

DEPARTMENT OF HOMELAND SECURITY
Office of Inspector General

University of Texas Health Science
Center, Houston, Texas

FEMA Disaster Number DR-1379-TX



Central Regional Office
Office of Disaster Assistance Oversight

DD-07-01

October 2006



Homeland
Security

October 17, 2006

MEMORANDUM FOR: William E. Peterson, Director
FEMA Region VI

Tonda L. Hadley

FROM: Tonda L. Hadley, Director
Central Regional Office

SUBJECT: *University of Texas Health Science Center, Houston, Texas*
FEMA Disaster Number DR-1379-TX
Public Assistance Identification Number 000-UAA9T-00
Audit Report Number DD-07-01

The Office of Inspector General (OIG) audited public assistance funds awarded to the University of Texas Health Science Center (UTHSC), Houston, Texas. Our audit objective was to determine whether UTHSC accounted for and expended Federal Emergency Management Directorate (FEMA) funds according to federal regulations and FEMA guidelines.

UTHSC received an award of \$39.4 million from the Texas Governor's Division of Emergency Management (GDEM), a FEMA grantee, for damages caused by Tropical Storm Allison beginning on June 5, 2001. Tropical Storm Allison produced severe flooding, causing physical damage and failure of utilities at the University of Texas Medical School Complex. The award provided 75 percent FEMA funding, for 30 large projects and 42 small projects.¹ The audit covered the period June 5, 2001, to June 7, 2005, during which GDEM awarded UTHSC \$39.4 million and disbursed \$23.5 million² for direct program costs. We audited 4 large projects and 2 small projects totaling \$12.7 million or 32 percent of the total award (see Exhibit). As of the date of this report, FEMA had not closed all of the UTHSC projects, including one project in our scope of review; therefore, some of the data in this report is subject to change after the final closeout.

We performed the audit under the authority of the Inspector General Act of 1978, as amended, and according to generally accepted government auditing standards. The audit included interviews of UTHSC, GDEM, and FEMA Region VI officials; reviews of UTHSC's contract files; tests of UTHSC's accounting records; judgmental samples generally based on dollar values of project expenditures; and other auditing procedures considered necessary to accomplish the audit objective.

¹ Federal regulations in effect at the time of the disaster set the large project threshold at \$50,600.

² The \$39.4 million awarded is based on June 7, 2005, National Emergency Management Information System data, whereas the \$23.5 million of direct program costs is based on data obtained from GDEM on May 23, 2005.

We did not assess the adequacy of UTHSC's internal controls applicable to its grant activities because it was not necessary to accomplish our audit objective. We did, however, gain an understanding of UTHSC's grant accounting system used to account for disaster-related costs and its procurement policies and procedures.

RESULTS OF AUDIT

UTHSC did not account for and expend all FEMA funds according to federal regulations and FEMA guidelines. UTHSC's claim included \$1,903,825 (FEMA share \$1,427,869) in questioned costs, consisting of \$1,268,303 in ineligible contractor costs and \$635,522 in unsupported contractor costs. In addition, UTHSC did not follow all federal procurement standards or FEMA guidelines in awarding contracts totaling \$14,553,491. However we did not question costs based solely on noncompliance with federal procurement standards because the procurements occurred under exigent circumstances.

Finding A: Ineligible Contractor Costs

UTHSC claimed \$1,268,303 in ineligible contractor costs, made up of the following:

- \$1,090,345 in unallowable contractor markups on Projects 1885 (\$659,950) and 1886 (\$430,395). Markups on Project 1885 ranged from 10 percent to 17 percent on contractor and sub-contractor billings for labor, equipment and various expense items. Markups on Project 1886 ranged from 6 percent to 10 percent for labor, materials, and equipment. The markups on these projects resulted from the use of cost-plus-a-percentage-of-cost contract provisions, which are prohibited by 44 CFR 13.36(f)(4).
- \$164,337 in contract labor costs on Project 1886 charged at rates that exceeded agreed-upon contract rates and labor costs inappropriately claimed as overtime.
- \$6,871 in duplicate charges on Project 1886. UTHSC claimed duplicate costs for sub-contractor labor, equipment, and material.
- \$5,000 in equipment stand-by costs on Project 1658. According to FEMA Publication 321, *Public Assistance Policy Digest*, equipment rates are applied only to the time equipment is actually working. Standby time and idle time are not eligible.
- \$1,750 in contractor freight charges on Project 1658 that exceeded the not-to-exceed ceiling price for freight on the contract.

Recommendation

We recommend that the Regional Director, FEMA Region VI:

1. Disallow \$1,268,303 in ineligible contractor costs on Projects 1885 (\$659,950), 1886 (\$601,603), and 1658 (\$6,750).

Finding B: Unsupported Contractor Costs

UTHSC claimed \$635,522 in unsupported contract costs that consisted of the following:

- \$624,190 in unsupported contract labor, equipment, and material costs on Project 1886. UTHSC did not provide payroll records to support claimed contract labor costs and did not provide invoices for material and equipment charges.
- \$3,120 in contractor costs on Project 1658 not supported by invoices.
- \$8,212 in unsupported costs for Projects 1658 and 2384 that exceeded supported claimed costs. The amount FEMA awarded for Project 1658 exceeded UTHSC's claimed costs by \$7,712. Similarly, the amount FEMA awarded for Project 2384 exceeded UTHSC's claimed costs by \$500. FEMA closed these projects without adjusting the final award amount to match the final claimed amount.

According to 44 CFR 13.20(b)(2) and (6), grantees and subgrantees must maintain accounting records that adequately identify the source and application of federal funds and those accounting records must be supported by source documentation such as cancelled checks, paid bills, time and attendance records, and payroll records. UTHSC did not provide sufficient records to document the above-referenced costs and in two instances FEMA did not adjust the final award to match claimed amounts.

Recommendation

We recommend that the Regional Director, FEMA Region VI:

2. Disallow \$ 635,522 in unsupported contractor costs on Projects 1886 (\$624,190), 1658 (\$10,832), and 2384 (\$500).

Finding C: Unallowable Contract Procedures

UTHSC did not follow all federal procurement standards or FEMA guidelines in awarding contracts totaling \$14,553,491. As a result, FEMA did not have adequate assurance that contract costs claimed were reasonable. We reviewed six contracts totaling \$16,262,616. Of the six, five did not meet one or more required federal procurement standards. UTHSC awarded time and material contracts without competition; however, 44 CFR 13.36(d)(4)(i)(B) allows for noncompetitive procurement under certain circumstances, one being when the public exigency or emergency exists. We did not question the noncompetitive contract costs because exigent circumstances existed at the time of award. However, federal regulations and FEMA guidelines mandate that UTHSC use sound procurement practices to contain costs even under exigent circumstances. UTHSC did not take the following actions, resulting in violations of the indicated federal procurement standards:

- Prohibit cost-plus-a-percentage-of-cost provisions in contracts (44 CFR 13.36(f)(4)).
- Analyze proposed contract price or cost (44 CFR 13.36(f)(1)).
- Negotiate profit as a separate element of cost (44 CFR 13.36 (f)(2)).

Under 44 CFR 13.43(a)(2), failure to comply with applicable statutes or regulations can result in the disallowance of all or part of the costs of the activity or action not in compliance. Because UTHSC did not follow federal regulations and FEMA guidelines, FEMA had the authority to disallow all of the \$14,552,854 claimed costs. We did not question total costs based solely on noncompliance with procurement standards because the work was necessary as a result of the disaster. However, as discussed in Findings A and B, we questioned contract costs that were ineligible and unsupported.

UTHSC's lack of compliance with federal procurement standards indicates that GDEM did not adequately monitor UTHSC's activities under the subgrant. According to 44 CFR 13.40(a), grantees are to monitor subgrant supported activities to assure compliance with applicable federal regulations.

Recommendation

We recommend that the Regional Director, FEMA Region VI:

3. Require the Governor's Division of Emergency Management to monitor subgrantees to ensure compliance with applicable federal regulations, standards, and guidelines related to procurement.

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOW-UP

We discussed the results of the audit with FEMA officials on August 30, 2006, GDEM officials on September 13, 2006, and UTHSC officials on September 14, 2006. UTHSC agreed with Finding A, but did not agree with the recommendation to disallow contractor markups totaling \$1,090,345. They withheld comments on Finding B, stating that they would search for additional documentation related to the costs questioned as unsupported; and they agreed with Finding C.

Please advise this office by January 17, 2007, of the actions taken or planned to implement the recommendations, including target completion dates for any planned actions. Should you have any questions concerning this report, please call me, or your staff may contact Paige Hamrick at (940) 891-8900.

EXHIBIT

**Schedule of Audited Projects
University of Texas Health Science Center, Houston, Texas
FEMA Disaster Number DR-1379- TX**

| <u>Project</u> | <u>Category</u> | <u>Description of Work</u> | <u>Amount Claimed</u> | <u>Insurance Applied</u> | <u>Amount Awarded</u> | <u>Ineligible Contractor Costs Questioned</u> | <u>Unsupported Contractor Costs Questioned</u> | <u>Total Questioned Costs</u> |
|----------------|-----------------|--|-----------------------|--------------------------|-----------------------|---|--|-------------------------------|
| 1886 | B | Temporary relocation of Gross Anatomy Labs | \$4,592,973 | \$3,570,358 | \$ 912,587 | \$601,603 | \$624,190 | \$1,225,793 |
| 1885 | B | Initial cleanup and demolition of UTHSC buildings | 4,663,898 | 0 | 4,663,898 | 659,950 | 0 | 659,950 |
| 1658 | B | Temporary air conditioning units to cool, heat, and humidify buildings | 5,352,106 | 0 | 5,359,818 | 6,750 | 10,832 | 17,582 |
| 2384 | E | Replacement of TOFPET ³ scanner | 1,709,125 | 0 | 1,709,625 | 0 | 500 | 500 |
| 2129 | B | Disposal of hazardous waste | 36,017 | 0 | 36,017 | 0 | 0 | 0 |
| 1235 | A | Removal of perished research animals | 9,507 | 0 | 9,507 | 0 | 0 | 0 |
| Totals | | | <u>\$16,363,626</u> | <u>\$3,570,358</u> | <u>\$12,691,452</u> | <u>\$1,268,303</u> | <u>\$635,522</u> | <u>\$1,903,825</u> |

³ Time of Flight Positron Emission Tomography (TOFPET)