



Homeland Security

SEP 26 2011

MEMORANDUM FOR: Tony Russell
Regional Administrator, Region VI
Federal Emergency Management Agency

FROM: Matt Jadacki 
Assistant Inspector General
Office of Emergency Management Oversight

SUBJECT: *FEMA Public Assistance Grant Funds Awarded to
Jesuit High School, New Orleans, Louisiana*
FEMA Disaster Number 1603-DR-LA
Audit Report Number DD-11-21

We audited public assistance grant funds awarded to Jesuit High School (Jesuit) in New Orleans, Louisiana (Public Assistance Identification Number 071-U5K9S-00). Our audit objective was to determine whether Jesuit accounted for and expended Federal Emergency Management Agency (FEMA) grant funds according to federal regulations and FEMA guidelines.

Jesuit received an award of \$11.5 million from the Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP), a FEMA grantee, for damages resulting from Hurricane Katrina, which occurred August 29, 2005. The award provided 100% funding for 21 large projects and 1 small project.¹ The audit covered the period August 29, 2005, through May 14, 2010, the cutoff date of our audit, and included a review of nine large projects totaling \$10.5 million, or 91% of the total award.² We also performed a limited review of the remaining 13 projects totaling \$1.0 million to determine the type of contracts Jesuit awarded and whether the contract costs complied with contract terms and conditions, or whether Jesuit claimed duplicate costs (see Exhibit A, Schedule of Questioned Costs). As of the cutoff date of our audit, Jesuit had claimed \$10.8 million.

¹ Federal regulations in effect at the time of the disaster set the large project threshold at \$55,500.

² We audited the gross amount of \$12.1 million awarded before reductions for insurance and U.S. Small Business Administration loan proceeds.

Table 1 shows the gross and net award and claim amounts before and after reductions for insurance and Small Business Administration (SBA) loan proceeds for all projects and for those in our audit scope.

Table 1. Gross and Net Award and Claim Amounts

	Gross Award Amount	Gross Claim Amount	Insurance and SBA Reductions	Net Award Amount	Net Claim Amount
All Projects	\$13,978,030	\$13,340,595	(\$2,490,985)	\$11,487,045	\$10,849,610
Audit Scope	\$12,052,472	\$11,415,037	(\$1,548,610)	\$10,503,862	\$9,866,427

We conducted this performance audit 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 according to the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.

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

RESULTS OF AUDIT

Jesuit accounted for FEMA grant funds on a project-by-project basis as required. However, Jesuit did not comply with federal procurement standards in awarding \$12,027,768 of contracts, and its claim included ineligible and unsupported costs. As a result, we question the following \$11,585,610 in ineligible and unsupported costs:

- Finding A: \$6,131,683 of ineligible contract costs billed under noncompetitive and improper contracts (net of \$1,178,158 insurance proceeds and net of \$4,717,927 that we also questioned in other findings—see Exhibits A, Schedule of Questioned Costs, and B, Costs Questioned Under Multiple Criteria);
- Findings B, C, and D: \$4,717,927 of ineligible and unsupported contract costs that were either not supported by documentation, duplicated, or not billed according to contract terms); and
- Finding F: \$736,000 of ineligible costs to be reduced by insurance proceeds.

In addition, FEMA should complete its insurance review to allocate insurance proceeds to applicable projects (finding F) and should deobligate \$27,518 and put those federal funds to better use (finding E).

Finding A: Contracting

Jesuit did not follow federal procurement standards in awarding four contracts totaling \$12,027,768. Federal regulations at 2 CFR Part 215, in part, require subgrantees to comply with the following procurement standards:

- All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. (2 CFR 215.43)
- “Cost-plus-a-percentage-of-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)
- Specific provisions shall be included in all contracts and subcontracts. (2 CFR 215.48)

Jesuit awarded four noncompetitive contracts totaling \$12,027,768, including one cost-plus-percentage-of-cost contract. Additionally, Jesuit did not always perform the required cost or price analyses and did not include required provisions in any of its contracts.

Noncompetitive and Prohibited Contracts

Jesuit did not openly compete four contracts totaling \$12,027,768 for permanent repair work and design and inspection services. One of the contracts totaling \$1,945,315 was a prohibited cost-plus-percentage-of-cost contract.

Generally, open and free competition means that all responsible sources are allowed to compete for contracts. Jesuit did not advertise for its contracts, but invited five preselected contractors to bid on construction projects, and awarded a professional service contract without competition. Jesuit officials stated that they followed the guidance FEMA provided to them in awarding contracts after inviting a preselected group of contractors to submit bids. FEMA did advise Jesuit that FEMA procurement policy requires three bids to obtain reasonable pricing; however, this advice was not sufficient to comply with federal procurement regulations. Jesuit officials also stated that they awarded architectural and engineering contracts without solicitations because of their long-standing relationships with the contractors.

During our exit briefing, Jesuit officials stated that they sought solicitations from 15 pre-selected contractors, not the 5 we identified; however, Jesuit did not provide documentation to support their statement that they solicited more than 5 contractors. Jesuit officials also stated that “word of mouth” was the most effective way to provide open and free competition, considering the state of affairs in New Orleans after the disaster. Jesuit’s architect solicited proposals from January 3–24, 2006, to restore damaged facilities. However, on

January 3, 2006, the local New Orleans newspaper included public notices of contractor solicitations. Because a public notification system was available on the date Jesuit began its solicitations, it should have used open and free competition to allow all responsible sources to compete. Jesuit officials stated that they did not limit the number of potential contractors and accepted bids from any interested party; however, they could not have known the number of potential contractors without open and free competition.

FEMA attempted to determine whether the cost for one of Jesuit's contracts was reasonable by comparing it to another school's contract with the same contractor. However, the two contracts had different scopes of work, and the other school also did not compete its contract. FEMA's comparison of the same contractor with different work scopes, especially to a contract that was not competed, did not provide a reliable or appropriate basis for determining the reasonableness of cost.

Regardless, even if FEMA's cost analysis had accurately determined that the contract costs were reasonable, 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. Generally, FEMA's practice has been to allow contract costs it considers reasonable, regardless of whether the contract complies with federal procurement regulations. We do not agree with this practice unless lives and property are at stake, because the goals of proper contracting relate to more than just cost. Open and free competition usually increases the number of bids received and thereby increases the opportunity for obtaining reasonable pricing from the most qualified contractors. Open and free competition also helps to discourage and prevent favoritism, collusion, fraud, waste, and abuse.

One of the noncompetitive contracts that Jesuit awarded was a prohibited cost-plus-percentage-of-cost contract totaling \$1,945,315 for its initial emergency and restoration work. Although the contract was awarded under exigent circumstances, cost-plus-percentage-of-cost contracts are specifically prohibited. These types of contracts provide no incentive for the contractor to control costs. For example, Jesuit claimed costs for work covered under this contract that included markups of 21% for a fully burdened (overhead and profit included in rates) subcontract and another 21% markup on those costs by the general contractor, also for a fully burdened contract.

Jesuit officials contended the contract was not a cost-plus-percentage-of-cost contract because it contained a not-to-exceed guaranteed maximum price. A guaranteed maximum price does not change the type of contract. A not-to-exceed price may limit the amount of total costs incurred, but it does not provide an incentive for the contractor to control costs before reaching the guaranteed maximum price specified by the contract.

Cost or Price Analysis

Jesuit did not perform a cost or price analysis on three of its four contracts, and therefore increased the likelihood that unreasonable costs, misinterpretation, or errors related to scopes of work would occur. Jesuit officials confirmed that they did not perform formal cost or price analyses before most of its procurements, including 76 contract change orders.

Contract Provisions

Jesuit did not include the required provisions in its contracts and subcontracts. We reviewed four contracts and all subcontracts with costs over \$100,000, and none of them contained more than portions of the required provisions. The required provisions document the rights and responsibilities of the parties and minimize the risk of misinterpretations and disputes.

Because Jesuit awarded contracts without full and open competition and awarded a prohibited cost-plus-percentage-of cost contract, we question \$10,849,610 as ineligible contract costs (\$12,027,768 minus \$1,178,158 insurance proceeds and SBA loan proceeds applied). This amount includes \$4,717,927 that we also question in findings B, C, and D. Therefore, the net amount of total questioned costs for finding A is \$6,131,683 (see Exhibits A, Schedule of Questioned Costs, and B, Costs Questioned Under Multiple Criteria).

Finding B: Duplicate Funding

Jesuit received \$4,693,265 of duplicate funding for damages resulting from the disaster. After the disaster, Jesuit received \$4,693,265 in donations designated for a “Katrina Fund.” Jesuit’s 2009–2010 President’s Report states that the fund was set up to help pay for the extensive repairs and renovation to Jesuit’s facilities. Jesuit officials said these funds were not used for the repair and renovation purposes stated in the President’s Report, but were used to offset revenue decreases after the disaster. Jesuit later provided previous versions of the President’s Report, which state that the “Katrina Fund” donations were to be used for facility repair costs not covered by insurance and FEMA grant funding. However, Jesuit has not provided documentation to prove these funds were not used for the same purpose as the FEMA grant funds.

Section 312(a) of the Stafford Act states that no entity will receive assistance for any loss for which financial assistance has already been received from any other program, from insurance, or from any other source. Further, *Public Assistance Policy Digest* (FEMA 321, p. 34) states that grants and cash donations from nonfederal sources designated for the same purpose as public assistance funds are considered a duplication of benefits. Therefore, because Jesuit designated its “Katrina Fund” for the same purpose as its FEMA grant, we question \$4,693,265 of ineligible duplicate costs claimed.

Finding C: Contract Charges

Jesuit's claim included \$20,369 for contract costs that were ineligible because the contractor did not bill the costs according to the contract terms and conditions. The contract specified a markup of 20%; however, the contractor billed markups of 21% and 25%. The contractor billed \$20,369 of markups in excess of the 20% allowed in the contract. Accepting contract prices at rates higher than stipulated in a contract is a waste of federal funds, encourages abuse of the contract process, and invites acts of fraud. Jesuit officials said that the contract included a 10% overhead rate and a 10% profit rate calculated by applying the 10% profit to the costs already marked up by the 10% overhead, resulting in a 21% markup. However, the contractor's cost estimate incorporated into the contract applied overhead and profit separately to total contract costs for a 20% markup. Therefore, the billing rates were not according to the contract terms and are ineligible. As a result, we question \$20,369 of ineligible contract costs.

Finding D: Documentation

Jesuit's claim included \$4,293 of unsupported costs. Jesuit claimed \$649,252 of contract costs for work under several projects, but provided support for only \$644,959. 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. Further, FEMA's *Public Assistance Guide* (FEMA 322, October 1999) states that applicants must carefully document contractor expenses. Therefore, we question \$4,293 as unsupported costs. GOHSEP and Jesuit officials generally agreed with this finding but said that they will look for additional support.

Finding E: Funds Put to Better Use

Jesuit completed work and claimed \$478,070 for Project 16617, which was \$27,518 less than the total amount FEMA estimated and approved for the project. Jesuit completed the project more than 3 years ago and had requested project closeout. Therefore, FEMA should deobligate \$27,518 of unneeded funds and put those federal funds to better use. GOHSEP and Jesuit officials agreed with this finding.

Finding F: Insurance Review

FEMA had not completed its insurance review at the start of our audit. Jesuit received \$4,343,123 of property insurance proceeds, but FEMA had allocated only \$666,878 to Jesuit's projects. Some of the insurance proceeds were for costs not eligible for FEMA funding, such as interest expenses and loss of tuition. However, we estimated that approximately \$736,000 of additional insurance proceeds may be applicable to FEMA-eligible projects. Therefore, FEMA should complete its insurance review and allocate the applicable insurance proceeds to Jesuit's projects. FEMA officials said that they would reduce project funding obligations upon completion of their review. GOHSEP and Jesuit officials agreed with this finding.

RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region VI:

Recommendation #1: Disallow \$6,131,683 (\$6,131,683 federal share) of improperly contracted costs that were ineligible (finding A).

Recommendation #2: Disallow \$4,693,265 (\$4,693,265 federal share) of ineligible duplicate funding (finding B).

Recommendation #3: Disallow \$20,369 (\$20,369 federal share) of ineligible contract costs billed in excess of contract terms (finding C).

Recommendation #4: Disallow \$4,293 (\$4,293 federal share) of unsupported costs (finding D).

Recommendation #5: Deobligate \$27,518 (\$27,518 federal share) and put those federal funds to better use (finding E).

Recommendation #6: Complete the insurance review and allocate approximately \$736,000 of applicable insurance proceeds to Jesuit's projects and disallow those amounts from the projects as ineligible (finding F).

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed the results of our audit with Jesuit 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 Jesuit officials and discussed them at exit conferences held with FEMA officials on July 7, 2011, and with GOHSEP and Jesuit officials on July 15, 2011. FEMA officials generally agreed with our findings and recommendations. However, FEMA officials did state that FEMA will not agree to disallow the value of any improperly procured contracts identified in finding A if the costs were reasonable, even if they were incurred under prohibited contract types. GOHSEP withheld comments except as stated in the report. Jesuit officials disagreed with all findings and recommendations except findings E and F.

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 your response is received and evaluated, the recommendations will be considered open and unresolved.

Consistent with our responsibility under the *Inspector General Act*, we are providing copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. To promote transparency, this report will be posted to our website, with the exception of sensitive information identified by your office. Significant contributors to this report were Tonda Hadley, Paige Hamrick, and Timothy Scott.

Should you have questions concerning this report, please contact me at (202) 254-4100 or Tonda Hadley at (214) 436-5200.

cc: Administrator, FEMA
Executive Director (Acting), FEMA Louisiana Recovery Office
Audit Liaison, FEMA Louisiana Recovery Office
Audit Liaison, FEMA Region VI
Audit Liaison, FEMA (Job Code G-10-010)
Audit Liaison, DHS

Schedule of Questioned Costs
August 29, 2005, to May 14, 2010
Jesuit High School, New Orleans, Louisiana
FEMA Disaster Number 1603-DR-LA

Project Number	Net Award Amount	Net Claim Amount	Finding A	Findings B and C	Finding D	Total Costs Questioned	Net Deobligation Amount
16351	\$ 6,433,969	\$6,433,969	\$6,433,969	\$4,693,265	\$ 0	\$11,127,234	\$ 0
10323	1,569,012	1,569,012	1,569,012	0	0	1,569,012	0
16617	505,588	478,070	478,070	0	4,293	482,363	27,518
17028	422,931	422,931	422,931	0	0	422,931	0
8572	389,631	0	0	0	0	0	0
5075	375,724	375,724	375,724	3,921	0	379,645	0
5130	309,190	309,190	309,190	4,474	0	313,664	0
5102	277,531	277,531	277,531	2,775	0	280,306	0
8563	220,286	0	0	0	0	0	0
16336	186,495	186,495	186,495	1,865	0	188,360	0
5106	169,995	169,995	169,995	1,700	0	171,695	0
5061	147,460	147,460	147,460	1,475	0	148,935	0
16308	128,990	128,990	128,990	1,290	0	130,280	0
16329	113,262	113,262	113,262	1,133	0	114,395	0
16339	87,121	87,121	87,121	871	0	87,992	0
16337	86,470	86,470	86,470	865	0	87,335	0
10054	63,390	63,390	63,390	0	0	63,390	0
Subtotals	<u>\$11,487,045</u>	<u>\$10,849,610</u>	<u>\$10,849,610</u>	<u>\$4,713,634</u>	<u>\$4,293</u>	<u>\$15,567,537</u>	<u>\$27,518</u>
Insurance to Be Allocated (finding F)						<u>\$ 736,000</u>	
Subtotals	<u>\$11,487,045</u>	<u>\$10,849,610</u>	<u>\$10,849,610</u>	<u>\$4,713,634</u>	<u>\$4,293</u>	<u>\$16,303,537</u>	
Less Costs Questioned Twice (from exhibit B)			<u>(\$4,717,927)</u>			<u>(\$4,717,927)</u>	
Grand Totals	<u>\$11,487,045</u>	<u>\$10,849,610</u>	<u>\$ 6,131,683</u>	<u>\$4,713,634</u>	<u>\$4,293</u>	<u>\$11,585,610</u>	
Total Net Questioned Costs Recommended for Disallowance						<u>\$11,585,610</u>	
Total Costs Recommended for Deobligation (finding E)							<u>\$27,518</u>

Costs Questioned Under Multiple Criteria
August 29, 2005, to May 14, 2010
Jesuit High School, New Orleans, Louisiana
FEMA Disaster Number 1603-DR-LA

Project Number	Net Award Amount (from Exhibit A)	Amount Questioned (from Exhibit A)	Amounts Questioned More than Once³	Net Costs Questioned
16351	\$6,433,969	\$11,127,234	(\$4,693,265)	\$6,433,969
10323	1,569,012	1,569,012	0	1,569,012
16617	505,588	482,363	(4,293)	478,070
17028	422,931	422,931	0	422,931
8572	389,631	0	0	0
5075	375,724	379,645	(3,921)	375,724
5130	309,190	313,664	(4,474)	309,190
5102	277,531	280,306	(2,775)	277,531
8563	220,286	0	0	0
16336	186,495	188,360	(1,865)	186,495
5106	169,995	171,695	(1,700)	169,995
5061	147,460	148,935	(1,475)	147,460
16308	128,990	130,280	(1,290)	128,990
16329	113,262	114,395	(1,133)	113,262
16339	87,121	87,992	(871)	87,121
16337	86,470	87,335	(865)	86,470
10054	<u>63,390</u>	<u>63,390</u>	<u>0</u>	<u>63,390</u>
Totals	<u>\$11,487,045</u>	<u>\$15,567,537</u>	<u>(\$4,717,927)</u>	<u>\$10,849,610</u>
Insurance to Be Allocated (finding F)				\$ 736,000
Total Net Questioned Costs				<u>\$11,585,610</u>

³ The \$4,717,927 of ineligible and duplicate costs (findings B–D) is also questioned as improper contracting costs (finding A). Recommendation 1 (finding A) is to disallow \$6,131,683 of questioned improper contracting costs, which is net of the \$4,717,927 that is questioned in findings B–D. Therefore, if FEMA does not disallow the \$4,717,927 of ineligible and unsupported costs, it should add back that amount to increase the amount of recommendation 1 to \$10,849,610.