

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

FEMA Should Recover \$4.1 Million of Public Assistance Grant Funds Awarded to Orlando Utilities Commission — Hurricane Charley



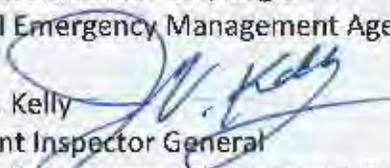


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Department of Homeland Security

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

June 5, 2013

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

FROM: John V. Kelly 
Assistant Inspector General
Office of Emergency Management Oversight

SUBJECT: *FEMA Should Recover \$4.1 Million of Public Assistance Grant Funds Awarded to Orlando Utilities Commission — Hurricane Charley*
FEMA Disaster Number 1539-DR-FL
Audit Report Number DA-13-18

We audited Public Assistance grant funds awarded to the Orlando Utilities Commission, Florida (Utility) (FIPS Code 000-UT15M-00). Our audit objective was to determine whether the Utility accounted for and expended Federal Emergency Management Agency (FEMA) grant funds according to Federal regulations and FEMA guidelines.

The Utility received a Public Assistance award of \$17.1 million from the Florida Division of Emergency Management (State), a FEMA grantee, for damages resulting from Hurricane Charley, which occurred in August 2004. The award provided 90 percent FEMA funding for debris removal activities, emergency protective measures, repair of the electric transmission and distribution system, repair/replacement of buildings and equipment, and other disaster-related activities. The award consisted of 23 large projects and 23 small projects.¹

We audited six large projects with awards totaling \$12.8 million (see Exhibit, Schedule of Projects Audited). The audit covered the period August 13, 2004, to September 21, 2011, during which the Utility claimed \$12.8 million under the projects reviewed. At the time of our audit, the Utility had not submitted final claims on all project expenditures to the State.

We conducted this performance audit between June 2012 and March 2013 under the authority of 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 and 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 on our audit objective. To conduct this

¹ Federal regulations in effect at the time of Hurricane Charley set the large project threshold at \$54,100.



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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 Utility, State, and FEMA officials; reviewed the Utility procurement policies and procedures; reviewed applicable Federal regulations and FEMA guidelines; and performed other procedures considered necessary to accomplish our audit objective. We did not assess the adequacy of the Utility'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 Utility's method of accounting for disaster-related costs and its policies and procedures for administering the activities provided for under the FEMA award.

RESULTS OF AUDIT

FEMA should recover \$4,067,504 (Federal share \$3,660,754) of grant funds awarded to the Utility. Although the Utility generally accounted for FEMA funds according to Federal regulations and FEMA guidelines, its claim included \$4,067,504 for contract work that did not meet Federal procurement requirements and FEMA guidelines. We also determined that the State and FEMA could have done a better job of reviewing the eligibility of costs claimed by the Utility during their closeout process.

Finding A: Contracting Procedures

The Utility did not comply with Federal contracting requirements when awarding contracts for permanent electrical repair work valued at \$4,067,504. Federal procurement regulations at 44 CFR 13.36 required the Utility, among other things, to—

- Conduct all procurement transactions in a manner providing full and open competition. Noncompetitive procurement may be used under certain circumstances, one of which is when the public exigency or emergency will not permit a delay resulting from competitive solicitation. (44 CFR 13.36 (c)(1) and 44 CFR 13.36(d)(4)(i)(B))
- Perform a cost or price analysis in connection with every procurement action, including contract modifications, to determine the reasonableness of the proposed contract price. A cost analysis is required when adequate price competition is lacking. (44 CFR 13.36(f)(1))
- Take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used, when possible, during the procurement process. (44 CFR 13.36(e)(1))



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- Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. (44 CFR 13.36(b)(9))

In addition, FEMA *Public Assistance Guide* (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)).

The Utility did not solicit competitive bids or take positive efforts to use small businesses, minority-owned firms, and women's business enterprises for contract work valued at \$4,067,504. Utility officials said that, using the Utility's emergency contracting procedures, they solicited bids only from contractors from which they already had secured services prior to the storm, or ones that they believed had the requisite knowledge, expertise, and workforce to perform the required work. In addition, they said that the Utility's emergency procurement procedures do not require it to consider procurement opportunities for small businesses, minority-owned firms, women's business enterprises, and disadvantaged businesses.

We disagree with the Utility's assertion that emergency conditions warranted the use of noncompetitive contracts. The Utility restored electrical power to almost all of its customers on August 22, 2004, which we consider the end of the emergency period. The contracts in question were for work performed after August 22, 2004, and continued for several months. The Utility should have openly competed such work because exigent circumstances no longer existed to justify the use of noncompetitive contracts. Full and open competition increases the probability of reasonable pricing from the most qualified contractors, and helps discourage and prevent favoritism, collusion, fraud, waste, and abuse. It also allows the opportunity for minority



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firms, women’s business enterprises, and labor surplus area firms to participate in Federally funded work.

In addition, the Utility did not have adequate documentation to show that it performed a cost/price analysis to determine the reasonableness of the contractors’ proposed prices. 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. Utility officials said that they used the scope of work and price points established with existing contractors to establish prices for the work with new contractors. However, they could not provide documentation to show how they negotiated the prices with the existing contractors. Without adequate documentation, we could not validate that the Utility performed a proper cost analysis and that the prices paid for the contract work were reasonable. We question the \$4,067,504 claimed for the contract work that did not meet Federal procurement requirements and FEMA guidelines, as identified in table 1.

Table 1. Noncompetitive Contracts

Project Number	Scope of Work	FEMA Category of Work	Amount Questioned
1812	Engineering and Management Fees to Replace Transformer	F	\$ 147,119
2311	Debris Removal	A	262,230
3565	Electrical Transmission System Repairs Equipment Repairs	F	3,522,565
3587	Equipment Repairs	F	135,590
Total			\$4,067,504

Utility Response. Utility officials generally disagreed with our finding. They said that it was infeasible to use a competitive award process because of a shortage of viable contractors and the public emergency created by widespread power outages after the disaster. They also said that the emergency did not permit them to take affirmative steps to ensure that minority firms, women’s business enterprises, and labor surplus area firms were used when possible for the required services.

Office of Inspector General Response. As discussed in the finding, we disagree with the Utility’s assertions. We did not question contract costs claimed for the emergency restoration of power. The costs we are questioning are for longer-term electrical repair work completed after emergency power had been restored to the Utility’s customers. After such time, we believe that an emergency situation no longer existed to warrant the use of noncompetitive contracts. Further, the Utility did not provide us with evidence to support its assertion that viable contractors were not available to support a competitive award process. In addition, Federal



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regulations required the Utility to consider minority firms, women's business enterprises, and labor surplus area firms when contracting for goods and services under a Federal grant.

Finding B: Grant Management

The State and FEMA should have done a better job of reviewing the eligibility of costs claimed by the Utility. According to 44 CFR 13.37(a)(2), the State, as grantee, is required to ensure that subgrantees are aware of requirements imposed on them by Federal regulations. Further, 44 CFR 13.40(a) requires the grantee to manage the day-to-day operations of subgrant activity and monitor subgrant activity to ensure compliance with applicable Federal requirements.

Before the start of our audit, a closeout team of FEMA and State personnel reviewed and approved the contract costs under the applicable projects during closeout of the projects, which occurred at various times between May 2006 and July 2011. However, the closeout file documentation did not indicate that the team reviewed the contracts for adherence to Federal procurement requirements and FEMA guidelines, or for reasonableness. The team's procedures focused mainly on whether the Utility followed its own contracting procedures and whether the costs were supported by invoices. Therefore, we recommend that FEMA remind the State and FEMA Public Assistance personnel of the need to adequately review costs claimed by subgrantees for adherence to Federal regulations and FEMA guidelines.

RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region IV:

Recommendation #1: Disallow \$4,067,504 (Federal share \$3,660,754) of ineligible costs claimed for contracts unless FEMA grants the Utility 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, and determines the costs were reasonable.

Recommendation #2: Instruct the State to remind the Utility that it is required to comply with Federal procurement standards when acquiring goods and services under a FEMA award.

Recommendation #3: Reemphasize to the State and FEMA Region IV Public Assistance personnel of the need to adequately review costs claimed by subgrantees for adherence to Federal regulations and FEMA guidelines.



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DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOW-UP

We discussed the audit results with Utility, State, and FEMA officials during our audit. We also provided a written summary of our findings and recommendations in advance to these officials and discussed them at the exit conference held on March 14, 2013. Utility officials' comments, where appropriate, are included in 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 we receive and evaluate your response, the recommendations will be considered open and unresolved.

Consistent with our responsibility under the *Inspector General Act*, we will provide 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 David Kimble, Eastern Region Audit Director; Felipe Pubillones, Audit Manager; Salvador Maldonado-Avila, Auditor-in-Charge; and Larry Jones, Auditor.

Please call me with any questions at (202) 254-4100, or your staff may contact David Kimble, Eastern Region Audit Director, at (404) 832-6702.



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Exhibit

Schedule of Projects Audited

Project Number	Category of Work	Amount Awarded	Amount Questioned	Federal Share
1812	F	\$961,523	\$147,119	\$132,407
2311	A	1,796,943	262,230	236,007
2333	A	340,564	0	0
3565	F	9,200,278	3,522,565	3,170,309
3587	E	237,419	135,590	122,031
3646	B	255,412	0	0
Total		\$12,792,139	\$4,067,504	\$3,660,754



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