

**The State of North Dakota
Needs to Assist Ramsey
County in Completing \$24
Million of FEMA Public
Assistance Projects for Three
Federally Declared Disasters
That Occurred in 2009-2011**





HIGHLIGHTS

The State of North Dakota Needs to Assist Ramsey County in Completing \$24 Million of FEMA Public Assistance Projects for Three Federally Declared Disasters that Occurred in 2009–2011.

October 15, 2014

Why We

Did This

The County received over \$24 million in Public Assistance awards for three federally declared flooding events.

Our objective was to determine whether the County accounted for and expended FEMA grant funds according to Federal regulations and FEMA guidelines.

What We Recommend

We recommended FEMA to direct North Dakota to provide the County with additional technical assistance and monitoring to ensure the County properly spends about \$20 million obligated for uncompleted large and small projects.

For Further Information:

Contact our Office of Public Affairs at (202) 254-4100, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

The County has procedures in place to account for disaster-related costs on a project-by-project basis. The County however, has completed very little of the work FEMA approved for the three federally declared disasters. At the time of our field work, the County did not have sufficient records available for us to determine whether the County is fully capable of managing the three Federal grants.

We evaluated procurement procedures the County used in contracting \$544,908 in disaster work for 3 large projects we reviewed. Although the County competitively awarded the contracts, it did not (1) take required affirmative steps to ensure the use of small and disadvantaged businesses; or (2) include any of the provisions in its contracts that Federal procurement regulations require. The County may also be in danger of losing most of the Federal funding it received for 550 small projects FEMA approved for the three disasters, if those projects are not completed in accordance with Federal requirements.

FEMA Response

FEMA officials generally agreed with our findings and will address the recommendations in audit follow-up. FEMA's written response is due within 90 days.



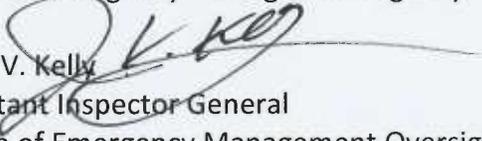
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Department of Homeland Security

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

OCT 15 2014

MEMORANDUM FOR: Tony Russell
Acting Regional Administrator, Region VIII
Federal Emergency Management Agency

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

SUBJECT: *The State of North Dakota Needs to Assist Ramsey County in Completing \$24 Million of FEMA Public Assistance Projects for Three Federally Declared Disasters that Occurred in 2009–2011*
FEMA Disaster Numbers 1829-, 1907-, and 1981-DR-ND
Audit Report Number OIG-15-03-D

We audited three Federal Emergency Management Agency (FEMA) Public Assistance grants awarded to Ramsey County, North Dakota (County), Public Assistance Identification Number 071-99071-00. The North Dakota Department of Emergency Services (North Dakota), a FEMA grantee, awarded the County \$24.5 million for the three federally declared flooding events (see table 1). The awards provided Federal funding for debris removal (Category A), emergency protective measures (Category B), and permanent work (Category C – Roads and Bridges, and Category D – Water Control Facilities). Insurance did not cover any of the projects under the three awards.

Table 1: Disaster Events

Declaration Date	Disaster Number	Award Amount	Federal Share of Eligible Costs
March 24, 2009	1829-DR	\$ 5,202,622	90%
April 30, 2010	1907-DR	7,067,613	75%
May 10, 2011	1981-DR	12,276,338	90%
Total		\$24,546,573	

Source: FEMA Emergency Management Mission Integrated Environment (EMMIE).

Although these disasters occurred in 2009, 2010, and 2011, the County has completed very little of the work FEMA approved. Therefore, we conducted this audit early in the Public Assistance process to identify areas where the County may need additional technical assistance or monitoring to complete the projects and ensure compliance with Federal regulations and FEMA guidelines.

As of the end of our field work, the County had completed only 3 of the 129 approved large projects. The award amount for the three completed large projects—all for Disaster 1829—totaled \$649,893, or about 4.5 percent of the \$14.4 million total grant awards for large



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projects.¹ The County had also completed some of the 550 approved small projects, but had not yet submitted costs incurred to North Dakota for small projects. Table 2 provides a breakdown of large and small projects for the three disasters.

Table 2: Project Universe for Disasters 1829-, 1907-, and 1981-DR-ND

Disaster Number	Large Projects		Small Projects		Total Each Disaster	
	Number	Award Amount	Number	Award Amount	Total Projects	Total Award Amount
1829	19	\$ 2,295,647	224	\$ 2,906,975	243	\$ 5,202,622
1907	45	4,077,231	125	2,990,382	170	7,067,613
1981	65	8,045,386	201	4,230,946	266	12,276,332
Total	129	\$14,418,264	550	\$10,128,303	679	\$24,546,567

Source: FEMA EMMIE.

We reviewed \$544,908 in costs the County claimed for the three completed large projects to determine whether the County accounted for and expended FEMA grant funds according to Federal regulations and FEMA guidelines (see exhibit). For the remaining \$24 million in approved projects, we reviewed the County’s policies, procedures, and business practices for disaster grants to determine whether they are adequate to account for and expend Federal FEMA grant funds according to Federal regulations and FEMA guidelines.

We conducted this performance audit between July 2013 and May 2014, 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. We conducted this audit by applying the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.

The audit covered the period of March 2009 through May 2014. We interviewed FEMA, North Dakota, and County officials; reviewed cost documentation for three large projects totaling \$544,908 that the County completed under Disaster 1829; reviewed the County’s policies, procedures, and business practices for disaster grants; and performed other procedures

¹ Federal regulations in effect at the time of the disaster set the large project threshold at \$64,200 under 1829-DR, \$63,200 under 1907-DR, and \$63,900 under 1981-DR.



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considered necessary to accomplish our objective. As part of our standard auditing procedures, we also notified the Recovery Accountability and Transparency Board (RATB) of all contracts the County awarded under the grant to determine whether the contractors were debarred or whether there were any indications of other issues related to those contractors that would indicate fraud, waste, or abuse. As of the date of this report, the Recovery Accountability and Transparency Board's analysis of contracts was ongoing. When it is complete, we will review the results and determine whether additional action is necessary. We did not assess the adequacy of the County's internal controls applicable to grant activities because it was not necessary to accomplish our audit objective. However, we did gain an understanding of the County's method of accounting for disaster-related costs and its procurement policies and procedures.

BACKGROUND

Ramsey County lies northeast of the North Dakota Territory, and contains over 27 congressional Townships located throughout 990 square miles. The County is a low-lying territory susceptible to recurring flooding, primarily from the Devils Lake water basin (a sub-basin of the Red River of the North), which is a closed water system with no natural outlet. Closed basin waters cover over 100 square miles or one-tenth of the County's surface.

During the three incident periods, low-lying County and Township roadways remained inundated for long-periods of time. Throughout the inundation periods, some residents did not have access to their homes, and the County faced challenges in providing emergency services, such as fire, police, and ambulance. Some of the County's inundated roadways have taken several years to drain because of the heavy ground saturation. The slow drainage damaged roads, bridges, and culverts throughout the County, and delayed the recovery process. For example, at the time of our field work, the County had not completed repairs to a significant number of roads and bridges damaged in the March 2009 disaster (1829-DR).

Figure 1 shows a bridge and roadway from Coulee Township, North Dakota—both inundated long term with floodwaters from Devils Lake, North Dakota.



Figure 1: Flooded Bridge and Roadway in Coulee Township, North Dakota



Source: OIG, August 2013.

RESULTS OF AUDIT

The County has procedures in place to account for disaster-related costs on a project-by-project basis. However, at the time of our field work, the County did not have sufficient records available for us to determine whether the County is fully capable of managing the three Public Assistance grants. As of the end of our field work, the County had completed and closed only 3 of 129 approved large projects with total claimed costs of \$544,908, or less than 4 percent of the \$14.4 million grant awards for large projects. Therefore, the County has not met statutory deadlines for completing large projects, and may be in danger of losing its Federal funding.

We evaluated the procurement procedures the County used in contracting for the \$544,908 in disaster work for the three large projects we reviewed. Although the County competitively awarded the contracts, it did not (1) take required affirmative steps to ensure the use of small and disadvantaged businesses such as minority firms, women's business enterprises, and labor-surplus area firms when possible; or (2) include any of the specific provisions in its contracts that Federal procurement regulations require. County officials explained that they were not aware of these Federal requirements.

In addition, the County may be in danger of losing most of the Federal funding it received years ago for the 550 small projects FEMA approved for the three disasters. At the time of our audit, the County had received \$8,666,916 (Federal share) for the 550 small projects, but had not



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claimed any costs for them or provided any evidence the County had completed the small projects.

The findings in this report occurred in part because North Dakota did not fulfill its responsibility as the grantee to ensure that the County was aware of and followed Federal requirements. Therefore, FEMA should direct North Dakota to provide additional technical assistance and monitoring to the County to ensure that the County is aware of and follows Federal requirements in completing disaster work. FEMA should also work with North Dakota in developing a plan for the County to complete all remaining work for the three disasters, including both large and small projects.

Finding A: Insufficient Records for Review

The County has procedures in place to account for disaster-related costs on a project-by-project-basis, as Federal regulations require.² However, at the time of our initial field visit in July 2013, the County did not have project cost information available for review and had completed very little of the work FEMA had approved for the three disasters. As a result, we could not determine whether the County is fully capable of properly managing Public Assistance grant funds.

The County later submitted to FEMA a final claim totaling \$544,908 for three large projects it completed under Disaster 1829. FEMA reviewed the claim and disallowed \$87,589 for excessive material costs. FEMA reimbursed the County \$457,319 for the remainder of its claim and closed the three projects (see exhibit). We reviewed the cost documentation that the County submitted to FEMA for the three large projects to ensure it was adequate as Federal regulations require (44 Code of Federal Regulations (CFR) 13.20(b)(2) and (6)). We also reviewed the procurement procedures the County used to award contracts for the work (see finding C). We determined that, although the County did not follow all Federal procurement standards, it submitted sufficient cost documentation to allow FEMA to review the eligibility and reasonableness of its claim. Therefore, we agree with FEMA's final determination to allow \$457,319 of the \$544,908 the County claimed. However, neither FEMA nor we have assurance that the County is fully capable of properly managing Public Assistance grant funds. Accordingly, FEMA should direct North Dakota to provide the County with additional technical assistance and monitoring to ensure the County is aware of and follows Federal requirements in completing approved disaster work.

Finding B: Large Projects not Completed

As of the end of our field work, the County had not completed and closed 126 of the 129 FEMA approved large projects within the statutory approved deadlines. According to 44 CFR 206.204,

² 44 Code of Federal Regulations (CFR) 206.205(b)(1) requires that each large project be accounted for separately.



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the time limit for completing permanent work is 18 months. Based on extenuating circumstances or unusual project requirements beyond a subgrantee's control, the grantee may extend the statutory deadlines for an additional 30 months for a total of 48 months. County officials explained that they have not completed a significant number of large projects because of several extenuating circumstances hindering their ability to complete them, including:

- *Long-term inundation of damaged roadways.* The drainage of inundated roadways is extremely slow, and may not occur for several years because of heavy ground saturation, which can lead to additional damage to roads, bridges, and culverts.
- *Short construction seasons.* Because of the extreme winter weather in the North Dakota Territory, the County's ability to repair damaged roadways is limited to a few months throughout the year.
- *Limited number of available contractors.* County and North Dakota officials explained that the County has experienced a shortfall of available contractors because a significant number of them opted to provide their services to the recent North Dakota oil boom instead of performing roadway repairs.

North Dakota officials said that they are making progress with the County in completing large projects awarded under the three disasters. These officials also stated that, because of these extenuating circumstances, they expect it will take the County several more years past the approved statutory deadlines to complete all FEMA-approved projects. Therefore, FEMA should work with North Dakota to ensure that it develops a plan for the County to complete all remaining large projects for the three disasters.

Finding C: Noncompliance with Federal Procurement Standards

The County did not follow all Federal procurement regulations in awarding three contracts under Disaster 1829 to complete category C work for three large projects (5351, 5472, and 5485).³ Although the County competitively awarded the contracts, it did not comply with Federal requirements to (1) take affirmative steps to ensure the use of small and minority firms, women's business enterprises, and labor surplus area firms when possible (44 CFR 13.36(e)); and (2) include specific provisions in subgrantees' contracts (44 CFR 13.36(i)). County officials explained that they were not aware of these Federal requirements, but would ensure the County complied with them in future contracts for disaster work.

The County did not take the required steps to ensure the use of minority firms, women's business enterprises, and labor-surplus area firms when possible. These affirmative steps should include (1) using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and (2) requiring

³ The County awarded the three contracts for a total of \$682,738; however, actual costs totaled \$544,908.



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the prime contractor, if using subcontracts, to take the affirmative steps listed in Federal regulations 44 CFR 13.36(e)(2)(i) through (v). County officials explained that because of the limited number of contractors within the County, they opened the available work to competition from all eligible contractors, including small and disadvantaged firms. We agree that the County did not exclude any contractors in its solicitations for bids; however, the County did not take the required affirmative steps that Federal regulations require. As a result, FEMA has no assurance that minority firms, women's business enterprises, and labor-surplus area firms had opportunities to bid on federally funded contracts.

The County also did not include in its contracts any of the provisions that Federal procurement standards require. These contract provisions document the rights and responsibilities of the parties and minimize the risk of contract misinterpretations and disputes. For example, the termination for cause provision (13.36(i)(2)) gives the subgrantee the right to end an agreement with a contractor for nonperformance; and the access to records provision (13.36(i)(10)) gives the subgrantee, grantee, and FEMA the right to examine the contractor's records. County officials said that they were not aware of this requirement.

According to 44 CFR 13.6(c), FEMA has the authority to grant exceptions on a case-by-case basis to certain administrative requirements, including Federal procurement standards. As we discussed in finding A, FEMA reviewed the \$544,908 that the County claimed for the three projects and determined that \$457,319 of that amount was eligible and reasonable. Therefore, we are not questioning any of the contract costs that the County claimed for these projects. In addition, FEMA deobligated the \$192,574 in excess funds (\$649,893 initially obligated less \$457,319 FEMA allowed at closeout).

However, \$13,768,371 of the initial award remains obligated for the 126 uncompleted large projects (\$14,418,264 less \$649,893 obligated for the three projects we reviewed). Therefore, to avoid the County improperly spending these remaining funds, FEMA should direct North Dakota to provide the County with additional technical assistance concerning compliance with Federal procurement standards.



Finding D: Status of Small Projects for the Three Disasters

The County has received \$8,666,916 for 550 small projects FEMA approved for the three disasters. However, as of the end of our field work, the County had not claimed any costs for the small projects or provided any evidence the County had completed them. As a result, the County may be in danger of losing most of the Federal funding it received years ago for the 550 small projects. As table 3 shows, the award amount for the 550 small projects totaled \$10,128,303, or an average of \$18,415 per project.

Table 3: Small Projects for Disasters 1829-, 1907-, and 1981-DR-ND

Disaster Number	Declaration Date	Number of Small Projects	Award Amount	Federal Share	Federal Share Paid
1829	March 2009	224	\$ 2,906,975	90%	\$2,616,278
1907	April 2010	125	2,990,382	75%	2,242,787
1981	May 2011	201	4,230,946	90%	3,807,851
Totals		550	\$10,128,303		\$8,666,916

Source: FEMA EMMIE.

According to 44 CFR 206.205(a), for small projects, the grantee will make payment of the Federal share to the subgrantee as soon as practicable after FEMA approves the funding. Before the closeout of the “disaster contract,” the grantee must certify that the subgrantee completed all such projects according to FEMA approvals. The regulation continues, “The Federal payment for small projects shall not be reduced if all of the approved funds are not spent to complete a project. However, failure to complete a project may require that the Federal payment be refunded.”

Because the County had not claimed any costs for small projects at the time of our audit, we did not include them in our audit scope. However, we were concerned that the County may have to refund all or part of the funds it received for small projects if it failed to complete them. Therefore, in August 2014, we reviewed records in FEMA’s Emergency Management Mission Integrated Environment (EMMIE) to determine the status of the 550 small projects. According to those records, the County has completed and FEMA has closed the 224 small projects for Disaster 1829 that occurred in March 2009. However, there were no records of completion or closure of the 125 small projects FEMA approved for Disaster 1907 (April 2010) or the 201 small projects FEMA approved for Disaster 1981 (May 2011).

Therefore, FEMA should require North Dakota to report on the status of the 326 small projects FEMA approved in 2010 and 2011 for Disasters 1907 and 1981, respectively. The Federal share for these 326 small projects totals more than \$6 million, and the County may be in danger of losing those Federal funds if the projects are uncompleted.



Finding E: Grant Management

Federal regulations at 44 CFR 13.37(a)(2) require grantees to ensure that subgrantees are aware of requirements that Federal regulations impose on them. Further, 44 CFR 13.40(a), requires grantees to manage the day-to-day operations of subgrant activity and monitor subgrant activity to ensure compliance with applicable Federal requirements. The findings in this report occurred, in part, because North Dakota did not fulfill these responsibilities. The County was not always aware of applicable Federal requirements, and did not complete large projects within regulatory timeframes. North Dakota has also not reported to FEMA the status of small projects for which the County received over \$6 million under Disasters 1907 and 1981. As a result, the County's FEMA funding for the three disasters may be in jeopardy.

Conclusion

We are concerned that County officials may not comply with Federal regulations and FEMA guidelines in completing the \$24 million of remaining disaster work. To lessen this risk, we advised County officials on Federal procurement standards and other Federal requirements for properly accounting for and expending FEMA funds. However, it is North Dakota's responsibility to ensure that subgrantees are aware of and follow Federal requirements. Therefore, to avoid \$24 million in improper spending, FEMA should ensure that North Dakota fulfills its grantee responsibilities. These responsibilities include providing the County with additional technical assistance and monitoring to ensure the County is aware of and follows Federal requirements in completing approved disaster work. FEMA should also work with North Dakota in developing a plan for the County to complete the remaining work for the three disasters.

RECOMMENDATION

We recommend that the Regional Administrator, FEMA Region VIII:

Recommendation #1: Direct North Dakota to provide the County with additional technical assistance and monitoring to ensure the County is aware of and follows Federal requirements in completing approved disaster work (finding A).

Recommendation #2: Work with North Dakota to ensure that it develops a plan for the County to complete all remaining large projects for the three disasters (finding B).

Recommendation #3: Direct North Dakota to provide the County with additional technical assistance concerning compliance with Federal procurement standards to avoid improperly spending the \$13,768,371 obligated for 126 uncompleted large projects (finding C). These procurement standards include: (1) taking required, affirmative steps to solicit bids from small



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and minority firms, women's business enterprises, and labor-surplus area firms; and (2) including required provisions in the County's contracts.

Recommendation #4: Direct North Dakota to determine whether the County has completed 326 small projects FEMA approved under disaster numbers 1907 and 1981 and work with the County to either:

- avoid losing more than \$6 million that FEMA obligated on those projects if the County still plans to complete them; or
- recover Federal funds the County received under those disasters for any small projects the County has not completed (finding D).

Recommendation #5: Remind North Dakota of its grantee responsibilities to ensure that subgrantees are aware of and comply with Federal regulations (finding E).

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed the results of our audit with County, North Dakota, and FEMA officials during our audit and included their comments in this report, as appropriate. We also provided a discussion draft report to FEMA on May 5, 2014, and to North Dakota and County officials on May 7, 2014. On May 8, 2014, we held an exit conference with FEMA, North Dakota, and County officials to discuss this report's findings and recommendations, which these officials did not dispute. In response to this report's grant management finding, North Dakota officials said that they would ensure that all applicants are aware of every contract provision required under Federal procurement regulations. North Dakota officials also said that, by performing timely reviews of costs claimed, they are making progress with the County in completing large projects. FEMA and North Dakota officials further stated that they will continue to work closely with the County to complete and close the remaining large projects approved under the three declared disasters.

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 the recommendations. Also, please include the contact information of responsible parties and any other supporting documentation necessary to inform us about the status of the recommendations. Until we receive and evaluate your response, we will consider the recommendations 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.



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Major contributors to this report are Humberto Melara, Director; Louis Ochoa, Audit Manager; Renee Gradin, Auditor in Charge; William Stark, Auditor; and Paul Sibal, Auditor.

Please call me with any questions at (202) 254-4100, or your staff may contact Humberto Melara, Director, Western Regional Office, at (510) 637-1463.



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Exhibit

Schedule of Projects Audited For Disaster 1829-DR-ND

Project Number	FEMA Category of Work	Initial Award Amounts⁴	Costs Claimed	FEMA Reimbursement
5351	C	\$373,085	\$282,623	\$244,193
5472	C	119,962	125,217	98,719
5485	C	156,846	137,068	114,407
Total		\$649,893	\$544,908	\$457,319

Source: FEMA EMMIE.

⁴ FEMA deobligated the \$192,574 in excess funds (\$649,893 initially obligated less \$457,319 FEMA allowed at closeout).



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