

Department of Homeland Security **Office of Inspector General**

FEMA Public Assistance Grant Funds Awarded to
County of El Dorado, California



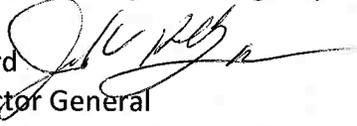


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Department of Homeland Security

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

JUL 3 2012

MEMORANDUM FOR: Nancy Ward
Regional Administrator, Region IX
Federal Emergency Management Agency

FROM: D. Michael Beard 
Assistant Inspector General
Office of Emergency Management Oversight

SUBJECT: *FEMA Public Assistance Grant Funds Awarded to
County of El Dorado, California*
FEMA Disaster Number 1628-DR-CA
Audit Report Number DS-12-11

We audited Public Assistance (PA) grant funds awarded to the County of El Dorado, California (County), Public Assistance Identification Number 017-99017-00. Our audit objective was to determine whether the County accounted for and expended Federal Emergency Management Agency (FEMA) grant funds according to Federal regulations and FEMA guidelines.

The County received a PA award of \$3.7 million from the California Emergency Management Agency (Cal EMA),¹ a FEMA grantee, for debris removal, emergency protective measures, and permanent repairs to facilities damaged as a result of flooding that occurred from December 17, 2005, through January 3, 2006. The award provided 75 percent FEMA funding for 5 large and 16 small projects.² The audit covered the period from December 17, 2005, to January 9, 2009.³ We audited four large projects and two small projects totaling \$3.3 million, or 92 percent of the total award (see Exhibit, Schedule of Audited Projects).

We conducted this performance audit between August 2011 and April 2012 pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objective. We believe that the evidence

¹ At the time of the disaster, the grantee's name was the Governor's Office of Emergency Services, which became part of Cal EMA on January 1, 2009.

² Federal regulations in effect at the time of the disaster set the large project threshold at \$57,500.

³ January 9, 2009, denotes the date of County of El Dorado's programmatic closure by FEMA.



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obtained provides a reasonable basis for our findings and conclusions based upon our audit objective. We conducted this audit applying the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.

We discussed issues related to this audit with FEMA, Cal EMA, and County officials; reviewed judgmentally selected project costs (generally based on dollar value); and performed other procedures considered necessary to accomplish our objective. We did not assess the adequacy of the County'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 County's method of accounting for disaster-related costs and its procurement policies and procedures.

RESULTS OF AUDIT

Of the \$3.3 million we reviewed, the County did not comply with Federal grant regulations and FEMA guidelines to award a contract totaling \$2.2 million, nor did it ensure the reasonableness of the contract price. Additionally, the County can improve record keeping for procurement activities.

Finding A – Procurement by Noncompetitive Proposal

The County awarded a construction contract for road repairs under Project 34, totaling \$2.2 million, using a noncompetitive proposal⁴ not allowed under Federal procurement criteria. In addition, the County did not perform a cost or price analysis to ensure the reasonableness of the contract price.⁵

Federal procurement standards at 44 CFR 13.36 require the County to—

- Conduct all procurement transactions in a manner providing full and open competition consistent with Federal regulation standards. (13.36(c)(1))
- Award contracts by noncompetitive proposals only if awarding a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals, and one of the following circumstances applies—

⁴ Per 44 CFR 13.36(d)(4), procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source (i.e., sole-source), or after solicitation of a number of sources when competition is determined inadequate.

⁵ The County should have been aware of the procurement requirements because it had applied for and received PA funding in 1997 for FEMA disaster 1155-DR-CA.



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- (a) The item is available only from a single source;
 - (b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - (c) The awarding agency authorizes noncompetitive proposals; or
 - (d) After solicitation of a number of sources, competition is determined inadequate. (13.36(d)(4)(i)(A)-(D)) (see also FEMA 322, October 1999, p. 39)
- Perform a cost analysis in connection with every procurement action. A cost analysis is necessary when adequate price competition is lacking, and for sole-source procurements, including contract modifications or change orders, unless price reasonableness can be established on other bases mentioned in 44 CFR 13.36(f)(1). A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price. (13.36(f)(1))

FEMA may grant exceptions to Federal procurement requirements to subgrantees on a case-by-case basis. (13.6(c))

On January 5, 2006, the County declared a local state of emergency. This was followed by the County's determination to dispense with competitive bidding (January 10, 2006), asserting that the emergency would not permit delays resulting from competitive solicitation of bids, and that immediate action was necessary to stabilize the damaged roads. Project records, however, indicate that the County did not take immediate action to secure the services of a contractor for Project 34. Rather, the County signed and executed the contract, valued at \$1,575,321 (final contract cost totaled \$2,183,613, including contract change orders for additional repair work) to stabilize and repair the damaged road on March 9, 2006, almost 2 months after its decision to dispense with competitive bidding. The competitive bidding process took 10 days or less to complete for two other road repair contracts⁶ that the County awarded 2 and 5 months, respectively, after its decision to dispense with competitive bidding for Project 34.

We asked County officials to explain why the construction contract for Project 34 was not procured through full and open competition. They said that the competitive bidding process generally took up to 4 months and would have delayed the completion of the repairs and critical access to the road. In a letter to our office, dated April 19, 2012,⁷ the County explained that the sole-source contract was awarded to the same contractor hired to complete a FEMA-funded debris removal project, with the work being in the same general vicinity as Project 34. The County also explained that the contractor had

⁶ Projects 490 and 492.

⁷ The County provided this letter following the audit exit conference that took place on April 4, 2012.



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recently completed other projects for the County and had demonstrated the skills necessary to complete the permanent repairs required for Project 34.

County records, however, do not include documented evidence to justify sole-source contracting and in some instances contradict County officials' assertions. The records further indicate that competitive procurement could have been done in an expeditious manner. Three days following the disaster, on January 6, 2006, the County visited the damaged area, accompanied by a geotechnical consultant and a civil engineer consultant. County records also indicate that several contractors visited the site prior to the County's decision to dispense with competitive bidding—including the contractor that was awarded the sole-source contract for Project 34.

According to officials, the County invited contractors to inspect the disaster damage in an effort to obtain their technical expertise and recommendations on constructability. Thus, about 2 months prior to awarding the sole-source contract, the County collected information that would have facilitated competitive procurement. In addition, on February 6, 2006, more than a month before it executed the contract, the County had substantially completed schematic drawings and a geotechnical engineering study that detailed the scope of the repairs. Further, County procurement records indicate that the competitive bidding process for the other two FEMA-funded road repair projects took approximately 10 days to complete. As a result, we concluded that the County had sufficient time to competitively procure the disaster work for Project 34, which ultimately cost nearly \$2.2 million. Figure 1 depicts the completed work for Mosquito Road.



Figure 1: Project-34, Mosquito Road – Repair

Source: Office of Inspector General site visit (August 24, 2011)



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Additionally, even if it were necessary to award a noncompetitive contract, project records did not include the required documentation showing that the County performed a cost or price analysis for the sole-source contract. According to 44 CFR 13.36(f)(1), the County was required to perform a cost or price analysis to determine if the contractor's proposed price was fair and reasonable. County officials told us that they determined that the project costs were fair and reasonable by using both FEMA-provided cost estimates and historical costs that the County has incurred for similar projects. With its April 19, 2012 letter, the County provided copies of three worksheets that it claims were recently located and used to perform a cost or price analysis. These worksheets were not in the project's contract files we reviewed during fieldwork.

One worksheet included a comparison of unit price items between the contractor, the County, and a County consultant. The worksheet identified that the contractor's estimate was more than \$400,000 over the estimate prepared by the County's consultant. The other two worksheets included bid proposals from four contractors for two projects outside of El Dorado County, with work and cost estimates that were significantly different from those of Project 34. Because the three worksheets were not included in the County's contract files for Project 34 and were undated, we could not determine their reliability or whether they were used for a cost or price analysis prior to awarding the contract, as the County asserts.

Since the County did not follow Federal procurement requirements, we question \$2,183,613 in ineligible contract costs associated with Project 34. County officials disagreed with our finding.

Finding B – Procurement Documentation

We determined that the County can improve its record keeping for disaster-related procurement activities. Although more than 2 years have passed since FEMA programmatically closed the County's grant on January 9, 2009, some procurement-related records either were not available or included incomplete information. This occurred because Cal EMA did not monitor the County's procurement activities to ensure that adequate historical documentation was maintained to support the County's compliance with Federal requirements for FEMA-funded projects.

Federal regulations at 44 CFR 13.36 (b)(9) require the County to maintain sufficient records to detail the significant history of procurement, including its rationale for contractor selection and basis for the contract price.



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The 2005–2006 State Administration Plan requires Cal EMA to ensure that disaster applicants maintain project documentation in a centralized location so that State and Federal representatives can monitor the applicant’s project activities, and to provide subgrantees with the information necessary for compliance with generally accepted accounting principles, procurement processes, documentation retention, and contracting issues.

Cal EMA officials explained that, as part of their monitoring and project closeout process, they generally do not review the applicant’s procurement records, and therefore could not comment on the issues we identified.

RECOMMENDATIONS

We recommend that the FEMA Region IX Administrator:

Recommendation #1: Disallow \$2,183,613 (Federal share \$1,637,710) in ineligible Project 34 costs that were not procured in accordance with Federal procurement requirements, unless FEMA decides to grant an exception for all or part of the costs as provided for in 44 CFR 13.6(c) and Section 705(c) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (finding A).

Recommendation #2: Instruct Cal EMA to provide the additional guidance emphasizing that subgrantees must follow Federal procurement standards at 44 CFR 13.36 when procuring contracts for FEMA projects, or risk losing Federal funding (finding A).

Recommendation #3: Instruct Cal EMA to provide additional guidance emphasizing that subgrantees need to take the steps necessary to ensure that procurements funded by FEMA PA grant awards are supported with sufficient documentation that outlines compliance with Federal procurement regulations (finding B).

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed the results of this audit with County officials during our audit, and have included their comments in this report, as appropriate. We also provided written summaries of our findings and recommendations in advance to the County on March 30, 2012; to Cal EMA on April 3, 2012; and to FEMA on April 26, 2012. We discussed these findings and recommendations at exit conferences held with Cal EMA and County officials on April 4, 2012. County officials disagreed with the findings. We allowed a 2-week period for the County to provide supporting documentation in support of its



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assertions. The County provided additional documentation on April 10 and April 19, 2012. As a result, we adjusted questioned costs and have included the County's comments in the report, as appropriate. FEMA and Cal EMA officials withheld further comment until after we issue our final report.

Within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendations. Until your response is received and evaluated, the recommendations will be considered open and unresolved.

Consistent with our responsibility under the *Inspector General Act*, we are providing copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination. Significant contributors to this report were Humberto Melara, Louis Ochoa, Renee Gradin, Gregory Suko, Elizabeth Finn, and Paul Sibal.

Should you have questions concerning this report, please contact me at (202) 254-4100 or Humberto Melara at (510) 637-1463.

cc: Audit Liaison, FEMA Region IX
Administrator, FEMA
Audit Liaison, FEMA (Job Code G-11-053-EMO-FEMA)
Audit Liaison, DHS



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EXHIBIT

**Schedule of Audited Projects
December 17, 2005, to January 9, 2009
County of El Dorado, California
FEMA Disaster Number 1628-DR-CA**

Project Number	Project Award Amount	Project Charges Reviewed	Questioned Costs (Finding A)
34	\$2,696,044	\$2,696,044	\$2,183,613
490	333,535	333,535	
492	132,223	132,223	
1837	74,517	74,517	
3079 ⁸	50,000	50,000	
3400 ⁸	56,532	56,532	
Total	\$3,342,851	\$3,342,851	\$2,183,613

⁸ Small project.

ADDITIONAL INFORMATION AND COPIES

To obtain additional copies of this document, please call us at (202) 254-4100, fax your request to (202) 254-4305, or e-mail your request to our Office of Inspector General (OIG) Office of Public Affairs at: DHS-OIG.OfficePublicAffairs@dhs.gov.

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