

**FEMA Should Recover
\$216.2 Million Awarded to
the Recovery School District
in Louisiana for
Hurricane Katrina**





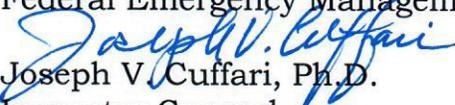
OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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

September 15, 2020

MEMORANDUM FOR: The Honorable Peter T. Gaynor
Administrator
Federal Emergency Management Agency

FROM: 
Joseph V. Cuffari, Ph.D.
Inspector General

SUBJECT: *FEMA Should Recover \$216.2 Million Awarded to the Recovery School District in Louisiana for Hurricane Katrina*

Attached is our final report, *FEMA Should Recover \$216.2 Million Awarded to the Recovery School District in Louisiana for Hurricane Katrina*. We incorporated the formal comments provided by your office.

The report contains eight recommendations aimed at improving the disaster grant management of the Recovery School District, Louisiana. Your office concurred with six of the eight recommendations. Based on information provided in your response to the draft report, we consider recommendations 2, 3, 5, and 6 resolved and open with an estimated completion date of May 31, 2021. Recommendations 4 and 7 are resolved and open with an estimated completion date of November 30, 2020. For recommendations 2 through 7, please submit a formal closeout letter once the recommendations have been fully implemented or by your target completion dates. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions and of the disposition of any monetary amounts.

Recommendations 1 and 8 are unresolved and open. As prescribed by the Department of Homeland Security Directive 077-01, *Follow-up and Resolutions for the Office of Inspector General Report Recommendations*, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) target completion date, and (2) corrective action plans for recommendations 1 and 8. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendations. Please send your response or closure request to OIGAuditsFollowup@oig.dhs.gov.



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Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the final report on our website for public dissemination.

Please call me with any questions or your staff may contact Sondra McCauley, Assistant Inspector General for Audits, at (202) 981-6000.



DHS OIG HIGHLIGHTS

FEMA Should Recover \$216.2 Million Awarded to the Recovery School District in Louisiana for Hurricane Katrina

September 15, 2020

Why We Did This Audit

We conducted this audit to determine whether RSD accounted for and expended funds according to Federal regulations. As of October 2016, RSD had received a \$1.5 billion Public Assistance grant from Louisiana, a FEMA grantee, for damages from Hurricane Katrina. We examined \$1.3 billion granted for a consolidated project as part of the total amount awarded.

What We Recommend

FEMA should deobligate \$216.2 million in ineligible funding and reclassify 35 damaged facilities from replacement-eligible to repair-eligible, and deobligate the differences in funding.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

In some instances, the Recovery School District in Louisiana (RSD) accounted for and expended portions of the \$1.3 billion in Public Assistance grant funds we reviewed according to Federal regulations. However, the Federal Emergency Management Agency (FEMA) improperly awarded \$216.2 million to repair or replace more than 292 Orleans Parish school facilities in RSD. Specifically:

- FEMA used a cost estimate rather than actual costs to determine how much to award RSD for schools that were already completed, thus improperly awarding \$156.6 million to RSD.
- FEMA duplicated benefits by not reducing the amount of the award by \$57 million to account for other Federal grant funds RSD received.
- FEMA improperly awarded \$2.6 million to replace portable school buildings that were not RSD's legal responsibility at the time of the hurricane.

The improper awards occurred primarily because FEMA did not follow Federal regulations and its own guidance for awarding Federal funds. For example, FEMA did not follow its own guidance to base grant awards for completed work on actual costs. Additionally, FEMA assessed damages to 35 facilities 19 to 59 months after the disaster and, therefore, failed to ensure the damages were a direct result of the hurricane. Due to the improper awards and delayed damage assessment, FEMA provided millions of ineligible funds to RSD, placing those Federal funds at risk of fraud, waste, and abuse.

FEMA Response

FEMA concurred with recommendations 2 through 7, which are resolved and open, but did not concur with recommendations 1 and 8, which are unresolved and open. We have included a copy of FEMA's comments in their entirety in appendix B.



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Abbreviations

CDBG	Community Development Block Grant
CEF	Cost Estimating Format
CFR	Code of Federal Regulations
ECD	estimated completion date
EMMIE	Emergency Management Mission Integrated Environment
FEMA	Federal Emergency Management Agency
HUD	Housing and Urban Development
NEMIS	National Emergency Management Information System
OIG	Office of Inspector General
OPSB	Orleans Parish School Board
RSD	Recovery School District
SRIA	<i>Sandy Recovery Improvement Act</i>



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Background

The Recovery School District (RSD) is a statewide school district administered by the Louisiana Department of Education that intervenes in the management of chronically low-performing schools in Louisiana. Because of Orleans Parish public schools' poor performance, the Louisiana Legislature turned the majority of its schools over to RSD.

In August 2005, high winds, driving rains, and flooding resulting from Hurricane Katrina damaged hundreds of Orleans Parish schools and equipment, as shown in figures 1 and 2. On August 29, 2005, the President signed a major disaster declaration (DR-1603-LA) to provide Louisiana and local government with Federal assistance to recover from damages.



Figure 1: School buses under water in New Orleans
Source: The Patriot Post, August 2015



Figure 2: Damage to Joseph A. Hardin Elementary School
Source: NOLA.com Times Picayune, April 2015

In 2008, RSD and the Orleans Parish School Board (OPSB) jointly developed the New Orleans Schools Facilities Master Plan (Master Plan) to rebuild school



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facilities damaged by Hurricane Katrina. The Master Plan, consisting of a six-phase construction plan beginning with Quick Start Program schools,¹ served as a guide for rebuilding and renovating New Orleans public schools.

To accomplish the Master Plan, RSD applied the *Consolidated Appropriations Act, 2008*,² which allows local educational agencies in Louisiana affected by Hurricane Katrina special exceptions to Federal requirements. The Federal Emergency Management Agency (FEMA) awarded \$1.5 billion, which constituted 100 percent funding for debris removal, emergency protective measures, and permanent work for the schools. FEMA allowed RSD to consolidate 255 projects into one project, Alternate Project 19166,³ for which it received a grant totaling \$1.3 billion. Funding for Alternate Project 19166 comprised 87 percent of the total \$1.5 billion Public Assistance award RSD had received as of October 27, 2016, from the Louisiana Governor’s Office of Homeland Security and Emergency Preparedness (Louisiana), a FEMA grantee, for damages resulting from Hurricane Katrina. The remaining \$200 million (13 percent) of the \$1.5 billion funded other RSD projects not consolidated under Alternate Project 19166.

We reviewed the \$1.3 billion in funding for Alternate Project 19166. Table 1 shows the gross and net award amounts before and after reductions for insurance and other reductions for Alternate Project 19166.

Table 1. Gross and Net Award Amounts for Alternate Project 19166

	Gross Award Amount	Insurance Reductions	Other Reductions⁴	Net Award Amount
Audit Scope	\$1,335,004,950	\$(134,803,681)	\$(43,040,436)	\$1,157,160,833

Source: FEMA and RSD records

As of October 2016, RSD had not completed work on Alternate Project 19166 and, therefore, had not submitted a final claim to Louisiana for its expenditures. We conducted our audit to determine whether RSD accounted for and expended funds according to Federal regulations. We focused our audit on the \$1.3 billion granted for the consolidated Alternate Project 19166.

¹ Quick Start Program School Plans called for reconstruction of six campuses across New Orleans to house students as quickly as possible after the disaster, but only four schools were completed.

² *Consolidated Appropriations Act, 2008*, Pub. L. No. 110-161, § 552.

³ Alternate Project 19166 was a Single Settlement Request pursuant to Section 552 of the *Consolidated Appropriations Act, 2008*, to repair and reconstruct numerous facilities damaged by Hurricane Katrina in the New Orleans Public School educational system.

⁴ Other Reductions is an adjustment made in Version 4 of Alternate Project 19166, which served to correct the Architect and Engineering fee calculation as applied to eligible repair or replacement cost associated with Quick Start Program schools.



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Results of Audit

In some instances, RSD accounted for and expended portions of the \$1.3 billion in Public Assistance grant funds we reviewed according to Federal regulations. However, FEMA improperly awarded \$216.2 million to repair or replace more than 292 Orleans Parish school facilities in RSD. Specifically:

- FEMA used a cost estimate rather than actual costs to determine how much to award RSD for schools that were already completed, thus improperly awarding \$156.6 million to RSD.
- FEMA duplicated benefits by not reducing the amount of the award by \$57 million to account for other Federal grant funds RSD received.
- FEMA improperly awarded \$2.6 million to replace portable school buildings that were not RSD's legal responsibility at the time of the hurricane.

The improper awards occurred primarily because FEMA did not follow Federal regulations and its own guidance for awarding Federal funds. For example, FEMA did not follow its own guidance to base grant awards for completed work on actual costs. Additionally, FEMA assessed damages to 35 facilities 19 to 59 months after the disaster and, therefore, failed to ensure the damages were a direct result of the hurricane. Due to the improper awards and delayed damage assessment, FEMA awarded millions of ineligible funds to RSD, placing Federal funds at risk of fraud, waste, and abuse.

FEMA Did Not Comply with Federal Regulations and FEMA Guidelines for Awarding the Public Assistance Grant

The Code of Federal Regulations (CFR) establishes policies and procedures for determining the eligibility of applicants, work, and cost associated with public assistance under the *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (Stafford Act).⁵ FEMA policies clarify and provide direction for implementing the CFR. According to FEMA policy, cost directly tied to the performance of eligible work must be reasonable and necessary and cannot duplicate cost that is another Federal agency's responsibility. In addition, eligible applicants must be legally responsible for damaged facilities at the time of the disaster, and work must be required as a direct result of the declared disaster. FEMA did not follow Federal regulations and its own guidance to ensure it awarded funds to RSD for costs necessary to accomplish the work to

⁵ 44 CFR pt. 206, subpt. H.



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rebuild and replace schools. We identified deficiencies in four areas: ensuring actual costs are used for completed work, avoiding duplication of benefits, ensuring Federal funding eligibility, and providing delayed and recurring damage assessments.

FEMA Did Not Properly Use Actual Costs to Award Funding for Completed Facilities

According to FEMA guidance:

- a cost must be necessary and reasonable to accomplish the disaster recovery work;
- reasonable cost can be established through average cost for similar work in the area;
- 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 cost;⁶ and
- grant amounts are based on actual costs if the subgrantee has completed the work at the time of the request for public assistance.⁷

Although FEMA possessed actual costs calculated from construction of the Quick Start schools, it accepted RSD's estimated cost of \$268 per square foot when awarding funds to Alternate Project 19166 for completed work.

To determine the reasonableness of RSD's request for \$268 per square foot for repairs and replacements, FEMA officials said they performed a series of analyses using local, regional, and national data. However, FEMA improperly used the \$268 to award funding for the already completed Quick Start schools construction. Since FEMA did not properly award this funding, about \$156.6 million in costs were unreasonable, and therefore ineligible.

Table 2 summarizes four key issues we identified related to FEMA's analyses of the \$268 per square foot request from RSD. We discuss each issue in detail after the table, as well as how these issues contributed to ineligible funding for the Quick Start schools.

⁶ FEMA's *Public Assistance Guide*, FEMA 322, October 1999, pages 33 and 34.

⁷ FEMA's *Public Assistance Policy Digest*, FEMA 321, October 2001, page 22.



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Table 2. Results of FEMA’s Analyses and OIG Findings

FEMA Analyses	Costs Resulting from FEMA Analyses	FEMA Awarded Cost	OIG Finding
	<i>Average cost per square foot</i>		
17 Facility Comparison	\$269	\$268	FEMA’s cost analysis included data from improperly competed contracts, which can increase the cost per square foot
FEMA Regional Comparison	\$96 to \$267		FEMA used improperly competed contracts for facilities in its analysis
Cost Estimating Format (CEF) ⁸ Comparison	\$208		FEMA used the CEF average of \$208 only to determine repair/replace decisions, then increased the cost to \$268 to award grant funding
2009 Annual School Construction Report Comparison	\$160		FEMA awarded funds at \$268 although the regional average was 40 percent less

Source: Office of Inspector General (OIG) analysis of FEMA records

FEMA’s Analyses Did Not Account for Issues Related to Improper Procurement

First, FEMA selected, reviewed, and compared school construction costs across 17 other school facilities in the New Orleans Metropolitan area (post-Hurricane Katrina) against RSD’s requested cost. FEMA used the following criteria to choose the 17 comparable facilities to determine cost reasonableness:

- codes and standards
- educational requirements
- elevation requirements
- mix of elementary, middle, and high schools
- size
- environmental conditions
- foundation requirements and construction materials and methods
- location in urban environments and storage and staging constraints
- proper procurement

FEMA compared the 17 facilities to calculate the average construction cost. In addition to using the aforementioned criteria, FEMA reviewed contract costs using bid amounts and square footage for buildings to determine an average rate per square foot. FEMA’s comparison yielded an average rate of \$269 per

⁸ FEMA uses the CEF to develop a cost estimate for large projects, and as the basis for obligating funds.



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square foot for construction cost. However, FEMA did not properly support this analysis. For example, 3 of the 17 facilities FEMA selected had procurement issues related to improperly competed contracts, which means FEMA had no reasonable assurance the associated costs were reasonable.⁹ In particular, improperly competed contracts can increase cost per square foot, thereby increasing overall costs. FEMA's analysis resulted in costs ranging from \$155 to \$463 per square foot, with one of the improperly procured facilities priced at \$463 per square foot. Thus, the comparison skewed the estimated rate.

Second, FEMA completed a regional comparison analysis using its own data. However, as with the previous analysis, it did not always verify the projects it compared had properly competed contracts. FEMA said it researched construction cost data for K-12 school facilities replaced in FEMA Regions IV and VI in the previous 10 years. Using project worksheets and CEFs from the National Emergency Management Information System (NEMIS) and the Emergency Management Mission Integrated Environment (EMMIE),¹⁰ FEMA identified 38 school replacement projects with construction cost ranging from an estimated \$96 to \$267 per square foot. FEMA used this comparison to substantiate the reasonableness of RSD's \$268 per square foot cost request, but failed to take into account improperly procured contracts, about which we previously reported.¹¹ Because these contracts were improperly procured, FEMA has no assurance the estimates used are reasonable.

FEMA Exceeded Its Initial CEF Cost Estimate When Determining the Cost to Replace Facilities

FEMA contended it used the CEF to determine a reasonable cost per square foot. However, our analysis of FEMA's initial CEF cost estimate demonstrated that, when determining the cost to replace the 143 Orleans Parish facilities, FEMA exceeded its initial average CEF cost of \$208 per square foot. Specifically, FEMA only used the estimate of \$208 to determine whether facilities were eligible for replacement rather than repair. FEMA then used the greater estimate of \$268 per square foot to determine the actual funding

⁹ *FEMA Public Assistance Grant Funds Awarded to Saint Mary's Academy, New Orleans, Louisiana* (DD-11-15), August 5, 2011; and *FEMA Should Disallow \$82.4 Million of Improper Contracting Costs Awarded to Holy Cross School, New Orleans, Louisiana* (OIG-15-65-D), April 14, 2015.

¹⁰ FEMA's NEMIS and EMMIE are integrated data management systems consisting of a collection of distributed disaster data and workflow databases permitting the comprehensive information retrieval.

¹¹ *Hurricane Katrina Activities for Jackson County School District* (DA-09-02), November 20, 2008; *FEMA Public Assistance Grant Funds Awarded to Long Beach School District, Long Beach, Mississippi* (DA-12-02), December 1, 2011; and *FEMA Should Recover \$5.3 Million of the \$52.1 Million of Public Assistance Grant Funds Awarded to the Bay St. Louis Waveland School District in Mississippi – Hurricane Katrina* (OIG-14-44-D), February 25, 2014.



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amount to award to replace the facilities. Using the different cost estimates resulted in FEMA awarding significantly more funding to replace the 143 facilities than it initially estimated.

Further, according to the CFR, a facility is considered repairable when disaster damages do not exceed 50 percent of the cost of replacing the facility to its pre-disaster condition and it is feasible to repair the facility so that it can perform its function as well as it did immediately prior to the disaster.¹² Had FEMA used the greater estimated cost of \$268 per square foot when determining which facilities to replace rather than repair, the facilities would not have met the required 50 percent threshold for replacement.

For example, using the CEF cost estimate of \$208 for Project 15969 (Little Wood Elementary School), FEMA estimated a repair cost of \$49,112 and a replacement cost of \$82,717, resulting in a repair to replacement ratio of about 59 percent. Because the cost to repair was more than 50 percent of the cost to replace the facility, FEMA officials decided to replace the facility. In contrast, when FEMA consolidated the construction projects under Alternate Project 19166, it increased the replacement cost for Little Wood Elementary School to \$443,262 (calculated using \$268 per square foot, per RSD's request) without re-evaluating the repair or replacement decision. Accordingly, the repair cost decreased to 11.1 percent, well short of the 50 percent threshold. If FEMA had correctly used the CEF to determine the reasonableness of RSD's request, it would have captured the average CEF estimated cost of \$208 per square foot.

FEMA Awarded RSD Its Requested Amount Although the Construction Cost Was Greater than the Regional Average

FEMA chose to award funds to RSD for its requested cost even though it was greater than the regional average. FEMA reviewed the *School Planning and Management 2009 Annual School Construction Report* to determine a reasonable construction cost per square foot for schools within its 12 Regions across the United States. The average construction cost per square foot for all schools (elementary, middle, and high) in Region 9 (Arkansas, Louisiana, Oklahoma, and Texas) did not exceed \$160, which was 40 percent less than the \$268 cost per square foot awarded. RSD acknowledged its requested cost was high, but justified it by citing factors specific to RSD, such as multi-story buildings and foundations to accommodate specific ground conditions.

¹² 44 CFR 206.226(f)(1).



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FEMA's Use of Estimated Cost Resulted in Ineligible Funding

Because RSD had already completed the Quick Start schools at the time of the request for public assistance, FEMA should have based the Alternate Project 19166 award amount on the actual costs. However, FEMA did not leverage the actual costs data it had readily available from the four recently completed RSD schools and awarded about \$156.6 million to Quick Start schools for unreasonable, and therefore ineligible, funding.

FEMA allowed RSD to combine 105 project worksheets to form Alternate Project 18597, Quick Start Schools, and awarded \$177 million in funding. RSD built the four schools to house students as quickly as possible after the disaster. Later, RSD requested FEMA transfer the scope of work from Alternate Project 18597 to Alternate Project 19166. Prior to its request, RSD completed three of the four schools, and nearly completed the fourth school, for a total of \$145.7 million. According to the RSD Superintendent's Report, the four schools and completion dates were:

- Langston Hughes Elementary, August 11, 2009 (Phase 1) and November 10, 2010 (Phase 2)
- Andrew Wilson Elementary, October 11, 2009
- Lake Area High, December 28, 2009
- Landry High School, June 30, 2010

FEMA awarded funds for Alternate Project 19166 in September 2010. However, when FEMA transferred the scope of work from Alternate Project 18597 to 19166, it increased the funding from \$177 million to \$376.7 million based on the \$268 per square foot cost provided by RSD. This resulted in increasing the award by about \$156.6 million.¹³ Therefore, we are questioning \$156.6 million.

Duplication of FEMA and Department of Housing and Urban Development Funding Resulted in Awarding Ineligible Benefits

Section 312 of the Stafford Act outlines general prohibitions for any entity to receive financial assistance for any loss for which assistance has already been provided. Publication 322, *FEMA Public Assistance Guide*,¹⁴ reiterates these

¹³ We did not use the actual costs of \$145.7 million to compute ineligible funding because Project 18597 is an alternate project. The applicant is entitled to the \$177 million award approved by FEMA regardless of actual costs to complete the project.

¹⁴ According to *Public Assistance Guide*, FEMA 322, dated October 1999, page 34, if an applicant can obtain assistance for a project from a source other than FEMA, then FEMA cannot provide funds for that project. The Stafford Act prohibits such a duplication of benefits.



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prohibitions from the Stafford Act. According to the guide, whenever an applicant receives funding from another source for similar or identical work, FEMA must reduce the eligible cost or deobligate funding to avoid a duplication of benefits.

FEMA did not properly reduce Alternate Project 19166 by \$57 million for duplicate Community Development Block Grant (CDBG) funds the Department of Housing and Urban Development (HUD) had previously awarded to RSD to complete schools. Specifically, HUD awarded \$110.1 million to RSD for 29 school sites between 2007 and 2014. A comparison of the CDBG applications and FEMA Alternate Project 19166 documentation showed RSD requested funding for similar repairs for 19 of the 29 sites. For those 19 sites, FEMA awarded funds for Alternate Project 19166 in September 2010 after HUD had already awarded \$57 million between 2007 and 2009 for similar purposes. Table 3 lists the duplicate CDBG awards by school and amount.

Table 3. List of Identified Duplicate CDBG Awards

School	Awarded CDBG Funds	Disbursed CDBG Funds
Charles T. Colton Junior High	\$ 4,203,947	\$ 3,567,563
Gentilly Terrace Elementary	2,647,553	1,909,918
McDonogh 42 Elementary	1,430,520	1,322,241
NOCCA/Live Oak Middle	1,906,090	1,906,090
Lafayette Elementary	1,556,618	1,556,618
Douglass High School	6,030,084	5,688,818
John Dibert Elementary	918,241	787,343
Sylvanie Williams Elementary	896,091	471,165
Sarah T. Reed Senior High	3,787,699	3,758,580
Rabouin Career Magnet	767,843	346,051
Crossman Elementary	2,779,024	1,537,521
Village de L'est Elementary School	1,561,293	1,494,287
Harney Elementary	782,306	782,306
Dr. Charles R. Drew Elementary	2,775,749	2,526,725
Thurgood Marshall Middle School	7,488,618	7,488,618
Live Oak Elementary (2)	1,344,783	1,272,447
Martin Luther King Elementary School	3,884,721	1,642,362
William J. Guste Elementary	11,205,678	11,195,600
Walter L. Cohen Senior High	1,034,541	1,032,631
Total	\$57,001,399	\$50,286,884

Source: OIG analysis of FEMA and Louisiana.gov records



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FEMA officials were aware of the CDBG funding when they awarded funds for Alternate Project 19166. Although they accepted responsibility to ensure public assistance applicants did not receive duplicate benefits, FEMA officials also contended that HUD was actually responsible for ensuring there was no duplication of benefits between FEMA and HUD. This would not have been possible because HUD had approved funding first. Specifically, HUD's approval for the 19 schools occurred between 2007 and 2009 — before approval of Alternate Project 19166 in September 2010. As a result, HUD was not in a position to prevent the duplication of benefits. For the 19 schools in question, as of April 2017, HUD has already disbursed \$50.3 million, or 88 percent, of the \$57 million. We question \$57 million for ineligible duplicate benefits RSD received from HUD CDBG funding. As a separate issue, we identified another \$27.5 million in FEMA awards that potentially duplicated CDBG funds. Of the total 29 sites, 7 CDBG applications valued at \$27.5 million did not contain detailed descriptions of work. Therefore, we were unable to determine whether FEMA awarded funds for the same repairs covered by CDBG funds and whether duplicate benefits were provided. The remaining 3 applications for the 29 sites did not duplicate the scope of Alternate Project 19166.

Both of the issues occurred because FEMA did not follow established procedures for awarding Federal funds.

FEMA's Funding of Portable Buildings Not Owned by RSD Resulted in Ineligible Funding

To be eligible for financial assistance, an item must be the legal responsibility of an eligible applicant.¹⁵ Ownership is generally sufficient to establish responsibility.¹⁶ Further, according to Federal regulations, grant funds are only for allowable costs.¹⁷

To support Alternate Project 19166, FEMA awarded \$2.6 million for eight portable school buildings leased, but not owned, by RSD. Upon our request, FEMA could not provide proof of ownership for a number of portable units. Specifically, when approving Alternate Project 19166, FEMA officials could not account for eight leased portable school buildings included in RSD's request, costing \$321,703 each, totaling \$2.6 million. RSD originally stated the units were not included in the project worksheet. When shown contrary evidence, RSD recanted its initial statement and claimed the units were the legal responsibility of the OPSB. However, neither OPSB nor RSD were the legal

¹⁵ 44 CFR 206.223(a)(3).

¹⁶ FEMA's *Public Assistance Guide*, FEMA 322, October 1999, page 25.

¹⁷ 44 CFR 13.22(a).



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owners of the units. Figure 3 shows the timeline for the portable school buildings from lease inception to award of Alternate Project 19166.

Figure 3. Timeline of Portable School Buildings from Lease to Award



Source: OIG analysis of FEMA and RSD records

OPSB entered into an equipment lease for the eight portable units in October 1999. According to the lease terms, OPSB was responsible for paying the insurance premiums but the leasing company would receive any proceeds from the insurance policy for damages, such as those caused by Hurricane Katrina.

In October 2005, a representative of the leasing company stated the leasing company owned the units, and the units were a total loss due to wind and wind-driven rain caused by Hurricane Katrina. In December 2005, the leasing company retained legal counsel after extensive efforts to resolve its damage claim with OPSB. The leasing company requested \$397,737 for damages to the leased units, and filed a lawsuit in the United States District Court for the Eastern District of Louisiana against the insurance company to recover those damages and other relief. In January 2007, the leasing company settled the lawsuit for \$439,288. As a result, the units' estimated replacement cost should not have been included in Alternate Project 19166. FEMA agreed with our determination that the eight portable buildings in question were ineligible for FEMA funds, based on the terms and conditions of the lease agreement. FEMA also agreed to deobligate the associated \$2.6 million.

Further, during our review of legal responsibility for the 8 portable school buildings, we identified 84 additional portable buildings included in Project 19166 valued at \$35.2 million. Upon asking for proof of ownership for the 84 portable units, neither FEMA nor RSD could provide evidence verifying ownership or legal responsibility. In response to our request, FEMA officials stated, "typically FEMA establishes ownership or legal responsibility by collecting and reviewing titles, deeds, bill of sales, leases (where applicable), and insurance policies." However, to verify ownership, FEMA relied solely on OPSB's insurance policy Schedule of Reported Values, which proved to be unreliable.



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Delayed and Recurring Damage Assessments Led to Increased Cost

According to Federal regulations, FEMA will restore an eligible facility to its pre-disaster design through either repair or replacement of the facility,¹⁸ but damages must be the direct result of a disaster to be eligible for FEMA financial assistance.¹⁹ FEMA conducted initial damage assessments of 35 school facilities in April 2006 (about 8 months after Hurricane Katrina), which was reasonable given the disastrous conditions. However, FEMA performed multiple reassessments of the 35 facilities for years after the initial assessments. Of the 35 facilities:

- Six underwent subsequent assessments that deemed them eligible for replacement between 30 and 50 months after the initial assessments of repair.
- Twenty-six underwent subsequent assessments that deemed them eligible for replacement between 13 and 28 months after the initial assessments for repair.
- Three underwent subsequent assessments that deemed them eligible for replacement between 10 and 12 months after the initial assessments for repair.

If a disaster-damaged facility remains unrepaired and exposed to weather and potential vandalism for an extended duration, it is likely the facility will deteriorate further. FEMA officials acknowledged this in documents pertaining to Livingston Middle School, stating, “Despite applicant’s prudent measures to protect their facility, but due to the catastrophic nature of the event, lack of resources, and a shortage of contractors, these measures fell short and left the building in a state of continuing decline.” In another example, even during its initial April 2006 damage assessment of the Annex Building at Little Woods Elementary School, conditions had already deteriorated. Mold was prevalent throughout the facility due to high humidity, moisture, and lack of ventilation. After the initial April 2006 assessment, FEMA concluded the construction cost to repair the Annex Building was 46 percent of the construction cost to replace it. However, nearly 2 years later, in February 2008, FEMA concluded the construction cost to repair the Annex Building had increased to 78 percent of the replacement cost, resulting in replacement eligibility. As a result, eligible funding increased from \$635,611 to \$2,248,739, a 254 percent increase.

¹⁸ 44 CFR 206.226(f)(1) – A facility is considered repairable when disaster damages do not exceed 50 percent of the cost of replacing a facility to its pre-disaster condition.

¹⁹ 44 CFR 206.223(a)(1) – To be eligible for financial assistance, an item of work must be required as the result of the major disaster event.



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FEMA performed multiple reassessments of all 35 facilities, ultimately resulting in their replacements instead of less costly repairs. In particular, eight of these facilities were reassessed two or more times. In accordance with FEMA policy²⁰ and the CFR,²¹ the eight facilities were initially deemed eligible for repair because the cost of repairing them did not reach the 50 percent threshold for replacement. However, at the request of RSD, FEMA conducted several subsequent reassessments and finally determined the facilities should be replaced. Reaching the 50 percent threshold entitles an applicant to substantially more funding based on the full replacement cost of a facility. The final assessments resulting in FEMA's replacement decisions ranged from 1 to 4 years after initial assessments. The decisions to replace instead of repair the facilities increased awards by \$34.6 million.

For example, FEMA performed its initial damage assessment of Project 15174, Florence Chester Elementary School Classrooms, in May 2006. The result of the assessment estimated the repair cost at \$296,700. A second assessment in February 2008, nearly 2 years later, increased the repair cost to \$1,047,034, or 19 percent of replacement cost. Finally, in April 2009 — 3 years after the initial assessment — FEMA performed its final assessment. At that time, FEMA determined the repair cost was 51 percent of replacement cost, which meant the facility was eligible for replacement, costing \$8,193,710. The decision to replace instead of repair the facility resulted in a 2,662 percent increase in cost from the initial to the final assessment. Table 4 lists sites that received multiple assessments, which resulted in increased awards.

²⁰ FEMA Policy 9524.4, September 24, 1998 - Construction cost refers to only those costs allowed in the numerator (repair cost) and denominator (replacement cost) of the 50 Percent Rule calculation. The construction cost to repair a facility is the cost of repairing disaster damage and does not include demolition of the entire facility (demolition essential to the repair only of the damaged elements may be included), design associated with upgrades, site work, applicable project management cost, contents, or hazard mitigation measures. The construction cost to replace a facility is the cost of replacing a facility based on its pre-disaster design and in accordance with applicable codes and standards. It does not include demolition, site work, applicable project management cost, contents, or hazard mitigation measures.

²¹ 44 CFR 206.226(f)(1).



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Table 4. Effect of Recurring Assessments on Repair versus Replace Decisions

Project Worksheet	Date of Assessment	Percentage Damage	Restoration Cost per CEF	Initial/Final Assessment Difference
13085 Lake Area Middle School Gym	July 2006	No percent given	\$ 200,623	
	September 2007	13%	334,146	
	December 2007	31%	817,328	
	July 2010	54%	\$1,608,231	\$ 1,407,608
12433 Carver Complex High School Gym	June 2006	44%	\$1,583,986	
	March 2007	42%	2,374,717	
	August 2007	53%	\$8,484,139	\$ 6,900,153
13469 Bradley Elementary School – Building A	July 2006	42%	\$1,991,994	
	November 2006	44%	2,682,599	
	August 2007	53%	\$8,068,804	\$ 6,076,810
14783 Florence Chester Elementary School Cafeteria	October 2006	No percent given	\$ 91,109	
	February 2008	27%	591,752	
	April 2009	59%	\$2,397,834	\$ 2,306,725
15174 Florence Chester Elementary School Classrooms	May 2006	No percent given	\$296,700	
	February 2008	19%	1,047,034	
	April 2009	51%	\$8,193,710	\$ 7,897,010
12141 Gregory High School – Building C	May 2006	No percent given	\$ 684,053	
	February 2008	31%	2,250,247	
	July 2009	48%	3,355,008	
	August 2010	55%	\$8,066,930	\$ 7,382,877
12948 Barbra Jordan Library	June 2006	No percent given	\$ 114,520	
	February 2008	17%	444,062	
	June 2009	71%	\$1,090,690	\$ 976,170
13286 Livingston Middle School – Building B	July 2006	41%	\$567,481	
	February 2008	40%	\$1,013,718	
	May 2009	54%	\$2,256,356	\$ 1,688,875
Total Difference				\$34,636,228

Source: OIG analysis of project worksheet data on LouisianaPA.com

FEMA’s recurring assessments for repair or replacement eligibility cast uncertainty over whether these 35 facilities were classified correctly since they were exposed to the elements and vandalism for as long as 5 years after the disaster occurred. As a result, FEMA cannot confirm Hurricane Katrina was the direct cause of damages discovered during the assessments and should review the 35 facilities and reclassify their eligibility for repair or replacement



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as appropriate. Additionally, FEMA should deobligate funds, as appropriate, based on the difference between the replacement and repair costs to prevent potential fraud, waste, and abuse of Federal funds.

Recommendations

Recommendation 1: We recommend the Regional Administrator, Federal Emergency Management Agency Region VI, deobligate \$156.6 million from Alternate Project 19166 for ineligible funds it awarded for completed Quick Start schools and follow established Federal regulations and Federal Emergency Management Agency guidelines for obligating funds.

Recommendation 2: We recommend the Regional Administrator, Federal Emergency Management Agency Region VI, deobligate \$57 million from Alternate Project 19166 for ineligible duplicated benefits the Recovery School District received from Community Development Block Grant funds and follow established Federal regulations and Federal Emergency Management Agency guidelines for preventing duplication of funds.

Recommendation 3: We recommend the Regional Administrator, Federal Emergency Management Agency Region VI, examine the seven Community Development Block Grant applications valued at \$27.5 million, which failed to detail the scope of work to ensure no duplication exists.

Recommendation 4: We recommend the Regional Administrator, Federal Emergency Management Agency Region VI, deobligate \$2.6 million from Alternate Project 19166, as agreed, for ineligible cost for portable school buildings, which were not the legal responsibility of the Recovery School District.

Recommendation 5: We recommend the Regional Administrator, Federal Emergency Management Agency Region VI, collect and review titles, deeds, bills of sale, or leases to verify ownership and eligibility of the remaining 84 portable units valued at \$35.2 million, and deobligate funds accordingly.

Recommendation 6: We recommend the Regional Administrator, Federal Emergency Management Agency Region VI, validate an applicant's ownership and legal responsibility for work items to avoid awarding ineligible funding.

Recommendation 7: We recommend the Regional Administrator, Federal Emergency Management Agency Region VI, to implement policies and procedures to specify a reasonable timeframe to assess damages comprehensively.



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Recommendation 8: We recommend the Regional Administrator, Federal Emergency Management Agency Region VI, re-evaluate documented proof of assessments for the 35 identified projects; reclassify them, as appropriate, to repair-eligible; and deobligate the cost difference as appropriate.

Management Comments and OIG Analysis

FEMA provided its written response to the report on July 7, 2020. FEMA concurred with recommendations 2 through 7, but did not concur with recommendations 1 and 8. We received technical comments on the draft report, including information FEMA did not provide during the course of the audit, and revised the report as appropriate. This included revising the recommended amount of deobligation in recommendation 1. As a reminder, it is important for the auditee to provide accurate and complete information during the course of the audit to ensure balanced reporting of all facts. Appendix B contains FEMA's management comments in their entirety. We consider recommendations 2, 3, 5, and 6 resolved and open with an estimated completion date of May 31, 2021. Recommendations 4 and 7 are resolved and open with an estimated completion date of November 30, 2020. We consider recommendations 1 and 8 unresolved and open. A summary of FEMA's responses and our analysis follows.

FEMA Comments to Recommendation #1: FEMA did not concur with the recommendation, stating the FEMA Region VI Administrator affirmed the cost per square foot (SF) and the application of the 50 Percent Rule are reasonable. FEMA's management response details the steps taken to affirm costs in support of the application of the 50 Percent Rule.

In summary, FEMA validated the \$267.67 per SF construction cost, using: (1) competitive low bids for four RSD Quick Start Schools, (2) FEMA's analysis of 16 local contracts/17 facilities for unit cost information, and (3) regional and national historical unit cost information provided by School Planning and Management Magazine's "2009 Annual School Construction Report," published in February 2009.

In order to reevaluate the 50 Percent Rule after applying the updated \$267.67 per square foot to each facility, FEMA would need to reevaluate cost eligibility and the 50 Percent Rule for each of the 143 facilities. Although this action would change the eligibility determinations for some facilities from replacement-eligible to repair-eligible, FEMA believed doing so requires changing the history and the context of the intent under Section 552 of the Omnibus Bill.



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The Omnibus Bill did not include provisions for a retroactive analysis of critical eligibility determinations. As Section 552 of the Omnibus Bill eventually became the foundation for Section 1102 of the *Sandy Recovery Improvement Act* (SRIA) of 2013 (Public Law 113-2), signed by the President on January 29, 2013, FEMA references SRIA to further clarify the intent of Section 552 of the Omnibus Bill.

Section 1102 of SRIA revised the Stafford Act by creating a new Section 428, which allowed FEMA to implement certain provisions as a pilot program until the regulations could be changed. The goals of FEMA's SRIA Public Assistance Alternate Procedures are to: (1) reduce costs to the Federal Government, (2) increase flexibility in the administration of assistance, (3) expedite the delivery of recovery funds, and (4) provide financial incentives for timely and cost-effective completion of Public Assistance funded projects. FEMA requested that OIG consider this recommendation resolved and closed.

OIG Analysis of FEMA's Response: We partially agree with FEMA's comments and actions taken. Therefore, this recommendation is unresolved and open. We agree FEMA properly validated the \$267.67 square footage cost used for the uncompleted work. However, we disagree FEMA can use the \$267.67 to determine obligated costs for the completed Quick Start schools.

FEMA properly validated the \$267.67 square footage cost used for the uncompleted work. In its management response, FEMA provided additional evidence concerning the total square footage of 581,804 for the completed Quick Start schools. We agree the \$265.92 and \$250.41 per square foot are within 10 percent of the RSD-requested \$267.67 and can be used as an estimate to obligate funding for uncompleted construction. As such, we no longer question \$117.4 million in costs for uncompleted work.²²

However, FEMA's own policies do not authorize use of the estimated \$267.67 for the completed Quick Start schools. Initially, the finding and recommendation addressed both completed (Quick Start schools) and uncompleted construction. The version of the CEF guide cited by FEMA in its comments states, to qualify for CEF consideration, a project must be less than 50 percent complete, or take 4 or more months to be 90 percent complete. If a large project does not meet this standard, FEMA should use actual costs to award funding.²³ Finally, FEMA Public Assistance Policy Digest 321 states

²² FEMA obligated \$178.7 million for uncompleted work. However, in that amount, FEMA included \$61.3 million for the already completed Quick Start schools. Since we are not questioning uncompleted work due to FEMA's additional evidence, the \$61.3 million should be included in the questioned costs for the completed Quick Start schools.

²³ The same approach applies under the version of the CEF guide in place when FEMA approved Alternative Project 19166, which states that, to qualify for CEF consideration, a project must be less than 90 percent complete.



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grant amounts are based on actual costs if the subgrantee completes the work at the time of the request for public assistance. Prior to RSD's \$267.67 square footage request, it completed three of the four schools, and nearly completed the fourth school. FEMA also validated the completions in its official comments, stating that prior to obligation of Alternate Project 19166 in 2010, FEMA used the estimated final costs and square footage for the four RSD Quick Start schools in Orleans Parish as one factor for its evaluation.

Based on the additional evidence FEMA provided with its management response, we revised recommendation 1. Specifically, we reduced the recommended deobligation by \$117.4 million to reflect FEMA's proper validation of the \$267.67 square footage cost used for the uncompleted work. However, we continue to recommend FEMA deobligate \$156.6 million from Project 19166, which is the increase in completed work funding for the Quick Start schools when FEMA transferred the scope of work from Alternate Project 18597 to 19166.

When FEMA provides a response with an estimated completion date, evidence of actions taken to address why funding for completed work was increased \$156.6 million, and its actions to deobligate that funding, we will reconsider the recommendation for resolution and closure.

FEMA Comments to Recommendation #2: FEMA concurred with the recommendation. The FEMA Region VI Administrator will examine the 19 Community Development Block Grant (CDBG) projects and will take corrective measures for any FEMA-funded scope of work duplicated by CDBG funding to prevent a duplication of benefits. Estimated Completion Date (ECD): May 31, 2021.

OIG Analysis of FEMA's Response: FEMA's actions are responsive to the intent of the recommendation. This recommendation will remain resolved and open with a target completion date of May 31, 2021.

FEMA Comments to Recommendation #3: FEMA concurred with the recommendation. The FEMA Region VI Administrator will examine the seven CDBG projects. FEMA will take corrective measures for any FEMA-funded scope of work duplicated by CDBG funding to prevent a duplication of benefits. ECD: May 31, 2021.

OIG Analysis of FEMA's Response: FEMA's actions are responsive to the intent of the recommendation. This recommendation will remain resolved and open with a target completion date of May 31, 2021.

FEMA Comments to Recommendation #4: FEMA concurred with the recommendation. The FEMA Region VI Administrator will review



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documentation for the eight portable school buildings, including legal responsibility and insurance offset issues. FEMA will take corrective measures as needed. ECD: November 30, 2020.

OIG Analysis of FEMA's Response: FEMA's actions are responsive to the intent of the recommendation. This recommendation will remain resolved and open with a target completion date of November 30, 2020.

FEMA Comments to Recommendation #5: FEMA concurred with the recommendation. The FEMA Region VI Administrator will review available documentation to confirm the 84 portable units were the legal responsibility of New Orleans Public School System/RSD at the time of the declared disaster. If any portable units are determined not to have been the legal responsibility of the Orleans Parish School Board or Recovery School District, FEMA will de-obligate corresponding funding. ECD: May 31, 2021.

OIG Analysis of FEMA's Response: FEMA's actions are responsive to the intent of the recommendation. This recommendation will remain resolved and open with a target completion date of May 31, 2021.

FEMA Comments to Recommendation #6: FEMA concurred with the recommendation. The FEMA Region VI Administrator follows established Federal and state laws and regulations when validating an applicant's ownership and legal responsibility for work items. FEMA will institute a regional briefing to educate FEMA staff on ownership and legal responsibility validation. ECD: May 31, 2021.

OIG Analysis of FEMA's Response: FEMA's actions are responsive to the intent of the recommendation. This recommendation will remain resolved and open with a target completion date of May 31, 2021.

FEMA Comments to Recommendation #7: FEMA concurred with the recommendation. The FEMA Region VI Administrator will provide information on agency policy changes instituted since Hurricane Katrina in 2005. The updated policy will address the timeframe for an applicant to report damage to FEMA. ECD: November 30, 2020.

OIG Analysis of FEMA's Response: FEMA's actions are responsive to the intent of the recommendation. This recommendation will remain resolved and open with a target completion date of November 30, 2020.

FEMA Comments to Recommendation #8: FEMA did not concur with the recommendation. In summary, FEMA stated the FEMA Region VI Administrator affirms its eligibility determinations, which established the 35 facilities as replacement-eligible following a comprehensive assessment of each



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structure. Further, FEMA stated it is important to note that these 35 projects are included in the 143 brick and mortar replacement facilities discussed in the response to recommendation 1.

OIG Analysis of FEMA's Response: We disagree with FEMA's comments and actions taken as they do not address our concerns regarding the frequency, duration, and outcome of the damage assessments. Therefore, this recommendation is unresolved and open.

We agree the 35 projects are included in the 143 brick and mortar replacement facilities discussed in the response to recommendation 1. However, this point does not address our finding regarding repair versus replacement decisions. Furthermore, the letter issued by the City of New Orleans Chief Electrical Inspector on October 25, 2005, does not justify the repeated assessments by FEMA. At the time of the initial damage assessments, FEMA was aware that electrical equipment required replacement and should have included it in the initial repair/replacement decisions. Nevertheless, FEMA continued to reassess some buildings up to 5 years later. FEMA states that industry-trained inspectors conducted the field assessments, identified the damaged elements, and developed and refined the scope of work for each facility. Additionally, FEMA said it took every precaution to ensure it was only addressing eligible Katrina-related damage as time passed. However, these continued reassessments were vulnerable to loss of evidence due to deterioration and/or demolition of buildings left exposed to the elements. The passage of time FEMA allowed between assessments and from initial to final assessment as shown in Table 4 indicate FEMA did not take every precaution to ensure it only addressed eligible Katrina-related damages.

When FEMA provides a response that addresses our concerns regarding the frequency, duration, and outcome of the damage assessments along with an estimated completion date and evidence of actions taken, we will reconsider the recommendation for resolution and closure.



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Appendix A

Objective, Scope, and Methodology

Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. We audited FEMA Public Assistance Program grant funds awarded to RSD (Public Assistance Identification Number 033-UA9M2-00). Our audit objective was to determine whether RSD accounted for and expended FEMA funds according to Federal regulations.

As of October 27, 2016, the Recovery School District received a Public Assistance award of \$1.5 billion (net) for damages resulting from Hurricane Katrina, FEMA Disaster Number 1603-DR-LA, that occurred in August 2005. Our audit scope covered the period August 29, 2005, through October 27, 2016. The award provided 100 percent funding for 281 large projects and 865 small projects.²⁴ We audited one large project totaling \$1.3 billion, or 87 percent of the funds awarded to RSD.

We selected our sample of projects for testing from a universe of projects downloaded from FEMA's computerized information system (EMMIE) and verified payments and claimed costs were supported by source documents. We did not rely on or test the data from the system; however, we deemed it sufficient to answer our audit objective. We compared FEMA awarded cost to state payments and subgrantee claimed cost, and verified the payments and claimed cost were supported by source documents.

We interviewed FEMA, Louisiana, and RSD officials; gained an understanding of RSD's method of accounting for disaster-related cost; reviewed RSD's procurement policies and procedures and contracting documents; and judgmentally selected and reviewed (generally based on dollar values) project cost and procurement transactions for the projects. We also performed other procedures necessary to accomplish our objective. We gained an understanding of RSD's method of accounting for disaster-related cost and its policies and procedures for administering activities provided under the FEMA award.

We conducted this performance audit between October 2016 and May 2018, under the authority of the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objective. We believe the evidence obtained

²⁴ At the time of the 2005 disaster, the large project threshold was \$55,500.



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provides a reasonable basis for our findings and conclusions based upon our audit objective. We conducted this audit by applying the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.



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Appendix B
FEMA's Management Response to Draft Report

U.S. Department of Homeland Security
Washington, DC 20472



July 7, 2020

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.
Inspector General

FROM: Cynthia Spishak
Associate Administrator
Office of Policy and Program Analysis

SUBJECT: Management Response to Draft Report: "FEMA Should Recover \$333.6 Million Awarded to the Recovery School District in Louisiana for Hurricane Katrina" (Project No. G-17-004-EMO-FEMA)

CYNTHIA SPISHAK
Digitally signed by CYNTHIA SPISHAK
Date: 2020.07.07 13:06:47 -04'00'

Thank you for the opportunity to comment on this draft report; FEMA appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

FEMA concurs with the majority of recommendations in the OIG report, but disagrees with its conclusion that FEMA used an unreasonable cost estimate to determine how much to award the Recovery School District in Louisiana (RSD). The draft report indicates a fundamental misunderstanding of the FEMA process for eligibility determinations, as well as the application of the 50 Percent Rule in accordance with established regulations and policies.

According to 44 CFR §206.226(f), the 50 Percent Rule (Repair versus Replacement) states that "a facility is considered repairable when disaster damages do not exceed 50 percent of the cost of replacing a facility to its pre-disaster condition, and it is feasible to repair the facility so that it can perform the function for which it was being used as well as it did immediately prior to the disaster." Therefore, if a facility's damage meets or exceeds the 50 Percent Rule and warrants a replacement facility, the original disaster-damaged facility will be eligible for demolition or will be secured to ensure safety.

FEMA affirmed the application of the 50 Percent Rule in the case of the award to repair or replace school facilities in the RSD. From February through July 2010, FEMA's Louisiana Recovery Office (LRO) validated the payment to RSD under the Consolidated Appropriations Act of 2008 (Pub. L. 110-161, the "Omnibus Bill"), consulting with FEMA Region VI; FEMA Headquarters; the U.S. Office of Management and Budget



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Appendix B
FEMA's Management Response to Draft Report (continued)

(OMB); and then senior U.S. Department of Homeland Security (DHS) leadership and staff.

The draft report contained eight recommendations, six with which FEMA concurs (Recommendations Two through Seven) and two with which FEMA non-concurs (Recommendations One and Eight). Attached find our detailed response to each recommendation. FEMA previously submitted technical comments under a separate cover for OIG's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Attachment



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Appendix B
FEMA's Management Response to Draft Report (continued)

Attachment: Management Response to Recommendations Contained in G-17-004-EMO-FEMA

OIG recommended that the Regional Administrator, FEMA Region VI:

Recommendation 1: Deobligate \$274 million from Alternate Project 19166 for ineligible funds it awarded and follow established Federal regulations and Federal Emergency Management Agency guidelines for obligating funds. However, if the Federal Emergency Management Agency determines the funding is reasonable, it should reexamine the 143 brick and mortar replacement facilities based on the \$268 per square foot construction cost to determine if the facilities meet the 50 Percent Rule threshold for replacement.

Response: Non-concur. The FEMA Region VI Regional Administrator affirms the cost per square foot (SF) and the application of the 50 Percent Rule are reasonable.

Project Worksheet (PW) 19166 incorporated the 143 facilities/projects that were reviewed and approved by FEMA Public Assistance leadership from 2006 through 2009. FEMA's review included: (1) applicant eligibility, (2) facility eligibility, (3) work eligibility, and (4) cost eligibility for the RSD's 143 facilities. FEMA found RSD to be an eligible applicant with legal responsibility for each facility and established scopes of work. FEMA had also previously established estimated costs for the respective replacement-eligible school facilities, in partnership with the Louisiana Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP) and RSD.

From February through July 2010, FEMA's LRO evaluated the RSD request under Section 552 of Consolidated Appropriations Act of 2008 (the "Omnibus Bill" Pub Law 110-161). Section 552 of the Omnibus Bill fast tracked funding and prioritized recovery efforts for educational agencies overwhelmed by Hurricanes Katrina and Rita, and RSD requested that FEMA provide a single payment in a sufficient amount to complete numerous RSD Master Plan facilities projected over a minimum of seven years. Therefore, GOHSEP and RSD requested that FEMA validate a cost per SF methodology replacement facilities projected over the life of the projected construction, amounting to \$267.67 per SF construction cost.

FEMA's LRO evaluated the request and completed the task, basing its cost-reasonable validation effort on its standard practice using the "Cost Estimate Format (CEF) for Large Project Instructional Guide Version 2.0" (CEF Guide) dated November 1998, and the Emergency Management Institute's "Instruction Materials for Public Assistance Cost Estimating Format (L480) Instructor Materials" (CEF Instructor Material) for CEF Version 2, dated October 2008. The CEF Guide explains how to validate estimated costs. Accepting a construction cost estimate for uncompleted work is reasonable if the cost estimate is within 10 percent of the local average weighted unit prices or R.S.



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Appendix B
FEMA’s Management Response to Draft Report (continued)

Means cost data. If the estimate is not within 10 percent, FEMA should assume the estimate is not reasonable.

The CEF Instructor Material lists a hierarchy of costs in which a competitive low bid or a construction contract is ranked the best and preferred option for estimating reasonable costs. The second and third options in the hierarchy are force account costs and local/historical unit costs information, respectively, although force account costs do not apply to new facility construction and were thus not applicable for RSD’s validation.

FEMA validated the \$267.67 per SF construction cost, using: (1) competitive low bids for four RSD Quick Start (QS) Schools, (2) FEMA’s analysis of 16 local contracts/17 facilities for unit cost information, and (3) regional and national historical unit cost information provided by School Planning and Management Magazine’s “2009 Annual School Construction Report,” published in February 2009. The scope and breadth of the RSD’s recovery construction work – 438 buildings with extensive storm-related damage – far exceeded any school construction projects FEMA was able to identify nationwide. This validation and analysis are summarized below.

Competitive Low Bids from four RSD QS Schools

Prior to obligation of the Alternate Project obligation of RSD’s PW 19166 in 2010, FEMA used the estimated final costs and SF for the four RSD QS schools in Orleans Parish as one factor for its evaluation. This “best available information” at the time included estimated final construction costs for the QS schools at \$265.92 per SF. FEMA found the project cost was within one percent of the RSD requested \$267.67 per SF, and determined the requested construction cost as reasonable.

While not available at the time of obligation, actual final costs and actual SF based on architectural drawings for the completed QS schools yields a construction cost of \$250.41 per SF (see below final construction payments as calculated by FEMA), which is within seven percent of the value \$267.67 per SF.

FINAL CONSTRUCTION PAYMENTS (corrected by FEMA)			
QS School	Actual SF per PW	Payments	Average Construction Cost/SF
Landry High School	214,032	\$ 55,795,801.10	\$ 260.69
Lake Area High	173,008	\$ 36,581,860.00	\$ 211.45
Langston Hughes Elem	98,642	\$ 27,649,581.15	\$ 280.30
Andrew Wilson Elem	96,122	\$ 25,660,627.92	\$ 266.96
Totals:	581,804	\$ 145,687,870.17	\$ 250.41

Since the CEF Instructor Material considers competitive low bids as the best option for estimating reasonable costs, and since the competitive low bids and final actual costs for



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Appendix B
FEMA's Management Response to Draft Report (continued)

the four QS schools were within the CEF Guide's 10 percent variance for cost reasonableness, FEMA considered the \$267.67 per SF reasonable.

17 Facilities for Unit Cost Information

FEMA identified 17 non-RSD facilities built in the greater New Orleans area for unit cost comparison. FEMA's analysis of these facilities showed a straight average of \$268.77 per SF, which was greater than RSD's request and was within one percent of the RSD requested \$267.67 per SF. Based on this information, FEMA found the \$267.67 per SF reasonable.

The OIG identified concerns with three of these 17 facilities, following two OIG audits, which included one facility at St. Mary's Academy and two facilities at Holy Cross School.¹ Specifically, the OIG stated that improperly competed contracts at three of the 17 facilities may increase cost per SF. However, it should be noted that the OIG's audit findings for St. Mary's Academy and Holy Cross School addressed the inclusion of certain contract clauses and other issues not relevant to competition. Furthermore, FEMA's responses to these audits established that the unit prices were cost effective and reasonable, and the OIG subsequently accepted and closed the audit recommendations.

Regional and National Historical Unit Cost Information

FEMA also validated the SF construction cost through use of the School Planning and Management Magazine's "2009 Annual School Construction Report," which provided ranges of costs for school construction based on regional construction data. The 2009 report represented regional and national data. As the costs cited in the regional construction data included basic facilities which did not take into account the construction methodologies and factors required in New Orleans, FEMA used adjustments to account for conditions experienced in southern Louisiana, particularly along the coast to account for substantial code differences for wind and flood loading and for soil differences. The adjusted code costs, in conjunction with cost information presented in the "2009 Annual School Construction Report," allowed FEMA to validate RSD's request.

Although FEMA did not take into account three OIG audits identifying improperly procured contracts,² it is important to note that only one of the OIG audits was issued prior to RSD's request in 2009. FEMA's LRO was unaware of the 2008 audit, and the

¹ The audits included *FEMA Public Assistance Grant Funds Awarded to Saint Mary's Academy, New Orleans, Louisiana* (DD-11-15), August 5, 2011; and *FEMA Should Disallow \$82.4 Million of Improper Contracting Costs Awarded to Holy Cross School, New Orleans, Louisiana* (OIG-15-65-D), April 14, 2015.

² The audits included *Hurricane Katrina Activities for Jackson County School District* (DA-09-02), November 20, 2008; *FEMA Public Assistance Grant Funds Awarded to Long Beach School District, Long Beach, Mississippi* (DA-12-02), December 1, 2011; and *FEMA Should Recover \$5.3 Million of the \$52.1 Million of Public Assistance Grant Funds Awarded to the Bay St. Louis Waveland School District in Mississippi- Hurricane Katrina* (OIG-14-44-D), February 25, 2014.



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Appendix B
FEMA's Management Response to Draft Report (continued)

OIG has since resolved and closed recommendations from all three audits.

Based on the FEMA analysis of the: (1) competitive low bids for four RSD QS Schools; (2) unit price comparison of 16 local contracts per 17 facilities in the greater New Orleans area (non-RSD construction); and (3) regional and national historical unit cost information from the "2009 Annual School Construction Report," FEMA validated the established reasonable costs in PW 19166.

In order to reevaluate the 50 Percent Rule after applying the updated \$267.67 per SF to each facility, FEMA would need to reevaluate scope eligibility and the 50 Percent Rule for each of the 143 facilities. Although this action would change the eligibility determination for some facilities to repair-eligible instead of replacement-eligible, FEMA believes doing so requires changing the history and the context of the intent under Section 552 of the Omnibus Bill.

At the time of the RSD single payment request in 2009, Orleans Parish had four years of recovery underway. The Orleans Parish School System, served through the Orleans Parish School Board (OPSB) and RSD, coordinated efforts for a new educational Master Plan, redefining the footprint and addressing the concern of urban rebuilding. Thousands of individuals provided input towards the Master Plan during the course of 19 public meetings. Of the 143 damaged facilities, 75 were demolished prior to February 2010, and an additional 60 facilities were slated for demolition. If a building is no longer standing, it is not feasible to reverse the FEMA grant.

The Omnibus Bill did not include provisions for a retroactive analysis of critical eligibility determinations. As Section 552 of the Omnibus Bill eventually became the foundation for Section 1102 of the Sandy Recovery Improvement Act (SRIA) of 2013 (Public Law 113-2), signed by the President on January 29, 2013, FEMA references SRIA to further clarify the intent of Section 552 of the Omnibus Bill.

Section 1102 of SRIA added Section 428 to the Stafford Act and allowed FEMA to implement certain provisions of the Act as a pilot program until the regulations could be changed. The goals of FEMA's SRIA Public Assistance Alternate Procedures were to (1) reduce costs to the federal government; (2) increase flexibility in the administration of assistance; (3) expedite the delivery of recovery funds; and (4) provide financial incentives for timely and cost-effective completion of Public Assistance funded projects. SRIA also allowed federally declared disasters prior to 2013 to participate, given construction on the permanent work project had not started.

In addition, Section 1207(d) of the Disaster Recovery Reform Act of 2018 (Public Law 115-254) contains a provision that requires cost estimates submitted under Section 428 procedures that are certified by a professionally licensed engineer and accepted by the FEMA Administrator to be presumed to be reasonable and eligible costs unless there is evidence of fraud. Prior to implementation of this provision, FEMA had the discretion to



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make case-by-case determinations regarding whether costs were reasonable and eligible, and FEMA had the discretion to change the determinations even after an original cost estimate was approved.

FEMA believes the 2013 and 2018 legislation addresses the intent of Section 552 of the Omnibus Bill as it would relate to the 50 Percent Rule. Therefore, FEMA's actions for the repair versus replacement calculations were validated by a professionally licensed engineer and had the approval of the FEMA Administrator with input from the OMB. Consequently, FEMA does not believe it is appropriate to change its determination after the original costs were approved, unless it is determined there was fraudulent use by any party.

FEMA requests that the OIG consider this recommendation resolved and closed.

Recommendation 2: Deobligate \$57 million from Alternate Project 19166 for ineligible duplicated benefits the Recovery School District received from Community Development Block Grant funds and follow established Federal regulations and Federal Emergency Management Agency guidelines for preventing duplication of funds.

Response: Concur. The FEMA Region VI Regional Administrator will examine the 19 Community Development Block Grant (CDBG) projects and will take corrective measures for any FEMA-funded scope of work duplicated by CDBG funding to prevent a duplication of benefits. Estimated Completion Date (ECD): May 31, 2021.

Recommendation 3: Examine the seven Community Development Block Grant applications valued at \$27.5 million, which failed to detail the scope of work to ensure no duplication exists.

Response: Concur. The FEMA Region VI Regional Administrator will examine the seven CDBG projects. FEMA will take corrective measures for any FEMA-funded scope of work duplicated by CDBG funding to prevent a duplication of benefits. ECD: May 31, 2021.

Recommendation 4: Deobligate \$2.6 million from Alternate Project 19166, as agreed, for ineligible cost for portable school buildings, which were not the legal responsibility of the Recovery School District.

Response: Concur. The FEMA Region VI Regional Administrator will review documentation for the eight portable school buildings, including legal responsibility and insurance offset issues. FEMA will take corrective measures as needed. ECD: November 30, 2020.

Recommendation 5: Collect and review titles, deeds, bills of sale, or leases to verify ownership and eligibility of the remaining 84 portable units valued at \$35.2 million, and

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deobligate funds accordingly.

Response: Concur. The FEMA Region VI Regional Administrator will review available documentation to confirm the 84 portable units were the legal responsibility of New Orleans Public School System/RSD at the time of the declared disaster. If any portable units are determined not to have been the legal responsibility of OPSB/RSD, FEMA will de-obligate funding. ECD: May 31, 2021.

Recommendation 6: Follow established policies and procedures when validating an applicant's ownership and legal responsibility for work items to avoid awarding ineligible funding.

Response: Concur. The FEMA Region VI Regional Administrator follows established federal and state laws and regulations when validating an applicant's ownership and legal responsibility for work items. FEMA will institute a regional briefing to educate FEMA staff on ownership and legal responsibility validation. ECD: May 31, 2021.

Recommendation 7: Update policies and procedures to specify a reasonable timeframe to assess damages comprehensively.

Response: Concur. The FEMA Region VI Regional Administrator will provide information on agency policy changes instituted since Hurricane Katrina in 2005. The updated policy addresses the timeframe for an applicant to report damage to FEMA. ECD: November 30, 2020.

Recommendation 8: Re-evaluate documented proof of assessments for the 35 identified projects; reclassify them, as appropriate, to repair-eligible; and deobligate the cost difference as appropriate.

Response: Non-concur. The FEMA Region VI Regional Administrator affirms its eligibility determinations, which established the 35 facilities as replacement-eligible facilities. Further, it is important to note that these 35 projects are included in the 143 brick and mortar replacement facilities discussed in the response to Recommendation 1.

The OIG's draft report states that 35 school facilities changed from repair-eligible to replacement-eligible after additional damage assessments took place from 10 to 50 months after FEMA's original assessments. The OIG further states that the significant passage of time and damaged facilities' exposure to the elements leaves little assurance that damage identified in subsequent assessments was a direct result of the disaster.

FEMA accessed the school buildings multiple times leading to a final comprehensive assessment of each structure. Upon completion of the comprehensive assessment, FEMA predicated the assessed damage on the baseline level of inundation observed at the site, as well as identification of the possible causes of observed damage.

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After receiving full access to the facilities, FEMA was able to quantify the Katrina-related damage and qualify the cause of damage. Further, for electrical damages, the City of New Orleans Chief Electrical Inspector issued a letter dated on October 25, 2005, stating all electrical apparatus that was submerged in the floodwaters shall be replaced as a code requirement. More than 90 percent of these projects required additional electrical scope of work when compared to the initial assessment. Utilizing the City Inspector's letter, industry-trained inspectors conducted the field assessments, identified the damaged elements, and developed and refined the scope of work for each facility.

FEMA took every precaution to ensure it was only addressing eligible Katrina-related damage. For instance, if a building had inundated components from four-six feet of floodwaters, FEMA considered those components within the observed inundation level as eligible for assistance. There were instances during the comprehensive assessments where FEMA clearly established the cause of damage as neglect, vandalism, and theft. In those instances, FEMA did not provide funding.

Additionally, of these 35 facilities, 15 were demolished on-or-before February 2010; 12 were under an architecture/engineering or general contractor contract for demolition as of August 2010; and eight were slated for demolition as of August 2010. Since PW 19166 was obligated on September 1, 2010, the reevaluation of these facilities would be dependent on photographs and information documented in the PWs regardless of the demise of the facilities.

Prior to RSD's request for a single payment, FEMA determined that 33 of the 35 facilities were eligible for replacement and obligated in their respective PW. For the remaining two facilities, identified as PW 12141 and 13085, FEMA confirmed each facility was replacement-eligible based on CEF prepared on July 17, 2010, and July 15, 2010, respectively, so these determinations were in place prior to the obligation of PW 19166 on September 1, 2010.

FEMA requests that the OIG consider this recommendation resolved and closed.



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Appendix C
Potential Monetary Benefits

Table 5. Project Audited and Questioned Cost

Project Number	Category of Work - Project Scope ²⁵	Amount Awarded	Amount Claimed	Total Questioned Cost
19166	E-Recovery School District Buildings and Facilities	\$1,157,160,833	\$967,625,282	\$216,263,416
Totals		\$1,157,160,833	\$967,625,282	\$216,263,416

Source: OIG analysis of FEMA and RSD records

Table 6. Summary of Potential Monetary Benefits

Type of Potential Monetary Benefit	Rec. No.	Amounts	Federal Share
Questioned Cost – Ineligible	1,2,4	\$216,263,416	\$216,263,416
Funds Put to Better Use		0	0
Totals		\$216,263,416	\$216,263,416

Source: OIG analysis of findings in this report

²⁵ FEMA classifies disaster-related work by type: debris removal (Category A), emergency protective measures (Category B), and permanent work (Categories C through G).



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Appendix D

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