

Department of Homeland Security **Office of Inspector General**

Legal Responsibility Issues Related to FEMA Public Assistance Grant Funds Awarded to Orleans Parish Criminal Sheriff's Office, Orleans Parish, Louisiana



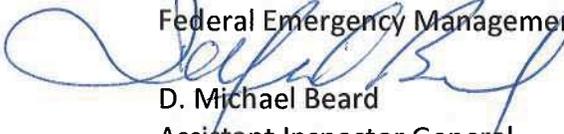


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Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

MAY 30 2012

MEMORANDUM FOR: Tony Robinson
Acting Regional Administrator, Region VI
Federal Emergency Management Agency

FROM: 
D. Michael Beard
Assistant Inspector General
Office of Emergency Management Oversight

SUBJECT: *Legal Responsibility Issues Related to FEMA Public Assistance Grant Funds Awarded to Orleans Parish Criminal Sheriff's Office, Orleans Parish, Louisiana*
FEMA Disaster Number 1603-DR-LA
Audit Report DD-12-12

We are currently auditing \$178 million of Federal Emergency Management Agency (FEMA) public assistance (PA) funds awarded to the Orleans Parish Criminal Sheriff's Office (OPCSO) in Orleans Parish, Louisiana, (Public Assistance Identification Number 071-UPP9W-00). The Louisiana Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP), a FEMA grantee, awarded these funds to OPCSO for permanent disaster recovery work related to Hurricane Katrina, which occurred in August 2005. The purpose of this memorandum is to advise you of legal responsibility issues related to \$104.5 million of OPCSO's award that require your immediate attention.

As discussed below, FEMA should disallow \$97.9 million of the \$104.5 million obligated for work that was related to or funded from projects related to properties that OPCSO does not own.¹ FEMA should also stop obligating additional Federal funds related to properties for which legal responsibility is disputed; and, if OPCSO and the City of New Orleans (City) do not reach a legally binding agreement regarding ownership and legal responsibility for these properties within 6 months, require GOHSEP to recover all Federal funds paid to date to the two entities for these properties.

¹ We did not question the remaining \$6.65 million that related to properties that OPCSO owned.



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We are conducting this performance audit pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Our overall objective is to determine whether OPCSO accounted for and expended FEMA PA funds according to Federal regulations and FEMA guidelines. At the conclusion of our audit, we plan to issue our complete audit report, including any additional findings and recommendations.

Background

OPCSO operates jail facilities to provide care, custody, and control of incarcerated persons in Orleans Parish, Louisiana. The Sheriff executes all writs, orders, and processes of the Traffic, Municipal, and Criminal Courts. The City is required to provide OPCSO with jail facilities, per Louisiana Statutes and Court Orders. OPCSO receives a rate of \$22.39 per inmate per night, which includes routine maintenance fees for properties owned by the City.

Legal Responsibility for Work

FEMA obligated \$104.5 million under 14 projects for work that was related to or funded from projects related to properties that OPCSO does not own. The City owns most of the properties that OPCSO uses for its operations, but does not have a written agreement with OPCSO regarding their use. As a result, OPCSO has incurred, or may incur, about \$103 million of costs that are not eligible because the scope of work was not its legal responsibility. Further, neither FEMA nor GOHSEP knows for sure who is legally responsible for obtaining and maintaining insurance on damaged facilities, which is a condition for receiving PA funds.

Federal regulation 44 CFR 206.223(a)(3) requires the subgrantee to own and be legally responsible for the facility to be eligible for federal disaster assistance. Also, the Public Assistance Guide (FEMA 322, October 1999, p. 25) states that an eligible applicant must be legally responsible for the damaged facility at the time of the disaster. If the applicant is the lessee (tenant), repairs to that facility are not eligible unless the lease specifically states that the lessee is responsible for the repairs. The guide further states that, in the absence of a written agreement or lease, the owner of the property, not the occupant, is assumed to be responsible for the repairs. Accordingly, we question \$97.9 million for work that was not OPCSO's legal responsibility.

This condition occurred because neither FEMA nor GOHSEP determined which entity was legally responsible before approving work on the properties. FEMA officials said that, during project development, they rely on the subgrantee's word to determine ownership. GOHSEP officials said that they rely on FEMA to tell them if a subgrantee is



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the owner of or has legal responsibility for a facility. Relying on the subgrantee’s word, rather than legal documentation, to determine ownership provides no assurance that Federal funds are going to an eligible entity. FEMA officials acknowledged that legal disputes exist between OPCSO and the City regarding property ownership and said that they are still working with OPCSO to resolve the problems.

We requested proof of ownership or any type of lease or written agreement regarding legal responsibility for the 14 projects we question from the City and OPCSO. City officials have not responded to our request. OPCSO provided us with several deeds indicating OPCSO’s ownership of several properties, but the deeds were not related to the projects we question. We also obtained a House Judiciary Committee sworn testimony from April 10, 2007, in which the current Sheriff of Orleans Parish stated that the City owns three of the largest properties that OPCSO operates. Therefore, because no one provided us proof of ownership, we relied on the Orleans Parish Tax Assessor’s (Assessor) records to determine the owner of record for the properties related to these projects. Table 1 summarizes our questioned costs and relevant information about the 14 projects.

Table 1. Costs Questioned for Lack of Legal Responsibility

Project	Name of Property	Property Address	Description of Work	Amount Obligated	Amount Questioned
14071	Main Kitchen	2801 Perdido	Replacement of Property	\$ 62,646,329	\$ 62,646,329
17427	Main Kitchen	2801 Perdido	Architectural & Engineering Fees	616,848	616,848
361	House of Detention	2700 Tulane	Laundry Equipment	144,011	144,011
926	Intake Processing	2700 Tulane	Replacement of Property	8,671,323	8,671,323
930	Templeman V	2800 Gravier	Repair Storm Damage	5,681,593	5,681,593
2279	Templeman V	3100 Perdido	Security System	329,630	329,630
1201	Maintenance Building	739 S. Lopez	Replacement of Property	3,709,618	3,709,618
1267	Warehouse	2900 Perdido	Demolition of Property	300,119	300,119
5912	Training Building	225 S. Broad	Replacement of Property	117,394	117,394



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16353	Mechanical Shop	723 S. Lopez	Replacement of Property	1,845,292	1,845,292
19541	Administration Building	819 S. Broad	Replacement of Property	7,739,783	5,785,887
5757	Fisk Building	716 S. Rendon	Demolition of Property	1,561,535	1,561,535
19545	Various	Various	Alternate Project	401,338	329,698
18284	Various	Various	Project Management	<u>10,755,777</u>	<u>6,129,276</u>
Totals				<u>\$104,520,590</u>	<u>\$97,868,553</u>

Projects 14071 and 17427

FEMA obligated \$62,646,329 under Project 14071 for the replacement of the Main Kitchen and \$616,848 under Project 17427 for architectural and engineering (A&E) fees for the Main Kitchen. The Main Kitchen is located at 2801 Perdido Street, and the City is the owner of record, according to the Assessor’s records. Therefore, we question the funds obligated under these two projects. Of the \$62.6 million obligated for Project 14071, \$17.2 million was transferred from Project 1267, which is discussed below.

Project 361

FEMA obligated \$144,011 for the replacement of laundry equipment in the House of Detention located at 2700 Tulane. According to the Assessor’s records, the City is the owner of record for this property. We asked OPCSO to provide proof of ownership of the equipment, but it could not provide adequate support of ownership. Therefore, we question the \$144,011 obligated.

Project 926

FEMA obligated \$8,671,323 under Project 926 for the replacement of the intake processing center located at 2700 Tulane. The City is the owner of record, according to the Assessor’s records. Therefore, we question the \$8,671,323 currently obligated for this project. Pending final approval, FEMA intends to deobligate \$8,199,702 from this project (Project 926) and obligate the funds to Project 4876 for the replacement of Templeman III and IV, a facility for which OPCSO is the owner of record. This is an example of how FEMA is comingling funds between projects owned by different entities.



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Projects 930 and 2279

FEMA obligated \$5,681,593 under Project 930 to repair the Templeman V property and listed the address in the project worksheet as 2800 Gravier. FEMA obligated \$329,630 under Project 2279 to replace the security system in the Templeman V property and listed the address in the project worksheet as 3100 Perdido. According to the Assessor's records, the City is the owner of record for both these addresses. FEMA identified the property as being owned and insured by the City, not OPCSO, yet FEMA obligated the funds under OPCSO's award. During the conclusion of our audit fieldwork, OPCSO provided documents indicating that it may own Templeman V, but during one of our prior audits of the City,² the City provided documentation indicating that it insured Templeman V. We have not yet determined whether the City or OPCSO received any insurance proceeds; however, the City is the owner of record for the Templeman V facility; therefore, we question the funds obligated for Projects 930 and 2279.

Projects 1201 and 1267

FEMA obligated \$3,709,618 under Project 1201 to replace a maintenance building used by OPCSO located at 739 South Lopez Street. The City is the owner of record, according to the Assessor's records. Therefore, we question \$3,709,618. We also question the \$300,119 that remains obligated under Project 1267 for the cost of demolishing this building. However, we have additional concerns about Project 1267 that FEMA should consider. FEMA originally obligated \$17,196,176 under Project 1267 for the replacement of a single-story warehouse, located at 2900 Perdido, measuring 69,372 square feet (FEMA later transferred the majority of these funds to Project 14071, which is discussed above). According to the Assessor's records, the size of the lot is 31,015 square feet. Therefore, if FEMA decides to transfer the funds (deobligate and reobligate to another project) obligated for either of these projects (1201 and 1267), FEMA should first reassess the data it used in estimating the demolition and replacement costs for the warehouse, because a single-story warehouse measuring 69,372 square feet cannot fit on a lot measuring 31,015 square feet.

Project 5912

FEMA obligated \$117,394 for the repair of a training building located at 225 South Broad. The City is the owner of record, according to the Assessor's records; therefore, we question the \$117,394.

Project 16353

² Audit Report Number DD-09-17, *City of New Orleans Community Correctional Center*, issued September 30, 2009.



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FEMA obligated \$1,845,292 for the replacement of a mechanical shop located at 723 South Lopez. The City is the owner of record, according to the Assessor's records; therefore, we question the \$1,845,292.

Projects 19541 and 5757

FEMA obligated \$7,739,783 as an alternate project under Project 19541 for replacement of the administration building located at 819 S. Broad. OPCSO is the owner of record, according to the Assessor's records. However, Project 19541 is a combination of 10 projects or parts of projects; therefore, the 10 projects were the source of funds for Project 19541. One of the 10 projects was Project 5757, from which FEMA transferred \$5,785,887 to add funds to Project 19541. Project 5757 currently obligates \$1,561,535 for the demolition of the Fisk/Work Release building located at 716 South Rendon, which according to the Assessor's records is the City's property. Therefore, the \$5,785,887 transferred from Project 5757 to Project 19541 is ineligible because the source of the funds was a City property. We also question the \$1,561,535 currently obligated for Project 5757 because the Fisk/Work Release building belongs to the City.

Project 19545

FEMA obligated \$401,338 as an alternate project under Project 19545 by transferring funds from five previously obligated projects. Of the \$401,338, \$329,698 was transferred from two projects that related to properties the City owned. Project 13964 (\$192,640) was for contents of the Fisk/Work Release property; and Project 4735 (\$137,058) was to repair the commissary located in the Main Kitchen. According to the Assessor's records, the City is the owner of record for these two properties; therefore we question \$329,698 (\$192,640 plus \$137,058).

Project 18284

FEMA obligated \$10,755,777 under Project 18284 for project management costs associated with the projects listed in table 1 and other projects. Of the \$10,755,777, we question \$6,129,276 for project management costs associated with projects that are not OPCSO's legal responsibility.

Longstanding Legal Responsibility Issues

According to OPCSO officials, they have been fighting with the City over legal responsibility issues since the 1960s. The City is responsible for providing properties to OPCSO for jails to house incarcerated persons. OPCSO officials said that they are the defendants in any lawsuit that questions the proper care, custody, or control of



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prisoners. In 1969, prisoners initiated a Federal class action lawsuit alleging unconstitutional conditions and practices at the Orleans Parish Prison. In 2003, the Sheriff sought court action to force the City to increase funding for the care of prisoners. As a result of this lawsuit, the City pays OPCSO per diem payments of \$22.39 per inmate. However, OPCSO officials stated that they sometimes seek additional funding from the City because the cost of operations is not directly related to the number of prisoners.

OPCSO officials contend that, because they are responsible for prisoners, they are also responsible for maintenance and repairs to the buildings that house prisoners. However, there is no written agreement between the City and OPCSO regarding funding obligations and legal responsibility for the repair of damaged facilities. GOHSEP officials have tried unsuccessfully to get the two parties to work out a written agreement, and therefore believe that a court of law should settle these longstanding issues.

This is not the first time we have reported on OPCSO's legal responsibilities. We previously audited funds awarded to OPCSO for emergency protective measures necessitated by Hurricane Katrina.³ In the resulting report, we questioned \$1.8 million under Project 15556 and \$422,819 under Project 16871 for work on two facilities that were the City's responsibility, not OPCSO's. FEMA agreed with our audit recommendation regarding Project 15556 and deobligated the associated \$1.8 million. FEMA has requested additional time to respond to other recommendations in our prior report.

Unless these legal issues are resolved, we believe that FEMA and GOHSEP will continue to face problems in managing and administering subgrants to OPCSO and the City. Because ownership and legal responsibilities are unclear, neither FEMA nor GOHSEP knows who is legally responsible for obtaining and maintaining insurance on damaged facilities, which is a condition of funding for receiving public assistance.⁴ We have not completed our review of insurance issues, but we are working with FEMA, GOHSEP, and OPCSO to determine how much insurance was in place at the time of the disaster, whether insurance proceeds have been received and applied to the projects we question, and whether the legally responsible entity has obtained and maintained adequate insurance since the disaster occurred.

³ We previously audited \$41.4 million awarded to OPCSO for emergency protective measures (Category B work) resulting from Hurricane Katrina (Audit Report Number DD-11-24, *FEMA Public Assistance Grant Funds Awarded to Orleans Parish Criminal Sheriff's Office*, issued September 27, 2011).

⁴ Section 311 of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act*, as amended, requires recipients to obtain and maintain insurance coverage to protect against future losses to any property to be replaced, restored, repaired, or constructed with Federal assistance. Further, the Public Assistance Guide (p. 97) states that, as a condition for receiving public assistance for a facility, such coverage must, at minimum, be in the amount of the estimated eligible project costs for that structure before any reduction.



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Another problem is that both OPCSO and the City are still negotiating with FEMA about how to repair or replace several facilities related to law enforcement and housing prisoners. As a result, these projects are in a constant state of flux because FEMA is comingling projects, approving alternate projects, and transferring funds among projects. Thus, Federal funds become difficult to trace back to the original projects for which the funds were estimated and approved.

FEMA should disallow currently approved Federal funds, and not approve any more funds, related to properties for which legal responsibility is disputed. Further, if OPCSO and the City do not reach a legally binding agreement regarding ownership and legal responsibility for these properties soon, FEMA should require GOHSEP to recover all Federal funds paid to date to the two entities for these properties.



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RECOMMENDATIONS

We recommend the Acting Regional Administrator, FEMA Region VI:

Recommendation #1: Disallow \$97,868,553 of funds obligated for work that was either related to properties that OPCSO does not own or funded from projects related to properties that OPCSO does not own.

Recommendation #2: Cease and desist the obligation of additional Federal funds related to properties for which legal responsibility is disputed.

Recommendation #3: If OPCSO and the City do not reach a legally binding agreement regarding ownership and legal responsibility for these properties within 6 months, require GOHSEP to recover all Federal funds paid to date to the two entities for these properties.

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOWUP

We discussed the results of our audit with FEMA, GOHSEP, and OPCSO during our audit and included their comments in this report, as appropriate. We also provided copies of our draft report in advance to these officials and discussed it at exit conferences held with FEMA on March 19, 2012, and OPCSO and GOHSEP officials on March 20, 2012. FEMA officials generally agreed with our findings and recommendations.

Within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until your response is received and evaluated, the recommendations will be considered open and unresolved.

Consistent with our responsibility under the *Inspector General Act*, we are providing copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination. Significant contributors to this report were Tonda Hadley, Judy Martinez, Ronald Jackson, Bryan Chauvin, and Natalie Fussell.



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Should you have questions concerning this report, please contact me at (202) 254-4100 or Tonda Hadley at (214) 436-5200.

cc: Administrator, FEMA
Director, Risk Management and Compliance, FEMA Office of Chief Financial Officer
Executive Director, FEMA Louisiana Recovery Office
Audit Liaison, FEMA Louisiana Recovery Office
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