OFFICE OF INSPECTOR GENERAL

The Chippewa Cree Tribe of the Rocky Boy's Indian Reservation in Montana Mismanaged $3.9 Million in FEMA Disaster Grant Funds

Homeland Security

June 9, 2015
OIG-15-101-D

DHS OIG HIGHLIGHTS

The Chippewa Cree Tribe of the Rocky Boy's Indian Reservation in Montana Mismanaged $3.9 Million in FEMA Disaster Grant Funds

June 9, 2015

Why We Did This

The Federal Emergency Management Agency (FEMA) awarded the Tribe a $31.6 million grant for damages from a June–July 2010 flood disaster. The award provided 100 percent Federal funding. FEMA requested this audit to facilitate its closeout of Project 117, for which it estimated $3.4 million and the Tribe claimed $3.9 million.

What We Recommend

FEMA should disallow $3.9 million the Tribe claimed for Project 117 and provide technical assistance to the Tribe to improve its grant management capabilities.

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 Chippewa Cree Tribe of the Rocky Boy's Indian Reservation in Montana (Tribe) mismanaged this grant, which resulted in a domino effect of negative consequences. First, the Tribe awarded a $3.7 million sole-source contract to a Tribal-owned corporation, the Chippewa Cree Construction Corporation (Corporation). The lack of full and open competition set the stage for fraud, waste, and abuse. Then, the Tribe neglected to identify the material deficiencies in the Corporation's fiscal controls and accounting procedures. The Corporation's Chief Executive Officer took advantage of these weaknesses; and a Federal court has since convicted him of Federal corruption charges for embezzling the Tribe's insurance proceeds and FEMA grant funds, and sentenced him to prison in August 2014. Finally, the Tribe could not provide documentation sufficient to support the $3.9 million it claimed for Project 117.

Evidence indicates that these significant grant management problems may have also negatively affected the Tribe's other projects, especially considering that the Tribe used the same contractor, the Corporation, for other disaster work. Therefore, we plan to audit additional projects that comprise the Tribe's total gross award of $31.6 million.

FEMA Response

FEMA officials agreed with our findings and recommendations of this report. FEMA's written response is due within 90 days.

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

JUN 9 2015

MEMORANDUM FOR: Sharon Loper
Acting Regional Administrator, Region VIII
Federal Emergency Management Agency

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

SUBJECT: *The Chippewa Cree Tribe of the Rocky Boy's Indian Reservation in Montana Mismanaged $3.9 Million of FEMA Disaster Grant Funds*
Audit Report Number OIG-15-101-D

We audited Federal Emergency Management Agency (FEMA) Public Assistance grant funds awarded to the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation in Montana (Tribe). FEMA awarded the Tribe, a FEMA grantee, $31.6 million for damages from a June–July 2010 flood disaster. The award provided 100 percent Federal funding. FEMA Region VIII officials requested this audit to assist them in closing out Project 117, estimated at $3.4 million, for the demolition and removal of the Tribe's Na-toose Health Clinic (Clinic). At the time of our fieldwork, the Tribe had completed all work for Project 117 and had submitted a final claim to FEMA with costs totaling $3,892,073, including $458,098 of costs overruns.

Background

The Tribe, established by executive order on September 7, 1916, is recognized in accordance with the *Indian Reorganization Act of 1934*. The Reservation encompasses approximately 130,000 acres in north central Montana.

On June 15, 2010, severe storms dropped more than 5 inches of rain during a 36-hour period and caused widespread flooding in north central Montana. Approximately 115,000 acres of the Rocky Boy's Reservation experienced heavy flooding that also produced landslides. As a result, on July 10, 2010, the President declared approximately 115,000 acres of the Rocky Boy's Reservation as a major disaster area. The disaster caused severe damage to the Tribe's Na-toose Health Clinic resulting in ultimate abandonment of the facility (see figure 1). The Clinic provided dental and medical services as well as optometry, mental health, physical therapy, diabetes, and preventive care services to a population of approximately 5,000 Tribal members.

Figure 1: Na-toose health clinic damaged by floods and mudslides

Source: Chippewa Cree Tribe.

To restore health services, FEMA approved and funded the construction of a new Na-toose Health clinic approximately 3 miles northwest of the original clinic's location, a more centralized location for the Tribe's medical services. For Project 117, the subject of this audit, FEMA estimated the Tribe would need $3,433,975 to demolish and remove the damaged clinic. FEMA is providing funding for the construction of the new clinic under a separate project.[1] FEMA will adjust allocations for insurance proceeds to projects during its closeout process of the Tribe's grant. We plan on reviewing insurance amounts and allocations in a subsequent audit of the Tribe's total grant award.

Results of Audit

The Tribe did not account for and expend FEMA Public Assistance grant funds for Project 117 according to Federal regulations and FEMA guidelines. Therefore, we recommend that FEMA disallow the total costs claimed of $3,892,073, which includes $458,098 in unapproved cost overruns. Specifically, the Tribe—

[1] FEMA initially approved (obligated) $15.6 million for the construction of the new clinic under Project 132. As of December 2014, the Tribe had stopped construction of the clinic because of lack of funding and costs overruns. Tribe officials anticipate that costs to replace the clinic will exceed $40 million.

- disregarded Federal procurement standards by awarding a $3.7 million sole-source contract to a Tribal-owned corporation, the Chippewa Cree Construction Corporation (Corporation);
- failed to maintain a financial management system sufficient to meet Federal standards; and
- neglected its duties as grantee to (1) administer and monitor grant activities and (2) maintain effective controls over and accountability for Federal funds.

The Tribe's mismanagement of this grant resulted in a domino effect of negative consequences. First, full and open competition did not occur, which set the stage for fraud, waste, and abuse. Then, the Tribe neglected to identify the material deficiencies in the Corporation's fiscal controls and accounting procedures. The Corporation's Chief Executive Officer (CEO) took advantage of these weaknesses, and a Federal court has since convicted him of Federal corruption charges for embezzling the Tribe's insurance proceeds and FEMA grant funds and sentenced him to prison in August 2014. Finally, the Tribe could not provide documentation sufficient to support the $3.9 million it claimed for Project 117.

Evidence indicates that these significant grant management problems may have also negatively affected the Tribe's other projects, especially considering that the Tribe used the same contractor, the Corporation, for other disaster work. Therefore, we plan to audit additional projects that comprise the Tribe's total gross award of $31.6 million.

Finding A: Noncompliance with Federal Procurement Standards

The Tribe did not comply with Federal procurement standards when awarding a contract valued at $3,749,440. The Tribe awarded the contract on a sole-source basis to the Chippewa Cree Construction Corporation, a Tribal-owned entity. The Tribe hired the Corporation to perform demolition and debris removal for the damaged Na-toose Health clinic under Project 117.

Federal procurement standards stipulate that the Tribe must—

- conduct all procurement transactions in a manner providing full and open competition except under certain circumstances. One acceptable circumstance is when the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (44 Code of Federal Regulations (CFR) 13.36(c)(1) and 13.36(d)(4)(i)(B));

- perform a cost or price analysis to determine the reasonableness of the proposed contract price (44 CFR 13.36(f)(1)); and

- include all applicable Federal contract provisions in all awarded contracts (44 CFR 13.36(i)).

The Tribe, however, did not comply with these Federal procurement standards. Specifically, the Tribe neglected to—

- justify the need to award a sole source contract. Therefore, full and open competition did not occur, which increased the risk of favoritism, collusion, fraud, waste, and mismanagement of Federal funds;

- perform a cost or price analysis. As a result, FEMA has no assurance that contract costs claimed are reasonable; and

- include required Federal contract provisions in the contract. These 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 or grantee the right to end an agreement with a contractor for nonperformance; the access to records provision (13.36(i)(10)) gives the subgrantee, grantee, and FEMA the right to examine the contractor's records; and the *Copeland ''Anti-Kickback'' Act* provision (13.36(i)(4)) prohibits "kickbacks" to prime contractors, prime contractor employees, subcontractors, and subcontractor employees.

The Tribe also neglected to follow its own procurement procedures. Federal regulation 44 CFR 13.36(b)(1) allows the Tribe to use its own procurement procedures providing that, at minimum, they conform with applicable Federal standards. Tribal procurement policies require the Tribe to (1) award large contracts over $100,000 on the basis of formal bidding or proposal procedures, (2) identify a justifiable circumstance when awarding sole source contracts, and (3) include applicable Federal contract provisions in all of its contracts. The Tribe, however, did not comply with any of its own contract requirements. Additionally, the Tribe used a contract form designed for small contracts, which was not adequate for a $3.7 million contract.

Because the Tribe did not comply with either Federal procurement requirements or its own, FEMA should disallow as ineligible $3,749,440 in contract costs. We discussed these procurement findings with Tribal and FEMA officials during separate meetings, but they did not provide comments.

Finding B: Substandard Financial Management System

The Tribe's Financial Management System does not meet Federal standards in several respects. As a result, FEMA has no assurance that costs the Tribe claimed for grant activities are valid, allowable, or for work FEMA authorized. In fact, the Tribe cannot provide adequate documentation to support any of the $3,892,073 that it claimed for Project 117. Of that amount, we question $3,749,440 in contract costs in finding A. Therefore, in this finding B, we question as unsupported the remaining $142,633 the Tribe claimed for non-contract costs (labor, equipment, and supplies). If FEMA allows any contract costs we question in finding A, it should require the Tribe to support the contract costs with adequate source documentation.

According to 44 CFR 13.20(b), the financial management systems for grantees (other than states) must meet specific standards. However, the Tribe's financial management systems do not meet the following Federal standards:

- "Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant" (44 CFR 13.20(b)(1)). The Tribe has not provided FEMA with such reports. For example, the Tribe has not submitted quarterly progress reports to FEMA to describe the status of each open large project as 44 CFR 206.204(f) requires.

- "Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities" (44 CFR 13.20(b)(2)). The Tribe comingled Federal and non-federal funds and cannot account separately for each FEMA approved project as 44 CFR 206.205(b) requires.

- "Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes" (44 CFR 13.20(b(3)). As we discuss in finding C, the Tribe failed to monitor each grant supported "program, function, or activity" as 44 CFR 13.40(a) requires, which resulted in its contractor embezzling Federal funds.

- "Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs" (44 CFR 13.20(b(5)). The Tribe has not followed Federal cost principles and regulations; therefore, we cannot determine the reasonableness or allowability for any of the costs the Tribe claimed for Project 117.

- "Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc." (44 CFR 13.20(b(6)). The Tribe cannot provide adequate documentation to support claimed costs.

Many of the requirements in these standards overlap, but clearly the Tribe's financial management system did not meet Federal standards. The Tribe did not (1) validate the accuracy of disbursement of FEMA funding or (2) ensure that disbursements are supported with adequate documentation such as copies of valid vouchers, receipts, or canceled checks. The Tribe allowed the entity requesting the disbursement to (1) self-validate the accuracy of each request, and (2) submit the request without appropriate support documentation (the requestor keeps the supporting records). As a result, we could not reconcile the claimed costs to FEMA's authorized scope of work or verify supporting documentation. Federal cost principles at 2 CFR Part 225, Appendix A, Section C.1.j., require grant recipients to adequately document costs under a Federal award. The following examples further demonstrate the Tribe's poor record keeping:

- $459,200 of costs claimed without sufficient records to determine eligibility of work. In one instance, we identified load tickets for debris removal work that did not describe the "who, what, when, or where" of the work performed; the tickets only contained a single line item for total quantity and price. In another instance, we identified force account labor summary reports that only contained names of employees and total hours worked, without describing the type of activities performed.

- $104,882 of costs claimed that commingled costs for disaster-related with non-disaster-related work. For instance, we identified (1) vouchers for construction work related to a new Tribal detention facility the Department of Justice (DOJ) funded; (2) fuel tickets with expenditures related to the DOJ project and for internal Tribal use; and (3) canceled checks for payment to vendors working on FEMA and non-FEMA projects.

- $141,185 the Tribe paid to a vendor for consulting services without documenting the costs or a statement of work. The Tribe recorded the expenditure in its claim costs summary, but could not provide records to support the costs.

FEMA officials told us that they were aware that the Tribe lacked fiscal controls over grant records. These officials explained that FEMA informed the Tribe that it was at risk of losing Federal funding, unless the Tribe supported eligible disaster costs with appropriate source documentation, and made the records available for review in one central location. Given the significant internal control weaknesses we identified, FEMA should consider applying special conditions or restrictions to the award if it deems the Tribe to be a high-risk grantee (44 CFR 13.12).

The Tribe did not have an effective financial management system in place to track large project expenditures in accordance with Federal standards, and lacked adequate documentation to support the costs it claims under the Project. Therefore, FEMA should disallow $3,892,073 (including $458,098 in cost overruns) in total costs the Tribe claimed for Project 117. However, as we said previously, we questioned contract costs totaling $3,749,440 in finding A; therefore, we are only questioning $142,633 related to force account costs under this finding (or $3,892,073 total costs claimed less $3,749,440 questioned in finding A).

Finding C: Ineffective Grant Management

The findings in this report occurred in part because the Tribe, as grantee, neglected to administer and monitor day-to-day grant activities to ensure compliance with applicable Federal requirements (44 CFR 13.40(a)). The Tribe also failed to maintain effective controls over and accountability for all FEMA funds, maintain adequate safeguards for all such assets, and ensure the use of Federal funds solely for authorized purposes (44 CFR 13.20(b)(3)).

Consequently, the Tribe neglected to identify the material deficiencies in the Corporation's fiscal controls and accounting procedures related to its work on Project 117. As a further consequence, the Corporation's CEO and his associates took advantage of weaknesses in the Corporation's fiscal controls and committed fraud, waste, and mismanagement of Federal funds.

The Tribe owns the Corporation and operates it as an *independent legal entity* in accordance with its Federal charter issued by the Bureau of Indian Affairs. In November 2005, the Corporation elected its CEO into office. This individual also served as the Tribe's Emergency Incident Commander during the June 2010 flooding; in this capacity, he awarded insurance and FEMA contracts in connection with the recovery efforts. Such activities clearly violate Federal conflict-of-interest restrictions. According to 44 CFR 13.36(b)(3), "No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved."

Specifically, we learned that the CEO empowered himself with sole authority to award contracts without competition, issue disaster-related work orders without contracts, approve work orders and invoices, issue and cash checks, and request drawdowns of FEMA grant funds. Generally, fiscal controls should ensure that no one person has complete control over all aspects of a financial transaction. The CEO resigned in September 2013 following allegations of fraud, waste, and mismanagement of Federal funds. A Federal Court convicted the CEO of Federal corruption charges for embezzling Tribal insurance proceeds and FEMA grant funds for this disaster and sentenced him to prison in August 2014.

Conclusion

We conclude that FEMA should designate the Tribe as a high-risk grantee. The Tribe's financial management system did not meet Federal standards, and the Tribe has not conformed to the terms and conditions of the grant. As such, according to 44 CFR 13.12, the Tribe meets the requirements for designation as a high-risk grantee. This regulation authorizes Federal agencies to impose certain conditions and restrictions on high-risk grantees and subgrantees, such as:

- making payments only on a reimbursement basis;
- withholding authority to proceed to the next phase until receipt of evidence of acceptable performance; and
- requiring more detailed financial reports, additional project monitoring, and technical or management assistance.

We also conclude that, based on the actions of the Corporation's CEO and his associates in committing fraud, waste, and mismanagement of Federal funds, there is a material risk that the CEO or associates may continue such actions under Federal awards. Therefore, in an effort to protect the public interest as 2 CFR 180 stipulates, FEMA should also suspend and debar the CEO and his associates convicted of embezzling Federal funds.

In addition, we are very concerned that these significant grant management problems may have also negatively affected the Tribe's other projects, especially considering that the Tribe used the same contractor (the Corporation) for other disaster work. Therefore, we plan to audit additional projects that comprise the Tribe's total gross award of $31.6 million.

Recommendations

We recommend that the Acting Regional Administrator, FEMA Region VIII:

Recommendation 1: Disallow as ineligible $3,749,440 (Federal share $3,749,440) of contract costs that did not comply with Federal procurement standards unless FEMA grants an exception to this administrative requirement as 44 CFR 13.6(c) authorizes (finding A).

Recommendation 2: Disallow as unsupported $142,633 (Federal share $142,633) of force account (non-contract) costs for which the Tribe could not provide adequate documentation (finding B). If FEMA allows any contract costs we recommend for disallowance in recommendation 1, FEMA should require the Tribe to support the contract costs with adequate documentation.

Recommendation 3: Provide technical assistance to the Tribe to improve its grant management capabilities and ensure the Tribe:

- improves its financial management system to meet Federal standards at 44 CFR 13.20(b);
- makes grant records available for review in one centralized location and maintains them on a project-by-project basis; and
- maintains effective fiscal controls and accounting procedures sufficient to safeguard Federal resources (finding C).

Recommendation 4: Initiate Suspension and Debarment procedures for the Chief Executive Officer of the Corporation (elected from November 2005 to September 2013) and his associates convicted of Federal corruption charges for embezzling Tribal insurance proceeds and FEMA grant funds.

Recommendation 5: Designate the Tribe as a high-risk grantee and impose some or all of the conditions and restrictions suggested in 44 CFR 13.12.

Discussion with Management and Audit Follow-up

We discussed the results of our audit with Tribal 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 April 22, 2015, and to the Tribe on April 30, 2015. We discussed this report's findings and recommendations at exit conferences with FEMA on April 29, 2015, and with the Tribe on May 7, 2015. Tribal officials said that they would forgo requesting reimbursement of its costs claimed for Project 117. FEMA officials stated that they will continue to work closely with the Tribe to complete and close the remaining large projects approved under the disaster. FEMA and Tribal officials agreed with the findings and recommendations in 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 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. Please email a signed pdf copy of all responses and closeout request to Humberto Melara, Director, Western Regional Office, Office of Emergency Management Oversight, at Humberto.Melara@oig.dhs.gov. Until we receive your response, we will consider the recommendations open and unresolved.

The Office of Emergency Management Oversight major contributors to this report are Humberto Melara, Director; Louis Ochoa, Audit Manager; and Paul Sibal, Auditor-in-Charge.

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.

Appendix A

Objective, Scope, and Methodology

Our objective was to determine whether the Tribe (Public Assistance Identification Number 000-63925-00) accounted for and expended FEMA Public Assistance grant funds according to Federal regulations and FEMA guidelines for FEMA Disaster Number 1922-DR-MT. FEMA awarded the Tribe, as grantee, $31.6 million for damages resulting from severe storms, flooding, and mudslides that occurred from June 15, 2010, to July 30, 2010. FEMA provided 100 percent funding for 23 large projects and 116 small projects for emergency protective measures and permanent work.[2] Our audit covered the period from June 15, 2010, to December 1, 2014.

We audited one large project, Project 117, at FEMA's request to facilitate its closeout of the project. FEMA initially obligated zero funding for Project 117 because anticipated insurance proceeds covered the $3,433,975 million in estimated repair costs. However, FEMA adjusts obligations at project closeout, based on actual insurance proceeds, and allocates proceeds proportionately to project costs it determines eligible.

Therefore, the allocation of anticipated insurance proceeds was not relevant to the scope of our review (Project 117) because it is not final and because FEMA will base its allocation of actual insurance proceeds on eligible costs for all of the Tribe's projects, not just Project 117. At the time of our fieldwork, the Tribe had completed all work for Project 117 and had submitted a final claim to FEMA with costs totaling $3,892,073, which included a cost overrun of $458,098.

We interviewed FEMA and Tribal officials; reviewed judgmentally selected project costs (generally based on dollar value) for Project 117, and performed other procedures considered necessary to accomplish our objective.

We also notified the Recovery Accountability and Transparency Board of all contracts the grantee 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. We did not assess the adequacy of the Tribe'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 Tribe's method of accounting for disaster-related costs and its procurement policies and procedures.

[2] Federal regulations in effect at the time of the disaster set the large project threshold at $63,200.

Appendix A (Continued)

We conducted this performance audit between July 2014 and April 2015 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.

Appendix B

Potential Monetary Benefits

Table 1: Summary of Potential Monetary Benefits

Type of Potential Monetary Benefit	Total	Federal Share
Questioned Costs – Ineligible	$ 3,749,440	$ 3,749,440
Questioned Costs – Unsupported	142,633	142,633
Funds Put to Better Use	0	0
Totals	**$3,892,073**	**$3,892,073**

Source: FEMA and Office of Inspector General Analysis.

Appendix C

Report Distribution

Department of Homeland Security

Secretary
Chief of Staff
Chief Financial Officer
Under Secretary for Management
Chief Privacy Officer
Audit Liaison, DHS

Federal Emergency Management Agency

Administrator
Chief of Staff
Chief Financial Officer
Chief Counsel
Chief Procurement Officer
Director, Risk Management and Compliance
Audit Liaison, FEMA Region VIII
Audit Liaison, FEMA (Job Code G-14-043)

Recovery Accountability and Transparency Board

Director, Investigations

Office of Management and Budget

Chief, Homeland Security Branch
DHS OIG Budget Examiner

Congress

Congressional Oversight and Appropriations Committees

External

Tribal Area Representative, Chippewa Cree Tribe of the Rocky Boys Indian Reservation

ADDITIONAL INFORMATION AND COPIES

To view this and any of our other reports, please visit our website at: www.oig.dhs.gov.

For further information or questions, please contact Office of Inspector General Public Affairs at: DHS-OIG.OfficePublicAffairs@oig.dhs.gov. Follow us on Twitter at: @dhsoig.

OIG HOTLINE

To report fraud, waste, or abuse, visit our website at www.oig.dhs.gov and click on the red "Hotline" tab. If you cannot access our website, call our hotline at (800) 323-8603, fax our hotline at (202) 254-4297, or write to us at:

Department of Homeland Security
Office of Inspector General, Mail Stop 0305
Attention: Hotline
245 Murray Drive, SW
Washington, DC 20528-0305