

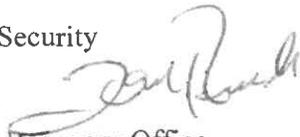
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FEMA

August 13, 2009

**MEMORANDUM FOR:** Tonda L. Hadley, Director  
Central Regional Office  
Office of Inspector General  
US Department of Homeland Security

**FROM:** Tony Russell, Acting Director   
FEMA Louisiana Transitional Recovery Office

**SUBJECT:** Plaquemines Parish, Louisiana  
FEMA Disaster No. 1603-DR-LA  
Report Number DD-09-03

Thank you for your December 19, 2008 Office of Inspector (OIG) review of Hurricanes Katrina debris removal activities in Plaquemines Parish. FEMA has previously responded to this audit recommendation on June 3, 2009 and has now received GOHSEP's and Plaquemines Parish's response to this audit.

This memorandum provides FEMA's response and corrective actions taken or planned to implement the audit recommendations.

**Audit Recommendations and Actions Required**

**A. Percentage-of-Cost Used in a Contract**

*Recommendation 1: Disallow the claimed costs of \$126,342.00 and*

*Recommendation 2: Require GOHSEP to advise the Parish not to use cost-plus-percentage-of-costs clauses in future contracts.*

The audit report states that on May 1, 2006, the Parish awarded a competitively bid contract to an engineering firm to provide services in three phases of a project to remove debris from the Parish drainage system under PW 10732. Although the contract contained hourly rates for resident inspection hours, the Parish agreed to pay the contractor a fee of 4% of the actual construction costs proportionate to the completion of work.

44 CFR 13.36(f)(4) states that costs plus percentage of cost and percentage of construction cost methods shall not be used. Use of such contracts may result in FEMA limiting the Public

Assistance grant to an amount determined to be reasonable based on the eligible work performed. FEMA Publication 325, *Debris Management Guide*, dated April 1999.

Plaquemines Parish agrees with these two audit recommendations. The Parish states that the cost-plus-a-percentage of costs issue arose with a previous administration and has taken steps to prohibit such illegal clauses in future contracts. Plaquemines Parish agrees to return the sum of \$126,342.00.

**FEMA response:** By December 4, 2009, FEMA will prepare a Version of PW 10732 deobligating \$126,342.00 as ineligible, and provide a copy of the new PW to OIG. Additionally, by letter dated no later than December 4, 2009, FEMA will instruct the Grantee to require the sub-grantee not to use cost-plus-percentage-of-costs clauses in future contracts.

#### B. Procurement of Services

*Recommendation 3: Require GOHSEP to direct the Parish to comply with federal procurement regulations concerning competitive bids and written contracts for Katrina and future disasters.*

The audit states that the Parish procured debris removal services exceeding \$100,000.00 without written contracts, one for debris removal (PW 13362), and one for equipment rental (PW 2942). The Parish did not solicit any bids for the rented equipment.

Grant funds may be used only for the allowable costs of the grantees, subgrantees, and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors. 44 CFR 13.22 (a)(1). An applicant may use force account labor (applicant owned) or hire a contractor to perform such work as debris clearance, removal, disposal, reduction, recycling and/or monitoring. FEMA Publication 325, *Debris Management Guide*, dated April 1999. A contract means a procurement contract under a grant or subgrant. 44 CFR 13.3. According to 44 CFR 13.36(b)(1), applicants will utilize their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable federal law and the standards identified in that section. FAR Section 2.101 requires contracts and any amendments or modifications thereto to be in writing. Additionally, all procurement transactions shall be by full and open competition. 44 CFR 13.36(c)(1).

In its response, Plaquemines Parish states that it agrees with this recommendation and that it has no explanation as to why a written contract for services with United Labor LLC was not completed or why the Parish rented equipment from Duplessis and Sons without soliciting bids or executing a written contract.

**FEMA response:** By letter dated no later than December 4, 2009, FEMA will instruct the Grantee to require the sub-grantee to comply with federal procurement regulations concerning competitive bids and written contracts for Katrina and future disasters.

#### C. Commercial Properties Demolished Without Prior FEMA Approval

*Recommendation 4: Develop a methodology for estimating the amount of debris removed from the 245 commercial properties demolished without FEMA's prior approval, and require the*

*parish to obtain the required FEMA approvals in future disasters for commercial property demolitions and*

*Recommendation 5: Disallow the costs claimed by the Parish for the estimated amounts of debris removed from the 245 commercial properties demolished without FEMA's prior approval.*

The audit report states that the Parish did not obtain FEMA approval before it demolished or removed debris from 245 commercial properties. The Parish responded claiming they did follow proper procedures and even worked with FEMA to develop a checklist of procedures to follow prior to demolishing commercial properties, which FEMA later adopted.

**FEMA response:** Plaquemines Parish disputes these recommendations and findings, and included documentation they state supports most of the questioned costs. Due to the nature of the review required and the necessity that FEMA pull all 245 files on the commercial properties to conduct a review and make a final determination, FEMA anticipates making a final determination and deobligating any funds it deems ineligible, if any, by December 4, 2009.

#### D. Unallowable Costs for Unauthorized Positions and Force Account Equipment

*Recommendation 6: Disallow the unallowable costs totaling \$6,911.00.*

The audit report states that the Parish claimed unallowable labor and unsupported equipment costs totaling \$6,911.00 under two PW(s). In the first instance, the Parish incurred charges for two site surveillance technicians who provided asbestos testing of homes to be demolished. OIG claims that these positions were not specified under the contract; therefore, they are not eligible for reimbursement. The Parish responded stating that they agree with the audit recommendation, and will review the contract and rates charged for services to determine whether the services were authorized under the contract and whether the rates charged were reasonable. If the rates charged are reasonable, the Parish will amend the contract to include the services. If the rates charged are not reasonable, the Parish will demand a refund of funds from the contractor.

The Parish also claimed costs in the amount of \$3,036.00 under PW 2942 for the use of Parish equipment that was not supported by time sheets of force account employees using the equipment. OIG found eighteen (18) instances of charges for equipment hours when force account employees did not work. The Parish responded stating that it agrees with the audit recommendation and will credit FEMA \$3,036.00.

44 CFR 13.36(b)(2) requires grantees and subgrantees to maintain a contract administration system to ensure their contractors perform according to the terms and conditions of the contracts or purchase orders. 44 CFR 20(b)(6) requires that costs claimed under federal programs must be adequately supported.

**FEMA response:** While the Parish has agreed to conduct a review of the costs incurred under PW 9090, currently the Parish cannot substantiate the costs claimed. Therefore, by December 4, 2009 FEMA will prepare a Version of PW 9090 deobligating \$3,875.00 as ineligible, and provide a copy of the new PW to OIG. FEMA will review all additional documentation if the Parish has additional documentation that can substantiate the costs incurred under the PW 9090.

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Additionally, by December 4, 2009, FEMA will prepare a Version of PW 2942 deobligating \$3,036.00 as ineligible, and provide a copy of the new PW to OIG.

I believe that the FEMA, State and City actions described above adequately resolve the OIG recommendations.

Enclosures

cc: Gray Jones, Acting Regional Administrator, FEMA Region VI  
Col. (R) Thomas Kirkpatrick, Louisiana State Coordinating Officer  
Mark Riley, Deputy Director, GOHSEP  
Mark Debosier, Assistant Deputy Director, Disaster Recovery, GOHSEP  
Bernard Plaia, Attorney, GOHSEP