

**FEMA Should Recover
\$13 Million of Grant Funds
Awarded to The
Administrators of the
Tulane Educational Fund,
New Orleans, Louisiana**





HIGHLIGHTS

FEMA Should Recover \$13 Million of Grant Funds Awarded to The Administrators of the Tulane Educational Fund, New Orleans, Louisiana

October 08, 2014

Why We Did This

The Administrators of the Tulane Educational Fund (Tulane) received a Federal Emergency Management Agency (FEMA) Public Assistance award of \$291.9 million for damages caused by Hurricane Katrina in August 2005. The objective of our audit was to determine whether Tulane accounted for and expended the FEMA grant funds correctly.

What We Recommend

The Regional Administrator FEMA Region VI disallow \$12,988,064 of unsupported and ineligible costs, and that Louisiana perform a comprehensive review of Tulane's claimed costs.

For Further Information:

Contact our Office of Public Affairs at (202) 254-4100, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

Tulane's contractor could not support or justify \$13.0 million of the \$36.1 million (gross) that we audited. Specifically, the contractor overbilled or could not support the following amounts totaling \$13.0 million:

- \$6,870,325 of unsupported fuel, equipment, and labor-related costs;
- \$3,839,224 of ineligible equipment costs that Tulane's contractor billed at rates higher than the contract specified;
- \$1,096,182 of subcontractor volume discounts that Tulane's contractor should have applied (passed through) to reduce its invoices to Tulane;
- \$930,908 of excessive (unreasonable) subcontractor markups on fuel; and
- \$251,425 of obligated costs for scheduled equipment that the contractor billed twice.

These findings occurred because (1) the contractor could not show that it actually incurred the costs that it billed Tulane; (2) Tulane did not ensure that its contractor's billings were valid, eligible, and supported; and (3) Louisiana, as the grantee, did not effectively execute its responsibilities to ensure compliance with Federal regulations and FEMA guidelines.

FEMA Response

FEMA officials generally agreed with our findings and will address the recommendations in audit followup. FEMA's written response is due within 90 days.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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

October 8, 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 Recover \$13.0 Million of Public Assistance Grant Funds Awarded to The Administrators of the Tulane Educational Fund, New Orleans, Louisiana*
FEMA Disaster Number 1603-DR-LA
Audit Report Number OIG-15-01-D

We audited Public Assistance grant funds awarded to The Administrators of the Tulane Educational Fund, New Orleans, Louisiana (Tulane), (Public Assistance Identification Number 000-ULVHC-00). Our audit objective was to determine whether Tulane 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 Tulane \$291.9 million for damages resulting from Hurricane Katrina, which occurred on August 29, 2005. As table 1 shows, Tulane's insurance proceeds as of June 2011 and a Small Business Administration (SBA) loan reduced the gross award to a net award of \$153.1 million.

Table 1. Gross and Net Award Amounts

	Gross Award Amount	SBA Loan Reduction	Insurance Reductions ¹	Net Award Amount
All Projects	\$291,896,596	\$(1,500,000)	\$(137,309,505)	\$153,087,091

Source: FEMA Project Worksheets

¹ The amount of insurance reductions may change because, as of the cutoff date of our audit, FEMA had not completed its analysis of Tulane's insurance proceeds (see footnote 4 regarding Office of Inspector General (OIG) report DD-13-11).



The award provided 100 percent funding for 497 projects—309 large and 188 small projects.² The audit covered the period August 29, 2005, through June 30, 2011, the cutoff date of our audit. Because of the size of the award and number of projects, we divided this audit into three phases.

During the first phase, we audited FEMA’s allocation of Tulane’s \$303.3 million of insurance proceeds between Hurricane Katrina property damages and business interruption losses. Our first report recommended that FEMA (1) apply an additional \$24.5 million of proceeds from Tulane’s commercial insurance policies to reduce the value of Tulane’s projects and (2) complete its review of eligible and ineligible losses covered under Tulane’s commercial insurance policies to determine whether additional proceeds should be applied to reduce the value of Tulane’s projects.³

During the second phase, we reviewed the methodology Tulane used to award \$230.1 million in disaster-related contracts. Our second report recommended that FEMA disallow \$46.2 million as ineligible contract costs consisting of (1) \$35.0 million in excessive and prohibited markups on costs, (2) \$5.7 million for four noncompetitive contracts Tulane awarded after exigent circumstances ended, and (3) \$5.5 million in unapplied credits.⁴

During this third phase, we reviewed the support and eligibility of \$36.1 million that Tulane claimed on the following projects:

Table 2. Audit Scope for Phase 3 of Tulane Audit

Project Number	Gross Award Amount (audited)	Net Award Amount (after insurance allocations)	Scope of Work
11512	\$25,985,698	\$16,395,044	Temporary power, dehumidification and cooling (one subcontractor)
18547	<u>10,121,660</u>	<u>10,121,660</u>	Contractor employee support services
Totals	<u>\$36,107,358</u>	<u>\$26,516,704</u>	

Source: FEMA Project Worksheets.

² Federal regulations in effect at the time of the disaster set the large project threshold at \$55,500.

³ DD-12-10, *Insurance Allocations to FEMA Public Assistance Grant Funds Awarded to the Administrators of the Tulane Educational Fund, New Orleans, Louisiana*, dated April 19, 2012.

⁴ DD-13-11, *FEMA Should Recover \$46.2 Million of Improper Contracting Costs from Federal Funds Awarded to the Administrators of the Tulane Educational Fund, New Orleans, Louisiana*, dated August 15, 2013.



We also audited the gross award of \$289,965 for Project 15604; however, FEMA reduced this project to \$0 after allocating insurance (see “Other Matters” in this report). Tulane has completed most work under this grant, but FEMA has closed only 47 large projects with a value of \$753,974 (see finding F).

We conducted this performance audit between February 2012 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 and Tulane officials; gained an understanding of Tulane’s method of accounting for disaster-related costs; judgmentally selected and reviewed project costs 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. We did not perform a detailed assessment of Tulane’s internal controls over its grant activities because it was not necessary to accomplish our audit objective.

BACKGROUND

Tulane is a private university located in New Orleans, Louisiana. It offers undergraduate, graduate, and professional degrees in various disciplines; and it has developed significant research programs. Tulane’s primary campuses are located in the New Orleans area, and it is the city’s largest employer. Hurricane Katrina caused significant damage to its facilities and, as a result, Tulane suspended much of its New Orleans-based activities and programs for the 2005 fall semester. Tulane reopened its main campus in January 2006.

RESULTS OF AUDIT

Tulane’s contractor could not support or justify \$13.0 million of the \$36.1 million (gross) that we audited. Specifically, the contractor overbilled or could not support the following amounts totaling \$13.0 million:

- \$6,870,325 of unsupported fuel, equipment, and labor-related costs (finding A);



- \$3,839,224 of ineligible equipment costs that Tulane’s contractor billed at rates higher than the contract specified (finding B);
- \$1,096,182 of subcontractor volume discounts that Tulane’s contractor should have applied (passed through) to reduce its invoices to Tulane (finding C);
- \$930,908 of excessive (unreasonable) subcontractor markups on fuel (finding D); and
- \$251,425 of obligated costs for scheduled equipment that the contractor billed twice (finding E).⁵

These findings occurred because: (1) the contractor could not show that it actually incurred the costs that it billed Tulane; (2) Tulane did not ensure that its contractor’s billings were valid, eligible, and supported; and (3) Louisiana, as the grantee, did not effectively execute its responsibilities to ensure compliance with Federal regulations and FEMA guidelines.

We asked Tulane to provide documents to support most of the \$36.1 million the contractor billed for the two projects. Tulane told us that its contractor did not provide documents to support the invoices we reviewed, so we asked Tulane officials to request these documents for our audit. However, the contractor refused Tulane’s request. Therefore, we subsequently issued subpoenas to the contractor and its subcontractor to provide us all records supporting the costs they incurred for work on these projects. Given the contractor’s reluctance to provide the support for the costs it incurred on those projects, we were not surprised that the contractor could not provide documents to support or justify all of the amounts it billed Tulane. We were surprised at the **amount** of costs that the contractor could not support or justify. Further, because we had to issue subpoenas we had to extend the time it took to conduct this audit considerably.

The contractor overbilled or could not support a significant portion (36 percent) of the costs for the two projects we audited because, as discussed in our second report (DD-13-11), Tulane did not institute adequate cost controls. Therefore, we are concerned that these issues could affect the entirety of Tulane’s claimed costs in addition to the two projects we reviewed for this report. FEMA should note that the \$36.1 million (gross) we audited for this report represents only 12 percent of Tulane’s gross award of \$291.9 million. Accordingly, FEMA should direct Louisiana to perform a comprehensive review of all of Tulane’s claimed costs to ensure they are valid, reasonable, eligible, and supported.

⁵ All amounts we present in this report are net of contractor’s markup on the costs or rates (generally 21 percent) per the terms of its cost-plus-percentage-of-cost contract with Tulane. We previously questioned all of the contractor’s markups (\$35.0 million) in our second report (DD-13-11). If FEMA allows any part of the \$35.0 million in markups we questioned in our second report, then it should proportionately increase any amounts it disallows for the recommendations in this report.



Finding A: Unsupported Costs

Tulane’s contractor could not support the validity of \$6,870,325 of fuel and labor-related costs that it billed Tulane under the cost-plus contract. According to Federal cost principles, grant recipients must adequately document costs under Federal awards.⁶ The unsupported costs included the following costs for which neither Tulane nor its contractor or subcontractors provided support:

- \$3,082,771 for fuel and fuel delivery costs,
- \$2,501,976 for lodging costs, and
- \$1,285,578 for personal safety equipment

Despite the fact that Tulane used a “cost” type contract and its contractor told us that it managed more than 300 projects in the New Orleans area after Katrina, Tulane did not require its contractor to disclose or document the actual costs it incurred. Without documentation to prove that the contractor actually incurred the billed costs and that the costs were for Tulane projects, Tulane and FEMA have no assurance that the contractor did not bill excessive or fraudulent costs.

We issued subpoenas to Tulane, the contractor, and a subcontractor to determine whether Tulane’s contractor could support certain labor and subcontract costs that it passed through (billed) to Tulane. We reviewed most of the subpoenaed information and Tulane reviewed some of the information. In some cases, Tulane identified support for the costs that its contractor and subcontractor provided through the subpoenas. We reviewed and accepted any documentation Tulane identified that was adequate. We also did not question the costs that we could readily identify as eligible and supported based on the subpoenaed documentation or the additional cost support that Tulane provided. However, as we discuss in the following subsections, a significant portion of the costs Tulane’s contractor billed did not appear valid. Therefore, FEMA needs to require Louisiana to review all costs Tulane claimed to ensure costs are valid, eligible, documented, and reasonable.

Fuel and Fuel Delivery Costs

The contractor billed \$3,103,026 for fuel and fuel delivery costs, however, neither it nor its subcontractor could fully support \$3,082,771 (99.3 percent) of these billings. We

⁶ Office of Management and Budget (OMB) Circular A-21, *Cost Principles for Educational Institutions* was in effect at the time of the disaster. OMB relocated it to 2 Code of Federal Regulations (CFR) 220 on August 31, 2005. 2 CFR 220, Appendix A, C.4.d(4) states that documentation requirements for educational institutions are located at Appendix A of 2 CFR Part 215, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*. Accordingly, the criteria we cite here are located at 2 CFR 215.21(b)(2) and (7).



reviewed all the documents Tulane’s contractor provided in support of the fuel costs. The invoices from the contractor and its subcontractor did not document the actual fuel costs incurred or that the contractor or subcontractor used the fuel for Tulane projects. The subcontractor that provided temporary power, heating, and cooling equipment when utility services were unavailable to Tulane’s campus also provided the fuel to run the equipment. The subcontractor billed Tulane’s primary contractor \$1,820,665 for the cost of the fuel and \$1,262,106 for fuel delivery fees that it could not support. The subcontractor’s billing documents for the unsupported fuel and delivery fees included spreadsheets and copies of the fuel delivery vendor’s tickets, but did not include any of the fuel vendors’ invoices that documented how much fuel the subcontractor either purchased or paid for the fuel. When questioned, the subcontractor said it did not have the fuel vendors’ invoices, any evidence of payment to the fuel vendors, or any accounting records that supported the amount it actually paid for fuel or the fuel delivery fees.

Further, Tulane or its contractor representative signed only one of the fuel delivery tickets before April 12, 2006. Instead, the fuel vendor’s driver signed 98 percent of the others.⁷ The remaining 2 percent of the delivery tickets also did not support fuel deliveries because either the subcontractor did not provide the delivery tickets or it provided unsigned tickets. Therefore, there is little to no evidence that the fuel vendor delivered the quantities of fuel the subcontractor billed. We, as well as Tulane representatives, requested the subcontractor to provide copies of payment records for the fuel, but the subcontractor did not provide the documentation. Tulane’s view is that the subcontractor’s billings to the contractor (even without any actual support of payment) were valid invoices that FEMA should accept. Although we acknowledge that the subcontractor did purchase fuel for the Tulane project, we do not know how much fuel the subcontractor obtained or the cost. Regardless, as stated previously, Federal regulations require adequate support for costs to be eligible.

We asked Tulane to apply the manufacturers’ fuel usage rates for its power generation equipment to calculate how much fuel the contractor would have used for the time the contractor billed Tulane for its equipment. Tulane based its calculations on 24 hour/day usage for days billed and showed that the subcontractor would have used more than twice the fuel quantities that the subcontractor billed. Although Tulane believes its calculations support the subcontractor’s fuel billings, Tulane’s calculations raise serious questions as to the accuracy of both the fuel charges and equipment charges, such as—

- how much of the equipment the contractor used or needed;

⁷ The subcontractor provided support for billings dated after April 12, 2006, totaling \$19,940 of \$22,150 billed and one billing for \$315 before to April 12, 2006. Therefore, the subcontractor supported only .7 percent of the total fuel billings.



- whether any of the equipment ran off grid power, as opposed to generators for which the contractor billed Tulane;
- whether the equipment was the right size or the right type for the requirements; and
- whether the amounts the contractor billed for equipment usage were reasonable.

Neither Tulane nor its contractor could provide calculations or support that show within a reasonable margin how much fuel the contractor used, and there was no evidence that the subcontractor actually incurred the fuel costs or fuel delivery fees. Therefore, we question \$3,082,771 (\$1,820,665 of fuel costs plus \$1,262,106 of delivery fees) as unsupported.

Lodging Costs

The contractor could not support \$2,501,976 of the \$4,258,911 lodging costs it billed Tulane. Tulane's contract with its primary contractor provided that the contractor would bill lodging costs at actual cost plus 10 percent. However, in lieu of the contractor providing documentation of its actual costs, Tulane accepted the contractor's billing rates for lodging at \$85 per night for laborers and \$150 per night for management plus a 10 percent markup. Importantly, Tulane did not require the contractor to provide support that it incurred the majority of the lodging costs. As a result, FEMA has no assurance that the contractor actually incurred all of the costs.

The primary contractor's cumulative job cost report as of February 2007 indicated that, out of \$4,258,911 that it billed Tulane, it incurred just \$1,756,935 to lodge workers performing Tulane projects. Despite this being a cost contract, the limited documentation that Tulane or its contractor provided did not support the lodging rates billed (\$85 or \$150 per person per night) and did not represent the actual costs that the contractor incurred for lodging workers. Rather, the documentation supporting the actual cost incurred showed that the contractor's lodging costs were less than those it billed. Examples include the following:

- hotel room receipts averaged less than \$85 or \$150 per night;
- more than one person occupied some rooms; and
- the contractor housed some workers in apartments at a cost substantially less than \$2,550 or \$4,500 per month. The \$2,550 or \$4,500 monthly amounts represent 30 days times \$85 or \$150 per day, respectively.

In response to our concerns on this issue, the contractor said that it incurred more than \$18.0 million in lodging costs for all of its New Orleans post-Katrina projects. The contractor also said that a significant amount of these costs related to Tulane but, for



various reasons, the contractor did not include these in its Tulane job costs. The contractor said that, if it had charged the appropriate costs to Tulane, the costs would exceed the amounts it billed. The amount that the contractor actually paid to lodge all of its workers in New Orleans is irrelevant to the amount Tulane paid because the contractor admits that it performed work on over 300 projects in New Orleans after Hurricane Katrina. Tulane entered into a cost type contract with its contractor, and Federal cost principles state that grant recipients must adequately document costs under Federal awards. Because the contractor did not adequately support its invoices, the costs are not allowable under Federal cost principles; and FEMA has no assurance the costs related to Tulane's projects. Further, we find the contractor's assertion that the appropriate costs would exceed the amounts it billed Tulane unconvincing and irrelevant given the amount of other work it performed in New Orleans.

Contractor Did Not Adequately Allocate, Document, and Invoice Lodging Costs for Tulane Projects

Tulane and the contractor provided lists of the other lodging costs it did not allocate to Tulane's job costs. These costs included hotel expenses for employees who worked on more than one project, costs to refurbish hotels (used for lodging contract employees), and costs for legal settlements of rental agreements with hotels. However, Tulane and its contractor did not provide documentation to support that they incurred any of these costs for employees who worked directly on the Tulane campus. Such documentation is necessary to evaluate whether these costs relate to the Tulane projects because the contractor said that it had more than 300 projects in the New Orleans area after Katrina. Therefore, because the contractor had such a large number of projects in New Orleans, we cannot determine whether the contractor incurred significant amounts of additional lodging costs related to Tulane's projects other than the \$1,756,935 documented on the contractor's 2007 job-cost report.

Further, the contractor's documentation also indicated that it had established a comprehensive practice of contemporaneously allocating its New Orleans lodging costs among its 300 Katrina projects. As a result, because neither Tulane nor the contractor provided any supporting documentation to us to indicate the original allocations to Tulane were understated, the lodging costs are unsupported.

Contractor Cannot Bill for Lodging Workers Who Stayed in Tulane Dorm Rooms

Complicating matters, Tulane provided dorm rooms for an average of approximately 372 workers per day for 56 days (approximately 20,800 nights) during peak construction. Because Tulane provided lodging, its contractor could not bill Tulane approximately \$1.77 million in lodging costs (20,800 nights times \$85). As a result, the contractor's lodging costs for its Tulane project could have been much less on a percentage basis than for its other New Orleans projects. Therefore, unless the



contractor can document its actual costs, Tulane and FEMA have no assurance the costs are accurate.

Contractor Claims it Provided Incomplete Records

The contractor also said that the job-cost report it provided for our review was only 88 percent complete. However, we subpoenaed the contractor's documentation in 2013, which was 7 to 8 years after the contractor allegedly incurred the costs. Thus, we do not understand why the contractor did not have a final accounting of its costs. Despite the lack of adequate supporting documentation, Tulane officials said that they agree with the contractor's representation of \$4,258,911 in lodging costs directly attributable to Tulane.

Given that the contractor is a national construction company working on over 300 projects in New Orleans alone, we find its assertion that its accounting records are incomplete 7 years after completing the work unconvincing.

Contractor's Costs Must be Supported to be Eligible

Because Tulane and its contractor did not provide support for actual costs incurred for lodging, we question \$2,501,976 as unsupported. If the contractor had actually paid the lodging rates it billed Tulane, we would consider the rates reasonable on a per-person basis. However, on a cost contract, if a national contractor can support only \$1,756,935 out of \$4,258,911 billed, the contractor billed excessive, unreasonable costs, and FEMA has no assurance that it incurred those costs.

Personal Safety Equipment

The contractor could not support \$1,285,578 that it billed for personal safety equipment for workers on Tulane projects. Tulane's contractor said that it provided new personal safety equipment kits (gloves, masks/respirators, and safety suits) each day to all laborers in certain categories. However, the contractor said that it did not always record all the equipment it issued on daily "crew sheets," even though it also said most of its crews had worked for the contractor before and therefore should have known the procedures for recording the use of safety equipment.⁸

The contractor billed Tulane \$1,285,578 for safety kits that it said it issued but that its employees did not record on the crew sheets. The contractor based its calculation on the assumption that it issued each worker a new safety kit every day. Tulane representatives said they agree with the assertion that the contractor issued safety kits

⁸ The contractor prepared daily crew sheets for each crew. These sheets were the contractor's source for billing Tulane for labor hours, equipment, consumables, and supplies the crews used each day.



to employees every day. Tulane also said that they have witness statements to indicate that employees did not record all safety equipment on the crew sheets. Tulane's view is that these statements support the contractor's assertion that it did not bill for all the safety equipment it actually used. Tulane representatives said they also re-verified that the calculations of the unrecorded safety kits were reasonable based on its review of headcounts.

However, the assertion that the contractor's crews did not record a significant amount of safety kit issuances is contrary to the contractor's actual practices. Further, the contractor later acknowledged that all workers may not have needed an entirely new safety kit every day—depending on locations, nature of work, and the fact that some employees may have used the equipment for more than 1 day. We requested documentation to substantiate that the quantities of personal safety equipment the contractor shipped to the job site approximated the amounts claimed and the contractor representative said this information does not “still exist.”

The simple fact of the matter is that Tulane entered into a cost type contract. Consequently, because the contractor could not provide documentation substantiating the actual costs it incurred for safety equipment, FEMA has no assurance that the contractor incurred those costs for Tulane projects. Therefore, we question \$1,285,578 as unsupported.

Finding B: Ineligible, Excessive Billings

The contractor billed Tulane for equipment costs that exceeded the amounts authorized and specified in its contract by \$3,839,224. Tulane's contract with its primary contractor allowed the contractor to bill specified temperature and humidity control equipment (scheduled equipment) at stated daily rates plus a 21 percent markup. The contract also stated that the contractor was to bill all other equipment (unscheduled equipment) at the contractor's cost plus 21 percent markup (pass-through basis). However, rather than billing unscheduled equipment at its cost plus a 21 percent markup, Tulane's contractor billed Tulane for unscheduled equipment at scheduled equipment rates at more than 550 percent above its costs. To be eligible for Federal reimbursement, costs must be reasonable (2 CFR 220, Appendix A, C.3.). It was not reasonable for the contractor to bill unscheduled equipment at more than 550 percent above its costs when its contract with Tulane established that it would bill unscheduled equipment at actual cost with only a 21 percent markup.

Tulane's contract with its contractor listed only 20/25/60 ton air conditioners as scheduled equipment, but the contractor also billed Tulane for unscheduled 10/30/37/75 ton air conditioners at scheduled rates. As a result, the contractor billed Tulane \$872,328 more for air conditioners than the contract with Tulane allowed. Additionally the contractor billed other unscheduled temperature and humidity control



equipment (water chillers and air handlers) at rates based on a formula of the scheduled rates, plus a 21 percent markup, rather than at cost plus a 21 percent markup as the contract specified. The contractor said it substituted the additional unscheduled equipment for scheduled equipment because the scheduled equipment was not available. This substitution resulted in Tulane claiming \$2,966,896 more for equipment than the contractor could bill based on its contract with Tulane.

Tulane and the contractor did not amend the contract to authorize the increased billing rates for temperature and humidity control equipment. Tulane representatives said that they do not know whether Tulane authorized these increased rates. They said that, if Tulane did approve the increased rates, it might have been because they were concerned that the contractor would not have provided the equipment unless they accepted the increased rates; and, without the equipment, Tulane would have incurred greater damage. We do not consider such a perceived threat to be a valid or prudent reason for Tulane to accept rates higher than its contract allowed.

Further, subpoenaed records from the subcontractor showed that it did not change or increase its billing rates for equipment in its contract with Tulane's contractor. The subcontractor billed Tulane's contractor at the initial established contract rates. Therefore, there is no valid reason for Tulane's contractor to mark up the contract rates on unscheduled equipment. Accordingly, we question \$3,839,224 (\$872,328 plus \$2,966,896) as ineligible, excessive billings.

Finding C: Discounts Not Provided to Tulane

The contractor did not pass on to Tulane \$1,096,182 of discounts that it received from a subcontractor for unscheduled equipment rentals. This practice resulted in unreasonable costs and additional profit for the contractor. The discounts included a 15 percent "Quick Pay" discount for equipment charges because the contractor paid within 30 days, and a 7.5 percent annual discount for equipment charges. Tulane's agreement with its contractor stipulated that the contractor bill unscheduled equipment at the contractor's cost, plus a 21 percent markup. Therefore, Tulane's contractor should have billed Tulane only for costs it actually paid plus the agreed-upon markup. Federal cost principles state that allowable costs should be net of applicable credits.⁹ Therefore, we question \$1,096,182 as ineligible because the contractor did not pass along these discounts (credits) to Tulane.

Tulane officials said they were not aware of the discounts and that they notified FEMA of the contractor's discount arrangement with its subcontractor in August 2013 after they learned of the discounts.

⁹ 2 CFR, Part 220, Appendix A, C.5.



Finding D: Unreasonable Subcontractor Markups

The contractor passed through to Tulane \$930,908 of unreasonable subcontractor markups on fuel costs. The subcontractor that provided fuel for its equipment (see finding A) billed the contractor a 30 percent markup of \$930,908 on top of its \$3.1 million in total fuel and delivery costs (\$1.8 million for fuel and \$1.3 million for delivery).¹⁰ The contractor and subcontractor's contract, which was in place 3 years before 2005 (when Katrina struck), did not include a provision for this 30 percent markup; and the contractor and the subcontractor did not formally modify their contract to include the additional markup. The contract included set pricing for labor and equipment. Tulane said that the subcontractor was entitled to the 30 percent markup because the subcontractor arranged for the (sole source) fuel delivery operations.

The 30 percent markup is unreasonable because there was no justifiable business reason (such as unrecovered other costs) for the contractor to pay a 30 percent markup. The subcontractor's potential or actual other costs for providing the fuel and charging a markup could have included interest or other carrying costs for purchasing the fuel. However, the contractor timely paid for the fuel costs so that it could earn a 15 percent discount (see finding C earlier). As a result, the subcontractor had little to no interest or other carrying costs as it received payments quickly enough to pay its fuel vendors timely. In addition, the subcontractor billed all of its direct labor on the project, including project managers, at rates that appeared fully loaded for overhead and profit. Therefore, the additional 30 percent markup was not justifiable, and we see no economic basis for it. As discussed in finding B earlier, Federal cost principles require costs to be reasonable to be allowable under a Federal award (2 CFR 220, Appendix A, C.3.). As a result, we question the \$930,908 of markups on fuel costs as unreasonable and, therefore, ineligible.

As we discussed in finding A, generally, neither the subcontractor nor any other party received and checked the quantities of the fuel recorded on the fuel delivery tickets. This practice and the unreasonable markups on fuel also raise questions as to whether the parties violated provisions of Louisiana Revised Statutes R.S. 29:732 that prohibit "price gouging" during a "state of emergency."

¹⁰ As we stated previously in footnote 5, we questioned the contractor's 21 percent markups in our previous report DD-13-11 and, therefore, do not question them again in this report. However, it is important to note that the contractor's 21 percent markup (approximate) on the subcontractor's 30 percent markup was \$195,491. Adding the two markups together results in a true markup on fuel costs of 36 percent [(\$195,491 plus \$930,908) divided by \$3.1 million].



Finding E: Duplicate Billings

The contractor billed Tulane \$251,425 twice for the same scheduled equipment costs—once on invoice DH/DX3 and again on FAL Scheduled Equipment Invoices 1 and 2 and invoice DH/DX5. FEMA also obligated the same costs twice on Project 11512. FEMA cannot provide financial assistance twice for the same loss from a major disaster or emergency (*Robert T. Stafford Disaster Relief and Emergency Assistance Act*, Section 312, *Duplication of Benefits*). Therefore, we question \$251,425 of duplicate billings as ineligible.

Finding F: Contract Cost Controls and Grant Monitoring

The issues presented in findings A through E generally occurred because (1) the contractor could not show that it actually incurred the costs that it billed Tulane; (2) Tulane officials did not adequately control or monitor its contractor to ensure costs were valid, eligible, and supported; and (3) Louisiana, as the grantee, did not effectively execute its responsibilities under its grant with FEMA to ensure compliance with Federal regulations and FEMA guidelines. Tulane, as subgrantee, and Louisiana, as grantee, should have better controlled and monitored these costs.

We identified the deficiencies with Tulane’s cost controls in our second report (DD-13-11). We determined that Tulane did not adequately monitor its costs and, as a result, the contract costs Tulane incurred were unreasonable. The report included the following findings:

- Tulane awarded a prohibited cost-plus-percentage-of-cost contract. Under this type of contract, the contractor did not have an incentive to control costs;
- Tulane did not adequately monitor its costs because it:
 - did not always obtain actual cost documents from its contractor;
 - accepted billings “as presented”—meaning Tulane performed only limited reviews of the invoiced costs; and
 - did not require any party (e.g., either Tulane or its contractor) to document approval and adequacy of the contractor’s, subcontractors’, or vendors’ billings.

Tulane’s inability to provide documentation to support the actual costs its contractor incurred illustrates Tulane’s failure to monitor contract costs adequately. Further, Louisiana’s review of Tulane’s contract activities was not adequate because Louisiana did not always require or verify that Tulane had support for costs that it claimed. If Louisiana had adequately and promptly reviewed these costs and required Tulane to



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provide documentation before reimbursing Tulane, Tulane may have been able to obtain the required documentation from its contractor.

For example, Tulane requested and Louisiana provided Tulane with an \$8 million reimbursement in March 2013 for its contractor's lodging, per diem, and safety equipment costs (Project 18547). Tulane requested this reimbursement after we asked Tulane officials to support these costs. Louisiana should not have reimbursed costs on this project or any project where Tulane could not provide support for the actual costs its contractor incurred.

In addition, 44 CFR 206.204 requires subgrantees to complete debris removal (FEMA Category A) and emergency protective measures (FEMA Category B) in 6 months and permanent work in 18 months. Grantees can grant extensions up to 6 months for Categories A and B and 30 months for permanent work. FEMA granted additional time extensions through August 29, 2008, for debris clearance and demolition work and August 29, 2010, for permanent work. Tulane completed most emergency work by December 2006 and the majority of permanent projects by December 2008.

Federal regulations at 44 CFR 206.205(b)(1) require grantees to submit an accounting to FEMA for each large project as soon as practicable after the subgrantee completes work on that project. Further, FEMA Standard Operating Procedure (SOP) 9570.14 states that grantees should reconcile costs within 90 days of the date that the subgrantee completes the project. As of June 2014, FEMA had closed 47 of the 48 large projects Louisiana had submitted for closure. These projects had an obligated value of only \$753,974, after insurance reductions of \$21,371,056. However, Louisiana had paid Tulane 77 percent of the \$153,087,091 in Federal funds that FEMA obligated for the awarded 497 projects—309 large and 188 small projects.

Federal regulations at 44 CFR 13.37(a)(2) and 13.40(a) state that it is the grantee's responsibility to ensure that subgrantees follow Federal regulations and FEMA guidelines when spending FEMA grant funds. We questioned as ineligible or unsupported \$13.0 million, or 36 percent of Tulane's claim for the two projects we reviewed. However, the \$36.1 million (gross) we reviewed represents only 12 percent of Tulane's gross award of \$291.9 million. Therefore, FEMA should require Louisiana to conduct a comprehensive review of Tulane's claimed costs for all its projects.

Other Matters

Department of Education Grant to Tulane

Tulane received a \$1,885,038 Department of Education grant for Tulane's Howard Tilton library. FEMA provided substantial disaster funding for this building. However, Tulane did not notify FEMA of the award from the Department of Education. We did not



question these costs because Tulane plans to use the Department of Education grant to fund costs that are not FEMA eligible. Regardless, Tulane should have informed FEMA and Louisiana of this grant. We are informing FEMA about this grant because, at the time of our audit, FEMA was considering a number of funding options for Tulane including alternate projects.

Per Diem

Tulane's contractor included provisions for billing Tulane for per diem, but its contract did not specify that the contractor would pay the per diem to its employees. Tulane's contractor billed Tulane \$30 per day for each contractor employee during the entire term of its construction activities. The per diem charges totaled \$1.806 million plus a 10 percent markup of \$180,600. The contractor used the per diem to provide on-site catering (kitchen) services for its employees as well as for employees working on site for others (subcontractors and consultants) for more than 2 months of peak construction.

The contractor's subpoenaed records indicated that the amount of per diem it billed (without markup) during the time it provided catering services may have greatly exceeded its catering costs. The contractor's subpoenaed records also indicated that it paid per diem to less than 25 percent of its employees during the construction periods when it did not provide catering services. However, the contractor continued to bill Tulane the \$30 per diem for all employees who worked during those periods.

Because the contract did not require the contractor to actually spend any or all of the per diem billings for its employees (either for actual per diem payments or for benefits such as the catering service the contractor provided), the contract was susceptible to abuse and excessive contractor profits.

Duplicate Obligation and Unused Federal Funds

FEMA inadvertently obligated \$169,470 twice for the same work—once on Project 10863 and again on Project 15604—to replace or repair damaged pianos. In addition, Tulane did not use \$60,343 of the \$289,965 FEMA initially obligated for Project 15604 (before insurance allocations). Under these circumstances, we would normally recommend that FEMA deobligate \$229,813 from Project 15604 and put those funds to better use (\$169,470 obligated twice plus \$60,343 Tulane did not use). However, FEMA has already deobligated all of the \$289,965 estimated for that project and reduced the obligation to \$0 because of insurance allocations.

At the time of our audit, FEMA had not completed its analysis of Tulane's insurance proceeds; therefore, the amount of insurance reductions may change. Accordingly, FEMA should consider the \$169,470 duplicate obligation and the \$60,343 in unused



funds when it rewrites Tulane’s projects after it completes the analysis of Tulane’s insurance proceeds.

Table 3. Gross and Net Award Amounts to Replace or Repair Pianos

Project Number	Gross Award	Insurance Allocations	Net Award	Funds Obligated Twice	Unused Funds
10863	\$1,100,629	\$500,000	\$600,629		
15604	<u>289,965</u>	<u>289,965</u>	<u>0</u>	<u>\$169,470</u>	<u>\$60,343</u>
Totals	<u>\$1,390,594</u>	<u>\$789,965</u>	<u>\$600,629</u>	<u>\$169,470</u>	<u>\$60,343</u>

Source: FEMA Project Worksheets and OIG analysis.

RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region VI:

Recommendation #1: Disallow \$6,870,325 of unsupported fuel, equipment, and labor related costs (finding A).

Recommendation #2: Disallow \$3,839,224 of ineligible equipment costs that Tulane’s contractor did not bill according to contract terms (finding B).

Recommendation #3: Disallow \$1,096,182 of volume discounts as ineligible costs that a subcontractor provided to Tulane’s contractor (finding C).

Recommendation #4: Disallow \$930,908 of unreasonable markups on fuel costs (finding D).

Recommendation #5: Disallow \$251,425 of duplicate costs (finding E).

Recommendation #6: Require Louisiana to perform a comprehensive review of Tulane’s claimed costs on all projects to determine whether the costs are valid, reasonable, eligible, and supported (finding F).

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed the results of our audit with Tulane 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 Tulane officials and discussed it at exit conferences with FEMA officials on December 17, 2013, and with FEMA, Louisiana, and Tulane



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officials on January 31, 2014. FEMA officials generally agreed with our findings and recommendations subject to further review and clarification. Tulane officials generally disagreed with our findings but needed to review the questioned costs further. Louisiana officials did not offer any comments.

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 for responsible parties and any other supporting documentation necessary to inform us about the status of the recommendations. 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; Bill Haney, Auditor-in-Charge; Rebecca Hetzler, Senior Auditor; and D'Angela Dummons, 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	Gross Award Amount	Finding A	Finding B	Finding C	Finding D	Finding E	Total Questioned Costs
11512	\$25,985,698	\$3,082,771	\$3,839,224	\$1,096,182	\$930,908	\$251,425	\$ 9,200,510
18547	<u>10,121,660</u>	<u>3,787,554</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>3,787,554</u>
Totals	<u>\$36,107,358</u>	<u>\$6,870,325</u>	<u>\$3,839,224</u>	<u>\$1,096,182</u>	<u>\$930,908</u>	<u>\$251,425</u>	<u>\$12,988,064</u>

Source: FEMA Project Worksheets and OIG Analysis.



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