

Office of Inspector General
CITY OF NEW ORLEANS



ED QUATREVAUX
INSPECTOR GENERAL

BY CERTIFIED MAIL AND ELECTRONIC MAIL

June 7, 2013

Mr. John White, State Superintendent of Education
Louisiana State Department of Education
1201 N. 3rd St./4th Floor
P.O. Box 94064
Baton Rouge, LA 70802

RE: Notice of Termination for cause

Dear Mr. White,

Pursuant to Paragraph 4 of Cooperative Endeavor Agreement # CFMS 712634, please accept this letter as notice of termination for cause of our Cooperative Endeavor Agreement and the ancillary funding agreement with GOHSEP, unless the Department of Education through its Recovery School District is able to fully remedy its consistent breaches of the requirements of the Agreements.

The Department of Education through its Recovery School District has failed to fulfill its obligations under Para. 1, Sections a. and d. of the Cooperative Endeavor Agreement. More specifically, the RSD has:

- Routinely failed to provide access to its records, in contravention of Para. 1, Sec. d.(5) "Responsibilities of the State through its Recovery School District";
- Twice directed the OIG to stop working, in violation of the Agreements, which have no provision for a "stop work order";
- Failed to fund the forensic engineering reviews as required by the Agreement in Para. 1, Sec. a.(2) "Deliverables";
- Permitted its own contractor to provide testing, in direct opposition to recommendations by the OIG and the Legislative Auditor (see attached letter of January 30, 2013);
- Impeded implementation of the Code of Ethics and the Vendor Screening programs which were developed by the OIG;
- Routinely attempted to restrict the scope of the agreements;
- Routinely failed to make its employees available for independent interviews in contravention of Para. 1, Sec. d.(5);
- Arbitrarily withheld payments due under the Agreements, making its first payment in August 2012 and not making another one until May 2013;

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- Routinely made it impossible for the OIG to perform its work with the independence that professional standards require.

Under the difficult circumstances created by the RSD, the OIG is unable to fulfill its professional responsibilities to provide independent oversight, and I can no longer allow this office to be associated with this project unless there is a full and complete cure no later than June 21.

Please contact me at 504-681-3212 if you would like to discuss this matter.



E.R. Quatrevaux
Inspector General

cc: Mark DeBosier, Governor's Office of Homeland Security and Emergency Preparedness
Patrick Dobard, Recovery School District Superintendent

OFFICE OF INSPECTOR GENERAL
CITY OF NEW ORLEANS



ED QUATREVAUX
INSPECTOR GENERAL

January 30, 2013

State of Louisiana, Recovery School District

1615 Poydras Street, Suite 1400
New Orleans, LA 70112

Attn: Patrick Dobard
Superintendent, Recovery School District

RE: Oversight of Testing & Inspection Services for School Construction

Dear Mr. Dobard,

I am writing to you regarding the Recovery School District (RSD) policy for oversight of testing and inspection services for school construction. As you are aware, current RSD policy makes the general contractor responsible for the oversight of testing and inspection services.

It is widely viewed by Inspectors General, Auditing Agencies, Law Enforcement, and Prosecutors that oversight of testing and inspection services should be controlled by the owner, or the owner's representative for the construction project. Many cases demonstrate that Owners remain exposed to the high risk of fraudulent activities when they do not control construction testing and inspection services. One recent highly publicized example:

*In the summer of 2011, New York County announced indictments in a construction fraud case against AMERICAN STANDARD TESTING AND CONSULTING LABORATORIES ("ASTC"), its owner, ALAN FORTICH, and five other defendants **for falsifying concrete testing and inspection reports**, as well as manipulating government programs to obtain jobs for which they were otherwise ineligible. The District Attorney stated, "Construction projects must comply with building codes for one simple, but very important, reason: to ensure that our City's buildings are safe. By falsifying safety tests and reports for more than 10 years, the defendants are charged not only with cheating their clients, but also jeopardizing the public's safety. Because of this fraud, government agencies and private companies paid thousands of dollars for test results that were no more than worthless pieces of paper.*

The RSD policy as it relates to the rebuilding program of the Orleans Parish school system is that these testing and inspection agencies are currently being retained, paid and managed by the General Contractor hired by the RSD to construct or renovate each school building, site and/or



campus. This creates an inherent conflict of interest between the testing/inspection agencies and their client. In the opinion of the OIG, this practice adds an additional layer of risk and creates opportunities for fraud and abuse to occur within the administration of these particular services.

This practice was also recognized and documented in the Louisiana Legislative Auditors (LLA) report issued June, 2012 in which the report stated:

“Recommendation 5: RSD should hire testing agencies directly.”

The RSD responded to this recommendation by the LLA in a letter dated May 24, 2012, and stated:

“The RSD has considered this recommendation; however, with competing inputs of the various projects, this did not seem feasible. The district believes the current practice meets our needs and provides the best value in a timely manner”. The letter goes on to state, “The material testing requirements are being administered and controlled by a third-party testing agency.”

Also, within *Exhibit A* of the three (3) year contract for Project Management services executed at the end of 2010, between the State of Louisiana, Department of Education, and Jacobs Project Management Company/CSRS Consortium, it clearly states within the *Scope of Services* for the PM:

“Field Inspection Services 3.5.2.3 The PM/CM shall provide oversight and management of an RSD-retained third party testing agency.”

The aforementioned LLA report documented findings based on the review of only one school’s testing and inspection reports. Auditors documented several discrepancies with concrete mix and strength descriptions, and the failure of the Project Management firm to provide some testing results.

OIG Recommendations:

- 1) The OIG recommends that the RSD immediately change its current practice for retaining testing and inspection services regarding the direct recruitment, hiring, payment and reporting of such Agencies. To maintain close control of these important testing and inspections of materials comprising the New Orleans school buildings, **these services should be directly retained, managed, and controlled by the RSD.**
- 2) If the Project Management firm, Jacobs/CSRS, was compensated for oversight and management of field inspection services as per the 2010 contract, the RSD should request a credit from Jacobs/CSRS for not providing the service for direct oversight and management of the third party testing agency on all projects complete and portions of projects complete within the scope of the 2010 executed contract.



Finally, if you so desire, the OIG, in accordance with the existing Cooperative Endeavor Agreement between the OIG and RSD, will prepare a Request for Proposal (RFP) for an Independent Private Sector Inspector General to review the current testing and inspection results to ensure that inspections are actually being performed as stated within the construction documents, and that the results of the testing are as indicated on construction documents.

Should you have any comments or concerns, I can be reached at (504) 681-3220.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter G. Smith", is written over the word "Sincerely,".

Peter G. Smith

First Assistant Inspector General/School Construction Unit

CC: James Clark
Jay Ginsberg