



Homeland
Security

June 18, 2010

MEMORANDUM FOR: Beth Freeman, Regional Administrator
FEMA Region VII

Tonda L. Hadley

FROM: Tonda L. Hadley, Director
Central Regional Office

SUBJECT: *Nebraska Public Power District, Columbus, NE*
FEMA Disaster Number 1674-DR-NE
Public Assistance Identification Number 000-UPS4G-00
Audit Report Number DD-10-10

We audited public assistance funds awarded to Nebraska Public Power District (NPPD). Our audit objective was to determine whether NPPD accounted for and expended Federal Emergency Management Agency (FEMA) grant funds according to federal regulations and FEMA guidelines.

NPPD received an award of \$71.8 million from the Nebraska Emergency Management Agency (NEMA), a FEMA grantee, for damages caused by severe winter storms that occurred December 19, 2006, through January 1, 2007. The award provided 75% FEMA funding for 25 large and 52 small projects.¹ We audited 100% of the large projects totaling \$70.7 million, or 98% of the award (see Exhibit). The audit covered the period December 19, 2006, to October 15, 2009, during which NPPD claimed \$71.8 million of direct program costs.

We conducted this performance audit 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 on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We interviewed FEMA, NEMA, and NPPD officials; reviewed judgmentally selected transactions (generally based on dollar value) of NPPD's claimed costs; and performed other procedures

¹ Federal regulations in effect at the time of the disaster set the large project threshold at \$59,700.

considered necessary to accomplish our objective. We did not assess the adequacy of NPPD's internal controls applicable to grant activities because it was not necessary to accomplish our audit objective. We did, however, gain an understanding of NPPD's method of accounting for disaster-related costs and its procurement policies and procedures.

RESULTS OF AUDIT

NPPD accounted for and expended the majority of its FEMA grant funds (97% of the \$70.7 million audited) according to federal regulations and FEMA guidelines. However, NPPD's claim included ineligible costs for damages to private property (\$1,125,937), idle equipment (\$579,303), misclassified mutual aid work (\$490,455), for which a waiver may be granted, duplicate mechanic charges (\$252,169), overstated labor (\$235,330), and easement and travel expenses (\$36,059). As a result, we questioned \$2,228,798 (\$1,671,598 FEMA share).

Finding A: Damages to Private Property

NPPD's claim included \$1,125,937 of payments to land owners and leaseholders for repairs to damaged private property based on crop loss calculations. Construction crews caused the damages while gaining access to right-of-ways to repair transmission lines. However, the entire claimed amount is ineligible because the damages did not pose a threat to public health or safety and were not on improved property. FEMA Publication 321, October 2001, *Public Assistance Policy Digest*, pages 37, 67, and 94, states that if an eligible applicant damages private property while performing eligible work, repairs to that property are not eligible unless the damages result in a health or safety risk and that unimproved property is not eligible for FEMA funding. Further, 44 CFR 206.221(d) states that land used for agricultural purposes is not improved property. Thus, it is not eligible for FEMA funding. Therefore, we questioned the \$1,125,937 as ineligible.

Finding B: Contract Equipment Costs

NPPD's claim included \$579,303 for unused (idle) contract equipment. According to 2 CFR 225, *Cost Principles for State, Local and Indian Tribal Governments*, Appendix A, Paragraph C.2., 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. NPPD's utility line construction contracts included a provision that guaranteed 40-hours per week minimum charge for equipment regardless of its usage. Paying for idle equipment is not a prudent use of federal funds. Further, FEMA does not allow idle time for applicant-owned equipment. Therefore, we questioned the \$579,303 as ineligible.

Finding C: Mutual Aid Costs

NPPD claimed \$490,455 for mutual aid costs to complete work that FEMA classified as permanent work (Category F). FEMA Public Assistance Policy 9523.6, *Mutual Aid Agreements for Public*

Assistance (September 22, 2004), section 7.E.1.b.i states, “Examples of mutual aid work that are not eligible include permanent recovery work.” NPPD used mutual aid cooperatives, contractors, and force account labor to restore power during the emergency period. Because FEMA classified all the work as permanent rather than emergency protective measures (Category B emergency work), the costs were ineligible. FEMA should classify the work to restore power to residential customers and critical facilities as Category B, emergency protective measures, because this work may save lives and property. Further, classifying power restoration work as emergency work clearly delineates the period of time when exigent circumstances exist, which sometimes justify relaxed procurement procedures, such as non-competitive contracts and time-and-material contracts. When lives are at risk, there is often not enough time for full and open competition or for preparing a detailed scope of work necessary for lump sum or unit price contracts.

If FEMA had classified power restoration work as Category B emergency work, the \$490,455 claimed for mutual aid costs would have been eligible. FEMA is reviewing Policy 9523.6 and plans to address the eligibility of Category F work performed under mutual aid. In the interim, FEMA has allowed the Category F costs with a waiver for specific disasters. Therefore, we recommended that FEMA Region VII request a waiver for the ineligible mutual aid costs under this disaster.

Finding D: Contract Mechanic Costs

NPPD claimed \$252,169 for contract mechanic costs. Of this, \$219,220 was for labor costs and \$32,949 was for equipment. NPPD’s utility line construction contracts state that equipment rates shall include all ownership costs, fuel, maintenance, overhead, profit, etc. Consequently, the costs for mechanics’ labor and related equipment were already included in the equipment rates charged by the contractor. Therefore, we questioned the \$252,169 as duplicate costs.

Finding E: Force Account Labor Costs

NPPD’s claim included \$235,330 in overstated force account labor costs for restoration of its utility system. After the disaster, NPPD implemented a policy to pay double time for overtime. The Stafford Act, Section 406(a)(2)(C), *Repair, Restoration, and Replacement of Damaged Facilities*, states that associated expenses shall include base and overtime wages for the employees and extra hires that perform eligible work, plus fringe benefits on such wages to the extent that such benefits were being paid before the major disaster. Therefore, we questioned the \$235,330 as ineligible.

Finding F: Easement and Travel Costs

NPPD’s claim included \$36,059 for ineligible easement-related and travel costs. During the disaster recovery activities, NPPD purchased \$33,230 in easements to private property to repair or replace transmission lines. Additionally, NPPD’s claim included \$2,829 for an employee’s trip to Canada and Kentucky to expedite the delivery of materials. FEMA Publication 321, October 2001, *Public Assistance Policy Digest*, page 128, states that FEMA does not provide funds for increased operating

expenses resulting from a disaster. Easement costs and employee travel costs are a normal part of NPPD's business. Therefore, we questioned the \$36,059 as ineligible.

RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region VII:

1. Disallow the \$1,125,937 of ineligible damages to private property costs.
2. Disallow the \$579,303 of ineligible contract equipment costs.
3. Request a waiver for the \$490,455 of misclassified mutual aid work under this disaster.
4. Disallow the \$252,169 of duplicate contract mechanic costs.
5. Disallow the \$235,330 of ineligible labor costs.
6. Disallow the \$36,059 of ineligible costs for easements and travel.

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOW-UP

We discussed the results of our audit with officials from FEMA on June 9, 2010, NEMA on June 11, 2010, and NPPD on June 15, 2010. FEMA and NEMA agreed with our findings. NPPD agreed with findings C and F, but did not agree with findings A, B, D, and E. Please advise this office by August 17, 2010, of the actions planned or taken to implement the recommendations, including target completion dates for any planned actions. Significant contributors to this report were Paige Hamrick, Sharon Snedeker, Cheryl Spruiell, and Pat Epperly. Should you have questions concerning this report, please contact me, or your staff may contact Paige Hamrick, Audit Manager, at (214) 436-5200.

Cc: Audit Liaison, FEMA Region VII
Audit Liaison, FEMA (Job Code DG9C11)

EXHIBIT

**Schedule of Audited and Questioned Costs
Nebraska Public Power District
FEMA Disaster Number 1674-DR-NE**

Project Number	Award Amount	Finding A	Finding B	Finding D	Finding E	Finding F	Total Questioned
532	\$23,509,403	\$ 523,613	\$ 16,880	\$ 78,690	\$ 8,138	\$22,266	\$ 649,588
537	9,663,817	116,286	0	0	11,089	2,829	130,204
538	9,110,944	153,158	32,322	61,200	6,710	4,122	257,511
502	5,204,003	126,750	13,363	18,323	1,572	4,321	164,330
503	3,874,068	50,564	0	0	2,679	0	53,242
504	359,328	450	0	0	4,904	211	5,565
505	1,046,530	3,645	0	0	44,350	0	47,995
506	2,616,112	15,908	82,413	3,670	478	1,311	103,779
507	1,011,585	1,568	0	0	8,672	0	10,240
508	1,028,832	10,465	66,077	15,094	1,343	500	93,479
509	1,849,298	81,179	308,712	61,843	1,679	500	453,912
510	67,360	0	0	0	5,951	0	5,951
533	2,263,435	944	0	0	11,408	0	12,352
534	3,253,861	27,561	0	0	1,964	0	29,525
535	1,327,239	3,800	59,537	13,348	332	0	77,018
536	926,030	0	0	0	74,617	0	74,617
539	227,849	200	0	0	3,265	0	3,465
540	250,195	0	0	0	3,842	0	3,842
557	177,763	0	0	0	7,402	0	7,402
558	1,659,116	2,450	0	0	6,021	0	8,471
559	126,194	1,007	0	0	2,052	0	3,058
560	747,596	750	0	0	781	0	1,531
561	117,415	0	0	0	8,002	0	8,002
562	154,258	5,640	0	0	11,086	0	16,726
563	90,684	0	0	0	6,992	0	6,992
Totals	<u>\$70,662,914</u>	<u>\$1,125,937</u>	<u>\$579,303</u>	<u>\$252,169</u>	<u>\$235,330</u>	<u>\$36,059</u>	<u>\$2,228,798</u>