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FEMA

March 21, 2012

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

FROM: Joseph Threat, Executive Director
Louisiana Recovery Office

SUBJECT: Town of Abita Springs
FEMA Disaster No. 1603-DR-LA
Report Number DD-11-04

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

The Federal Emergency Management Agency (FEMA) has reviewed the Office of Inspector General's (OIG) memorandum of December 10, 2010, concerning the Town of Abita Springs (Abita). This memorandum provides FEMA's response and corrective actions taken or planned to implement the audit recommendations.

Background

The Town of Abita Springs is located in St. Tammany Parish, Louisiana. On August 29, 2005, Hurricane Katrina brought high winds and torrential rain to the area resulting in extensive damage to the small town. As an eligible applicant for FEMA public assistance grants, Abita received an award of \$5.1 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 October 20, 2010 and included 19 projects totaling \$4.78 million.

OIG Audit Recommendations and Actions Required

Recommendation 1: Disallow \$3,525,941 of improper contracting costs (Finding A).

The OIG recommends FEMA disallow \$3,525,941 in costs incurred by Abita in the performance of contracts for debris removal, debris removal monitoring, and replacement of culverts. The OIG bases this recommendation on its finding that Abita did not follow Federal procurement regulations and, therefore, should not be eligible for FEMA Public Assistance for this work.

FEMA Response: FEMA partially agrees with the OIG on this recommendation.

Each contract is discussed below.

1.) Debris removal by Omni Pinnacle LLC. for \$2,834,017(PW 567)

Abita incurred costs totaling \$2,834,017 for the pickup, removal and disposal of debris (primarily vegetative and construction and demolition) on the Abita's roads, right of way, and public property. Abita did not procure a contract with Omni Pinnacle, LLC ("Omni") for the work. Instead, Abita used a pre-disaster debris removal contract between St. Tammany Parish and Omni. There appears to be no dispute regarding whether St. Tammany Parish used competitive bidding practices to obtain the contract with Omni. Because Abita "piggybacked" onto St. Tammany Parish's contract, Abita did not comply with 44 CFR § 13.36(c).

In a letter dated October 28, 2005, Abita's Mayor cited exigent conditions prevailing in the area after the disaster as the basis for their decision to "piggyback" onto an existing contract for this work. The Mayor cites the absence of communications to support a publicly advertised competitive procurement and the disruption of basic services in the town as the rationale for his decision. A copy of a signed agreement between Abita and Omni, dated September 4, 2005, is included.¹ The Mayor also states the use of such contracts is consistent with Louisiana Revised Statutes and administrative regulations governing public entity procurements. Chapter 11 of the Louisiana Administrative Code details the circumstances, which allow for emergency procurement. Section 1103 defines emergency conditions as:

An emergency condition is a situation which creates a threat to public health, welfare, safety, or public property such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reason as may be proclaimed by the chief procurement officer. The existence of such condition creates an immediate and serious need for supplies, services, or major repairs that cannot be met through normal procurement methods and the lack of which would seriously threaten:

1. The functioning of Louisiana government;
2. The preservation or protection of property; or
3. The health or safety of any person.²

Although the Mayor expressed that emergency conditions existed which prevented procurement of contracts via competitive bidding, and even assuming that Abita had emergency procurement procedures in place as a result of the disaster, the fact remains Abita did not comply with competitive bidding practices when they elected to "piggyback" onto St. Tammany Parish's existing contract. 44 CFR §13.36(b) provides that "Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section." (Emphasis added).

¹ Exhibit 1, Project Worksheet 567 Version 0.

² LAC Title 34 § 1103, promulgated in accordance with LA. R.S. 39:1581.

The risk of “piggyback” contracting is that an applicant may be in noncompliance with 44 CFR Part 13 and the applicant could also risk not being reimbursed all of its eligible costs. The cost principles applicable to grants to state, local, and Indian tribal government at 2 C.F.R. § 225, Appendix A provide guidelines for allowable costs. ³ Federal regulations at 44 C.F.R. § 13.43(a)(2) authorizes FEMA to disallow all or part of the costs of an activity not in compliance. Under this section FEMA may reimburse for costs it determines to be “reasonable and necessary” for eligible work notwithstanding a violation of regulations.

In accordance with 44 CFR §206.223, FEMA determined the work in this case was eligible for Public Assistance. The FEMA Public Assistance Guide (FEMA 322, October 1999) sets forth criteria for use in determining reasonable costs. FEMA reviewed legally procured contracts for similar operations in the area to determine the highest contract rate determined to be eligible for FEMA reimbursement. In each case, the rate paid by Abita was less than the highest legally procured contract rate for similar work items. The results of the analysis are provided in Table 1 below.

Item	Applicant’s Unit Price	Highest Eligible Rate in the Area
Vegetative debris pick up & haul	\$14.00	\$ 15.00
Burning	\$2.00	\$ 4.50
Hanging limbs	\$100.00	\$300.00
Leaner	\$75.00	\$500.00
Load, haul & dispose of C & D	\$9.25	\$ 18.50
Load & haul mixed debris	\$9.25	\$ 14.00
Separation of debris from C & D	\$8.50	\$8.50
Vegetative stumps	\$14.00	\$14.00
Stumps 24” to 36”	\$200.00	\$550.00
Stumps 36” to 48”	\$400.00	\$550.00
Stumps 48” and over	\$600.00	\$900.00

Table 1. Reasonable Costs for Debris Removal Operations

Based on this analysis, FEMA has determined Abita’s eligible costs for its debris removal contractor were reasonable and should be eligible for public assistance.

2.) Debris Monitoring by Kyle Associates, Inc. for \$546,024 (PW3235).

The OIG recommended that FEMA disallow \$544,314 for costs incurred by Abita for debris monitoring. Abita used a pre-existing contract with an engineering firm to monitor debris removal operations; the OIG’s recommendation is based on Abita’s failure to re-compete these services as well as the fact that this was a time and materials type contract. The OIG concluded that Abita had failed to comply with several criteria established by Federal regulations for the use of such contracts and, therefore, recommended FEMA disallow these costs.

³ 2 C.F.R. Part 225, App. A, C. 1. Provides factors affecting the allowability of costs including that they must be reasonable and necessary, and that they are authorized or not prohibited by state or local laws or regulations.

When a time and materials contract is used, FEMA may provide assistance for work completed under the contract for a limited period (generally not more than 70 hours) for work that is necessary immediately after the disaster has occurred when a clear scope of work cannot be developed. However, even in the case of a time and materials contract, a competitive process should be used to include labor and equipment rates. It is important that applicants carefully monitor and document contractor expenses; federal procurement regulations require that grantee and subgrantee time and materials contracts include a ceiling price that the contractor exceeds at its own risk.⁴ Moreover, the OIG is correct in finding that Abita failed to comply with several Federal regulations for the use of such contracts, including failure to use a competitive process for rates and failure to include a cost ceiling provision.

Nonetheless, as with the debris removal contract, FEMA may separately evaluate and reimburse costs it finds to be both necessary and reasonable for eligible work. FEMA performed a comparative analysis of debris monitoring contract rates for similar activities in the area. The results of the analysis are provided in Table 2 below.

Contract Positions	Applicant's Rates	Average Comparable Rates
Principal	\$115/hour	\$125/hour
Manager	\$75/hour	\$117.14/hour
Coordinator	\$45.20/hour	\$86.28/hour
Administrative (Not included in Contract)	\$30/hour	\$40/hour
Monitor	\$32.50/hour	\$49.71/hour

Table 2. Reasonable Costs for Debris Monitoring in Area

Based on this analysis, FEMA has determined Abita's eligible costs under the debris monitoring contract were reasonable and should be eligible for public assistance.

3.) Removal and replacement of culverts by McMath Construction for \$147,610 (PW 15341).

The OIG recommended FEMA disallow \$147,610 in contract costs incurred by Abita for the removal and replacement of culverts along town roads and rights of way. Abita had competitively procured the services of McMath Construction in November 2005 to remove debris from approximately 24,000 linear feet of culverts; however, as the work proceeded Abita discovered that the disaster had severely damaged culverts at a number of locations primarily in residential areas of the town.

⁴ 44 C.F.R. § 13.36(b)(10).

Abita halted the ditch cleaning and requested a proposal from McMath for a culvert removal and replacement operation. McMath proposed replacing these culverts for \$139,830; upon completion of the work, McMath billed Abita \$147,610.34 for culvert replacements at 18 locations. Abita executed a change order to its existing contract with McMath and asserts that it did so for the following reasons: the work was similar in nature to the original scope of work; Abita avoided the time that would be lost in a competitive bidding process; and, adding the work to an existing contract would avoid conflicts in coordinating and scheduling disaster repair operations.

The original ditch-cleaning contract was written for \$69,222, so the change order significantly modified both the scope of services and contract amount of the original contract. Federal regulations at 44 CFR §13.36 (g)(2) require applicants to submit changes of this magnitude to FEMA for review prior to award. In this instance, there is no indication in FEMA records that such a prior review occurred.

Federal regulations at 44 CFR §13.43 set forth a number of remedies for noncompliance with Federal procurement regulations. Among these is the option to “disallow (that is, deny both use of funds and matching credits for) all or part of the cost of the activity or action that is not in compliance. At the same time, these regulations do authorize FEMA to reimburse for reasonable costs for work it determines to be eligible under 44 CFR §206.223. FEMA does not dispute that the work was eligible for FEMA Public Assistance.

44 CFR §13.43, *Enforcement*, contains provisions setting forth the actions that an awarding agency may take where a grantee or subgrantee materially fails to comply with any term of an award. These actions include:

- (1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency;
- (2) **Disallow (that is deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance (emphasis added);**
- (3) Wholly or partly suspend or terminate the current award for the grantee’s or subgrantee’s program;
- (4) Withhold further awards for the program; or
- (5) Take other remedies that may be legally available.

Subsection 13.43(a)(2) authorizes FEMA as the awarding agency 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.⁵

⁵ 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).

In order to determine cost reasonableness, FEMA's Louisiana Recovery Office (LRO) Cost Estimating Center (CEC) performed a cost validation of contract documents and invoices submitted by Abita. The CEC applied FEMA's Cost Estimating Format (CEF) to Abita's eligible scope of work and determined the actual costs exceeded those costs FEMA would have estimated to be eligible for this work. The CEC performed the CEF using the R.S. Means national cost estimating database adjusted for locality factors. The CEF reasonable cost was determined to be \$133,586.84.⁶ Therefore, FEMA will prepare a version to PW15341 to deobligate \$11,269.85 (\$147,610.34 actual cost less \$133,586.84 CEF = \$11,269.85)

Recommendation 2: Require GOHSEP to advise the Town of Abita Springs on proper procurement procedures required under federal grant awards (Finding A).

FEMA Response: FEMA agrees with this finding.

The contracts addressed by the OIG were bid during the initial emergency period following Hurricane Katrina, and were not in full compliance with the procurement requirements of 44 CFR §13.36. Following the OIG audit and meetings with GOHSEP and FEMA, the Town of Abita Springs is now cognizant of proper procurement procedures. GOHSEP, as a formal response to the OIG audit, has by letter dated February 14, 2011, reiterated to Abita the importance of complying with Federal regulations in the conduct of future disaster-related procurements practices.⁷

Recommendation 3: Disallow \$19,600 of duplicate supply costs claimed (Finding B).

The OIG recommends FEMA disallow \$19,600 for the duplicated reimbursement of supplies for the repair of Abita's gas system obligated in PWs 522 and 1060.

FEMA Response: FEMA agrees with this recommendation.

After review, FEMA determined PW 522 included a quotation from Coburn Supply Co for \$26,565. The quotation was for 100 gas meters, 2 handheld meter readers, 100 ERT units, software and computer training. The items in the quotation were partially duplicated in PW 1060 by invoices from Coburn Supply Co. for 100 gas meters at \$75.00 each and 100 ERT units at \$58.00 for a total of \$13,300.00. An estimate and an invoice from MBR Enterprises, a subcontractor, for \$6,300 for the same work were located within PW 1060.

Based upon this review FEMA de-obligated \$19,600 in PW 1060 Version 1.⁸

Recommendation 4: Disallow \$13,290 of ineligible costs (Finding C).

The OIG recommended disallowing \$13,290 for items not eligible for disaster-related assistance. The OIG based this amount on a quotation in PW 522 for \$26,565.00 from Coburn Supply Co. that included: two hand held meter reading devices with radios, one deck dock single port hand held station, software, and, software training. As Abita did not own such items

⁶ Exhibit 2 CEC Culverts Summary.

⁷ Exhibit 3 GOHSEP letter dated February 14, 2011.

⁸ Exhibit 4 PW 1060 Version 1.

prior to the disaster, the costs associated with these were not eligible for reimbursement. The OIG did not dispute the eligibility of other items on Coburn's invoice.

FEMA Response: FEMA agrees with this recommendation.

FEMA agrees with the OIG that the items in question were not in Abita's inventory prior to the disaster. Abita contends that the purchases were necessary to restore the metering system and although an "upgrade" these were the only meter reading system available. FEMA has confirmed there were like and in-kind gas meters available that could have been purchased by Abita; therefore the \$13,290 for the upgraded items is ineligible. FEMA will deobligate \$13,290 from PW 522 and forward to the OIG by April 13, 2012.

Recommendation 5: Disallow \$1,710 of ineligible contract costs for administrative tasks (Finding D).

Abita, in discussions with GOSHEP and FEMA, agreed that the \$1,710.00 questioned in PW 3235 for 57 hours was for a contractor's employee to perform time-keeping, payroll and invoicing for the debris-monitoring contract. Therefore, the administrative costs should be disallowed since these charges did not directly relate to work performed and are costs that are considered included within the contract unit prices.

FEMA Response: FEMA agrees with this finding.

FEMA has researched PW 3235 and the supporting documentation and verified that the hours and costs in question were accurately identified by the OIG. The Administrative position was not included in the contract nor was an hourly rate included within the contract for the position.

Accordingly, FEMA has de-obligated \$1,710 from PW 3235.⁹

Recommendation 6: De-obligate \$429,503 in federal funds and put those funds to better use (Finding E).

GOHSEP and the Applicant confirm that both projects are 100 percent complete and agree that the remaining unused funds should be de-obligated

FEMA Response: FEMA partially agrees with this recommendation.

FEMA's review of PW 489 uncovered duplicated costs obligated in PW 330. FEMA has de-obligated the duplicated amount of \$149,324 from PW 489.¹⁰

PW 567 has been obligated for \$3,114,195.73. A subsequent review of Abita's records and invoices identified \$2,952,074.26 in eligible costs. Version 5 of PW 567 has been prepared to deobligate \$162,121.47.¹¹

⁹ Exhibit 5 PW 3235 Version 4.

¹⁰ Exhibit 6 PW 489 Version 3

¹¹ Exhibit 7 PW 567 Version 5.

Summary of FEMA's Response

In summary, FEMA's responses to the OIG's Audit Recommendations are as follows:

1. **Recommendation 1:** FEMA partially agrees with this recommendation and will deobligate \$11,269.85 from PW 15341.
2. **Recommendation 2:** FEMA agrees with the OIG's Recommendation 2 and has included a letter from GOHSEP to Abita.
3. **Recommendation 3:** FEMA agrees with the OIG's Recommendation 3 and has deobligated \$19,600 from PW 1060.
4. **Recommendation 4:** FEMA agrees and will deobligate \$13,290 from PW 522 and submit to the OIG by April 13, 2012.
5. **Recommendation 5:** FEMA agrees with the OIG's Recommendation 5 and has deobligated \$1,710 from PW 3235.
6. **Recommendation 6:** FEMA partially agrees with the OIG's Recommendation 6 and has de-obligated \$149,324 from PW 489 and \$162,121.47 from PW.

FEMA believes the actions by FEMA, the State, and Abita, as described above, should adequately resolve this audit.

Enclosures: Exhibit 1, Project Worksheet 567, Version 0
Exhibit 2, CEC Culverts Summary
Exhibit 32, GOHSEP letter dated February 14, 2011
Exhibit 4, Project Worksheet 1060, Version 1
Exhibit 5, Project Worksheet 3235, Version 4
Exhibit 6, Project Worksheet 489, Version 3
Exhibit 7, Project Worksheet 567, Version 5

cc: Tony Russell, Regional Administrator, FEMA Region VI
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