

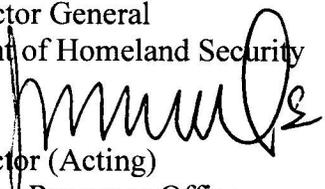
U.S. Department of Homeland Security
Federal Emergency Management Agency
Louisiana Recovery Office
One Seine Court, Room 1024
New Orleans, Louisiana 70114



FEMA

October 21, 2010

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

FROM: Joseph Threat 
Executive Director (Acting)
FEMA Louisiana Recovery Office

SUBJECT: Xavier University of Louisiana, Contracting
FEMA Disaster Number 1603-DR-LA
Public Assistance Identification Number 071-020BC-00
Audit Report Number DD-10-19

Thank you for your recent Office of Inspector General (OIG) review of Federal Emergency Management (FEMA) public assistance funds awarded to Xavier University of Louisiana (Xavier) for disaster recovery work related to Hurricane Katrina. This memorandum provides FEMA's response and corrective actions taken planned to implement the recommendations.

OIG Finding A: Open and Free Competition

Xavier awarded a \$50 million contract to its general contractor without competition, and therefore did not comply with federal contracting requirements for open and free competition.

OIG Finding B: Cost-Plus-Percentage-of-Cost Contract

The contract Xavier awarded to its general contractor contained cost-plus-percentage-of-cost provisions. Federal regulations at 2 CFR 215.44© specifically prohibit these types of contracts because they provide an incentive for the contractor to incur as much cost as possible.

OIG Recommendation #1:

Require the Louisiana Governor's Office of Homeland Security and Emergency Preparedness to advise Xavier University of Louisiana that, to qualify for federal assistance, it must follow federal contracting regulations and that continued non-compliance with federal regulations will jeopardize its funding. (Findings A and B).

Tonda L. Hadley
October 21, 2010
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FEMA RESPONSE:

In a letter dated September 24, 2010, FEMA addressed concerns with current contract procurement procedures being practiced by Xavier to the Louisiana Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP). Federal regulation 44 CFR § 13.36(c) (1) states, "All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition." Further, 44 CFR § 13.36(f) (4) states, "The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used." The Applicant has been notified that the continued use of these types of contracts violates Federal regulations. (Letter attached)

Finding C: Remaining Work

On September 15, 2010, Xavier officials provided the OIG with a packet of contract documents that indicated Xavier had solicited competitive bids for several projects with a combined estimated total cost of about \$10.4 million. However, they also admitted that they had awarded a non-competitive \$6.7 million contract for work to be performed on a student center. We requested a copy of the student center contract; and Xavier subsequently emailed the OIG a copy of a draft contract. The draft contract contained prohibited cost-plus-percentage-of-cost provisions and showed the contractor to be the same general contractor discussed above in Findings A and B.

OIG Recommendation #2:

Require the Louisiana Governor's Office of Homeland Security and Emergency Preparedness to advise Xavier University of Louisiana to immediately terminate all non-competitively awarded contracts and any contracts with prohibited cost-plus-percentage-of-cost provisions (Finding C).

FEMA RESPONSE

FEMA advised GOHSEP in a letter dated September 24, 2010, to inform the Applicant that, to qualify for Federal assistance, they must follow Federal contracting regulations, as outlined in 44 CFR, and that continued non-compliance with those regulations will jeopardize their funding. In addition, FEMA recommended GOHSEP advise the Applicant to immediately terminate all non-competitively awarded contracts and any contracts with prohibited cost-plus-percentages-of-cost provisions. (Letter attached)

Thank you for your attention, and please feel free to contact me if you have any questions.

cc: Tony Russell, Regional Administrator, FEMA Region VI
Mark S. Riley, Chief of Staff, GOHSEP
Mark DeBosier, Deputy Director, Disaster Recovery Division, GOHSEP
Ben Plaia, Legal Counsel for Disaster Recovery Division, GOHSEP

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FEMA

September 24, 2010

Mark DeBosier
Deputy Director - Disaster Recovery Division
GOHSEP
State of Louisiana
7667 Independence Boulevard
Baton Rouge, LA 70806

Re: Contract Procurement Procedures
Xavier University of Louisiana; FIPS# 071-020BC-00
FEMA-1603-DR-LA

Dear Mr. DeBosier:

This letter is to address concerns with current contract procurement procedures being practiced by Xavier University of Louisiana (Applicant). It has come to FEMA's attention that the Applicant continues the practice of awarding contracts for Public Assistance projects that have not been competitively bid and has in the past awarded contracts with cost-plus-percentage-of-cost provisions.

Specifically, on September 15, 2010, the Applicant acknowledged to officials from the Office of Inspector General (OIG) that they had awarded a non-competitively bid \$6.7 million contract for work at the Student Center (Project Worksheet 19093) and continued the use of non-competitive contracts with cost-plus-percentage-of-cost provisions awarded during the initial emergency period following Hurricane Katrina. While FEMA understands the Applicant's difficulty in competitively bidding projects during the emergency period (August 29, 2005 – January 31, 2006) due to exigent circumstances, the continued use of these types of contracts violates Federal regulations.

Federal regulation 44 CFR §13.36(c)(1) states, "All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition." As such, applicants must advertise contract solicitations publically when projects are federally funded. This requirement applies to architectural and engineering design services as well as general contracting services.

Mark DeBosier
September 24, 2010
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Cost-plus-percentage-of-cost contract provisions are specifically prohibited by 44 CFR §13.36(f)(4) because they provide an incentive for the contractor to incur as much cost as possible.

Please advise the Applicant that, to qualify for Federal assistance, they must follow Federal contracting regulations, as outlined in 44 CFR, and that continued non-compliance with those regulations will jeopardize their funding. In addition, please advise the Applicant to immediately terminate all non-competitively awarded contracts and any contracts with prohibited cost-plus-percentage-of cost provisions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andre Cadogan', with a long horizontal flourish extending to the right.

Andre Cadogan
Deputy Director, Programs
Louisiana Recovery Office

cc: Mark S. Riley, Chief of Staff, GOHSEP