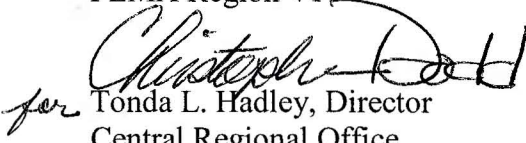




Homeland  
Security

April 4, 2011

MEMORANDUM FOR: Tony Russell, Regional Administrator  
FEMA Region VI

FROM:  for Tonda L. Hadley, Director  
Central Regional Office

SUBJECT: *Xavier University of Louisiana*  
FEMA Disaster Number 1603-DR-LA  
Public Assistance Identification Number 071-020BC-00  
Audit Report DD-11-12

We audited public assistance funds awarded to Xavier University of Louisiana (Xavier), located in New Orleans, Louisiana. Our audit objective was to determine whether Xavier accounted for and expended Federal Emergency Management Agency (FEMA) grant funds according to federal regulations and FEMA guidelines.

Xavier received an award of \$75.4 million from the Louisiana Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP), a FEMA grantee, for damages resulting from Hurricane Katrina, which occurred on August 29, 2005. The award provided 100% FEMA funding for 40 large and 57 small projects.<sup>1</sup> The audit covered the period August 29, 2005, through June 22, 2010, and included 40 projects totaling \$74.5 million. We expanded our scope to include all remaining projects to determine whether Xavier claimed duplicate costs and accounted for costs on a project-by-project basis.

Xavier did not account for costs on a project-by-project basis as required (see Finding A); therefore, we could not determine whether Xavier's expenditures were for eligible work authorized on the project worksheets. As a result, our audit scope was limited, and other matters may have come to our attention if Xavier had properly accounted for costs. As of June 22, 2010, the cut-off date of our audit, repairs were in various stages of completion; and Xavier had claimed and GOHSEP had disbursed \$35.1 million.

We conducted this performance audit under the authority of the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those

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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.

standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective, except for the scope limitation discussed above.

We interviewed FEMA, GOHSEP, and Xavier officials; reviewed judgmentally selected transactions (generally based on dollar value); and performed other procedures considered necessary to accomplish our objective. We did not assess the adequacy of Xavier's internal controls applicable to grant activities because it was not necessary to accomplish our audit objective. We did, however, gain an understanding of Xavier's method of accounting for disaster-related costs and its procurement policies and procedures.

## **BACKGROUND**

Xavier University of Louisiana is a private, non-profit Catholic university that is historically African-American. In September 2005, flood waters brought by Hurricane Katrina inundated the 43 buildings of the Xavier University campus with 4 feet of water for more than 2 weeks. Many students, staff, and faculty, who were displaced across the nation, were concerned with the survival of their university. Xavier's President committed to reopen the university in time for what was officially the resumption of the "fall" semester. While waiting for federal disaster assistance, Xavier sought "bridge loan" financing to begin work on campus. After 5 months of intensive cleanup and reconstruction, the University reopened in January 2006. Xavier began to rebound with the gradual arrival of students who were housed in FEMA temporary housing units that filled two of the University's largest parking lots. Almost 80% or 3,098 of pre-Katrina Xavier students returned.

## **RESULTS OF AUDIT**

Xavier did not account for and expend FEMA grant funds according to federal regulations and FEMA guidelines. Xavier did not account for costs on a project-by-project basis as required and provided documentation that included duplicate, ineligible, and unsupported costs. Further, Xavier did not follow federal procurement standards in awarding \$56.4 million of contracts, and did not purchase the required amount of property insurance. As a result, we question Xavier's entire award of \$75.4 million. At the close of our audit fieldwork, Xavier officials were working with GOHSEP and FEMA to account for costs on a project-by-project basis.

### **Finding A: Project Accounting**

Xavier did not account for its claimed costs on a project-by-project basis, as required. Xavier officials could not provide a complete and reliable listing of costs for its projects. This occurred because Xavier's contract with its general contractor did not have a clear scope of work and FEMA rewrote project worksheets multiple times attempting to align the projects to the contractor's invoices. Because Xavier did not provide supporting documentation on a project-by-project basis, we question \$75,352,011 as unsupported costs.

Xavier should have had a financial and record keeping system in place that could accurately track costs. FEMA Publication 322, Public Assistance Guide, Chapter 5 – Project Management, states that it is critical that the applicant establish and maintain accurate records of events and expenditures related to disaster recovery work. Further, 44 CFR 206.205(b) requires that large project expenditures be accounted for on a project-by-project basis. The importance of maintaining a complete and accurate set of records for each project cannot be overemphasized.

The majority of Xavier's projects for permanent work were written for specific buildings or facilities such as a gymnasium, administration building, or science building. However, Xavier provided 41 invoices from its general contractor that listed costs by type of cost, rather than by building or project. For example, a typical invoice included a summary of general contractor labor, equipment, and materials expenses and similar expenses for subcontractors for a specific period of time, but did not allocate these costs to any specific buildings or areas of the university. Therefore, the invoices did not reconcile to the costs authorized on associated project worksheets. As a result, we could not perform a complete audit of claimed costs. However, we did review the initial 16 general contractor invoices and the supporting documentation provided to determine the type and adequacy of support. Our limited review disclosed that the invoices contained ineligible, duplicate, and unsupported costs. For example, the general contractor billed for the following costs:

- Ineligible costs totaling \$16,945 that were not within the scope of the projects, or not the direct result of the disaster. For example, these ineligible costs included \$4,115 for telephones and equipment rental with service or invoice dates before the disaster. Additionally, these costs included building permits and building materials for a FEMA trailer park, and survey work for underground utilities that were not authorized in the project scopes of work.
- Duplicate administrative costs of \$3,213, consisting of office equipment maintenance, general office and employee bonuses, and vehicle services. These costs were duplicate costs because they were already covered under the contractor's overhead rate.
- Duplicate invoice charges totaling \$2,100.
- Overhead costs of \$2,821,395 not supported by actual overhead costs incurred.<sup>2</sup>
- Direct labor costs of \$1,880,191 for which the contractor provided hours worked but did not provide support for rates paid to each employee and the associated fringe benefit costs.<sup>3</sup>
- Equipment charges, fuel costs, office supplies, and living expenses totaling \$114,095 that were not supported by receipts or other source documentation.

Cost principles at 2 CFR 215.21(b)(2) and (7) state that a cost must be adequately documented to be allowable under federal awards.<sup>4</sup> Further, FEMA's Public Assistance Guide (FEMA 322, October 1999) states that applicants must carefully document contractor expenses. In addition,

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<sup>2</sup> The overhead was included in contractor invoices 1 through 28.

<sup>3</sup> The direct labor costs were included in contractor invoices 1 through 28.

<sup>4</sup> OMB Circular A-21, *Cost Principles for Educational Institutions*, in effect at the time of the disaster, was relocated to 2 CFR 215 on August 31, 2005.

44 CFR 206.223(a)(1) states that to be eligible an item of work must be required as the result of the disaster.

Although Xavier was responsible for adequately documenting its costs on a project-by-project basis, FEMA's methodology for preparing project worksheets made it difficult for Xavier. FEMA began writing project worksheets after much of Xavier's emergency work and permanent work was in-progress. FEMA initially prepared the project worksheets by type of work using the general contractor's invoices, then rewrote the project worksheets by assigning costs to individual buildings. Xavier officials recognized the challenge of tracking costs as the number and scope of project worksheets changed and stated to FEMA that "confusion is bound to ensue if FEMA proceeded with plans to write one giant worksheet for each building." FEMA later consolidated over 480 of the 723 projects into two project worksheets. FEMA's actions made accounting for the funds on a project-by-project basis difficult.

Further, FEMA's project rewrites have resulted in supporting documentation being duplicated for some projects. For example, Xavier submitted documentation for \$388,557 for work on 12 small projects and 1 large project. However, after the FEMA rewrites, Xavier inadvertently submitted the same supporting documents under two other large projects.

Xavier could not provide a complete and reliable accounting of its costs; and its claim included unsupported, duplicate, ineligible costs. Therefore, we question the entire award, or \$75,352,011, as unsupported. Of this amount, we question \$49,703,291 as ineligible in Findings B, C, and D. Therefore, our recommendation for Finding A is for FEMA to disallow the net amount of \$25,648,720 (\$75,352,011 - \$49,703,291) (see Exhibit A). Xavier officials disagreed with this finding, stating that they have all the documents to support all costs according to the project worksheets.

### **Finding B: Contracting**

Xavier did not follow federal procurement standards in awarding \$56,351,000 of repair and restoration work. Federal regulations at 2 CFR 215 require, among other things:

- All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. (2 CFR 215.43)
- The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used. (2 CFR 215.44(c))
- Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. (2 CFR 215.45)
- Subgrantees' contracts must contain specific provisions (2 CFR 215 Appendix A)

Xavier did not openly compete a contract totaling \$49.7 million for its initial emergency and restoration work, and the awarded contract was a prohibited cost-plus-percentage-of-cost contract.<sup>5</sup> Xavier also awarded a second \$6.7 million non-competitive cost-plus contract to the

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<sup>5</sup> The contractor billed \$49,691,227 under the initial contract under 41 invoices. However, Xavier only claimed \$47,857,665, submitting 28 of 41 invoices. Xavier officials stated that they intend to claim the balance of the invoiced amounts.

same contractor. As a result of our recent management advisory report,<sup>6</sup> Xavier halted work under the second contract and notified us that the contract work would be awarded using full and open competition. Work under the initial cost-plus contract was substantially complete at the time of our audit.

Xavier officials confirmed that they did not perform cost or price analyses on procurements. However, they did state that their consultant reviewed engineering and construction proposals and subcontractor invoices on the \$49.7 million contract. The documents Xavier provided included sign-offs on invoices by the consultant and notes of meetings with FEMA staff and Xavier management, but no specific analyses of proposals. Further, Xavier did not include all required contract provisions in its contracts. Xavier's procurement of \$56.4 million in services without required provisions not only violated federal regulations, it was not prudent because the rights and responsibilities of the parties remained open to dispute and interpretation.

Federal procurement regulations require open and free competition to the extent practicable not only to achieve a reasonable cost, but also to allow all qualified, responsible parties an equal chance to compete for the work. Open and free competition also helps to discourage and prevent favoritism, collusion, fraud, waste, and abuse. Further, cost-plus contracts provide no incentive for the contractor to control costs. Because Xavier halted work under the second contract and notified us that the contract work would be awarded using full and open competition, we did not question the \$6.7 million contract costs. Therefore, we question \$49,691,000 for improperly contracted costs.<sup>7</sup> This amount includes \$281,430 we also question in Finding C below. Therefore, our recommendation for Finding B is for FEMA to disallow the net amount of \$49,406,570 (\$49,691,000 - \$281,430) (see Exhibit A).

Xavier officials disagreed with this finding and stated they acted prudently to ensure that the school reopened and resumed academic operations, and that their actions saved costs for the government under the circumstances of the hurricane. However, federal regulations do not allow cost-plus-percentage-of-cost contracts under any circumstances.

### **Finding C: Insurance**

Xavier's claim included \$281,430 for two buildings and contents under Project 15866 for which Xavier did not purchase insurance. Section 311(a)(1) of the Stafford Act requires subgrantees to obtain and maintain insurance as may be reasonably available, adequate, and necessary to protect against future loss as a condition of receiving FEMA grant funds. Further, 44 CFR 206.252(d) requires that subgrantees obtain and maintain flood insurance in the amount of eligible disaster assistance. Xavier officials acknowledged that they did not purchase insurance on the two buildings, but were working to obtain a waiver from the state because they believed insurance was not required due to the building elevations. Because Xavier did not obtain insurance, FEMA should disallow the uninsured portion of claimed costs. Therefore, we question \$281,430 as ineligible.

### **Finding D: Legal Responsibility**

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<sup>6</sup> OIG Report Number DD-10-19, *Xavier University of Louisiana, Contracting*, issued September 24, 2010.

<sup>7</sup> Because Xavier has not claimed all costs for contracts, we question the award amounts for those contracts.

Xavier's claim included \$12,291 for two facilities and contents under Projects 9734 and 13229 that it did not own and, therefore, was not legally responsible for at the time of the disaster. Federal regulations at 44 CFR 206.223(a) and (b) require that, to receive federal funding, the subgrantee must own and be legally responsible for the facility. Also, the Public Assistance Guide (FEMA 322 p. 25) states that an eligible applicant must be legally responsible for the damaged facility at the time of the disaster. Xavier officials agreed that the facilities and contents were not owned by Xavier. Therefore, we question \$12,291 as ineligible.

#### **Finding E: Insurance Review**

FEMA had not completed its insurance review as of the cut-off date of our audit. Xavier received \$36.3 million of insurance proceeds. However, FEMA had allocated only \$21.6 million to Xavier's projects. Some of these insurance proceeds (approximately \$14.7 million) may be applicable to FEMA-eligible projects. Therefore, FEMA needs to complete its insurance review and allocate the applicable insurance proceeds to Xavier's projects.

#### **Finding F: Project Extensions**

At the time of our audit, Xavier had not submitted required requests for time extensions. Federal regulations at 44 CFR 206.204(c) and (d) place time restrictions on project completion and set forth requirements for subgrantees to request extensions for project completion. Xavier began submitting project extension requests on October 11, 2010, several weeks after the last approved project deadline. Although we did not question costs related to project deadlines, FEMA should ensure that GOHSEP require subgrantees to follow federal regulations regarding time restrictions and extensions on project completion.

### **RECOMMENDATIONS**

We recommend that the Regional Administrator, FEMA Region VI:

**Recommendation #1:** Disallow \$25,648,720 (\$25,648,720 federal share) of unsupported costs unless Xavier provides documentation sufficient to support costs allocable to each large project (Finding A).

**Recommendation #2:** Disallow \$49,409,570 (\$49,409,570 federal share) of ineligible contract costs (Finding B).

**Recommendation #3:** Disallow \$281,430 (\$281,430 federal share) of ineligible insurance costs (Finding C).

**Recommendation #4:** Disallow \$12,291 (\$12,291 federal share) of ineligible costs Xavier claimed for facilities it did not own (Finding D).

**Recommendation #5:** Complete the insurance review and allocate applicable insurance proceeds to Xavier's projects (Finding E).

**Recommendation #6:** Require GOHSEP to implement controls to ensure subgrantees comply with federal regulations regarding time restrictions and extensions on project completion (Finding F).

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

We discussed the results of our audit with Xavier officials during our audit and included their comments in this report, as appropriate. We also provided written summaries of our findings and recommendations in advance to FEMA, GOHSEP, and Xavier officials and discussed them at exit conferences held with FEMA on March 23, 2011, and with GOHSEP and Xavier officials on March 24, 2011. FEMA officials generally agreed with our findings and recommendations. However, FEMA officials did state that FEMA will not agree with disallowing costs that are reasonable, even if they are incurred under prohibited contract types. GOHSEP withheld comments. Xavier officials generally disagreed with the findings and recommendations. However, Xavier committed to begin work with GOHSEP immediately to resolve the issues.

Please advise this office by (90 days after issuance) July 5, 2011 of the actions planned or taken to implement the recommendations, including target completion dates for any planned actions. To promote transparency, this final report and your response to this report, including your corrective actions planned, will be posted to our website, with exception of sensitive information identified by your office.

Significant contributors to this report were Paige Hamrick, Jim Mitchell, and Rebecca Hetzler. Should you have questions concerning this report, please contact me or Paige Hamrick, Audit Manager, at (214) 436-5200.

cc: Executive Director (Acting), FEMA Louisiana Recovery Office  
Audit Liaison, FEMA Louisiana Recovery Office  
Audit Liaison, FEMA Region VI  
Audit Liaison, FEMA (Job Code G-10-043)  
Audit Liaison, DHS

**Costs Questioned Under Multiple Criteria  
Xavier University  
FEMA Disaster Number 1603-DR-LA**

We question unsupported costs in Recommendation 1 (Finding A) and contracting in Recommendation 2 (Finding B) in our report that, in some instances, were questioned for more than one reason. As shown in the table below, we questioned \$49,691,000 in Finding B, which includes \$281,430 also questioned in Finding C. Also shown, we questioned \$75,352,011 in Finding A, which includes \$49,409,570 (Net) also questioned in Finding B, \$281,430 questioned in Finding C, and \$12,291 questioned in Finding D. Therefore, if FEMA does not disallow these costs for Findings B, C, and D, FEMA should add them back to the amount recommended for disallowance in Finding A.

<b>Questioned Costs</b>			
<b>Finding</b>	<b>Gross Amount Questioned</b>	<b>Costs Questioned Under Multiple Findings</b>	<b>Net Questioned Costs by Finding</b>
A. Project Accounting Less costs questioned in B (Net) Less costs questioned in C Less costs questioned in D Net amount questioned in A	\$75,352,011	\$(49,409,570) (281,430) <u>(12,291)</u>	\$25,648,720
B. Contracting Less costs questioned in C	49,691,000	\$ (281,430)	49,409,570
C. Insurance	281,430	\$ <u>0</u>	281,430
D. Legal Responsibility	12,291	\$ <u>0</u>	<u>12,291</u>
<b>Totals</b>		<b>\$ <u>49,984,721</u></b>	<b><u>\$75,352,011</u></b>