

U.S. Department of Homeland Security
Federal Emergency Management Agency
Louisiana Recovery Office
One Seine Court, Suite 1027
New Orleans, Louisiana 70114
(504) 762-2018 office
(504) 762-2899 fax



FEMA

May 7, 2010

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

FROM: Mark H. Landry, Interim Director
Mark H. Landry
FEMA Louisiana Transitional Recovery Office

SUBJECT: New Orleans City Park Improvement Association and
Offices of Facility Planning and Control
FEMA Disaster No. 1603-DR-LA
Report Number DD-09-15

Thank you for your September 18, 2009 Office of Inspector General's (OIG) review of Hurricane Katrina activities for New Orleans City Park Improvement Association (CPIA) and Offices of Facility Planning and Control (OFPC). This memorandum provides FEMA's response and corrective actions taken or planned to implement the audit recommendations.

Background

The City of New Orleans owns the land comprising City Park, but the non-profit City Park Improvement Association operates City Park, which is a state entity. The Office of Facility Planning and Control is responsible for the facility management of the state's fixed assets, including City Park. City Park suffered extensive damage after Hurricane Katrina when several floodwalls failed, flooding the park with 1 to 8 feet of water. The water stood for up to four (4) weeks, damaging buildings, amusement rides, electrical systems, equipment and vehicles. The standing water caused the death of trees and landscaping, including a substantial portion of City Park's plant collection. At the time of this audit report, most of City Park's facilities has reopened, including Storyland, Tad Gormley Stadium, Pan American Stadium, the Botanical Gardens, the North Golf Course, and the amusement areas. Repairs to shelters, the administration building and improvement projects to the East, West and South golf courses were in progress.

Audit Recommendations and Actions Required

A. Contracting

Recommendation 1: Disallow \$226,034 for prohibited markups on contract costs.

The audit report indicates that CPIA and OFPC accounted for costs on a project-by-project basis, provided adequate documentation to support claimed expenses and expended FEMA funds according to federal regulations and FEMA guidelines. OFPC followed state procurement regulations as required in awarding contracts, but CPIA claimed \$226,034 for ineligible mark-ups on a cost plus a percentage of cost contracts. CPIA used a time and materials contract that allowed markups up to 20% (including a .075% fuel charge) on labor, equipment, materials and subcontractor costs. CPIA paid the contractor \$266,034 in mark-ups on costs.

GOHSEP argues that as state entities, CPIA and OFPC were subject to Executive Order KBB 2005-66 that provides that because of Hurricanes Katrina and Rita, strict compliance with state requirements was not required. While this may be true, State Executive Orders do not govern or change Federal regulations that must be complied with for a project to be eligible for FEMA funding. 44 CFR 13.36(b)(1).

FEMA response: FEMA PA Public Assistance Guide, FEMA-322, October 1999, p. 40, states that time and materials contracts should be avoided, but may be allowed for work that is necessary immediately after the disaster has occurred when a clear scope of work cannot be developed. Costs plus a percentage of costs contracts and contracts contingent on FEMA reimbursement are not eligible for FEMA funding. See also FEMA PA Digest, October 2001, page 20, 44 CFR 13.36(f)(4).

FEMA has conducted reviews of the contract cost to determine if the contracts costs are reasonable. FEMA prepared an independent cost estimate using the CEF method and determined the cost to be 196% to 487% greater than the RS Means estimate. Since the claimed costs are not considered reasonable, and are cost plus a percentage of costs type costs, FEMA agrees with OIG on this audit recommendation. Therefore, by date no later than June 12, 2010, FEMA will de-obligated \$266,034.

B. Eligibility of Costs

Recommendation 2: Disallow \$68,140 for ineligible sod replacement costs

The audit states that OFPC claimed \$68,140 for sod replacement at Pan American Stadium on PW 7167, which is ineligible.

FEMA response: FEMA PA Public Assistance Guide, FEMA-322, October 1999, p. 60, states that trees, shrubs, and other ground cover are not eligible for FEMA reimbursement. Grass and sod are only eligible when necessary to stabilize slopes and minimize sediment runoff. See also FEMA PA Policy Digest, FEMA-321 October 2001, p. 86. FEMA has determined that not

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providing assistance to replace disaster-damaged trees, shrubs and other plantings will not impact essential public services. However, this policy does not effect eligible debris removal and emergency measures. FEMA Policy 9524.5.

On November 11, 2009, FEMA deobligated \$45,687 from PW 7167 V3 of the \$68,140 questioned by OIG. A copy of PW 7167 V3 is attached. Exhibit A. FEMA determined that the \$45,687 amount was attributed to the purchase, delivery and replacement, including markups costs, of 70,200 SF of Bermuda Tiff way sod in the football field area.¹ A review of the remaining \$22,452.72 obligated for PW 7167 V3 remains eligible for reimbursement. Exhibit A. These costs include:

- Excavation and disposal of dead turf
- Replacement of damaged football field line striping
- Replacement of irrigation pump
- Salvaging of Rain bird irrigation controls and metal cabinet.

At close-out, FEMA will reconcile the actual costs expended for these eligible items.

I believe that the FEMA, State and Applicant actions described above adequately resolve and close this audit.

Enclosures

cc: Tony Russell, Regional Administrator, FEMA Region VI
Mark Cooper, Director, GOHSEP
Mark Riley, Chief of Staff, GOHSEP
Mark Debosier, Deputy Director, Disaster Recovery Division, GOHSEP
Bernard Plaia, Attorney, GOHSEP

¹ City Park chose to replace the sod with Astroturf with funding from non-FEMA sources.

Exhibit A, FEMA response to DD-09-15

| | Flood - Rising Water Damage | Base Cost | Soft Cost CRR Factor | | De -obligation Ineligible Non Reimbursable Cost - PW 7167 V3 | Adjusted Reimbursable eligible Cost -PW 7167 V3 |
|---|---|---------------------|-----------------------------|---------------------|---|--|
| | | | 0.68735 | Total Cost | | |
| 1 | Sod Bermuda Tiffway | \$ 28,782.00 | \$ 16,905.11 | \$ 45,687.11 | \$ (45,687.11) | 0 |
| 2 | Remove sod, 1" deep | \$ 3,159.42 | \$ 1,855.69 | \$ 5,015.11 | | \$ 5,015.11 |
| 3 | Excavation, bulk bank, measure, sand | \$ 2,682.38 | \$ 1,575.50 | \$ 4,257.88 | | \$ 4,257.88 |
| 4 | Line stripping | \$ 500.00 | \$ 293.68 | \$ 793.68 | | \$ 793.68 |
| 5 | Selective Demo - Pump, .1Hp. Thru 5 HP | \$ 103.03 | \$ 60.51 | \$ 163.54 | | \$ 163.54 |
| 6 | Replace Pumps, Electric 250 GPM, PS PSI | \$ 7,699.95 | \$ 4,522.57 | \$ 12,222.52 | | \$ 12,222.52 |
| | | | | | | |
| | Flood - Rising Water Total Damages | \$ 42,926.78 | \$ 25,213.04 | \$ 68,139.82 | \$ (45,687.11) | \$ 22,452.72 |