



DEPARTMENT OF HOMELAND SECURITY

Office of Inspector General
Dallas Field Office - Audit Division
3900 Karina Street, Room 224
Denton, Texas 76208

September 26, 2003

MEMORANDUM

TO: Edward Buikema, Regional Director
FEMA Region V

Tonda L. Hadley

FROM: Tonda L. Hadley, Field Office Director

SUBJECT: City of Chicago, Illinois
FEMA Disaster Numbers 3134-EM-IL and 3161-EM-IL
Public Assistance Identification Number 031-14000-00
Audit Report Number DD-16-03

The Office of Inspector General (OIG) audited public assistance funds awarded to the City of Chicago, Illinois (City). The objective of the audit was to determine whether the City expended and accounted for Federal Emergency Management Agency (FEMA) funds according to federal regulations and FEMA guidelines.

Under FEMA disaster number 3134-EM-IL, the City received an award of \$14.45 million from the Illinois Emergency Management Agency (IEMA), a FEMA grantee, for snow removal resulting from record or near record snowfall that began on January 1, 1999. The award provided 75 percent FEMA funding for Category B (emergency) work performed during the 48-hour emergency period of January 2, 1999, and January 3, 1999, and consisted of 29 large projects and 3 small projects.¹ The audit covered the period of January 2, 1999, through January 29, 2002, during which the City claimed \$14.45 million and IEMA disbursed \$10.84 million in direct program costs. The OIG examined the costs for 21 large projects and three small projects totaling \$12.28 million, representing 85 percent of the total award (see Exhibit 1). Under FEMA disaster number 3161-EM-IL, the City received an award of \$3.44 million from IEMA for snow removal resulting from record or near record snowfall that began on December 10, 2000. The award provided 75 percent FEMA funding for Category B work performed on December 13, 2000, and December 14, 2000. The City claimed \$3.44 million and IEMA disbursed \$2.58 million in direct program costs for expenditures incurred by the City during this 48-hour period. The OIG performed a limited

¹ Federal regulations in effect at the time of the disaster defined a large project as a project costing \$47,800 or more and a small project as one costing less than \$47,800.

review of costs for two large projects² totaling \$1.45 million, representing 42 percent of the total award (see Exhibit 2).

The OIG performed the audit under the authority of the Inspector General Act of 1978, as amended, and according to generally accepted government auditing standards. The audit included tests of the City's accounting records, a judgmental sample of project expenditures, and other auditing procedures considered necessary under the circumstances.

RESULTS OF AUDIT

The City did not expend and account for FEMA funds according to federal regulations and FEMA guidelines. The audit identified \$8,945,093 of claimed costs that were either ineligible or unsupported. Specifically, the City's claim under FEMA disaster number 3134-EM-IL included questioned costs of \$7,492,763 (\$5,619,572 FEMA share), consisting of duplicate benefits (\$6,397,236), unsupported costs (\$688,887), work not related to the disaster (\$225,423), and unreasonable costs (\$181,217). Further, the City did not follow federal procurement regulations to contract for \$1,705,640 in disaster work. As a result, FEMA had no assurance that contract costs claimed were reasonable.

Under FEMA disaster number 3161-EM-IL, the City's claim included questioned costs of \$1,452,330 (\$1,089,248 FEMA share) in duplicate benefits.

Finding A: Duplicate Benefits

The City's claim under FEMA disaster number 3134-EM-IL included \$6,397,236 in costs that were duplicate benefits. These costs were for snow removal at the two airport facilities that were the responsibility of the airlines using the facilities. The "Airline Use Agreements" between the City and its two airport facilities, Chicago O'Hare³ and Midway⁴, require airline companies to pay all expenses incurred by the City for the net cost of operating, maintaining, and developing the airport. Section 312 of the Stafford Act, Duplication of Benefits, prohibits any person, business concern, or other entity from receiving assistance that duplicates benefits available for the same purpose from any other source. According to the "Airline Use Agreements," the airlines were legally responsible for these costs. Therefore, FEMA funding of this work constituted a duplication of benefits.

During the course of this audit, the OIG discovered that the City had filed a subsequent claim for snow removal work the following year under FEMA disaster number 3161-EM-IL. After performing a limited review of costs claimed under the subsequent disaster, the OIG determined that the City claimed an additional \$1,452,330 in costs for snow removal at

² Federal regulations in effect at the time of the disaster defined a large project as a project costing \$50,600 or more and a small project as one costing less than \$50,600.

³ Chicago-O'Hare International Airport, Amended and Restated Airport Use Agreement and Terminal Facilities Lease, effective date May 12, 1983, termination date May 11, 2018.

⁴ Chicago Midway Airport, Amended and Restated Airport Use Agreement and Facilities Lease, effective date January 1, 1997, termination date December 31, 2012.

airport facilities. Because the “Airport Use Agreements” extend to 2012 and beyond, these costs were also a duplication of benefits. Accordingly, the OIG questioned \$7,849,566 (\$6,397,236 + \$1,452,330) as duplicate benefits received under the two disasters.

Finding B: Unsupported Costs

The City’s claim included \$688,887 in unsupported costs for contract labor with equipment, force account materials, and force account labor and equipment on various projects. According to 44 CFR 13.20(b)(2), a subgrantee must maintain records that adequately identify the source and application of federal funds. Additionally, 44 CFR 13.20(b)(6) provides a list of specific source documentation, including cancelled checks, paid bills, payrolls, time and attendance records, contracts, etc., that are acceptable as supporting documentation for the accounting records.

- Contract Labor with Equipment on Projects 535 and 536. The City’s claim included \$321,074 unsupported contract labor with equipment costs resulting from missing documentation, incomplete or conflicting documentation, duplications, and rate discrepancies.
- Force Account Materials on Projects 336 and 337. The City’s claim included \$200,530 in unsupported force account materials costs. These unsupported costs included \$134,567 because the City did not provide documentary evidence of the delivery and use of 4,642 tons of bulk rock salt and \$65,963 because the City did not provide documentary evidence to support the claimed rock salt rate per ton.
- Force Account Labor and Equipment on Projects 338, 339, 340, and 341. The City’s claim included \$110,256 for unsupported force account labor and equipment costs. Documentation provided by the City did not support \$73,049 in labor hours (\$70,612 labor plus \$2,437 associated fringe benefits) and \$37,207 in equipment hours because the time reports either did not support the hours claimed, did not list a truck number, or did not agree with the time rolls and payroll registers.
- Small Projects 95 and 465. The City’s claim included \$57,027 for small projects that were not substantiated as completed or even started. Under 44 CFR 206.205(a), failure to complete a small project may require that the federal payment be refunded.

Because the City did not provide acceptable source documentation, such as those described in 44 CFR 13.20(b)(6), to support these costs, the OIG questioned \$688,887.

Finding C: Work Not Related to the Disaster

The City's claim included \$225,423 for work not related to the disaster for force account labor and equipment and contract labor with equipment on various projects. According to 44 CFR 206.223(a)(1), an item of work must be required as the result of the major disaster event to be eligible for financial assistance.

- Force Account Labor and Equipment on Projects 338, 339, 340, and 341. The City's claim included \$218,707 for work not related to the disaster for force account labor and equipment. Personnel identified by duty codes "SU" (office supervisor), "DE" (data entry), "CL" (clerk), and "SB" (standby) resulted in labor costs of \$215,205 (\$208,028 labor plus \$7,177 associated fringe benefits) and equipment costs of \$3,502. These duty codes indicated that the personnel were not performing work related to the disaster and the City failed to provide documentary evidence to the contrary. Further, even if the office supervisors, data entry personnel, and clerks performed disaster-related work, their titles indicate that the work would have been administrative in nature, which is covered by the statutory administrative allowance. Additionally, standby time is not eligible because personnel in standby status are not performing work directly related to the disaster.
- Contract Labor with Equipment on Project 535. The City's claim included \$6,716 for contract labor with equipment costs outside the eligible 48-hour period; therefore, they are not related to the disaster.

Accordingly, the OIG questioned \$225,423 for work not related to the disaster.

Finding D: Unreasonable Costs

The City's claim included \$181,217 in unreasonable costs for contract labor with equipment and force account labor and equipment on various projects. The Office of Management and Budget (OMB) Circular A-87, Attachment A, paragraph C.2., defines a reasonable cost as one that, in 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. Further, this Circular states that, in determining the reasonableness of a given cost, consideration shall be given to whether the individuals acted with prudence and whether they used sound business practices, such as compliance with federal, state, and other laws and regulations.

The City claimed costs for work performed by individuals who allegedly worked up to 48 consecutive hours during the 48-hour eligible period. These claims were imprudent, unreasonable, and, in certain cases, unlawful. To determine allowable costs, the OIG separated personnel into two categories and applied methodologies based upon the best available information to arrive at reasonable costs under OMB Circular A-87.

1. For personnel required by law to hold a commercial driver's license (CDL)⁵, the OIG adjusted the claimed hours to adhere to federal and state laws as required by OMB Circular A-87. The U.S. Department of Transportation (DOT), Federal Motor Carriers Safety Regulation, part 395.3(a)(1), 10-1-99, and Illinois state laws restrict drivers whose assignment requires a CDL to no more than 10 hours following 8 hours off duty. The OIG contacted the Illinois Department of Transportation who confirmed the State of Illinois imposes the same driving limitations established by federal law for those drivers requiring a CDL license.

Based on a 48-hour timeline, the OIG applied the DOT law using various start times to derive the combination of allowable work and off-duty time that was most beneficial to the City. When an operator worked more than 10 hours the first day, January 2, he was allowed the lesser of actual time or 16 hours for that day and 14 hours for the second day, January 3. When an operator worked less than 10 hours the first day, he was allowed actual time the first day and the lesser of actual time or 16 hours the second day. The OIG applied this methodology to billings from two contractors for CDL operators.

Due the City's record layout, the OIG could not cost justify the time involved to analyze the force account personnel in this manner; therefore, the OIG modified the described methodology in order to more expeditiously analyze force account personnel time records. The OIG calculated a 2-day average based on the two possible scenarios and applied the most beneficial average to the City's force account records. The scenarios described above produced averages of 15 and 13 hours; therefore, the OIG applied the 15-hour average. The OIG applied this methodology to force account personnel who drove salt spreaders and tractor-trailers.

2. For non-CDL personnel, the OIG determined that it was both imprudent and unreasonable for the City and its contractors to require personnel to work 24 or more consecutive hours. At a minimum, personnel required a limited amount of time for meals, rest, and other necessary functions. For non-salaried personnel, the OIG considered allowable a maximum of 21 hours per day based on prudence, reasonableness, and language in the union agreements between the City and several local unions.⁶ These union agreements required that employees receive a ½ hour unpaid lunch break midway through an 8 hour shift (½ hour every 4 hours in a 24-hour workday). The OIG applied this methodology to billings from four contractors for non-salaried employees as well as claims for non-salaried force account personnel that did not drive salt spreaders and tractor-trailers (non-CDL personnel).

For salaried personnel, the OIG considered allowable a maximum of 18 hours per day based on prudence, reasonableness, and language in the union agreements relevant to salaried personnel. These agreements required that salaried employees receive a 1 hour unpaid lunch break midway through an 8 hour shift (1 hour every 4 hours in a 24-hour

⁵ According to the Illinois Secretary of State, a CDL is required if a person operates a vehicle with a gross vehicle weight rating of 26,001 pounds or more.

⁶ Collective Bargaining Agreement Between Locals 1001 (supervisors and foremen), 1092 (engineering laborers), and 76 (cement workers) of the Laborers International Union of North America and the City of Chicago, effective July 1, 1995 through June 30, 1999, Article 9, Section 9.2.1 (for non-salaried) and Section 9.2.2 (for salaried).

work day). The OIG applied this methodology to billings from one contractor for salaried employees as well as claims for force account personnel who were field supervisors (“FL” duty code).

- Contract Labor with Equipment on Projects 535 and 536. Based on the categories of personnel described above, the City’s claim included \$106,294 in unreasonable costs for contract labor with equipment. These unreasonable costs included \$25,282 for personnel required to hold a CDL, \$65,892 for non-salaried, non-CDL personnel, and \$15,120 for salaried, non-CDL personnel.
- Force Account Labor and Equipment on Projects 338, 339, 340, and 341. Based on the categories of personnel described above, the City’s claim included \$66,524 in unreasonable costs consisting of \$47,593 (\$46,004 labor plus \$1,589 associated fringe benefits) in unreasonable labor costs and \$18,931 in unreasonable equipment costs. These unreasonable costs, including fringe benefits, are detailed by category in the table below.

| Category | Force Account Labor | Force Account Equipment |
|-------------------------|------------------------|-------------------------|
| Holders of CDL licenses | \$40,292 | \$18,194 |
| Non-Salaried, Non-CDL | 4,751 | 440 |
| Salaried, Non-CDL | <u>2,550</u> | <u>297</u> |
| Totals | <u>\$47,593</u> | <u>\$18,931</u> |

- Force Account Equipment Rates on Project 338. The City’s claim included \$8,399 in unreasonable equipment rates. According to 44 CFR 206.228(a)(ii), the eligible equipment rate is the lower of the City’s established rate or the FEMA established rate. Because the City charged a rate higher than the FEMA rate for several pieces of equipment, the OIG questioned the difference between the two rates as unreasonable.

Accordingly, the OIG questioned \$181,217 in unreasonable costs.

Finding E: Unallowable Contract Procedures

The City did not follow federal procurement regulations or FEMA guidelines in awarding contracts totaling \$1,705,640 for snow removal. As a result, FEMA had no assurance that contract costs claimed were reasonable.

Under 44 CFR 13.36, procurements must provide for competitive bids, unless an allowable exception is met; reasonable costs; a cost or price analysis; and must be supported by sufficient records as to the procurement process. Further, these regulations limit the use of time-and-material-type (T&M) contracts to situations where no other contract is suitable, mandate the inclusion of a ceiling price that the contractor exceeds at its own risk for T&M

contracts, and prohibits procurement based on professional and technical competence for all contracts except architectural and engineering services.

In addition, FEMA's Public Assistance Guide (FEMA Publication 322) states that T&M contracts should be avoided, but may be allowed for work that is necessary immediately after the disaster has occurred when a clear scope of work cannot be developed. If applicants use T&M contracts, they must carefully monitor and document contractor expenses, and a cost ceiling or "not to exceed" provision must be included in the contract.

The OIG examined procurement procedures for four contractors. Even though federal regulations limit qualification-based procurement to architectural and engineering services, the City awarded one of the four contracts, an auto towing and relocation contract, based on qualifications. Of the remaining three contracts, the City was unable to provide two of the actual contracts. The one contract that the City provided was a T&M contract awarded based on standby labor and equipment costs. Available records, such as bid specifications and invoices, indicated that the other two contracts were also T&M contracts awarded on the same basis. Because FEMA prohibits the payment of standby time, this selection criterion invalidates the bid process; therefore, competition was lacking. Even though the OIG did not question the necessity of a T&M award during the 48-hour emergency period, federal regulations and FEMA guidelines mandated the City use sound procurement practices to contain costs even under these exigent circumstances. The City failed to include cost ceilings in these T&M contracts, analyze proposed contract costs, monitor contract performance, or maintain sufficient records as to the procurement process. Through these actions, the City disregarded federal procurement regulations and FEMA guidelines; therefore, FEMA has no assurance that contract costs claimed were reasonable.

RECOMMENDATIONS

The Office of Inspector General recommended that the FEMA Regional Director, in coordination with the Illinois Emergency Management Agency:

1. Disallow \$8,945,093 of questionable costs.
2. Ensure that, for other projects in this disaster and all future disasters, subgrantees are provided guidance on federal regulations and Federal Emergency Management Agency guidelines related to procurement.

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

The OIG discussed the results of the audit with officials from the City on September 8, 2003. City officials disagreed with the findings and recommendations. The OIG discussed the results of the audit with IEMA on August 19, 2003, and with FEMA on August 14, 2003.

Please advise this office by October 27, 2003, of the actions taken or planned to implement the recommendations, including target completion dates for any planned actions. If you have questions concerning this report, please contact me at (940) 891-8900. Major contributors to this report were Daniel Benbow, DeAnna Fox, and Joe Chavez.

Schedule of Audited Projects
City of Chicago, Illinois
FEMA Disaster Number 3134-EM-IL

| <u>Project Number</u> | <u>Amount Claimed</u> | <u>Questioned Costs</u> | <u>Finding Reference</u> |
|---------------------------|----------------------------|-----------------------------|------------------------------|
| Large | | | |
| 336 | \$ 883,452 | \$ 54,888 | B |
| 337 | 750,240 | 145,642 | B |
| 338 | 405,195 | 68,039 | B,C,D |
| 339 | 511,357 | 70,931 | B,C,D |
| 340 | 856,848 | 149,269 | B,C,D |
| 341 | 710,510 | 115,647 | B,C,D |
| 362 | 414,022 | 414,022 | A |
| 363 | 107,400 | 107,400 | A |
| 364 | 504,130 | 504,130 | A |
| 366 | 903,024 | 903,024 | A |
| 367 | 811,995 | 811,995 | A |
| 368 | 518,782 | 518,782 | A |
| 369 | 743,114 | 743,114 | A |
| 370 | 100,782 | 100,782 | A |
| 371 | 385,168 | 385,168 | A |
| 372 | 264,230 | 264,230 | A |
| 373 | 487,389 | 487,389 | A |
| 517 | 241,284 | 241,284 | A |
| 518 | 872,111 | 872,111 | A |
| 535 | 866,477 | 189,423 | B,C,D,E |
| 536 | <u>839,163</u> | <u>244,661</u> | B,D,E |
| Large Subtotal | \$12,176,673 | \$7,391,931 | |
| Small | | | |
| 95 | \$ 24,161 | \$ 24,161 | B |
| 365 | 43,805 | 43,805 | A |
| 465 | <u>32,866</u> | <u>32,866</u> | B |
| Small Subtotal | \$ 100,832 | \$ 100,832 | |
| TOTALS | <u>\$12,277,505</u> | <u>\$7,492,763</u> | |

Schedule of Audited Projects
City of Chicago
FEMA Disaster Number 3161-EM-IL

| <u>Project Number</u> | <u>Amount Claimed</u> | <u>Questioned Costs</u> | <u>Finding Reference</u> |
|----------------------------------|----------------------------------|------------------------------------|-------------------------------------|
| 921 | \$1,163,851 | \$1,163,851 | A |
| 1425 | <u>288,479</u> | <u>288,479</u> | A |
| Total | <u>\$1,452,330</u> | <u>\$1,452,330</u> | |