



Homeland Security

March 14, 2011

MEMORANDUM FOR: Major P. (Phil) May, Regional Administrator
FEMA Region IV

FROM: C. David Kimble, Director
Eastern Regional Office

A handwritten signature in black ink that reads "C. David Kimble".

SUBJECT: *Emerald Coast Utilities Authority*
FIPS Code 033-0B36F-00
FEMA Disaster No. 1551-DR-FL
Report Number DA-11-11

In response to a congressional request, we audited the contracting practices of the Emerald Coast Utilities Authority (ECUA) located in Pensacola, Florida. As of June 18, 2010, ECUA received an award of \$158.6 million from the Florida Division of Emergency Management (FDEM)¹, a Federal Emergency Management Agency (FEMA) grantee, for emergency protective measures and repairs and replacement of utilities, facilities, and equipment damaged by Hurricane Ivan in September 2004. The award provided 90% FEMA funding for 46 large projects and 73 small projects.²

We limited our review to ECUA's compliance with state and federal procurement regulations concerning contract awards to small, minority, and women-owned businesses on the Main Street Wastewater Relocation Project, which was funded by two large projects (3661 and 3389) totaling \$149.2 million. The review covered the period from September 16, 2004 to October 21, 2010. During this period, ECUA received \$134.2 million (90% of \$149.2 million) of FEMA funds under the two large projects.

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 reviewed judgmentally selected project cost documentation (generally based on dollar value) and interviewed personnel from the Environmental Protection Agency, Florida Department of

¹ The Florida Division of Emergency Management is administratively housed within the Florida Department of Community Affairs.

² Federal regulations in effect at the time of Hurricane Ivan set the large project threshold at \$54,100.

Environmental Protection; Escambia Pensacola Human Relations Commission (EPHRC); ECUA; FDEM; and FEMA. We also observed FEMA Equal Employment Opportunity (EEO) investigator interviews of EPHRC executive director and minority business owners and reviewed transcript drafts of the investigator's interviews of ECUA executive personnel. Furthermore, we reviewed ECUA's procurement policies and procedures; analyzed contractual provisions of major prime contracts; obtained statistical data from major prime contractors on awards to subcontractors; reviewed ECUA outreach initiatives for minority businesses; reviewed applicable state and federal regulations; and performed other procedures considered necessary under the circumstances to accomplish our audit objective.

BACKGROUND

On September 16, 2004, Hurricane Ivan struck ECUA's Main Street Wastewater Treatment Plant located adjacent to Pensacola Bay causing severe damage to the entire facility and rendering the wastewater treatment plant inoperable for more than 4 days. The resultant overflows triggered widespread environmental damage in Pensacola Bay. Rather than restore the original facility, ECUA decided to use the opportunity to relocate the plant to a site 25 miles north of the facility so that the wastewater treatment plant would no longer be located in a storm surge, flood-prone, area.

At the request of ECUA, FEMA approved the Main Street Wastewater Relocation Project as an "improved project". An improved project is the decision by an applicant to make improvements to a damaged facility while maintaining the same function of the pre-disaster facility. Federal regulation 44 CFR 206.203 (d)(1) and FEMA *Public Assistance Guide* (FEMA 322, October 1999, p. 85) limits federal funding for improved projects to the federal share of the approved estimates of eligible costs associated with repairing or replacing the damaged facility to its pre-disaster design.

The total cost of the Main Street Wastewater Relocation Project was estimated at \$317 million, with FEMA providing \$134.2 million of funding for the project. Construction activities started in July 2007 with the initiation of land clearing activities at the new Central Water Reclamation Facility (CWRP) site. According to ECUA, the CWRP was officially opened on December 2, 2010.

RESULTS OF AUDIT

ECUA did not comply with certain provisions of 44 CFR 13.36(e) when contracting with small and minority businesses and women's business enterprises on the Main Street Wastewater Relocation Project. The noncompliant areas included: (1) a lack of solicitation lists; (2) not using the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; and (3) not requiring prime contractors to take affirmative steps on contracting with small, minority and women-owned business enterprises on the award of subcontracts.

According to 44 CFR 13.36(e), the grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises and labor surplus area firms are used when possible. Affirmative steps shall include:

- Placing qualified small and minority businesses and women’s business enterprises on solicitation lists.
- Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources.
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women’s enterprises.
- Establishing delivery schedules where the requirement permits, which encourage participation by small and minority business, and women’s business enterprises.
- Using the Small Business Administration, and the Minority Business Development Agency of the U.S. Department of Commerce.
- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps addressed above.

1. Solicitation Lists. ECUA did not use solicitation lists to assure that small, minority and women-owned business enterprises were identified as potential sources for goods and services for the relocation project. However, in February 2010, a Small Business Directory was published by ECUA, although this was after the majority of the contracts on the Main Street Wastewater Relocation Project were awarded. According to procurement personnel, this directory was provided to certain ECUA employees for consideration on awards no greater than \$1,000. Also, ECUA encouraged minority vendors to complete vendor applications at Outreach Programs and those applications were provided to ECUA procurement agents who maintain a file for possible considerations on future solicitations. However, neither the Business Directory nor the vendor application process meet the requirements of 44 CFR 13.36(e)(i) and 44 CFR 13.36(e)(ii).

ECUA recently developed a listing of small, minority, and women-owned businesses that contains information such as a vendor number, company name, telephone number, type of business/commodity, email address, and designation of either small, minority, or women-owned business. We were informed by the ECUA procurement manager that ECUA Information Technology Services were requested to activate the listing when goods or services are to be procured. Upon activation, emails will be sent to all those businesses that provide such goods or services and bids will be solicited. Once this system is operational, it should meet the requirements of 44 CFR 13.36(e)(i) and (ii). However, ECUA should ensure the listing is complete and accurate by using the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce.

ECUA Response. ECUA officials disagreed with our finding. They said that all contracts were awarded competitively and, as such, fulfilled the requirements of 44 CFR 13.36(e). They also said that ECUA does have a solicitation list.

OIG Response. We disagree with ECUA’s position. We consider 44 CFR 13.36(e) to be a separate and distinct requirement that would not be modified for the various methods of procurement identified in 44 CFR 13.36(d). We also take exception to the solicitation listing referred to by ECUA, which is a database of vendors that ECUA has contracted with and, as such, does not include other potential vendors. In addition, we do not agree that all procurements were advertised and competitively awarded.

2. Small Business Administration and Minority Business Development Agency

ECUA did not use the services and assistance of the Small Business Administration or Minority Business Development Agency of the U.S. Department of Commerce to assure that minority firms, women’s business enterprises and labor surplus area firms were used as contracting sources when possible, as required by 44 CFR 13.36(e)(v).

ECUA Response. ECUA officials believed that the services of the Small Business Administration and the U.S. Department of Commerce were not applicable since they considered all awards to be competitive.

3. Prime Contractors

ECUA did not require its prime contractors, who were awarded significant contracts on the Main Street Wastewater Relocation Project, to take affirmative steps to subcontract with small, minority, and women-owned business enterprises when possible as required by 44 CFR 13.36(e)(vi). Our conclusion is based on the review of terms and conditions of contracts awarded to prime contractors and discussions held with ECUA representatives.

Although ECUA did not require its prime contractors to take affirmative steps to contract with small, minority, and women-owned businesses, we requested and analyzed statistical subcontract data from five major prime contractors whose contracts under the relocation project were valued at \$7 million and above. The results of our analysis indicated that \$22.8 million of contract work, or 15.2% of the total contract value of \$149.2 million awarded to the prime contractors, was subcontracted to small, minority and women-owned businesses. The results are shown in the following table.

Contractor	Prime Contract Value	Minority Business	Small Business	Women-Owned Business	Total
A	\$ 7,273,235	\$ 0	\$ 2,491,056	\$ 48,480	\$ 2,539,536
B	91,427,445	917,730	11,972,745	2,690,272	15,580,747
C	32,503,626	0	1,896,681	1,703,769	3,600,450
D	10,120,859	134,561	52,945	0	187,506
E	7,960,719	34,629	335,709	483,906	854,244
Total	\$149,285,884	\$1,086,920	\$16,749,136	\$4,926,427	\$22,762,483
Percentages		.7%	11.2%	3.3%	15.2%

ECUA Response. ECUA officials concurred with our finding and have taken corrective action in recent advertisements for bids on both the Lakewood Phase 5 Sewer Expansion and the Main Street Wastewater Treatment Plant Demolition projects. Included in the specifications for those projects are the requirements for compliance with the affirmative steps identified in 44 CFR 13.36 (e)(2)(i) through (v).

According to 44 CFR 13.43, if a grantee or subgrantee materially fails to comply with any term of any award, whether stated in a federal statute or regulation, an assurance, in a State plan or application, a notice of an award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances.

- (1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,
- (2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,
- (3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,
- (4) Withhold further awards for the program, or
- (5) Take other remedies that may be legally available.

As discussed in this report, ECUA did not fully comply with 44 CFR 13.36(e). Nonetheless, we determined that \$22.8 million of contract work under the FEMA projects was awarded to such business enterprises through ECUA's prime contractors. However, had ECUA taken all necessary affirmative steps outlined in the regulation, the overall contract amount awarded to such businesses may have been greater. Because federal procurement standards do not require an applicant to meet any specific set-aside goals for contract awards to small, minority, and women-owned business enterprises, we were not able to determine the impact of ECUA's non-compliance. As noted in this report, ECUA has begun to take action to address its violations of 44 CFR 13.36(e) by (1) developing solicitation lists that will identify small, minority, and women's business enterprises as potential sources on future procurements, and (2) including in recent advertisements for contract work that the prospective contractors take affirmative steps to subcontract with small, minority, and women's business enterprises when possible. In consideration of all these factors, we are not recommending that any of the actions identified in 44 CFR 13.43 be taken.

RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region IV, in coordination with FDEM:

Recommendation #1: Instruct ECUA to accelerate their efforts in the development of a solicitation process which will ensure small, minority and women-owned businesses are considered for future procurements of goods and services.

Recommendation #2: Instruct ECUA to use the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce to assure that minority firms, women's business enterprises and labor surplus area firms are considered for future procurements under the award.

Recommendation #3: Instruct ECUA to comply with federal regulations on the award of future contracts by requiring prime contractors to take affirmative steps to subcontract with small, minority, and women-owned businesses when possible.

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOW-UP

We discussed the results of our audit with ECUA, FEMA, and FDEM officials during our audit. We also provided written summaries of our findings and recommendations in advance to these officials and discussed them at an exit conference held on January 12, 2011. ECUA comments, where appropriate, have been incorporated into the body of the report.

Please advise me by June 10, 2011, of the actions planned or taken to implement the recommendations, including target completion dates for any planned actions. To promote transparency, this final report and your response to this report, including your corrective actions planned, will be posted to our website, with exception of sensitive information identified by your office. Significant contributors to this report were Larry Arnold, Gary Rosetti, and John Skrmetti. Should you have any questions, please contact me at (404) 832-6702, or your staff may contact Larry Arnold, Audit Manager, at (228) 822-0346.

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