FEB 2 2 2013

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

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

SUBJECT: *FEMA Should Recover $8.5 Million of Public Assistance Grant Funds Awarded to the City of Gulfport, Mississippi, for Debris Removal and Emergency Protective Measures – Hurricane Katrina*
FEMA Disaster Number 1604-DR-MS
Audit Report Number DA-13-10

We audited Public Assistance grant funds awarded to the City of Gulfport, Mississippi (City) (FIPS Code 047-29700-00) for debris removal and emergency protective measures. Our audit objective was to determine whether the City accounted for and expended Federal Emergency Management Agency (FEMA) grant funds according to Federal regulations and FEMA guidelines.

The City received an award of $233.9 million from the Mississippi Emergency Management Agency (State), a FEMA grantee, for damages resulting from Hurricane Katrina, which occurred in August 2005. The award provided 100 percent FEMA funding for debris removal, emergency protective measures, and permanent repairs to buildings and facilities. However, we limited the scope of our audit to debris removal and emergency protective measures (Categories A and B), for which the City was awarded $86.6 million. Under Categories A and B, the award included 78 large and 73 small projects.[1]

We audited six large projects with awards totaling $54.7 million. The audit covered the period of August 29, 2005, to May 22, 2012, during which the City claimed $54.7 million of FEMA funds under the six projects (see Exhibit, Schedule of Projects Audited). At the time of our audit, the City had completed work on the six projects and submitted a final claim to the State for project expenditures.

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

We conducted this performance audit between May and November 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 obtained provides a reasonable basis for our findings and conclusions based upon our audit objective. To conduct this audit, we applied the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.

We judgmentally selected project costs (generally based on dollar value); interviewed City, State, and FEMA personnel; reviewed the City'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 City's internal controls applicable to its grant activities because it was not necessary to accomplish our audit objective. However, we gained an understanding of the City'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

FEMA should recover $8.5 million of grant funds awarded to the City. Although the City accounted for FEMA projects on a project-by-project basis as required, we determined that the City should remit to FEMA $296,792 of interest earned on advanced funds. In addition, the City's claim included the following $8,186,346 of questionable costs:

- $949,378 of contract costs in which duplicate funding may exist;
- $5,473,821 of unsupported debris removal costs;
- $1,688,567 for contract work that was not procured according to Federal procurement requirements, of which $989,148 is unreasonable and $231,941 is not adequately supported; and
- $74,580 of unauthorized project costs.

Finding A: Interest on Advanced Funds

The City should remit to FEMA $296,792 of interest earned on advanced funds. According to 44 CFR 13.21(i), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned (less amounts up to $100 per year for administrative purposes) on FEMA advances. The City did not remit the interest because City officials did not believe they were in a financial position to earn interest, although the State

provided the City with advances of $33.6 million for a Category A project because of the City's financial situation following Hurricane Katrina. We question $296,792 ($296,992 minus ($100 times 2 calendar years)) of interest the City earned on FEMA advanced funds.

Finding B: Duplicate Funding

The City's claim under Project 8852 (debris removal from private property) included $949,378 of costs that may be covered by insurance. According to Section 312(a) of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act*, as amended, FEMA funds may not be used for expenditures recoverable from another Federal program, insurance, or any other source. Also, FEMA Policy 9523.13, *Debris Removal from Private Property*, Section VII(C), requires that State and local governments take reasonable steps to 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.

Our review of source documentation, including Right of Entry (ROE) agreements, that supported 4 ($4,490,209) of the 13 summary invoices billed by the City, identified $949,378 of costs that may have been covered by insurance proceeds received by the homeowners. The City provided homeowners with an ROE agreement, which documented whether homeowners had received insurance or other compensation or would receive compensation in the future. However, the City did not take required steps to determine whether the homeowners actually received insurance proceeds or other funding to cover the debris removal work and, if so, obtain such proceeds to reduce project costs claimed to FEMA. As a result, the City received FEMA funds for debris removal that may have been covered by homeowners' insurance or other funding. Therefore, we question the $949,378.

We could not review the remaining nine invoices totaling $5,308,963 because the City could not provide documentation supporting the contractor's summary invoices. Therefore, we are questioning those costs as unsupported under finding C. However, the costs may also be covered by insurance, and therefore, the State and/or FEMA should carefully review the costs for eligibility should the City provide source documentation for the invoices in question.

Finding C: Unsupported Costs

The City did not have adequate source documentation to support $5,705,762 of debris removal contract charges claimed under several projects. Cost principles at OMB Circular A-87, Attachment A, Section C.1.j, state that a cost must be adequately documented to be allowed under Federal awards. We question the $5,705,762 of unsupported costs, as follows:

- $77,135 of contract costs under Project 18, where the City paid the contractor for the contract amount, net of adjustments per monitoring firm's review, which exceeded actual supporting documentation.

- $231,941 of contract costs under biohazard debris Project 8490, which was the result of an overbilling of $212,840 and $19,101 for labor costs. The contractor submitted bills totaling $638,521 for 39 days of biohazard debris removal at a contract price of $16,372.33 per 12-hour day, or $1,364.36 per hour. We question $212,840 of the billed amount because the bill contained charges for biohazard debris crews on 13 days when no dumping of biohazard debris occurred ($16,372.33/day times 13 days). If the contractor did not dispose of biohazardous debris, the use of biohazard debris removal crews would not be warranted. The $19,101 overbill occurred because the contractor billed for two crews working a full 12-hour day ($32,744.66); however, supporting documentation showed that the two crews worked only 5 hours for a total of 10 hours at a cost of $13,643.60 ($1,364.36/hour times 10 hours). Therefore, the City was overbilled $19,101 ($32,744.66 minus $13,643.60).

- $5,396,686 of contract costs under Project 8852 (Debris Removal, North of I-10, (ROE)), which included $5,308,963 for nine contractor invoices for which the City was unable to provide supporting documentation, as explained under finding B; and $87,723 where the City paid the contractor for the contract amount, net of adjustments per the monitoring firm's review, which exceeded actual supporting documentation.

Finding D: Contracting Procedures

The City did not comply with Federal procurement requirements when awarding a unit price contract under Project 8490 for biohazard debris removal for which it claimed $1,688,567. Federal procurement guidance at 44 CFR, Part 13, requires the City, among other things, to—

- Conduct all procurement transactions in a manner providing full and open competition (44 CFR 13.36(c)), though noncompetitive proposals may be used when the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. (44 CFR 13.36(d)(4)(i)(B))
- Perform a cost or price analysis in connection with every procurement action. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurement. (44 CFR 13.36(f)(1))

- Negotiate profit as a separate element of the price for each contract in which there is no price competition. (44 CFR 13.36(f)(2))
- Along with the grantee (the State), maintain a contract administration system which ensures that contractors perform in accordance with terms, conditions, and specifications of contracts. (44 CFR 13.36(b)(2))

In addition, FEMA 322, *Public Assistance Guide*, 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) there is an emergency requirement that 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.

FEMA may grant exceptions to Federal procurement requirements to subgrantees on a case-by-case basis (44 CFR 13.6(c)).

Project 8490 authorized the collection, hauling, and disposal of pork bellies and frozen chickens that washed ashore from the Mississippi State Port during the storm. The City awarded a noncompetitive contract for removal of the biohazard debris, which was justified because of the threat to public health and safety posed by the debris. To perform the contract work, the City issued change orders to an existing contract with its primary debris removal contractor. However, the City did not conduct a cost or price analysis to determine the reasonableness of the contractor's price or negotiate profit as a separate element of the price. A cost or price analysis decreases the likelihood of unreasonably high or low prices, contractor misinterpretations, and errors in pricing relative to the scope of work.

The City did not conduct a cost or price analysis because it believed that the emergency circumstances negated the need to follow Federal procurement regulations. Also, the State did not ensure that the City was aware of Federal regulations and monitor City activities under the project. Federal regulations require the State, as the grantee, to ensure that subgrantees are aware of requirements imposed on them by Federal regulations and to monitor subgrant activity to ensure compliance with applicable Federal requirements (44 CFR 13.37(a)(2) and 44 CFR 13.40(a)). Finally, the City should determine who is legally responsible for the biohazard debris removal of the pork bellies

and frozen chickens and seek reimbursement of cleanup costs from the responsible party.

Because the City did not follow Federal procurement requirements, FEMA has no assurance that the $1,688,567 the City paid and claimed for the contract work was fair and reasonable. In the case of the haul/disposal fees under the contract, we determined that the $1,050,046 of costs claimed for such activity were unreasonably high and have questioned $989,148 under finding E. Additionally, we questioned $231,941 of the contract costs as unsupported under finding C. Therefore, we question a net of $467,478 under this finding.

Finding E: Unreasonable Costs

The City claimed $989,148 in unreasonable costs for the haul/disposal portion of its contract under Project 8490 (Biohazard Debris Removal). This occurred because the City did not follow Federal procurement procedures and perform a cost or price analysis when costs data were available from another City project (Project 10565), under which identical work was performed for a significantly lower cost.

The FEMA *Public Assistance Guide* (FEMA 322, October 1999, pp. 33-34) states that a cost must be reasonable and necessary to accomplish the work. It further states 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. In other words, a reasonable cost is a cost that is both fair and equitable for the type of work performed. The guide states that the use of historical documentation for similar work, and average costs for similar work in the area, are among the methods through which reasonable costs can be established.

The City claimed $1,050,046 of contract costs under Project 8490 for the hauling and disposal of pork bellies and frozen chickens that washed ashore from the Mississippi State Port during the storm. By comparing work under a separate City project (Project 10565, Biohazard Removal/Disposal),which was performed 6 weeks earlier and which FEMA deemed to be reasonable, we determined that the City paid an unreasonable amount (17 times greater) of $989,148 for the work. The haul/disposal fees portion of Project 8490, which can logically be compared with Project 10565, is for identical work during the same period. Therefore, we question the $989,148 of unreasonable costs, as calculated and shown in table 1.

Table 1. Recalculation of Haul/Disposal Fees in Project 8490 Based on Cost Factors in Project 10565

Scenario	Loads	Pounds	Tons	Rate	Unit of Pricing	Total Haul/Disposal
As Billed (Project 8490)						
Haul/Disposal	71	2,019,320	1,009.66	$.52	pound	$1,050,046
Comparison Analysis (Project 10565)						
Haul	71	2,019,320	1,009.66	$360.00	load	$25,560
Disposal	71	2,019,320	1,009.66	$35.00	ton	$35,338
Total						$60,898
Difference (factor of 17+)						$989,148

Finding F: Unauthorized Project Costs

The City's claim under Project 18 included $74,580 of unauthorized project costs. The FEMA *Public Assistance Guide* (FEMA Public Assistance Guide 321, October 2001, p. 24) states, that if a change in the scope of work is identified, "[t]he applicant should contact the State to ensure that proper guidelines for documenting any additional costs are followed." Project 18 authorized the removal and disposal of debris. However, the City's final claim under the project included $74,580 of costs for personal protective equipment, water and sewer line capping, and air monitoring. Neither FEMA nor the State included these items in the authorized scope of work on the final version of the project worksheet. Rather, the project worksheet authorized debris removal costs based on a cubic yards per unit price. In addition, the City did not have documentation to indicate that it contacted the State to include these items in the project's scope of work. Therefore, we question $74,580 of unauthorized project costs.

RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region IV:

Recommendation #1: Require the City to remit $296,792 of interest earned on FEMA advanced funds, which could be put to better use (finding A).

Recommendation #2: Deobligate $949,378 of funding under Project 8852 for costs that may have been covered by homeowners' insurance or other funding, and, in

conjunction with the State and the City, conduct a review of insurance proceeds received by the homeowners (finding B).

Recommendation #3: Disallow $5,705,762 of unsupported contract costs under Projects 18 ($77,135), 8490 ($231,941), and 8852 ($5,396,686) (finding C).

Recommendation #4: Disallow $467,478 of ineligible contract costs under Project 8490 unless FEMA grants the City 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 D).

Recommendation #5: Instruct the State to reemphasize to the subgrantees their requirement to comply with Federal procurement regulations and FEMA guidelines when acquiring goods and services under the FEMA award (finding D).

Recommendation #6: Reemphasize to the State the requirement to ensure that subgrantees are aware of requirements imposed on them by Federal statutes and regulations (44 CFR 13.37(a)(2)) and to monitor subgrantee activity for compliance with applicable Federal requirements (44 CFR 13.40(a)) (finding D).

Recommendation #7: Require the City to determine who is legally liable for the removal of the biohazard debris under Project 8490 and seek reimbursement of cleanup costs from such party (finding D).

Recommendation #8: Disallow $989,148 of unreasonable contract costs under Project 8490 (finding E).

Recommendation #9: Disallow $74,580 of unauthorized contract costs under Project 18 (finding F).

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed the results of our audit with City, State, and FEMA officials during our audit. We also provided a draft report in advance to these officials and discussed it at the exit conference held on November 29, 2012. City officials agreed with our findings and recommendations.

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

Sample Case from the Appeals Database

Ineligible Contract - Debris Removal
Second Appeal Letter
1602-DR-FL; PA ID# 086-36300-00; Village of Key Biscayne; PW ID# 385

August 27, 2012
Bryan Koon, Director
Florida Division of Emergency Management
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399

Dear Mr. Koon:

This letter is in response to a letter from your office dated September 20, 2011, which transmitted the referenced second appeal on behalf of the Village of Key Biscayne (Applicant). The Applicant is appealing the Department of Homeland Security's Federal Emergency Management Agency's (FEMA) decision to deobligate $208,522 for debris removal performed under a Time and Materials (T&M) contract.

Background

On August 25, 2005, high velocity winds generated from Hurricane Katrina produced large amounts of vegetative debris throughout the Village of Key Biscayne. FEMA approved two Project Worksheets (PWs), in the amount of $739,214 for village-wide debris removal operations.

The Applicant entered into a T&M contract with All Florida Tree and Landscape, Inc. (contractor) from August 26 through September 27, 2005, to remove hazardous trees, tree limbs, and stumps within its jurisdiction. FEMA prepared PW 385 in the amount of $208,522 to document the contract costs for this work.

During project closeout, FEMA determined that the work performed under the T&M contract extended beyond the initial 70-hour period that FEMA allows for emergency debris clearance. It was also determined that the contractor's equipment rates were unreasonably high when compared to established FEMA equipment rates for applicant owned equipment. FEMA allowed the contractor's equipment rates for the first 70-hours of emergency debris clearance but adjusted the rates – for five (5) different pieces of equipment – to match FEMA equipment costs for the remainder of the contract. This resulted in a reduction of $37,817 with adjusted total funding of $170,705.

First Appeal

The Applicant submitted a first appeal on March 26, 2010, which was forwarded by the Florida Division of Emergency Management (State) to FEMA on May 14, 2010, requesting that FEMA reinstate debris removal costs in the amount of $37,817. The State, in support of the first appeal, cited FEMA 325 - Debris Management Guide dated July 2007, stating that T&M contracts are allowable beyond the initial 70-hour time frame so long as the costs are reasonable for the type of work required. The State questioned FEMA's assessment that the contractor's equipment rates for the five pieces of equipment were unreasonably high. The State argued that although the Applicant's average debris management cost of $39.38 per cubic yard (CY) is higher than that of the neighboring jurisdiction, City of Miami Beach ($32.76 per CY), it is a reasonable cost when accounting for economies of scale. The State argues that the City of Miami Beach collected almost ten times the amount of debris than the Applicant, which results in a lower unit cost for the City of Miami Beach. Because the Applicant's average unit cost is within 20 percent of the City of Miami Beach's cost, it should be considered reasonable.

In a letter dated September 22, 2010, the Regional Administrator denied the first appeal for $37,817 and advised that the remaining funding of $170,705 on PW 385 would be deobligated. The Regional Administrator stated that the Applicant did not fully comply with Federal procurement regulations at 44 CFR §13.36, Procurement when it entered into the T&M contract. The Regional Administrator explained that the Applicant did not demonstrate that other contract types were not suitable; that the terms of the T&M contract did not include a ceiling price; and that a cost/price analysis was not conducted in connection with the contract. The Regional Administrator also stated that the Applicant did not provide documentation to establish that the removal of hanging limbs, leaning trees, and stumps eliminated an immediate threat to life, public health, and safety, or of significant damage to improved public or private property.

Second Appeal

The State transmitted the Applicant's second appeal to FEMA on September 20, 2011. The Applicant is requesting reconsideration of FEMA's decision to withdraw funding in the amount of $208,522. The Applicant reiterates its first appeal arguments that the T&M costs are both eligible and reasonable in accordance with 44 CFR §206.224(a), Debris removal, Public interest, OMB Circular A-87, and by direct comparison to contracts let by surrounding local governments.

Second appeal documentation includes a DVD showing disaster-generated vegetative debris throughout the Applicant's jurisdiction, a copy of a September 1, 2005, Revised Tree Debris Removal Contract, copies of daily worksheets and work orders listing contract personnel hourly rates and equipment hourly rates, and cancelled checks. Load tickets with debris quantities were not provided with the second appeal.

Discussion

On April 10, 2012, FEMA Headquarters requested additional documentation from the Applicant regarding its second appeal documentation. The Applicant was asked to provide a copy of its hourly rate contract for hazardous tree limbs, hangers and stump removal. Also requested was a copy of the original Tree Debris Removal Contract so that FEMA could compare it with the Revised Tree Debris Removal Contract that was provided with the second appeal. The Applicant did not submit the requested documentation for FEMA to consider during the second appeal review.

FEMA may provide assistance for emergency debris removal work completed under T&M contracts for work that is necessary immediately after the disaster has occurred and when a clear scope of work cannot be developed. In accordance with FEMA Publication 325 – Debris Management Guide dated April 1999, which was in effect for Hurricane Katrina, FEMA typically limits funding for T&M contracts to a maximum of 70 hours of actual emergency debris clearance work. The scope of work for PW 385 entailed the removal of hazardous trees, limbs, and stump removal operations from August 24 through September 27, 2005.

Applicants who seek reimbursement under the Public Assistance Program must comply with the Federal procurement requirements contained in 44 CFR §13.36, Procurement. In accordance with 44 CFR §13.36(b)(2), Procurement, Procurement Standards, "… subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts…" The Revised Tree Debris Removal Contract identifies the existence of a separate hourly-rate contract between the Applicant and the contractor for hazardous tree limbs and hangers removal. The Applicant, however, did not provide the hourly-rate contract for FEMA to review.

The Debris Management Guide stipulates that supervision of T&M contracts is extremely important. The reports should clearly state the amount of work accomplished daily in quantitative terms, such as the number of cubic yards of debris hauled, the number of hazardous trees, limbs, hangers, and stumps removed, etc. The Applicant did not provide sufficient documentation, such as load tickets or photographs of the debris removal operation, to validate the number of trees, hangers, and stumps cut or removed, nor did the Applicant identify the exact locations of where the work was performed.

In the absence of a contract with a defined scope of work and documentation to quantify the amount of debris the Applicant's contractor removed, FEMA cannot calculate eligible costs for debris removal services nor compare the contract with other contracts from surrounding jurisdictions.

Furthermore, as determined by the Regional Administrator, the Applicant did not provide documentation demonstrating that other non-T&M contract types were not suitable, that the terms of the contract included a ceiling price, or that a cost/price analysis was conducted. The Applicant did not meet Federal procurement requirements prior to executing the contract.

Finally, the State submitted the second appeal approximately one year after the Regional Administrator decided the first appeal. In accordance with 44 CFR §206.206© Appeals, Time Limits, applicants must file its second appeal within 60 days after being notified of the first appeal decision. The State must review and forward appeals from an applicant, with a written recommendation, to the Regional Administrator within 60 days of receipt of the appeal. The Applicant's second appeal is undated, but the State's transmittal occurred nearly eight months after the regulatory deadline elapsed.

Conclusion

I have reviewed the information submitted with the appeal and have determined that the Regional Administrator's decision in the first appeal is consistent with Public Assistance regulations and policy. The Applicant did not meet the Federal requirements for procurement of its T&M contract or provide documentation of the quantity of work performed by the contractor. Finally, the appeal was submitted well after the regulatory deadline. Accordingly, I am denying the second appeal.

Please inform the Applicant of my decision. This determination is the final decision on this matter pursuant to 44 CFR §206.206, Appeals.

Sincerely,
Elizabeth A. Zimmerman
Deputy Associate Administrator
Office of Response and Recovery

cc: Major P. May
Regional Administrator
FEMA Region IV