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FEMA

February 2, 2012

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

FROM: Joseph Threat, Acting Executive Director
FEMA Louisiana Recovery Office

A handwritten signature in black ink, appearing to read "Joseph Threat", written over the "FROM:" line.

SUBJECT: *FEMA Public Assistance Grant Funds Awarded to Saint Mary's Academy, New Orleans, Louisiana*
FEMA Disaster No. 1603-DR-LA
Report Number DD-11-15
Interim Response

The Federal Emergency Management Agency (FEMA) has reviewed the Office of Inspector General's (OIG) memorandum of August 5, 2011, concerning St. Mary's Academy (SMA). This memorandum provides FEMA's interim response and corrective actions taken or planned to implement with reference to the OIG audit recommendations.

Background

St. Mary's Academy is a private, non-profit middle through high school built in the 1960's in New Orleans, Louisiana. On August 29, 2005, Hurricane Katrina deposited over four feet of brackish floodwater in the buildings, where it remained for three weeks. As an eligible applicant for FEMA grant funding, SMA has received an award of over \$56.6 million from the Grantee, the Louisiana Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP).

The OIG audit covered the period of August 29, 2005 through December 9, 2010 and included 12 projects totaling \$53.5 million.

OIG Audit Recommendations and Actions Required

Recommendation 1: Disallow \$18,727,789 (\$18,727,789 federal share) of improperly contracted costs that were ineligible (Finding A).

The OIG stated that SMA did not follow federal procurement standards in awarding eight contracts totaling \$18,843,445. In addition, according to the OIG, SMA gave unfair advantage to a subcontractor, and paid one contractor on a prohibited cost-plus-percentage-of-cost basis and did not include all required provisions in any of its contracts.

Both GOSHEP and SMA disagree with the OIG on Finding A. In their response to the OIG, SMA included a cost analysis for all questioned contracts. GOHSEP also conducted a similar analysis to demonstrate cost reasonableness across project worksheets (PWs) and vendors for the complete scope of work.

FEMA Response: FEMA partially agrees with this recommendation.

Federal regulations at 44 CFR § 13.36 (d)(4) establish the conditions under which applicants may rely on noncompetitive procurements. In this instance FEMA refers to 44 CFR § 13.36 (d)(4)(i)(B) “public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.” SMA’s intent was to provide emergency repairs on their campus to allow for the timely return of students back to classes.

At the time of the disaster and immediately afterwards, it was difficult to obtain contractors to do emergency and temporary work. It was also difficult to get contractors to bid on projects. SMA made a good faith effort to obtain bids and solicited three sources for the immediate contracting work. Once aware of the need to publicize bids, SMA advertised for their permanent work awards.

The majority (over \$13 million) of the \$18.8 million in dispute in Recommendation 1 was for emergency work and work associated with temporary facilities. SMA’s emergency and temporary eligible facility work was obligated on PWs 15985, 17837 and 18994. FEMA agrees that SMA did not follow all federal procurement standards in the awarding of some of the contracts. However, SMA subsequently performed a cost analysis of the contracts in accordance with 44 CFR § 13.36 (f) which states, “grantees and subgrantees must perform a cost or price analysis in connection with every procurement action...” Both GOHSEP and SMA performed separate analyses.

FEMA is authorized under 44 CFR § 13.43(a)(2) to disallow all or any part of the claimed grant costs when the grantee or subgrantee is not in compliance with the terms of a grant award, including procurement requirements. FEMA may exercise this authority to determine in a particular case whether the work claimed was performed and whether costs claimed were reasonable and necessary. FEMA may allow costs that are reasonable and necessary for eligible work actually performed, and disallow any costs it determines not to be reasonable and necessary to the performance of eligible work.¹

FEMA is currently conducting a validation of costs along with a review of invoices and scope of work performed to determine reasonableness. FEMA anticipates completion of this review by April 17, 2012.

Recommendation 2: *Disallow \$60,036 (\$60,036 federal share) of ineligible legal costs (Finding B).*

FEMA Response: FEMA concurs with this recommendation.

¹ 44 CFR § 13.22 provides that Federal principles for determining allowable costs for State, local and Indian tribal governments are set forth in OMB Circular A-87 (codified at 2 CFR Part 225). Costs must be reasonable and necessary in order to be allowable (2 CFR Part 225, Appendix A, ¶ C. 1. (a)).

SMA's architect, Rozas-Ward/a.i.a. architects, inc. (RWA), retained the services of the Davillier Law Group, LLC, for projects relating to SMA. RWA invoiced SMA for the monthly legal retainer fee along with a 15% overhead and profit fee.

Although there may be legal fees involved in the performance of eligible A/E services, the retaining of a legal firm is not a recognized eligible cost.

FEMA has not obligated any funds for legal fees for SMA. However, FEMA's validation process has identified six invoices from RWA, paid by GOHSEP, that include ineligible legal services. As these ineligible funds were paid for by GOHSEP, it is GOHSEP's responsibility to reconcile and recover these costs from SMA.

Recommendation 3: Disallow \$55,620 (\$55,620 federal share) of ineligible contract costs that exceeded agreed-upon rates (Finding C).

FEMA Response: FEMA concurs with this recommendation.

Threefold Consultants, SMA's Project Manager, escalated their rates between October 2010 and November 2010. The new rates were in some cases in excess of a 50% increase. These new rates were not agreed to in a revised contract or amendment to the contract. FEMA was not aware of the contractor's escalation of their rates. During the process of writing version 2 of PW 18696 for change orders, FEMA discovered that the Project Manager had increased their rates. FEMA informed SMA that these new rates would not be an eligible cost and would not be included in the version to PW 18696.

FEMA will prepare version 3 to PW 18853 to de-obligate the \$55,620 of ineligible contract costs and provide a copy to the OIG by April 17, 2012.

Recommendation 4: Disallow the ineligible, uninsured portion of SMA's new facility totaling \$30,790,998 (\$30,790,998 federal share) unless SMA obtains and maintains additional flood insurance to cover the full amount of eligible disaster assistance provided for the new facility (Finding D).

FEMA Response: FEMA disagrees with this recommendation.

Saint Mary's Academy has taken the required steps to fulfill all insurance requirements and to apply for a certification to the Louisiana State Insurance Commissioner as allowed pursuant to 44 CFR § 206.252 and § 206.252. While SMA has not received its certification at the time of this response, the attached Exhibit 1 (Insurance Waiver request letter) is a copy of the submission made by SMA on July 18, 2011, and is currently with the State Insurance Commissioner.

FEMA will send the approved certification to the OIG upon receipt. If SMA is denied a waiver, FEMA will adjust the grant funding to reflect additional insurance reductions.

Recommendation 5: Allocate \$1,523,507 (\$1,523,507 federal share) of insurance proceeds to SMA's projects, to reduce those amounts from the projects as ineligible (Finding E).

FEMA Response: FEMA concurs with this recommendation.

FEMA has allocated \$1,523,507 of insurance proceeds to PW 18696 version 3. Exhibit 2, PW 18696, Version 3.

In summary, FEMA will take the following actions:

- Recommendation 1: FEMA partially agrees with the OIG. FEMA will continue the validation of the contracts and the work performed for SMA and present the OIG a reasonable cost analysis of the work. FEMA anticipates completion by April 17, 2012.
- Recommendation 2: FEMA is in agreement with the OIG.
- Recommendation 3: FEMA agrees and will prepare version 3 to PW 18853 to de-obligate the \$55,620 and provide a copy to the OIG by April 17, 2012.
- Recommendation 4: FEMA disagrees with the OIG. FEMA contends that SMA has taken the steps necessary to apply for insurance certification from the Louisiana State Insurance Commissioner. FEMA will provide the OIG a copy of the approved waiver, or if denied, FEMA will apply the necessary insurance reductions and provide the OIG with the project worksheet versions.
- Recommendation 5: FEMA agrees with the recommendation and has applied the insurance deduction of \$1,523,507 to PW 18696 V3.

I believe that the FEMA Response described above adequately resolves recommendations 2 and 5 made by the Office of Inspector General. As indicated, herein, an addendum to this memorandum will be forwarded to your attention by April 17, 2012 providing a full response to recommendation numbers 1, 3 and 4.

Enclosures

cc: Tony Russell, Regional Administrator, FEMA Region VI
Brad Shefka, FEMA HQ Audit Liaison
Wayne Rickard, Emergency Management Analyst, FEMA Region VI
Kevin Davis, Director, GOHSEP
Mark Riley, Deputy Director/Chief of Staff, GOHSEP
Mark DeBosier, Deputy Director, Disaster Recovery Division, GOHSEP
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