

Department of Homeland Security **Office of Inspector General**

FEMA Should Recover \$5.3 Million of Public
Assistance Grant Funds Awarded to the University of
Southern Mississippi – Hurricane Katrina



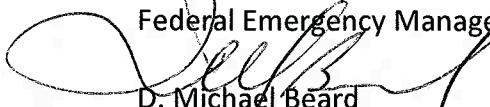


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Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

NOV 6 2012

MEMORANDUM FOR: Major P. (Phil) May
Regional Administrator, Region IV
Federal Emergency Management Agency

FROM: 
D. Michael Beard
Assistant Inspector General
Office of Emergency Management Oversight

SUBJECT: *FEMA Should Recover \$5.3 Million of Public Assistance
Grant Funds Awarded to the University of Southern
Mississippi – Hurricane Katrina*
FEMA Disaster Number 1604-DR-MS
Audit Report Number DA-13-03

We audited Public Assistance grant funds awarded to the University of Southern Mississippi (University), in Hattiesburg, Mississippi (FIPS Code 000-UEM8U-00). Our audit objective was to determine whether the University accounted for and expended Federal Emergency Management Agency (FEMA) grant funds according to Federal regulations and FEMA guidelines.

As of October 31, 2011, the University received a Public Assistance award of \$41.1 million from the Mississippi Emergency Management Agency (State), a FEMA grantee, for damages resulting from Hurricane Katrina, which occurred in August 2005. The award provided 100 percent FEMA funding for emergency protective measures and repair of buildings, equipment, utilities, and recreational facilities damaged as a result of the disaster. The award included 118 large and 202 small projects.¹

We audited four large projects with awards totaling \$10.4 million. We also performed a limited review of eight other projects totaling \$1.8 million for procurement and insurance issues. The audit covered the period August 29, 2005, to October 31, 2011, during which the University claimed \$11.6 million of FEMA funds under the 12 projects included in our audit scope (see Exhibit A, Schedule of Projects Audited). At the time of our audit, the University had not completed work on all projects, and therefore, had not submitted a final claim to the State for project expenditures.

¹ Federal regulations in effect at the time of Hurricane Katrina set the large project threshold at \$55,500.



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We conducted this performance audit between October 2011 and May 2012 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 judgmentally selected project costs (generally based on dollar value); interviewed University, State, and FEMA personnel; reviewed the University's procurement policies and procedures; reviewed applicable Federal regulations and FEMA guidelines; and performed other procedures considered necessary under the circumstances to accomplish our audit objective. We did not assess the adequacy of the University's internal controls applicable to its grant activities because it was not necessary to accomplish our audit objective. However, we gained an understanding of the University's method of accounting for disaster-related costs and its policies and procedures for administering activities provided for under the FEMA award.

RESULTS OF AUDIT

FEMA should recover \$5.3 million of costs claimed by the University. Although the University accounted for FEMA projects on a project-by-project basis as required by Federal regulations and FEMA guidelines, its claim included \$358,528 of costs that were not reduced by insurance proceeds, and \$2,045,789 of project funding that is not needed because the University received funding from another Federal agency to cover the costs of the approved work. Further, the University did not comply with Federal procurement requirements when awarding contracts on which it claimed \$2,873,000, of which the University did not have adequate documentation to support \$979,803 of the contract costs. Finally, the University received \$2,082,279 of FEMA funding for damaged facilities under alternate project criteria that was not reduced for temporary relocation costs provided for the damaged facilities.²

Finding A: Duplicate Benefits

The University's Public Assistance grant included \$2,404,317 in duplicate benefits. Specifically, the University's claim included \$358,528 of costs that were not reduced by

² An alternate project is established when an applicant determines that the public welfare would not be best served by restoring a damaged facility or its function to the predisaster design. In this event, the applicant may use the Public Assistance grant for that facility for other purposes.



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insurance proceeds. In addition, the University's Public Assistance grant included \$2,045,789 of project funding for which it also received funding from another Federal agency to cover the costs of the same work. According to Section 312(a) of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act*, as amended (Stafford Act), FEMA funds cannot be used for expenditures recoverable from another Federal program, insurance, or any other source. Also, according to 44 CFR 206.250(c), actual and anticipated insurance recoveries shall be deducted from otherwise eligible costs. Therefore, FEMA should deobligate \$2,404,317 and put the funds to better use.

Insurance Proceeds. The University received insurance proceeds totaling \$27,054,709 as a result of a final negotiated settlement with its insurance carriers. The University applied \$17,803,342 of the proceeds to cover eligible damages under FEMA projects and used the remaining \$9,251,367 to cover damages not funded by FEMA. However, we identified an additional \$561,908 of FEMA project costs that should have been reduced by the insurance proceeds. This amount included \$431,893 received during the final negotiated settlement that exceeded the University's insurance claim to its primary insurance carrier. The University did not credit the FEMA projects with the \$431,893 because it did not believe that the excess proceeds should be used to offset eligible project costs. The \$561,908 also included \$130,015 of project costs that University officials overlooked when applying the final insurance proceeds to the FEMA projects.

In addition, the University did not receive \$203,380 of anticipated proceeds that had been deducted from estimated project costs when the project worksheets were approved because the damages were not covered by insurance. Therefore, FEMA should deobligate a net of \$358,528 (\$561,908 minus \$203,380) and put the funds to better use.

University Response. University officials disagreed that the final negotiated insurance settlement of \$27,054,709 included proceeds that exceeded its insurance claim with its primary insurance carrier. They said that insurance proceeds for damages to the gulf coast campuses were no more than the primary insurance policy limits. They also said that the University went to its excess insurance carrier and negotiated additional funds, which were paid and applied to eligible FEMA projects.

Office of Inspector General (OIG) Response. We disagree that the University did not receive insurance proceeds above its primary policy limits. We requested documentation from the University to show which project(s) it applied the additional insurance proceeds mentioned in its response to this finding. However, the University did not respond to our request. Therefore, without new evidence, the finding remains unchanged.



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Duplicate Grant Funding. The University received two grants that totaled \$11,822,894 from the U.S. Department of Education (Hurricane Katrina Foreign Contributions Award and Hurricane Recovery Award) for hurricane-related recovery activities, which included temporary campus lease costs and renovation costs for a temporary facility. Of these grants, \$2,045,789 were for the same activities approved under Project 7823 (temporary location of the Gulf Park Campus). This occurred because the State did not notify FEMA of the duplicate grant funding. The University notified the State of the duplicate grant funding in June 2009 and reduced expenditures claimed under the project by \$2,045,789. However, as of May 2012, the State had not notified FEMA that the \$2,045,789 of project funding was no longer needed. FEMA should deobligate the \$2,045,789 of unneeded funding and put the funds to better use.

University Response. University officials agreed that the original request for the U.S. Department of Education grants included funding for temporary location renovations and a portion of lease costs for the facilities. They said that the grant funding included a provision that allowed the University to reallocate up to 10 percent of these funds to other projects of a nature similar to the grant's purpose. They said that the University used this provision to reallocate \$616,157 that was provided for lease costs under the Department of Education grants to other projects. Further, the officials said that they supplied a grant accounting to OIG, which showed that no expenditures for lease costs had been included in the Department of Education grant funding.

OIG Response. We agree that the U.S. Department of Education grants had a provision that allowed the University to reallocate up to 10 percent of the funds to other projects of a nature similar to the grant's purpose. However, the University did not provide us with sufficient evidence (reallocation and expenditure documents) to support its assertion that this grant did not fund lease expenditures. Therefore, our finding remains unchanged.

Finding B: Contracting Procedures

The University did not comply with Federal procurement requirements when awarding a time-and-materials contract for which it claimed \$2,419,910 and an architectural and engineering (A/E) services contract for which it claimed \$453,090. Federal procurement regulations at 2 CFR 215 required the University, among other things, to—

- Perform some form of cost or price analysis for every procurement action and document such analysis in the procurement files. (2 CFR 215.45)
- Perform all procurement transactions in a manner to provide, to the maximum extent practical, open and free competition. (2 CFR 215.43)



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- Make positive efforts to use small businesses, minority-owned firms, and women’s business enterprises whenever possible. (2 CFR 215.44(b))

In addition, FEMA 322, *Public Assistance Guide*, October 1999, pp. 39–40, specifies that—

- Time-and-materials contracts should be avoided, but may be used for a limited period (generally not more than 70 hours) for work that is necessary immediately after the disaster has occurred, when a clear scope of work cannot be developed.
- Contracts must be of reasonable cost, generally must be competed, and must comply with Federal, State, and local procurement standards.
- Noncompetitive proposals should be used only when the award of a contract is not feasible under small purchase procedures, sealed bids, or competitive proposals, and one of the following circumstances applies: (1) the item is available only from a single source, (2) there is an emergency requirement that will not permit a delay, (3) FEMA authorizes noncompetitive proposals, or (4) solicitation from a number of sources has been attempted and competition is determined to be inadequate.

FEMA may grant exceptions to Federal procurement requirements to subgrantees on a case-by-case basis (2 CFR 215.4).

Time-and-Materials Contract. The University awarded a time-and-materials contract on which it claimed \$2,419,910 for permanent repairs (electrical, replacement of heating, ventilation, and air-conditioning (HVAC) units, temporary roof replacement, drywall replacement, etc.) under six projects. The contract work was completed in July 2006, 11 months after Hurricane Katrina. However, the project files did not contain adequate justification for use of the time-and-materials contract.

Project documentation showed that a clear scope of work had been developed at the time the contract was awarded. A memo from the project architect stated, “We brought in reputable contractors . . . and reviewed the scope of work.” The memo also noted drawings that outlined the proposed work. Because this contract was completed 11 months after the disaster and FEMA’s *Public Assistance Guide* states that time-and-materials contracts should be avoided but may be used for a limited period (generally not more than 70 hours) for work that is necessary immediately after the disaster has occurred when a clear scope of work cannot be developed, we question the \$2,419,910 claimed for the time-and-materials work. The University should have used a more appropriate type of contracting method to accomplish the work. The \$2,419,910 includes \$979,803 of costs we are questioning under finding C. Therefore, the net amount questioned for this finding is \$1,440,107.



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A/E Services Contract. The University did not allow for full and open competition when procuring A/E services for which it claimed \$453,090. Instead of soliciting competitive proposals, the University used an A/E firm with which it had a contract prior to Hurricane Katrina. Full and open competition increases the probability of reasonable pricing from the most qualified contractors and helps discourage and prevent favoritism, collusion, fraud, waste, and abuse.

The University also did not perform a cost or price analysis before awarding the time-and-materials and A/E services contracts. A cost or price analysis decreases the likelihood of unreasonably high or low prices, contractor misinterpretations, and errors in pricing relative to the scope of work. Finally, the University did not make an effort to use small businesses, minority-owned firms, and women’s business enterprises whenever possible. As a result, such businesses were not given an opportunity to participate in federally funded work. University officials said that this occurred because they were not aware of the Federal procurement requirements. However, FEMA/State and State/applicant agreements require compliance with Federal procurement requirements.

Because the University did not follow Federal procurement requirements, FEMA has no assurance that the University paid a fair and reasonable price for the contract work. Therefore, we question a total of \$1,893,197 (\$1,440,107 in time-and-materials contracts plus \$453,090 in A/E contracts), as shown in table 1.

Table 1: Questioned Costs for Time-and-Materials and A/E Services Contracts

Project Number	Project Scope	Amount Questioned (Time-and-Materials)	Amount Questioned (A/E Services)	Total Amount Questioned
7186	Holloway Complex, Building Repair	\$179,698	\$12,579	\$192,277
7724	Physical Plant Building #997	50,337	\$3,529	\$53,866
8770	Gulf Park Utilities (Campuswide)	226,532	15,857	242,389
9550	Gulf Park Library Building	461,344	155,196	616,540
9624	Gulf Park Advanced Education Center Building	362,977	254,766	617,743
9931	Central HVAC Plant Building	159,219	11,163	170,382
Total		\$1,440,107	\$453,090	\$1,893,197

University Response. University officials said that even though they now understand that the “labor and materials” contract in question is not allowed under the Public Assistance program, they did not understand that early in the recovery process. The officials said the University paid eight invoices under the contract from September 2005 through about June 2006 and neither the State nor FEMA questioned the contract. Moreover, they said that had officials informed the University of the Federal regulations



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when they first submitted an invoice, the University would have altered its process. Finally, the officials said that the University has complied with applicable Federal contracting requirements since being made aware of them.

OIG Response. Federal procurement regulations at 2 CFR 215 require the University to comply with procurement requirements. The University signed a State/University disaster assistance agreement stating that the University will comply with all applicable provisions of Federal and State procurement regulations.

Finding C: Unsupported Costs

The University did not maintain adequate source documentation to support \$979,803 of time-and-materials contract costs claimed under Projects 9550 and 9624. For the costs in question, the University had only summary invoice data from the prime contractor, rather than source documentation such as labor and equipment records. According to 2 CFR 215.21(b)(7), recipients' financial management systems shall provide accounting records that are supported by source documentation. Without adequate source documentation, we were unable to validate the contractor's billings. Therefore, we question the \$979,803 (\$216,010 under Project 9550 and \$763,793 under Project 9624).

University Response. University officials said that the invoices in question were paid and reviewed by the managing architect, and that they believe all relevant documentation was in place. They also said that they believe the documentation exists with the contractor and that the University could have obtained and submitted the relevant documentation to OIG upon request. Finally, the officials said that the contractor's invoices were reviewed, approved, and funded over a period of 10 months by the State and no documentation issues were raised at that time.

OIG Response. Summary invoice data from the prime contractor are not considered source documentation, especially when supporting claimed costs for a time-and-materials contract. We disagree that source documentation was not requested from the University during the audit. We initially notified the University of this issue during a meeting on March 23, 2012, and again via email on March 26, 2012. On May 8, 2012, we also provided the University with a draft discussion report that contained the finding. As of the date of this report, University officials have not provided any additional documentation to resolve the questioned costs. Therefore, this finding remains unchanged.

Finding D: Alternate Project Funding

The University received \$2,082,279 of FEMA funding for damaged facilities under alternate project criteria that was not reduced for temporary relocation costs provided



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for the damaged facilities. According to FEMA Policy 9523.3(f)(2), July 16, 1998, funds approved for temporary facilities may not be applied to an alternate project. Further, if temporary relocation costs were approved before a decision by an applicant to pursue an alternate project, these costs will be deducted from the Federal estimate of the alternate project funding.

In August 2005, Hurricane Katrina damaged a number of facilities on the University's Gulf Coast Campus in Long Beach, Mississippi. Because of those damages, in April 2006, FEMA approved Project 7823, which authorized funds for temporary relocation space while the damaged facilities were repaired or replaced. In August 2011, at the University's request, FEMA approved four alternate projects (Projects 6061, 9230, 9346, and 9728) totaling \$2,082,279 because the University decided not to repair or replace those facilities. However, when FEMA approved the \$2,082,279 of alternate project funding for the four facilities, it did not reduce eligible costs for temporary relocation costs that the University had received for the facilities under Project 7823.

As of October 2011, FEMA had awarded the University \$6,754,871 of temporary relocation costs under Project 7823, a portion of which applies to the four alternate projects. FEMA could not give a reason why the funding on the alternate projects had not been reduced for temporary relocation costs. However, FEMA officials began discussing an action plan to address the problem after we brought the issue to their attention.

Since the temporary relocation facility costs are based on square footage and footage documentation was not available supporting the alternate projects, we were not able to determine the funding that should be reduced from the alternate projects. Therefore, we are recommending that FEMA determine, using square footage data, the temporary relocation costs provided for the four facilities under Project 7823 and reduce the \$2,082,279 of alternate project funding accordingly.

University Response. University officials responded to this finding by providing comments concerning the University's pre- and post-Hurricane Katrina facility capacities relating to the aspects of Project 7823. The officials also discussed Disaster Specific Guidance 17, FEMA-1604-DR-MS, as it relates to FEMA funding for improved and alternate projects.

OIG Response. We did not dispute the University's need for and use of space, either permanent or temporary, in this finding. The issue concerns FEMA funding of temporary facilities when the University stated through an alternate project request that it no longer needed the facilities for which the funds were provided. FEMA Policy 9523.3(f)(2) clearly states that funds approved for temporary facilities may not be applied to an alternate project and any temporary costs will be deducted from the eligible Federal estimate for the permanent restoration of the damaged facility.



RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region IV:

Recommendation #1: Deobligate and put to better use \$358,528 of project funding provided for costs covered by insurance proceeds (finding A).³

Recommendation #2: Deobligate and put to better use \$2,045,789 of funding under Project 7823 that is no longer needed because the University received funding from the U.S. Department of Education to cover the costs of the approved work (finding A).

Recommendation #3: Disallow \$1,893,197 of ineligible contract costs unless FEMA grants the University an exception for all or part of the costs as provided for in 2 CFR 215.4 and Section 705(c) of the Stafford Act (finding B).

Recommendation #4: Instruct the State to reemphasize to the University its requirement to comply with Federal procurement regulations and FEMA guidelines when acquiring goods and services under the FEMA award (finding B).

Recommendation #5: Disallow \$979,803 of unsupported costs under Projects 9550 (\$216,010) and 9624 (\$763,793) (finding C).

Recommendation #6: Determine the square footage applicable to the temporary space supporting the alternate projects and reduce alternate project funding accordingly for temporary relocation costs provided for under Project 7823 (finding D).

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed the results of our audit with University, State, and FEMA officials during our audit. We also provided a draft report in advance to these officials and discussed it at the exit conference held on May 22, 2012. University officials' comments, where appropriate, are included in the body of the report.

³ FEMA officials deducted \$124,690 of insurance proceeds relative to this finding (\$100,000 from Project 6289 and \$24,690 from Project 10972) prior to the issuance of this report.



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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 responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until your response is received and evaluated, the recommendations will be considered open and unresolved.

Consistent with our responsibility under the *Inspector General Act*, we are providing copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Major contributors to this report were David Kimble, Eastern Region Audit Director; Larry Arnold, Audit Manager; John Skrmetti, Auditor-in-charge; and Mary James, Auditor.

Please call me with any questions at (202) 254-4100, or your staff may contact David Kimble, Eastern Region Audit Director, at (404) 832-6702.



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EXHIBIT A

**Schedule of Projects Audited
August 29, 2005, to October 31, 2011
University of Southern Mississippi
FEMA Disaster Number 1604-DR-MS**

Project Number	Project Scope	Amount Awarded	Amount Claimed	Questioned Costs	Funds Put to Better Use	Finding
2786	Gulf Coast Research Laboratory Debris Removal	\$246,559	\$280,384	-	-	
7823	Gulf Park Campus Temporary Relocation	6,754,871	5,819,406	-	\$2,045,789	A
9550	Gulf Park Library Building	1,332,167	2,227,322	832,550	-	B, C
9624	Gulf Park Advanced Education Center Building	2,039,498	2,529,617	1,381,536	-	B, C
*	Gulf Park Procurement	1,001,151	455,424	658,914	-	B
#	Insurance Proceeds	780,248	284,452	-	358,528	A
Total		\$12,154,494	\$11,596,605	\$2,873,000	\$2,404,317	

* Projects 7186, 7724, 8770, and 9931. Review of these projects was limited to procurement issues relative to the time-and-materials repair work and A/E services contracts.

Projects 5226, 5789, 6289, and 10972. Review of these projects was limited to insurance issues.



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Exhibit B

Report Distribution List
University of Southern Mississippi
FEMA Disaster Number 1604-DR-MS

Department of Homeland Security

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Under Secretary for Management
Acting Chief Privacy Officer
Audit Liaison, DHS

Federal Emergency Management Agency

Administrator
Chief of Staff
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Chief Procurement Officer
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Audit Liaison, FEMA Region IV
Audit Liaison, FEMA (Job Code G-12-005)

Grantee

Executive Director, Mississippi Emergency Management Agency

State

State Auditor, Mississippi

Subgrantee

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