

# Department of Homeland Security Office of Inspector General

FEMA Should Disallow \$7.6 Million in  
Public Assistance Grant Funds Awarded to the  
Audubon Commission, New Orleans, Louisiana



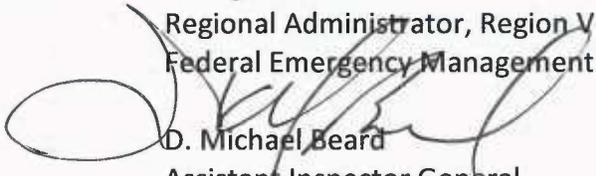


**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

1/25/2013

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

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

SUBJECT: *FEMA Should Disallow \$7.6 Million in  
Public Assistance Grant Funds Awarded to the  
Audubon Commission, New Orleans, Louisiana*  
FEMA Disaster Number 1603-DR-LA  
Audit Report Number DD-13-05

We are currently auditing \$12.3 million of Federal Emergency Management Agency (FEMA) Public Assistance (PA) grant funds awarded to the Audubon Commission (Commission) in New Orleans, Louisiana (Public Assistance Identification Number 071-U76DM-00). The Louisiana Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP), a FEMA grantee, awarded these funds to the Commission for disaster recovery work resulting from Hurricane Katrina, which occurred in August 2005.

This memorandum advises you of two issues related to \$7.6 million of the Commission's \$12.3 million award that require your immediate attention. First, FEMA should disallow \$7.6 million because 29 approved projects are not the Commission's legal responsibility, which Federal regulations require to be eligible for funding. Second, of the 29 projects in question, FEMA should assess the ongoing need for 20 projects totaling \$6.9 million (90.8 percent of the questioned \$7.6 million) because the Commission has not initiated work on these projects in the 7 years since Hurricane Katrina. These conditions occurred because neither FEMA nor GOHSEP fulfilled their responsibilities in managing funds awarded to the Commission.

We are conducting this performance audit pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Our overall objective is to determine whether the Commission accounted for and expended FEMA PA funds according to Federal regulations and FEMA guidelines. At the conclusion of our audit, we plan to issue our complete audit report, including any additional findings and recommendations.



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#### BACKGROUND

The Commission is a component of the City of New Orleans (City) that the City authorizes to administer various museum and park facilities. These facilities include the Audubon Park, Audubon Zoo, Aquarium of the Americas, Woldenberg Riverfront Park, and several other facilities. The Commission, through a City charter and property leases, has legal responsibility for repairing some but not all of the facilities it administers for the City. For example, the Commission also administers the Audubon Nature Center (Center) located in eastern New Orleans. However, the Commission does not have legal responsibility for repairing damages to facilities at the Center because the lease the City entered into with the Audubon Nature Institute (Institute) assigned this responsibility to the Institute, not the Commission.<sup>1</sup>

#### **The Commission Does Not Have the Legal Responsibility To Repair the Damages Involving More Than Half of the Award**

The Commission does not have the legal responsibility to repair the damages Hurricane Katrina caused to the Center. Of the \$12.3 million FEMA approved for the Commission, \$7.6 million was for 29 projects at the Center. Because the Commission is not legally responsible for making repairs to the Center, it is not the eligible applicant for these 29 projects. As a result, FEMA should disallow the \$7.6 million and determine whether these funds should be awarded to the Institute, which is the entity legally responsible for making the repairs.

Federal regulation 44 CFR 206.223(a)(3) requires the subgrantee to be legally responsible for the facility to be eligible for Federal disaster assistance. Also, the Public Assistance Guide (FEMA 322, October 1999, p. 25) states that an eligible applicant must be legally responsible for the damaged facility at the time of the disaster. If the applicant is the lessee (tenant), repairs to that facility are not eligible unless the lease specifically states that the lessee is responsible for the repairs. The guide further states that, in the absence of a written agreement or lease, the owner of the property, not the occupant, is assumed to be responsible for the repairs.

The City owns the land on which the Center is located and leases it to the Institute, not the Commission. We obtained copies of the lease in effect at the time of the disaster from Commission officials.<sup>2</sup> It did not contain any evidence that the parties to the lease (the City and the Institute) have changed since May 1994. Further, according to the lease agreement, damages to the facilities at the Center are the responsibility of the lessee. Based on the lease agreement, the Institute, as lessee, is responsible for repairing damages to Center facilities.

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<sup>1</sup> The Audubon Nature Institute is a private-nonprofit organization that operates various museums and parks in the New Orleans area on behalf of the Commission through a management agreement.

<sup>2</sup> In December 1976, the City and the Louisiana Nature Center, Inc., executed the original land lease for the construction of a Nature Center facility. However, in May 1994, the parties substituted the Institute as the lessee on this lease as a condition of a Society for Environmental Education merger with the Institute.



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We requested copies of any other legal documentation that would indicate a transfer of the lease responsibility from the Institute to the Commission. Commission officials did not provide documentation identifying the Commission as the lessee and, therefore, the entity legally responsible for repairing Hurricane Katrina damages at the Center facilities. However, Commission officials provided an opinion letter from their attorney that stated why they believe that the Center facilities are the Commission's legal responsibility. However, because the opinion did not provide evidence that the City had transferred the Center lease to the Commission, it did not provide a credible argument that would exempt the Commission or the Center from 44 CFR 206.223(a)(3). As stated previously, this Federal regulation states that, to be eligible for Federal disaster assistance, the subgrantee must be legally responsible for the facility. However, according to Commission officials, neither FEMA nor GOHSEP ever requested copies of the lease agreement or other documents to determine legal responsibility.

An additional eligibility issue exists because FEMA authorized the Commission to construct a \$357,897 alternate project (Project 19089, the Parakeet Aviary and Ghost of the Wetlands exhibit) at the Aquarium of the Americas that FEMA funded by deobligating funds from a Center project (Project 16292). This alternate project is the legal responsibility of the Institute and not the Commission. Thus, FEMA funded the Commission's alternate project with money from a project related to the Center, which is the legal responsibility of another applicant.

Because the Commission is not legally responsible for the Center's damages, we question \$7.6 million for work that was related to or funded from projects related to the Center. Exhibit A summarizes our questioned costs and relevant information about the 29 projects.

#### **No Work Started on 20 Projects 7 Years After Hurricane Katrina**

Neither the Commission nor the Institute initiated work on 20 of the 29 aforementioned projects. The 20 projects total \$6.9 million, or 90.8 percent of the \$7.6 million we questioned for the 29 projects related to the Center. Quarterly progress reports for the past several years show that the Commission repeatedly asked GOHSEP to provide project extensions on these 20 projects. Grant files also show that GOHSEP forwarded the extension requests to FEMA, and FEMA approved them, with the latest extension ending on August 31, 2012. In their requests for project extensions, Commission officials stated that they delayed the projects because the City mayor's office placed a "hold" on work at the Center. However, in their requests, Commission officials did not provide any documentation to support this assertion. Rather, they stated in the extension letters that the City had verbally instructed them to delay work on the 20 projects.

After the Commission submitted the last extension request, the City deputy mayor issued a letter stating that the City was committed to the reconstruction of the Center. Regardless, 7 years have passed since Hurricane Katrina. Because this much time has elapsed, we question the real need for these projects. FEMA and GOHSEP should review these projects and work



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with the eligible applicant to assess their ongoing need. For projects that cannot be started within 6 months, FEMA should deobligate the corresponding Federal funds and put them to better use.

#### **FEMA and GOHSEP Need To Improve Grant Management**

With respect to the two issues this report identifies, neither FEMA nor GOHSEP fulfilled their responsibilities in managing funds awarded to the Commission. Regarding the issue of legal responsibility, FEMA officials said that, during project development, they rely on the subgrantee's word to determine ownership. GOHSEP officials said that they rely on FEMA to tell them whether a subgrantee is the owner of or has legal responsibility for repairing a facility. The State Administrative Plan in effect at the time of the disaster specifically states that GOHSEP and FEMA "will jointly determine the eligibility of all applicants." Neither FEMA nor GOHSEP fulfilled their responsibilities in this respect. Relying on the subgrantee's word, rather than legal documentation, to determine ownership provides no assurance that Federal funds are awarded to an eligible entity. FEMA officials acknowledged that a question of legal responsibility exists regarding the Center and said that they are still reviewing the issue and working with the Commission and GOHSEP to resolve it.

Regarding the 20 projects not started, FEMA officials said that they are reviewing project status issues with the applicant. GOHSEP officials said that they are working with both the applicant and FEMA to help address project status. However, both GOHSEP and FEMA have been continually approving the Commission's project extension requests for several years without adequate justification.

According to 44 CFR 206.204, the time limitation for completing permanent work is 18 months. Based on extenuating circumstances or unusual project requirements beyond the control of the subgrantee, the grantee may extend the deadlines for an additional 30 months, on a project-by-project basis for permanent work. The grantee must submit requests for time extensions beyond its authority to the FEMA Regional Administrator and must include (1) the dates and provisions of all previous time extensions on the project and (2) a detailed justification for the delay and a projected completion date. The grantee's requests for time extensions included the required information. However, the Commission based its justification on verbal comments from the City. There is no evidence that either FEMA or GOHSEP took any steps to verify these assertions or provide the applicant with any assistance in resolving the delays. The Regional Administrator's approval letter should include the approved completion date and any other requirements that the Regional Administrator determines necessary to ensure that the new completion date is met. No other requirements were included in the approved extension requests. If the Regional Administrator denies the time extension request, the grantee may, upon completion of the project, be reimbursed for eligible project costs incurred only up to the latest approved completion date. If the project is not completed, no Federal funding will be provided for that project.



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As stated previously, the latest FEMA-approved extension ended on August 31, 2012. Because 7 years have passed since Hurricane Katrina, FEMA should not approve another extension request and should deny all funding for the 20 projects unless the Commission and GOHSEP can provide an adequate, reasonable justification for the delays and an action plan to complete the projects within 18 months.

### RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region VI:

**Recommendation #1:** Disallow \$7,552,785 of funds awarded to the Audubon Commission for Hurricane Katrina damages on 29 projects related to or funded from projects related to Audubon Nature Center facilities for which the Audubon Commission is not legally responsible (see exhibit A).

**Recommendation #2:** Discontinue obligation of additional Federal funds related to Audubon Nature Center facilities until FEMA resolves all issues related to the determination of legal responsibility for repairing the damages caused by Hurricane Katrina.

**Recommendation #3:** Require GOHSEP to recover all Federal funds paid to the Commission for Audubon Nature Center projects if, within 6 months, FEMA and GOHSEP cannot establish which entity has legal responsibility to repair the damages caused by Hurricane Katrina.

**Recommendation #4:** Work with GOHSEP to review the 20 Audubon Nature Center projects not yet started, assess the need for those projects, and deobligate the funding for projects that are no longer needed.

**Recommendation #5:** For any of the 20 projects not yet started that are still needed, require the legally responsible applicant to start work on the projects within 6 months and complete the projects within 18 months.



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### DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed the results of our audit with Commission officials during our audit and included their comments in this report, as appropriate. We also provided a draft report in advance to FEMA, GOHSEP, and Commission officials and discussed it at exit conferences held with FEMA officials on November 9, 2012, and with GOHSEP and Commission officials on November 29, 2012. FEMA, GOHSEP, and Commission officials generally agreed 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 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 to be 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 were Tonda Hadley, Director; Paige Hamrick, Audit Manager and John Polledo, Auditor-in-Charge.

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



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**EXHIBIT A**

**Schedule of Audubon Nature Center Projects Where Legal Responsibility Is Questioned**  
**Audubon Commission, New Orleans, Louisiana**  
**FEMA Disaster Number 1603-DR-LA**

Project	Description	Gross Project Amount	Insurance Reduction	Net Project Obligated Amount
<b>Projects Not Started -</b>				
16643	Interpretive Center	\$1,985,206	\$ (33,197)	\$1,952,009
14609	Science Building	886,367	0	886,367
13800	Education Building	762,609	0	762,609
16324	Astronomy Center	750,755	0	750,755
14285	Interpretive Center Contents	748,753	(288,300)	460,453
13909	Boardwalk	709,182	0	709,182
13678	Botany Center	341,401	(101,240)	240,161
14022	Planetarium Projector	269,000	0	269,000
19195	Main Center Decking	259,348	0	259,348
13728	Maintenance Building	253,910	(180,046)	73,864
14203	Planetarium Contents	187,423	0	187,423
13500	Gift Shop	170,878	(111,221)	59,657
13931	Maintenance Building Contents	78,242	(38,121)	40,121
13938	Admin. Building Contents	73,489	(35,744)	37,745
14016	Science Building Contents	65,986	0	65,986
16292	Admin. Building Demolition	51,765	0	51,765
13907	Education Building Contents	21,000	0	21,000
13677	Gift Shop Contents	20,151	(8,076)	12,075
13861	Botany Center Contents	11,747	(4,873)	6,874
14214	Recreation Facilities	10,054	0	10,054
<i>Total of Projects Not Started</i>		<b><u>\$7,657,266</u></b>	<b><u>\$ (800,818)</u></b>	<b><u>\$6,856,448</u></b>
<b>Projects Completed -</b>				
19089	Parakeet Park & Wetlands Exhibits	\$ 570,284	\$ (212,387)	\$ 357,897
3716	Perimeter Fence	144,620	0	144,620
14265	Emergency Protection	63,779	0	63,779
13552	Information Technology Equipment	62,560	0	62,560
9906	Debris Removal	54,120	0	54,120
15080	Emergency Protective Measures	28,342	(28,342)	0
13685	Emergency Protective Measures	5,601	0	5,601
13506	Vehicle Replacement	4,790	0	4,790
17752	Perimeter Fence Repair	2,970	0	2,970
<i>Total of Projects Completed</i>		<b><u>\$ 937,066</u></b>	<b><u>\$ (240,729)</u></b>	<b><u>\$ 696,337</u></b>
<b>Total of Audubon Nature Center Projects</b>		<b><u>\$8,594,332</u></b>	<b><u>\$(1,041,547)</u></b>	<b><u>\$7,552,785</u></b>



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**EXHIBIT B**

**Report Distribution List**  
**Audubon Commission, New Orleans, Louisiana**  
**FEMA Disaster Number 1603-DR-LA**

**Department of Homeland Security**

Secretary  
Chief Financial Officer  
Under Secretary for Management  
Acting Chief Privacy Officer  
Audit Liaison, DHS

**Federal Emergency Management Agency**

Administrator  
Chief of Staff  
Chief Financial Officer  
Chief Counsel  
Director, Risk Management and Compliance  
Interim Director, FEMA Louisiana Recovery Office  
Audit Liaison, FEMA Louisiana Recovery Office  
Audit Liaison, FEMA Region VI  
Audit Liaison, FEMA (Job Code G-12-034)

**Grantee**

Director, Louisiana Governor's Office of Homeland Security and Emergency Preparedness  
Audit Liaison, Louisiana Governor's Office of Homeland Security and Emergency Preparedness

**State**

Louisiana Legislative Auditor

**Subgrantee**

Senior Executive Vice President, Audubon Commission

**Congress**

Congressional Oversight and Appropriations Committees, as appropriate

## ADDITIONAL INFORMATION AND COPIES

To obtain additional copies of this document, please call us at (202) 254-4100, fax your request to (202) 254-4305, or e-mail your request to our Office of Inspector General (OIG) Office of Public Affairs at: [DHS-OIG.OfficePublicAffairs@oig.dhs.gov](mailto:DHS-OIG.OfficePublicAffairs@oig.dhs.gov).

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