



January 22, 2014

To: Finance and Administration Committee

From: Darrell Johnson, Chief Executive Officer

Janet Sutter, Executive Director
Internal Audit Department

Janet Sutter for

[Signature]

Subject: Department of Homeland Security, Federal Emergency Management Agency, Region IX Grants Management Division, Financial Monitoring Review of 2009 through 2012 Transit Security Grant Program Funding

Overview

Region IX of the Grants Management Division of the Department of Homeland Security's Federal Emergency Management Agency has completed a financial monitoring review of Transit Security Grant Program funds awarded to the Orange County Transportation Authority in 2009, 2010, 2011, and 2012. The review cited non-compliance with regard to the expenditure of \$624,275 in grant funds, which will be returned as recommended. The Internal Audit Department has also made a recommendation to improve controls over implementation, monitoring, and reporting of grant funds and related projects.

Recommendations

- A. Receive and file financial monitoring review letters from Region IX of the Grants Management Division of the Department of Homeland Security's Federal Emergency Management Agency, dated October 13, 2013 and December 23, 2013.
- B. Direct staff to implement supplemental recommendation by the Internal Audit Department.

Background

On February 27, 2009, the Orange County Transportation Authority (OCTA) finalized an application for \$880,000 in Federal Emergency Management Agency (FEMA) Transit Security Grant Program (TSGP) funds for four projects.

The funds were awarded and accepted by the Board of Directors through resolution on July 27, 2009.

FEMA, Region IX Grants Management Division conducted an on-site financial monitoring review covering TSGP funding awarded to OCTA for fiscal years (FY) 2009, 2010, 2011, and 2012. The review was conducted in July 2013, and initial results were provided in October 2013 (Attachment A). After discussion with FEMA regarding the initial results, an addendum to the initial report letter was issued in December 2013 (Attachment B).

Discussion

FEMA questioned \$624,275 in expenditures relating to FY 2009 TSGP funds and requested that the expenditures be justified or that the funds be returned. The basis of the finding stems from guidance that disallows the use of these funds to supplant existing funding. In March 2013, two months prior to expiration of the grant funds, staff utilized the TSGP funds to replace Proposition 1B funding that had been used to pay a November 2012 invoice related to the transit radio communications system upgrade. Management has prepared a written response to FEMA (Attachment C) and will remit the funds on January 27, 2014.

In reviewing the circumstances that led to this condition, weaknesses in the implementation, reporting, and monitoring of TSGP grant funds and related projects were noted. The Executive Director of Internal Audit has issued a memorandum to the Chief Executive Officer (Attachment D) describing these weaknesses and has offered a supplemental recommendation to management.

Summary

FEMA has conducted a financial monitoring review of TSGP funds awarded to OCTA. The review cited non-compliance with regard to the expenditure of \$624,275 in grant funds. The Internal Audit Department has made a supplemental recommendation to improve controls over implementation, monitoring, and reporting of grant funds and related projects.

Attachments

- A. Letter to Ric Teano from Jack Brannon, Director, Grants Management Division, Department of Homeland Security/Federal Emergency Management Agency, Date Stamped October 25, 2013
- B. Letter to Ms. Janet Sutter from Jack Brannon, Director, Grants Management Division, Department of Homeland Security/Federal Emergency Management Agency, Date Stamped December 23, 2013
- C. Letter to Jack Brannon, Director, Grants Management Division, Department of Homeland Security/Federal Emergency Management Agency, from Andrew Oftelie, Executive Director, Finance and Administration, Dated January 27, 2014
- D. Memo to Darrell Johnson, Chief Executive Officer from Janet Sutter Executive Director, Internal Audit, Re: Supplemental Recommendation Related to the Federal Emergency Management Agency, Region IX Grants Management Review, Dated January 8, 2014

Prepared by:



Janet Sutter
Executive Director, Internal Audit
714-560-5591

U.S. Department of Homeland Security
 Region IX
 1111 Broadway, Suite 1200
 Oakland, CA 94607-4052



FEMA

OCT 25 2013

Mr. Ric Teano
 Senior Grants Specialist
 Orange County Transportation Authority
 550 South Main Street
 Orange, CA 92863-1584

Dear Mr. Teano:

The purpose of this letter is to report the results of the on-site financial monitoring review conducted July 15-17, 2013, by U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA), Region IX Grants Management Division (GMD). Under the 9/11 Commission Act of 2007, Title I, requires the Department of Homeland Security (DHS) to conduct a programmatic and financial review at least every two years for each state and high-risk urban area. We appreciate the support and cooperation staff provided over the course of the review.

During the review, the monitor assessed whether the financial and administrative operations of the Orange County Transportation Authority properly accounted for the receipt and expenditure of DHS funds; whether expenditures were in compliance with federal financial regulations; and if expenditures were in compliance with the applicable funding parameters for the grant awards reviewed. A review was conducted of Orange County Transportation Authority's accounting of grant funds, documented policies, procedures, disbursement records and expenditures charged to the following grants:

| GRANTEE | GRANT NUMBER | GRANT TYPE |
|--|---------------------|--------------------------------|
| Orange County Transportation Authority | 2009-RA-T9-K014 | Transit Security Grant Program |
| Orange County Transportation Authority | 2010-RA-T0-K050 | Transit Security Grant Program |
| Orange County Transportation Authority | EMW-2011-RA-K00069 | Transit Security Grant Program |
| Orange County Transportation Authority | EMW- 2012-RA-K00045 | Transit Security Grant Program |

A copy of the completed Financial Monitoring Protocol used to monitor these grants is included with this letter.

Areas Requiring Corrective Action:

The following is a list of five (5) areas determined to be out-of-compliance with federal financial regulations:

1. 44 CFR, Part 13, Section 13.20 (b)(5). Allowable cost.
2. 44 CFR, Part 13, Section 13.30 (c)(1). Budget Changes - Nonconstruction projects.
3. 44 CFR, Part 13, Section 13.30 (d)(1). Programmatic changes.
4. 44 CFR, Part 13, Section 13.30 (f)(1). Requesting prior approval.
5. 44 CFR, Part 13, Section 13.40(a). Monitoring and reporting performance.

Findings Summary:

OCTA documentation shows payment of an ACS Transport invoice using reallocated funds of \$624,275 from the 2009 TSGP grant. This action is considered supplanting, whereby federal grant funds were used to replace OCTA agency budgeted funds which otherwise would have been applied to the contract.

The scope of work for OCTA's approved 2009 TSGP award was authorized for training purposes. The scope of work identified in the ACS Transport contract is for an upgrade to OCTA's existing Integrated Transportation Communications System (ITCS), which is outside the approved scope of work for the grant award.

OCTA failed to comply with federal financial regulations and FEMA Information Bulletin 379 by redirecting 2009 TSGP funds to the completed ACS Transport Inc. contract, *without having requested or received prior approval from FEMA* to modify their 2009 TSGP grant. OCTA applied unspent 2009 grant funds to the ACS Transport contract to ensure all TSGP grant funds were expended by the end of the grant period of performance. An OCTA request for a final modification was submitted after they transferred the unspent TSGP grant funds.

FEMA is questioning OCTA's reallocation of \$624,275 from their 2009 TSGP award to pay a portion of a vendor contract (ACS Transport Solutions, Inc.).

NEXT STEPS

Orange County Transportation Authority will need to document the corrective actions implemented to come into compliance with the federal financial regulations for the five issues identified above. This information must be submitted to the FEMA Regional Office for review and approval within sixty (60) days of receipt of this letter.

Required Actions/Questioned Costs:

- Non-compliance #1, Allowable Costs. Within sixty (60) days of receipt of this letter, OCTA must submit source documentation and a written justification to support charges of \$624,275 expensed to the FY09 TSGP grant. FEMA will review the documentation and make a determination on the charges.

- If OCTA in its review of the expense determines that ACS Transport, Inc. costs should not have been charged to the FY09 TSGP program, OCTA should remit payment to FEMA in the amount of \$624,275 for the FY09 TSGP award. The check or money order should be from a non-federal source and made payable to the U.S. Treasury. Upon receipt of the payment, FEMA Region IX will record and send funds to the Department of Treasury. The check or money order should reference grant number FY09 TSGP (2009-RA-T9-K014) and the remittance should include the following Accounting Classification Code information:

Fiscal Year/Fund Code/Budget Account/Office/Division Reg./Sub./POMS

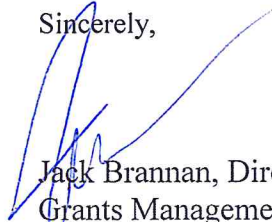
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All correspondence related to the above findings should be addressed to:

FEMA Region IX
1111 Broadway, Suite 1200
Oakland, California 94607-4052
Attn: Michelle Weaver

FEMA Region IX, Grants Management Division, looks forward to continuing to work with you and your staff. Please do not hesitate to contact Michelle Weaver, Grants Management Branch Chief, should you or your staff have any questions or need additional information or assistance pertaining to the results this monitoring visit. She can be reached at michelle.weaver@fema.dhs.gov or by calling (510) 627-7021.

Sincerely,



Jack Brannan, Director
Grants Management Division
DHS/FEMA

Enclosure

cc: Janet Sutter, Executive Director, Internal Audit, OCTA
Brian Cavanaugh, Program Analyst (FEMA/HQ)
Grant File

U.S. Department of Homeland Security
 Region IX
 1111 Broadway, Suite 1200
 Oakland, CA 94607-4052



FEMA

DEC 23 2013

Ms. Janet Sutter
 Vice President, Internal Audits
 Orange County Transportation Authority
 550 South Main Street
 Orange, CA 92863-1584

Dear Ms. Sutter:

This letter will serve as an Addendum to the FEMA site visit monitoring results letter addressed to Ric Teano, Orange County Transportation Authority (OCTA), dated October 25, 2013. We are writing this letter to amend the areas of non-compliance cited in the October 25th letter with respect to the grant number listed below:

| GRANTEE | GRANT NUMBER | GRANT TYPE |
|--|-----------------|--------------------------------|
| Orange County Transportation Authority | 2009-RA-T9-K014 | Transit Security Grant Program |

The outstanding issue is Orange County Transportation Authority's supplanting of the above-referenced FEMA 2009 Transit Security Grant funds.

Below is the timeline of OCTA's supplanting of FEMA Transit Security Grant Program funds:

| <u>7/31/09</u> | <u>6/30/10</u> | <u>11/16/12</u> | <u>12/19/12</u> | <u>2/26/13</u> | <u>3/18/13</u> | <u>3/22/13</u> | <u>5/31/13</u> |
|-------------------------|--|--|---|---|--|---|---|
| 2009 TSGP grant awarded | ACS Transport Solutions, Inc. (ACS) contract (C-9-0300) signed by OCTA | ACS invoice #31200401-13 submitted to OCTA for payment | OCTA pays ACS invoice #31200401-13 (California Prop 1B funds are expended on invoice #31200401-13). | OCTA submits formal written request to FEMA for SOW grant modification of 2009 TSGP grant | FEMA approves SOW grant modification - issues GAN #3 | OCTA draws \$641,551 from 2009 TSGP funds. \$624,275 is applied to ACS invoice #31200401-13 (supplanting CA Prop 1B funds). | 2009 TSGP grant period of performance expires |

Supplanting:

2009 Transit Security Grant Program Guidance and Application Kit - Part VI, Award Administration Information, Subpart B, Administrative and National Policy Requirements #2:

- ❖ Non-supplanting Requirement. Grant funds will be used to supplement existing funds, and *will not replace* (supplant) funds that have been appropriated for the same purpose.

- ❖ Applicants or grantees may be required to supply documentation certifying that a reduction in non-Federal resources occurred for reasons other than the receipt or expected receipt of Federal funds.

Award Continuation Sheet - Cooperative Agreement Project Number 2009-RA-T9-K014 Award Date 07/31/2009:

- ❖ Special Conditions #3: The recipient agrees that all allocations and use of funds under this grant will be in accordance with the FY 2009 Transit Security Grant Program guidance and application kit.

Supplanting Summary:

FEMA is questioning OCTA's reallocation of \$624,275 from their 2009 TSGP award to pay a portion of a vendor contract ACS Transport Solutions, Inc. (ACS). Applying the 2009 TSGP grant funds against the ACS invoice is deemed supplanting.

On June 30, 2010 OCTA executed a contract with ACS. The scope of work identified in the ACS contract was for upgrades to OCTA's existing Integrated Transportation Communications System (ITCS). The scope of work approved for OCTA's 2009 TSGP award was for training purposes. The 2009 TSGP grant award scope of work did not identify nor include any ITCS upgrades.

On December 19, 2012, OCTA paid a portion of ACS invoice #3120040-13 with California Proposition 1B funds. The ACS invoice was for work done to upgrade OCTA's ITCS.

On February 26, 2013, OCTA sent an email to their FEMA PA entitled "Final Modification Request OCTA 2009 TSGP" wherein the grantee notes that a time extension is "...no longer an option..." and instead requests a "...final modification to our 2009 TSGP grant 2009-RA-T9-K014...." to move all "potentially unspent funds... to ensure all TSGP funds are expended by March 31, 2013."

On March 18, 2013 FEMA issued a Grant Adjustment Notice (GAN), authorizing the change of scope and revised budget of TSGP 2009-RA-T9-K014.

On March 22, 2013, OCTA redirected \$624,275 of their 2009 TSGP funds to replace a portion of the November 16, 2012 ACS invoice #3120040-13 already paid for in part by OCTA with California Proposition 1B funds.

REMOVED

The following five items have been removed from our October 25th letter:

- **44 CFR, Part 13, Section 13.30 (c)(1). Budget Changes - Nonconstruction projects.**

During FEMA's on-site monitoring visit, OCTA did not provide documentation to support the FEMA Program Analyst (PA) was aware that OCTA had entered into a contract two and a half years earlier and was going to apply a major portion of the TSGP grant funds towards the contract; the basis for requesting a grant modification. The modification request was made to avoid the loss of funds.

- **44 CFR, Part 13, Section 13.30 (d)(1). Programmatic changes.**

OCTA did not receive formal approval for the programmatic change requested in their 2009 TSGP grant.

- **44 CFR, Part 13, Section 13.30 (f)(1). Requesting prior approval.**

OCTA did not submit a revised budget, nor did they provide a narrative justification for the proposed revision, in the format required by FEMA Grants Program Directorate Cooperative Agreement in their February 26, 2013 email to FEMA Program Analyst (FEMA PA).

- **44 CFR, Part 13, Section 13.20 (b)(5). Allowable cost.**

OCTA designated federal grant funds to pay a vendor without formal approval of the allowability of the cost.

- **44 CFR, Part 13, Section 13.40(a). Monitoring and reporting performance.**

On April 12, 2012, OCTA received a GAN authorizing a project modification and 12-month period of performance extension (to May 30, 2013). Because OCTA was not able to complete the modified project within the extension period, OCTA requested an additional 12-month extension, which was denied. Projects were modified or cancelled prior to receiving formal approval from FEMA. OCTA failed to manage the day-to-day operations of the grant supported activities of their 2009 Transit Security grant.

Required Actions/Questioned Costs:

- Within forty-five (45) days of receipt of this letter, OCTA must submit source documentation and a written justification to support charges of \$624,275 expensed to the FY09 TSGP grant. FEMA will review the documentation and make a determination on the charges.
- If OCTA in its review of the expense determines that ACS Transport, Inc. costs should not have been charged to the FY09 TSGP program, OCTA should remit payment to FEMA in the amount of \$624,275 for the FY09 TSGP award. The check or money order should be from a non-federal source and made payable to the U.S. Treasury. Upon receipt of the payment, FEMA Region IX will record and send funds to the Department of Treasury. The check or money order should reference grant number FY09 TSGP (2009-RA-T9-K014) and the remittance should include the following Accounting Classification Code information:

Fiscal Year/Fund Code/Budget Account/Office/Division Reg./Sub./POMS

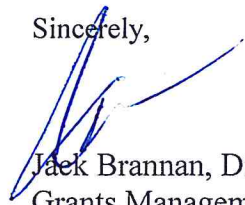
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All correspondence related to the above findings should be addressed to:

FEMA Region IX
1111 Broadway, Suite 1200
Oakland, California 94607-4052
Attn: Michelle Weaver

FEMA Region IX, Grants Management Division, looks forward to continuing to work with you and your staff. Please do not hesitate to contact Michelle Weaver, Grants Management Branch Chief, should you or your staff have any questions or need additional information or assistance pertaining to the results this monitoring visit. She can be reached at michelle.weaver@fema.dhs.gov or by calling (510) 627-7021.

Sincerely,



Jack Brannan, Director
Grants Management Division
DHS/FEMA

cc: Ric Teano, Program Manager, OCTA
Alexander Mrazik, Jr., Branch Chief (FEMA HQ, GPD)
Brian Cavanaugh, Program Analyst (FEMA HQ, GPD)
Grant File



AFFILIATED AGENCIES

*Orange County
Transit District*

*Local Transportation
Authority*

*Service Authority for
Freeway Emergencies*

*Consolidated Transportation
Service Agency*

*Congestion Management
Agency*

*Service Authority for
Abandoned Vehicles*

January 27, 2014

Jack Brannan, Director
FEMA Region IX
Grants Management Division, DHS/FEMA
1111 Broadway, Suite 1200
Oakland, CA 94607-4052

Dear Mr. Brannan,

Pursuant to the finding outlined in your addendum letter received on December 23, 2013 that the Orange County Transportation Authority (OCTA) supplanted funds on Grant 2009-RA-T9-KO14, please find the attached payment to FEMA in the amount of \$624,275. After further review of the program guidelines, OCTA understands FEMA's position that these funds should be returned.

I can assure you that OCTA did not intend to do anything outside the requirements of the program guidelines. OCTA sought approval from FEMA prior to moving forward with the formal grant adjustment to the Fiscal Year (FY) 2009 Transit Security Grant Program (TSGP) grant.

It was only after receiving formal approval from FEMA that OCTA proceeded to use the remaining TSGP funds prior to expiration. This action was taken in the spirit of using the funds on an eligible project consistent with FEMA's funding priorities, as noted in the FY 2009 Transit Security Grant Program Guidance and Application Kit.

To ensure this does not happen again, OCTA staff is in the process of updating internal policies and procedures related to the administration of grant programs such as the TSGP program.

If you have any questions, please contact me at (714) 560-5649 or at aoftelie@octa.net.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Oftelie", is written over a horizontal line.

Andrew Oftelie
Executive Director
Finance and Administration

AO:vg



INTEROFFICE MEMO

January 15, 2014

To: Darrell Johnson, Chief Executive Officer

From: Janet Sutter, Executive Director
Internal Audit 

Subject: **Supplemental Recommendation Related to the Federal
Emergency Management Agency, Region IX Grants
Management Review**

The Federal Emergency Management Agency (FEMA) conducted an on-site financial monitoring review and questioned \$624,275 in expenditures. In reviewing the circumstances that led to this condition, weaknesses in implementation, reporting, and monitoring of Transit Security Grant Program (TSGP) funding and related projects were identified by Internal Audit Department (Internal Audit).

Finding

TSGP funded projects are often not executed as originally planned, resulting in staff submitting multiple requests to replace projects and extend expiration dates in an effort to avoid loss of funds. There are no formal procedures in place to effectively report project status or impending expiration of grant funds.

Recommendation

The Internal Audit Department (Internal Audit) recommends that management improve controls over the implementation, monitoring, and reporting of grant funds and related projects. Procedures for project selection, project management, monitoring, and reporting should be formalized with roles and responsibilities clearly defined. Further, staff should apply for grant funds for only those projects that they can reasonably expect to complete.

Background

The Orange County Transportation Authority (OCTA) successfully secured transit grant funds for several years, beginning in 2005; however, projects for which the funds were awarded were often not completed within the stated three year performance period. FEMA historically approved requests to extend

the period of performance up to an additional two years, allowing staff time to expend the funds. However, in February 2012, FEMA notified all agencies that future requests for extension would be highly scrutinized. OCTA's subsequent request to extend the 2009 TSGP period of performance through May 2014 (the second request for a one-year extension) was denied.

OCTA was awarded \$200,000 in 2006 to complete a Comprehensive Emergency Management Plan and another \$200,000 for Update to the Emergency Operations Plan in 2009. Staff requested extensions to the due date for the 2006 TSGP funds that extended the performance period to May 2012. When an OCTA Emergency Operations Plan was completed in April 2011, rather than utilizing 2009 TSGP funds, staff applied these expenditures against the 2006 TSGP award; leaving \$200,000 in funding available. In February 2012, staff requested these funds be approved for use on a new project, to install remote vehicle immobilizing technology on 20 OCTA buses, and the performance period be extended to May 2013. These modifications were approved; however, the remote vehicle immobilization project was never implemented.

Two projects, counter-surveillance training for \$180,000 and staff emergency operations training and exercise for \$200,000, were completed in April and May 2013, respectively. Both projects were completed for considerably less than originally anticipated; leaving \$136,000 in funding available. The final project, a public awareness campaign for \$300,000, was never undertaken. As the expiration of the unused grant funds approached, staff submitted several modification requests to apply the funds to other projects.

It should be noted that an additional \$294,000 in 2010 TSGP funds have yet to be expended and will expire in May 2014. Staff has estimated that some of these funds will be left unspent.

Three separate divisions are involved in the application, expenditure, and reporting of TSGP funds. The Government Relations Division identifies grant opportunities and prepares the TSGP application and any adjustment or extension requests. The Transit Division develops applicable projects, prepares cost estimates, and executes the projects. The Finance and Administration Division (F&A) prepares and submits grant reimbursement requests, reconciles grant activity in the general ledger, and prepares a Quarterly Grant Status report to the Board of Directors (Board).

F&A obtains updates from project managers on the status of grant projects and this information is recorded in the Quarterly Grant Status Report; however, the report does not clearly communicate when a project is falling

behind and/or that grant funds are at risk of expiring. Both a Security Working Group, made up of Board members, and a Security Advisory Group, made up of internal staff members, meet quarterly, or as needed, to discuss transit security issues; however, it does not appear that either group has responsibility for oversight of project milestones and related grant funding sources. As a result, there is no mechanism to report to management that projects are not being completed timely and/or that there are unused, available funds.

The Transit Division project manager, responsible for execution of these projects, advised that some TSGP funded projects are of secondary importance and, as assigned tasks and higher priorities arise, program timelines often shift. Higher priority projects are completed, while lower priority projects are delayed or cancelled. This is evident based on review of status updates provided by the project manager and multiple amendments and extension requests related to these TSGP awards.

Management Response

Management agrees with the recommendation. Staff is developing an authority-wide policy and accompanying set of procedures for the entire grants process that will address each of the issues identified in the Internal Audit recommendation. The policy will formalize roles and responsibilities and will clearly detail the responsible parties for ensuring that project milestones are met, who is responsible for the various reporting requirements, and who will have the final decision on determining whether OCTA will apply for a particular grant and for which projects. The procedures will include a formal review prior to applying for a grant that will help ensure that OCTA only applies for grant funds that is reasonably expected to be complete.

Follow-up Process

This recommendation will be included in the list of Outstanding Audit Recommendations that accompanies the Quarterly Updates to the Internal Audit Plan. Internal Audit will perform follow-up on the status of implementation of this recommendation in six months.

c: Lance Larson
Beth McCormick
Andy Oftelie