | \$16,277,083                                 |
| Insurance proceeds not applied                       | 5                                       | 6,454,400                                    |
| Duplicate charges                                    | 9                                       | 4,223,980                                    |
| Administrative allowance/overhead                    | 5                                       | 2,228,987                                    |
| Salvage proceeds/credits                             | <u>6</u>                                | <u>292,550</u>                               |
| Totals   | <u>36</u>                               | <u>\$29,477,000</u>                          |

We reported instances of (1) costs that were excessive or unreasonable when compared with the limitations placed on the work by regulation or policy or when compared with the

FEMA-approved scope of work, (2) FEMA-approved work that was covered by insurance, (3) the same costs being claimed more than once, (4) administrative costs claimed as direct project costs, and (e) salvage proceeds or credits that were not netted against project costs. Examples of audits addressing these conditions are provided below.

- Audit Report DA-09-03, *Hurricane Ivan, Dennis, and Katrina Activities for Baldwin County, Alabama*, reported that the county claimed \$7.7 million in excessive fees for the diminished capacity of a landfill resulting from the disposal of disaster-generated debris (tipping fees). The county claimed tipping fees based on the total volume of vegetative debris delivered to the landfill. However, since the actual volume was significantly reduced as a result of burning the debris after delivery, tipping fees likewise should have been reduced.
- Audit Report DD-09-02, *Hurricane Katrina Debris Removal Activities in East Baton Rouge Parish, Louisiana*, reported that the parish hauled construction and demolition debris to temporary landfills rather than a permanent landfill specified in the FEMA-approved scope of work resulting in excessive costs of \$423,632.
- Audit Report DA-09-21, *Hurricane Georges Activities for the Puerto Rico Electric and Power Authority*, noted that the authority's claim of \$6.7 million included \$4.7 million in damages covered by insurance. We also reported that the authority claimed the same \$3.6 million on two projects.
- In four audit reports, we reported instances where administrative allowance costs ranging from \$165,000 to \$280,000 were improperly claimed as direct project costs. In another audit, we reported that indirect overhead costs totaling \$1.4 million were also improperly claimed as direct project costs. Both types of charges were contrary to federal regulations in effect at the time the disasters occurred and were therefore ineligible for FEMA reimbursement.
- Our audits reported six instances where credits or the salvage value of items purchased with federal funds were not netted against project costs. Our findings questioned nearly \$293,000.

The miscellaneous ineligible costs discussed above occurred because subgrantees did not always seek prior approval for revisions to the scope or objectives of a project. Therefore, while these costs were claimed at the completion of all work, the work and associated costs were not always eligible for FEMA reimbursement. Additionally, because subgrantees often viewed any work performed after a disaster as "disaster-related" irrespective of eligibility, their claims included costs for work that went beyond the FEMA-approved scope of work or administrative expenses that were covered by FEMA's administrative allowance. Further, subgrantees sometimes did not credit insurance proceeds to FEMA eligible work as required by federal regulations, thereby allowing them to maximize FEMA reimbursements and use the proceeds for non-FEMA-eligible purposes.

## **B. Unsupported Costs**

Our FY 2009 audits reported 19 instances where costs claimed or to be claimed by subgrantees were not adequately supported. Questioned costs totaled nearly \$29.4 million. Examples of costs we questioned owing to inadequate supporting documentation are provided below.

- Audit Report DA-09-18, *Review of Hurricane Katrina and Wilma Activities for Broward County, Florida*, questioned over \$2.3 million because the county did not have load tickets and invoices from a landfill to support \$1.2 million in costs claimed, and equipment logs did not include sufficient information for us to validate claimed equipment costs of \$1.1 million.
- Audit Report DD-09-08, *Jefferson Davis and Beauregard Electric Cooperatives in Jennings and DeRidder, Louisiana*, reported that the cooperatives claimed nearly \$5.7 million in unsupported costs because they did not provide timesheets and other appropriate documentation to support T&M contract invoices paid.
- Audit Report DS-09-13, *California Department of Water Resources, Sacramento, California*, questioned \$1.0 million of the department's claim owing to insufficient supporting documentation. We reported that the department claimed the "not to exceed" amount on a T&M contract and the estimated costs on two other projects rather than actual supported costs.

Unsupported costs result because subgrantees (1) had not established fiscal and accounting procedures that would allow us to trace expenditures to confirm that funds were used according to applicable laws, regulations, and FEMA policy; or (2) did not maintain accounting records that were supported by source documents such as canceled checks, paid bills, and contracts. Further, the grantee did not always verify that costs claimed by its subgrantees met the standards for financial management or ensure that its subgrantees were aware of and followed the retention and access requirements for records.

### **C. Collections/Deobligations**

We reported 16 instances where \$15.0 million in FEMA funding could be put to better use if interest earned on FEMA funds was collected and unneeded project funding was deobligated.

- Six audits noted that FEMA should collect a total of \$1.4 million earned by subgrantees on FEMA funds. Interest earned on FEMA advances ranged from \$21,317 to \$177,116, and interest earned on excess funding provided to a subgrantee totaled \$1.1 million.
- Ten audits reported instances where project funding was no longer needed by subgrantees and recommended that a total of \$13.6 million in unneeded funding be deobligated. Two examples of audits reporting this condition are provided below.
  - In audit report DA-09-08, *Hurricane Katrina Activities for the Catholic Diocese of Biloxi, Mississippi*, we reported that the diocese used funds received from the U.S. Department of Education's Restart program to accomplish the same work as FEMA-funded projects valued at \$1.2 million. Because the \$1.2 million was not needed, we recommended that those funds be deobligated.
  - Audit Report DS-09-09, *City of Los Angeles, California, Department of Water and Power*, reported that the city had completed three projects years earlier but had not notified the state or FEMA that \$2.1 million in funds awarded to those projects was no longer needed and available for deobligation. In this case, as well as during several other audits, we reported that grantees should strictly follow the monitoring and program

Subgrantees may be unaware that interest accruing on federal funds belongs to the federal government and as such, must be remitted to FEMA.

Further, nothing in federal regulations precludes subgrantees from requesting final payment and closure of projects on a project-by-project basis. When this is not done, unneeded federal funding can be tied up on completed projects for years pending completion of all open subgrantee projects. Deobligating unneeded funds on a project-by-project basis would (1) free up funding to cover cost overruns on other projects associated with the disaster, (2) aid in closing out the subgrantee's PA application, since projects would be settled throughout the life of the application rather than after all work is completed, (3) provide a more accurate status of PA program costs for a disaster, and (4) be consistent with appropriation law that requires obligations in FEMA's accounting system be supported by bona fide needs. Grantees need to improve their monitoring efforts to ensure that unneeded funds are identified and returned to FEMA as soon as practicable after projects are completed.<sup>4</sup>

#### **D. Grants Management and Administrative Issues**

Our reports included 39 grants management and administrative findings or reportable conditions covering project accounting, general grants management, contracting practices, contract billings, and project costs.

- We reported 17 instances of improper project accounting in which subgrantees did not account for disaster expenditures on a project-by-project basis. In many of our reports, we stated that failure to perform project-by-project accounting increased the risk of duplicating disaster expenditures between projects. In one instance (Audit Report DA-09-01, *Hurricane Katrina and Wilma Activities for Miami-Dade County Parks and Recreation Department*), we suspended our audit until the department could provide records that accounted for expenditures on a project-by-project basis.
- We reported seven instances in which grantee management could be improved. For example, grantees (1) did not have procedures in place to ensure that cash advances to subgrantees were expended timely and excess funds were recovered promptly, (2) did not have a documented or standard payment processing policy or needed to strengthen controls to prevent overpayments, (3) had no procedures in place to follow up on material deficiencies reported in Single Audits, (4) were unaware of significant budget and scope increases, or (5) did not adequately monitor and report subgrantee program performance.
- As discussed earlier in this report, we identified reportable conditions and made administrative recommendations concerning subgrantee contracting practices that included FEMA (1) informing subgrantees to (a) comply with federal procurement regulations,

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<sup>4</sup> OIG Management Report OIG 10-49, *Opportunities to Improve FEMA's Disaster Closeout Process*, discusses several reasons for delays in the disaster closeout process. Grantee delays were attributed to staff shortages, inexperienced staff, conflicting priorities, and a need for closure incentives, which among other things, results in not performing final inspections and reconciliations of individual subgrantee projects when they are completed.

(b) refrain from using cost-plus-percentage-of-cost contracts, and (c) solicit competitive bids; and (2) performing technical reviews to determine contract cost reasonableness and eligibility. We also reported that one subgrantee did not maintain contract monitoring documentation such as logs or reports of contractor activities that were necessary to validate the contractor's \$1.1 million billing of work performed.

- We reported one instance where debris was removed from 245 commercial properties without FEMA approval (Audit Report DD-09-03). Because the cost of removing debris from commercial properties was not readily available, we recommended that FEMA (1) direct the grantee to develop a methodology for estimating the cost of debris removed from commercial properties without FEMA's approval and (2) disallow this amount. We also recommended that FEMA direct the grantee to require the subgrantee to obtain prior approval from FEMA before removing debris from commercial property.

Federal regulations establish uniform administrative rules for grants and procedures for public assistance project administration. These rules and procedures require that grantees and subgrantees have fiscal control, accounting procedures, and project administration procedures that give FEMA assurance that (1) grant and subgrant financial and project status reports are accurately reported, (2) expenditure can be traced to a level that ensures that funds have not been used in violation of applicable statutes, and (3) grantee and subgrantees adhere to *Stafford Act* requirements and the specific provisions of 44 CFR when administering public assistance grants. The results discussed in this report are indicative of FEMA's need to compel grantee and subgrantee compliance with laws and regulations.

## **CONCLUSIONS AND RECOMMENDED MANAGEMENT ACTIONS**

Grantees and subgrantees did not always properly expend and account for FEMA PA program funds. Federal regulations regarding PA grant administration require states, as grantees, to oversee subgrant activities and ensure that subgrantees are aware of and follow federal regulations designed to ensure that financially assisted activities are accomplished according to applicable laws and regulations. However, many of our findings and reportable conditions indicate that states should do a better job of educating subgrantees and enforcing federal regulations.

Moreover, FEMA often does not hold states accountable for their failure to properly administer subgrant awards, especially with regard to contracting practices. FEMA should use the remedies specified in federal regulations as (1) a means to hold grantees and subgrantees accountable for material noncompliance with federal statutes and regulations and (2) an incentive to properly account for and expend FEMA funds. In addition, FEMA should consider requesting states to (1) evaluate their capabilities to effectively administer FEMA PA grants, (2) identify gaps inhibiting effective grant and subgrant management and program and project execution, and (3) identify opportunities for FEMA technical assistance such as training and project monitoring.

As FEMA implements changes to its regulations based on statutory requirements, and updates, clarifies, and streamlines its PA policies and procedures as recommended in Management Report OIG-10-26, *Assessment of FEMA's Public Assistance Program Policy and Procedures*, grantees must be kept informed of these changes in order to communicate this information to PA program applicants. PA projects often take years to complete; and constant grantee monitoring is critical to ensure that pertinent laws, regulations, and policies are followed throughout the projects.

This report provides a means for FEMA to (1) examine its regulations, policies, and procedures and assess the need for changes based on the recurring nature of our findings and reportable conditions and (2) inform state emergency management officials (i.e., PA program grantees) of grant and subgrant activities that should be avoided or implemented. Providing this report to PA program grantees will enable them to ensure that all laws, regulations, policies and procedures are followed and that FEMA funds are properly accounted for and expended.

We recommend that FEMA's Associate Administrator, Response and Recovery:

**Recommendation #1:** Emphasize to all FEMA personnel, particularly those in the Public Assistance program, the importance of:

- a. Vigorously enforcing all regulations and policies to ensure that grantees and subgrantees are held accountable for spending disaster assistance funds in a manner that instills the public's confidence that the funds are being spent wisely,
- b. Using all available remedies to deal with material instances of noncompliance with grant and subgrant statutes and regulations, and
- c. Engaging grantees in on-going proactive working relationships.

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

We discussed the results of our review with FEMA's Deputy Associate Administrator, Response and Recovery on November 18, 2010. That official generally concurred with our review results and the recommendation contained herein.

Please advise this office within 60 days of issuance of the actions planned or taken to implement the recommendation, including target completion dates for any planned actions. Significant contributors to this report were our Office of Emergency Management Oversight, Eastern Regional Office Director David Kimble; Central Regional Office Director Tonda Hadley; and Western Regional Office Director Robert Lastrico. Should you have questions concerning this report, please call me at (202) 254-4100, or your staff may contact any of the three EMO Regional Directors at (404) 832-6702, (214) 436-5220, or (510) 637-1461, respectively.

cc: Audit Liaison, FEMA (Job Code: G-11-006-EMO-FEMA)

**Schedule of Public Assistance Grant and Subgrant Audits Issued in FY 2009**

|    | <b>Report Number</b> | <b>Disaster Number(s)</b> | <b>Date Issued</b> | <b>Report Title</b>  |
|----|----------------------|---------------------------|--------------------|--|
| 1  | DA-09-01             | 1602, 1609                | 11/12/08           | Hurricane Katrina and Wilma Activities for Miami-Dade County Parks and Recreation Department                 |
| 2  | DA-09-02             | 1604                      | 11/20/08           | Hurricane Katrina Activities for Jackson County School District  |
| 3  | DA-09-03             | 1549, 1593, 1605          | 12/04/08           | Hurricane Ivan, Dennis, and Katrina Activities for Baldwin County, Alabama                                   |
| 4  | DA-09-04             | 1604                      | 12/04/08           | Hurricane Katrina Activities for Harrison County Wastewater and Solid Waste Management District, Mississippi |
| 5  | DA-09-05             | 1604                      | 12/08/08           | Hurricane Katrina Activities for Jasper County, Mississippi  |
| 6  | DA-09-06             | 1609                      | 12/08/08           | Hurricane Wilma Activities for City of Boca Raton, Florida   |
| 7  | DA-09-07             | 1604                      | 12/18/08           | Mississippi Gulf Coast Regional Wastewater Authority   |
| 8  | DA-09-08             | 1604                      | 01/08/09           | Hurricane Katrina Activities for the Catholic Diocese of Biloxi, Mississippi                                 |
| 9  | DA-09-10             | 1549                      | 02/12/09           | Hurricane Ivan Activities for City of Gulf Shores, Alabama   |
| 10 | DA-09-11             | N/A                       | 02/27/09           | West Virginia Division of Homeland Security and Emergency Management   |
| 11 | DA-09-12             | 1604                      | 03/12/09           | Hurricane Katrina Activities for Pearl River Valley Electric Power Association                               |
| 12 | DA-09-13             | 1609                      | 03/18/09           | Hurricane Wilma Activities for the City of Hollywood, Florida  |
| 13 | DA-09-14             | 1604                      | 04/28/09           | Hurricane Katrina Activities for Pascagoula School District, Pascagoula, Mississippi                         |
| 14 | DA-09-15             | 1551                      | 04/30/09           | Hurricane Ivan Activities for Escambia County Sheriff's Office, Pensacola, Florida                           |
| 15 | DA-09-16             | 1545, 1561, 1602, 1609    | 05/14/09           | Seminole Tribe of Florida - Activities for 2004 and 2005 Florida Hurricanes                                  |
| 16 | DA-09-17             | 1609                      | 05/14/09           | Hurricane Wilma Activities for Town of Davie, Florida  |
| 17 | DA-09-18             | 1602, 1609                | 05/28/09           | Review of Hurricane Katrina and Wilma Activities for Broward County, Florida                                 |
| 18 | DA-09-19             | 1604                      | 07/01/09           | Hurricane Katrina Activities for Pass Christian Public School District                                       |
| 19 | DA-09-21             | 1247                      | 08/11/09           | Hurricane Georges Activities for Puerto Rico Electric and Power Authority                                    |
| 20 | DA-09-22             | 1539, 1545, 1561          | 08/15/09           | Orange County, Florida   |
| 21 | DA-09-23             | 1609                      | 08/18/09           | City of Homestead, Florida   |
| 22 | DA-09-24             | 1661                      | 08/31/09           | City of Richmond, Virginia   |
| 23 | DD-09-01             | 1603, 1607                | 11/21/08           | Louisiana Department of Agriculture and Forestry   |
| 24 | DD-09-02             | 1603                      | 12/19/08           | Hurricane Katrina Debris Removal Activities in East Baton Rouge Parish, Louisiana                            |
| 25 | DD-09-03             | 1603                      | 12/19/08           | Hurricane Katrina Debris Removal Activities in Plaquemines Parish, Louisiana                                 |
| 26 | DD-09-04             | 1603                      | 01/09/09           | Hurricane Katrina Debris Removal Activities in the City of Kenner, Louisiana                                 |
| 27 | DD-09-05             | 1579                      | 03/25/09           | City of Wichita, Kansas  |
| 28 | DD-09-06             | 1603                      | 03/31/09           | Louisiana Superdome Sheltering and Repair  |
| 29 | DD-09-07             | 1620                      | 03/31/09           | Central Electric Cooperative, Inc.   |
| 30 | DD-09-08             | 1607                      | 05/29/09           | Jefferson Davis and Beauregard Electric Cooperatives   |
| 31 | DD-09-09             | 1603                      | 05/29/09           | Downtown Development District, New Orleans, Louisiana  |
| 32 | DD-09-10             | 1603                      | 05/29/09           | St. Bernard Parish, Louisiana  |
| 33 | DD-09-11             | 1603                      | 06/12/09           | City of New Orleans Residential Solid Waste and Debris Removal   |

**Schedule of Public Assistance Grant and Subgrant Audits Issued in FY 2009**

|    | <b>Report Number</b> | <b>Disaster Number(s)</b> | <b>Date Issued</b> | <b>Report Title</b>   |
|----|----------------------|---------------------------|--------------------|---|
| 34 | DD-09-12             | 1678                      | 06/23/09           | Kiamichi Electric Cooperative, Inc., Wilburton, Oklahoma                                  |
| 35 | DD-09-13             | 1573                      | 07/29/09           | City of Muncie, Indiana   |
| 36 | DD-09-15             | 1603                      | 09/18/09           | New Orleans City Park Improvement Association and Office of Facility Planning and Control |
| 37 | DD-09-16             | 1580                      | 09/29/09           | Licking Rural Electrification, Inc., Utica, Ohio  |
| 38 | DD-09-17             | 1603                      | 09/30/09           | City of New Orleans Community Correctional Center   |
| 39 | DS-09-01             | 1477                      | 11/19/08           | Trico Electric Cooperative, Inc.  |
| 40 | DS-09-02             | 1628                      | 03/12/09           | East Bay Regional Park District, Oakland, California                                      |
| 41 | DS-09-03             | 1585                      | 04/07/09           | Ventura County Watershed Protection District  |
| 42 | DS-09-04             | 1585                      | 04/19/09           | San Diego County, California  |
| 43 | DS-09-05             | 1577                      | 05/20/09           | California Department of Parks and Recreation   |
| 44 | DS-09-07             | 1682                      | 06/19/09           | Snohomish County Public Utilities District No. 1  |
| 45 | DS-09-08             | 1682                      | 07/02/09           | City of Seattle, Washington   |
| 46 | DS-09-09             | 1577                      | 07/10/09           | City of Los Angeles Department of Water and Power   |
| 47 | DS-09-10             | 1585                      | 08/07/09           | City of Laguna Beach, California  |
| 48 | DS-09-11             | 1628                      | 08/21/09           | California Department of Fish and Game, Sacramento, California                            |
| 49 | DS-09-12             | 1577                      | 09/22/09           | City of San Diego, California   |
| 50 | DS-09-13             | 1529                      | 09/25/09           | California Department of Water Resources, Sacramento, California                          |
| 51 | DS-09-14             | 1646                      | 09/29/09           | City of Oakland, California   |

Note: The following audits did not relate to the Public Assistance program and were excluded from this report:

- DA-09-09      *Contract Award and Administration, Federal Emergency Management Agency, Transitional Recovery Office, Biloxi, Mississippi* (program-specific review), issued 2/9/2009
- DA-09-20      *Harrison County School District, Mississippi* (Hazard Mitigation Grant program), issued 08/04/09
- DD-09-14      *City of Kettering, Ohio* (Hazard Mitigation Grant program), issued 08/17/09.
- DS-09-06      *Boone County Fire Protection District, Columbia, Missouri* (National Urban Search and Rescue Response System), issued 06/17/09

Copies of the audit reports issued in FY 2009 are available at the following web address:  
[http://www.dhs.gov/xoig/rpts/audit/oig\\_09grantsrpts.shtm](http://www.dhs.gov/xoig/rpts/audit/oig_09grantsrpts.shtm)

### Findings and Reportable Conditions by Type and Subtype

| Findings/Reportable Conditions by Type             | No.        | Amount Reported      | Findings/Reportable Conditions by Subtype          | No.        | Amount Reported      |
|--|------------|----------------------|--|------------|----------------------|
| <b>Ineligible Work or Costs</b>                    | 134        | \$ 93,992,781        | Contracting practices                              | 15         | \$ 29,929,094        |
|  |            |                      | Contract billings                                  | 15         | 4,682,199            |
|  |            |                      | Unreasonable contract costs                        | 4          | 2,347,569            |
|  |            |                      | Contract work not performed or not in contract     | 2          | 1,661,915            |
|  |            |                      | Ineligible work and project charges                | 38         | 20,199,785           |
|  |            |                      | Other federal agency funding available             | 5          | 1,872,947            |
|  |            |                      | Ineligible force account equipment rates           | 9          | 758,225              |
|  |            |                      | Ineligible force account labor and fringe benefits | 10         | 3,064,047            |
|  |            |                      | Excessive/unreasonable charges                     | 11         | 16,277,083           |
|  |            |                      | Insurance proceeds not applied                     | 5          | 6,454,400            |
|  |            |                      | Duplicate charges                                  | 9          | 4,223,980            |
|  |            |                      | Administrative allowance/overhead                  | 5          | 2,228,987            |
|  |            |                      | Salvage proceeds/credits                           | 6          | 292,550              |
|  |            |                      | <b>Subtotal</b>                                    | 134        | \$ 93,992,781        |
| <b>Unsupported Costs</b>                           | 19         | \$ 29,383,646        | <b>Subtotal</b>                                    | 19         | \$ 29,383,646        |
| <b>Collections/Deobligations</b>                   | 16         | \$ 15,059,654        | Interest earned on advances                        | 6          | \$ 1,437,814         |
|  |            |                      | Unneeded funding                                   | 10         | 13,621,840           |
|  |            |                      | <b>Subtotal</b>                                    | 16         | \$ 15,059,654        |
| <b>Grants Management and Administrative Issues</b> | 39         | \$ 0                 | Grants management                                  | 7          | \$ 0                 |
|  |            |                      | Project accounting                                 | 17         | 0                    |
|  |            |                      | Contracting practices                              | 13         | 0                    |
|  |            |                      | Contract billings                                  | 1          | 0                    |
|  |            |                      | Ineligible project costs                           | 1          | 0                    |
|  |            |                      | <b>Subtotal</b>                                    | 39         | \$ 0                 |
| <b>Total</b>                                       | <b>208</b> | <b>\$138,436,081</b> | <b>Total</b>                                       | <b>208</b> | <b>\$138,436,081</b> |

## Criteria Applicable to the Findings and Reportable Conditions Reported in FY 2009

### Section A – Ineligible Work or Costs

**A.1 - Contracting practices.** Procurement standards applicable to grantees and subgrantees are contained in 44 CFR 13.36. In the broadest sense, the regulations [13.36(a)] allow a state (i.e., grantee) to follow the same policies and procedures it uses for procurements from its nonfederal funds as long as procurements using federal funds include clauses required by federal statutes, executive orders, and their implementing regulations. Subgrantees are allowed to use procurement procedures that reflect applicable state and local laws and regulations provided that the procurements conform to applicable federal laws and regulations [13.36(b)(1)]. Some of the standards required by the regulations are listed below:

- Require the performance of procurement transactions in a manner providing full and open competition except under certain circumstances [13.36(c)(1)].
- Allow procurement by noncompetitive proposals only when certain circumstances apply. One acceptable circumstance is when the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation [13.36(d)(4)(i)].
- 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 price [13.36(b)(9)].
- Require subgrantees to maintain a contract administration system that ensures contractors perform according to the terms, conditions, and specifications of their contracts or purchase orders [13.36(b)(2)].
- Prohibit the use of T&M-type contracts unless a determination is made that no other contract is suitable and provided that the contract includes a ceiling price that the contractor exceeds at its own risk [13.36(b)(10)].
- Require a cost or price analysis when adequate price competition is lacking [13.36(f)(1)].
- Require profit to be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed [13.36(f)(2)].
- Prohibit the cost-plus-percentage-of-cost and percentage-of-construction-cost methods of contracting [13.36(f)(4)].

According to 44 CFR 206.200(b), FEMA expects the grantee and subgrantee to adhere to the regulations, including those that deal with contracting practices.

Federal regulations at 44 CFR 13.43(a)(2), *Remedies for noncompliance*, allow FEMA to disallow all or part of the costs of an activity or action not in compliance with applicable statutes or regulations.

FEMA's *Public Assistance Guide* (FEMA 322, June 2007, page 53) discusses contracting practices. For noncompetitive proposals, the guide says that (1) applicants (subgrantees) should avoid T&M contracts; (2) when used, T&M contracts must include a cost ceiling or "not to exceed" provision; and (3) cost-plus-percentage-of-cost contracts are not eligible although FEMA may separately evaluate and reimburse costs it finds fair and reasonable.

**A.2 - Contract monitoring.** According to 44 CFR 13.36(b)(2), grantees and subgrantees will maintain a contract administration system that ensures contractors perform according to the terms, conditions, and specifications of their contracts or purchase orders. In addition, OMB Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*, Attachment A, Section C.2 (2 CFR, Part 225) says that a cost is reasonable if, in its nature and amount, it 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.

**A.3 - Other ineligible work or project charges.** The following criteria relate to the examples cited in the body of the report.

- FEMA's *Debris Management Guide* (FEMA 325, July 2007, page 25) says that removing hazardous trees may be eligible for PA funding if the hazardous condition was caused by the disaster, and the trees (1) are an immediate threat to lives, public health and safety, or improved property, (2) have a diameter of 6 inches or greater, and (3) meet one of four specific criteria (e.g., leaning at an angle of 30 degrees or greater).
- Entities eligible to apply for assistance under a public assistance grant are (1) state and local governments, (2) certain private nonprofit organizations or institutions, and (3) Indian tribes or authorized tribal organizations and Alaska Native villages or organizations [44 CFR 206.222].
- If a subgrantee desires to make improvements but still restore the predisaster function of a damaged facility, the grantee's approval must be obtained. Federal funding for improved projects is limited to the federal share of the approved estimate of eligible costs [44 CFR 206.203(d)(1)].
- To be eligible for financial assistance, an item of work must (1) be required as a result of the emergency or major disaster event, (2) be located within the designated area of a major disaster or emergency declaration, and (3) be the legal responsibility of an eligible applicant [44 CFR 206.223(a)].
- Subgrantees must evaluate each cost overrun during the execution of approved work and, when justified, submit requests and justifications for additional funding through the grantee to the Regional Administrator for a final determination [44 CFR 206.204(e)(1) and (2)]. Likewise, grantees and subgrantees shall obtain prior written approval for any budget

revision that would result in the need for additional funds and prior approval for any revision of the scope or objectives of a project [44 CFR 13.30(c)(2) and (d)(1)].

- Generally, disaster assistance will not be made available under the *Stafford Act* when another federal agency has specific authority to restore facilities damaged or destroyed by an event that is declared a major disaster. [44 CFR 206.226(a)(1)].
- The straight- or regular-time salaries and benefits of a subgrantee's permanently employed personnel are not eligible in calculating the cost of eligible emergency work [44 CFR 206.228(a)(2)].
- Reimbursement for ownership and operating costs of applicant-owned equipment used to perform eligible work will be provided according to the provisions of 44 CFR 206.228(a)(1)(i) through (iii). FEMA's *Public Assistance Guide* says that costs for use of automobiles and pickup trucks may be reimbursed on the basis of mileage if less costly than the hourly rates.
- Grantees are required by 44 CFR 206.205(b) to make an accounting to FEMA of eligible costs for each approved large project and certify that (1) reported costs were incurred in the performance of eligible work, (2) approved work was completed, (3) projects complied with the FEMA-State Agreement, and (4) payments are made according to 44 CFR 13.21.

**A.4 - Miscellaneous ineligible costs.** The following criteria relate to the examples cited in the body of the report.

- FEMA's *Debris Operations Job Aid* (FEMA 9580.1, August 2000 [current when audits of hurricanes Dennis and Katina were performed]) said that burning vegetative debris reduces its volume by approximately 95%. FEMA's *Debris Management Guide* (FEMA 325, July 2007, pages 23 and 84, and Appendix B, page 5) says that vegetative debris may be reduced by 90% to 95% of its volume through burning technologies.
- OMB Circular A-87, Attachment A, Section C.2 (2 CFR, Part 225) says that a cost is reasonable if, in its nature and amount, it 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. Section C.3 says that a cost is allocable to a particular cost objective if the goods or services received are chargeable or assignable to such cost objective according to the relative benefits received.
- Section 312 of the *Stafford Act* does not allow FEMA funds to be used for activities covered by other federal sources and insurance. In addition, 44 CFR 206.191 requires that grant recipients pursue an adequate insurance settlement and credit FEMA projects with insurance proceeds that apply to such projects.
- According to 44 CFR 206.228(a)(2)(ii), [1990 (revised 2007)] the necessary costs, of requesting, obtaining, and administering federal disaster assistance subgrants will be covered by a statutory administrative allowance. Additionally, 44 CFR 206.228(b)(2) [revised 2007]

says that no indirect costs of a subgrantee are separately eligible because the administrative allowance covers these costs. [Note: For disasters and emergencies declared by the President on or after November 13, 2007, grantees are eligible to apply to FEMA for PA management funds pursuant to 44 CFR, Part 207.]

- OMB Circular A-87, Attachment A, Section C.1.i (2 CFR, Part 225), says that costs claimed under a federal award must be net of applicable credits.

### **Section B – Unsupported Costs**

Subgrantees must have fiscal and accounting procedures to permit the tracing of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes [44 CFR 13.20(a)(2)]. To meet this financial management standard, subgrantees, at a minimum, should maintain accounting records that identify how FEMA funds are used and ensure that their accounting records are supported by source documents such as canceled checks, paid bills, and contracts. Likewise, the grantee should verify that costs claimed by its subgrantees meet the standard for financial management systems [44 CFR 13.20] and ensure that its subgrantees are aware of and follow the retention and access requirements for records [44 CFR 13.42].

### **Section C – Collections/Deobligations**

According to 44 CFR 13.21(i), grantees and subgrantees shall promptly, but at least quarterly, remit to FEMA interest earned on advances (less an amount up to \$100 per year for administrative expenses).

According to 44 CFR 206.205(b)(1), the grantee shall make an accounting to the Regional Administrator of eligible costs for each approved large project, and each large project shall be submitted as soon as practicable after the subgrantee has completed the approved work and requested payment. In addition, 44 CFR 13.40(a) says that grantees are responsible for managing the day-to-day operations of grant and subgrant-supported activities, and as such they must monitor these activities to ensure compliance with applicable federal requirements and that performance goals are being achieved. Moreover, 44 CFR 13.40(d)(2) requires grantees to inform the federal agency of favorable developments that enable meeting time schedules and objectives sooner or at less cost than anticipated as soon as they become known. Finally, FEMA's Standard Operating Procedure 9570.14, *Program Management and Grant Closeout*, paragraph 9.2.1, says the grantee should reconcile costs within 90 days of the date the subgrantee completes the project.

### **Section D – Grants Management and Administrative Issues**

According to 44 CFR 13.20(a)(2), fiscal control and accounting procedures of subgrantees must be sufficient to permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes. To meet this financial management standard, subgrantees should maintain records that adequately identify the source and application of funds. Additionally, FEMA's *Public Assistance Guide* (FEMA

322, June 2007, page 137) says that all documentation pertaining to a project should be filed with the corresponding project worksheet and maintained by the subgrantee as the permanent record of the project. These records become the basis for verification of the accuracy of project cost estimates during validation of small projects, reconciliation of costs for large projects, and audits.

Good grantee management includes (1) having procedures in place to ensure that cash advances to subgrantees are expended timely [44 CFR 13.21] and that excess funds are recovered promptly, (2) having a documented or standard payment processing policy with controls that prevent overpayments [44 CFR 13.20(a)], (3) having procedures to follow up on material deficiencies reported in Single Audits [OMB Circular A-133], (4) being aware of significant budget and scope increases [44 CFR 13.30(c) and (d) and 206.204(e)], and (5) adequately monitoring and reporting subgrantee program performance [44 CFR 13.40 and 206.204(f)].

FEMA Disaster Assistance Policy 9523.13, *Debris Removal from Private Property*, says that state or local governments that intend to remove debris from commercial property must submit a written request to the FEMA Federal Coordinating Officer seeking approval for reimbursement before commencing the work.