

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

FEMA Public Assistance Grant Funds Awarded to  
Middle School Advocates, Inc., New Orleans, Louisiana

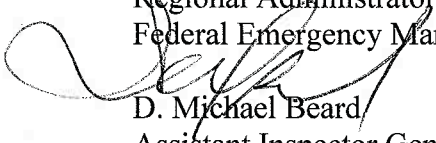




# Homeland Security

FEB 22 2012

MEMORANDUM FOR: Tony Russell  
Regional Administrator, Region VI  
Federal Emergency Management Agency

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

SUBJECT: *FEMA Public Assistance Grant Funds Awarded to  
Middle School Advocates, Inc., New Orleans, Louisiana*  
FEMA Disaster Number 1603-DR-LA  
Audit Report Number DD-12-05

We audited public assistance grant funds awarded to Middle School Advocates, Inc. (MSA) in New Orleans, Louisiana (Public Assistance Identification Number 071-U4NTA-00). Our audit objective was to determine whether MSA accounted for and expended Federal Emergency Management Agency (FEMA) funds according to federal regulations and FEMA guidelines.

The Louisiana Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP), a FEMA grantee, awarded MSA \$13 million to replace a school damaged during Hurricane Katrina, which occurred on August 29, 2005. The award provided 100% funding for five large projects related to the school.<sup>1</sup> The audit covered the period August 29, 2005, to November 7, 2011, the cut-off date of our audit. As of our cut-off date, MSA had not claimed any costs under its award.

We conducted this performance audit 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 according to the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.

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<sup>1</sup> Federal regulations in effect at the time of the disaster set the large project threshold at \$55,500.

We interviewed FEMA, GOHSEP, and MSA officials; reviewed all five approved projects (see Exhibit A, Schedule of Projects Audited); performed a limited review of MSA's proposed alternate project plan; and performed other procedures considered necessary to accomplish our objective. We did not assess the adequacy of MSA's internal controls applicable to grant activities because it was not necessary to accomplish our audit objective. We did, however, gain an understanding of MSA's methods of accounting and its procurement policies and procedures.

## **BACKGROUND**

MSA was a nonprofit organization formed in 1998 to serve as the chartering group for New Orleans Charter Middle School. The Louisiana Board of Elementary and Secondary Education granted MSA a charter to operate charter schools, with the New Orleans Charter Middle School being the first charter school in New Orleans. The school became the highest performing, open-enrollment public middle school in New Orleans from its opening in 2002 until flooding from Hurricane Katrina destroyed the building in 2005.

In 2008, MSA changed its name to FirstLine Schools because it expanded its mission of developing and implementing effective educational practices to include directly operating schools. FirstLine Schools currently operates four charter schools in the New Orleans area. All schools are open-admissions public schools and enroll children in kindergarten through eighth grade.

In November 2005, the Louisiana State Legislature passed Act 35 activating the Recovery School District (RSD) as part of the Louisiana Department of Education and authorizing it to assume academic control of schools identified as "failing" by the State's Comprehensive Curriculum Standards. The subsequent Act 455 authorized RSD to assume the rights and responsibilities of ownership of all schools and school facilities operating within its academic control. However, MSA owned the New Orleans Charter Middle School when Hurricane Katrina struck in 2005, and the school did not subsequently fall under RSD's control.

## **RESULTS OF AUDIT**

MSA did not account for and expend FEMA funds according to federal regulations and FEMA guidelines because MSA has not started, and does not plan to start, any work to replace the damaged school, as FEMA approved. Instead, MSA entered into an agreement with a third party, RSD, to build a different school as a proposed alternate project without FEMA's approval. Therefore, because MSA has not completed any authorized work or claimed any costs under its award, FEMA should deobligate all of MSA's \$13 million award and put those federal funds to better use. Further, FEMA should not approve MSA's proposed alternate project because—

- (1) FEMA authorized RSD, not MSA, to build the new school under its Master Plan; therefore, FEMA has already obligated funding for the new school, and any funds provided to RSD, through MSA, for the same purpose would be a duplication of benefits; and

- (2) Under its agreement with RSD, MSA would retain no ownership in or legal responsibility for the new school.

Additionally, FEMA needs to improve its procedures for determining the eligibility of (1) private nonprofit entities as applicants under the public assistance program and (2) facilities to be repaired or replaced under the program.

### **Finding A: MSA’s Nonperformance of Authorized Work**

FEMA inspected MSA’s New Orleans Charter Middle School, located at 3801 Monroe Street in New Orleans, and determined that the cost to repair the school exceeded 50% of the cost to replace it. Therefore, FEMA approved five large projects for MSA totaling \$13 million to replace the school.<sup>2</sup> However, MSA has not started, and does not plan to start, any work on the school at the Monroe Street site. Instead, MSA has submitted a proposed alternate project to FEMA.

#### MSA’s Alternate Project

MSA formulated a proposed alternate project that would hand over or “pool” most of MSA’s federal funding from its eligible facility to a third party, RSD, in return for the right to use the new school that RSD is building under its Master Plan. The new school, Bienville Elementary, is located at 1456 Gardena Drive in New Orleans at the former Jean de Baptiste Bienville Elementary School site.

Under 44 CFR 206.203(d)(2), the grantee may request that FEMA approve an alternate project when a subgrantee determines that the public welfare would not be best served by restoring a damaged public facility or the function of that facility. However, according to this federal regulation, an alternate project is subject to the following conditions, in part:

- (i) The alternate project option may be taken only on permanent restorative work.
- (ii) Federal funding for such alternate projects shall equal 90% of the federal share of the approved estimate of eligible costs if soil instability at the alternate project site makes repair, restoration, or replacement of a State- or local-government owned facility infeasible.<sup>3</sup>
- (iii) Funds contributed for alternate projects may be used to repair or expand other selected public facilities, to construct new facilities, or to fund hazard mitigation measures. These funds may not be used to pay the nonfederal share of any project, nor any operation expense.
- (iv) Prior to the start of construction of any alternate project, the grantee shall submit the following to FEMA for approval: a description of the proposed alternate

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<sup>2</sup> A facility is considered repairable when disaster damages do not exceed 50% of the cost of replacing a facility to its predisaster condition, and “it is feasible to repair the facility so that it can perform the function for which it was being used as well as it did immediately prior to the disaster.” (44 CFR 206.226(f)(1)).

<sup>3</sup> Since Hurricane Katrina, (44 CFR 206.203 (d)(2)(ii) has been amended to read “Federal funding for alternate projects for damaged public facilities will be 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.”

project(s), a schedule of work, and the projected cost of the project(s). The grantee shall also provide the necessary assurances to document compliance with special requirements, including, but not limited to, floodplain management, environmental assessment, hazard mitigation, protection of wetlands, and insurance.

Section 607 of the Supplemental Appropriations Act, 2009, as amended, extended the waiver of the alternate project funding reduction to private nonprofit primary and secondary schools, directing FEMA to make no reduction for alternate projects when that option is chosen by any nonprofit primary or secondary school.

MSA applied for the alternate project in February 2011, but as of November 2011, FEMA had not approved it. RSD is currently building the new school as part of its Master Plan. FEMA's *Disaster Assistance Policy* 9525.13 and 44 CFR 206.203(d)(2)(v) specifically state that all requests for alternate projects must be approved by FEMA *prior to* the start of construction of the alternate project. Therefore, because FEMA has not approved MSA's alternate project, construction of the new school is not authorized under MSA's award.

#### RSD's Master Plan

In November 2005, RSD assumed legal responsibility for 107 of the original 134 New Orleans public school campuses, which involved 341 buildings eligible for FEMA Public Assistance (PA). RSD requested an alternate project (Project 19166) pursuant to Section 552 of the Consolidated Appropriations Act, 2008, as amended, which allowed local educational agencies impacted by Hurricanes Katrina or Rita to request a single capped payment for any eligible costs.<sup>4</sup> On November 24, 2009, RSD asked FEMA to provide a single settlement payment for reconstruction of New Orleans public schools. FEMA provided a lump sum settlement of \$1.08 billion for the construction of 53 campuses throughout New Orleans. According to RSD's Master Plan, this system will eventually include 87 school campuses; however, RSD plans to update the Master Plan as repopulation projections and facility condition assessments change.

FEMA's approval capped the funding for RSD's alternate project, or Master Plan, at \$1.08 billion. The new school, referred to as the "Bienville Campus," is one of the schools RSD proposed to build under its Master Plan. Therefore, FEMA has already obligated funding for the new school; and any funds provided to RSD, through MSA, for the same purpose would be a duplication of benefits, which is prohibited under section 312 of the Stafford Act. In addition, providing these additional funds to RSD would circumvent the intent of RSD's Single Settlement payment, which includes funds for the Bienville school.

#### Legal Responsibility for the New School

Federal regulations at 44 CFR 206.223(a) require that, to receive federal funding, the subgrantee must be legally responsible for the facility. Under its agreement with RSD, MSA would retain no ownership in or legal responsibility for the new school, except for the contents of the

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<sup>4</sup> Section 607 of the Supplemental Appropriations Act, 2009, amended Section 552 of the Consolidated Appropriations Act, 2008, by replacing "local educational agencies" with "primary or secondary school sites."

building; therefore, the majority of FEMA's funding to MSA for the new school would be ineligible.<sup>5</sup>

In April 2010, MSA entered into a Cooperative Endeavor Agreement (agreement) with the Louisiana Department of Education, through RSD and the Orleans Parish School Board (OPSB), to consolidate FEMA resources to build the new school. The agreement is contingent upon FEMA approving MSA's alternate project plan. Based on the terms of the agreement, OPSB and RSD will be the sole owners of the new property and will allow MSA to lease the property without paying a fee for occupancy for as long as MSA holds a charter (see exhibit B, which includes selected terms contained in the agreement).

### Conclusion

FEMA should deobligate MSA's \$13 million award and put those federal funds to better use because MSA has not completed any authorized work or claimed any costs under its award. Further, FEMA should not approve MSA's proposed alternate project because providing funds to RSD, through MSA, to build the Bienville Campus would be a prohibited duplication of benefits, and MSA would retain no ownership in or legal responsibility for the new school.

FEMA 9525.13, *Alternate Projects*, allows for multiple uses of PA grant funds. Alternate project funds from a single project do not have to be used on a single project. Funds from multiple projects may be pooled or divided. The guidance allows for alternate project funds to be divided and used on multiple projects to repair, expand, mitigate, or construct a facility that would be an eligible facility under the PA grant program.

However, there is no guidance that allows for the pooling of funds with other applicants toward one joint alternate project. FEMA has requested that its Office of Chief Counsel review and provide a legal opinion of MSA's alternate project plan and its agreement with RSD. However, as of November 7, 2011, FEMA's counsel was still reviewing the alternate project and the agreement between the parties.

### **Finding B: FEMA's Determination of Eligibility**

We determined that MSA was an eligible applicant under the PA program and that the damaged facility that MSA owned was an eligible facility for PA funding. However, FEMA used and maintained incorrect information in its case management files for determining the eligibility of both MSA and the facility. If not corrected, this misinformation could cause delays and errors when FEMA closes out MSA's projects. Therefore, FEMA needs to improve its procedures for ensuring that eligibility decisions are based on accurate information.

FEMA determined MSA's eligibility based on its Charter School Contract, its Charter Agreement with OPSB, and MSA's bylaws and nonprofit filing with the Secretary of State Office. However, MSA's Charter Agreement with OPSB that was in FEMA's files was for the

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<sup>5</sup> Project 18211 authorized \$796,366 for damaged school contents. The remaining four projects, totaling \$12,172,402, related to structural damage to MSA's New Orleans Charter Middle School, located at 3801 Monroe Street in New Orleans.

Samuel J. Green Middle School, which did not relate to the damaged facility. Further, the case files did not document several significant events that affected the determination of MSA as an eligible applicant.

FEMA's case management files also contained incorrect information that FEMA used to determine the eligibility of the damaged facility. MSA owned the damaged facility, which was the New Orleans Charter Middle School located at 3801 Monroe Street. However, the information we received and reviewed from FEMA's case files stated that New Orleans Public Schools owned the damaged facility cited as the S. J. Green Charter School located at 2319 Valence Street. The case files also contained a private-nonprofit worksheet that MSA completed incorrectly by stating that the name of the damaged facility was S. J. Green Charter School. We understand how easily inaccurate information can be received and saved. However, after more than 6 years, FEMA should have corrected its case management files for this applicant.

### **RECOMMENDATIONS**

We recommend that the Regional Administrator, FEMA Region VI:

**Recommendation #1:** Deobligate \$12,968,768 and put those federal funds to better use (finding A).

**Recommendation #2:** Deny MSA's application for an alternate project because it would duplicate work already authorized under an award to RSD (finding A).

**Recommendation #3:** Improve the Region's procedures for determining the eligibility of applicants and facilities under the Public Assistance Program to ensure eligibility decisions are based on complete and accurate information and case management files are updated periodically (finding B).

### **DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOW-UP**

We discussed the results of our audit with FEMA, GOHSEP, and MSA officials during our audit and included their comments in this report, as appropriate. We also provided a draft report in advance to these officials and discussed it at exit conferences held with FEMA officials on December 5, 2011, with GOHSEP officials on December 13, 2011, and with MSA officials on December 14, 2011. FEMA officials generally disagreed with our findings and recommendations. GOHSEP and MSA officials stated that they are reserving their comments and intend to review their options.

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. To promote transparency, this report will be posted to our website, with the exception of sensitive information identified by your office. Significant contributors to this report were Tonda Hadley, Judy Martinez, Ronald Jackson, and Natalie Fussell.

Should you have questions concerning this report, please contact me at (202) 254-4100 or Tonda Hadley at (214) 436-5200.

cc: Administrator, FEMA  
Audit Liaison, FEMA Louisiana Recovery Office  
Audit Liaison, FEMA Region VI  
Audit Liaison, FEMA (Job Code G-11-041)  
Audit Liaison, DHS



**EXHIBIT A**

**Schedule of Projects Audited  
August 29, 2005 to November 7, 2011  
Middle School Advocates, Inc.  
FEMA Disaster Number 1603-DR-LA**

<b>Project Number</b>	<b>Project Amount</b>	<b>Questioned Costs</b>
17572	\$ 847,325	\$ 847,325
17573	5,289,819	5,289,819
17574	5,792,194	5,792,194
18211	796,366	796,366
19138	<u>243,064</u>	<u>243,064</u>
<b>TOTAL</b>	<b><u>\$12,968,768</u></b>	<b><u>\$12,968,768</u></b>

**Selected Terms in the Agreement between MSA (FirstLine)  
and the Louisiana Department of Education, through RSD  
and the Orleans Parish School Board**

- a) RSD and FirstLine Schools will each apply for FEMA funding through FEMA's alternate project vehicle and will use this funding for the construction of the Bienville Campus.
- b) RSD, FirstLine, and OPSB agree that the new Bienville Campus will be built by the RSD in accordance with the specifications in their Master Plan.
- c) The site ownership of the Bienville Campus will continue to be owned by OPSB, and RSD will continue to maintain all rights and responsibilities of ownership of the facility.
- d) RSD and FirstLine will enter into a Lease Agreement for use of the new Bienville Campus to coincide with terms of its current Charter Agreement. Under this Lease, FirstLine may be subject to a monthly fee under the terms of Lease Agreement for the sole purpose of providing for compliance oversight for general and preventative maintenance, long-term maintenance, and replacement of major equipment required for proper operation equipment of the school. The Parties agree FirstLine shall not be charged a fee for occupancy of the new Bienville Campus.
- e) FirstLine agrees to provide all current and future FEMA-eligible funds obligated to FirstLine for projects including, but not limited to, Projects 17572, 17573, and 17574, and these funds will constitute FirstLine's responsibility for the construction of the Bienville facility and RSD will be responsible for the balance of costs of the Facility.
- f) It is understood that the sale or salvage proceeds of the Monroe campus shall be remitted to FEMA and will be deducted from FirstLine's eligible, obligated funding from its project worksheets. This pertains only to that portion of the sale proceeds relating to the buildings and the portion of the net sale proceeds attributable to the sale of the land shall remain FirstLine's and shall not be contributed to the Bienville project.
- g) FirstLine will retain its project worksheets written for contents and will use these funds to procure items that will remain under FirstLine's ownership. RSD agrees to work with FirstLine on the procurement of contents subject to further written agreement.
- h) Insurance proceeds received by FirstLine will not be contributed to the project.
- i) FirstLine authorizes RSD to request additional support from FEMA through the facility scope alignment process to cover unidentified damages, project management/construction management costs based on free market anticipated costs for school development within the City of New Orleans, and other factors in each of FEMA's Project's Cost Estimating Format to contribute any additional funds to the new Bienville Campus to support the approved RSD design.
- j) RSD will have full authority as the developer of the new Bienville Campus with respect to all project management, building commissioning, and design and construction decisions.

- k) In the event FirstLine's Charter is revoked or terminated for any reason, FirstLine is to relinquish any and all ownership interest in the Bienville Campus and expressly waives any right it may have to reimbursement of any funds it supplied to the Bienville Campus. FirstLine shall maintain ownership of any contents purchased with their contents project worksheet.
- l) FirstLine agrees to interact with any professional service firms, architects, and construction providers with the RSD's Capital Program representatives with respect to the construction of the Bienville Campus.
- m) FirstLine agrees to participate in collaborative planning meetings when requested by the RSD pertaining to decisionmaking in the design process, but forfeits the opportunity to participate if their representatives are nonresponsive or fail to respond by the deadline.
- n) FirstLine agrees to fully and meaningfully participate in meetings involving key stakeholders.
- o) FirstLine agrees to recognize RSD's responsibility and authority to execute all design and construction activities associated with the interior design and construction elements of the Bienville Campus in conformance with the Master Plan.
- p) FirstLine agrees to inform all parents, caregivers, students, board members, teachers, staff, administrators, volunteers, and any other interested party that they are expressly prohibited from entering the Bienville Campus during the period of construction unless specifically authorized through a scheduled, optional bimonthly visit, accompanied by RSD Capital Program Staff, and such requests will not be unreasonably withheld.

## ADDITIONAL INFORMATION AND COPIES

To obtain additional copies of this report, please call the Office of Inspector General (OIG) at (202)254-4100, fax your request to (202)254-4305, or e-mail your request to our OIG Office of Public Affairs at [DHS-OIG.OfficePublicAffairs@dhs.gov](mailto:DHS-OIG.OfficePublicAffairs@dhs.gov). For additional information, visit our OIG website at [www.oig.dhs.gov](http://www.oig.dhs.gov) or follow us on Twitter @dhsOIG.

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