

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

**FEMA Should Disallow \$9.6 Million of Disaster-Related
Costs Incurred by the University of New Orleans
Research and Technology Foundation,
New Orleans, Louisiana**






OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

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

September 19, 2014

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

FROM: 
John V. Kelly
Assistant Inspector General
Office of Emergency Management Oversight

SUBJECT: *FEMA Should Disallow \$9.6 Million of Disaster-Related Costs Incurred by the University of New Orleans Research and Technology Foundation, New Orleans, Louisiana*
FEMA Disaster Number 1603-DR-LA
Audit Report Number OIG-14-148-D

We audited Public Assistance grant funds awarded to the University of New Orleans Research and Technology Foundation (Foundation) in New Orleans, Louisiana (Public Assistance Identification Number 071-UX2ZM-00). Our audit objective was to determine whether the Foundation accounted for and expended Federal Emergency Management Agency (FEMA) grant funds according to Federal regulations and FEMA guidelines.

The Louisiana Governor's Office of Homeland Security and Emergency Preparedness (Louisiana), a FEMA grantee, awarded the Foundation \$11.2 million for damages resulting from Hurricane Katrina, which occurred on August 29, 2005. The award provided 100 percent funding for 12 large projects.¹ The audit covered the period August 29, 2005, through January 9, 2014, the cutoff date of our audit, and included a review of 12 large projects totaling \$11.2 million, or all projects (see Exhibit, Schedule of Projects Audited).² At the time of our audit, the Foundation had completed all 12 projects and had claimed \$5.3 million, but had not requested any projects be closed. Therefore, all of the projects remained open.

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

² We audited the gross amount of \$12.0 million awarded before reductions for insurance and an additional \$7.1 million of cost overruns (\$19.0 million of disaster-related costs).



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Table 1 shows the gross and net award amounts before and after reductions for insurance for all projects.

Table 1. Gross and Net Award Amounts

	Gross Award Amount	Insurance Reductions	Net Award Amount
All Projects	\$12,002,313	(\$784,427)	\$11,217,886

Source: FEMA Project Worksheets

We conducted this performance audit between November 2013 and August 2014 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 Foundation officials; gained an understanding of the Foundation’s method of accounting for disaster-related costs; reviewed the Foundation’s procurement policies and procedures; judgmentally selected and reviewed project costs and procurement transactions for the projects included in our audit scope; reviewed applicable Federal regulations and FEMA guidelines; and performed other procedures considered necessary to accomplish our objective. As part of our standard audit procedures, we also notified the Recovery Accountability and Transparency Board of all contracts the Foundation awarded under the grant to determine whether the Foundation’s contractors were debarred or whether there were any indications of other issues related to those contractors that would indicate fraud, waste, or abuse.³ 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 the Foundation’s internal controls over its grant activities because it was not necessary to accomplish our audit objective.

³ Federal regulations in effect at the time of the disaster set the large purchase threshold at \$100,000.



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BACKGROUND

The Foundation is incorporated as a private non-profit entity. The Foundation's purpose is to support the University of New Orleans and the Louisiana State University system with any appropriate programs, facilities, research, and educational opportunities.

The Foundation worked under exigent conditions until November 2005 to protect the facilities from further wind and water intrusion damage. We consider circumstances to be exigent when lives or properties are at stake and considered the contracts awarded to protect the facilities from further damage to be under exigent conditions. Foundation officials said that their main tenant could not return to the Research and Technology Park until July 2006; therefore, the exigent period should have ended in July 2006 rather than November 2005. However, these officials provided documentation stating that the tenant's employees were able to work in other locations. Therefore, we do not consider any contracts procured after November 1, 2005, as exigent because lives and property were no longer at stake.

RESULTS OF AUDIT

The Foundation did not account for and expend FEMA grant funds according to Federal regulations and FEMA guidelines. The Foundation did not follow Federal procurement standards in awarding \$18.5 million for six contracts—\$7.9 million for four non-exigent contracts and \$10.6 million for two exigent contracts. As a result, open and free competition did not occur. FEMA also has no assurance that contract costs were reasonable or that small businesses, minority-owned firms, and women's business enterprises had sufficient opportunities to bid on Federally funded work. We are not questioning all of the \$18.5 million because the Foundation awarded two of the six contracts for exigent work. However, we are questioning the following contract costs totaling \$9.6 million:

- \$7,875,262 for four noncompetitive contracts the Foundation awarded for non-exigent work, and
- \$1,752,117 in markups on the cost of exigent work that one of the Foundation's contractors billed on a prohibited cost-plus-percentage-of-cost basis.

The Foundation also did not properly reconcile Federal funds in a timely manner. FEMA authorized \$12 million (gross) for 12 projects, but the Foundation has spent over \$19 million without requesting authorization for the cost overruns. Almost 9 years after the disaster, the Foundation has claimed only \$5.3 million although it completed most work several years ago. These reconciliation problems make it impossible for FEMA to determine the precise status of Federal appropriations.



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These findings occurred, in part, because Louisiana, as the grantee, should have managed this grant better. It is the grantee's responsibility to ensure that its subgrantees are aware of and comply with Federal requirements.

Finding A: Improper Contracting

The Foundation did not follow Federal procurement standards in awarding \$18,496,612 for six disaster-related contracts. As a result, open and free competition did not occur. FEMA also has no assurance that contract costs were reasonable or that small businesses, minority-owned firms, and women's business enterprises had sufficient opportunities to bid on Federally funded work.

As table 2 shows, the Foundation awarded four contracts for non-exigent permanent work totaling \$7,875,262 and two contracts for exigent emergency work totaling \$10,621,350. We question all of the costs for permanent work because the Foundation did not adequately compete the work and did not make positive efforts to use small businesses, minority-owned firms, and women's business enterprises, whenever possible. The Foundation also did not comply with Federal procurement standards in awarding the two contracts for emergency work. Because the work was exigent, we are not questioning all of the costs. However, we are questioning \$1,752,117 of the \$10,621,350 because one contractor billed prohibited markups on the costs of exigent work.

Foundation officials stated that their insurance carrier approved these contracts.⁴ They said their insurance carrier "analyzed contracts and rates, comparing them to the insurance standard cost estimate factors and competitive rates prevailing at the time, to ensure the costs reflected fair and reasonable rates based on then current market conditions." However, the Foundation, as the subgrantee, is responsible for complying with Federal regulations.

⁴ Louisiana's Office of Risk Management is the insurance carrier for the Foundation and for the State of Louisiana. FEMA has not yet finalized the application of insurance proceeds for Hurricane Katrina damages to state-owned property. Therefore, FEMA may reduce the Foundation's award by more than the \$784,427 of anticipated insurance proceeds applied as of the cutoff date of our audit.



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Federal regulations at 2 Code of Federal Regulations (CFR) 215, in part, require that subgrantees—

1. perform procurement transactions in a manner to provide, to the maximum extent practical, open and free competition (2 CFR 215.43),
2. not use “cost-plus-a-percentage-of-cost” or “percentage of construction cost” methods of contracting (2 CFR 215.44(c)),
3. include required provisions in all of their contracts (2 CFR 215.48 and Appendix A to Part 215—Contract Provisions), and
4. make positive efforts to use small businesses, minority-owned firms, and women’s business enterprises, whenever possible (2 CFR 215.44(b)).

Table 2. Contracting Violations

Contract Scope of Work	Contract Amount	Questioned Amount	Noncompliance with Procurement Standards 1–4 Listed Above			
			1	2	3	4
Non-exigent, Permanent Work						
Primary Contractor - Bldgs 2–4	\$ 4,921,759	\$4,921,759	X			X
Primary Contractor - Bldgs ATC & 1	2,040,326	2,040,326	X			X
Primary Contractor - Lighting	637,930	637,930	X			X
Primary Contractor - Exterior Walls	<u>275,247</u>	<u>275,247</u>	X			X
Total Non-exigent Work	<u>\$ 7,875,262</u>	<u>\$7,875,262</u>				
Exigent, Emergency Work						
Primary Contractor	\$10,423,380	\$1,752,117		X	X	X
Environmental Contractor *	<u>197,970</u>	<u>0</u>			X	X
Total Exigent Work	<u>\$10,621,350</u>	<u>\$1,752,117</u>				
Totals	<u>\$18,496,612</u>	<u>\$9,627,379</u>				

Source: Foundation documents and Office of Inspector General (OIG) analysis.

* This is a woman-owned business.



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Non-exigent Work

The Foundation awarded four contracts for non-exigent work totaling \$7,875,262. We question all of these costs as ineligible because the Foundation did not provide open and free competition and did not take required steps to ensure the use of small businesses, minority-owned firms, and women's business enterprises whenever possible.

Rather than compete these contracts in an open and free manner, Foundation officials notified contractors by word-of-mouth or by phoning known contractors about the required pre-bid conference. Foundation officials said these contracts were competitive because they did not limit the competition to only the contractors they had contacted; they allowed any contractor that attended the pre-bid conference to bid. We disagree. Although the Foundation did not show preferential treatment, it did not fulfill Federal requirements for open and free competition because it did not publicly advertise the repair work.

FEMA's general practice has been to allow contract costs it considers reasonable regardless of noncompliance with Federal procurement regulations for open and free competition. We do not agree with this practice because the goal of proper contracting involves more than just cost. Open and free competition not only provides an environment for obtaining reasonable pricing from the most qualified contractors, it also discourages favoritism, collusion, fraud, waste, and abuse.

In addition to not providing open and free competition, the Foundation did not take the required steps on the four non-exigent contracts to ensure the use of small businesses, minority-owned firms, and women's business enterprises whenever possible. The required 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.

Exigent Work

The Foundation awarded two contracts during the exigent period totaling \$10,621,350—one for \$10,423,380 for emergency restoration work and one for \$197,970 for emergency environmental work. We consider the exigent period to be the time when immediate actions are required to protect life and property. When lives and property are at risk, we generally do not question costs for noncompliance with Federal procurement standards. However, in this case, we did question \$1,752,117 of markups on costs because one of the contractors billed on a prohibited cost-plus-percentage-of-cost basis.



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The Foundation awarded a \$10,423,380 time-and-materials contract for emergency restoration work. However, the contractor marked up the cost of some labor and material by \$1,752,117. The terms and conditions of the contract did not include provisions for markups on cost. Further, Federal regulations prohibit the cost-plus-percentage-of-cost method of contracting. Therefore, the contractor's billings violated not only Federal procurement regulations, but also the terms of the contract itself.

By definition, time-and-material contracts provide for acquiring supplies or services based on (1) direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and (2) materials at cost, including, if appropriate, material handling cost. Therefore, the time-and-material rates of this contractor were to include profit and overhead, yet this contractor charged markups of 10 percent to 20 percent on top of its agreed-upon time-and-materials rates.

Foundation officials said that they thought their insurance adjuster requested the contractor to remove the markups from the invoices. However, documents show that the contractor did not remove the markups. Therefore, we question \$1,752,117 of ineligible contract markups.

In addition to using this prohibited method of contracting for one contract, the Foundation did not follow two other procurement standards for either of the two exigent contracts. The Foundation (1) did not take the required affirmative steps to ensure the use of small businesses, minority-owned firms, and women's business enterprises whenever possible; and (2) did not include required contract provisions, such as Equal Employment Opportunity compliance, compliance with labor laws, and prohibition of "kickbacks."⁵ These provisions document the rights and responsibilities of the parties and minimize the risk of contract misinterpretations, disputes, and access to contractor records.

Foundation officials said they did not follow these requirements because this was emergency work and they needed to reopen the buildings as quickly as possible. However, exigent circumstances do not negate the necessity to follow these requirements even when doing so is difficult. Regardless, as noted previously, out of the \$10,621,350 the Foundation claimed for exigent work, we questioned only \$1,752,117 in prohibited markups.

⁵ The Foundation awarded one contract for \$197,970 to a woman-owned business; however, the award did not result from any positive efforts that the Foundation initiated.



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Finding B: Project Reconciliation

The Foundation did not reconcile or submit incurred costs in a timely manner. FEMA authorized \$12.0 million (gross) for 12 projects, but the Foundation has spent over \$19.0 million without requesting authorization for cost overruns (see exhibit). Further, almost 9 years after the disaster, the Foundation has claimed only \$5.3 million, although it completed most work several years ago. These reconciliation problems make it impossible for FEMA to determine the precise status of Federal appropriations.

Federal regulation 44 CFR 206.204(e)(2) states:

The subgrantee must evaluate each cost overrun and, when justified, submit a request for additional funding through the Grantee to the Regional Administrator for a final determination. All requests for the Regional Administrator's approval will contain sufficient documentation to support the eligibility of all claimed work and costs. The Grantee must include a written recommendation when forwarding the request. The Regional Administrator will notify the Grantee in writing of the final determination.

The Foundation did not promptly reconcile its incurred costs and claimed costs to the amounts FEMA authorized (obligated). As a result, it did not request authorization for cost overruns. As of January 2014, the Foundation had incurred \$19,028,588 and had completed all of its 12 projects an average of over 4 years ago. We audited these costs and found them supported and eligible, except for the fact that FEMA had not authorized the \$7,067,414 in cost overruns. The Foundation has submitted claims for only \$5,282,245 in costs resulting in \$13,746,343 of unclaimed costs. Therefore, the Foundation needs to reconcile these projects and submit the actual costs to Louisiana.

Foundation officials said that these reconciliation problems occurred because their priority was to reopen the buildings quickly, and their insurance company paid the invoices (approximately \$16 million of the \$19 million the Foundation incurred). They told us that they are working as quickly as possible to prepare accurate documentation to submit to Louisiana. After the start of our audit, the Foundation submitted support documents for \$2.9 million of these cost overruns to the State.



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Finding C: Grant Management

The contracting and project cost issues presented earlier generally resulted because Louisiana, as the grantee, did not effectively execute its grantee responsibilities. 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.” Those requirements include the following:

- 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.
- 44 CFR 206.205(b)(1) requires grantees to make an accounting to the FEMA Regional Administrator of eligible costs for each approved large project “as soon as practicable after the subgrantee has completed the approved work and requested payment.”
- 44 CFR 206.204(f) requires grantees to submit quarterly progress reports to FEMA. Such reports will describe the status of each large, open project and outline any problems or circumstances expected to result in noncompliance with the approved grant conditions.

Hurricane Katrina occurred almost 9 years ago. It is too late to correct the contracting mistakes that subgrantees made back then. All Louisiana can do is try to prevent those same mistakes from occurring again and try to correct them when they do. To its credit, Louisiana has made significant efforts to educate subgrantees on Federal procurement and has developed a workflow schedule of project worksheets to help speed the closing of completed projects.

However, in a recent OIG report, we found that Louisiana has been very slow to provide closeout information to FEMA because state officials had not made closing projects a priority.⁶ We found the same condition in this audit. The Foundation has completed its projects, but Louisiana has not closed a single project. Grantees must be proactive rather than wait years for subgrantees to submit information for closing projects. It is Louisiana’s responsibility to do whatever is necessary to get these projects closed.

In addition, 5 years ago, FEMA notified Louisiana that at least 6 of the 12 projects were 100 percent complete. The Foundation incurred \$10,804,579 for these six projects. However, Louisiana did not report these projects complete until the second quarter of 2013, over 4½ years later. Further, over a year ago, the Foundation reported to Louisiana that the majority of its projects were at least 90 percent complete. However,

⁶ Report Number DD-13-15, *State of Louisiana Needs a Strategy to Manage Hurricanes Katrina and Rita Public Assistance Grants More Effectively*, September 26, 2013.



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Louisiana has not provided closeout information to FEMA. Therefore, Louisiana should work with the Foundation to close these projects and report the actual cost to FEMA.

It is FEMA's responsibility to hold Louisiana accountable for proper grant administration. Louisiana and the Foundation should have long ago reconciled all incurred, claimed, and reimbursed costs. Therefore, it is critical that both Louisiana and the Foundation strengthen their accounting procedures to ensure compliance with Federal guidelines for future disasters, and FEMA should take steps to ensure that this occurs.

RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region VI:

Recommendation #1: Disallow \$7,875,262 as ineligible for four noncompetitive contracts for non-exigent work, unless FEMA grants an exception for all or part of the costs as provided for in 2 CFR 215.4 (finding A).

Recommendation #2: Disallow \$1,752,117 as ineligible for prohibited markup on contract costs, unless FEMA grants an exception for all or part of the costs as provided for in 2 CFR 215.4 (finding A).

Recommendation #3: Ensure that FEMA and Louisiana instructs the Foundation to complete the reconciliation of all projects and submit the actual costs to Louisiana (finding B).

Recommendation #4: Provide documentation that Louisiana is working with the Foundation to strengthen its accounting procedures to ensure compliance with Federal regulations for future disasters (finding B).

Recommendation #5: Direct Louisiana to finalize and close out the Foundation's completed projects within 12 months of this report (finding C).

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed the results of our audit with the Foundation officials during our audit and included their comments in this report, as appropriate. We also provided a draft report in advance to FEMA, Louisiana, and Foundation officials and discussed it at exit conferences with FEMA officials on July 15, 2014, and with Louisiana and Foundation officials on August 5, 2014. FEMA officials generally agreed that our findings and recommendations are valid. However, FEMA requested that, for recommendation #5,



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we change the timeframe for Louisiana to close the Foundation's completed projects to 12 months, rather than the 6 months we initially recommended in our draft report. We concurred and made the change. FEMA officials said they requested this change because they did not think Louisiana would be able to close the completed projects in 6 months. Louisiana and Foundation officials generally disagreed with our findings and recommendations.

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 of responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until we receive and evaluate your response, we will consider the recommendations open and unresolved.

Consistent with our responsibility under the *Inspector General Act*, we will provide 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 are Christopher Dodd, Acting Director; Paige Hamrick, Audit Manager; Rebecca Hetzler, Auditor-in-Charge; D'Angela Dummons, Auditor; and Raeshonda Keys, Auditor.

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



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Exhibit

Schedule of Projects Audited

Project Number	Category of Work*	Gross Award Amount	Net Award Amount	Gross Eligible Incurred Costs	Cost Over-runs	Claimed Costs	Questioned Cost	
							Non-Competitive Contracts	Prohibited Contract Mark-ups
15932	B	\$1,336,836	\$1,336,836	\$ 2,641,946	\$1,305,110	\$1,319,840	\$ 0	\$ 437,892
15933	B	1,307,576	1,307,576	1,608,767	301,191	1,167,055	0	263,426
15578	E	1,286,367	1,286,367	1,986,820	700,453		1,959,076	0
15934	B	1,288,789	1,288,789	2,435,625	1,146,836		0	404,648
15286	E	1,208,176	1,208,176	1,225,474	17,298	1,161,142	1,197,136	0
15321	E	1,191,127	1,191,127	1,163,098			1,032,942	0
15287	E	1,008,017	1,008,017	1,545,418	537,401		1,527,977	0
15929	B	1,006,156	1,006,156	3,190,032	2,183,876	1,006,156	0	525,507
15576	E	931,740	931,740	1,531,882	600,142		1,520,201	0
15545	E	784,427	0	771,317			637,930	0
15930	B	583,534	583,534	835,765	252,231	583,534	0	120,644
15864	B	69,568	69,568	92,444	22,876	44,518	0	0
Totals		<u>\$12,002,313</u>	<u>\$11,217,886</u>	<u>\$19,028,588</u>	<u>\$7,067,414</u>	<u>\$5,282,245</u>	<u>\$7,875,262</u>	<u>\$1,752,117</u>
Claimed Costs				5,282,245				
Unclaimed Costs				\$13,746,343				
Total Questioned Costs							<u>\$9,627,379</u>	

Source: FEMA Project Worksheets, Louisiana, the Foundation, and 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).



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