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DEC 16 2011

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

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

SUBJECT: *FEMA Public Assistance Grant Funds Awarded to  
Town of Fairfax, California*  
FEMA Disaster Number 1628-DR-CA  
Audit Report Number DS-12-01

We audited Public Assistance (PA) grant funds awarded to the Town of Fairfax, California (Town), Public Assistance Identification Number 041-23168-00. Our audit objective was to determine whether the Town accounted for and expended Federal Emergency Management Agency (FEMA) grant funds according to federal regulations and FEMA guidelines.

The Town received a PA award of \$1.9 million from the California Emergency Management Agency (Cal EMA),<sup>1</sup> 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% FEMA funding for 7 large and 10 small projects.<sup>2</sup> The audit covered the period from December 17, 2005, to November 17, 2011. We audited six large projects and three small projects totaling \$1.7 million, or 90% of the total award (see Exhibit, Schedule of Audited Projects).

We conducted this performance audit 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 according to 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 Town officials; reviewed judgmentally selected samples of project costs (generally based on dollar value); and performed other

<sup>1</sup> 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.

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

procedures considered necessary to accomplish our objective. We did not assess the adequacy of the Town’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 Town’s method of accounting for disaster-related costs and its procurement policies and procedures.

## RESULTS OF AUDIT

Of the \$1.7 million we reviewed, Town officials did not account for and expend \$602,158 according to federal grant regulations and FEMA guidelines. Table 1 summarizes the questioned costs. Further, the Town had a remaining unused award amount of \$207,000 that should be deobligated and put to better use (finding D).

<b>Table 1: Summary of Questioned Costs Recommended for Disallowance</b>		
<b>Finding</b>	<b>Subject</b>	<b>Net Questioned Costs</b>
A	Procurement	\$206,034
B	Professional Services	345,217
C	Accounting Error	50,907
<b>TOTAL</b>		<b>\$602,158</b>

### **Finding A: Noncompetitive Procurement**

Town officials did not comply with federal grant regulations and FEMA guidelines in the solicitation and award of five contracts totaling \$551,251 for construction management, engineering, and design services for Projects 2224, 2330, 2338, 2345, and 3041 (see table 2). As a result, full and open competition did not occur, and FEMA had no assurance that the Town paid reasonable prices.

Federal grant regulations covering procurement under a grant, codified at 44 CFR 13.36, required the Town to—

- Perform procurement transactions in a manner providing full and open competition unless noncompetitive proposals were permitted. Procurement by noncompetitive proposal is permitted when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals, and there is a public exigency or emergency for the requirement that will not permit a delay resulting from competitive solicitation. (44 CFR 13.36(c)(1) and (d)(4)(i)(B))
- Take all necessary affirmative steps to ensure that minority firms, women’s business enterprises, and labor surplus area firms are used when possible. (44 CFR 13.36(e)(1))
- Maintain records sufficient to detail the significant history of the procurement, including the rationale for the method of procurement, contractor selection, type of contract, and contract price. (44 CFR 13.36(b)(9))
- Prepare a cost or price analysis in connection with every procurement action, including contract modifications. (44 CFR 13.36(f)(1))

- Include mandatory contract provisions detailed in 44 CFR 13.36(i)

In addition, FEMA’s *Public Assistance Guide* (FEMA 322, October 1999, p. 39) specifies that—

- Contracts must be of reasonable cost, generally must be competed, and must comply with federal, state, and local procurement standards.
- Noncompetitive proposals should be used only when the award of a contract is not feasible under small purchase procedures, sealed bids, or competitive proposals, and one of the following circumstances applies: (1) the item is available only from a single source, (2) an emergency requirement will not permit a delay, (3) FEMA authorizes noncompetitive proposals, or (4) solicitation from a number of sources has been attempted, and competition is determined to be inadequate.

<b>Table 2: Construction Management, Engineering, and Design Services Contracts</b>						
<b>Project Number</b>	<b>Competitively Procured?</b>	<b>Took All Necessary Affirmative Steps?</b>	<b>Maintained Sufficient Procurement Records?</b>	<b>Prepared Cost/Price Analyses?</b>	<b>Included Mandatory Contract Provisions?</b>	<b>Questioned Contract Costs</b>
2224	No	No	No	No	No	\$89,641
2330	No	No	No	No	No	142,809
2338	No	No	No	No	No	100,445
2345	No	No	No	No	No	93,090
3041	No	No	No	No	No	125,266
<b>TOTAL</b>						<b>\$551,251</b>

Town officials did not solicit competitive bids in awarding contracts for the projects. Instead, they awarded these contracts to the contractor they used before the disaster. The Town could not justify why full and open competition did not occur when exigency was not a factor and the work was permanent in nature. Full and open competition increases the opportunity for obtaining reasonable pricing from the most qualified contractors and allows minority firms, women’s business enterprises, and labor surplus area firms to participate in federally funded work. In addition, full and open competition helps discourage and prevent favoritism, collusion, fraud, waste, and abuse.

By awarding the contracts noncompetitively, Town officials did not follow other mandatory federal procurement criteria (identified in table 2). Specifically, they did not (1) take all necessary affirmative steps to ensure that minority firms, women’s business enterprises, and labor surplus area firms were used when possible; (2) maintain records including the rationale why the procurement was not competed.; (3) prepare a cost or price analysis for each procurement action; and (4) include required provisions within their contracts.

Therefore, \$551,251 of contract costs is ineligible because the Town did not comply with federal procurement regulations and FEMA guidelines. This amount includes \$345,217 in costs that we determined to be excessive and unreasonable (see finding B). To avoid duplicate questioned costs, the net amount questioned and recommended for disallowance within this finding is \$206,034 (\$551,251 less \$345,217).

**Finding B: Excessive and Unreasonable Professional Services**

Town officials charged \$345,217 in excessive and unreasonable construction management, engineering, and design service costs for Projects 2330, 2338, 2345, and 3041 (see table 3). FEMA officials estimate these costs as a percentage of total construction cost. However, instead of limiting charges for these services to between 11% and 19% of construction costs (which FEMA calculated and approved as reasonable), the Town charged as much as 48% to 90% of construction costs for these services.

Federal rules and FEMA guidelines stipulated that a cost is reasonable if the cost—

- In its nature and amount 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. (Office of Management and Budget Circular A-87, Revised, Appendix A, section C.2)
- Is both fair and equitable for the type of work being performed. (FEMA 322, October 1999, p. 34)

Reasonable costs can be determined by using historical documentation for similar work; average costs for similar work in the area; published unit costs from national cost estimating databases; and FEMA cost codes. (FEMA 322, October 1999, p. 34)

**Table 3: Construction Management, Engineering and Design Services**

Project Number	Total Construction Costs	FEMA Estimated % Allowable	FEMA Estimated \$ Allowable	Town Claimed %	Town Claimed \$	% Exceeding FEMA Estimated Allowed Amount	Total Questioned Costs
2330	\$299,945	15.3%	\$45,891	47.6%	\$142,809	32.3%	\$96,918
2338	164,938	11.2%	18,473	60.9%	100,445	49.7%	81,972
2345	103,000	14.5%	14,935	90.4%	93,090	75.9%	78,155
3041	193,200	19.2%	37,094	64.8%	125,266	45.6%	88,172
<b>TOTAL</b>	<b>\$761,083</b>		<b>\$116,393</b>		<b>\$461,610</b>		<b>\$345,217</b>

FEMA used Cost Curve B to estimate the engineer and design services for Projects 2330, 2338, 2345, and 3041 due to their minimal design and average complexity, and included percentages separately for construction management.<sup>3</sup> FEMA calculated the reasonable percentages for the various projects to be between 11% and 19%, depending on the project. However, the Town charged between 48% and 90% for these services.

Using FEMA’s calculations, we determined that the cumulative amount allowable for these projects was \$116,393. By subtracting this eligible amount from the actual costs charged (\$461,610 less \$116,393), we determined that Town officials charged a total excess of \$345,217 to these projects.<sup>4</sup>

<sup>3</sup> More information on FEMA’s cost curves can be found in the *FEMA Public Assistance Guide* (FEMA 322, October 1999), pp. 75–80.

<sup>4</sup> Some dollar amounts have been rounded for consistency.

Therefore, we question as ineligible \$345,217 in excessive and unreasonable costs for Projects 2330, 2338, 2345, and 3041.



**Project 3041 – replacement bridge (left) and  
Project 2330 – tennis court and embankment repair (right)**

*Source: OIG site visit (September 14, 2011)*

### **Finding C: Accounting Error**

The Town recorded \$111,027 in costs for Project 2122 that included \$47,407 in charges pertaining to another FEMA-funded project. In addition, accounting records for Project 2330 included \$3,500 in cost for tree planting that FEMA had determined ineligible.

Therefore, we question \$47,407 in ineligible cost to Project 2122 and \$3,500 in costs charged to Project 2330, for a total of \$50,907.

### **Finding D: Funds Not Used**

FEMA approved \$207,000 in hazard mitigation funding for Project 2338 that the Town did not use. Therefore, FEMA should deobligate the \$207,000 and put those federal funds to better use.

## **RECOMMENDATIONS**

We recommend that the FEMA Region IX Administrator, in coordination with Cal EMA:

**Recommendation #1:** Disallow \$206,034 (federal share \$154,526) in ineligible contract costs incurred without compliance with federal regulations and FEMA guidelines for Projects 2224, 2330,

2338, 2345, and 3041 (finding A). The combined recommended disallowance for the projects is \$551,251.

**Recommendation #2:** Disallow \$345,217 (federal share \$258,913) in ineligible, excessive, and unreasonable costs for construction management, engineering, and design services for Projects 2330, 2338, 2345, and 3041 (finding B). The combined recommended disallowance for the projects is \$551,251.

**Recommendation #3:** Disallow \$50,907 (federal share \$38,180) in ineligible project costs charged in error to Project 2122 and Project 2330 (finding C).

**Recommendation #4:** Deobligate \$207,000 (federal share \$155,250) in unused hazard mitigation funding for Project 2338, and put those federal funds to better use (finding D).

### **DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP**

We discussed the results of this audit with Town 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 FEMA, Cal EMA, and the Town on November 16, 2011. We discussed these findings and recommendations at exit conferences held with Cal EMA and Town officials on November 17, 2011. Town officials disagreed with findings A and B, and agreed with findings C and D. 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. To promote transparency, this report will be posted to our website. Significant contributors to this report were Humberto Melara, Devin Polster, Louis Ochoa, Paul Sibal, Renee Gradin, and Elizabeth Finn.

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-11-037)  
Audit Liaison, DHS

**EXHIBIT**

**Schedule of Audited Projects  
December 17, 2005, to November 17, 2011  
Town of Fairfax, California  
FEMA Disaster Number 1628-DR-CA**

Project Number	Project Award Amount	Questioned Costs Recommended for Disallowance				Funds Not Used (Finding D)
		Procurement (Finding A)	Construction Management, Engineering, and Design Services (Finding B)	Accounting Error (Finding C)	Total Questioned Costs: Findings A+B+C	
1845	\$299,249					
2122 <sup>5</sup>	33,121			\$47,407	\$47,407	
2224 <sup>5</sup>	54,631	\$89,641			89,641	
2330	427,528	45,891	\$96,918	3,500	146,309	
2338	607,160	18,473	81,972		100,445	\$207,000
2345	112,616	14,935	78,155		93,090	
2476	62,969					
3034 <sup>5</sup>	6,241					
3041	125,765	37,094	88,172		125,266	
<b>Total</b>	<b>\$1,729,280</b>	<b>\$206,034</b>	<b>\$345,217</b>	<b>\$50,907</b>	<b>\$602,158</b>	<b>\$207,000</b>

<sup>5</sup> Small projects.



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