DEPARTMENT OF HOMELAND SECURITY

# Office of Inspector General

## FEMA's Award of 36 Trailer Maintenance and Deactivation Contracts

OIG-07-36

March 2007

*Office of Inspector General*

**U.S. Department of Homeland Security**
Washington, DC 20528

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Homeland Security

MEMORANDUM FOR: Deidre Lee
Director of Management and Chief Acquisition Officer
Federal Emergency Management Agency

FROM: Matt Jadacki
Deputy Inspector General
Office of Disaster Assistance Oversight

SUBJECT: *FEMA's Award of 36 Trailer Maintenance and Deactivation Contracts*
OIG-07-36

At the request of Senators Byron L. Dorgan and Mary L. Landrieu, we reviewed FEMA's award of 36 contracts worth $3.6 billion for the maintenance and deactivation of travel trailers and manufactured housing needed after Hurricanes Katrina and Rita. The Senators' letter asked us to investigate the bid process, order a halt to the destruction of bid material, and address several concerns raised by witnesses who testified before the Senate Democratic Policy Committee on May 19, 2006.

Our review focused on determining the overall fairness of the bid process and addressing the specific concerns raised in the Senators' letter. We conducted this review under the authority of the Inspector General Act of 1978, as amended, and according to Quality Standards for Inspections issued by the President's Council on Integrity and Efficiency. Our review included interviews with FEMA officials, review of contract solicitation and award documentation, and other procedures considered necessary under the circumstances. We did not interview the bidders during our review.

## Background

Hurricanes Katrina and Rita caused catastrophic damage to Louisiana, Mississippi, Alabama, and Texas, displacing more than 700,000 people and leaving many homeless. These hurricanes caused significant wind and rain damage, extensive storm surge flooding, and failure of the New Orleans levee system. As a result, available housing in the region was severely reduced.

FEMA responded by providing evacuees over 100,000 travel trailers and manufactured housing units. To install, maintain and deactivate these housing units, FEMA awarded four large technical assistance contracts on a non-competitive basis to CH2M Hill, Fluor Corporation, Shaw Group, and Bechtel. FEMA awarded these contracts non-competitively because the urgency and magnitude of the disasters required immediate action. In the months following the disasters, FEMA contracting officials worked to solicit and award new contracts designed to provide competition and contracting opportunities to small and disadvantaged local businesses.

FEMA awarded these 36 contracts based on eight separate solicitations; two in each of the four states. Upon award, FEMA assigned each of these 36 contractors to specific geographic regions within the hurricane-impacted states.

## RESULTS OF REVIEW

Overall, FEMA contracting officials treated bidders fairly during the bid process. However, to fully realize its goal of maximizing local participation, they should have established better criteria for determining whether a bidder was a local firm. They also should have analyzed prices more thoroughly before awarding the contracts to ensure that costs were reasonable.

The Senators ask us to provide answers related to the following topics:

- Destruction of bidding material
- Information provided to bidders
- Wide range of cost estimates among winning bidders
- Qualifications of winning bidders
- Public availability of winning bids and post-award meetings
- Adequacy of services provided to travel trailer residents
- Award of four $100 million contracts to a joint venture

We address each of these concerns below.

## Destruction of Bidding Materials

FEMA officials did not destroy, or plan to destroy, original bidding materials. The letter sent to unsuccessful bidders said that FEMA will "destroy any *excess* (emphasis added) proposal documents that were submitted by your firm." This wording led bidders to believe that FEMA planned to destroy important proposal information. However, the Contracting Officer told us that FEMA planned to destroy only excess copies, not original documents. To confirm this, we verified that FEMA retained original proposal documents.

## Information Provided to Bidders

One of the concerns raised in the Senators' letter was that "apparently inconsistent information [was] provided to bidders with regard to the contract's requirements." This concern is unfounded. We interviewed contracting officials and reviewed solicitations, amendments, statements of work, meeting transcripts, and correspondence related to the contract awards. FEMA contracting officials provided consistent information to all bidders and shared this information with all prospective contractors.

Some witnesses testified before the Senate Democratic Policy Committee that FEMA provided inconsistent information to prospective bidders. For example, witnesses said FEMA provided inconsistent information within the solicitations regarding the number of trailers assigned to each contractor and amount of funding available. According to meeting transcripts, FEMA contracting officials provided adequate clarification on these items during the question and answer period of bidder conferences.

## Wide Range of Cost Estimates Among Winning Bidders

Prices did vary widely among the 36 winning price proposals. Some contracts included unrealistically low overall prices. Still others included both unreasonably high prices and unrealistically low prices on individual contract line items–a condition known as unbalanced pricing.

A bid is materially unbalanced if it is mathematically unbalanced and one of the following is true:

- There is reasonable doubt that the lowest evaluated bid will actually result in the lowest cost to the Government.
- The offer is so grossly unbalanced that its acceptance would be tantamount to allowing an advanced payment.

A bid is mathematically unbalanced if it is based on prices that are significantly less than the cost for some line items and significantly more than cost for other line items. Contracting officers should reject bids if they determine that the lack of balance poses an unacceptable risk to the Government. Such bids are generally described as materially unbalanced.

Federal Acquisition Regulations (FAR) recognize that unbalanced pricing increases performance risk and may result in unreasonably high prices, especially when, as in the case of some of these contracts, up-front costs appear grossly unbalanced (FAR 15.404-1(g)). For example, some contractors bid nothing for phase-in costs during the first 30 days of performance, while ten contractors bid $1 million to $5 million for the same phase-in work. FEMA estimated phase-in costs at $75,000, or $2.7 million for all 36 contracts, yet paid 14 of the 36 contractors over $500,000 each–a total first month's payment exceeding $20 million for these 14 contracts. Other examples of wide price variations include the following:

- One winning contractor bid a total price of $86 million covering 5 years, while another bid $299 million to perform the same work over the same period–a $213 million difference. FEMA estimated that these services should cost $309 million.

- FEMA accepted one contractor's bid of $24 per trailer to perform monthly inspection and maintenance–a price too low to be realistic.[1] FEMA estimated this service should cost $295 per trailer.

- FEMA accepted bids as low as $74 and as high as $4,720 to completely refurbish used travel trailers (restoring trailers to "like new" condition). FEMA estimated this service should cost $1,380 per trailer.

- FEMA accepted bids for travel trailer deactivation as low as $200 and as high as $5,250, or five times FEMA's cost estimate of $1,021.

Exhibit 1 is a detailed analysis of price variations among the 36 winning bidders. Based on our analysis, we concluded that FEMA contracting officials exposed the agency to an unacceptable level of risk.

FEMA contracting officials generally disagreed with our conclusion. While acknowledging the risks inherent in the wide price variation and high up-front payments, they said that they properly assessed the prices and their actions did not present unacceptable risks. They also said that, over time, lower contract line-item prices would offset higher line-item prices and they plan to issue additional task orders on lower priced items to offset the higher up-front payments. FEMA contracting officials were also concerned that some bids appeared too low to be realistic and suspected bidders may have made mistakes setting prices. To resolve potential mistakes before the awards, contracting officials properly contacted the lowest bidders, called attention to the low prices, and asked bidders to either confirm or withdraw their bids; all bidders confirmed their bids.

## Qualifications of Winning Bidders

The Senators' letter raised "allegations that several winning bidders [may have] lacked stated qualifications." We saw no evidence that winning bidders lacked the technical qualifications presented in their proposals. We reviewed the technical proposals of all 36 winning bidders. We also reviewed an analysis of bidder qualifications by FEMA's Source Evaluation Board and discussed bidder qualifications with FEMA contracting and program personnel, who said they were not aware of winning bidders lacking stated qualifications.

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[1] Throughout this report, per unit prices are average prices over the 5-year term of the contracts.

However, in analyzing contract prices, we determined that FEMA contracting officials accepted unrealistically low prices without properly assessing whether contractors had sufficient financial strength to perform these tasks at little or no profit. Examples of unrealistically low prices are presented in Table 2 of Exhibit 1. Although unreasonably high prices are obviously undesirable, in cases where contracts include unrealistically low prices, the government may experience an unacceptable risk of poor performance. To protect the government, contracting officials are required to assess whether contractors are sufficiently responsible to perform the work at the prices offered (FAR 9.103 (b) and 15.404-1 (d)).

FEMA determined that all 36 contractors were responsible to perform under these contracts. However, we identified bidders posing significant financial risk, including bidders with weak financial statements, incomplete and missing financial documentation, and negative net worth. The Defense Contract Audit Agency (DCAA) assisted FEMA officials in determining financial responsibility by assessing bidder financial statements. However, DCAA did not complete financial assessments on 3 of the 36 bidders and determined that 3 others bidders presented high financial risks. FEMA allowed these contracts to go forward, in part because FEMA officials believed that the contract's low minimum purchase requirement of $50,000 protected FEMA from contractor default or poor performance.

FEMA officials disagreed with our determinations, saying that their assessments were proper because they were based on DCAA's financial assessments combined with an assessment of each contractor's past performance. FEMA officials also emphasized that the FAR does not prohibit the government from awarding contracts at below market rates as long as FEMA determines the contractor responsible to perform the contract.

## Public Availability of Winning Bids and Post-Award Meetings

Another concern raised in the Senators' letter was "FEMA's failure to make winning bids publicly available, or to hold post-award meetings for losing bidders." FEMA did make the overall winning offers publicly available, but did not hold post-award meetings with unsuccessful bidders. However, FAR does not require federal agencies to hold face-to-face post-award meetings (FAR 15.506(b)). Instead, the Contracting Officer provided unsuccessful bidders with written debriefings, but the written debriefings did not include unit prices, as required (FAR 15.506(d)(2)).

The Contracting Specialist assigned to this procurement said that she and the Contracting Officer decided not to disclose unit prices as part of the debriefing process because it would have been administratively burdensome in light of the heavy post-Katrina workload. She also said that she would have provided the unit prices to unsuccessful bidders, if requested, but she received no formal requests for such information. FAR does not provide exceptions to disclosure of unit pricing in post award debriefings.

## Adequacy of Services Provided to Travel Trailer Residents

The Senators were also concerned about "early indications that the winning bidders may provide inadequate services to trailer residents." We saw no evidence of such indications after interviewing FEMA contracting and program officials and reviewing correspondence and other program documentation. However, at the time of our fieldwork, FEMA officials had not implemented the contracts' monitoring program to assess contractor performance, but told us they are working with contractors to implement this monitoring program as soon as possible.

## Award of Four $100 Million Contracts to a Joint Venture

The final concern raised in the Senators' letter was "the award of no fewer than four $100 million contracts to a joint venture that failed to identify itself as a small business in its central contractor registration and that includes a San Diego-based business and wholly-owned subsidiary of the Fluor corporation." FEMA contracting officials adhered to solicitation requirements in awarding the four $100 million contracts to the Project Resources, Inc. /Del-Jen, Inc. joint venture. Del-Jen Inc., as a large business and subsidiary of Fluor Corporation, would normally be excluded from competing for these small business set-aside contracts. However, under the Small Business Administration's 8(a) Business Development Mentor-Protégé Program (13 CFR 124.520(a)), Del-Jen, Inc. is the approved large business "Mentor" of Project Resources, Inc. as the small business "Protégé."

Therefore, the joint venture was eligible to compete in these solicitations as a small business. This joint venture won contracts as both a small business and a disadvantaged 8(a) business in both Louisiana and Mississippi for a total of four $100 million awards. Finally, although Project Resources, Inc. did not properly register as a small business in the Central Contractor Registration, the company corrected this error.[2]

However, the joint venture received FEMA's 30% local business price preference when neither company had its headquarters in Louisiana or Mississippi nor, in any other way, demonstrated that it had a history of working primarily in the impacted states. This occurred because FEMA did not effectively design the solicitations to provide preference to those businesses "residing or doing business primarily" in the disaster-impacted areas, as required by the Stafford Act. It is important to note that the bids provided by this joint venture were so low that the joint venture would have been a successful bidder without the 30% local price preference.

FEMA weakened the Stafford Act requirement in the solicitations by substituting "regularly" for "primarily" doing business and by accepting inconclusive proof to support

[2] Central Contractor Registration refers to the government repository for contractor information required for doing business with the federal government.

that a business resided, or did business primarily, in the disaster-impacted states.[3] As proof of local status, FEMA required bidders to submit a copy of a business license–in essence, only requiring that a company show it was authorized to do business in the state. As a result, any bidder that could provide a government-issued document that it had performed business in the state was considered local for the purpose of these solicitations and enjoyed the 30% price preference.

According to the Contract Specialist, FEMA had no formal criteria for determining whether a contractor should be considered local. However, contracting officials should have required other corroborating information to properly achieve Stafford Act goals. To address this issue, in mid-2006 after FEMA awarded these contracts, the General Services Administration amended the FAR with an interim rule (FAR Subpart 26.2) that provides guidance to contracting officials on how to determine whether a business is local. This solicitation provision (FAR 52.226-3) includes a list of factors to consider in determining whether a firm resides or primarily does business in a disaster-impacted area and should check this problem in the future.

## CONCLUSION AND RECOMMENDATIONS

Overall, FEMA treated bidders fairly during the bidding process. However, contracting officials did not properly assess the wide range of prices proposed by bidders and thereby exposed FEMA to both the risk of paying too much for contract line items as well as not paying enough to ensure proper performance. In addition, FEMA officials did not design the solicitation to maximize preference to local businesses. Finally, FEMA officials did not promote openness during post award debriefings because they did not provide unsuccessful bidders with line-item prices.

In June 2006, the Department of Homeland Security's Chief Procurement Officer reported problems with this procurement and recommended that FEMA program and contracting staff attend additional training in processing contracting actions. We concur with this recommendation and recommend that FEMA's Chief Procurement Officer also issue guidance to contracting staff to:

1. Emphasize the importance of assessing price reasonableness and price realism before awarding contracts.

2. Develop written guidance for the implementation of the new statutory provision and interim rule to ensure FEMA contracting officers properly determine whether a business is local (FAR Subpart 26-2).

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[3] Congress substituted a new provision on use of local firms and individuals in Section 694 of the Department of Homeland Security Appropriations Act, 2007 (P.L. 109-295), enacted October 4, 2006. This provision did not change the essence of the local business preference but added implementation requirements.

3. Reinforce the FAR requirement to disclose unit prices as part of post award debriefings.

## DISCUSSION WITH MANAGEMENT AND FOLLOW-UP

We discussed the results of our review with FEMA contracting officials on December 5, 2006. They generally agreed with our findings, but disagreed that they did not properly consider the risks posed by the wide range of prices. Please advise this office within 30 days of the actions taken or planned to implement our recommendations, including target completion dates for any planned actions.

Should you have questions concerning this report, please call me at (202) 254-4100 or Dennis White, Assistant Deputy Inspector General, at (202) 254-4157.

cc: Audit Liaison, DHS
Audit Liaison, FEMA
Deputy Director, Gulf Coast Recovery
Chief Financial Director, Gulf Coast Recovery

**EXHIBIT 1**

## OIG Analysis of Price Proposals

We reviewed the price proposals of the 36 winning bidders. Bidders offered prices on a per housing-unit basis. To determine total proposal price, FEMA multiplied the unit amounts by a predetermined number of housing units. Our analysis includes comparisons of the range of prices for all four states (Table 1) and a more detailed schedule of prices for Louisiana and Mississippi, the two most severely impacted states (Table 2).

**Table 1: Contract Awards Statistics**

| | Total Proposal | 30-Day Phase-in | Travel Trailer Maintenance | Travel Trailer Refurbishment | Travel Trailer Deactivation | Emergency Maintenance |
|---|---|---|---|---|---|---|
| Louisiana & Mississippi (25 Contract Awards): | | | | | | |
| High | $299,367,647 | $4,898,667 | $265 | $4,720 | $5,250 | $495 |
| Low | 85,851,180 | 0 | 24 | 74 | 200 | 50 |
| Alabama (6 Contract Awards): | | | | | | |
| High | 40,993,674 | 348,490 | 294 | 4,625 | 1,555 | 307 |
| Low | 26,153,456 | 0 | 189 | 791 | 766 | 189 |
| Texas (5 Contract Awards): | | | | | | |
| High | 34,192,078 | 150,000 | 208 | 3,045 | 1,700 | 312 |
| Low | 27,208,600 | 0 | 141 | 250 | 260 | 65 |
| Overall (36 Contract Awards): | | | | | | |
| | High | 4,898,667 | 294 | 4,720 | 5,250 | 495 |
| | Low | 0 | 24 | 74 | 200 | 50 |
| | Median | 284,325 | 169 | 839 | 819 | 179 |
| | | | | | | |
| **FEMA Estimate** | | **$75,000** | **$295** | **$1,380** | **$1,021** | **$267** |

The following briefly describes each task reviewed in this report:

- "Phase-in" represents the total price for the bidder to meet work requirements necessary to accept over 1,000 units within 30 days. This task represented only 0.2% of total estimated contract price.
- "Maintenance" represents the per unit price to perform monthly maintenance inspections and resolve maintenance issues. The bidder must also pay the first $250 of material costs. These tasks (for both mobile homes and travel trailers) represent 77% of the estimated total contract price.
- "Refurbishment" represents the unit price to restore the unit to "like new" condition, including replacement of broken or faulty equipment. This task represents 3% of total estimated contract price.
- "Deactivation" represents the per unit price to perform site and unit preparation, remove and transport to the designated area (up to 150 miles), and return site to pre-placement condition. This task represents 2% of total estimated contract price.
- "Emergency Maintenance" represents the per unit price to perform repairs needed to eliminate health, safety, or security hazards within six hours of receipt (7 days a

week) on an emergency request basis. This task represents 5% of total estimated contract price.

FEMA used the following standard housing unit quantities (based on anticipated needs over 5 years) to calculate total proposal costs:

- Louisiana and Mississippi 25 contracts – 6,700 housing units, estimated total cost per contract of $309 million;
- Alabama 6 contracts – 800 housing units, estimated total cost per contract of $37 million; and
- Texas 5 contracts – 1,000 housing units, estimated total cost per contract of $46 million.

EXHIBIT 2

**Table 2: Louisiana and Mississippi Contract Awards – 25 Contracts**

| Bidder | Total Proposal | 30-Day Phase-In | Travel Trailer Maintenance | Travel Trailer Refurbishment | Travel Trailer Deactivation | Emergency Maintenance |
|---|---|---|---|---|---|---|
| | | | | | | |
| A | 85,851,180 | 122,000 | 64 | 500 | 200 | 65 |
| B | 89,856,470 | 250,000 | 58 | 74 | 690 | 73 |
| C | 89,959,952 | 85,000 | 69 | 269 | 700 | 108 |
| √ D | 94,989,890 | 620,695 | 51 | 485 | 1,062 | 195 |
| √ E | 102,743,945 | 4,898,667 | 24 | 541 | 1,359 | 187 |
| √ F | 174,429,966 | 1,130,814 | 163 | 581 | 248 | 176 |
| √ G | 174,429,966 | 1,130,814 | 163 | 581 | 248 | 176 |
| √ H | 177,312,545 | 1,140,156 | 165 | 597 | 242 | 179 |
| √ I | 177,312,545 | 1,140,156 | 165 | 597 | 242 | 179 |
| √ J | 179,178,747 | 1,232,010 | 166 | 596 | 249 | 175 |
| √ K | 180,841,127 | 1,251,515 | 168 | 601 | 251 | 177 |
| L | 184,128,937 | 100 | 170 | 800 | 500 | 190 |
| M | 197,441,925 | 0 | 185 | 380 | 1,200 | 125 |
| N | 197,513,516 | 23,220 | 167 | 1,979 | 665 | 125 |
| O | 211,453,975 | 275,000 | 148 | 1,970 | 2,356 | 284 |
| √ P | 230,025,277 | 786,797 | 186 | 1,992 | 1,032 | 392 |
| √ Q | 230,386,189 | 624,412 | 196 | 1,246 | 926 | 220 |
| √ R | 245,147,812 | 743,202 | 197 | 743 | 745 | 433 |
| S | 253,597,609 | 293,650 | 205 | 3,807 | 983 | 266 |
| T | 254,448,373 | 293,650 | 205 | 3,807 | 983 | 280 |
| √ U | 264,551,571 | 1,500,000 | 135 | 4,200 | 4,681 | 150 |
| V | 268,027,263 | 489,000 | 253 | 700 | 865 | 253 |
| √ W | 275,497,461 | 1,750,000 | 120 | 4,720 | 5,250 | 148 |
| X | 281,779,619 | 265 | 265 | 2,700 | 800 | 50 |
| Y | 299,376,647 | 2,264,719 | 244 | 2,700 | 928 | 495 |
| **FEMA Estimate** | **$308,878,053** | **$75,000** | **$295** | **$1,380** | **$1,021** | **$267** |

See task descriptions at Table 1.

√ - Examples presenting potential unbalanced pricing. These awards contained phase-in costs greater than $500,000 combined with other contract line items costing significantly less than the independent government cost estimate.

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