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FEMA

March 29, 2010

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

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

SUBJECT: Jefferson Davis and Beauregard Electrical Cooperatives
FEMA Disaster No. 1603-DR-LA
Report Number DD-09-08

Thank you for your May 29, 2009 Office of Inspector (OIG) review of Hurricanes Katrina activities for Jefferson Davis and Beauregard Electrical Cooperatives (Co-ops) located in Jennings and DeRidder, Louisiana, respectively. This memorandum provides FEMA's response and corrective actions taken or planned to implement the audit recommendations.

Background

Hurricane Rita made landfall in western Louisiana on September 4, 2005, only three weeks after Hurricane Katrina. Hurricane Rita caused catastrophic damage to the electrical transmission and distribution systems of the Jefferson Davis Electrical Co-operative (JDEC) and the Beauregard Electrical Co-operative (BEC). Both Co-ops called in workers from the Association of Electrical Co-ops from several states and hired contractors from all over the Parish to restore power. Normally, repair workers would occupy local hotels; however, since Hurricane Katrina evacuees occupied all of the hotel rooms in the area, Co-op management needed another solution to their housing problem. In late September 2005, as Hurricane Rita approached, JDEC and BEC officials asked the Association of Louisiana Electrical Cooperatives (ALEC) to help them find a base camp provider. An ALEC official contacted two base camp providers who said they were not interested in bidding because they were busy providing base camps for Hurricane Katrina. The ALEC official then contacted the President of Service Rentals, Inc. who said he could provide the base camps. Co-ops officials said they were faxed a price list and told they only had 15 minutes to make a decision or Service Rental would rescind its offer. In addition, the Co-ops had to wire immediately $500,000 each before Service Rentals would start work on the base camps. JDEC agreed and contracted with Service Rentals, Inc. (Service Rentals) to build a tent city at the Chennault International Airport in Calcasieu Parish, Louisiana. BEC also agreed and hired Service Rental to set up a similar tent city at the DeRidder Airport in Beauregard Parish.

Audit Recommendations and Actions Required

Finding A: Costs Related to Base Camps

Recommendation A-1: Disallow $9, 107,760.00 for unreasonable base camp costs ($6,233,630.00 for JDEC and $2,874,130.00 for BEC).

The OIG report indicates that JDEC and BEC claimed $19.6 million ($13.4 million and 6.2 million, respectively) for base camps to provide food and lodging to personnel performing work to restore electrical power. OIG claims that the prices paid were unreasonable high as they were more than twice as high as those charged by other base camp contractors in Louisiana performing similar services during the same period of time.

The Co-ops and Service Rentals, Inc. did not have written contracts. The oral understanding provided for fixed weekly prices for some items (sleeping tents, laundry facilities and shower units) and daily rates for others (meals and motorized carts). Labor costs were included in the prices. The Co-ops did not perform a price-cost analysis to determine if the prices were reasonable or how they compared to current or recent prices. Co-op officials told OIG they believe they had no alternative but to accept Service Rentals' offer because the emergency workers were on their way and had no place to stay.

In the audit report, OIG compared the Service Rental prices to the highest GSA contract prices awarded in Louisiana during the same time period for comparable base camp services. OIG selected seven comparable contracts and then calculated the GSA rate per person, per day, based on the capacity and the number of days the base camps were open. For those base camp contracts that did not provide meals, OIG added the daily meal cost for the contractors providing the meals. OIG used the same approach to calculate Service Rentals' daily rate, but in the absence of a written contract, used the average daily capacity and the actual invoiced amounts to determine the average daily cost per person.

OIG concludes that Service Rental charged over twice as much as the most expensive GSA contract. The average daily cost per person, per day was $371.76 for JDEC and $415.55 for BEC, while the daily rate per day, per person for the seven other GSA contracts ranged from $87.93 to $173.63. Using the highest GSA contract price of $173.63, OIG calculated that JDEC incurred excessive costs in the amount of $7,123,170.00 and BEC incurred excessive costs in the amount of $3,317,013.00.

44 CFR 13.36(d)(i)(B) states that Federal regulations allow an exception to the requirement of full and open competition when the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. However, 44 CFR 13.36(f)(1) requires that every grantee and sub-grantee must perform a cost or price analysis in connection with every procurement action including contract modifications. 44 CFR 13.36(f)(2) states that grantees and sub-grantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where costs analysis is performed.

According to OIG, the Co-ops did not perform a cost or price analysis to determine if the agreed-upon rates and prices were reasonable. They also did not negotiate profit as a separate element of price. This resulted in the Co-ops paying unreasonably high rates and prices for the base camp services. Therefore, OIG questions $9,107,760.00 as unreasonable costs for the base camps.[1]

GOHSEP responded taking issue with OIG's method of comparing contract prices for the needs of southeast Louisiana with contract prices for the needs of southwest Louisiana in a second storm only three weeks later when resources were already limited due Hurricane Katrina. GOHSEP points out that a cost is reasonable if, by its nature and amount, it does not exceed that which a prudent person under the circumstances prevailing at the time the decision was made to incur the costs. Public Assistance Guide FEMA-322, October 1999, p. 34. Shortage of readily available supplies is a factor that may affect costs.

GOHSEP points out that the electrical Co-ops tried to obtain quotes from two other companies, but only Service Rentals was available. The original estimate provided to the Co-ops by Service Rentals was based on what it had charged for Hurricane Katrina base camps, but Service Rentals warned that this was based on availability of supplies. As it turned out, Service Rentals had to bring in supplies from Michigan, North Carolina, Missouri, Florida, Colorado, Texas and California, with some personnel coming in from North Canada. Exhibit A, April 24, 2006 letter from Service Rentals, Inc. to Col Thomas Kirkpatrick. GOHSEP states that this significantly effected the prices.

FEMA response: FEMA disagrees with OIG on this recommendation. FEMA defines allowable costs under PA regulations, program guides, and guidelines as:

- Reasonable and necessary to accomplish the work;
- Compliant with Federal, State and local requirements for competitive procurements and;
- Reduced by all applicable credits, such as anticipated insurance proceeds and salvage values.

"A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs." Public Assistance Guide, FEMA-322, October 1999, p. 33-34.

Reasonable costs can be established through:

- The use of historical documentation for similar work;
- Average costs for similar work in the area;
- Published unit costs from national cost estimating databases; and
- FEMA cost codes. Public Assistance Guide, FEMA-322, October 1999, p. 34.

FEMA considers several factors in determining reasonableness of costs, including but not limited to, shortages in equipment, materials and labor that effects costs. FEMA PA staff makes the

[1] OIG questions $6,233,630.00 in base camp costs for JDEC and $2,874,130.00 in base camp costs for BEC, for a total of $9,107,760.00 in questioned base camp costs.

final determine on the reasonableness of a cost. Public Assistance Guide, FEMA-322, June 2007, p. 41.

OIG claims that the prices paid for the base camps were unreasonable high as they were more than twice as high as those charged by other base camp contractors in Louisiana performing similar services during the same period. To determine reasonableness, OIG utilized GSA contract information to formulate the reasonable costs for the base camps. OIG selected seven comparable contracts and then calculated the GSA rate per person, per day, based on the capacity and the number of days the base camps was open.

FEMA does not believe this is a reasonable comparison. At the time Hurricane Rita struck Louisiana, GSA services were not available to either applicant, and it was not until the passage of the John Warner National Defense Authorization Act (Section 833) in 2007 that GSA Federal Supply Schedules were made available to state, local, and tribal agencies.

Moreover, when Hurricane Rita hit, evacuees and first responders for Hurricane Katrina filled all of the available rental stock. Left with little choice for housing their own responders called in from an association of Co-ops from seven states, the applicants used the Association of Louisiana Electric Cooperatives (ALEC) in locating a base camp provider. The applicants contacted three base camp suppliers, but due to the lack of available vendors, resources that were exhausted by the Katrina response, and driven by the emergency need to restore electrical power, the applicants had no choice but to engage the services of Service Rentals.

Recommendation A-2: Disallow $1,235,423.00 for invoice overcharges ($792,540.00 for JDEC and $442,883.00 for BEC).

OIG states that JDEC and BEC did not adequately review Service Rentals' invoices before paying them resulting in higher prices being invoiced than those quoted on the rate sheets. OIG discussed the overcharges with the President of Service Rentals, who said the rate sheets did not constitute a binding agreement, but rather only represented his estimate. He added that his operating costs were higher than he estimated. OIG also discussed the overcharges with JDEC and BEC management. The Co-op officials said they were not aware of the overcharges.

OIG claims that a prudent person would have executed a written contract to avoid misunderstanding or, at a minimum, would have secured a firm agreement on the rate sheet prices. A prudent person would have also reviewed the invoices before paying them.

GOHSEP states that the Co-ops and Service Rentals did not have a firm price agreement because at that time, Service Rentals could not determine the availability and costs due to the limited resources caused by Hurricane Katrina. GOHSEP believes that the prices paid by JDEC and BEC were reasonable at that time under the circumstances.

FEMA response: FEMA agrees with OIG. The applicant did not secure a firm agreement on the rate sheet prices and did not adequately review the invoices before paying them. 44 CFR 13.20(b)(2) and (6) requires grantees and subgrantees to maintain records that adequately identify the source and application of funds and to maintain accounting records supported by source documentation. By date no later than June 21, 2010, FEMA will deobligate $792,540.00 from PW 795 for JDEC and $442,883.00 from PW 401 for BEC.

Recommendation A-3: Disallow $189,435 for excess costs for JDEC sack lunches.

OIG questions excess charges for sack lunches paid for by JDEC. JDEC said that Service Rentals provided the same sack lunch each day for the first month and that the work crew eventually refused to eat it. JDEC asked Service Rentals if it would be possible to change the lunch or reduce the price. Rather than provide greater variety, Service Rentals reduced the daily meal price by $8.00. JDEC then paid a local company $20.00 per day to provide sack lunches in lieu of the $8.00 Service Rentals sack lunches. OIG claims that JDEC did not act prudently in paying $20.00 per sack lunch without securing an agreement from Service Rentals for a comparable reduction in the daily meal price.

GOHSEP had no comment on this recommendation.

FEMA response: FEMA agrees with OIG on this recommendation. Daily meal charges were included in the base camp costs for JDEC, and therefore the additional sack lunch expenses for the other company were a duplication. By date no later than June 21, 2010, FEMA will deobligate $189,435 from PW 795 for JDEC.

Recommendation A-4: Disallow $97,000 for the math error in JDEC's Service Rentals invoices.

OIG questions $97,000 in overcharges to JDEC that resulted from a math error in a Service Rentals' invoice.

GOHSEP states that $97,000 plus administrative costs were reimbursed to GOHSEP on May 29, 2009, and GOHSEP acknowledges the return of the funds.

FEMA response: FEMA agrees with OIG on this recommendation to disallow $97,000 for a math error. By date no later than June 21, 2010, FEMA will deobligate $189,435 from PW 795 for JDEC.

Recommendation B-1: Disallow $10,518,434 for improper contracting procedures ($10,235,544 for JDEC and $282,890 for BEC).

OIG claims that the Co-ops did not comply with the federal procurement standards or FEMA guidelines in procuring contract work. This resulted in a lack of full and open competition, and no assurances that the Co-ops paid a reasonable price. Additionally, OIG questions costs for work performed after power was fully restored to the Co-ops' customers because after the power was fully restored, exigent circumstances no longer existed to justify the Co-ops' non-compliance with federal procurement standards. OIG further states that the Co-ops utilized time and materials type contracts without sufficient justification, did not maintain adequate records sufficient in detail to justify the contractor selection and basis for the contract price, did not perform a cost or price analysis or negotiate profit as a separate element of price. In nearly every case, the Co-ops used verbal agreements and rate sheets, rather than written contracts. The Co-ops were also unable to provide evidence of adequate contract monitoring of the time and materials type contract, without which the Co-ops had no evidence to validate the labor and hours billed in the invoices.

While OIG makes note that the Co-ops did not follow the proper procurement procedures during the emergency period, it does not question the costs incurred during the emergency period before power was restored. OIG does question the costs incurred by the Co-ops after the emergency period ended, which OIG determined was November 18, 2005 for JDEC and October 21, 12005 for BEC. Once the emergency period was over, OIG claims the Co-ops should have stopped using the non-competitive, time and materials type contracts and solicited competitive bids for the remaining work.

While GOHSEP concurs with OIG in that costs the Co-ops incurred prior to the end of the emergency period should not be questioned given the unavailability of resources and the emergency nature of the repairs, it takes issue with OIG's determination of when the emergency period ended. GOHSEP claims that the approved regulatory time period for emergency work was originally six (6) months and through extensions, ended August 29, 2009. GOHSEP points out that although power was restored to the Cameron court house (which was used as an emergency command center) and to other emergency responders approximately 55 days after Hurricane Rita made landfall, the restoration of power to individual consumers was very widespread and intermittent. The Co-ops continued to work to restore power to individual customers in the two Parishes throughout the year, completing power restoration within the first year after the storm, and well within the approved regulatory timeframe.

FEMA response: FEMA does not concur with OIG on this recommendation. Given the exigent circumstances of the power outages and the unavailability of resources, the Co-ops utilized what resources were available. As residents returned home and began to rebuild, the Co-ops had to repair lines to homes and rebuild power substations to neighborhoods. Without restoring power to all of the residents, those returning residents would have to move into shelters until the power restoration was complete. FEMA believes that the dates used by OIG are arbitrary and that the work completed after the OIG cut-off dates constitutes emergency work completed during the emergency period. 44 CFR 13.36 (d)(4)(B) states that procurement by non-competition is permitted when the public exigency or emergency for a requirement will not permit a delay resulting from competitive solicitation. An emergency existed until all of the power was restored in each parish. The costs incurred by the Co-ops were consistent from the first day of emergency work until the power was completely restored to each Parish. This was a public emergency and consequently, the costs incurred during the emergency period are eligible.

Recommendation B-2: Disallow $5,654,891 for unsupported costs ($5,654,580 for JDEC and $311 for BEC).

OIG questions unsupported costs because the Co-ops did not provide timesheets and other appropriate documents to support invoices paid. The costs included summarize charges by the contractor for credit card purchases, equipment and labor hours. OIG requested JDEC obtain the supporting documentation from the contract, but they declined to do so. 44 CFR 13.20(b)(2) and (6) require subgrantees to maintain adequate records that identify the source and application of the funds and to maintain accounting records supported by source documentation, such as cancelled checks, paid bills, payrolls, time and attendance records and contract documents.

GOHSEP states that both JDEC and BEC have provided all the available supporting documentation they possess, and that the Co-ops did not decline OIG's requests to pursue additional documentation. They made every effort to secure additional documentation from the contractor, but could not four years after the disaster. GOHSEP further states that the purpose of documentation is to verify performance, and that both subgrantees can verify that the work was performed and the services were provided.

FEMA response: FEMA agrees with OIG on this audit recommendation. 44 CFR 13.20(b)(2) and (6) requires grantees and subgrantees to maintain records that adequately identify the source and application of funds and to maintain accounting records supported by source documentation. By date no later than June 21, 2010, FEMA will deobligate $5,654,580 from PW 1737 for JDEC and $311 from PW 401 for BEC.

Recommendation B-3: Disallow $110,444 for duplicate or improper meal and lodging expenses ($39,182 for JDEC and $71,262 for BEC).

OIG questions costs associated with meals and lodging during the period of time when Service Rentals provided the same services at the base camp or incurred as per diem for contractors after power was restored. Contractors included theses charges in their invoices when workers elected to stay in a hotel or eat a meal away from the base camp. The costs for the food and lodging is a duplicative costs and not allowed.

GOHSEP has no further information to offer for this recommendation.

FEMA response: FEMA agrees with OIG on this recommendation. The meals and lodging expenses were duplicative, and the Co-ops have not submitted documentation to support their request for this cost. By date no later than June 21, 2010, FEMA will deobligate $39,182 from PW(s) 1737 and 1975 for JDEC and $71,262 from PW 401 for BEC.[2]

Recommendation B-4: Disallow $25,000 for the land purchase not reimbursed by JDEC.

When Hurricane Rita destroyed JDEC's customer service facility, JDEC elected to purchase land and place a prefabricated building on the property as a temporary facility. OIG questions $25,000 JDEC paid to purchase land for a temporary customer service facility. 44 CFR 13.31, Real Property, requires that once the real property is no longer needed, the grantee or subgrantee will 1) retain title and compensate the awarding agency; or 2) sell the property and compensate the awarding agency; or 3) transfer the title of the property to the awarding agency.

GOHSEP states that JDEC elects to retain title to the purchased property and agrees to reimburse FEMA the cost of the property.

FEMA response: FEMA agrees with OIG on this recommendation. By date no later than June 21, 2010, FEMA will deobligate $25,000 from PW 4181 for JDEC.

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[2] The amount of $110,444 is included in the amount questioned in recommendation B-1. FEMA only agrees with the deobligation of the questioned costs in recommendation B-3.

Recommendation B-5: Disallow $21,465 for the duplicative invoice charge for JDEC.

OIG questions $21,465 in duplicative charges on a JDEC contractor's invoice. JDEC said they were unaware of the duplicative charge and agreed to recover the money from the contractor.

GOHSEP states that $21,465 plus administrative costs were reimbursed to GOHSEP and GOHSEP acknowledges the return of the funds.

FEMA response: FEMA agrees with this audit recommendation. By date no later than June 21, 2010, FEMA will deobligate $21,465 from PW 1975 for JDEC.[3]

Recommendation B-6: Disallow $19,662 for unallowable mark-ups by JDEC contractors.

OIG questions $19,662 in markups on pass-through contract costs billed to JDEC for materials, rented equipment, meals and lodging. These charges were billed as a percentage of costs without any justification as to their purpose. Such markups are a form of cost plus a percentage of cost contracts, which are prohibited by federal regulations. 44 CFR 13.36(f)(4).

GOHSEP agrees with the audit recommendation to deobligate $19,662.

FEMA response: 44 CFR 13.36(f)(4) prohibits the use of cost plus a percentage of cost and percentage of construction cost methods in contracting. FEMA agrees with the audit recommendation. By date no later than June 21, 2010, FEMA will deobligate $19,662 from PW(s) 1737, 1975 and 2368 for JDEC.[4]

I believe that the FEMA, State and applicants' actions described above adequately resolve these OIG recommendations.

Enclosure

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

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[3] The amount of $21,465 is included in the amount questioned in recommendation B-1. FEMA only agrees with the deobligation of the questioned costs in recommendation B-5.
[4] The amount of $19,662 is included in the amount questioned in recommendation B-1. FEMA only agrees with the deobligation of the questioned costs in recommendation B-6.