



Homeland Security

SEP 15 2011

MEMORANDUM FOR: Major P. (Phil) May
Regional Administrator, Region IV
Federal Emergency Management Agency

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

SUBJECT: *FEMA Public Assistance Grant Funds Awarded to
Wayne County, Mississippi, Board of Supervisors*
FEMA Disaster Number 1604-DR-MS
Audit Report Number DA-11-24

We audited public assistance grant funds awarded to the Wayne County, Mississippi, Board of Supervisors (County) (FIPS Code 153-99153-00). 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.

As of October 25, 2010, the County had received a public assistance award of \$25.6 million from the Mississippi Emergency Management Agency (MEMA), a FEMA grantee, for damages resulting from Hurricane Katrina in August 2005. The award provided 100% FEMA funding for debris removal, emergency protective measures, and permanent repairs to damaged facilities. The award included 11 large projects and 29 small projects.¹

Our audit focused on \$24.3 million awarded under three large projects (see Exhibit, Schedule of Projects Audited). The audit covered the period from August 29, 2005, to October 25, 2010, during which the County claimed \$27.2 million and received \$24.6 million of FEMA funds. At the time of our audit, the County had completed work on all three 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

¹ Federal regulations in effect at the time of Hurricane Katrina set the large project threshold at \$55,500.

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 reviewed judgmentally selected samples of project costs (generally based on dollar value); interviewed County, MEMA, and FEMA personnel; reviewed the County's procurement policies and procedures; reviewed applicable federal regulations and FEMA guidelines; and performed other procedures considered necessary under the circumstances to accomplish our audit objective. We did not assess the adequacy of the County's internal controls applicable to its 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 policies and procedures for administering activities provided for under the FEMA award.

RESULTS OF AUDIT

The County did not account for large project expenditures on a project-by-project basis, and did not always follow federal procurement regulations when awarding contracts for debris removal. We also question \$4.6 million claimed for debris removal on private property because the County did not take reasonable steps to prevent duplication of benefits, and \$2.7 million of contract charges that exceeded eligible project costs. Finally, the County did not comply with FEMA contract monitoring requirements for debris removal activities.

Finding A: Project Accounting

According to 44 CFR 13.20(a)(2), fiscal control and accounting procedures of the state and its 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. Further, 44 CFR 206.205(b) requires that large project expenditures be accounted for on a project-by-project basis.

The County's accounting system did not provide an accurate accounting of disaster costs by project. The County created two general ledger accounts to record all disaster transactions—one for expenditures and one for receipts. As a result, project expenditures and receipts under individual projects could not be readily identified. To conduct the audit, we relied on various expenditure and receipt documents from MEMA, which we eventually traced back to each project.

County officials disagreed with the finding. They said that the lack of accurate accounting of disaster costs by project did not cause any issues or create any problems. However, we disagree. The County's method of accounting for project costs caused an unnecessary delay in determining actual receipts and expenditures under each project and was in violation of federal regulations.

Finding B: Procurement Procedures

Federal regulation 44 CFR 13.36 requires that a cost or price analysis be performed in connection with every procurement action, including contract modifications, to determine the reasonableness of the contractor's proposed price (44 CFR 13.36(f)(1)). The County awarded two contracts for debris removal activities totaling \$23.7 million without performing a cost or price analysis.

- *Debris Removal.* Under Projects 198 and 1268, the County solicited bids for debris removal work valued at \$23.7 million, during a public board meeting in September 2005. County officials received five bids from responsible contractors possessing the ability to perform the work. After evaluating the five bids, the County selected the responsible bidder whose bid was lowest in price. However, the County did not perform a price analysis before accepting the bids. County officials said they met the requirements for a price analysis because of the sealed bid process they used to award the contract. However, federal regulation requires an independent estimate of contract cost or price before the receipt of bids or proposals.
- *Project Management.* Under Project 198, the County hired a local management firm shortly after the disaster to oversee emergency debris clearance and debris removal operations for the County. However, the County did not perform a price analysis before awarding the contract, which totaled \$137,100, to determine whether the proposed price was reasonable.

We reviewed the prices paid by neighboring counties for similar services under the disaster and concluded that the contract costs were reasonable. Therefore, because the County used competitive procedures to award debris removal work at reasonable prices, we are not questioning any contract costs because of the County's noncompliance with federal procurement regulations.

County officials disagreed with the finding, saying that the procurements conformed to State of Mississippi bid laws. However, 44 CFR 13.36(b) states that subgrantees will use their own procurement procedures, which reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal law and standards.

Finding C: Debris Removal from Private Property

The County claimed more than \$6.9 million of contract costs to remove vegetative debris (hanging limbs, leaning trees, ground debris, and stumps) from private property. However, the County did not take reasonable steps to ensure, for all properties, that (1) insurance or other funding sources did not exist for the debris removal work and (2) insurance proceeds received by homeowners for debris removal were recovered and remitted to FEMA. As a result, FEMA has little assurance that duplication of benefits did not occur.

According to FEMA's *Public Assistance Guide* (FEMA 322, October 1999, p. 46) debris removal from private property is the responsibility of the individual property owner, aided by

insurance settlements and assistance from volunteer agencies. However, if debris on private business and residential property is so widespread that public health, safety, or the economic recovery of the community is threatened, the actual removal of debris from private property may be eligible (44 CFR 206.224(b)).

Sections 403 and 407 of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (Stafford Act), as amended, provide FEMA the authority to fund debris removal from private property provided that the state or local government (1) arranges an unconditional authorization for removal of the debris and (2) agrees to indemnify the federal government against any claim arising from the removal. However, Section 312 of the Stafford Act prohibits FEMA from approving funds for work that is covered by insurance or any other source of funding. FEMA Policy 9523.13 requires that state and local governments take reasonable steps to prevent such an occurrence and verify that insurance coverage or any other source of funding does not exist for the debris removal work accomplished on each piece of private property. Specifically, section 7.D of the policy states the following:

FEMA is prohibited from approving funds that would result in a duplication of benefits, and therefore, State and local governments must take reasonable steps to prevent such an occurrence. These steps include the requesting entity's agreement to research whether insurance coverage exists for the debris removal accomplished on each piece of private property in the project. If it is discovered that duplication of benefits has occurred, the State and local government must agree to make reasonable efforts to recover such proceeds paid to the property owners and remit in a timely fashion to FEMA.

Under Project 1268, the County claimed more than \$6.9 million of contract costs to remove debris from private residential properties. However, the County did not take reasonable steps to prevent duplication of benefits for such activity. We reviewed Right of Entry (ROE) agreements collected by the County's contractors for 1,943 properties and identified 649 properties, totaling \$1,568,499 in debris removal costs, where the ROE agreements indicated the homeowners had insurance coverage. ROE agreements for 1,104 properties, totaling \$3,047,449 in debris removal costs, were incomplete and did not indicate whether the homeowners had insurance. Despite these conditions, the County could not provide evidence that it made reasonable efforts to verify insurance coverage or recover any applicable insurance proceeds paid to the property owners for debris removal costs. As a result, FEMA has little assurance that duplication of benefits did not occur. Therefore, we question the \$4,615,948 of debris removal costs claimed for the properties (\$1,568,499 plus \$3,047,449).

County officials disagreed with the finding, saying that they followed procedures FEMA provided in an October 6, 2005, letter. However, we reviewed the October 6, 2005, letter, which clearly instructed the County to make reasonable efforts to determine whether the property owners had received insurance proceeds for debris removal and to recover such proceeds. Furthermore, as previously discussed, the Stafford Act prohibits FEMA funding for work covered by insurance.

Finding D: Eligible Project Costs

The County’s claim included \$2,711,422 of contract charges that exceeded eligible project costs. According to 44 CFR 206.203(c)(1), federal funding for large projects shall equal the federal share (100% for Hurricane Katrina) of the actual eligible costs documented by a grantee. FEMA’s *Public Assistance Guide* (FEMA 322, October 1999, p. 83) also requires that large projects be funded on documented actual costs submitted by the subgrantee to the grantee.

Under Projects 198 and 1268, the County claimed contract costs totaling \$26,688,449 for debris removal activities. FEMA reviewed the County’s claim and disallowed \$2,969,147 of costs for ineligible activities, thus authorizing \$23,719,302. However, the County actually paid the contractors \$21,007,880. The difference of \$2,711,422 represents a 10% retainage fee that the County withheld from the contractors’ invoices as a control to ensure work was completed according to the terms of the contracts. However, the County never paid the remaining funds to the contractors.

To illustrate, under Project 1268, the contractor submitted Invoice 19557, dated December 1, 2005, to the County for payment. The County reduced the gross invoice amount of \$8,154.00 by 10% for a net amount of \$7,338.60. The County paid the contractor the net amount of \$7,338.60 (check 81862) and submitted the invoice to MEMA for reimbursement. MEMA reviewed the invoice and approved the gross amount of \$8,154.00 for reimbursement. However, the County never paid the contractor the remaining \$815.40 retainage fee. This process occurred repeatedly, resulting in \$2,711,422 of contract charges claimed to MEMA that the County never paid to its contractors. Neither MEMA nor FEMA identified the \$2.7 million of excess costs during closeout of the projects. Therefore, we question the \$2.7 million of ineligible project costs, as shown in table 1.

Table 1: Ineligible Project Costs

Project	Amount Claimed by Subgrantee ²	Amount Authorized by FEMA ³	Actual Amount Paid to Contractor	Amount Questioned
198	\$ 8,675,054	\$ 8,668,231	\$ 7,884,112	\$ 784,119
1268	18,013,395	15,051,071	13,123,768	1,927,303
Total	\$26,688,449	\$23,719,302	\$21,007,880	\$2,711,422

County officials disagreed with this finding, saying that they had provided us with documentation clearly showing that all payments were correct and properly accounted for. However, we have not received any documentation to indicate that the retainage fee was paid to the contractors. Therefore, our position remains unchanged.

² Claimed amount includes the contractor retainage costs and costs considered ineligible by FEMA.

³ Authorized amount includes the contractor retainage costs.

Finding E: Debris Removal Monitoring

Federal regulation 44 CFR 13.36(b)(2) requires that subgrantees maintain a contract administration system that ensures that contractors perform according to the terms, conditions, and specifications of their contracts or purchase orders. A subgrantee is responsible for monitoring debris removal activities. Fairness in the debris removal process relies heavily on the accuracy and integrity of the monitors. Under Projects 198 and 1268, the County did not adequately monitor the activities of contractors that removed debris from private property. We noted the following deficiencies in the County's debris removal operation, which we believe were a factor in the questioned costs contained in this report:

- The County used unit-price contracts for the removal of debris, which was an appropriate contracting method for such activity. FEMA's *Public Assistance Debris Management Guide* (FEMA 325, April 1999, p. 30) states that a unit-price contract requires full-time trained monitors to account for the actual quantity of debris being hauled and disposed of, among other responsibilities. According to employment applications, the County hired debris monitors who had no prior experience in debris monitoring. In addition, there was no evidence that either the County, state, or FEMA trained them on debris monitoring. Further, at any given time, there were no more than 34 monitors covering an 810-square-mile county-wide debris operation.
- Load tickets, which were the basis for the contractors' billings and the debris operation itself, contained numerous deficiencies. For instance, not all private property load tickets had specific addresses, some had multiple dates per ticket, and the tickets were not in sequential order. Therefore, it was difficult and in some cases impossible to cross-reference tickets to ROE agreements.
- The County did not have official truck listings or pictures to verify truck capacities. As a result, the monitors did not have a basis to accurately fill out a load ticket. According to FEMA's *Public Assistance Debris Management Guide* (FEMA 325, April 1999, p. 23), the contractor must provide, upon award of the contract, a notarized listing of the measured bed size in cubic yards and license plate numbers of all trucks to be used to move debris.

County officials disagreed with the finding, saying that they complied with all requirements provided by a FEMA debris manager. However, the County provided no evidence of such instructions. Further, as previously discussed, FEMA guidance clearly states that a subgrantee is responsible for adequately monitoring the debris removal activities of contractors.

RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region IV:

Recommendation #1: Instruct the County to account for large projects on a project-by-project basis, as required by federal regulation (finding A).

Recommendation #2: Instruct the County to comply with federal procurement regulations when acquiring goods and services under a FEMA award (finding B).

Recommendation #3: Disallow \$4,615,948 (federal share \$4,615,948) of ineligible costs claimed for debris removal from private property because the County did not make reasonable efforts to prevent duplication of benefits (finding C).

Recommendation #4: Disallow \$2,711,422 (federal share \$2,711,422) of ineligible debris removal costs under Projects 198 and 1268 (finding D).

Recommendation #5: Instruct the County to comply with contract monitoring requirements for activities under the FEMA award (finding E).

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed the audit results with County, FEMA, and MEMA officials during our audit. We also provided written summaries of our findings and recommendations in advance to these officials and discussed them at exit conferences held on April 28, 2011, and July 12, 2011. We held the July 12, 2011, exit conference to discuss finding D, which came to our attention after our initial exit conference in April 2011. County officials disagreed with all of the findings, as indicated by their comments, which we incorporated into the body of this 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 recommendation. 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, with the exception of sensitive information identified by your office. Significant contributors to this report were David Kimble, Larry Arnold, Melissa Powe, and Emma Peyton.

Should you have questions concerning this report, please contact me at (202) 254-4100 or David Kimble at (404) 832-6702.

cc: Administrator, FEMA
Executive Director, FEMA Mississippi Recovery Office
Audit Liaison, FEMA Mississippi Recovery Office
Audit Liaison, FEMA Region IV
Audit Liaison, FEMA (Job Code G-11-002)
Audit Liaison, DHS

EXHIBIT

**Schedule of Projects Audited
August 29, 2005, through October 25, 2010
Wayne County, Mississippi, Board of Supervisors
FEMA Disaster Number 1604-DR-MS**

Project Number	Project Scope	Category	Amount Awarded	Amount Claimed⁴	Questioned Costs
198	Debris Removal	A	\$ 8,668,231	\$ 8,675,054	\$ 784,119
265	Debris/Monitors	A	542,348	554,997	0
1268	Debris Leaners & Hangers	A	15,051,071	18,013,395	6,543,250
Total			\$24,261,650	\$27,243,446	\$7,327,369

⁴ Claimed amount includes the contractor retainage fee and costs considered ineligible by FEMA.