

**FEMA Should Disallow  
\$1.5 Million in Grant  
Funds Awarded to Hays  
County, Texas**





# DHS OIG HIGHLIGHTS

## *FEMA Should Disallow \$1.5 Million in Grant Funds Awarded to Hays County, Texas*

June 22, 2017

### Why We Did This Audit

Hays County, Texas (County), received a \$3.2 million Federal Emergency Management Agency (FEMA) grant award for damages resulting from severe storms and flooding in May and June 2015. We selected Hays County for audit because FEMA officials asked us whether the County's (and other grant subrecipients') use of a shared services agreement met Federal requirements.

### What We Recommend

FEMA should disallow \$1.5 million as ineligible costs for contracts that overly restricted competition and direct Texas to advise its grant subrecipients about the use of shared services agreements when spending Federal funds.

#### **For Further Information:**

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

### What We Found

The County did not fully comply with procurement standards for Federal grants in awarding contracts for disaster work. The County used the Houston-Galveston Area Council (HGAC) to procure two contracts totaling \$1.5 million for debris removal and monitoring. However, HGAC required its prospective debris removers to have performed three debris removal projects of at least 1 million cubic yards of debris. In this instance, the County needed to remove a much smaller volume of debris — about 150,000 cubic yards. Therefore, HGAC's requirements prevented smaller companies from competing for the federally funded work. In soliciting bids for the two contracts, HGAC also did not take all the affirmative steps that Federal regulations require to provide opportunities for disadvantaged businesses when possible.

Federal regulations encourage grant recipients to enter into state and local intergovernmental agreements to foster economy and efficiency. Nevertheless, the use of these shared services agreements does not relieve the grant recipient or subrecipient of its responsibility to comply with Federal procurement requirements.

The County also awarded two smaller contracts totaling \$367,191 without taking the federally required affirmative steps or including all required contract provisions. In response to our audit, however, the County revised its procurement policies to comply with Federal requirements, canceled one of the contracts, and plans to resolicit bids for more than \$200,000 of disaster work.

### FEMA Response

FEMA Region VI officials concurred with our findings and recommendations. Appendix C includes FEMA's written response in its entirety.

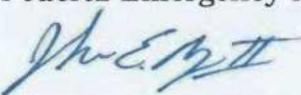


## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

MEMORANDUM FOR: George A. Robinson  
Regional Administrator, Region VI  
Federal Emergency Management Agency



FROM: John E. McCoy II  
Acting Assistant Inspector General  
Office of Emergency Management Oversight

SUBJECT: *FEMA Should Recover \$1.5 Million in Grant Funds  
Awarded to Hays County, Texas*  
Audit Report Number OIG-17-77-D

We audited Public Assistance grant funds awarded to Hays County, Texas (County). The Texas Division of Emergency Management (Texas), a Federal Emergency Management Agency (FEMA) grant recipient, awarded the County \$3.2 million for damages resulting from severe storms, tornadoes, straight-line winds, and flooding that occurred May 4, through June 19, 2015. The award provided 75 percent Federal funding for eligible work. The County received \$52,868 of insurance proceeds covering eligible damage.

We audited six approved projects totaling \$2.4 million, or 75 percent of the total award (see table 1 in appendix A). We also audited four unobligated projects totaling \$412,785. As of February 11, 2016, the cutoff date of our audit, the County had completed work on most projects, but had not submitted any of its costs to Texas for reimbursement.

FEMA Region VI officials informed us that several grant subrecipients had used the services of the Houston-Galveston Area Council (HGAC) to procure contracts for work related to this Texas disaster. FEMA asked us whether using HGAC's services satisfied the requirements of procurement standards for Federal grants. Therefore, we selected the County for audit specifically because it procured contracts using HGAC's procurement services. However, the findings and opinions we express in this report are based only on our audit of Hays County. We did not audit HGAC or the procedures it used to procure contracts other than those the County used for this disaster.



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### Background

Hays County is located on the Edwards Plateau situated between Austin and San Antonio, Texas, and is part of the Austin-Round Rock metropolitan area. The County has a population of about 195,000 and covers 680 square miles. From May 4, to June 19, 2015, the County received significant rainfall causing the rivers and creeks to overflow. The Blanco River, with a flood stage of 13 feet,<sup>1</sup> crested at over 40 feet, washing away more than 400 homes and 2 main bridges (see figure 1). The President declared the major disaster on May 29, 2015.

**Figure 1: Fisher Bridge Washed Out, Hays County, Texas**



Source: Hays County, Texas

On September 9, 1966, the State of Texas created the Houston-Galveston Area Council (HGAC) as a regional planning commission. HGAC, a political subdivision of the State of Texas, is a voluntary membership organization of local governments in a 13-county region surrounding Houston. According to its website, HGAC strives to make the government procurement process more efficient by providing competitively priced contracts for goods and services to help its members achieve their purchasing goals. The County used HGAC's procurement services to procure two contracts, one to perform debris removal and the other to monitor the debris removal.

<sup>1</sup> Flood stage is when the surface of a body of water has risen sufficiently to cause inconvenience or a threat to life or property.



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### Results of Audit

The County did not always comply with Federal procurement standards. Specifically, the County used a shared services agreement with HGAC to procure two contracts totaling \$1.5 million that did not fully meet Federal requirements. When advertising for the debris removal contract, HGAC unreasonably restricted competition by not allowing smaller contractors to compete for the work. For both debris-related contracts, HGAC's procurement practices also did not take the specific steps that Federal regulations require to provide opportunities for small and minority businesses, women's business enterprises, and labor surplus area firms to bid on federally funded work when possible.

The County also awarded two smaller contracts totaling \$367,191<sup>2</sup> without taking the federally required affirmative steps or including all required contract provisions. In response to our audit, however, the County revised its procurement policies to comply with Federal requirements. The County also canceled one of the contracts and plans to resolicit bids for more than \$200,000 of disaster work.

Federal regulations encourage grant recipients to use shared services to foster economy and efficiency. Nevertheless, the use of these shared services does not relieve the grant recipient or subrecipient of its responsibility to comply with Federal procurement requirements. Therefore, FEMA should disallow as ineligible \$1,473,045 for the two contracts that Hays County awarded using HGAC's procurement services.

Because grant recipients are responsible for ensuring that their grant subrecipients comply with Federal regulations, FEMA should also direct Texas to —

- (1) continue monitoring the County's grant subaward activities to ensure it complies with all Federal grant requirements and
- (2) inform its grant subrecipients that using a shared services agreement does not relieve them of the responsibility to comply with Federal procurement requirements.

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<sup>2</sup> The total estimated costs of \$367,191 are included under Project 992 for \$165,961 and unobligated Project 692 for \$201,230.



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### Finding A: Procurement Practices

The County awarded four disaster-related contracts totaling \$1.8 million that did not fully meet Federal procurement standards:

- two contracts, totaling \$1,473,045, using procurement services HGAC provided and
- two contracts, totaling \$367,191, without HGAC's assistance.

#### HGAC's Procurement of the County's Debris-related Contracts

The County awarded two contracts, totaling \$1,473,045, using procurement services provided by HGAC's Disaster Debris Clearance and Removal Services program. One contract was for debris removal (\$916,046) and the other for monitoring debris removal (\$556,999). HGAC made the following claims on its website:

- HGAC "has handled all the procurement issues";
- "The program provides End Users with a procurement process based on the latest FEMA policies to limit the entities exposure to potential non-reimbursement following a presidential disaster declaration"; and
- "The Program can save you time and money associated with the procurement process and can help maximize eligible FEMA reimbursement."

However, the problems we identified do affect eligibility for Federal grant funds. HGAC's requirements for debris removal contractors overly restricted competition; and, in soliciting bids for both contracts, HGAC did not take all the affirmative steps that Federal regulations require to provide opportunities for disadvantaged businesses when possible.

**Restricting Competition** — HGAC's restrictions prevented otherwise qualified contractors from participating in the County's debris removal contract. According to 2 Code of Federal Regulations (CFR) 200.319(a), all procurement transactions "must be conducted in a manner providing full and open competition.... Some of the situations considered to be restrictive of competition include but are not limited to: (1) Placing unreasonable requirements on firms in order for them to qualify to do business; [and] (2) Requiring unnecessary experience and excessive bonding."

HGAC required its prospective debris removers to have performed three debris removal projects requiring the removal of at least 1 million cubic yards of debris. For this disaster, though, the County needed to remove a much smaller volume of debris — about 150,000 cubic yards. Therefore, HGAC's requirements prevented smaller companies from competing for the federally



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funded work. It is important to note that HGAC's requirements would not be overly restrictive if its procurement services for debris removal were available only to customers requiring the removal of large volumes of debris. However, HGAC's procurement service is available to any governmental entity nationwide needing debris removal, regardless of project size. To comply with Federal regulation, HGAC needs to restrict its contractors to only large debris removal projects or provide its customers with a lower-volume option.

HGAC officials said they based their contractor experience requirements on a 2011 assessment of regional storm debris during recent storms (Katrina, Rita, and Ike). But past requirements from these catastrophic storms have no bearing on whether current requirements are reasonable and do not unreasonably restrict competition. Regardless, smaller contractors had no opportunity to compete for these contracts. HGAC officials agreed to include language on its webpage stating that these debris removal contracts may not be appropriate for all situations and require customers to contact HGAC to discuss whether the contract is appropriate.

**Affirmative Steps** — According to 2 CFR 200.321(a), non-Federal entities must take all necessary affirmative steps to assure the use of small and minority businesses, women's business enterprises, and labor surplus area firms when possible. Further 2 CFR 200.321(b) states that the affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5).

HGAC did not take all of these required affirmative steps; and, as discussed above, HGAC's requirements were overly restrictive for small businesses.

HGAC officials said, for the debris monitoring procurement, they did advertise in minority publications and maintain a solicitation list that includes



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contractors in the industry, disadvantaged businesses *identified by contractors*, and contacts made at trade conferences attended. HGAC's solicitation did require its general contractors to use their best faith efforts to help HGAC meet the State of Texas' goals to include historically underutilized businesses.<sup>3</sup>

Nevertheless, these requirements are not the same as those specifically listed at 2 CFR 200.319. Specifically, HGAC's procurement services did not include assurance that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources. Additionally, the procurement did not include the use of the services and assistance, as appropriate, of such organizations as the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce and did not require its prime contractor to take these affirmative steps. Therefore, FEMA has no assurance that HGAC will take the required affirmative steps in its future disaster procurement services.

The Federal requirements are not optional, and HGAC's procurement procedures would need to fully comply with Federal regulation to be eligible for FEMA funding. HGAC officials said they would update their website to include a statement that it does not guarantee compliance with Federal procurement requirements. HGAC officials also said they would fully comply with Federal requirements when they re-solicit the contracts. Although HGAC did not follow all required steps, about a third of businesses HGAC solicited for these contracts were historically disadvantaged businesses. However, the experience requirements in HGAC's solicitation would likely have discouraged or excluded most small businesses.

Texas officials said the County concluded normal procurement rules did not apply because of the "emergency/exigent period at the time the contract was awarded" and "that HGAC was merely a vehicle to access repository of vendors quickly." We disagree. Although FEMA classifies debris removal as "emergency work," the need for debris removal does not constitute exigent circumstances unless the debris poses an immediate threat to life and property. For example, pushing debris from blocked roadways to allow emergency vehicles to pass is exigent work, but normal debris removal is not. The County took proactive measures by using its employees and equipment to push debris from roadways. The remaining debris work posed no immediate threat and, therefore, did not warrant the County's circumvention of Federal procurement standards.

Because HGAC's experience requirements were overly restrictive and it did not take the required affirmative steps, we recommend that FEMA disallow as

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<sup>3</sup> The State of Texas created the Historically Underutilized Business (HUB) Program to promote full and equal procurement opportunities for small, minority- and women-owned businesses.



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ineligible \$1,473,045 for the two contracts that the County awarded using HGAC's procurement services for debris removal and monitoring.

### **The County's Procurement of Two Contracts Totaling \$367,191**

The County awarded two contracts totaling \$367,191, without fully complying with Federal requirements. Specifically, the County did not (1) take all of the required affirmative steps to assure the use of disadvantaged businesses when possible; or (2) include all required provisions in its contracts.

**Affirmative Steps** — The County did place qualified small and minority businesses and women's business enterprises on solicitation lists for the two contracts it awarded without HGAC's assistance. County officials said they have a master database with vendor information that includes specific information regarding historically underutilized businesses. They also said that they search the State Comptroller and Texas Unified Certification program sites for vendors that meet the criteria. These procedures satisfy some, but not all of the required affirmative steps.

**Contract Provisions** — The two contracts also did not include all required contract provisions. According to 2 CFR 326 and Appendix II to Part 200, contracts and subcontracts must include specific provisions. These provisions document the rights and responsibilities of the parties and help minimize the risk of contract misinterpretations and disputes. For example, the contracts did not include required provisions related to Equal Employment Opportunity, compliance with contract work and safety standards, or the right to examine contractor's records.

Because of our audit, the County (1) revised its procurement policies to comply with Federal requirements, (2) canceled one of the contracts, and (3) plans to resolicit bids for more than \$200,000 of disaster work. In addition, although the County did not take all of the required steps, its efforts to provide opportunities for disadvantaged businesses were substantial. Therefore, we are not questioning the \$367,191 for these two contracts the County procured.

### **Finding B: Grant Management**

As we discuss in this report, the County did not fully comply with procurement standards for Federal grants. Federal regulations encourage grant recipients to enter into state and local intergovernmental agreements to foster greater economy and efficiency and promote cost-effective use of shared services across the Federal Government (2 CFR 200.318(e)). Nonetheless, contracts procured through shared services must comply with all Federal requirements to ensure the eligibility of disaster-related costs. Therefore, the use of these shared



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services agreements does not relieve the grant recipient or grant subrecipient of its responsibility to follow Federal procurement requirements.

According to 2 CFR 200.331(d), the grant recipient (pass-through entity) must monitor the activities of the subrecipient as necessary to ensure that it uses the subaward for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward. Federal regulations also require the grant recipient to follow up and ensure that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award (2 CFR 200.331(d)(2)). Therefore, Texas, as FEMA's grant recipient, should continue to monitor the County's grant subaward activities to help ensure compliance with Federal regulations. Texas should also inform grant subrecipients that using a shared services agreement does not relieve them of the responsibility to comply with Federal procurement requirements.

### Recommendations

We recommend that the Regional Administrator, FEMA Region VI:

**Recommendation 1:** Disallow as ineligible \$1,473,045 (\$1,104,784 Federal share) for contracts that did not fully comply with Federal procurement standards and overly restricted competition, unless FEMA decides to grant an exception to Federal requirements as 2 CFR 200.102(a) allows and determines that the costs are reasonable (finding A).

**Recommendation 2:** Direct Texas to continue monitoring the County's grant subaward activities to ensure it complies with all Federal grant requirements (finding B).

**Recommendation 3:** Direct Texas to inform its grant subrecipients that using a shared services agreement does not relieve them of the responsibility to comply with Federal procurement requirements (finding B).

### Discussion with Management and Audit Follow-up

We discussed the results of our audit with FEMA, Texas, and County officials during our audit. We considered their comments in developing our final report and incorporated their comments as appropriate. We also provided a draft report in advance to these officials and discussed it at exit conferences with FEMA officials on February 21, 2017; with County officials on February 23, 2017; and with Texas officials on February 27, 2017. FEMA officials agreed with our findings and recommendations, while Texas and County officials generally disagreed.



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FEMA officials provided a written response on March 14, 2017, agreeing with our findings and recommendations (see appendix C). FEMA's response and related actions were sufficient to resolve and close recommendations 2 and 3, but were not sufficient to resolve or close recommendation 1. Regarding recommendation 1, FEMA stated the following:

Should Hays County (Applicant) submit claims to FEMA for reimbursement for disaster-related work completed via improperly procured contracts, FEMA will review all documentation submitted with the Applicant's claim(s) to determine what costs, if any, are eligible for FEMA reimbursement, and whether they are reasonable.

While we agree with FEMA's planned actions, we cannot consider recommendation 1 as resolved because FEMA did not provide a target completion date for its planned actions. Further, we cannot close the recommendation until we verify that FEMA has completed the actions.

Within 90 days of the date of this memorandum, please provide our office with a written response that includes your target completion date for recommendation 1. Also, please include contact information for responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Please email a signed PDF copy of all responses and closeout requests to [emo.auditliaison@oig.dhs.gov](mailto:emo.auditliaison@oig.dhs.gov). Until your response is received and evaluated, the recommendation will be considered open and unresolved.

The Office of Emergency Management Oversight major contributors to this report were Tonda L. Hadley, Director; Christopher Dodd, Director (retired); Kathleen Hughes, Audit Manager; Rebecca Hetzler, Senior Auditor; William Lough, Senior Auditor; and James Mitchell, Independent Reference Reviewer.

Please call me with any questions at (202) 254-4100, or your staff may contact Paul Wood, Acting Deputy Assistant Inspector General, at (202) 254-4100 or Tonda L. Hadley, Director, Central Regional Office - South, at (214) 436-5200.



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### Appendix A Objective, Scope, and Methodology

We audited Public Assistance grant funds awarded to Hays County, Texas, Public Assistance Identification Number 209-99209-00. Our audit objective was to determine whether the County accounted for and expended FEMA Public Assistance grant funds according to Federal regulations and FEMA guidelines for FEMA Disaster Number 4223-DR-TX. Texas awarded the County \$3.2 million for damages resulting from severe storms, tornadoes, straight-line winds, and flooding that occurred May 4 through June 19, 2015. The audit covered the period May 4, 2015, through February 11, 2016, the cutoff date of our audit. The award provided 75 percent funding for four large and four small projects.<sup>4</sup> We audited six projects obligated for \$2.4 million that included \$1.8 million for four contracts, each with a value greater than the simplified acquisition threshold.<sup>5</sup> We also reviewed the County's force account labor and force account material costs.<sup>6</sup> In addition, we reviewed four projects not obligated by FEMA at the cutoff date of our audit totaling \$412,785. Table 1 describes the projects we audited and costs we questioned.

**Table 1: Projects Audited**

Project Number	Category of Work*	Award Amount	Cost Overrun/ (Underrun)	Total Expended	Questioned Costs
427	A	\$ 1,330,658	\$ 142,387	\$ 1,473,045	\$ 1,473,045
992	A	655,155	58,717	713,872	0
736	B	312,007	(35,673)	276,334	0
402	C	78,317	9,974	88,291	0
83	C	21,848	3,074	24,922	0
277	B	11,306	(5,983)	5,323	0
<b>Subtotal</b>		<b>\$2,409,291</b>	<b>\$172,496</b>	<b>\$2,581,787</b>	<b>\$1,473,045</b>
Unobligated		412,785	0	412,785	0
<b>Totals</b>		<b>\$2,822,076</b>	<b>\$172,496</b>	<b>\$2,994,572</b>	<b>\$1,473,045</b>

Source: Project worksheets and Office of Inspector General (OIG) analysis

\*FEMA classifies disaster-related work by type: debris removal (Category A), emergency protective measures (Category B), and permanent work (Categories C through G).

<sup>4</sup> Federal regulations in effect at the time of the disaster set the large project threshold at \$121,600 [Notice of Adjustment of Disaster Grant Amounts, 79 Federal Register (October 20, 2014)].

<sup>5</sup> The simplified acquisition threshold was \$150,000 and is the limit where an entity may make purchases using simple purchasing methods (2 CFR 200.88).

<sup>6</sup> "Force Account" means labor or equipment provided by the grantee or subgrantee, rather than by a contractor (*Public Assistance Guide*, FEMA 322, June 2007, p. 42).



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### Appendix A (continued)

To accomplish our objectives, we interviewed FEMA, Texas, HGAC, and Hays County officials, and assessed the adequacy of the procedures the County used to account for and expend Federal grant funds and to procure and monitor contracts for disaster work. We also assessed HGAC's procurement practices the County used to solicit and award the two contracts for debris-related work. We judgmentally selected and reviewed project costs (generally based on dollar values) and procurement transactions; reviewed applicable Federal regulations and FEMA guidelines; and performed other procedures considered necessary to accomplish our objective.<sup>7</sup> We did not perform a detailed assessment of the County's internal controls over its grant activities because it was not necessary to accomplish our audit objective.

We conducted this performance audit between February 2016 and February 2017, 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.

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<sup>7</sup> We reviewed documentation showing the cancellation of a contract that occurred after our audit cutoff date.



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### Appendix B Potential Monetary Benefits

**Table 2: Summary of Potential Monetary Benefits**

Type of Potential Monetary Benefit	Amounts	Federal Share
Questioned Costs – Ineligible	\$ 1,473,045	\$ 1,104,784
Questioned Costs – Unsupported	0	0
Funds Put to Better Use	0	0
<b>Totals</b>	<b><u>\$1,473,045</u></b>	<b><u>\$1,104,784</u></b>

Source: OIG analysis of findings in this report



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**Appendix C**  
**FEMA Region VI Response to Draft Report**

U.S. Department of Homeland Security  
FEMA Region 6  
Federal Regional Center  
800 North Loop  
Denton, TX 76209-3698



**FEMA**

March 14, 2017

MEMORANDUM FOR: Tonda Hadley, Director  
Central Regional Office - South  
Office of Inspector General

FROM:   
George A. Robinson  
Regional Administrator

SUBJECT: Management's Response to OIG Draft Report,  
*Hays County, Texas, Needs Additional Assistance and Monitoring to  
Ensure Proper Management of Its FEMA Grant*  
FEMA Disaster Number: 4223-DR-TX  
Audit Job Code: OIG-G-16-019

Thank you for the opportunity to review and comment on this draft report. The Federal Emergency Management Agency (FEMA) appreciates the Office of Inspector General's (OIG) work in planning and conducting its review and issuing this report.

FEMA is pleased to note the OIG's positive recognition of Hays County's (Applicant) substantial efforts to provide opportunities for disadvantaged businesses as well as the Applicant's revision of its procurement policies. This includes the Applicant's cancellation of one of its improperly procured contracts, and its re-solicitation of bids for more than \$200,000 in disaster work.

The draft report contained three recommendations, with which FEMA concurs. Please see attached the detailed response to the recommendations.

Again, FEMA thanks you for the opportunity to review and comment on this draft report. FEMA has previously submitted technical comments on this draft report. If you have any questions, or need further assistance, please contact Kent Baxter, Audit Coordinator at 940-898-5399.

cc: W. Nim Kidd, Chief, TDEM  
Moises Dugan, R6-ORA  
Traci L. Brasher, R6-REC  
David Lebsack, R6-REC  
Bill Boone, R6-REC-PA  
Michael Crow, R6-REC-PA  
Melinda Dunn, R6-REC-PA  
Kathy Hill, HQ-OCFO  
Gary McKeon, HQ-OPPA-ALO  
Kent Baxter, R6-ORA



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### Appendix C (continued)

#### Attachment: FEMA Management Response to Recommendations Contained in OIG G-16-019

**Recommendation 1:** *Disallow as ineligible \$1,473,045 (\$1,104,784 Federal share) for contracts that did not fully comply with Federal procurement standards and overly restricted competition, unless FEMA decides to grant an exception to Federal requirements as 2 CFR 200.102(a) allows and determines that the costs are reasonable (finding A).*

**Response:** Concur. FEMA agrees with the intent of this recommendation. Should Hays County (Applicant) submit claims to FEMA for reimbursement for disaster-related work completed via improperly procured contracts, FEMA will review all documentation submitted with the Applicant's claim(s) to determine what costs, if any, are eligible for FEMA reimbursement, and whether they are reasonable. Based on this information, FEMA asks for this recommendation to be closed on final report issuance.

**Estimated Completion Date:** N/A

**Recommendation 2:** *Direct Texas to monitor the County's subgrant activities to ensure it complies with all Federal grant requirements (finding B).*

**Response:** Concur. FEMA agrees with the intent of this recommendation. The Regional Administrator instructed Texas by letter dated March 10, 2017, to continue providing technical assistance and monitoring to the Applicant to ensure compliance with Federal accounting and grants management standards in order to prevent improper spending of Federal funds. Based on this information, we ask for this recommendation to be closed on final report issuance.

**Estimated Completion Date:** N/A.

**Recommendation 3:** *Direct Texas to inform its subrecipients that using a shared services agreement does not relieve them of the responsibility to comply with Federal procurement requirements (finding B).*

**Response:** Concur. FEMA agrees with the intent of this recommendation. The Regional Administrator instructed Texas by letter dated March 10, 2017, to inform its subrecipients on proper compliance of Federal procurement standards. This letter further stipulates that if a subrecipient relies on a shared services agreement, the subrecipient is responsible for ensuring that any vendor lists, or other procurement tasks, have been developed in *full accordance* with *all* Federal requirements. Based on this information, FEMA asks for this recommendation to be closed on final report issuance.

**Estimated Completion Date:** N/A.



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### **Appendix D** **Report Distribution**

#### **Department of Homeland Security**

Secretary  
Chief of Staff  
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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 VI  
Audit Liaison, FEMA (Job Code G-16-019)

#### **Office of Management and Budget**

Chief, Homeland Security Branch  
DHS OIG Budget Examiner

#### **Congress**

Congressional Oversight and Appropriations Committees

#### **External**

Division Chief, Texas Division of Emergency Management  
Deputy Assistant Director Response, Texas Division of Emergency Management  
Texas State Auditor's Office  
Hays County Judge

**Fort Bend County, Texas,  
Needs Additional  
Assistance and  
Monitoring to Ensure  
Proper Management of Its  
FEMA Grant**





# DHS OIG HIGHLIGHTS

## *Fort Bend County, Texas, Needs Additional Assistance and Monitoring to Ensure Proper Management of Its FEMA Grant*

June 28, 2017

### Why We Did This Audit

The County estimated it had sustained \$6.4 million in damages from flooding in April and May 2016, for two disasters. We conducted this audit early in the grant process to identify areas where the County may need additional technical assistance or monitoring to ensure compliance with Federal requirements.

### What We Recommend

FEMA should not fund \$50,000 of unsupported force account labor costs and direct Texas to provide additional technical assistance and monitoring to the County to ensure it complies with Federal regulations and FEMA guidelines.

#### **For Further Information:**

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

### What We Found

Fort Bend County, Texas (County), needs additional technical assistance to account for FEMA Public Assistance grant funds according to Federal regulations and FEMA guidelines. Specifically, the County needs to revise its accounting policies and procedures to ensure it can fully support the disaster work it intends to complete with its own labor force. In addition, although the County's procurement policies and procedures generally comply with Federal procurement standards, they did not include all required contract provisions in either of their disaster contracts. Because of our audit, the County revised its policies and procedures to include implementing a plan that specifically addressed Federal requirements for documenting and accounting for disaster-related costs and compliance with Federal procurement standards.

At the time of our fieldwork, FEMA had not completed project worksheets to define the scope of disaster work. Because of this uncertainty, Texas should provide the County with additional technical assistance and monitoring. Doing so should provide FEMA reasonable assurance that the County will follow Federal accounting and procurement standards in spending the remaining estimated \$5.0 million in eligible disaster-related costs.

### FEMA Response

FEMA officials generally agreed with our findings and recommendations and have taken action sufficient to resolve and close our recommendations. Therefore, we consider this report closed and require no further action from FEMA.



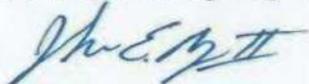
## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

June 28, 2017

MEMORANDUM FOR: George A. Robinson  
Regional Administrator, Region VI  
Federal Emergency Management Agency



FROM: John E. McCoy II  
Acting Assistant Inspector General  
Office of Emergency Management Oversight

SUBJECT: *Fort Bend County, Texas, Needs Additional Assistance  
and Monitoring to Ensure Proper Management of Its  
FEMA Grant*  
Audit Report Number OIG-17-83-D

We audited the capability of Fort Bend County, Texas (County), to manage Federal Emergency Management Agency (FEMA) Public Assistance grant funds. We conducted this audit early in the Public Assistance process to identify areas where the County may need additional technical assistance or monitoring to ensure compliance with Federal regulations and FEMA guidelines. In addition, by undergoing an audit early in the grant cycle, grant recipients have the opportunity to correct noncompliance before they spend the majority of their grant funding. It also allows them the opportunity to supplement deficient documentation or locate missing records before too much time elapses.

We initially planned a review of DR-4269-TX with estimated disaster damages from severe storms and flooding of \$4.1 million. However, because we identified potential problems with the County's policies, procedures, and business practices for documenting force account labor costs and its methodology for procuring contractors, we expanded the scope of our audit to include the more recent disaster DR-4272-TX with estimated disaster damages of approximately \$2.3 million.

At the time of our fieldwork, the Texas Department of Public Safety, Texas Division of Emergency Management (Texas), a FEMA grant recipient, had not yet awarded any of the \$6.4 million in disaster damages the County estimated it sustained from severe storms and flooding in April 2016 (DR-4269-TX) or May 2016 (DR-4272-TX). The awards will provide 75 percent Federal funding for debris removal, emergency protective measures, and permanent work. The disasters did not cause damage to insurable facilities. Therefore, the County did not receive any insurance proceeds for damages resulting from these



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disasters or need to obtain insurance to cover similar damages in future disasters. At the time of our fieldwork, FEMA had not completed project worksheets to define the scope of disaster work, and the County had not yet completed most of its disaster-related work or filed claims for reimbursement.

### Background

Fort Bend County is located in southeast Texas about 33 miles west of Houston. It covers approximately 875 square miles and is home to nearly 585,000 residents. In mid-April 2016, storms caused flooding of the County's waterways and damage to several of its eligible infrastructures. The President declared a major disaster (DR-4269-TX) on April 25, 2016. The next month, severe storms caused additional flooding and damage to the County's ditches and culverts. On June 11, 2016, the President declared another major disaster (DR-4272-TX) for damages that occurred in May 2016.

**Figure 1: Bessie Creek Washout, Fort Bend County, Texas**



*Source: Fort Bend County, Texas*



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### Results of Audit

The County does not have adequate accounting policies, procedures, and business practices to adequately document and support its own labor and equipment costs in accordance with Federal regulations and FEMA guidelines. As a result, FEMA should not fund \$50,000 of force account labor costs the County improperly documented. In addition, although the County's procurement policies, procedures, and business practices generally comply with Federal procurement standards, they did not include all required provisions in contracts the County awarded totaling \$1.4 million. Therefore, FEMA should direct Texas, as FEMA's grantee, to provide the County with additional technical assistance and monitoring to ensure it complies with all applicable Federal requirements in spending the remaining estimated \$5.0 million for eligible disaster work for the two disasters.

#### **Finding A: Policies, Procedures, and Business Practices**

##### **Project Cost Accounting**

The County does not have adequate policies, procedures, and business practices to account for FEMA grant funds properly. As a result, the County cannot adequately identify the source and application of Federal funds or to support project costs. For instance, many of the employees' timesheets did not (1) include an adequate description of the disaster-related work performed, (2) identify hours worked to a specific disaster or project, or (3) include required employee or supervisor approvals. Federal regulations and FEMA guidelines require that —

- subrecipients maintain accounting records that adequately identify the source and application of Federal funds and maintain source documentation to support those accounting records (2 Code of Federal Regulations (CFR) 200.302(b)(3)); and
- applicants maintain all source documentation supporting project costs. In addition, applicants should file all supporting documentation by project to facilitate closeout and audits (*Public Assistance Program and Policy Guide*, FP 104-009-2, January 2016, p. 134).

County officials said they plan to spend about \$635,000 using their own labor, materials, and equipment for disaster-related repairs. We discussed accounting procedures with County officials and reviewed examples of documentation supporting disaster costs. Although the County designates specific accounting codes for all disaster-related costs, it does not have procedures in place to



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adequately document and support its own labor, materials, and equipment costs.

County officials said they were unaware of the Federal requirements for documenting and supporting labor, materials, and equipment costs and, as a result, will not claim FEMA reimbursement for the County's unsupported force account labor costs of about \$50,000. However, if the County decides to seek reimbursement, FEMA should disallow the \$50,000 unless the County can provide documentation to support these costs. The County still intends to claim the remaining \$585,000 of estimated disaster-related labor, materials, and equipment costs for permanent work. Therefore, Texas should provide the County with additional assistance and monitoring to ensure it maintains records that adequately identify and support its labor and equipment costs.

Because of our audit, the County said it will revise its policies and procedures to require its employees to describe the work they perform for each project by disaster, and to sign and obtain proper approvals on individual timesheets. The County also implemented a compliance plan that specifically addresses Federal requirements for documenting and accounting for its disaster-related costs.

### **Procurement Practices**

The County's procurement policies, procedures, and business practices generally comply with Federal procurement standards. Nevertheless, the County did not include all required Federal provisions in either of its debris removal or debris monitoring contracts totaling \$1.4 million. Federal regulations require specific provisions for contracts and subcontracts, including remedies and termination clauses, non-discrimination, compliance with labor laws, and prohibitions of "kickbacks" (2 CFR Part 200, Appendix II). These provisions describe the rights and responsibilities of the parties and minimize the risk of misinterpretations and disputes.

To evaluate the County's procurement practices, we reviewed its policies and procedures in effect at the time of the two disasters and reviewed the methodology it used to award contracts. We also discussed procurement practices with County officials. Although the County did not follow all Federal procurement standards, it did have policies, procedures, and business practices in place to (1) conduct cost or price analyses; (2) maintain adequate records documenting its procurement history; (3) avoid or prevent situations involving conflicts of interest; and (4) monitor its vendors to ensure they met the terms, conditions, and specifications of their contracts.



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County officials said they plan to use contract labor for approximately \$5.7 million for debris removal and the repair and replacement of drainage ditches and culverts. As of August 26, 2016, the County had awarded two contracts totaling \$1.4 million, and incurred \$767,000 in debris removal and monitoring costs. We did not question any contracting costs because the County generally followed Federal procurement regulations.

On August 23, 2016, shortly after our audit began, County officials informed us that they were not in compliance with all Federal procurement standards and provided us with a memorandum addressed to their independent auditors indicating their intent to comply with previous Federal procurement standards (44 CFR 13.36) as permitted under 2 CFR 200.110(a). To make this election, the County must have previously documented its decision in its internal procurement policies. Nonetheless, the County did not comply with those regulations nor had it incorporated its decision to comply with previous procurement standards in its policies and procedures.

As a result of our audit, the County implemented a plan to provide reasonable assurance that it complies with Federal procurement requirements that includes, among other actions, working closely with its independent auditors to identify and correct contract procurement weaknesses in accordance with 2 CFR 200.317 through 2 CFR 200.326.

### **Finding B: Grant Management**

Texas should continue to monitor and provide technical assistance to the County to ensure it complies with all Federal accounting and procurement standards. In its FEMA-State Agreement (FSA-4269-FEMA-DR-TX, p. 2), Texas agreed to comply with all applicable Federal laws and regulations, including 2 CFR Part 200. In addition, Federal regulation at 2 CFR 200.331(d) requires recipients to monitor the subrecipient's activities "to ensure that the subaward is used . . . in compliance with Federal statutes, regulations, and the terms and conditions of the subaward."

On July 6, 2016, Texas conducted a joint meeting with potential disaster applicants (including the County) for DR-4269-TX and DR-4272-TX, and on July 25, 2016, participated in a FEMA-led meeting to discuss the Public Assistance grant program's requirements. Texas also provided the County with copies of its Procurement Guidance Checklist on August 12, 2016, and again on October 4, 2016, as an aid to properly procuring its contracts. In addition, Texas officials said they had hired approximately 84 individuals to help provide technical assistance and monitor subrecipients' activities, and that during future visits with the County, they would have addressed and resolved the



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issues we identified. However, the County could benefit from additional grant management and continued monitoring to ensure that it complies with Federal accounting and procurement standards. Doing so should provide reasonable assurance that the County will spend the remaining \$5.0 million (\$6.4 million minus \$1.4 million awarded contract costs) in estimated damages for eligible disaster work in accordance with Federal regulations and FEMA guidelines.

### Recommendations

We recommend that the Regional Administrator, FEMA Region VI:

**Recommendation 1:** Not fund \$50,000 (\$37,500 Federal share) of unsupported labor costs, unless the County can provide FEMA with documentation to support the costs (finding A).<sup>1</sup> We consider this recommendation to be resolved and closed and require no further action from FEMA because, on May 30, 2017, FEMA agreed that if the County submits funding for the affected projects, FEMA will review them to determine what costs, if any, are eligible and reasonable for FEMA reimbursement.

**Recommendation 2:** Direct Texas to provide additional technical assistance and monitoring to the County to ensure it complies with Federal accounting and procurement regulations for awarding disaster contracts and to prevent the potential improper spending of approximately \$585,000 (\$438,750 Federal share) in estimated labor, materials, and equipment costs (finding B). We consider this recommendation to be resolved and closed and require no further action from FEMA because on February 13, 2017, FEMA instructed Texas to continue providing technical assistance to the County, while monitoring their compliance with Federal procurement, accounting, and grants management standards.

### Discussions with Management and Audit Follow-Up

We discussed the preliminary results of our fieldwork with FEMA and Texas officials on September 7, 2016, and County officials on August 26, 2016, as well as during our audit. We considered their comments in developing our final report and incorporated their comments as appropriate. We also provided a draft report in advance to these officials and discussed it at exit conferences with FEMA officials on January 10, 2017; and with County and Texas officials on January 11 and January 12, 2017, respectively. FEMA and Texas officials generally agreed with our findings and recommendations. However, County officials disagreed and said they would provide us with additional

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<sup>1</sup> Because FEMA had not yet obligated these costs, we classify them as cost avoidance.



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documentation not previously provided to address our original findings. As a result of that new information, we revised the report accordingly.

On May 30, 2017, we received FEMA's written response to this report (see appendix B). FEMA officials concurred with recommendations 1 and 2. FEMA officials acknowledge the County did not have a system in place to allow it to track its employees' work on a project-by-project basis and agreed that if the County submitted requests for funding that it will review them to determine what costs, if any, are eligible and reasonable for FEMA reimbursement. FEMA officials also acknowledge the County needs additional technical assistance and on February 13, 2017, instructed Texas to continue providing technical assistance to the County, while monitoring their compliance with Federal procurement, accounting, and grants management standards. Based on FEMA's proposed actions, we consider recommendations 1 and 2 to be resolved and closed and require no further action from FEMA.

The Office of Emergency Management Oversight major contributors to this report are Paige Hamrick, Director; David B. Fox, Audit Manager; Raeshonda Keys, Auditor-in-Charge; Douglas Denson, Auditor; Jacqueline Lim, Auditor; and John Skrmetti, Independent Reference Reviewer.

Please call me with any questions at (202) 254-4100, or your staff may contact Paul Wood, Acting Deputy Assistant Inspector General at (202) 254-4100 or Paige Hamrick, Director, Central Regional Office - North, at (214) 436-5200.



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### Appendix A Objective, Scope, and Methodology

We audited the capability of Fort Bend County, Texas (County), Public Assistance Identification Number 157-99157-00 to manage Federal Emergency Management Agency (FEMA) Public Assistance grant funds. Our audit objective was to determine whether the County’s policies, procedures, and business practices are adequate to account for and expend FEMA grant funds according to Federal regulations and FEMA guidelines for FEMA Disaster Number DR-4269-TX. Because our initial review of the County’s force account labor and contracting methodology identified potential problems and because the County was the recipient of another FEMA Public Assistance grant, for force account and contracting purposes only, we expanded the scope of our audit to include FEMA Disaster Number DR-4272-TX.

As of August 26, 2016, the cutoff date of our audit, FEMA had not yet obligated any funding or completed its development of project worksheets for damages resulting from the two severe storms and flooding from April 17, 2016, through May 26, 2016. The County estimated it had sustained approximately \$6.4 million of disaster-related damages (see table 1). The award will provide 75 percent FEMA funding for debris removal, emergency protective measures, and permanent work for large and small projects.<sup>2</sup>

**Table 1: Estimated Disaster-Related Damages by Disaster**

Disaster	Estimated Damages	Force Account	Contract
DR-4269-TX	\$ 4,050,000	\$ 0	\$ 4,050,000
DR-4272-TX	2,300,000	635,000	1,665,000
<b>Totals</b>	<b>\$6,350,000</b>	<b>\$635,000</b>	<b>\$5,715,000</b>

Source: Office of Inspector General (OIG) analysis

We interviewed FEMA, Texas, and County officials; judgmentally selected and reviewed (generally based on dollar amounts) procurement transactions; reviewed applicable Federal regulations and FEMA guidelines; and performed other procedures considered necessary to accomplish our objective. We did not perform a detailed assessment of the County’s internal controls over its grant activities because it was not necessary to accomplish our audit objective. However, we did assess the adequacy of the policies, procedures, and business practices the County uses and plans to use to account for and expend Federal grant funds and to procure for and monitor disaster work.

<sup>2</sup> Federal regulations in effect at the time of the disaster set the large project threshold at greater than \$121,800 [*Notice of Adjustment of Disaster Grant Amounts*, Vol. 80, No. 198, Fed. Reg. 61,836 (Oct. 14, 2015)].



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### **Appendix A (continued)**

We conducted this performance audit between August 2016 and January 2017, 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. In conducting this audit, we applied the statutes, regulations, and FEMA policies and guidelines in effect at the time of the two disasters.



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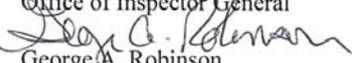
**Appendix B**  
**FEMA Region VI Audit Response**

U.S. Department of Homeland Security  
FEMA Region 6  
800 N. Loop 288  
Denton, TX 76209



May 30, 2017

MEMORANDUM FOR: Paige Hamrick, Director  
Central Regional Office - North  
Office of Inspector General

FROM:   
George A. Robinson  
Regional Administrator

SUBJECT: Management's Response to OIG 2<sup>nd</sup> Draft Report  
*Fort Bend County, Texas, Needs Additional Assistance and  
Monitoring to Ensure Proper Management of Its FEMA  
Grant*  
FEMA Disaster Number: 4269-DR-TX  
Audit Job Code: G-16-047

Thank you for the opportunity to review and comment on this draft report. The Federal Emergency Management Agency (FEMA) appreciates the Office of Inspector General's (OIG) work in planning and conducting its review and issuing this report.

FEMA is pleased to note the OIG's positive recognition of Fort Bend County's (Applicant) efforts to conduct cost/price analyses; maintain adequate procurement history records; avoid and prevent situations involving conflicts of interest; and monitor its vendors to ensure they meet the terms, conditions, and specifications of their contracts. FEMA is also pleased to note the OIG's positive recognition of the Applicant's revision to its policies and procedures to more effectively account for its employees' work on a project-by-project basis, as a result of the audit.

The draft report contained two recommendations, with which FEMA concurs. Please see the attached for our detailed response to the recommendations.

Again, we thank you for the opportunity to review and comment on this draft report. We have already submitted our technical comments on this draft report. If you have any questions, or need further assistance, please contact Kent Baxter, Audit Coordinator at 940-898-5399.

Attachments: FEMA Management Response to Recommendations  
February 13, 2017, Letter to TDEM



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

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**Appendix B (continued)**

cc: W. Nim Kidd, Chief, TDEM  
Moises Dugan, R6-ORA  
Traci L. Brasher, R6-REC  
David Lebsack, R6-REC  
Bill Boone, R6-REC-PA  
Michael Crow, R6-REC-PA  
Melinda Dunn, R6-REC-PA  
Kathy Hill, HQ-OCFO  
Gary McKeon, HQ-OPPA-ALO  
Kent Baxter, R6-ORA



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Department of Homeland Security

**Appendix B (continued)**

**Attachment: FEMA Management Response to Recommendations  
Contained in OIG G-16-047**

**Recommendation 1:** *Not fund \$50,000 (\$37,500 Federal share) of unsupported labor costs, unless the County can provide FEMA with documentation to support the costs (finding A).*

**Response:** Concur. FEMA Region 6 agrees with the intent of this recommendation agreeing that the County did not have a system in place to allow it to track its employees' work on a project-by-project basis at the time of both disaster declarations. If the affected projects are submitted by the County for funding, FEMA will review them to determine what costs, if any, are eligible and reasonable<sup>1</sup> for FEMA reimbursement. Based on these proposed actions, we request that this recommendation be closed on final report issuance.

**Estimated Completion Date:** N/A.

**Recommendation 2:** *Direct Texas to provide technical assistance and monitoring to the County to ensure it complies with Federal accounting and procurement regulations for awarding disaster contracts and to prevent the potential improper spending of approximately \$585,000 (\$738,750 Federal share) in estimated labor, materials, and equipment costs (finding B).*

**Response:** Concur. FEMA Region 6 agrees with the intent of this recommendation. In correspondence to the State of Texas dated February 13, 2017, the FEMA Region 6 Regional Administrator instructed the State to continue providing technical assistance to Fort Bend County, while monitoring their compliance with Federal procurement, accounting, and grants management standards. The outcome of this effort will prevent improper spending of federal funds. A copy of this letter is attached for your review. Based on these actions, we request that this recommendation be closed on final report issuance.<sup>2</sup>

**Estimated Completion Date:** N/A.

Based on our actions described above, we request that this audit be closed on issuance of the final report.

<sup>1</sup> See Title 44 of the Code of Federal Regulations (CFR) § 206.223, *General work eligibility*; see also 2 CFR Part 200, Subpart E, *Cost Principles*; and 2 CFR § 200.403, *Factors affecting allowability of costs*, and 200.404, *Reasonable costs*.

<sup>2</sup> See FEMA letter dated February 2, 2017, to the Texas Department of Emergency Management.



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**Appendix C**  
**Potential Monetary Benefits**

**Table 2: Potential Cost Avoidance**

<b>Disaster Number</b>	<b>Type of Work</b>	<b>Estimated Cost to Repair or Incurred</b>	<b>Cost Avoidance*</b>
<b>DR-4269-TX</b>			
	Contract (Estimated)	\$ 4,050,000	\$ 0
	Subtotal	\$ 4,050,000	\$ 0
<b>DR-4272-TX</b>			
	Contract (Incurred)	\$ 767,000	0
	Contract (Estimated)	898,000	0
	Force Account (Incurred)	** 50,000	50,000
	Force Account (Estimated)	585,000	585,000
	Subtotal	\$ 2,300,000	\$ 635,000
	<b>Totals</b>	<b>\$6,350,000</b>	<b>\$635,000</b>

*Source: Office of Inspector General (OIG) analysis*

\* At the time of our fieldwork, FEMA had not yet obligated funds to cover the estimated \$6,350,000 of damage to the projects on which the County expects to expend disaster-related costs; therefore, we classify these costs as cost avoidance. In addition, we did not question any contract costs because the County generally followed Federal procurement regulations.

\*\* County officials said they will no longer seek FEMA reimbursement for these costs.

**Table 3: Summary of Potential Monetary Benefits**

<b>Type of Potential Monetary Benefit</b>	<b>Amount</b>	<b>Federal Share</b>
Questioned Costs – Ineligible	\$ 0	\$ 0
Questioned Costs – Unsupported	0	0
Funds Put to Better Use (Cost Avoidance)	635,000	476,250
<b>Totals</b>	<b>\$635,000</b>	<b>\$476,250</b>

*Source: OIG analysis of report findings*



## OFFICE OF INSPECTOR GENERAL

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### **Appendix D** **Report Distribution**

#### **Department of Homeland Security**

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

#### **Federal Emergency Management Agency**

Administrator  
Chief of Staff  
Chief Financial Officer  
Deputy Chief Financial Officer  
Chief Counsel  
Chief Procurement Officer  
Director, Risk Management and Compliance  
Federal Coordinating Officer, DR-4269-TX and DR-4272-TX  
Audit Liaison, FEMA (Job Code G-16-047)  
Audit Liaison, FEMA Region VI

#### **Office of Management and Budget**

Chief, Homeland Security Branch  
DHS OIG Budget Examiner

#### **Congress**

Congressional Oversight and Appropriations Committees

#### **External**

Director, Texas Department of Public Safety, Texas Department of Emergency Management  
Audit Liaison, Texas Department of Public Safety, Texas Department of Emergency Management  
State Auditor, Office of the Texas State Auditor  
County Auditor, Fort Bend County, Texas

## ADDITIONAL INFORMATION AND COPIES

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



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

**Victor Valley Wastewater  
Reclamation Authority in  
Victorville, California, Did  
Not Properly Manage \$32  
Million in FEMA Grant  
Funds**





# DHS OIG HIGHLIGHTS

## *Victor Valley Wastewater Reclamation Authority in Victorville, California, Did Not Properly Manage \$32 Million in FEMA Grant Funds*

January 24, 2017

### Why We Did This Audit

The Victor Valley Wastewater Reclamation Authority in Victorville, California (Authority), received a \$41.3 million FEMA grant for damages resulting from a flooding disaster declared in January 2011. We audited three contracts totaling \$31.7 million for Project 828, a major pipeline construction project, or 77 percent of the \$41.3 million total award.

### What We Recommend

FEMA and California should disallow \$31.7 million in ineligible costs and determine whether additional regulatory and ethical violations or gross mismanagement occurred.

#### **For Further Information:**

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

### What We Found

The Authority did not comply with Federal regulations in its award and administration of three contracts totaling \$31.7 million. As a result, FEMA has no assurance that these costs were reasonable or that the Authority selected the most qualified contractors. Specifically, the Authority did not —

- perform cost/price analyses of bid proposals to ensure fair and reasonable costs;
- follow its own procurement policy and Federal regulations when evaluating and selecting its contractors;
- include all mandatory Federal provisions in contracts to document rights and responsibilities of the parties;
- maintain records sufficient to detail the significant history of its procurements;
- maintain an adequate contract administration system that included careful review of invoices; or
- include a ceiling price in time-and-material contracts that contractors exceed at their own risk.

The Authority also did not properly account for contract costs. Federal regulations and FEMA guidelines require subgrantees to account for costs by project. However, the Authority did not issue separate purchase orders to segregate costs for different FEMA projects, nor require its contractors to code the costs on a project-by-project basis. Commingling costs for different FEMA projects increased the Authority's risk of claiming unsupported costs.

### FEMA Response

FEMA agreed with our findings and recommendations and provided us their written response on October 24, 2016 (see appendix C).



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

January 24, 2017

MEMORANDUM FOR: Robert Fenton  
Regional Administrator, Region IX  
Federal Emergency Management Agency  
*Thomas M. Salmon*

FROM: Thomas M. Salmon  
Assistant Inspector General  
Office of Emergency Management Oversight

SUBJECT: *The Victor Valley Wastewater Reclamation Authority in  
Victorville, California, Did Not Properly Manage  
\$32 Million in FEMA Grant Funds  
Audit Report Number OIG-17-25-D*

We audited Federal Emergency Management Agency (FEMA) Public Assistance Program grant funds awarded to the Victor Valley Wastewater Reclamation Authority in Victorville, California (Authority). The California Governor's Office of Emergency Services (California), a FEMA grantee, administered the \$41.3 million grant FEMA awarded for damages from severe winter storms and flooding that occurred from December 17, 2010, through January 4, 2011. The award provided 75 percent FEMA funding for four large projects and two small projects. We audited three contracts totaling \$31.7 million for Project 828 (see table 1), a major pipeline construction project, or 77 percent of the \$41.3 million total award. This report focuses on the Authority's contracting and accounting practices for Project 828. A subsequent report will focus on misleading information the Authority provided to FEMA to develop the scope of work for Project 828.

### **Background**

The Victor Valley Wastewater Reclamation Authority, formed in 1976, provides wastewater treatment for the High Desert area of San Bernardino County. It treats about 11 million gallons of wastewater per day. On December 29, 2010, severe winter storms, flooding, debris flows, and mud flows caused a break in the Authority's wastewater pipeline. The Authority, in close coordination with its engineering contractor, selected an alternative method of repair instead of returning the sewer line to its pre-disaster condition, where a portion of the pipeline was located in the Mojave riverbed. This alternative method placed most of the pipeline outside of the riverbed and along the streets of the City of Victorville, California. FEMA awarded the Authority \$33.1 million under Project



## OFFICE OF INSPECTOR GENERAL

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828 to construct the new pipeline using this alternative method.<sup>1</sup> The Authority had generally completed the construction work as of August 2016.

### Results of Audit

The Authority did not properly account for and expend \$31.7 million of FEMA grant funds awarded for Project 828 — a major pipeline construction project. As a result, FEMA has no assurance that these costs were reasonable or that the Authority selected the most qualified contractors. Specifically, the Authority did not —

- perform cost/price analyses of bid proposals to ensure fair and reasonable costs;
- follow its own procurement policy and Federal regulations when evaluating and selecting its contractors;
- include all mandatory Federal provisions in contracts to document rights and responsibilities of the parties;
- maintain records sufficient to detail the significant history of its procurements;
- maintain an adequate contract administration system that included careful review of invoices; or
- include a ceiling price in time-and-material contracts that contractors exceed at their own risk.

The Authority also did not appropriately account for contract costs. Federal regulations and FEMA guidelines require subgrantees to account for costs by project. However, the Authority did not issue separate purchase orders to segregate costs for different FEMA projects, nor require its contractors to code the costs on a project-by-project basis. As a result of this commingling, the Authority charged duplicate costs to multiple FEMA projects, thereby increasing the risk of the Authority overstating its claims for FEMA funding.

California had informed the Authority of some of these issues in early 2013, *before* the Authority awarded its construction and construction management contracts totaling \$30,582,785. However, the Authority did not take proper steps to correct these deficiencies. Thus, we question as ineligible \$31,713,569 of the funds FEMA awarded to the Authority for Project 828.

We also determined that the Authority and its main engineering contractor (Contractor C) presented misleading data to FEMA that resulted in FEMA

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<sup>1</sup> Further, the Authority has recently requested more than \$6 million in additional FEMA funding.



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Department of Homeland Security

providing millions in funding to the Authority.<sup>2</sup> We will present these findings and recommendations in a subsequent report.

## Finding A: Improper Procurement

The Authority did not follow applicable Federal regulations in procuring contracts totaling \$31,713,569 for Project 828. As a result, FEMA has no assurance that these costs were reasonable or that the Authority selected the most qualified contractors. Table 1 lists the three contracts we reviewed for Project 828.

**Table 1: Contracts Reviewed for Project 828**

Contract Type	Contract Amount	Amount Questioned
Construction	\$28,782,129	\$28,782,129
Construction Management	1,800,656	1,800,656
Engineering	1,130,784	1,130,784
<b>Totals</b>	<b>\$31,713,569</b>	<b>\$31,713,569</b>

Source: Authority documentation and Office of Inspector General (OIG) analyses

According to 44 Code of Federal Regulations (CFR) 13.36(b)(1), “Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.” However, for the three contracts we reviewed, the Authority did not comply with its own and Federal procurement requirements.

The Authority did not perform cost/price analyses, as required, in awarding and modifying its engineering contract (44 CFR 13.36(f)(1) and (3)). It did not develop independent estimates before receiving proposals or perform cost analyses for every procurement action, including contract modifications. For example, when the Authority approved Contractor C’s

*The Authority accepted the contractor’s costs without verification. It modified all three contracts multiple times, including 15 modifications to the contract with Contractor C alone, escalating its value to more than three times the original price.*

change order requests, it accepted the contractor's own assessment of costs incurred and funds needed, without verification. In fact, the

<sup>2</sup> The Authority evaluated three engineering contractors that we refer to as Contractors A, B, and C, and it selected Contractor C. We discuss this selection process in finding A.



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Authority was not able to verify Contractor C's costs billed because Contractor C did not itemize the costs by the agreed-upon tasks in its invoices. Without knowing actual costs incurred, the Authority was not able to determine the amount of additional funds needed for each task. A member of the Authority's Board publicly expressed his frustration with the lack of oversight of contract modifications (change orders): "The philosophy in that agency is, if you run over a budget, just do a change order ... there are so many of them, you can't even keep track of them." This statement described precisely what happened. The Authority modified all three contracts (engineering, construction, and construction management) multiple times, including 15 modifications to the contract with Contractor C alone, escalating its value to more than three times the original bid price of \$410,520 to \$1,282,809.<sup>3</sup> Because of these numerous modifications, Authority officials were not able to track the contract ceilings and paid Contractor C, on multiple occasions, more than the amount the contract authorized.<sup>4</sup>

The Authority did not follow its own procurement policy and Federal regulations when evaluating contractor proposals and selecting its engineering contractor (44 CFR 13.36(d)(3)(v)). The Authority's policy requires it to select its professional services (e.g., engineering) contractors based on qualifications. Federal regulations require the Authority to identify

*The Authority bypassed both sets of requirements: it did not comply with Federal requirements and its own policies, and did not evaluate the proposals properly or fairly.*

all requirements and factors to be used in evaluating proposals in the solicitations (44 CFR 13.36(c)(3)) and have a method for evaluating the technical proposals

(44 CFR 13.36(d)(3)(iii)). However, the Authority bypassed both sets of requirements: it did not comply with Federal requirements or its own policies, and did not evaluate the proposals properly or fairly. Specifically, the Authority —

- did not involve its Engineering Committee properly. To select the most qualified contractors, the Authority's standard process includes these three steps: its Engineering Committee approves the request for proposals, reviews the proposals, and recommends a contractor to the Authority's Board for approval. However, in selecting its engineering contractor, the Authority did not seek the Committee's approval of the

<sup>3</sup>This amount included \$152,025 for Project 1136.

<sup>4</sup>For example, as of May 2014, the Authority's Board authorized only \$798,672 for Project 828, but the Authority paid Contractor C \$855,914.



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request for proposals nor allow the Committee enough time to conduct proper assessments of the proposals.<sup>5</sup>

- allowed one committee member's significantly disproportionate rating to be one of the decisive factors in the Authority's contractor selection process. Two of the five committee members scored the three proposals very closely; another two did not provide scores; and another gave Contractor C a perfect 100 points and the other proposals the unusually low scores of 78 and 76, respectively (see table 2). This disparity is especially concerning because the rater did not justify the scores, and the Authority did not provide us the rating sheet or explanations for not providing it. Further, Authority officials did not question the validity of these extreme scores or have a process to ensure uniformity and fairness in applying the criteria. They simply tallied the three scores, allowing the third disproportionate score to propel Contractor C's rating from the lowest overall score to the highest.

**Table 2: Scores of the Proposals**

Rater	Contractor A	Contractor B	Contractor C
#1	87	84	85
#2	87	88	84
<b>Subtotal</b>	<b>174</b>	<b>172</b>	<b>169</b>
#3 <sup>6</sup>	78	76	100
<b>Total Score</b>	<b>252</b>	<b>248</b>	<b>269</b>

Source: Authority documentation and OIG analyses

- did not disclose all factors used in evaluating proposals in the solicitation as Federal regulations require (44 CFR 13.36(c)(3)). The Authority's request for proposals did not identify pricing as an evaluation criterion. After the evaluators had already scored the proposals, the Authority unilaterally added pricing as the decisive contractor selection factor. Therefore, the Authority unfairly and improperly deviated from its evaluation criterion.

<sup>5</sup>The Authority gave the Committee about 3 business days to evaluate the proposals posted to the Authority's web site. Authority officials, via separate instructions, directed the Committee to complete an evaluation form that scores the proposals on a 100-point scale. The Authority received only three sets of scores from the Committee's five members. The two remaining members ranked the proposals instead of completing the form; and one of the two had difficulty accessing the proposals.

<sup>6</sup>Because the Authority did not provide us this rating sheet, we calculated the scores based on the other two rating sheets and the total scores recorded in the Authority's Board meeting minutes.



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The Authority did not include all mandatory Federal provisions in the three contracts we reviewed (44 CFR 13.36(i)). Federal regulations require contracts and subcontracts to include specific provisions, such as giving the grantee and FEMA the right to examine the contractor's records and providing administrative, contractual, or legal remedies in instances where the contractor violates or breaches the contract terms. These contract provisions document the rights and responsibilities of the parties and minimize the risk of contract misinterpretations and disputes. California became aware of this issue in early 2013 and promptly advised the Authority of the noncompliance. However, the Authority only amended the contracts that California had reviewed, and did not take steps to amend any other contracts or its procurement policies. Consequently, the Authority did not include all required provisions in *any* of the contracts we reviewed.

The Authority did not maintain records sufficient to detail the significant history of selecting its engineering contractor, as Federal regulations require (44 CFR 13.36(b)(9)). The Authority did not maintain one of the three rating sheets that were critical in the Authority's selection of Contractor C. The missing rating sheet gave Contractor C the highest score, while the combined scores of the other two rated Contractor C the lowest (see table 2).

The Authority did not maintain an adequate contract administration system (44 CFR 13.36(b)(2)) because it did not adequately review invoices for the engineering and construction management contracts for accuracy, support, and eligibility. For example, the Authority —

- overlooked a variety of errors, such as typographical mistakes, overstated mileage, and incorrect hourly labor rates within Contractor C's invoices.<sup>7</sup>
- permitted Contractor C's charges for computer usage based on total staff hours instead of computer usage logs. Because this contractor also charged FEMA for vehicle mileages for the same periods, it appeared that the staff were driving and operating computers at the same time.
- allowed both contractors to incur costs *before* the Authority's approval. During the period of April 2014 through December 2015, the Authority received 12 invoices from Contractor C. The cumulative total cost on 11 separate invoices exceeded the contract ceiling at the time of the invoice.

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<sup>7</sup> For example, Contractor C billed the services of its Engineer II at a rate of \$127/hour from May to September 2011. Although it began using the correct rate of \$107/hour starting in October 2011, it did not correct the overbilling.



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- permitted Contractor C to not itemize costs based on the agreed-upon tasks. Without knowing the costs incurred for each task, the Authority could not monitor the contractor's costs or perform analyses properly of contract modifications.
- did not match the invoices with purchase orders to ensure that payments were within the amount the contract or purchase orders authorized. As a result, the Authority's payments to Contractor C exceeded the purchase order limits. The Authority's practice violated its procurement policy requiring the matching of invoices with purchase orders.

The Authority did not comply with Federal regulations that require including a ceiling price in time-and-material contracts (44 CFR 13.36(b)(10)). The Authority increased the value of these time-and-material contracts multiple times, including 15 increases to the engineering contract. Not only did the Authority neglect to perform the required cost analyses for these modifications, it included costs in the modifications to cover costs already incurred, shifting the burden of funding cost overruns from the contractors to the Authority, California, and FEMA. Instead of ensuring its contractors performed in accordance with the contract terms, the Authority provided compensation based on the contractors' terms. Although both contracts had not-to-exceed ceilings, the Authority invalidated those ceilings by disregarding them.

On March 11, 2016, we provided Authority officials a discussion document that outlined our concerns with its contracting practices — specifically the lack of cost/price analysis, procurement history documentation, and proper methods for evaluating proposals. We also met with the officials to discuss these findings and requested the Authority provide us with documentation to support

*When the Authority amended these time-and-material contracts, some of the modifications were to cover costs already incurred. Further, although both contracts had not-to-exceeded ceilings, the Authority invalidated those ceilings by disregarding them.*

any challenges to our results. The Authority declined to discuss the findings with us, saying that its attorneys would provide us written comments, which we received on March 24, 2016. Authority officials

disagreed with virtually all the issues we presented in our discussion document but did not provide any evidence to support their assertions.

On September 26, 2016, we provided our draft report to Authority officials and requested an audit exit meeting. Again they informed us that their attorneys would respond to the report. We received their response on October 20, 2016. Authority officials generally disagreed with our findings and recommendations,



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and explained that their actions were appropriate, justified as a result of the emergency, or did not result in a material impact. The Authority's response also included over 1,300 pages of documentation. We determined that the documentation the Authority provided generally included the same records we collected and reviewed during our audit fieldwork and did not change the finding or conclusions in this report. We are providing the documents to FEMA for its consideration in audit follow-up.

California officials did not comment on this finding. FEMA officials concurred with our findings and recommendations.

### **Finding B: Improper Accounting**

The Authority did not account for its large project expenditures on a project-by-project basis, as Federal regulations require (44 CFR 206.205(b)). The Authority did not issue separate purchase orders to segregate costs for different FEMA projects or require its contractors to code the costs on a project-by-project basis, resulting in comingled costs for different FEMA projects. Contractor C requested, and the Authority approved, at least \$152,025 for tasks performed for Project 1136.<sup>8</sup> However, because Contractor C's invoices did not properly identify costs for these tasks, the Authority charged all Contractor C's costs to Project 828.<sup>9</sup>

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*By comingling costs, the Authority charged unsupported costs to the FEMA project. Further, California notified the Authority that its accounting system could not accurately track project costs, yet the Authority did not take proper steps to correct the deficiencies.*

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As a result, the Authority overstated the costs for Project 828, which California and FEMA should deduct from the Authority's claims. California and FEMA should also review costs associated with the Authority's other large projects, especially Project 1136, and disallow any costs

that are unsupported.

Authority officials told us that many of the deficiencies we identified were immaterial and that they took immediate action to correct them.

California officials agreed with our finding. They provided us documentation demonstrating that they notified the Authority in 2013 and 2015 that its

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<sup>8</sup> Because Contractor C did not identify the specific amount requested for Project 1136 on some of its change order request, we were not able to determine the additional amount.

<sup>9</sup> In addition, the Authority charged an invoice for \$96,003 to both Project 828 and Project 1136.



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accounting system could not accurately track project costs. However, the Authority did not take proper steps to correct the deficiencies.

FEMA officials agreed with our findings and recommendations.

### Conclusion

The Authority did not comply with Federal requirements, or with its own policies, in procuring contracts and accounting for costs for its FEMA grant. Our next report on Project 828 will discuss how the Authority and Contractor C misled FEMA to fund a significantly more expensive repair methodology for work beyond what was needed to bring its pipeline back to pre-disaster condition.

### Recommendations

We recommend that the Regional Administrator, FEMA Region IX:

**Recommendation 1:** Disallow \$31,713,569 (\$23,785,177 Federal share) in ineligible contract costs, unless FEMA grants an exception to administrative requirements, which include Federal procurement standards, as 44 CFR 13.6(c) allows and determines the costs are eligible and reasonable.

**Recommendation 2:** Review costs associated with the Authority's other large projects, especially Project 1136, and disallow any costs that are ineligible.

**Recommendation 3:** Review the process the Authority used to procure its engineering contract to determine whether regulatory and ethical infractions or gross mismanagement occurred. If such infractions or gross mismanagement occurred, FEMA should work with the Department of Homeland Security Office of Inspector General and Suspension and Debarment Official to debar the responsible organizations and individuals so that they are excluded from receiving benefits from Federal programs, as well as prohibited from future contracting with any agency in the Executive Branch of the U.S. Government for a specified period under 2 CFR 180.125(b).

**Recommendation 4:** Direct California to provide increased guidance to the Authority and more closely monitor its performance to ensure the Authority complies with mandatory Federal regulations and FEMA guidelines.



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### **Discussion with Management and Audit Follow-up**

We discussed the results of this audit with Authority officials during our audit and briefed FEMA, California, and the Authority on our audit findings. We also provided a draft report in advance to FEMA, California, and Authority officials, and discussed it at exit conferences with FEMA on September 26, 2016, and with the Authority and California on October 5, 2016.

FEMA Region IX officials provided a written response on October 24, 2016, agreeing with our findings and recommendations (see appendix C). The response indicated that FEMA expects to implement its proposed corrective actions to address recommendations 1, 2, and 3 by July 31, 2017, and recommendation 4 by January 31, 2017. Therefore, we consider all four recommendations resolved but open. We will close the recommendations when we receive and review documentation that FEMA has completed its proposed corrective actions. Please email closeout documentation and request to [Humberto.Melara@oig.dhs.gov](mailto:Humberto.Melara@oig.dhs.gov).

The Office of Emergency Management Oversight major contributors to this report are Humberto Melara, Director; Devin Polster, Audit Manager; Arona Maiava, Senior Auditor; Connie Tan, Senior Auditor; and Curtis Johnson, Senior 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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### Appendix A Objective, Scope, and Methodology

We audited FEMA Public Assistance grant funds awarded to the Victor Valley Wastewater Reclamation Authority, California, Public Assistance Identification Number 071-UI89M-00, for Project 828. Our audit objective was to determine whether the Authority accounted for and expended FEMA Public Assistance Program grant funds according to Federal regulations and FEMA guidelines for FEMA Disaster Number FEMA-1952-DR-CA. California, a FEMA grantee, administered the \$41.3 million grant FEMA awarded for damages resulting from severe winter storms, flooding, debris and mud flows from December 17, 2010, through January 4, 2011. The award provided 75 percent FEMA funding for four large projects and two small projects (see table 3).<sup>10</sup> We audited three contracts totaling \$31.7 million for Project 828 (see table 3), a major pipeline construction project, or 77 percent of the \$41.3 million total award.

**Table 3: Schedule of Projects and Questioned Costs**

Project Number	Category of Work <sup>11</sup>	Award Amount	Costs Audited and Questioned
<b>Project Audited</b>			
828	F	\$ 33,124,002	\$ 31,713,569
<b>Subtotal</b>		<b>\$33,124,002</b>	<b>\$31,713,569</b>
<b>Projects Not Audited</b>			
890	A	\$1,010	\$0
891	F	65,029	0
892	F	163,387	0
906	F	23,930	0
1136	B	7,954,740	0
<b>Subtotal</b>		<b>\$ 8,208,096</b>	<b>\$ 0</b>
<b>Totals</b>		<b>\$41,332,098</b>	<b>\$31,713,569</b>

*Source:* OIG analyses of FEMA and Authority documentation

<sup>10</sup> Federal regulations in effect at the time of the disaster set the large project threshold at \$63,900 [Notice of Adjustment of Disaster Grant Amounts, Vol. 75, No. 194 (Oct. 6, 2010)].

<sup>11</sup> FEMA identifies type of work by category: A for debris removal, B for emergency protective measures, and F for public utilities.



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### Appendix A (continued)

This report focused on the Authority's procurement and accounting practices. We reviewed the award and administration of three contracts (engineering,<sup>12</sup> construction, and construction management) valued at \$31,713,569, or 96 percent of the \$33,124,002 FEMA awarded to the Authority for Project 828. The audit covered the period from December 17, 2010, to December 27, 2015. A subsequent report will focus on information the Authority provided to FEMA to develop the scope of work for Project 828.

To accomplish our objectives, we interviewed FEMA, California, and Authority officials; gained an understanding of the Authority's procurement policies and procedures and its method of accounting for disaster-related costs; judgmentally selected and reviewed (generally based on dollar amounts) project costs and procurement transactions for Project 828; reviewed applicable Federal regulations and FEMA guidelines; and performed other procedures considered necessary to accomplish our audit objective. As part of our standard audit procedures, we also notified our Office of Information Technology Audits of all contracts the subgrantee awarded under the grant that we reviewed 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 Office of Information Technology Audits' analysis of contracts was ongoing. When it is complete, we will review the results and determine whether additional action is necessary. We did not perform a detailed assessment of the Authority's internal controls applicable to its grant activities because it was not necessary to accomplish our audit objective.

We conducted this performance audit between June 2015 and September 2016, 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.

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<sup>12</sup> We included \$1,130,784 of the engineering contract for Project 828 in our audit scope. This contract also included \$152,025 for Project 1136 (for construction of a temporary bypass pipeline), which was not part of our audit.



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**Appendix B**  
**Potential Monetary Benefits**

**Table 4: Summary of Potential Monetary Benefits**

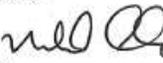
<b>Type of Potential Monetary Benefit</b>	<b>Total</b>	<b>Federal Share</b>
Questioned Costs – Ineligible	\$31,713,569	\$23,782,177
Questioned Costs – Unsupported		
Funds Put to Better Use		
<b>Totals</b>	<b>\$31,713,569</b>	<b>\$23,782,177</b>

*Source:* OIG analyses of findings in this report



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**Appendix C**  
**FEMA's Comments to the Draft Report**

		U.S. Department of Homeland Security Region IX 1111 Broadway, Suite 1200 Oakland, CA 94607-4052
	OCT 24 2016	FEMA
MEMORANDUM FOR:	Humberto U. Melara Director, Western Regional Office Office of Inspector General	
FROM:	Robert J. Fenton  Regional Administrator FEMA Region IX	
SUBJECT:	FEMA-1952-DR-CA Subrecipient: Victor Valley Wastewater Reclamation Authority; PA ID: 071-UI89M-00 Response to Draft Audit Report, OIG-17-##-D, <i>The Victor Valley Wastewater Reclamation Authority in Victor Valley, California, Did Not Properly Account for and Expend \$31.7 Million in FEMA Grant Funds</i> FEMA Log: 309312.2	
<p>On September 19, 2016, the Office of Inspector General (OIG) Western Regional Office transmitted the draft audit report <i>The Victor Valley Wastewater Reclamation Authority in Victor Valley, California, Did Not Properly Account for and Expend \$31.7 Million in FEMA Grant Funds</i>. The OIG audited the U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) Public Assistance grant funds awarded to the Victor Valley Wastewater Reclamation Authority (Subrecipient) under FEMA-1952-CA. The audit report listed the following four (4) recommendations based on findings related to the Subrecipient's procurement and accounting practices:</p>		
<p><b>Recommendation 1:</b> Disallow \$31,713,569 (\$23,785,177 Federal share) in ineligible contract costs, unless FEMA grants an exception to administrative requirements, which include Federal procurement standards, as 44 CFR 13.6(c) allows and determines the costs are eligible and reasonable.</p>		
<p><b>FEMA's Response to Recommendation 1:</b> Concur. FEMA does not grant exceptions for deliberate or avoidable violations of federal procurement and accounting requirements. FEMA and the California Governor's Office of Emergency Services (Cal OES) work closely with the Subrecipient to ensure that they are aware of all statutes, regulations, and policies regarding federal grants awarded for disaster recovery and that they have easy access to both printed and electronic copies of all applicable regulations. Furthermore, during the Applicants' Briefing and</p>		
<a href="http://www.fema.gov">www.fema.gov</a>		



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**Appendix C (continued)**

*Mr. Humberto U. Melara  
Draft Audit Report OIG-17-##-D  
FEMA-4240-DR-CA, FEMA Log: 309312.2  
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Kick-off Meeting, FEMA and Cal OES explain the requirements of procuring contracts, retaining documentation, and the legal requirements that govern the subsequent expenditures by the Subrecipient of the awarded funds. FEMA and Cal OES emphasize that proper and transparent contract procurement and accounting standards codified in Title 2 Code of Federal Regulations (CFR) § 200 (formerly found in 44 CFR § 13) must be strictly followed when spending Federal Public Assistance funds as failure to adhere to these standards jeopardizes federal funding.

The Subrecipient has not yet submitted a Project Completion and Certification report (P.4). Following the submittal of the P.4., FEMA will carefully review the Subrecipient's final claim. Based on the OIG's findings as well as the review of the Subrecipient's final documentation submittal and Cal OES' recommendations, FEMA will determine if the Subrecipient's claimed project costs are reasonable, statutorily justified; and, therefore, eligible for reimbursement.

FEMA considers this recommendation resolved and open. Estimated Completion Date is July, 31, 2017.

**Recommendation 2:** Review costs associated with the Authority's other large projects, especially Project 1136, and disallow any costs that are ineligible.

**FEMA's Response to Recommendation 2:** Concur. Following the submittal of the P.4., FEMA will carefully review the Subrecipient's final claim for the other large projects, including Project Worksheet (PW) 1136. FEMA will determine final cost eligibility based on regulation and reasonableness.

FEMA considers this recommendation resolved and open. Estimated Completion Date is July 31, 2017.

**Recommendation 3:** Review the process the Authority used to procure its engineering contract to determine whether regulatory and ethical infractions (e.g., bid manipulation, collusion) or gross mismanagement occurred. If such infractions or gross mismanagement occurred, FEMA should take actions promptly with the Department of Homeland Security Suspension and Debarment Official to debar the responsible organizations and individuals so that they are excluded from receiving benefits from Federal programs, as well as prohibited from future contracting with any agency in the Executive Branch of the U.S. Government for a specified period under 2 CFR § 180.125(b).

**FEMA's Response to Recommendation 3:** Concur. FEMA will review all documentation provided by the Subrecipient at project closeout. Any suspected malfeasance or fraudulent activities regarding the procurement or accounting procedures associated with FEMA grants will be directed to the proper authorities for further inquiry.



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**Appendix C (continued)**<sup>13</sup>

*Mr. Humberto U. Melara  
Draft Audit Report OIG-17-##-D  
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Page 3 of 3*

FEMA considers this recommendation resolved and open. Estimated Completion Date is July 31, 2017.

**Recommendation 4:** Direct California to provide increased guidance to the Authority and more closely monitor its performance to ensure the Authority complies with mandatory Federal regulations and FEMA guidelines.

**FEMA's Response to Recommendation 4:** Concur. FEMA works closely with Cal OES and all California Subrecipients to ensure that federal regulations regarding the FEMA Public Assistance program are fully understood and properly applied. In light of this OIG recommendation, FEMA will share the concerns of the OIG regarding the Subrecipient with Cal OES.

FEMA considers this recommendation resolved and open. Estimated Completion Date is December 31, 2016.

In summary, FEMA concurs with Recommendations 1, 2, 3, and 4. FEMA has taken the actions noted above.

If you have any questions or require additional information, please contact William Roche, Recovery Division Director, at (510) 627-7250.

<sup>13</sup> FEMA has recently revised its Estimated Completion Date for Recommendation 4 to January 31, 2017.



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### **Appendix D** **Report Distribution**

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Attention: Hotline  
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Washington, DC 20528-0305

**FEMA Should Disallow  
\$82.4 Million of Improper  
Contracting Costs  
Awarded to Holy Cross  
School, New Orleans,  
Louisiana**





# HIGHLIGHTS

## ***FEMA Should Disallow \$82.4 Million of Improper Contracting Costs Awarded to Holy Cross School, New Orleans, Louisiana***

**April 14, 2015**

### **Why We Did This**

Holy Cross received an \$89 million FEMA grant award for 2005 Hurricane Katrina damages to its campus in the Ninth Ward of New Orleans. By 2011, the school had completed work on 12 of its 16 projects. However, at the time of our audit, Louisiana had not submitted a final claim for the 12 projects and FEMA had closed only 1 large project.

### **What We Recommend**

FEMA should disallow \$82.4 million as ineligible contract costs unless FEMA grants an exemption for all or part of the costs as provided for in 2 CFR Part 215.4.

#### **For Further Information:**

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

### **What We Found**

Holy Cross did not follow Federal procurement standards in awarding 21 contracts totaling \$82.4 million. As a result, FEMA has no assurance that costs were reasonable. This is especially true for projects that FEMA funds at 100 percent of the costs. Further, the lack of open and free competition increased the risk of fraud, waste, and abuse and decreased opportunities for small businesses, minority-owned firms, and women's business enterprises to compete for federally funded work. For the most part, we do not question costs that Holy Cross incurred to reopen school in January 2006, or to operate temporary facilities in the Ninth Ward. However, in 2007, Holy Cross decided to relocate from the Ninth Ward to the Gentilly neighborhood of New Orleans. Holy Cross set up a temporary campus in Gentilly in 2007 and began work on permanent facilities there in 2008. By 2007, exigent circumstances no longer existed, so Holy Cross should have procured competitive bids according to Federal regulations for the work in Gentilly.

Since 2005, FEMA has obligated \$260.3 million for Louisiana to manage this disaster, but we continue to identify subgrantees like Holy Cross that could have benefited from better grant management from the State.

### **FEMA Response**

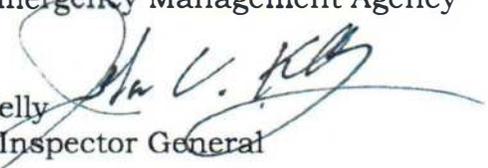
FEMA officials generally agreed with our findings and recommendation pending its review of our supporting documents. FEMA's written response is due within 90 days.



OFFICE OF INSPECTOR GENERAL  
Department of Homeland Security  
Washington, DC 20528

APR 14 2015

MEMORANDUM FOR: George A. Robinson  
Regional Administrator, Region VI  
Federal Emergency Management Agency

FROM: John V. Kelly   
Assistant Inspector General

SUBJECT: *FEMA Should Disallow \$82.4 Million of Improper Contracting Costs Awarded to Holy Cross School, New Orleans, Louisiana*  
Audit Report Number OIG-15-65-D

We audited Federal Emergency Management Agency (FEMA) grant funds awarded to Holy Cross School (Holy Cross) in New Orleans, Louisiana. The Louisiana Governor's Office of Homeland Security and Emergency Preparedness (Louisiana), a FEMA grantee, awarded Holy Cross \$89.3 million for damages resulting from Hurricane Katrina, which occurred in August 2005. The award provided 100 percent funding for eligible project costs for temporary buildings, replacement of permanent buildings and facilities, demolition of damaged facilities, and replacement of contents. We audited nine projects totaling \$88.6 million, or about 99 percent of the total award (see appendix A). By 2011, Holy Cross had completed work on 12 of its 16 projects. However, at the time of our audit, Louisiana had not submitted a final claim for the 12 projects and FEMA had closed only 1 large project.

### Background

Holy Cross School is a Catholic, private nonprofit college preparatory boy's middle and high school founded in 1849 by the Congregation of Holy Cross that covers grades 5–12. Hurricane Katrina devastated the Holy Cross school buildings located in the lower Ninth Ward neighborhood of New Orleans. The lower Ninth Ward remained uninhabitable for several weeks following the disaster in August 2005. Just weeks following Hurricane Katrina, Holy Cross began holding classes for displaced students at the Dunham School in Baton Rouge. In November 2005, school administrators returned to New Orleans and began holding classes at Cabrini High School.

Holy Cross worked under exigent conditions to reopen its first temporary campus in January 2006 in the Ninth Ward. In 2007, the Brothers of the Congregation of Holy Cross and their board of directors decided to relocate the



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school from the Ninth Ward to the Gentilly neighborhood of New Orleans. In May 2007, Holy Cross began setting up its temporary campus in Gentilly and started operating the school there in August 2007. Construction of permanent facilities in Gentilly started in 2008. Holy Cross completed construction of four permanent buildings—a middle school and high school in August 2009, an administration building in March 2010, and a student center in February 2011. Holy Cross used contractors to perform all work.

### Results of Audit

Holy Cross did not follow Federal procurement standards in awarding 21 contracts totaling \$82.4 million. As a result, FEMA has no assurance that costs were reasonable. This is especially true when the Federal share is 100 percent because, when FEMA pays the entire cost of the project, the applicant has no financial exposure to excessive or unnecessary costs. Further, the lack of open and free competition increased the risk of fraud, waste, and abuse and decreased opportunities for small businesses, minority-owned firms, and women's business enterprises to compete for federally funded work.

We reviewed 23 contracts totaling \$85.0 million that Holy Cross awarded primarily for three phases of work:

1. installing temporary classrooms under exigent circumstances on its original Ninth Ward campus to reopen the school in January 2006;
2. installing temporary classrooms on its new Gentilly campus in 2007 and 2008; and
3. construction and purchase of contents, beginning in 2008, for four new facilities in Gentilly.

We considered work in the first phase to reopen the school at its original Ninth Ward location to be exigent work. We generally consider circumstances exigent when lives or properties are at-stake or, as in this case, when a city or community needs to reopen its schools. We considered exigent circumstances to be over once Holy Cross' first temporary campus opened in January 2006. Holy Cross awarded two noncompetitive contracts totaling \$2,326,598 for this work.<sup>1</sup> One contract for \$1,752,074 was for temporary modular classrooms. The other was for a \$574,524 construction contract that Holy Cross awarded for other exigent work needed to reopen the school by January 2006. The construction contractor billed for work on a prohibited cost-plus-a-percentage-of-cost basis. Therefore, we questioned the \$99,144 in markups on costs, but

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<sup>1</sup> See table 1, Net Contract Award Amount, line 5 plus line 12.



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did not question the remaining \$2,227,454 because these contracts were for exigent work.<sup>2</sup>

Holy Cross awarded the other 21 contracts totaling \$82,679,297 for the second and third phases of work.<sup>3</sup> We questioned \$82,261,103<sup>4</sup> for 19<sup>5</sup> of the 21 contracts because Holy Cross did not follow Federal procurement standards after exigent circumstances ended. Because Holy Cross contracted for this work more than a year after the disaster, it had ample time to award the 19 contracts properly. The work to relocate temporary school operations to Gentilly did not begin until 2007, and construction of permanent facilities did not begin until 2008.

These findings occurred, in part, because Louisiana did not fulfill its grantee responsibilities to ensure Holy Cross was aware of and complied with Federal procurement standards. Since 2005, FEMA has obligated \$260.3 million for Louisiana to manage this disaster, but we continue to identify subgrantees like Holy Cross that could have benefited from better grant management.

### **Finding A: Improper Contracting**

Holy Cross did not follow Federal procurement standards in awarding 21 of the 23 disaster-related contracts. As a result, open and free competition did not always occur, which increased the risk of fraud, waste, and abuse and decreased the opportunities for small businesses, minority-owned firms, and women's business enterprises to compete for federally-funded work. In addition, because competition was inadequate, FEMA has no assurance that costs were reasonable. Therefore, we question \$82.4 million as ineligible.

Federal regulations at 2 Code of Federal Regulations (CFR) Part 215 and 44 CFR Part 13, in part, require that subgrantees:<sup>6</sup>

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<sup>2</sup> See table 1, Net Contract Award Amount, lines 5 plus 12, minus Procurement Violation Questioned Cost line 5.

<sup>3</sup> See table 1, Total Net Contract Award Amount minus lines 5 and 12.

<sup>4</sup> See table 1, Total Procurement Violation Questioned Cost minus line 5.

<sup>5</sup> See table 1, Total Number of Contracts minus lines 5, 11, and 12.

<sup>6</sup> Recipients of Federal grants or subgrants must comply with applicable Office of Management and Budget administrative requirements, which include applicable procurement standards. For private non-profit entities, the applicable requirements are located in 2 CFR 215 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations (Office of Management and Budget relocated the requirements from Circular A-110 in 2004 ). Although FEMA has not codified these requirements, the requirements are applicable to FEMA grants and subgrants to private-non-profit entities. We included citations from FEMA's 44 CFR 13 for similar procurement standards that apply to state, local, and tribal governments because Holy Cross representatives said that the only guidance they received during the initial "kickoff meeting" with FEMA and State representatives was in 321 FEMA Guidebook (which refers to the requirements of 44 CFR 13) and that they were, therefore, not aware of 2 CFR 215.



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1. perform procurement transactions in a manner to provide, to the maximum extent practical, open and free competition and make awards to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality, and other factors considered (2 CFR 215.43 and 44 CFR 13.36(c)(4) and 44 CFR 13.36(d)(3)(iv));
2. not use prohibited “cost-plus-a-percentage-of-cost” or “percentage-of-construction-cost” method of contracting (2 CFR 215.44(c) and 44 CFR 13.36(f)(4));
3. include required provisions in contracts and subcontracts, such as those relating to termination for cause, compliance with Equal Employment Opportunity and labor laws, and prohibition of “kickbacks” (2 CFR Part 215.48 and Appendix A to Part 215—Contract Provisions; and 44 CFR 13.36(i));
4. make positive efforts by taking specific steps to try to utilize small businesses, minority-owned firms, and women’s business enterprises, whenever possible (2 CFR 215.44(b) and 44 CFR 13.36(e));
5. prepare and document some form of cost or price analysis in connection with every procurement action (2 CFR 215.45 and 44 CFR 13.36(f)(1)); and
6. maintain a system for contract administration to ensure contractor conformance with the terms, conditions, and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract (2 CFR 215.47 and 44 CFR 13.36(b)(2)).

As table 1 shows, **Holy Cross awarded—**

- **17 of 23 contracts with inadequate competition;**
- **6 of 23 contracts using the cost-plus-a-percentage-of-cost or percentage-of-construction-cost method of contracting;**
- **21 of 23 contracts that did not include required provisions;**
- **20 of 23 contracts without making positive efforts to utilize small businesses, minority-owned firms, and women’s business enterprises, whenever possible;**
- **13 of 23 contracts without preparing and documenting some form of cost or price analysis; and**
- **10 of 23 contracts without properly administering and monitoring the contracts.**



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**Table 1: Questioned Contract Cost and Procurement Violations**

Scope of Work	Net Contract Award Amount	Procurement Violation Questioned Cost	Number of Contracts	Violations of Procurement Standards 1 - 6 Listed in Finding A Above					
				1*	2	3	4	5	6
<b>Construction Contractor</b>									
1. Permanent Construction Work	\$66,021,699	\$66,021,699	1			x	x	x	
2. Gentilly Temporary Campus Work	2,958,514	2,958,514	4	x		x	x	x	x
3. Ninth Ward Additional Temporary Campus Work After School Opening	298,530	298,530	1	x	x	x	x	x	x
4. Ninth Ward Code Work After School Opening	115,631	115,631	1	x	x	x	x	x	x
5. Ninth Ward Temporary Campus Work*	574,524	99,144	1	*	x	x	x	x	x
<b>Total Construction Contractor</b>	<b>\$69,968,898</b>	<b>\$69,493,518</b>	<b>8</b>						
<b>Architectural and Engineering</b>									
6. Design Work Permanent	\$ 5,248,222	\$ 5,248,222	1		x	x	x	x	
7. Gentilly Temporary Campus Work	118,500	118,500	1	x		x	x	x	x
<b>Total Architectural and Engineering</b>	<b>\$ 5,366,722</b>	<b>\$ 5,366,722</b>	<b>2</b>						
<b>Project Management</b>									
8. Permanent Campus Work	\$ 4,207,519	\$ 4,207,519	1	x	x	x		x	
9. Gentilly Temporary Campus Work	193,736	193,736	1	x	x	x	x	x	x
<b>Total Project Management</b>	<b>\$ 4,401,255</b>	<b>\$ 4,401,255</b>	<b>2</b>						
<b>Other Contractors</b>									
10. Replacement of Contents	\$ 1,920,220	\$ 1,920,220	6	x		x	x		
11. State Contracts - <b>NO VIOLATIONS</b>	418,194	0	2						
12. Modular Buildings in Ninth Ward*	1,752,074	0	1	*		x	x	x	x
13. Demolition of Old Campus	658,362	658,362	1			x	x		
14. Demobilization of Modular Buildings	520,170	520,170	1			x	x		
<b>Total Other Contractors</b>	<b>\$ 5,269,020</b>	<b>\$ 3,098,752</b>	<b>11</b>						
<b>Total</b>	<b>\$85,005,895</b>	<b>\$82,360,247</b>	<b>23</b>	17	6	21	20	13	10

Source: Holy Cross contracts, related contract documentation, and Office of Inspector General (OIG) analysis.

\* These two noncompetitive contracts were for exigent work in the Ninth Ward.



### **Inadequate Competition**

Holy Cross awarded 17 contracts totaling \$12,139,248<sup>7</sup> without open and free competition, including 15 contracts totaling \$9,812,650<sup>8</sup> for non-exigent work and 2 contracts for exigent work totaling \$2,326,598.<sup>9</sup> We question all costs for the 15 contracts for non-exigent work. For the two exigent work contracts totaling \$2,326,598, we question only \$99,144 in prohibited markups on costs (see section below on Prohibited Contracts).

Federal regulations require open and free competition; however, FEMA's practice has been to allow contract costs it considers reasonable, regardless of whether the contract complies with Federal procurement regulations. We do not agree with this practice because the goals of proper contracting relate to more than just reasonable cost. FEMA's normal practice of allowing contract costs it determines reasonable provides no deterrent to improper contracting and undermines good grant management.

Without open and free competition, FEMA has little assurance that contract costs are reasonable. This is especially true when FEMA funds 100 percent of the grant because applicants have no financial exposure and, thus, no incentive to save costs. Open and free competition usually increases the number of bids received and thereby increases the opportunity for obtaining reasonable pricing from the most qualified contractors. It also allows greater opportunity for small businesses, minority firms, and women's enterprises to compete for federally funded work. Open and free competition also helps to discourage and prevent favoritism, collusion, fraud, waste, and abuse. Open and free competition allows all responsible sources to compete for contracts.

**Project Management Contractor** — Holy Cross advertised the project management services on permanent work as a request for qualifications and awarded the contract based solely on qualification with no consideration for price. Holy Cross also awarded the project management services on temporary campus work at the Gentilly Campus to the same contractor without open and free competition. Both these contracts were also prohibited percentage-of-construction-cost contracts (see section on Prohibited Contracts, later in this report).

Holy Cross contends that FEMA categorized the temporary facility work awarded without publically advertising as emergency work and therefore allowed an exception to the bidding requirements. However, FEMA's categorization of work as Category B — Emergency Protective Measures has no

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<sup>7</sup> See table 1, lines 2, 3, 4, 5, 7, 8, 9, 10, and 12.

<sup>8</sup> See table 1, lines 2, 3, 4, 7, 8, 9, and 10.

<sup>9</sup> See table 1, lines 5 and 12.



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bearing on whether work is exigent for contracting purposes. The questioned Category B temporary facility work was work that Holy Cross' contractor started in April 2007 and completed in August 2007, nearly 2 years after the disaster occurred. As stated previously, exigent conditions ended after Holy Cross completed the first temporary campus in January 2006. From that point forward, Holy Cross should have followed Federal contracting regulations.

Holy Cross representatives also said that FEMA reviewed the project management contract and determined that the fee was reasonable and eligible. Holy Cross officials then sought reimbursement for the costs. However, FEMA officials said they only advise subgrantees that contracts must comply with applicable procurement standards (Federal, State, and local), be of reasonable cost, and pertain only to an eligible scope of work. When we asked FEMA officials about this, they emphasized that the subgrantee is responsible for complying with Federal regulations.

Holy Cross officials said that they publicly advertised the project management work for the permanent facility. However, Holy Cross did not consider price as a factor in selecting the successful firm. Holy Cross representatives said they did not know they were required to consider price in awarding the professional service contract for project management. The *FEMA Public Assistance Guide 322* states that only procurement of architectural or engineering services can consider only contractor qualifications.

**Construction Contractor Temporary Campus Work**— Holy Cross awarded seven temporary campus work contracts totaling \$3,947,199<sup>10</sup> to its construction contractor without open and free competition. These contracts also included three prohibited cost-plus-a-percentage-of-cost contracts (see section on Prohibited Contracts, later in this report). Rather than publicly advertise these seven contracts, Holy Cross awarded the work to one preferred construction contractor without open and free competition. This occurred despite the fact that Holy Cross' own procurement policy required it to establish a "competitive environment" for the purchase of goods and services.

Holy Cross representatives said they believed that contracts connected with Category B — Emergency Protective Measures were exempt from the requirement to advertise given the emergency nature of the work. However, as we noted earlier, FEMA's categorization of work as Category B — Emergency Protective Measures has no bearing on whether work is exigent for contracting purposes. We questioned the Category B temporary facility work because Holy Cross' contractor started the work in 2007, nearly 2 years after the disaster occurred; exigent conditions did not exist after Holy Cross reopened its school in the Ninth Ward in January 2006.

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<sup>10</sup> See table 1, lines 2–5.



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**Other Contractors**— Holy Cross awarded six contracts for building contents totaling \$1,920,220 without open and free competition. Holy Cross did not advertise or otherwise publicize its procurements to all potential qualified bidders. Holy Cross also gave unfair competitive advantage to one contractor because Holy Cross allowed the contractor to provide assistance in the design of the specifications for bleachers before it awarded the contract. Federal regulations at 2 CFR 215.43 and 44 CFR 13.36(c)(1) require grant recipients to conduct all procurement transactions in a manner to provide, to the maximum extent practical, open and free competition. **Additionally, Federal regulations at 2 CFR 215.43 state that contractors who develop specifications or statements of work for the specific procurements be excluded from competing for such procurements.**

Holy Cross officials provided us their invitations to bid to a preselected group of vendors as evidence of competition for six of these contracts. Holy Cross officials said the invitations provided evidence of sufficient competition because the Federal regulations did not require them to advertise procurements. Also, Holy Cross officials provided documentation from Louisiana approving the procurement of these six contracts. We asked Louisiana officials how they determined the contracts were competitive. Louisiana officials responded that Holy Cross received quotes from vendors and chose the vendor with the lowest bid and therefore provided adequate competition. However, Louisiana officials incorrectly concluded these actions constituted open and free competition as Holy Cross officials did not provide all prospective bidders an opportunity to bid.

Holy Cross officials contended that they complied with all requirements regarding “open and free competition” in connection with all contracts for permanent work, including the six contracts for the replacement of contents, because obtaining multiple bids from multiple preselected contractors did not restrict competition in any way.

**For one of the six contracts, Holy Cross officials said that Federal regulation did not require them to provide open and free competition because they used an existing state cooperative purchasing contract. FEMA encourages cooperative purchasing. According to Federal regulations at 44 CFR 13.36(b)(5), “to foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.”**

**However, to use a state purchasing contract, Holy Cross would have had to abide by the terms and conditions of the contract, which it did not. Holy Cross did not abide by the terms and conditions because the contract specifically excluded certain equipment that Holy Cross purchased and included a dollar-**



purchasing threshold that Holy Cross exceeded. Therefore, Holy Cross did not procure the purchase properly.

### **Prohibited Contracts**

Holy Cross awarded \$10,638,162 for six contracts using prohibited cost-plus-a-percentage-of-cost and percentage-of-construction-cost contracts.<sup>11</sup> Regulations at 2 CFR 215.44(c) and 44 CFR 13.36(f)(4) clearly prohibit the “cost-plus-a-percentage-of-cost” or “percentage-of-construction-cost” methods of contracting.

Federal regulations at 2 CFR 215.44(c) and 44 CFR 13.36(f)(4) prohibit the use of cost-plus-a-percentage-of-cost contracts and percentage-of-construction-cost because they provide no incentive for contractors to control costs—the more contractors charge, the greater the profit. Additionally the *FEMA 321 Policy Digest* (p. 20) and the *FEMA 322 Public Assistance Guide* (p. 40) state that cost-plus-a-percentage-of-cost contracts are not eligible for FEMA funding.

Holy Cross officials said that FEMA and Louisiana knew about their use of these contracts, yet did not tell them Federal regulations prohibited such contracts. However, FEMA officials told us that they do not provide advice on procurements other than to inform applicants they must follow the regulations. FEMA officials also said it is Holy Cross’ responsibility to follow the regulations. It is Louisiana’s responsibility to monitor its subgrantees to ensure compliance with Federal regulations. Further, as part of the grant award process, Holy Cross officials signed Louisiana documents certifying they were knowledgeable about Public Assistance guidelines including those in 44 CFR.

**Architectural and Engineering Contractor** — Holy Cross awarded a \$5,248,222 prohibited percentage-of-construction-cost contract to its Architectural and Engineering contractor for the design of the permanent school. Holy Cross awarded the contract using 8 percent of total construction cost—the more the building cost, the more the firm could charge.

Holy Cross officials said they publicly advertised the Architectural and Engineering contract for permanent work and ultimately awarded the contract to design the permanent school buildings to the same joint venture Architectural and Engineering firm that had designed some of the temporary facilities. Holy Cross representatives said that the contract used for the permanent work design was a standard American Institute of Architects contract providing for the fee to be calculated based upon a percentage of construction costs. However, regardless of the terms of the standard contract, Federal regulation strictly prohibited percentage-of-construction-cost contracts.

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<sup>11</sup> See table 1, lines 3, 4, 5, 6, 8, and 9.



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Holy Cross representatives said that they were unaware of any regulation restricting the manner in which they could calculate the Architectural and Engineering fee.

**Project Management**— Holy Cross awarded two noncompetitive and prohibited percentage-of-construction-cost contracts totaling \$4,401,255 for project management of a permanent school and temporary campus. These percentage-of-construction-cost contracts consisted of \$4,207,519 for management of permanent construction and \$193,736 for management of temporary campus construction. The fee for these contracts was 6 percent of total construction costs—again, the higher the construction costs, the more the project management stood to gain.

Holy Cross again said that Louisiana and FEMA officials were aware of the manner in which they awarded the fee-based contracts and neither Louisiana nor FEMA advised them of any problem with using a percentage-of-construction-cost. Holy Cross representatives said that they were unaware of any regulation preventing the fee from being based on a percentage of construction costs. They assumed that it was acceptable because that is how FEMA estimated the fee in the project worksheets. However, FEMA develops project worksheets based on estimated building costs, not actual costs, and doing so does not constitute approval or support for using an unallowable method of paying project management costs.

**Construction Contractor**— Holy Cross awarded \$988,685 for three prohibited cost-plus-a-percentage-of-cost contracts to its construction contractor for temporary campus work.<sup>12</sup> Although all three of these contracts are entirely ineligible, we did not question all of the costs because one contract was for exigent work to construct a temporary campus. As we discuss previously, for this \$574,524 exigent contract, we questioned only \$99,144 for improper markups.

### **Other Contracting Problems**

Holy Cross did not comply with other Federal procurement standards in awarding 21 of 23 contracts we reviewed totaling \$84,587,701.<sup>13</sup> Specifically, Holy Cross did not:

- include all the required provisions in 21 contracts;
- make efforts to ensure the use of small businesses, minority-owned firms, and women’s business enterprises to the fullest extent practicable for 20 of the contracts;

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<sup>12</sup> See table 1, lines 3, 4, and 5.

<sup>13</sup> See table 1, Total Net Contract Award Amount minus line 11.



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- perform a cost or price analyses on 13 of the contracts; and
- maintain an adequate contract administration system for 10 temporary campus work contracts.

**Required Provisions** — Holy Cross did not include all required provisions in 21 of its contracts totaling \$84,587,701. Federal regulations set forth the required provisions for contracts and subcontracts, such as Equal Employment Opportunity, compliance with labor laws, and prohibition of “kickbacks.” These provisions document the rights and responsibilities of the parties and minimize the risk of misinterpretations and disputes.

Holy Cross representatives said that they believed the required provisions should only be included in contracts where applicable. For example, Holy Cross representatives correctly pointed out that the *Davis-Bacon Act* is specifically not applicable to Federal Public Assistance grants under the *Robert T. Stafford Disaster Relief and Emergency Assistance Act*, as amended (*Stafford Act*). Furthermore, Holy Cross representatives said that they were unclear whether the provisions were required for non-construction contracts and even if required, failure to include all of the provisions is not a sufficient basis for questioning the costs associated with the contracts. Finally, Holy Cross officials said that even if they made technical mistakes, FEMA essentially waived the requirement by determining that the costs associated with the contracts were eligible.

Holy Cross representatives said that they publically advertised the contract for the permanent construction work and included all applicable provisions of 2 CFR 215 in the contract. Holy Cross representatives provided an excerpt from 1 out of the 21 contracts and said that either they included the required contract provisions or the provisions were not applicable. We disagreed with their assessment of the inclusion of provisions. The contracts did not specifically address certain important provisions, such as the *Contract Work Hours and Safety Standards Act*, the *Copeland Anti-Kickback Act*, *Clean Air Act*, and the *Energy Policy and Conservation Act*. Further, it is important to note that we questioned these contract costs for multiple procurement violations, not solely because of the missing provisions.

**Small and Minority- or Women-Owned Businesses** — Holy Cross did not make positive efforts on 20 contracts totaling \$80,380,182 to ensure the use of small businesses, minority-owned firms, and women’s business enterprises whenever possible.<sup>14</sup> Federal regulations require subgrantees to take specific steps to assure the use of these types of firms whenever possible. The steps include using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce to solicit and use these firms. Holy Cross could only

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<sup>14</sup> See table 1, lines 1, 2, 3, 4, 5, 6, 7, 9, 10, 12, 13, and 14.



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provide documentation to show they made efforts to award contracts to these firms for 3 contracts valued at \$4.6 million out of the 23 contracts we reviewed totaling \$85 million.<sup>15</sup>

**Cost or Price Analysis**— Holy Cross awarded \$81,488,949 for 13 contracts without performing a cost or price analysis in connection with each procurement action.<sup>16</sup> Federal Regulations require some form of cost or price analysis and documentation in the procurement files in connection with every procurement action. The absence of a cost or price analysis increases the risk of unreasonable contract costs and misinterpretations or errors in pricing relative to scopes of work.

Holy Cross officials said that they relied on the cost estimate FEMA prepared before Holy Cross advertised for the construction work. To support this, Holy Cross supplied four cost estimates that FEMA prepared to obligate the Federal funding. However, Holy Cross officials did not provide support for how they used FEMA estimates to assess the reasonableness of the construction cost bids.

**Contract Administration**— Holy Cross awarded \$6,011,509 for 10 contracts without maintaining an adequate contract administration system.<sup>17</sup> This occurred in large part because Holy Cross did not always require written contracts, which typically describe the contract terms, the responsibilities of the parties to the contract, and compensation. Holy Cross could not have properly administered contracts that do not contain expected terms and conditions.

Holy Cross officials did not produce documents showing they adequately monitored the work performed for the 10 contracts. Therefore, they could not support that contractors adequately completed the scopes of work or that they made payments that agreed with contract terms. Federal regulations at 2 CFR 215.47 require a system for contract administration be maintained to ensure contractor conformance with the terms, conditions, and specifications of the contract and to ensure adequate and timely follow up of all purchases. The regulations also require that recipients evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract.

Holy Cross officials said they maintained many contract administration documents, closely monitored projects as to the scope of work and price, and used an Architectural and Engineering and project management firm to administer the work. However, Holy Cross could not produce written contracts

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<sup>15</sup> See table 1, lines 8 and 11.

<sup>16</sup> See table 1, lines 1, 2, 3, 4, 5, 6, 7, 8, 9, and 12.

<sup>17</sup> See table 1, lines 2, 3, 4, 5, 7, 9, and 12.



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for 7 of the 10 contracts or provide documents adequately supporting its contract administration system. Holy Cross could not have adequately administered the contracts without written contracts to define the terms, conditions, and specifications of the agreements.

### **Finding B: Grant Management**

The contracting issues previously presented generally occurred because Louisiana, as the grantee, did not effectively execute its responsibilities under its grant from FEMA to ensure Holy Cross complied with Federal regulations and FEMA guidelines. In its FEMA-State Agreement, Louisiana, as the grantee, agreed to “comply with the requirements of laws and regulations found in the Stafford Act and 44 CFR.” Further, according to 44 CFR 13.37(a)(2), the grantee is required to ensure that subgrantees are aware of requirements Federal regulations imposed on them; and 44 CFR 13.40(a) requires the grantee to manage the day-to-day operations of subgrant activity and monitor subgrant activity to ensure compliance with applicable Federal requirements.

It was Louisiana’s responsibility to ensure Holy Cross complied with applicable Federal regulations and FEMA guidelines. It is FEMA’s responsibility to hold Louisiana accountable for proper grant administration. Therefore, it is critical that Louisiana understand Federal contracting procedures and comply with Federal guidelines, and that FEMA take steps to ensure that this occurs. We are not making any recommendations related to grant management in this report because (1) as a result of our previous audits, FEMA has repeatedly advised Louisiana of its grant management responsibilities; and (2) in the almost 10 years since Hurricane Katrina, Louisiana has made significant progress in educating subgrantees on Federal procurement requirements. Since 2005, FEMA has obligated \$260.3 million for Louisiana to manage this disaster, but we continue to identify subgrantees like Holy Cross that could have benefited from better grant management.

Finally, Louisiana did not execute its responsibility to ensure Holy Cross complied with applicable Federal regulations and FEMA guidelines. In addition, Louisiana did not provide Holy Cross with proper guidance on at least some of the contracts in question.

### **Recommendation**

We recommend that the Regional Administrator, FEMA Region VI, disallow \$82,360,247 as ineligible contract costs, unless FEMA grants an exemption for all or part of the costs as provided for in 2 CFR Part 215.4 (see table 3 in appendix A for breakdown of questioned costs by project).



## **Discussion with Management and Audit Follow-up**

We discussed the results of our audit with Holy Cross officials during and after our audit and included their comments in this report, as appropriate. We also provided a draft report in advance to FEMA, Louisiana, and Holy Cross officials. We considered their comments in developing our final report and incorporated their comments as appropriate.

During our fieldwork, Holy Cross provided written comments on our findings and recommendation in an email. Holy Cross strongly disagreed with our findings and recommendation regarding procurement. We discussed the draft report at exit conferences with FEMA on April 8, 2014, and March 5, 2015, and with Louisiana and Holy Cross officials on July 15, 2014. We have included FEMA Region VI Louisiana Recovery Office report comments in this report. We removed the requested report language addressed in FEMA's comments (see appendix B). FEMA officials generally agreed with our findings and recommendations, pending their review of our supporting documents. Holy Cross Officials disagreed with our findings on procurement and questioned costs. Louisiana officials also generally disagreed with our findings, but withheld specific comments.

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 each recommendation. Also, please include the contact information for 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 [Christopher.Dodd@oig.dhs.gov](mailto:Christopher.Dodd@oig.dhs.gov). Until we receive and evaluate your response, we will consider the recommendation open and unresolved.

Major contributors to this report were Christopher Dodd, Director; Paige Hamrick, Director; Jeffrey Campora, Senior Auditor; and John Polledo, Senior Auditor.

Please call me with any questions at (202) 254-4100, or your staff may contact Christopher Dodd, Director, Central Regional Office - South, at (214) 436-5200.



## Appendix A

### Objective, Scope, and Methodology

Our audit objective was to determine whether Holy Cross (Public Assistance Identification Number 071-U1Z17-00) accounted for and expended Federal Emergency Management Agency (FEMA) grant funds according to Federal regulations and FEMA guidelines for 16 projects—13 large and 3 small projects (FEMA Disaster Number 1603-DR-LA).<sup>18</sup> The audit covered the period August 29, 2005, through September 25, 2012, the cutoff date of our audit. Because of the size of the award and number of projects, we have divided this audit into phases. During the first phase, we reviewed FEMA’s allocation of Holy Cross’ insurance proceeds and the \$52.9 million obtain-and-maintain insurance requirement. During this second phase, we reviewed the methodology Holy Cross officials used to award \$85.0 million in disaster-related contracts. As shown in table 2, Holy Cross’ insurance proceeds as of September 2012 reduced the gross award amount of \$89.3 million to a net award of \$86.6 million. Table 3 describes the nine projects we audited and the amounts we questioned under each project.

**Table 2: Gross and Net Award Amounts**

	<b>Gross Award Amount</b>	<b>Insurance Reductions</b>	<b>Net Award Amount</b>
All Projects	\$89,346,449	(\$2,791,984)	\$86,554,465

Source: FEMA Project Worksheets.

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<sup>18</sup> Federal regulations in effect at the time of Hurricane Katrina set the large project threshold at \$55,500.



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**Table 3: Schedule of Questioned Costs**

Project Number	Category of Work*	Gross Award Amount	Net Award Amount (After Insurance Reduction)	Questioned Costs (Finding A)**
5964	B	\$ 6,322,343	\$ 6,322,343	\$ 3,906,551
12705	B	873,054	739,559	397,674
12753	E	12,650,999	11,597,573	12,650,999
12965	E	14,541,175	14,165,416	14,272,036
13136	E	7,970,166	7,941,101	8,322,552
13237	E	14,018,670	13,811,367	13,784,330
13333	E	26,951,577	26,471,726	26,204,568
18224	E	4,557,192	4,271,966	2,163,175
19251	E	701,016	701,016	658,362
Totals		<u>\$88,586,192</u>	<u>\$86,022,067</u>	<u>\$82,360,247</u>

Source: Project Worksheets, Holy Cross contracts, related contract documentation, OIG analysis.

\* FEMA classifies disaster-related work by type: debris removal (Category A), emergency protective measures (Category B), and permanent work (Categories C through G).

\*\* We questioned the entire amount that Holy Cross awarded to its contractors for eligible disaster work even if FEMA had not yet obligated these costs.

We conducted this performance audit between October 2012 and March 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.

We interviewed FEMA, Louisiana, and Holy Cross officials; gained an understanding of Holy Cross' method of accounting for disaster-related costs; reviewed Holy Cross' procurement policies and procedures and contracting documents; and performed other procedures considered necessary to accomplish our objective. As part of our standard auditing procedures, we notified the Recovery Accountability and Transparency Board of all contracts the subgrantee awarded under the grant to determine whether the contractors



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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 perform a detailed assessment of Holy Cross' internal controls over its grant activities because it was not necessary to accomplish our audit objective.



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**Appendix B**

U.S. Department of Homeland Security  
Louisiana Recovery Office  
1500 Main Street  
Baton Rouge, Louisiana 70802  
(225) 339-6610 office  
(225) 382-0153 fax



**FEMA**

March 13, 2015

MEMORANDUM FOR: Christopher Dodd, Acting Director  
Central Regional Office  
Office of Inspector General  
U.S. Department of Homeland Security

FROM: Thomas M. (Mike) Womack  
Director  
Louisiana Recovery Office

SUBJECT: FEMA Response to DRAFT Audit Report and Exit Conference  
*FEMA Should Disallow \$82.4 Million of Improper Contracting Costs  
Awarded to Holy Cross School, New Orleans, Louisiana*  
FEMA Disaster Number 1603-DR-LA  
DRAFT Audit Report Number OIG-15-XX-D

Digitally signed by Thomas M. Womack  
DN: cn=US, o=U.S. Government, ou=Department  
of Homeland Security, ou=FEMA, email=twomack@fema.dhs.gov,  
c=US, email=twomack@fema.dhs.gov  
Date: 2015.03.12 14:13:50 -0500

On March 5, 2015, the Office of Inspector General (OIG) conducted an **Exit Conference** with the Federal Emergency Management Agency (FEMA) concerning draft Audit Report Number OIG-15-XX-D (Audit Report) titled *"FEMA Should Disallow \$82.4 Million of Improper Contracting Costs Awarded to Holy Cross School, New Orleans, Louisiana."* This memorandum provides FEMA's conditional response to the draft Audit Report's two findings and one recommendation. FEMA requests the OIG include this memorandum as an attachment to the final Audit Report once it is distributed and published on the OIG's website.

**Background:**

On March 5, 2015, the OIG conducted an Exit Conference with FEMA concerning the revised draft Audit Report for Holy Cross School (Holy Cross) dated March 3, 2015. The OIG attributed many of the revisions in the draft Audit Report to **addressing** numerous comments from Holy Cross representatives. Overall, the OIG indicated the direction of the draft Audit Report was similar to the previously provided draft. The OIG stated that the reduction of **approximately \$400,000** in the total questioned costs for the revised draft Audit Report was due to Holy Cross awarding work under existing state contracts.

**OIG Draft Audit Findings and FEMA Responses:**

***Finding A: Improper Contracting –***

The OIG determined Holy Cross did not follow Federal procurement standards in awarding 21 of 23 disaster-related contracts. The Audit Report states that open and free competition did not always



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## Appendix B (Continued)

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occur, which increased the risk of fraud, waste, and abuse and decreased the opportunities for small businesses, minority-owned firms, and women's business enterprises to compete for Federally-funded work. Further, the OIG questions the reasonableness of the costs because competition was inadequate.

Finding A provides the basis of the OIG's sole recommendation to disallow \$82,360,247 as ineligible contract costs. Specifically, the draft Audit Report questions this amount as ineligible contract costs due to three main issues:

- 1.) Inadequate Competition,
- 2.) Prohibited Cost-Plus-Percentage-of-Costs Contracts, and
- 3.) Other Contracting Problems (i.e. Holy Cross failed to include required contract provisions, perform cost or price analysis, or provide documents evidencing a contract administration system).

**FEMA's Response:** FEMA agrees Holy Cross should comply with all Federal, State, and local procurement standards; however, in accordance with 44 C.F.R. §§ 13.22 & 13.52(a)(3), FEMA must perform a cost reasonableness analysis to determine if the claimed costs were reasonable and allowable for the level of effort required to perform the eligible work. Any costs determined unreasonable will be de-obligated from the applicable Project Worksheets (PWs).

During the Exit Conference on March 5, 2015, FEMA mentioned concerns with some of the language in Finding A of the draft Audit Report. Specifically, the draft Audit Report states that FEMA headquarters should explore providing disincentives or other negative consequences to applicants that do not follow procurement regulations.<sup>1</sup> Since the OIG directs the draft Audit Report to FEMA Region VI, the objectives and goals should be attainable for FEMA Region VI. FEMA recommends the deletion of this section of the audit report as FEMA Region VI does not have unilateral authority to develop and implement the suggested disincentives or other negative consequences suggested on behalf of the Agency. The OIG stated it would follow-up with its internal management regarding the inclusion of this language in the final Audit Report.

### ***Finding B: Grant Management –***

The OIG determined the contracting issues presented in Finding A generally occurred because the Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP), the grantee, did not effectively execute its responsibilities to ensure Holy Cross complied with Federal regulations and FEMA guidelines. Finding B did not result in a specific audit recommendation as the OIG recognized: 1) FEMA's past efforts to advise GOHSEP of its grant management responsibilities, and 2) GOHSEP's significant progress in educating sub-grantees on Federal procurement requirements.

**FEMA's Response:** FEMA agrees in part with this Finding and recognizes GOHSEP's efforts to ensure sub-grantees comply with all applicable Federal grant requirements, including procurement standards.

<sup>1</sup> See Draft Audit Report Number OIG-15-XX-D, dated March 3, 2015, p. 8.



## Appendix B (Continued)

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While Finding B did not result in an audit recommendation, FEMA again expressed concerns with some of the language in the finding. Specifically, the draft Audit Report states that GOHSEP did not provide Holy Cross with proper guidance on at least some of the contracts in question. Therefore, the OIG believes FEMA should consider asking GOHSEP to absorb some of the questioned costs to hold it accountable for its responsibilities as the grantee.

FEMA is not aware of any legal authority or specific Agency policy, and the OIG did not reference any such authority, requiring grantees to absorb costs for inadequately performing grant management responsibilities. Specifically, 44 C.F.R. Part 13, Subpart D, references later disallowances and adjustments to a grantee "in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award..." but provides no authority for FEMA to apply punitive costs to the grantee for alleged deficient grant management responsibilities.<sup>2</sup> This language in the draft Audit Report appears directed towards FEMA headquarters and not an obtainable goal for FEMA Region VI. FEMA recommends the deletion of this section of the audit report as FEMA Region VI does not have unilateral authority to develop and implement the suggested punitive costs onto the grantee under existing law, regulation, and policy. The OIG stated it would follow-up with its internal management regarding the inclusion of this language in the final Audit Report.

### **OIG Audit Recommendation and FEMA Response:**

***OIG Recommendation:*** We recommend that the Regional Administrator, FEMA Region VI, disallow \$82,360,247 as ineligible contract costs, unless FEMA grants an exemption for all or part of the costs as provided for in 2 CFR Part 215.4 (see table 3 in appendix A for breakdown of questioned costs by project).

***FEMA's Response:*** As stated above for Finding A, FEMA agrees Holy Cross should comply with all Federal, State, and local procurement standards; however, FEMA must perform cost reasonableness studies to determine if the claimed costs were reasonable for the level of effort required to perform the eligible work.

During the Exit Conference on March 5, 2015, FEMA expressed its desire to fully resolve and close the final Audit Report in a timely manner. FEMA acknowledged Holy Cross was an eligible sub-grantee performing eligible work to eligible disaster-damaged facilities. In fact, the draft Audit Report only focuses on the eligibility of the questioned contract costs. Accordingly, FEMA asked the OIG if cost reasonableness studies would be an acceptable approach to addressing this recommendation. The OIG stated this would be an acceptable method as long as FEMA provided sufficient documentation to support its determinations. The OIG acknowledged that only FEMA could determine cost reasonableness. FEMA will perform a cost reasonableness analysis and de-obligate any costs determined unreasonable from the applicable PWs.

### **Other Issues:**

The draft Audit Report states the OIG notified the Recovery Accountability and Transparency Board (RATB) of all contracts Holy Cross awarded under the grant to determine whether the

<sup>2</sup> See 44 C.F.R. § 13.52



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## Appendix B (Continued)

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contractors were debarred or whether there were any indications of other issues related to those contractors that would indicate fraud, waste, or abuse.<sup>3</sup> FEMA requested the OIG provide a copy of the transmittal documentation to the RATB and any response the OIG may have received from the RATB. The OIG stated it would follow-up with its internal management about providing this documentation to FEMA. FEMA reiterates its request for this information is necessary in order to develop a comprehensive final Agency termination.

**Conclusion:**

At the conclusion of the Exit Conference on March 5, 2015, FEMA requested the OIG provide copies of all source documentation upon issuing the final Audit Report. FEMA will submit its corrective action plan response to the OIG within 90 days of receiving the final Audit Report.

If you have any questions concerning this response, please contact Kent Baxter, Audit Coordinator and Management Analyst at (940) 898-5330.

cc: George A. Robinson, Regional Administrator, FEMA Region VI  
Kevin Davis, Director, GOHSEP  
Mark Riley, Deputy Director of Disaster Recovery Division, GOHSEP  
Mark DeBosier, Assistant Deputy Director, Public Assistance, GOHSEP  
Bernard Plaia, Attorney, GOHSEP  
R. Kent Baxter, Management Analyst, Office of the Regional Administrator  
Kathy Hill, Risk Management (HQ-OCFO)  
Gary McKeon, Audit Liaison (IIQ-OPPA)

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<sup>3</sup> *Id.* p. 20.



## **Appendix C**

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## **Appendix C (Continued)**

### **External**

Director, Louisiana Governor's Office of Homeland Security  
and Emergency Preparedness

Deputy Director of Disaster Recovery Division, Governor's Office of Homeland  
Security and Emergency Preparedness

State Coordinating Officer, Governor's Office of Homeland Security and  
Emergency Preparedness

Louisiana Legislative Auditor

Headmaster, Holy Cross School

Chief Financial Officer, Holy Cross School

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