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FEMA

July 29, 2011

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

FROM: Joseph Threat, Executive Director (Acting)
Louisiana Recovery Office

SUBJECT: *Orleans Parish Criminal Sheriff's Office*
FEMA Disaster No. 1603-DR-LA
Report Number DD-10-08

A handwritten signature in blue ink, appearing to read "J. Threat", is written over the "FROM:" field of the memorandum.

Thank you for your March 31, 2010 Office of Inspector General's (OIG) review of public assistance funds awarded to Orleans Parish Criminal Sheriff's Office for Hurricane Katrina activities. This memorandum provides FEMA's response and corrective actions taken or planned to implement the audit recommendations.

Background

Orleans Parish Criminal Sheriff's Office (OPCSO) operates jail facilities providing for the care, custody and control of inmates in Orleans Parish. OPCSO (the Applicant) was responsible for feeding approximately 6,000 inmates and its employees (as a general practice so they did not leave the jail facilities). After Hurricane Katrina, its kitchen facilities were destroyed requiring OPCSO to seek alternative means of feeding the inmates and staff. OPCSO received \$6.3 million for meal costs.

Finding C: Employee Meal Costs¹

Recommendation 1: Disallow \$1,000,249 in unreasonable costs for employee meals (Finding C.)

OIG claims that OPCSO paid an excessive amount for employee meals because OPCSO did not solicit proposals through full and open competition or conduct a price analysis as required by 44 CFR 13.36(d)(2) and (3) and 13.36(f)(1) and (2). OPCSO negotiated a verbal agreement with a local catering company for meals at \$46.00 per person, per day for employees to begin September 13, 2005 and for inmates to begin on October 18, 2005. On November 3, 2005, OPCSO renegotiated the rate for inmate meals to \$27.50 per inmate, per day. Thereafter, OPCSO solicited bids to provide inmate meals, and on January 23, 2006, a new caterer provided

¹ There are no OIG audit findings associated with Findings A, B or E.

inmate meals at a rate of \$7.25 per inmate, per day. OPCSO then verbally renegotiated the rate for employee meals to \$40.00 per person, per day to begin on January 23, 2006, then to \$31.00 for the first week of July 2006, and then to \$25.00 for the remainder of July 2006. OIG points out that OPCSO paid from \$46.00 to \$40.00 per person, per day over a nine (9) month period for employee meal costs, while it paid from \$46.00 to \$7.50 per inmate, per day over a three (3) month period. OIG claims that the OPCSO should have solicited proposals from contractors to reduce its employee meal costs along with its inmate meal costs, as it was clear the OPCSO was able to solicit competitive bids as early as January of 2006. Additionally, OIG contends that because employee meal costs (\$2.69 per person, per day) and inmate meal costs (\$3.82 per inmate, per day) were similar before the disaster, there was no justification for higher employee meal costs after the disaster. OIG therefore recommends disallowing the difference between employee and inmate meal rates after November 2, 2005.

GOHSEP responded stating that it generally agrees with the OPCSO's response to this audit.

In its response, the OPCSO asserts that it lost a substantial number of its staff in the aftermath of the storm and the devastation in the surrounding area greatly complicated employee retention. Given the challenging environment that lacked available and affordable housing, schools and medical facilities for the employees and their families, the OPCSO provided employees meals in order to maintain high morale and retain employees. Maintaining high moral and retaining employees who were tasked with maintaining order in the OPCSO's prison facilities was critical to operations and an important part of restoring the OPCSO's facilities. The OPCSO points out that inmate and employee meal rates are not comparable because in addition to providing meals for employees, the caterer provided essentially "base camp" type services, which included the facility, meeting and administrative space, generators, fuel, propane, electricity, freezers, refrigerated storage, air conditioning, tables, plates, cups, utensils, wait staff, clean up and disposal and restroom facilities. The OPCSO also states that FEMA personnel told them that the meal rates were reasonable because they were below the GSA per diem rates for the local area. Additionally, OPCSO said that it did not competitively solicit better rates in November of 2005 because it believed that a temporary kitchen would begin operations by January 2006.

FEMA Response: FEMA partially agrees with this recommendation. Prior to the storm, employees took their meals and break times in a 3,000 square foot (SF) dining facility within the OPCSO's complex. OPCSO did not allow its employees to leave the compound during duty hours, which was part of the OPCSO's efforts to control the flow of contraband into and out of the complex.

Hurricane Katrina severely damaged OPCSO's central kitchen, which provided food services to employees and inmates at the OPCSO's prison facilities. OPCSO was unable to establish a temporary kitchen until late August 2006 due to unforeseen delays, so it had to out-source the food services at its facilities for both inmates and employees.

On September 13, 2005, the OPCSO entered into a verbal agreement with that local catering company (Bella Luna Catering) to provide food services for employees at a rate of \$46.00 per person, per day. OPCSO operated from this "base camp" owned by a local caterer that supported its employees during the reconstitution of prison operations. The rate included three meals per day plus snacks, soft drinks, water, and coffee. In addition to providing meals, the caterer

provided its local facility for the exclusive use of the OPCSO 18 hours per day, which included the use of generators, fuel, electricity, air conditioning, three hot meals per day, soft drinks, water, coffee, wait staff, clean up and disposal, rest room facilities, and space for meetings, other administrative activities and meetings with FEMA. Consequently, inmate and employee meal rates are not comparable as the latter prices included the expenses associated with operating a full-service meal service, meeting facility and administrative space, or "base camp" type facilities.

On October 18, 2005, the OPCSO added inmate meals at the same rate to this arrangement with the local caterer. Employees took their meals at this "base camp" operated by the local caterer, while deputies delivered meals to inmates in temporary holding facilities. This arrangement continued to November 2, 2005. While all parties acknowledge that the OPCSO did not follow Federal procurement regulations to obtain these services (Finding A), the OIG did not question the meal costs during that time due to the exigent conditions and emergency circumstances immediately following the disaster.²

On November 3, 2005, the OPCSO verbally renegotiated its daily rate for inmate meals to \$27.50 per person, per day. In mid-December 2005, the OPCSO sought competitive bids for its inmate meal services. It rejected all bids in this first round of competitive bidding. After re-issuing the call for bids in early January 2006, the OPCSO awarded a competitively procured contract to another local caterer to provide inmate meals at a rate of \$7.25 per inmate, per day. OPCSO's kitchen reopened in late August 2006.

In contrast to inmate meals, the OPCSO continued to operate under its verbal agreement with the local caterer to provide employee meals at the local caterer's base camp facility. OPCSO verbally renegotiated the rate for employee meals to \$40.00 per person, per day to begin on January 23, 2006, then to \$31.00 for the first week of July 2006 and then to \$25.00 for the remainder of July 2006. Consequently, from November 3, 2005 to July 31, 2006, the OPCSO incurred \$1,468,508 in employee meal costs. OIG disputes as unreasonable \$1,000,249 of this cost, which represents the difference between employee and inmate meal rates after November 2, 2005.

The OPCSO asserts that the differences in the rates are attributable to the significantly different circumstances for the food service delivery. The caterer delivered inmate meals to the facilities, which were then provided to the inmates by the deputies on trays with plastic utensils, etc. As such, the operating costs associated with this service were significantly less than the employee meals.

FEMA concurs with OIG that after mid-January 2006, the OPCSO should have competitively bid out the meal services in accordance with 44 CFR 13.36(d)(2) and (3). FEMA selected this date because at that point, it was clear that the OPCSO was able to conduct a competitive procurement to obtain more cost-effective inmate meal rates.

The OPCSO states that it did not competitively solicit better rates because it believed that a temporary kitchen would begin operations shortly. However, that kitchen did not open until late

² Per 44 CFR §13.36 (d)(4)(i)(B), public exigency or emergency.

August 2006, during which time the OPCSO continued to incur excessive costs for employee meals. Additionally, the OPCSO sought to justify the rate through reference to the allowable GSA per diem rate for the local area and the need to maintain high morale for employees tasked with maintaining order in the OPCSO's prison facilities. FEMA concurs with OIG's rejection of the GSA per diem rate as a comparable basis for determining a reasonable employee meal cost rate.

While the OPCSO did not compete competitively the meal services when it was clear that the exigent conditions and emergency circumstances immediately following the disaster no longer existed in violation of federal grant guidelines, FEMA can reimburse costs for eligible work that is determined to be necessary and reasonable. 44 CFR §13.22(a)(2) and (b); OMB Circular A-87 (relocated to 2 CFR §225, Appendix A, C.1.a.); Public Assistance Guide, FEMA-322, October 1999, pp. 33-34; Public Assistance Policy Digest, FEMA-321, October 2001, pp. 38 and 101. Federal regulation 44 CFR §13.43 provides for potential remedies for noncompliance with Federal regulations governing procurements involving federal grants. 44 CFR §13.43 (2) states that FEMA is authorized to "disallow all or part of the cost of the activity or action not in compliance." FEMA is authorized to reimburse for the reasonable costs of work determined to be necessary and eligible. 44 CFR §13.22(a)(2) and (b); OMB Circular A-87 (relocated to 2 CFR §225, Appendix A, C.1.a.); Public Assistance Guide, FEMA-322, October 1999, pp. 33-34; Public Assistance Policy Digest, FEMA-321, October 2001, pp. 38 and 101. The FEMA Public Assistance Guide recommends that reasonable costs may be established through identification of "average costs for similar work in the area," among other means. FEMA Public Assistance Guide, FEMA 322, October 1999, p. 34.

FEMA conducted a survey of similar activities in the area and determined that at least one local applicant competitively procured similar food services, which were provided to a local base camp at a rate of \$29.75 per person, per day. FEMA used these rates to determine a reasonable and allowable cost for the OPCSO's employee meal rate and the local caterer's expenses associated with hosting the OPCSO's administrative functions and meetings for the period January 23 through July 7, 2006. FEMA determined that \$229,768 is the ineligible amount for employee meals. FEMA allowed \$53,457.46 for the use of 3,000 SF of the local facility for dining and meeting space. Exhibit 1, OPSCO Employee Meal Cost Summary and Comparison. Consequently, FEMA will deobligate \$176,310.47 from PW 1320 for the period of January 23 through July 31, 2006 ($\$229,768 - \$53,457.46 = \$176,310.46$).

Finding D: Funding of Inmate Meals

Recommendation 2: Disallow \$1,471,804 in duplicate funding for inmate meals (Finding D).

OIG claims that the OPCSO received a duplication of benefits for a portion of the costs claimed for inmate meals.³ The OPCSO daily meal rate per inmate prior to the storm was \$3.82. OIG determined that OPCSO received \$44 million in 2005 and \$29 million in 2006 for inmate custody and care, which included feeding according to OIG. Because OPCSO did not account for these reimbursements, a portion of the FEMA funds provided to OPCSO for feeding inmates

³ Section 312 of the Stafford Act, Duplication of Benefits, prohibits entities from receiving assistance that duplicates benefits available for the same purpose from any other source.

constituted a duplication of benefits. OIG calculated the number of inmate meals provided and multiplied the total by the pre-disaster daily inmate food rate cost to determine the total duplicated benefits. OIG questions \$1,471,804 in duplicate benefits for inmate meals.

GOHSEP responded stating that it generally agrees with the OPCSO's response to this audit.

OPCSO claims that there is no duplication of benefits regarding inmate meals because FEMA policy does not consider "grants and cash donations that are received for unspecified purposes or ineligible work" a duplication of benefits. FEMA Public Assistance Policy Digest FEMA 321, October 2001, p. 34. Under a settlement agreement with the City of New Orleans, the OPCSO receives \$22.39 per diem for housing and board. OPCSO asserts that no specific portion of the \$22.39 per diem is for meals. Thus, any portion of this per diem that is attributed to meals is an "unspecified" portion.

FEMA Response: FEMA concurs with the OIG on this recommendation. The OIG determined that the OPCSO received reimbursements from local, state, and federal agencies for the custody and care of inmates held at its facilities. For example, documents provided by the OPCSO show that it received a per diem rate of \$22.39 from the City of New Orleans for inmate "housing and board" beginning in 2002. Exhibit 2, Settlement Agreement. As stated by OIG, the OPCSO received \$44 million in 2005 and \$29 million in 2006 for "inmate custody and care." Exhibit 3, Calculation of cost of food per day per prisoner. The OIG interpreted this as meaning that the OPCSO, by accepting grant reimbursements from local, state, and Federal agencies, was receiving duplicate benefits for a portion of the costs for inmate meals during the period under consideration for this audit.

With regard to the City of New Orleans settlement agreement, the OPCSO asserts that no specific portion of the \$22.39 of the per diem rate awarded is for meals. Exhibit 4, OPSCO Correspondence May 9, 2011. The OPCSO has not made a compelling argument that the receipt of these funds does not constitute a duplication of benefits. The settlement agreement makes clear that this rate includes appropriate housing and board. The word "board" is defined in the World English Dictionary as "a person's food or meals, provided regularly for monetary or sometimes as payment for work done."

Furthermore, the OPCSO asserts that a more accurate daily rate for inmate meals is \$0.87 per meal, per day pre-Katrina. Exhibit 4, OPCSO Correspondence. In contrast to the detailed documentation supporting its \$3.82 rate, the OPCSO failed to submit a similar level of detail to substantiate its newer, preferred rate of \$0.87 per meal, per day. Consequently, FEMA concurs with this OIG recommendation and will disallow \$1,471,804 in duplicate benefits for inmate meal cost.

In summary, FEMA will take the following actions.

- In response to Recommendation 1, FEMA will de-obligate \$176,310.47 from PW 1320; and,
- In response to Recommendation 2, FEMA will de-obligate a total of \$1,471,804 as follows:
 - \$1,362,159 from PW 1320

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- o \$109,645 from PW 15882

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
Brad Shefka, FEMA HQ Audit Liaison
Pat Santos, Interim Director, GOHSEP
Mark Riley, Chief of Staff, GOHSEP
Mark Debosier, Deputy Director, Disaster Recovery Division, GOHSEP
Bernard Plaia, Attorney, GOHSEP