

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

FEMA Public Assistance Grant Funds Awarded to the
Alaska Department of Transportation and Public
Facilities, Central Region, Anchorage, Alaska



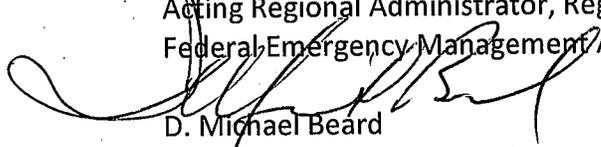


OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

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

July 18, 2012

MEMORANDUM FOR: Sharon Loper
Acting Regional Administrator, Region X
Federal Emergency Management Agency

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

SUBJECT: *FEMA Public Assistance Grant Funds Awarded to the
Alaska Department of Transportation and Public Facilities,
Central Region, Anchorage, Alaska
FEMA Disaster Number 1865-DR-AK
Audit Report Number DS-12-12*

We audited public assistance (PA) grant funds awarded to the Alaska Department of Transportation and Public Facilities, Central Region, Anchorage, Alaska (Department), Public Assistance Identification Number 000-U0291-00. Our audit objective was to determine whether the Department accounted for and expended Federal Emergency Management Agency (FEMA) PA grant funds according to Federal regulations and FEMA guidelines.

The Alaska Division of Homeland Security and Emergency Management (Grantee) awarded the Department \$1,422,996, primarily related to roadway washout damages resulting from severe storms, flooding, mudslides, and rockslides during the period from October 6 through 11, 2009. The award provided 75 percent FEMA funding for seven large and five small projects.¹ Our audit covered the period from October 6, 2009, to November 28, 2011. We audited the contract costs for 11 of the projects awarded for a total of \$1,414,762. The award amount generally represents FEMA's estimate of actual costs to repair damaged facilities to their predisaster condition, and will be adjusted by FEMA during the grant closeout to actual eligible costs. During this process, FEMA will review the final claim and determine if the claimed costs are eligible for reimbursement. As of our audit cutoff date of November 28, 2011, the final claim had not been prepared or submitted. Consequently, our audit was based on the Department's internal accounting charges of \$2,081,864 (see Exhibit, Schedule of Projects Audited) to the FEMA disaster projects, representing a net overrun of about 46 percent of the \$1.4 million award amount.

¹ Federal regulations in effect at the time of the disaster set the large project threshold at \$63,200.



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We conducted this performance audit between June 2011 and November 2011 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 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 interviewed FEMA, Grantee, and Department 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 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 methods of accounting for disaster-related costs and its procurement policies and procedures.

RESULTS OF AUDIT

The Department did not comply with applicable contract procurement requirements and also did not request overruns in accordance with FEMA regulations and guidance. As a result of the improper procurement, we questioned the eligibility of all contract costs of \$2,032,157 charged to FEMA projects. Of that amount, we also questioned \$811,230 because the charges exceeded the amount awarded by FEMA for 9 of the 11 projects. In addition to these findings, we reported as an "Other Matter" procedures that should be improved in the Grantee's training and monitoring of applicants during the preaward and recovery process to ensure compliance with the grant award.

Finding A: Contract Procurement

The Department did not follow either Federal or State of Alaska contract procurement requirements when it awarded two contracts for flood repairs in the Kodiak area, each for \$307,110, to separate contractors. For example, it did not obtain competitive sealed bids or contractor cost data as required. Instead, the Department improperly invited specific contractors to submit quotes using small procurement procedures that are generally limited to contracts under \$100,000. Under the "Invitation for Quotes," the Department awarded two time-and-material contracts. The contract documents for the two contracts set a \$1 million ceiling for each contractor and provided rates for six types of equipment.



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The contracts did not include a cost estimate by site or project. The scope of work for the two contracts was broadly worded and said that the contractors were to furnish all construction resources, such as supervision, labor, equipment, and materials, to repair flood-damaged sections of Rezanof Drive, Anton Larson Bay Road, Chiniak Highway, and Pasagshak Road to preflood conditions as directed by the Department representative. In contrast, FEMA's approved project worksheets included a cost estimate per damage site and specific roadway locations. For example, one of the project worksheet sites for project number 41 included the repair of Anton Larson Bay Road at MP 4.0. The project worksheet also detailed the work to be performed, including repair of the road surface, embankment, and culvert; and specific dimensions and materials required for each type of damage. As a result, the scope of work in the contracts cannot be reconciled with the FEMA-approved project worksheets.

Federal and State of Alaska procurement statutes, regulations, and guidelines require the following:

- Contractors are to be selected through competitive sealed bids [Alaska Statute (AS) 36.30.100].
- When a waiver of competitive procedures is needed due to emergency conditions, a written determination by the chief procurement officer of the basis for the emergency and the selection of the particular contractor must be included in the contract file (AS 36.30.310).
- In the absence of adequate price competition, the contractor or prospective contractor shall submit cost and pricing data before an award of a contract or a change order or contract modification (AS 36.30.400).
- Applicants should avoid using time-and-material contracting. FEMA may provide assistance for work completed under such contracts for a limited period (generally not more than 70 hours) that is necessary immediately after the disaster has occurred when a clear scope of work cannot be developed. In all cases, a cost ceiling, or "not-to-exceed" provision, must be included in the contract, and a competitive process should be used for all of the labor and equipment rates (FEMA Public Assistance Guide, FEMA 322, June 2007).
- Procurements for construction that do not exceed an aggregate dollar amount of \$100,000 may be made in accordance with regulations adopted by the commissioner for small procurements. They shall be made with competition



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that is practicable under the circumstances, and shall give adequate public notice of intent to make the procurement (AS.36.30.320).

The Department did not follow the Federal or State requirements in procuring its contracts:

- Specific contractors were invited to submit quotes, instead of the required competitive sealed bids.
- No waiver of competitive requirements was documented for the 14 percent of contract charges that were incurred on emergency projects.
- Small procurement procedures that have a \$100,000 limit were used for these two contracts, under which the Department charged about \$2 million to FEMA projects, as well as about \$1.6 million in additional charges to non-FEMA accounts, for a total of \$3.6 million.²
- No evidence exists that a cost or price analysis was conducted for the preaward or change order proposals that are required in the absence of adequate price competition.
 - While the quotes in the initial proposal included rates for six types of equipment, the actual number of different types of equipment (including standby rates) billed was more than 10 times that amount.
 - Thus, the rates for most of the equipment used were not included in the quotes that formed the basis for the original contract award.
 - Rather, the rates used for more than 91 percent of the equipment items billed were included in change orders for which the Department neither obtained competitive bids nor performed a cost analysis to determine the reasonableness of the rates.
- The Department paid contractors' billings that exceeded the cost ceilings under both contracts.

The procurement process used by the Department officials was not in compliance with the Federal or State competitive requirements, and did not otherwise provide assurance

² Included costs for projects funded by another Federal agency as well as the Department's maintenance projects; \$2,032,157 of the contractors' billings was charged to FEMA-eligible projects.



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that the price paid to the contractors was reasonable, as required. FEMA included a statement in the project worksheets to the effect that the Department elected to utilize a time-and-material-type contract that is not an eligible means of determining reasonable costs. FEMA added that all actual costs submitted by the Department will be evaluated for reasonableness and reimbursed accordingly. We question the eligibility of the total contract charges to all FEMA projects of \$2,032,157 owing to the Department's noncompliance with State and Federal contracting requirements.

Department and Grantee officials generally agreed that the Department did not comply with State and Federal procurement requirements. However, the Grantee officials contend that the Department's historical procedures for contract procurement and monitoring provided assurance of cost reasonableness and eligibility. FEMA was unable to make a determination at this time.

Finding B: Overruns

The Department did not request approval for \$811,230 in overruns of FEMA projects. Despite their not obtaining the required approval, Department officials told us they plan to submit claims for overruns on all projects. For 9 of the 11 projects included in the audit scope, the costs charged by the Department exceeded FEMA's cost estimate for the project.

In addition to the noncompliance with contract procurement requirements discussed in finding A, the issue of overruns was exacerbated because the contractor performed non-FEMA repairs in the same general area as the FEMA repairs. Although our audit did not disclose any duplicative charges, the identification of charges to the appropriate project could not be assured.

Federal grant regulations require that—

- Costs be adequately documented to be allowable under a Federal award (2 CFR, Part 225, Appendix A, Section C.1.j).
- Subgrantees have fiscal controls and accounting procedures that permit the tracing of funds to a level of expenditure adequate to establish that such funds are not used in violation of applicable laws (44 CFR 13.20(a)(2)).
- Generally, disaster assistance will not be made available by FEMA for damaged facilities when another Federal agency has specific authority to fund those disaster repairs (44 CFR 206.226(a)).



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- Work must be required as a direct result of the declared disaster (44 CFR 206.223(a)(1)).
- The subgrantee must submit a written request to the Grantee before expenditures are made if a cost overrun is expected. The request must include an itemized list of expenses and the reason for the overrun (Alaska grantee-subgrantee assurances and agreements, page 1, item 3).
- Requests for net small project overruns must be submitted through the Grantee to FEMA in the form of an appeal within 60 days of the completion of all of that applicant's small projects (FEMA's Public Assistance Guide, FEMA 322, June 2007).

The Department did not meet Federal and State requirements for obtaining approval for project overruns and documenting those costs:

- The Department provided Daily Work Reports as the primary basis for its contract charges to each project. Those reports generally noted roadway locations, labor hours, equipment hours, and materials used. However, the reports were not reliable for independent verification that the charges were eligible for the FEMA projects shown because—
 - They were not timely completed. For example, reports for October 19 and 21, 2009, were not completed until November 3.
 - They were not always signed by both the contractor and the Department. For example, reports for November 20 and 24, 2009, were not signed by the Department.
 - They could not be reconciled with a Department work order or similar system that identified a specific scope of work to be performed for each project, period of performance, and resources required.
- The Department's charges to the FEMA projects included substantial unapproved overruns of the FEMA-approved estimates (eligible amounts). The Department submitted no written request for approval with justification of the overruns to the Grantee or FEMA prior to project completion. Examples of the overruns are shown in table 1:



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Project No.	Eligible Amount	Amount Charged to FEMA	Amount of Overrun	Overrun Percentage
26	\$21,290	\$84,137	\$62,847	295%
32	\$9,044	\$67,880	\$58,836	651%
47	\$112,878	\$404,682	\$291,804	259%

For the work to be eligible for FEMA reimbursement, the Department must demonstrate that the work was for damages caused by the declared disaster and that it was not eligible under another Federal agency’s authority. Project records identified that the Department combined repair work funded from multiple sources into one contract, did not define work scope in the contract, and did not have an adequate work order system. The substantial overruns are an indicator that the charges to FEMA projects by the Department may not have been properly made. Therefore, we question the \$811,230 in overrun charges.

Department officials disagreed with our findings. They said that the charges were justified based on the Department’s daily reports and summary documentation, and that overruns had been shown on the quarterly progress reports. Grantee officials concurred with the Department’s comments but said that they had not reviewed documentation for any of the projects. FEMA officials were unable to make a determination.

Other Matter: Grantee Monitoring

Our review disclosed a need for improvement in the preaward training of potential applicants to ensure compliance with the eligibility requirements, especially as they pertain to procurement, documentation, and overruns. In addition, the Grantee needs to improve its monitoring of the grants awarded under the PA program to ensure the applicants’ compliance with the requirements and to take timely corrective action when appropriate. FEMA’s Public Assistance Guide (FEMA 322, chapter 1, page 3 (June 2007)) provides that the State, acting as the Grantee for the PA Program, is responsible for educating potential applicants and working with FEMA to manage the program, and for implementing and monitoring the grants awarded.

Based on the Department’s noncompliance with required procedures in such areas as contract procurement, time-and-material contracting, and requests for overrun approval, we determined that the Grantee should improve its training and monitoring process to ensure the Department’s adherence to the requirements.



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Examples in which the Department might have benefited from more training and closer monitoring by the Grantee are as follows:

1. Grantee guidance did not stress the State of Alaska statutory requirements for obtaining competitive sealed bids, as well as other procurement requirements. Further, the Grantee's position that irrespective of contract practices, the costs are acceptable because they are consistent with historically similar work may send mixed signals to the Department that compliance with the applicable procurement requirements is not mandatory.
2. Grantee guidance for time-and-material contracts clearly specified that this type of contracting should be avoided but may be allowed for work that is necessary during the first 70 hours after the disaster. However, documentation showed that the Grantee was aware of the time-and-material contracting early in the contracting process, but no effort was made to require the Department to terminate this form of contracting after the immediate emergency period. Further, the Grantee's position that the incurred costs are reasonable, and that it is confident that all of the work was strictly monitored by onsite Department of Transportation personnel, may send mixed signals to the Department that this form of contracting is acceptable, even after the immediate emergency period.
3. Grantee guidance specified that the Department, if it expects to have a cost overrun, is required to submit a written request to the Grantee before the expenditures are made, identifying the reason for the overrun and itemizing the expenses. The Grantee did not document any efforts to monitor the overruns and ensure that the Department followed its guidance for obtaining overrun approvals.

Based on these examples, as well as other deficiencies presented in our report, we determined that the Grantee should have employed increased proactive measures to ensure the Department's compliance with the eligibility requirements of FEMA's PA Program, and to avoid the improper use of grant funds.

RECOMMENDATIONS

We recommend that the Regional Director, FEMA Region X:

Recommendation #1: Disallow \$2,032,157 (Federal share \$1,524,118) of ineligible costs related to improper procurement, unless FEMA makes an affirmative decision



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that all or part of the contract costs are fair and reasonable and waives the Federal (44 CFR 13.6(c)) and State procurement requirements (finding A).

Recommendation #2: Disallow \$811,230 (Federal share \$608,423, also disallowed in recommendation #1) of ineligible contract costs due to insufficient documentation for unapproved overruns (finding B). To avoid duplication of costs questioned in recommendation #1, these costs should not be deducted to the extent of FEMA's disallowance of costs questioned in recommendation #1.

Recommendation #3: Advise the Grantee that applicants may benefit from more preaward training on procurement requirements and closer monitoring of their grant management throughout the recovery process, especially in regard to contract procurement and overrun procedures.

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed the audit results with Department officials during our audit and included their comments in this report, as appropriate. We provided written summaries of our findings and recommendations in advance to FEMA, Grantee, and Department officials and discussed them at exit conferences held with FEMA on November 29, 2011, and with Grantee and Department officials on November 28, 2011. Department and Grantee officials concurred with finding A but did not concur with finding B. FEMA officials withheld their comments for further analysis.

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.

Major contributors to this report are Humberto Melara, Western Regional Office Director; Jack Lankford, Audit Manager; and Connie Tan, Auditor.

Please call me with any questions, or your staff may contact Humberto Melara at (510) 637-1463.



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EXHIBIT

Schedule of Projects Audited
October 6, 2009, to November 28, 2011
Alaska Department of Transportation and Public Facilities, Central Region
FEMA Disaster Number 1865-DR-AK

Project Number	Project Award	Project Charges	Project Charges Audited	Cost Recommended for Disallowance		Total Findings (A-B)
				Contract Procurement Finding A	Overrun Finding B*	
26	\$21,290	\$84,137	\$84,137	\$84,137	\$62,847	\$84,137
31	187,505	152,060	152,060	152,060		152,060
32	9,044	67,880	67,880	67,880	58,836	67,880
40	92,039	96,642	78,281	78,281	4,603	78,281
41	460,519	351,836	351,836	351,836		351,836
42	24,401	38,794	38,794	38,794	14,393	38,794
44	34,425	81,519	81,519	81,519	47,094	81,519
45	184,727	210,844	179,498	179,498	26,117	179,498
46	131,200	258,922	258,922	258,922	127,722	258,922
47	112,878	404,682	404,682	404,682	291,804	404,682
48	156,734	334,548	334,548	334,548	177,814	334,548
51**	8,234					
Total Audited Project	\$1,422,996	\$2,081,864	\$2,032,157	\$2,032,157	\$811,230	\$2,032,157

*To avoid duplication, these costs will not be deducted if FEMA concurs with finding A.

**Project was not audited. At the time of our fieldwork, the Department had not charged costs to the project.



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APPENDIX

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