

# **Office of Inspector General**

**City of New Orleans**

## **Review of City of New Orleans Professional Services Contract With MWH Americas, Inc. For Infrastructure Project Management**

**OIG-I&E-09003(A)**

**E. R. Quatrevaux  
Inspector General**

**Final Report**

**April 21, 2010**



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March 3, 2010

Re: Review of City of New Orleans Professional Services Contract With MWH Americas, Inc.  
For Infrastructure Project Management. OIG-I&E-09003(A).

I certify that the Inspector General staff assigned to this project are free of personal or external impairments to independence.

A handwritten signature in blue ink, appearing to read "E.R. Quatrevaux".

E.R. Quatrevaux  
Inspector General

# Review of City of New Orleans Professional Services Contract With MWH Americas, Inc. for Infrastructure Project Management

OIG-I&E-09003(A)

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## I. EXECUTIVE SUMMARY

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The Office of Inspector General reviewed a contract awarded by the City of New Orleans to MWH Americas, Inc. (MWH) to manage the City's program for repair and rehabilitation of City-owned buildings, facilities, and streets. This contract was awarded in December 2007, after the City determined that it was necessary to increase its project management capacity to deal with an unprecedented volume of construction projects to repair damage from Hurricanes Katrina and Rita.

The contract awarded to MWH was based on a request for proposals that sought the services of one person to coordinate all of the City's large scale projects at a maximum annual cost of \$150,000. After MWH was selected the parties entered into private negotiations over a four-month period that resulted in a major contract estimated to be worth up to \$48 million. The drastic change in the scope and nature of the contract rendered the competitive procurement process irrelevant. Because the City did not require MWH to submit a fee schedule with its proposal, MWH faced no competitive pressure during the fee negotiations.

Through this contracting arrangement, the City in effect privatized major responsibility for managing the City's capital program, transferring many of the management functions formerly conducted by City employees to MWH. This shift of management responsibilities placed a daunting burden on the City to maintain control over the cost of the capital program, including the cost of MWH's fees. The contract terms negotiated by the City, however, did not provide appropriate controls or incentives to contain costs. MWH's compensation was based solely on the number of hours billed without regard to milestones or progress on projects. These terms provided a disincentive to work efficiently and did not allow the City to hold MWH accountable for keeping costs within budget. MWH was also allowed to mark up all direct costs by about 23%. These mark-ups, or cost-plus-percentage-of-cost terms, are prohibited under FEMA reimbursement rules because they provide an incentive to maximize costs.

We determined that City contract oversight was inadequate to protect against excessive fees and inappropriate charges. The City is relying heavily on FEMA reimbursement to fund its capital program, including the cost of MWH's project management services. FEMA has agreed to reimburse the City for MWH's fees on eligible projects provided they do not exceed 8 percent of design and construction cost. The City, however, included non-FEMA eligible work in MWH's contract and did not require MWH to allocate billings on a project-by-project basis, as required by FEMA rules. Concerned about the City's liability for fees that will not be reimbursed by FEMA, the Executive Assistant to the Mayor serving as the Director of the City's Project Delivery Unit (referred to in this report as the "PDU Director") asked a financial management consultant to conduct an analysis of MWH billings under the contract through July 2009. The City's analysis found that MWH billings had far exceeded the rate of progress on projects. In response, the City instituted changes, including reducing the number of projects

MWH would manage to control the spiraling costs. Despite these changes, the compensation structure of the contract continues to hinder the City's ability to control costs.

Other significant problems identified in this report include the City's failure to include a key personnel clause or to establish qualifications for any of the positions identified in the contract's rate schedule, making it difficult for the City to ensure that individuals in key positions have the necessary expertise or that billing rates are justified based on qualifications. The City also failed to require MWH to itemize more than \$1.3 million in billings for direct costs. As a result, the City paid blindly for costs without knowing whether the expenses were reasonable or appropriate. We also found that MWH employees submitted reimbursement requests to the company for gifts to City employees and elected officials, including employees responsible for overseeing MWH's work. Under state and local ethics laws, a City employee may not accept gifts or gratuities from anyone who has or seeks to obtain a contract with the employee's agency.

Our review found that the City currently lacks a coherent plan for funding all the recovery projects it has undertaken. The State of Louisiana created a \$200 million revolving fund to allow the City access to up-front cash flow while awaiting FEMA reimbursement on recovery projects. The City has relied on this revolving fund to pay for project expenses, including fees to MWH, that will not be reimbursed by FEMA. The City is in danger of exhausting this fund before completing all FEMA-eligible work, thereby jeopardizing critical projects. The City's ability to bring recovery administration and project management costs under control will have profound consequences for the recovery program. The report therefore includes the following recommendations:

Recommendation 1. The City Should Procure a New Contract for Project Management Services.

Recommendation 2. The City Should Develop Contract Terms that Protect the City's Interests and Provide Incentives for Containing Costs.

Recommendation 3. The City Should Institute Effective Contract Oversight Procedures.

Recommendation 4. The City Should Ensure that All City Employees and Elected Officials Receive Training in State Ethics Laws and the City's Code of Ethics.

## II. OBJECTIVES, SCOPE, AND METHODOLOGY

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The Office of Inspector General for the City of New Orleans (OIG) conducted an evaluation of:

1. The procurement process used by the City to award a public infrastructure project management contract to MWH Americas, Inc. (MWH);
2. The terms of the contract between the City and MWH; and
3. The City's oversight and management of the contract.

The objectives of this evaluation were to obtain information about the City's procurement and contract management procedures and to evaluate compliance with applicable legal requirements, policies, and prudent procurement and management practices.

The OIG interviewed City officials in the Chief Administrative Office, City Attorney's Office, and Project Delivery Unit (PDU), as well as other consultants working with the PDU. We also reviewed documents provided by the City response to requests for information issued pursuant to Sections 2-1120(18) and (20) of the Code of the City of New Orleans and La. R.S. 33:9613, including requests for proposals, proposals submitted by various respondents, documents reflecting the evaluation of proposals by Selection Review Panels assigned pursuant to Executive Order, evaluations of MWH's performance prepared by City consultants, and invoices submitted to the City by MWH pertaining to the 18-month period from January 1, 2008, through June 30, 2009. We also reviewed documents provided by MWH in response to requests for information, including e-mails regarding negotiation of the contract.

This evaluation was performed in accordance with the Principles and Standards for Offices of Inspector General for Inspections, Evaluations, and Reviews.<sup>1</sup> The evaluation includes findings and recommendation regarding the procurement of the contract, the contract terms, and contract oversight and management. These findings and recommendations are based on legal requirements, including requirements imposed by the Federal Emergency Management Agency (FEMA) for reimbursement of reasonable expenses, and on best practices adopted by professional organizations and other municipal governments for improving transparency, accountability, effectiveness, efficiency, and fiscal control.

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<sup>1</sup> Quality Standards for Inspections, Evaluations and Reviews by Offices of Inspector General, *Principles and Standards for Offices of Inspector General* (Association of Inspectors General, 2004).

### III. INTRODUCTION

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The OIG reviewed a contract awarded by the City of New Orleans to MWH Americas, Inc. (MWH) to manage the City's program for repair and rehabilitation of City-owned buildings, facilities, and streets. The City awarded the contract in December 2007, after the City determined that it was necessary to increase its project management capacity to deal with an unprecedented volume of construction projects to repair hurricane-related damage. Through February 2010, MWH billed the City over \$36 million for services provided under the contract and has been paid over \$29 million.

Several City departments have shared responsibility for managing the MWH contract over the past two years. The contract was initially procured at the request of the City's Office of Recovery Management, a unit established to manage the City's rebuilding efforts after Hurricanes Katrina and Rita. The City subsequently created an organizational unit titled the "Project Delivery Unit" (PDU) that includes representatives from the Chief Administrative Officer's Capital Projects Administration, the Department of Finance, the Department of Law, and the Department of Public Works. The function of the PDU is to coordinate the efforts of departments responsible for handling planning, finance, procurement, and contract management functions related to the City's rebuilding efforts.

The City initially set out in April 2007 to award multiple contracts to a group of firms who would be assigned to provide design review or project management services on a sector-by-sector basis (with one firm assigned to handling all fire station projects, one handling police station projects, one handling recreation projects, one handling criminal justice projects, and so on). To this end, the City issued two requests for proposals (RFPs) on April 24, 2007, one for "architectural and design services" and the other for "construction management services." The City budgeted a maximum of \$1 million for the first year to fund the services requested in each of the two RFPs. The City evaluated proposals and selected seven different firms for contract negotiations pursuant to these two RFPs.<sup>2</sup> Although the City sent award letters to each of the seven firms stating its intent to enter into contract negotiations, the City did not award any contracts pursuant to these RFPs. City records reflect that both of the RFPs were canceled some time after the evaluations were made.

Also on April 24, 2007, the City issued a third RFP seeking "public infrastructure project management" services. This RFP sought the services of an individual with a BA, MA, or MBA in architecture, engineering or a related field. The City budgeted \$150,000 for the first year of this contract. The City received six proposals, including a proposal from MWH. MWH's proposal included no cost information except that the firm would work with the City to develop a program to meet its budget of approximately \$150,000 per year. The City selected MWH for the contract award in August 2007.

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<sup>2</sup> MWH was one of three firms selected under the RFP for architectural and design services.

After issuing three separate RFPs and selecting seven firms for contract awards, the City inexplicably changed course and negotiated a contract with only one of the chosen firms – MWH. The City provided no documentation to show how or when the decision was made to eliminate the other six selected firms from consideration in favor of directing all the work to MWH. The contract award was based on an RFP that sought the services of one person and limited total compensation to the \$150,000 proposed annual cost. After MWH was selected, the parties entered into private negotiations over a four-month period that resulted in a major contract estimated at the time to be worth up to \$48 million.

On December 21, 2007, the City executed the contract for MWH to assume extensive management responsibilities for a rebuilding program described in the contract as the “assessment, rehabilitation, replacement and in certain cases the strategic improvement of civic infrastructure and public building assets following Hurricanes Katrina and Rita.” The contract initially encompassed approximately 150 projects with a total estimated design and construction cost of \$450 million to \$600 million, a rebuilding program defined in the contract as “the Infrastructure Project.” The contract called for MWH to bill by the hour for all services, with total billings to be capped at 8% of design and construction cost, or between \$36 million and \$48 million based on initial estimates.

The initial contract term was for one year, through December 21, 2008. The contract was amended in December 2008 to extend the term through June 2009. On December 31, 2009, the Mayor retroactively approved a second amendment extending the contract from July 2009 through December 31, 2009, a term that had expired before the extension was signed. The December 31, 2009, amendment also expanded the original agreement to authorize MWH to provide “staff augmentation” services to “various City departments” and authorized the use of over \$7 million in federal Community Development Block Grant funds to compensate MWH.

Through this contracting arrangement, the City in effect privatized major responsibility for managing the City’s rebuilding program. Many of the management functions that were formerly conducted by City employees, either in the Chief Administrative Officer’s Capital Projects Administration for building projects or in the Department of Public Works for street projects, were transferred to MWH employees or subcontractors through this contract. MWH employees and subcontractors were given roles in developing administrative practices for the City, in project planning, procurement, and contract management. This shift of management responsibilities to a contractor placed a daunting burden on the City to maintain control over the work and the cost of the rebuilding program, including the cost of MWH’s fees.

Our evaluation found that the contract terms negotiated by the City did not provide appropriate controls or incentives to contain costs and that City contract oversight was inadequate to protect against excessive fees and inappropriate charges. The City’s RFP process, which allowed MWH’s proposal for a \$150,000 scope of work to mushroom into a contract worth hundreds of times that amount, nullified any meaningful competition for the contract. This evaluation also found that the City failed to ensure that MWH’s fees would not exceed 8% of project costs, as MWH’s rate of billing has outpaced the rate of progress on the rebuilding

program. The City intends to fund the contract primarily through FEMA reimbursements. Failure to exercise effective control over this contract exposes the City to liability for costs FEMA will not reimburse, as discussed in the next section.

#### A. THE PUBLIC INFRASTRUCTURE PROJECT AND FEMA PUBLIC ASSISTANCE

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The City of New Orleans is relying heavily on funding from the FEMA Public Assistance Program to repair and rebuild storm damaged streets and facilities. The City's ability to maximize reimbursement from FEMA is critical to the City's recovery. At the outset, the City's intent was to structure and manage compensation for MWH's services to ensure that the contract would be funded by FEMA. The fees were capped at 8% of project costs, based on historical data provided by the City to FEMA showing that the City had previously incurred project management expenses averaging 7.2% of construction costs on projects of similar size and complexity. The City and FEMA agreed to use the 8% figure as a reasonable estimate of anticipated costs.

Unlike other types of federal grant programs, FEMA Public Assistance is a cost reimbursement program that covers only actual, allowable and reasonable costs to complete eligible work. To be eligible for reimbursement, work must be necessary to repair damages that are the direct result of a declared disaster.<sup>3</sup> For each project, the reimbursement process begins with a damage assessment, conducted jointly by the City and by FEMA, to determine the scope of the eligible work. A cost estimate is developed for the eligible work, and the scope and cost estimate is recorded in a document referred to as a Project Worksheet. FEMA obligates funds based on the Project Worksheet estimate. Adjustments can be made if damages prove to be more extensive than the initial assessment or if actual costs differ from the estimate.<sup>4</sup> After completion, the final eligible costs will be determined through a project closeout.

To ensure that costs are reasonable, FEMA rules require competitive procurement of contracts, as well as contract terms and contract management practices that keep costs under control.<sup>5</sup> All expenditures must be accounted for and documented. The Inspector General for the U.S. Department of Homeland Security and the Louisiana Legislative Auditor can audit FEMA project expenditures at various stages and at project closeout to determine whether all costs incurred are allowable. FEMA will not reimburse expenditures that are not allowable and can seek repayment of disallowed costs even after a project is complete.<sup>6</sup> To ensure FEMA reimbursement, it is critical to manage contracts carefully and to account for expenditures on a project-specific basis.

To expedite the reimbursement process, FEMA agreed to create a separate Project Worksheet to obligate funds for the MWH contract. The amount obligated represents 8% of the cost

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<sup>3</sup> 44 C.F.R. §206.223(a).

<sup>4</sup> 44 C.F.R. §13.21 and §206.205.

<sup>5</sup> 44 C.F.R. Part 13 and Office of Management and Budget Circular A-102.

<sup>6</sup> Stafford Act, 42 U.S.C. § 5161, 42 U.S.C. § 5205.

estimate for all FEMA-eligible work to be managed by MWH. The Project Worksheet requires the City to document costs for MWH's work on a project-by-project basis. To qualify for FEMA reimbursement, MWH fees must relate to an eligible project and comply with FEMA rules. The actual costs will be reviewed at project closeout and costs that do not conform to these requirements may be disallowed. The City's ability to properly control and account for MWH's work is therefore critical to the success of the Infrastructure Project and to the City's ability to avoid crippling financial shortfalls after the work is completed.

## B. THE CITY'S HISTORY WITH MWH

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MWH, or one of its corporate predecessors, has had contracts with public entities in New Orleans since at least 1979. That year, the City's Sewerage and Water Board (S&WB) contracted with James M. Montgomery Consulting Engineers (JMM), a predecessor of MWH. In 1996, Montgomery Watson Americas, Inc. (MWA), formed through a merger of JMM and the British firm Watson Hawksley, Ltd., was awarded a ten-year contract by the S&WB to oversee the \$650 million Sewer System Evaluation and Rehabilitation Program.

In 1997, the City awarded MWA a one-year contract to assist the City of New Orleans Sanitation Department with environmental compliance auditing at a cost of \$230,000. The City has perpetuated this contract, changing the nature and scope of services provided, through a series of extensions for more than 12 years, without seeking competitive proposals. During this time period, MWA merged with the Chicago-based firm Harza Engineering in 2001, forming MWH.

In 2005, the City amended the 1997 contract with MWH to add on approximately \$34 million in storm drain cleaning services following Hurricane Katrina. MWH continues to perform services for the New Orleans S&WB and the City's Sanitation Department, in addition to the project management contract which is the subject of this report. For over thirty years, the S&WB and the City have been connected to MWH through a series of contracts worth many millions of dollars.

## IV. REVIEW OF THE CITY'S RECOVERY PROJECT MANAGEMENT CONTRACT WITH MWH: FINDINGS

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### **FINDING 1. THE CITY SELECTED MWH THROUGH A FLAWED PROCUREMENT PROCESS THAT FAILED TO PRODUCE MEANINGFUL COMPETITION.**

On April 24, 2007, the City's Office of Recovery Management released the following three separate Requests for Proposals (RFPs):

- *Architectural and Design Services*

According to the City's proposal evaluation records, the goal of this RFP was to select a group of firms that could be assigned to perform architectural reviews and preliminary architecture for FEMA projects by type, e.g.; parks, police stations, fire stations, etc. The City established a budget of \$1,000,000 for this RFP for the first year. The City received four proposals for this work and selected three firms, including MWH, for contract awards.

- *Construction Management Services*

According to the City's proposal evaluation records, the goal of this RFP was to select a group of firms that could be assigned to manage FEMA infrastructure construction projects. Like the Architectural and Design Services RFP, projects would be assigned to each contractor by type, e.g.; criminal justice, fire stations, police stations, etc. The City established a budget of \$1,000,000 for this RFP for the first year. The City received fourteen proposals for this work and selected four firms for contract awards.

- *Public Infrastructure Project Manager*

According to the City's proposal evaluation records, the goal of this RFP was to select a person from a firm with the necessary background and skills to coordinate all of the City's large scale projects. The City established a budget of \$150,000 for this RFP for one year. The City received proposals from six firms and selected one – MWH – for the contract award.

Proposals received in response to the three RFPs were evaluated in July 2007 by three separate selection review panels.<sup>7</sup> The scores assigned to the proposals by the panels and the seven firms selected for contract awards are shown in Figure A on page 9.

In September 2007, the City's Chief Administrative Officer (CAO) sent each of the seven firms a letter signifying the City's intention to enter into contract negotiations. However, at some point

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<sup>7</sup> Under the City Charter, contracts for professional services are awarded through a competitive selection process established by the Mayor through executive order. The executive order in effect when these RFPs were issued, CRN 05-01, called for proposals to be evaluated by selection review panels, which would recommend one or more proposers to the Mayor for a contract award.

between early September and late November of 2007, the City abandoned the plan to award multiple contracts for different types of projects and decided instead to award a single contract to MWH. City records show that the RFPs for Architectural and Design Services and for Construction Management Services were canceled. The City proceeded to negotiate the contract with MWH based on the RFP for Public Infrastructure Management Services, for which MWH proposed a maximum annual cost of \$150,000.

The contract that resulted from these negotiations called for MWH to take over major responsibilities in connection with all of the City's recovery projects, including technical consultation and support to the City, project planning, schedule and cost control, architecture and design review, construction contract bid and award support, and construction management, oversight, and administration. The total estimated cost for all of the projects – collectively referred to as the "Infrastructure Project" – was \$450 to \$600 million. The maximum compensation for MWH's services was set at 8% of total construction and design costs, or up to \$48 million.

We asked City officials in an interview to explain the rationale for awarding a contract for up to \$48 million on the basis of a proposal with a maximum cost of \$150,000. The City officials said that the evaluations of all three RFPs were considered in the selection of MWH for the contract. This explanation does not alleviate the problematic character of this procurement. A basic tenet of fair competition is that the rules for proposal evaluation must be clearly stated and all proposers must be treated equally. Competing firms were not informed that responses to other RFPs would be factored into the selection process. MWH was the only firm to respond to all three RFPs and therefore received unequal treatment when the City considered all three.

Moreover, the evaluation results for the three RFPs do not provide a clear rationale for favoring MWH. Of the three RFPs, the description of the services in the RFP for Construction Management Services is most closely aligned with services included in the contract actually awarded to MWH. As shown in Figure A on page 9, MWH did not submit the highest rated proposal for these services and was not one of the four firms selected by the City pursuant to the Construction Management Services RFP. Although MWH received the highest score on the RFP for Architectural and Design Services, the services requested differ substantially from the scope of work in the contract, and the relevance of that evaluation is not apparent. The Public Infrastructure Project Manager RFP sought the services of an individual and the City considered the qualifications of the person proposed by MWH to be an important factor in the selection. The CAO's memorandum to the Mayor summarizing the proposal evaluations explained the selection review panel's conclusion:

*[T]he purpose of this RFP is to select a person from a firm that is capable of coordinating all of the City's large scale projects. MWH excelled in presenting a person who met all of these specifications and who has the requisite background and skills as well as tracking software to handle the task.*

When the City changed the scope of work for Public Infrastructure Project Management from the services of one person to a major contract worth more than \$48 million, it made little sense to rely on an evaluation that focused on the qualifications of an individual.<sup>8</sup>

None of the RFPs contemplated a contract on the scale of the massive agreement that the parties negotiated. A November 30, 2007, email from an MWH vice president to a City official during contract negotiations expressed concern that the radical change in the magnitude of the contract had undermined competition:

*The budget for ALL three of the RFPs, . . . (PM - \$150k/year; A/E Services - \$1M for first year; CM Services - \$1M for first year), do not match the City's current understanding of the level of effort to execute all the work. As such, if cost becomes an issue with the current finalization of contracts, then ALL awards to date resulting from ALL RFPs (PM, A/E Services, and CM Services) would have to be thrown out.*

*In addition, the famous FEMA letter, dated May 1, 2007, which defined the allocation of funds (9% - 12%) for performing project management services, was AFTER the RFPs were advertised in April. This could prove that the City nor prospective proposer [sic] would have a firm understanding during the procurement and selection process of what the cost would be.*

No other emails provided to the OIG relate to this discussion or discuss the impact of the change in scope on the competitive process. The City proceeded with the contract award without regard for the issues mentioned in the email.

Fair and open competition requires a sufficiently well-defined scope of services to allow proposals to be compared on a common footing. It also requires proposals to be evaluated on an equal basis according to stated criteria that are relevant to the contract requirements.<sup>9</sup> The City issued the RFPs in April 2007 without a clear idea of the services needed or the budget for the contract. When it became clear in the course of negotiations that the scope had changed drastically, the City should have issued a new RFP to allow other firms to compete on a level playing field for what would become one of the City's costliest professional services contracts.

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<sup>8</sup> Although the City considered the qualifications of an individual an important factor in selecting MWH, the City did not include a key personnel provision in the contract to ensure that the individual was assigned to the project. This issue is discussed in Finding 5.

<sup>9</sup> These standards are codified in the American Bar Association's Model Procurement Code for State and Local Government and have been endorsed by the National Institute of Governmental Purchasing and the National Association of State Procurement Officials.

**Figure A: Summary of the City's Ratings of Competing Proposals**

**Architectural Design Services RFP.** This RFP called for “an experienced firm or company to render architectural and design services.” The City received and evaluated four proposals in response to this RFP using the criteria and weighting factors shown below:

Vendor	Specialized experience & technical competence (20%)	Performance history including competency, responsiveness, cost control, work quality, and ability to meet schedules and deadlines (20%)	Maintenance of office, residence, or domicile in Orleans Parish (20%)	Local & DBE firm participation (20%)	Cost (20%)	Total
MWH	18	18	20	20	10	86
Richard C. Lambert	15	15	20	10	20	80
Torre Design	15	15	20	15	10	75
AQM New Orleans	5	5	20	5	5	40

The selection memo summarizing the evaluation indicated that the goal of the RFP was to “have a group of firms able to do all of the City’s FEMA work rather than RFP each project.” The Selection Review Panel recommended selection of all three of the highest ranking firms for the contract award. The Mayor initialed and signed the selection memo, indicating all three were selected.

**Construction Management Services RFP.** This RFP primarily called for “a firm to develop work programs and oversee major construction projects.” The City received and evaluated fourteen proposals in response to this RFP using the criteria and weighting factors shown below (only the top 6 proposals are shown):

Vendor	Specialized experience & technical competence (25%)	Performance history including competency, responsiveness, cost control, work quality, and ability to meet schedules and deadlines (20%)	Maintenance of office, residence, or domicile in Orleans Parish (15%)	Local & DBE firm participation (20%)	Cost (20%)	Total
Burk-Kleinpeter, Inc.	22	20	15	20	15	92
MWH	20	20	15	20	15	90
Regional Mgmt	20	20	15	20	15	90
Richard C. Lambert	20	20	15	20	15	90
Shaw Environmental	25	20	15	15	15	90
Design Build Group	20	20	15	15	0	70

The selection memo summarizing the evaluation indicated that the goal of the RFP was to “select a group of contractors who can manage large scale infrastructure projects associated with our FEMA program.” The Selection Review Panel recommended the six highest ranking firms for the contract award. The Mayor initialed and signed the selection memo, indicating that Burk-Kleinpeter, Inc., Regional Management, Shaw Environmental, and Design Build Group (but not MWH or Richard C. Lambert) were selected.

**Public Infrastructure Project Manager RFP.** This RFP called for “a program manager with related experience suitable to the task of guiding infrastructure and building programs of major scale.” The City received and evaluated six proposals in response to this RFP using the criteria and weighting factors shown below:

Vendor	Specialized experience & technical competence (35%)	Performance history including competency, responsiveness, cost control, work quality, and ability to meet schedules and deadlines (35%)	Maintenance of office, residence, or domicile in Orleans Parish (5%)	Local & DBE firm participation (5%)	Cost (20%)	Total
MWH	30	30	5	5	20	90
Regional Mgmt	20	20	5	5	10	60
ACI Cognitive	10	5	0	5	20	40
L.L.I.F.T., LLC.	15	15	5	5	0	40
Motir Construction	10	15	0	5	0	30
James M. Hill	10	10	5	0	0	25

The selection memo summarizing the evaluation indicated that the goal of the RFP was to “select a person from a firm that is capable of coordinating all of the City’s large scale projects.” The Selection Review Panel selected the two highest ranking firms for follow-up interviews, and recommended both for negotiations. The Mayor initialed and signed the selection memo, indicating only MWH was selected.

**FINDING 2. MWH WAS NOT REQUIRED TO SUBMIT A COMPETITIVE COST PROPOSAL AND THE CITY HAS NO ASSURANCE THAT MWH'S FEES ARE COMPETITIVE.**

Although each of the three RFPs indicated that cost was 20% of the criteria used to rank proposals, MWH did not submit a fee schedule or other cost information in any of its proposals. Instead, in each proposal, MWH stated it would “commit to working with the City to develop a program that meets the goals, objectives, and budget” of the City. Despite the lack of information on fees or costs, the City gave high scores for “cost” to the MWH proposals for Construction Management Services (15 out of 20 possible points) and for Public Infrastructure Manager (20 out of 20 possible points). The City negotiated a fee schedule with MWH well after the contract was awarded.

Other firms, including Regional Management Group and Burk-Kleinpeter, Inc., two of the other firms ranked highly for the Construction Services RFP, did submit fee schedules with their proposals.<sup>10</sup> The fees proposed by those two firms are compared with fees the City negotiated with MWH in Figure B on page 12. Both Regional Management Group and Burk-Kleinpeter proposed substantially lower fees than those negotiated with MWH, yet all three firms received the same score for cost (15 points) for the Construction Management Services RFP, as shown on Figure A on page 9. The relative scores for the Public Infrastructure Management RFP were even more irrational, with Regional Management Group receiving 10 points for cost compared with MWH’s 20 points. After receiving the highest possible score for cost, MWH was allowed to negotiate higher fees than those proposed by its competitors. These results show that the scores awarded for cost were meaningless.

The rationale for giving MWH high scores for cost in the absence of fee information is puzzling. The City had no basis for comparing MWH’s fees with those proposed by other firms during the selection process because MWH was allowed to avoid providing this information. The lack of any genuine price competition may have resulted in the City paying higher rates than necessary. Communications provided by MWH show that MWH did not submit proposed fees to the City until December 8, 2007, over a month after the parties had entered into exclusive negotiations and only 13 days before the contract was signed. At this stage of the contracting process, MWH faced little pressure to ensure that its fees were competitive.

A review of contract billings showed that MWH charged the City substantially more for labor than either Burk-Kleinpeter or Regional Management Group would have charged for personnel with comparable qualifications. Total MWH billings for program managers, engineers, architects, construction managers and other identified classes of labor were more than 20% higher than the cost of the same services at the rates proposed by the two other firms. In addition to charges for these identified labor categories, MWH billed substantial sums under categories with vague, non-descriptive titles. For example, MWH charged more than \$4.5 million for personnel described only as “professional,” with no indication of their qualifications

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<sup>10</sup> We could not compare all proposed fee schedules because the City was unable to locate 12 out of the 24 proposals submitted in response to the three RFPs.

or roles. The lack of a meaningful description for this labor category makes it impossible to determine whether the billing rates were competitive or reasonable.

In addition to acquiescing to comparatively high fees for labor, the City also agreed to unfavorable contract terms for MWH's direct costs. As part of the cost proposal submitted during contract negotiations, MWH indicated that it would mark up all direct costs by adding on a general and administrative charge and a fee, increasing the cost to the City by approximately 23%.<sup>11</sup> In contrast, the cost proposal submitted by Regional Management Group would not apply any mark up on direct costs. But these cost provisions, like the fees for labor, were never directly compared because MWH did not disclose the information until after the conclusion of the competitive process.

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<sup>11</sup> This mark up provision is considered a cost-plus-percentage-of-cost term that is prohibited under FEMA reimbursement rules, as discussed in Finding 7.

**Figure B: MWH Hourly Billing Rates Compared to Hourly Billing Rates Proposed by Competing Firms**

MWH Contract Rates		Burk-Kleinpeter		Regional Management	
Class	Rate	Class	Rate	Class	Rate
Program Principal/Executive	275.03	Principal	245	Principal/Program Manager	190
Program Manager	243.52	Vice-President	180	Project Manager	175
Deputy Program Manager	193.27				
Principal Engineer	181.85	Project Engineer	135	Senior Engineer/Scientist	155
Supervising/Lead Engineer	152.16	Senior Civil Engineer	130	Mid-Level Engineer/Scientist	130
Supervising/Lead Resident Engineer	152.16	Senior Mechanical Engineer	130	Junior Engineer/Scientist	95
Associate/Support Engineer	114.24	Senior Electrical Engineer	130		
Associate/Support Resident Engineer	114.24	Environmental Engineer	130		
		Civil Engineer	115		
		Mechanical Engineer	110		
		Electrical Engineer	110		
		Civil Engineer Intern	90		
Principal Project Controls Specialist	181.85	Planner	100	Scheduler	145
Supervising/Lead Project Controls Specialist	152.16				
Associate/Support Project Controls Specialist	114.24				
Principal Construction Manager	181.85	Construction Manager	125	Senior Construction Manager	125
				Construction Manager	95
Principal Architect	181.85	Architect	115	Senior Architect	145
Supervising/Lead Architect	145.31	Landscape Architect	102	Mid-Level Architect	120
Associate/Support Architect	108.76			Entry-Level Architect	90
Principal Project Cost Estimator	165.86			Cost Estimator	125
Supervising/Lead Project Cost Estimator	133.89				
Associate/Support Project Cost Estimator	108.76				
Principal Professional	152.16	Environmental Scientist	135	Senior Planner/FEMA Specialist	125
Supervising/Lead Professional	133.89			Junior Planner/FEMA Specialist	100
Associate/Support Professional	108.76				
Supervising/Lead Monitor	95.97	Senior Construction Inspector	70		
Associate/Support Monitor	88.21	Construction Inspector	60		
Supervising/Lead Technician	95.97	Senior CAD Technician	94	Senior CADD Technician	85
Associate/Support Technician	88.21	CAD Drafter	76	CADD Technician	70
Supervising/Lead Administrator	95.97			Administrative Assistant	60
Associate/Support Administrative	76.79				
Associate/Support Clerical	64.91	Clerical	45	Clerical	50
				Senior GIS/Database Analyst	120
				Mid-Level GIS/Database Analyst	95
				Entry-Level GIS/Database Analyst	75

**FINDING 3. MWH HAS REFUSED TO PROVIDE EVIDENCE THAT IT IS HONORING ITS CONTRACTUAL OBLIGATION TO CHARGE THE CITY ITS “MOST FAVORED CUSTOMER RATES.”**

Both MWH and the City appear to have disregarded a contract provision titled “Truth-In-Negotiation,” that states:

*As of the Effective Date of this Agreement, Contractor represents and warrants that the rates charged City . . . for the performance of the Services are no higher than those charged Contractor’s most favored customer for the same or substantially similar services. In the event Contractor’s “most favored customer” rates are reduced during the term of this Agreement, Contractor shall be obligated to promptly notify City of such reduction in writing, and such reduced rates shall apply to any services provided on or after the date that Contractor first reduced such rates.*

Our review found no evidence to document MWH’s compliance with this provision. It did not appear that the City had requested or received evidence to substantiate the promise that it would enjoy most favored customer pricing throughout the term of the contract. In January 2010, we asked MWH to provide all rate schedules reflecting MWH’s most favored customer rates during the contract period. In response to our request, MWH replied:

*MWH does not provide any of the same services or substantially similar services of which it provides to the City under the project management contract with any other client for which it can provide rate schedules.*

The assertion that MWH’s services to the City of New Orleans are completely different from services provided to any other customer strains credibility, particularly in light of representations MWH made in its proposal for the Infrastructure Project Manager contract:

*MWH has unparalleled experience in managing major infrastructure and building projects, including the interaction between federal, state, and local governments and non-governmental organizations.*

MWH’s unwillingness to provide any evidence that it has honored its promise to the City casts doubt on whether the company negotiated the compensation terms in good faith.

**FINDING 4. THE CITY IMPROPERLY PAID MWH FOR WORK PERFORMED PRIOR TO EXECUTION OF THE CONTRACT.**

On March 24, 2008, MWH submitted an invoice to the City seeking payment for professional services rendered from November 11, 2007, through December 29, 2007. The contract between MWH and the City was not executed until December 21, 2007. The invoice attached timesheets from four individuals who billed a total of 178.5 hours for activities simply described

as “PRE-CONTRACT” at rates up to \$275.03 per hour. The invoices and timesheets submitted by MWH do not indicate what services were performed, but most of the time billed was for two MWH executives responsible for negotiating the contract. Email communications between these MWH executives and City officials suggest that their primary activity during that time period was negotiation of the scope of work and description of duties that were incorporated into the terms of the final contract document.

The “pre-contract” charges total \$42,711.88 and represent time spent by MWH prior to the execution of a contract with the City. During this time period, the parties had no agreement on fees and the City had no contractual obligation to pay MWH’s employees for their time.

The expectations of the parties with regard to pre-contract costs were clear from the outset. The City’s Chief Administrative Officer sent MWH a letter dated August 24, 2007, relaying the City’s intention to enter into contract negotiations with MWH regarding the Public Infrastructure Project Manager RFP. This letter included the following statement:

*Please note that the selection only prompts a negotiation and does not guarantee a City contract. Accordingly, the City is not responsible for any costs you incur or obligations you enter in anticipation of the contract. You should begin no work until all parties execute the contract.*

Despite the clear understanding that time spent in contract negotiations could not be billed to the City, the City paid the \$42,711.88 invoice in full.

**FINDING 5. THE CONTRACT DID NOT REQUIRE MWH TO ASSIGN KEY PERSONNEL TO THE INFRASTRUCTURE PROJECT.**

A major consideration in selecting a professional services contractor is the qualifications and experience of the individuals who will perform the work. For this reason, it is critical to evaluate the credentials of proposed personnel and to include a clause in the contract that specifies the roles of key individuals. If the contractor proposes a substitute for any key position, the awarding authority should have the right to approve or reject the substitute, based on a review of qualifications. The City’s contract with MWH did not contain a key personnel clause and MWH was free to substitute personnel at its discretion.

In its response to the Public Infrastructure Project Manager RFP, MWH submitted resumes for a team of six experienced MWH employees to be assigned to the Infrastructure Project and an organizational chart showing their roles. The MWH proposal asserted that: “We have assembled a team that is uniquely qualified to perform these services for the City of New Orleans Office of Recovery Management because of its breadth of specialized experience and project management capabilities.”

A review of the MWH billings for the first 18 months of the contract shows that of the six individuals proposed as the project team, only two were assigned to the Infrastructure Project. The two proposed team members who worked on the Infrastructure Project, including the individual interviewed by the City to formulate its rankings, appeared in billings for only the first eight months. None of the key personnel proposed by MWH appear in billing statements after September 2008.

The failure to include a key personnel clause is compounded by the lack of contract standards or requirements for personnel qualifications. The MWH fee schedule includes a range of hourly rates, presumably based on experience levels, but the contract is silent about the amount or type of experience that qualifies an individual for a given billing rate. Without a key personnel clause or other qualifications requirements, it is difficult for the City to ensure that individuals in key positions have the needed expertise or that billing rates are justified based on qualifications.

**FINDING 6. THE CONTRACT CALLS FOR MWH TO BE PAID ON A TIME AND MATERIALS BASIS, A FORM OF COMPENSATION THAT PRESENTS A HIGH RISK OF EXCESSIVE CHARGES.**

MWH bills for its services based on a schedule of hourly rates ranging from \$275.03 for a program principal to \$64.91 for a clerical position. This form of compensation, based entirely on the number of hours billed rather than on work products completed, is referred to as “time and materials” or “T & M.” FEMA discourages the use of time and materials contracts because they invite inflated costs.<sup>12</sup> In a September 30, 2009 audit of a time and materials contract awarded by the City of New Orleans to another contractor, FEMA’s OIG explained that “T & M contracts present higher risks than unit-price contracts because they provide a disincentive for savings costs – the more hours charged to a project, the greater the contractor’s potential profit.”<sup>13</sup>

Rather than basing compensation on labor hours, service contracts should establish a unit price or lump sum payment for a defined scope of work whenever possible in order to contain costs and ensure accountability. This approach puts the burden on the contractor to work efficiently to complete the required task for the agreed upon price. The City’s contract with MWH lacks any provisions that would allow the City to tie payments to a defined scope of work. It is simply an open-ended agreement to pay for all hours billed, and payments are not contingent on work products or deliverables. These terms do not allow the City to hold MWH accountable for using resources efficiently or keeping costs within a budget.

In addition to providing a disincentive for efficiency, time and materials contracts place a burden on the City to closely monitor the contractor’s work and billings. There are indications

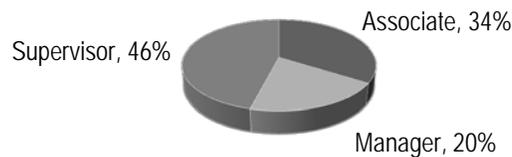
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<sup>12</sup> "Time and materials contracts should be avoided, but may be allowed for work that is necessary immediately after the disaster has occurred when a clear scope of work cannot be developed and the work will not exceed 70 hours." FEMA 321 Public Assistance Policy Digest, January 2008.

<sup>13</sup> See U.S. Department of Homeland Security audit, [www.dhs.gov/xoig/assets/auditreports/OIG\\_DD-09-17\\_Sep09.pdf](http://www.dhs.gov/xoig/assets/auditreports/OIG_DD-09-17_Sep09.pdf).

that the City did not exercise adequate oversight to protect against overpayment. In July 2009, the PDU Director determined that the rate of billing under the contract had outpaced the rate of progress, as discussed in Finding 10. Concerned that the City risked incurring significant liability for contract costs that FEMA would not reimburse, the PDU Director ordered an analysis of MWH billings. This analysis revealed a lopsided distribution of labor classes, with an unreasonably high proportion of hours billed at the higher rates charged for managers and supervisors. As shown in Figure C, the ratio of managers and supervisors to associates was approximately 2 to 1:

**Figure C: MWH Labor Grouping Hours**



Source: City of New Orleans Project Delivery Unit (PDU), Financial Assessment: Recovery Resource Utilization, June 2009

MWH's excessive concentration of higher-cost personnel inflated the cost of the contract. This example illustrates the need to closely monitor time and materials contracts. The PDU Director instituted cost-cutting measures based on this assessment, including reducing the number of projects MWH would manage. This belated effort to control costs was a positive step, but the compensation structure of this contract makes it difficult for the City to maintain control.

**FINDING 7. THE CONTRACT CALLS FOR MWH TO BE PAID FOR EXPENSES ON A COST-PLUS-PERCENTAGE-OF-COST BASIS, A FORM OF COMPENSATION THAT IS SPECIFICALLY PROHIBITED UNDER FEMA RULES.**

The contract calls for MWH to bill for labor according to a schedule of hourly rates and for "other direct costs," including travel, mileage, equipment, without specifically identifying what costs will be allowable expenses. MWH is authorized to mark up all of its "other direct costs," which are defined only as non-labor costs, by adding on 17.50% for "G&A" (general and administrative expense), and to add another 5% "fee" to the already marked-up cost. These mark-ups increase the cost to the City by approximately 23% for all expenses incurred by MWH. During the 18-month period from January 1, 2008 through June 30, 2009, MWH billed the City \$1,309,572 for other direct costs. Of this amount, \$248,157 represented MWH's mark-up.

FEMA rules specifically prohibit marking up costs based on a percentage of the costs because this method of compensation provides an incentive to the contractor to maximize costs in order to increase its profit.<sup>14</sup> The City incorporated similar cost-plus-percentage-of-cost compensation terms in previous contracts, including a contract awarded to MWH on August 27,

<sup>14</sup> 44 C.F.R. §13.36(f)(4) and Office of Management and Budget Circular A-102.

2005, for emergency debris removal services. In 2006, auditors for the Department of Homeland Security advised City officials that FEMA may disallow expenses incurred by the City under these prohibited contract terms. Despite admonitions about using this method of compensation for this specific contractor, the City incorporated it into the Infrastructure Project contract, thereby jeopardizing FEMA reimbursement for this portion of the contract.

**FINDING 8. THE NOT-TO-EXCEED CONTRACT COST WAS NOT BASED ON A REALISTIC BUDGET FOR THE INFRASTRUCTURE PROJECT.**

As discussed in Finding 6, FEMA strongly advises applicants to avoid time and materials contracts, which require intensive oversight to guard against excessive costs. FEMA also advises applicants to include a cost ceiling, referred to as a “not-to-exceed” provision, as a cost control whenever a time and materials compensation structure is used.<sup>15</sup> The City based the not-to-exceed provision in the MWH contract on a percentage of total design and construction cost rather than capping the contract at an actual dollar amount. This not-to-exceed limit did not serve as an effective cost control because the City failed to develop a realistic budget for design and construction.

In addition to hurricane damage, the City had a backlog of needed repair and rehabilitation work on streets, facilities, and buildings that pre-dated Hurricane Katrina. In negotiating the scope of work for the project management contract, MWH and the City prepared a comprehensive list of buildings, streets, and facilities in need of repair or rehabilitation and designated the list as the “Infrastructure Project.” The Infrastructure Project included both deferred maintenance and repair of hurricane damage. The Executive Assistant to the Mayor leading the PDU (referred to in this report as the “PDU Director”) told us that the City conceived the Infrastructure Project not as simply a plan to recover from hurricane damage but as a “revitalization” program designed to make City property better than it was before the storm, including improvements as well as storm-related repairs. According to the PDU Director, the City hoped for a metamorphosis and created this plan to encompass future needs as well as restoring pre-existing facilities.

When the City entered into the contract with MWH, the parties estimated the cost of the ambitious Infrastructure Project at \$450 million to \$600 million. This figure represented cost estimates developed for projects rather than the amount of funding available. FEMA would fund only eligible work resulting from hurricane damage, and other sources of funds would be needed for non-eligible work. Documents show that when the City and MWH were negotiating the contract, the City had identified only about \$315 million in anticipated funding from FEMA, bond sales, and other sources, leaving a budget shortfall of between \$135 million and \$285 million for the Infrastructure Project at the outset.<sup>16</sup>

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<sup>15</sup> Public Assistance Policy Digest, FEMA 321, page 23.

<sup>16</sup> The exact amount of the budget shortfall for the City’s Infrastructure Project at any given time is difficult to determine and is subject to change, in part because the process of assessing damages that qualify for FEMA reimbursement has been drawn out for more than four years. The damage assessment process and negotiations between the City and FEMA have resulted in many revisions in payment estimates and this process is still not

The City's contract with MWH provides that payments are limited to 8% of project costs. But the \$450 million to \$600 million estimate was unrealistically high because the City lacked funding to complete all of the projects. Using an unrealistic estimate for the projects MWH would actually manage produced a not-to-exceed cap that was far too high to be a meaningful cost control.

In order to maintain control over project management costs, the City needed to closely monitor the MWH billings on a project by project basis, to ensure that the fees did not outstrip the rate of progress toward completion. A review of the contract billings shows that the City did not control costs and allowed MWH fees to outpace the progress of design and construction work, as discussed in Finding 9 and Finding 10.

**FINDING 9. MWH'S BILLINGS FOR CAPITAL PROJECTS PROVIDE NO BASIS FOR ALLOCATING COSTS TO SPECIFIC PROJECTS OR FOR KEEPING MWH'S FEES IN LINE WITH OVERALL PROJECT COSTS.**

MWH's invoices for capital projects<sup>17</sup> work include labor hours, billed at the contract rate for each position description, broken down into ten general categories, or "tasks" as shown following in Figure D. The bills do not specify what projects are associated with the work. This failure to allocate work by project could jeopardize FEMA reimbursement for MWH fees. In addition to creating potential reimbursement problems, this billing method provides no mechanism to protect the City against excessive fees.

Each of the ten tasks described in the contract includes a broad range of activities, many consisting of administrative and management functions formerly carried out by City employees. Often these activities are not project specific. Figure D below shows a breakdown of MWH's billings for capital projects only, not including road and street projects, over the first 18 months of the contract, from January 1, 2008, through June 30, 2009, into the ten task areas shown following in Figure D.

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complete as of February 2010. Funding problems for the Infrastructure Project have not been resolved and a great deal of uncertainty remains about the feasibility of some of the projects.

<sup>17</sup> MWH submits separate invoices to the City's Capital Projects Administration for capital projects, which include work on buildings and other facilities, and to the Department of Public Works for street and road projects. The term "capital projects" is used to refer to work on buildings and other facilities, not including streets and roads.

**Figure D:** Capital Projects Billings by Task, January 1, 2008, through June 30, 2009.

Task 1	PDU Technical Consultation	\$233,269
Task 2	Project Management	\$4,651,644
Task 3	Planning Phase Management	\$952,512
Task 4	Project Controls	\$3,285,692
Task 5	Design Phase Management	\$3,138,447
Task 6	Bid and Award Phase Management	\$277,967
Task 7	Construction Phase Management	\$1,762,950
Task 8	Project Commissioning & Certification Phase	\$21,922
Task 9	Project Furniture, Fixtures, and Equipment	\$182
Task 10	Supplementary Services	\$1,297,700
TOTAL		<b>\$15,622,285</b>

As discussed in Finding 8, the not-to-exceed limit did not help the City manage contract costs because it was based on an unrealistic estimate for the projects MWH would actually manage. The task descriptions in the MWH contract could have been used as a contract management tool if the contract had defined the level of effort or placed an upper limit on the dollar amount that could be billed under any task, but the contract is silent as to amount or proportion of fees that can be billed under any given task.

The breakdown in Figure D shows that about 67% of the approximately \$15.6 million in billings, amounting to about \$10.4 million, was either for Tasks 1 through 4 or for unspecified “supplemental services.” This concentration of billings for activities that appear to relate more to general program management than to management of specific projects could have signaled that MWH’s fees were on track to exceed the 8% cost cap, but the City did not use the task breakdown to gauge progress on projects or control contract costs.

A contract provision designed to help control costs was largely ignored by both MWH and the City. The scope of work included a catch-all category for “supplementary services.” This task description included the following task order procedure to ensure that costs for unanticipated services did not exceed budgeted limits:

*Upon identification of new tasks, [MWH] shall provide a written description and a budget for supplemental services (e.g., surveying, testing) for PDU Administration approval. [MWH] shall not proceed on supplementary services until the PDU Administration has approved the budget and authorized [MWH] to proceed.*

During the period from January 1, 2008 through June 30, 2009, MWH billed the City more than \$1.2 million for supplementary services. The City could provide no work descriptions or budgets for these services and no records showing that the PDU Administration authorized MWH to proceed with the work. In August 2009, MWH did submit a budget of approximately \$127,000 for assisting with the implementation of a software system, MS SharePoint, across the PDU. This software implementation work appears to be the only instance in which MWH complied

with the contract requirement. The City apparently ignored this noncompliance with respect to the \$1.2 million billed for supplementary services during the first 18 months of the contract.

**FINDING 10. THE CITY ALLOWED MWH'S FEES TO MOUNT FASTER THAN THE RATE OF PROGRESS ON CAPITAL PROJECTS.**

In July 2009, the PDU Director asked a firm hired by the City to assist the PDU with accounting and financial management functions to analyze all invoices submitted by MWH through July 2009 for capital projects (excluding street and road projects). According to this analysis, the design and construction cost for projects expected to be managed by MWH totaled approximately \$597 million. Based on the 8% contract cap, MWH fees for these projects could not exceed a total of \$47.8 million.

The analysis concluded that MWH billings through July 2009 far exceeded the rate of progress on the projects. By that point, MWH had already invoiced nearly \$18.8 million through July 2009, or 39% of the maximum fees it could charge over the life of the project, based on 8% of the \$597 million estimate. However, the analysis determined that MWH's "calculated progress" on the projects was valued at slightly less than \$15.9 million, or only around 32% of the total maximum fee available. Based on these calculations, the analysis concluded that MWH had billed for approximately 118% of the actual value of its work and had overbilled by \$2.9 million through July alone.

Moreover, the analysis noted that the actual scope of projects "managed" by MWH would be impacted by:

- Projects that would be reassigned from MWH to other departments/contractors, including projects managed directly by the City's Capital Projects Administration;
- Projects that would be only "partially managed" by MWH (i.e., MWH might only manage the contracting phase or the construction phase on a given project); and
- Projects where the actual design and construction costs are reduced because of scope limitations, budget limitations (i.e., FEMA obligating less for a project than the amount projected by the City's consultants), and revisions to estimated costs.

The net effect of these factors could dramatically reduce the \$597 million budget figure. As noted in Finding 8, the City faced major shortfalls in funding these projects from the outset. Further, the PDU Director had already transferred a number of projects scheduled to be managed by MWH back to the Capital Projects Administration to be managed internally by City employees. As the overall budget for projects managed by MWH decreases, the overbilling through July 2009 represents an even greater overpayment. The analysis showed that drastic changes were needed to prevent continued cost overruns on the MWH contract from spiraling out of control.

The City's financial consultant also identified a problem with MWH's cost allocation. Although the Project Worksheet developed with FEMA for MWH project management fees required costs to be accounted for on a project by project basis, the July 2009 analysis found that 36% of MWH billings (\$6.8 million) were allocated to general program management and could not be related to specific projects. Only 64% of MWH fees were allocated to a specific project as required by the FEMA Project Worksheet. This failure to allocate costs by project could have an adverse impact on FEMA reimbursement.

In addition to reviewing costs, the analysis calculated a shortfall of approximately \$450 million in federal funding for the Infrastructure Project as of July 2009. As discussed in Finding 8, the City lacked adequate capital from bonds and other sources to bridge this funding gap, hence the feasibility of completing many projects remained in doubt.

According to the PDU Director, the City initiated changes in its management of the MWH contract in September 2009 to bring the mounting costs under control. The PDU Director told us that these changes included reducing the number of projects that MWH would manage, reducing the ratio of higher-paid managers to other personnel employed under the contract, and reducing the amounts paid on a monthly basis to MWH. Despite these efforts, the compensation structure of the contract continues to hinder the City's ability to control costs.

**FINDING 11. THE STATE REVOLVING FUND HAS BEEN PARTIALLY DEPLETED TO EXPEDITE PAYMENTS TO MWH WITHOUT REGARD FOR WHETHER EXPENDITURES WILL BE REIMBURSED.**

In the aftermath of Hurricanes Katrina and Rita, the City faced a cash-flow problem, waiting for FEMA funding to be made available for urgent projects. To alleviate this problem, the State of Louisiana agreed to issue bonds to create a revolving fund (the State Revolving Fund) that the City could use to pay project related costs that would later be reimbursed by FEMA. On June 29, 2007, the City and the State of Louisiana entered into a Cooperative Endeavor Agreement (CEA) that would make \$200 million in bond funds available to the City, with a pledge that reimbursements from FEMA would be deposited back into the fund. These FEMA reimbursements created a revolving fund that would provide continuous cash flow for an unlimited number of projects.

Under the original CEA, the State Revolving Fund could only be used to pay for FEMA-eligible work or work that qualified for federal hazard mitigation grants. However, the CEA was amended in December 2007, during the City's contract negotiations with MWH, to allow the City to pay MWH from the State Revolving Fund regardless of whether MWH's fees were eligible for FEMA reimbursement. The following language was added in the December 2007 amendment, expanding the definition of work that could be paid for to include program manager fees and costs for FEMA ineligible work:

*[A]ll project delivery costs, including but not limited to project manager fees, program manager fees, construction manager fees and administrative overhead costs are permitted costs for FEMA eligible and FEMA ineligible work; provided that the amounts paid with respect to FEMA ineligible work shall not exceed the percentages allowed with respect to FEMA eligible work pursuant to a Project Worksheet.*

This amendment to the State Revolving Fund agreement helped to expedite the City's payments to MWH and other contractors because it was no longer necessary to show that costs were FEMA eligible. It also allowed the State Revolving Fund to be permanently depleted by non-reimbursable expenditures. From December 2007 to January 29, 2010, the City spent \$114,492,868 out of the \$200 million initially available in the State Revolving Fund to pay contractors for recovery projects. Of this amount, MWH received approximately \$22 million.

The total amount of State Revolving Fund expenditures that will be recovered through FEMA payments will not be determined with certainty until after all projects are completed and closed out. However, the PDU Director told us that the "rate of return," or ratio of FEMA payments to costs paid from the State Revolving Fund, was only about 33% as of November 2009. According to the PDU Director, the City hopes to increase this ratio to about 56% through revisions to Project Worksheets. Unfortunately, the City has jeopardized its ability to maximize FEMA payments for MWH's work by including prohibited compensation terms in the contract, by failing to require a project by project accounting of all costs, and by failing to control excessive fees.

The State Revolving Fund has served as a mechanism to ensure prompt payment to MWH and other contractors. The purpose of the fund, however, was to provide continuous cash flow to facilitate the City's recovery. By failing to ensure that payments to MWH will be reimbursed by FEMA, the City may exhaust the State Revolving Fund before all FEMA-eligible work is completed. The unavailability of this funding in the future will have a negative impact on vital recovery projects.

**FINDING 12. THE CITY PAID MWH \$1,309,572 FOR UNSPECIFIED EXPENSES DURING THE FIRST 18 MONTHS OF THE CONTRACT.**

As discussed in Finding 7, the contract allows MWH to bill the City for "Other Direct Costs," defined only as "non-labor; e.g., travel, mileage, equipment, etc." The failure to specify what costs the City will pay for makes the contract difficult to manage, a problem that is compounded by MWH's billing practices. The MWH invoices provide only lump-sum totals for broad categories of costs, with no breakdown of the expense items included in the billing. This form of billing makes it impossible for the City to determine whether the expenses charged are reasonable or appropriate.

Along with invoices, MWH includes copies of expense reimbursement requests submitted to the company by its employees and subcontractors and, in some instances, receipts to substantiate expenses. These reimbursement requests and receipts are for a wide variety of expenses, including travel expenses, meals, office equipment and supplies, apartment rental, and gifts. Because MWH invoices do not itemize costs, we could not determine which of these expenses were charged to the City.

Examples of MWH expenses that appear questionable include:

- A \$93,289.20 charge for telecommunications services for a one-month period;
- Gift purchases, including flowers, theater tickets, and Christmas gifts for City employees;
- Unusual travel expenses, including a flight from Salt Lake City to Las Vegas with no apparent connection to New Orleans;
- Restaurant expenses for employees who may have received a per diem meal allowance;
- Rental for a corporate apartment that appears to have been paid twice for one month;
- MWH operating expenses, membership costs in professional organizations, MWH employee business cards, donations, and 75 polo shirts; and
- A \$10,559.55 expense for professional liability insurance.

We identified a list of 63 questionable expenses from MWH employee reimbursement requests or receipts and asked MWH to specify which items had been charged to the City. MWH informed us that the City had not been charged for 52 of the items, but had been inappropriately billed for the other 11 items. As a result of our inquiry, MWH issued a credit to the City in the amount of \$3,646.92 for gift and meal expenses.

The example cited above, where a limited inquiry uncovered numerous inappropriate charges, illustrates the risk the City takes when it does not know what expenses it is paying for. While MWH claims that many of these expenses were not billed to the City, the failure to include any itemization of expense billings makes such claims impossible to verify. This risk is compounded by terms that allow MWH to mark up costs by about 23%, giving the company an incentive to maximize costs. By not requiring MWH to itemize expense billings, the City has failed to exercise adequate contract oversight.

**FINDING 13. MWH EMPLOYEES SOUGHT REIMBURSEMENT FROM MWH FOR GIFTS TO CITY EMPLOYEES AND ELECTED OFFICIALS.**

As discussed in Finding 13, MWH invoices to the City included expense reimbursement requests submitted by employees to the company and, in some cases, receipts to substantiate the expenses. Some of these requests sought reimbursement for gifts to City employees or elected

officials, including flowers, golf shop purchases, and theater tickets. Other expenses were for restaurant meals with City employees or elected officials. In some cases, the City employees named were responsible for overseeing MWH's work.

Under the Louisiana Code of Governmental Ethics, La. R.S. 42:1101 et seq., and Sections 2-716 et seq. of the Code of the City of New Orleans, a City employee may not accept gifts or gratuities from anyone who has or is seeking to obtain a contract with the employee's agency. For elected officials, this prohibition extends to gifts from anyone who has or seeks any contract with the City. These rules also place a limit of \$50 on the value of any food, drink, or refreshment a City employee or elected official may consume as the guest of a prospective or current contractor. The reimbursement requests and receipts submitted by MWH employees to the company suggest that some City employees and elected officials may have violated these ethics laws by accepting gifts or meals.

Although the dollar value of the gift or meal in each instance was relatively modest, the City has a strong interest in ensuring strict compliance with ethics laws. The prohibition against gifts and gratuities helps to reinforce the strictly professional nature of the relationship that should be maintained between public officials and those who do business with the government. It also avoids the appearance of impropriety that gifts and gratuities inevitably create and helps maintain public confidence in government.

**FINDING 14. THE CITY USED THE MWH CONTRACT AS A VEHICLE FOR PROCURING OTHER PROFESSIONAL SERVICES WITHOUT COMPETITION.**

The City has engaged in a practice known as "piggyback contracting," which involves expanding an existing contract by adding on additional services. FEMA rules discourage this form of contracting because it is noncompetitive and does not ensure reasonable prices.<sup>18</sup> We determined that in at least two instances, the City procured services from other firms by instructing MWH to enter into subcontracts with the firms and act as a pass through for billing purposes. This practice circumvents the requirement for competitive procurement of services through an advertised request for proposals.

In one instance, the City solicited proposals in March 2008 for a consultant to advise and assist the City with FEMA policies, reimbursements, and practices. The City received responses, but canceled the RFP without awarding a contract. In February 2009, the City instructed MWH to award a subcontract for the FEMA consultant services to Integrated Disaster Solutions (IDS), a joint venture including one of the firms that responded to the original March 2008 RFP. In the five-month period from February 2009 through June 2009, MWH billed the City more than \$640,000 for services provided by IDS. The City paid MWH's hourly rates, higher than IDS's subcontract rates, for these services even though, according to a principal from IDS, MWH played no role in directing or supervising the work.

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<sup>18</sup> Public Assistance Policy Digest, FEMA 321, page 23.

In another case, in June 2009, the City directed MWH to enter into a contract with Wink Design Group, LLC (WDG), an architectural firm, to prepare a facility condition assessment report for the Chevron Building at 935 Gravier Street. The City sought this assessment in connection with a proposed plan to purchase the property for a new City Hall. The City paid MWH \$187,640 for this assessment.

The services procured through these extensions to the MWH contract were not advertised or subjected to public scrutiny. City law requires contracts for professional services in the amount of \$15,000 or more to be procured through a competitive process.<sup>19</sup> Open and fair competition for public contracts is essential to ensure that taxpayers receive the benefit of competitive prices and to maintain public confidence in government.

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<sup>19</sup> New Orleans City Code Ordinance §2-7.

## V. CONCLUSION AND RECOMMENDATIONS

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### A. CONCLUSION

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Over the past two years, MWH has billed the City of New Orleans more than \$36 million under a contract that was procured without meaningful competition. The compensation terms invite excessive costs and jeopardize the City's ability to maximize FEMA reimbursement for MWH's fees. The City has blindly paid MWH's expenses, which include a markup of approximately 23%, without adequate information to determine whether they are reasonable or appropriate. The City has also failed to exercise effective contract oversight and allowed costs to outpace the rate of progress on projects under management.

The City currently lacks a coherent plan for funding all the recovery projects it has undertaken and has depleted the State Revolving Fund to pay MWH and other contractors for costs that may not be reimbursed by FEMA. The City is in danger of exhausting the State Revolving Fund before completing all FEMA-eligible work, thereby jeopardizing critical projects. The City's ability to bring recovery administration and project management costs under control will have profound consequences for the recovery program. It is therefore not in the City's interests to continue this contractual arrangement with MWH, which has proven to be costly and difficult to manage.

## B. RECOMMENDATIONS

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### **RECOMMENDATION 1. THE CITY SHOULD PROCURE A NEW CONTRACT FOR PROJECT MANAGEMENT SERVICES.**

The City's current contract with MWH expired on December 31, 2009. Rather than extend this agreement for the third time, the City should invite competition for a contract that protects the City's interests. To promote fair and open competition, the City should adhere to standards codified in the American Bar Association's Model Procurement Code for State and Local Governments, which have been endorsed by the National Institute of Governmental Purchasing and the National Association of State Procurement Officials. These standards call for the City to:

- Define the scope of services needed and develop a sound plan for funding both project management services and design and construction projects that can realistically be undertaken in the near term. This will require prioritizing projects to ensure that the City's most vital needs are addressed with the limited funds available.
- Advertise for proposals based on a sufficiently well-defined scope of work and budget to attract qualified firms and permit meaningful comparison of proposals.
- Develop objective evaluation criteria that relate to contract requirements.
- Generate effective price competition by requiring all firms to submit cost proposals in a form that permits comparison. Compare cost proposals in dollars rather than assigning points for cost. Cost is an objective criterion and translating it into a point system confuses the comparison.
- Treat all proposers equally and adhere to the advertised rules of the competition. Evaluate proposals strictly on the basis on the stated criteria.
- Award the contract to the firm with the most advantageous proposal, taking into consideration evaluation criteria and cost.

### **RECOMMENDATION 2. THE CITY SHOULD DEVELOP CONTRACT TERMS THAT PROTECT THE CITY'S INTERESTS AND PROVIDE INCENTIVES FOR CONTAINING COSTS.**

The City should develop critical contract terms before advertising for proposals, rather than engaging in open-ended negotiations after the contractor is selected. Including significant terms in the RFP helps to ensure a level playing field for competing firms. These terms should include:

- A key personnel clause that defines the roles highly qualified individuals identified in the proposal will play under the contract. This provision should require the contractor to obtain the City's approval to substitute other individuals for these key roles, based on a review of their qualifications.
- Compensation terms that provide incentives for efficiency and help the City control costs. These terms should base payment on task orders whenever possible. The City

would develop each task order, describing in detail the services to be performed, work products to be produced, and a proposed schedule. The parties would agree in advance on a lump sum for the work, to be paid on a percentage of completion basis or upon acceptance by the City of specified deliverables. This method of compensation puts the onus on the contractor to work efficiently and helps keep projects within budget.

- Clear rules to define what costs are reimbursable. These rules should specify reasonable rates for such expenses as mileage and copying costs, a per diem allowance for meals, and limitations on travel and lodging expenses.
- A prohibition against marking up costs by adding on charges or fees.
- A prohibition against gifts or gratuities for City employees or elected officials.

**RECOMMENDATION 3. THE CITY SHOULD INSTITUTE EFFECTIVE CONTRACT OVERSIGHT PROCEDURES.**

Regardless of what project management tasks are contracted out, the City bears ultimate responsibility for keeping projects on schedule, controlling the budget, and ensuring the quality of work. Basing compensation on lump sum prices for well-defined task orders will greatly simplify the task of administering a project management contract, but the City will need to exercise effective contract oversight. With respect to reviewing contract billings, the City should:

- Require all billings to be project specific. To comply with FEMA reimbursement rules, all costs should be accounted for on a project-by-project basis. In addition to maximizing FEMA reimbursement, project specific accounting is critical to maintaining budget control.
- Ensure that project billings are in line with progress toward completion. Basing payments on stage of completion or other milestones in task orders will help keep project management costs under control. The City should also continuously monitor total project management costs for each project.
- Require itemized detail for all expenses and review bills for inappropriate charges. The City should also require MWH to immediately submit an itemization for the more than \$1.3 million in direct costs already billed by MWH and conduct a review of those charges.

**RECOMMENDATION 4. THE CITY SHOULD ENSURE THAT ALL CITY EMPLOYEES AND ELECTED OFFICIALS RECEIVE TRAINING IN STATE ETHICS LAWS AND THE CITY'S CODE OF ETHICS.**

The City should ensure that all employees and officials understand the legal restrictions on accepting gifts, gratuities, and meals from those doing business with the City, as well as the importance of avoiding even the appearance of impropriety.

**APPENDIX A**

CHIEF ADMINISTRATIVE OFFICE

**CITY OF NEW ORLEANS**

C. RAY NAGIN  
MAYOR

BRENDA G. HATFIELD, Ph.D.  
CHIEF ADMINISTRATIVE OFFICER

April 15, 2010

Edouard R. Quatrevaux  
Inspector General  
City of New Orleans  
535 Saint Charles Avenue  
New Orleans, Louisiana 70130

Dear Inspector General Quatrevaux:

On behalf of the administration of the City of New Orleans, attached is a response to the OIG Report entitled *Review of City of New Orleans Professional Services Contract with MWH Americas, Inc. for Infrastructure Project Management (OIG-I&E-09003A)*.

Please contact my office at 504-658-8910 if you have any questions.

Sincerely,



Brenda G. Hatfield, Ph.D.  
Chief Administrative Office

cc: Mayor C. Ray Nagin  
M. Harrison Boyd  
Kevin Wildes, Ethics Review Board



**RESPONSE TO THE OFFICE OF THE INSPECTOR GENERAL**

**CITY OF NEW ORLEANS**

**REGARDING**

**REVIEW OF CITY OF NEW ORLEANS PROFESSIONAL SERVICES CONTRACT WITH  
MWH AMERICAS, INC. FOR INFRASTRUCTURE PROEJECT MANAGEMENT**

**OIG – I&E – 09003(A)**

**M. HARRISON BOYD**

**EXECUTIVE ASSISTANT TO THE MAYOR**

**BRENDA G. HATFIELD, PH.D.**

**CHIEF ADMINISTRATIVE OFFICER**

**C. RAY NAGIN, MAYOR**

**APRIL 15, 2010**

**RESPONSE TO THE OIG REPORT: REVIEW OF NEW ORLEANS PROFESSIONAL SERVICES CONTRACT WITH MWH, INC. FOR INFRASTRUCTURE PROFESSIONAL MANAGEMENT SERVICES**

**OVERVIEW:** The City's Internal Review Copy or draft report titled, "Review of City of New Orleans Professional Services Contract with MWH Americas, Inc. for Infrastructure Project Management" (OIG-I&E-09003(A)) (the "Draft Report") recently completed by the Office of Inspector General (OIG) fails to accurately present the facts regarding this issue. The findings presented in the Draft Report are flawed, and many are based upon dated or incomplete information. As a result, the OIG's findings are not an accurate reflection of the services provided, value received, and effectiveness of the City's efforts to manage its massive recovery program through the use of an infrastructure project management services provider.

To effectively evaluate the recovery project management, it is helpful to review the catastrophic conditions that precipitated the need for these services. Hurricane Katrina and its aftermath resulted in the flooding of 80% of the City. More than 300 City buildings were damaged or destroyed and hundreds of miles of City streets were severely damaged.

The City was forced to lay off approximately 50% of its workforce due to budgetary constraints. The massive devastation in the region led to extraordinary competition for architects, and the City lost a number of its experienced architects to private firms or other public agencies. Consequently, the City's capacity was rendered even more inadequate to address the unprecedented recovery needs. In July 2006, the Civil Service Commission approved new, higher hiring rates for the positions of Capital Projects Administrator (CPA), CPA Assistant, Senior Architect, and Architect as requested by the Administration. Several advertisements seeking new architectural experts were placed in local and trade journals. These advertisements did not result in significant staff increases.

Even if these staffing challenges were not present, the City's internal capacity was inadequate to manage a recovery of this magnitude. Prior to Katrina, the City's Capital Project Administration (CPA) and the Department of Public Works (DPW) managed a limited number of projects per year. After the 2005 hurricanes, these departments found themselves faced with the task of managing more than 1,100 FEMA Project Worksheets representing nearly 600 reconstruction projects.

With this degree of devastation, it was essential that the City develop a clear process for moving forward. Critical public safety services (i.e. police, fire, emergency management services, and criminal justice) were severely impaired by the total destruction of many of their facilities. Resources were further strained by the effort and

## Internal Draft Response to OIG Report

funding needed to locate, build out, and equip suitable temporary facilities (i.e. UNO Crime Lab, NOPD Property and Evidence, Coroner, DA, Recorder of Mortgages), and to relocate displaced units into purchased, permanent facilities (i.e. NOPD: Special Operations Division and Third District). The challenges were time, staffing, and funding. The need to increase capacity of the City's recovery response was critical.

The remaining, small Capital Projects staff completed initial damage assessments of all City owned buildings in September and October 2005. The City estimated damages to these facilities at more than \$400 million at that time. The damage to City streets has been estimated at \$450 million to \$500 million. FEMA and State personnel accompanied staff on many of the initial site visits; however, the value of the FEMA generated Project Worksheets were less than 30% of the City's damage estimates. As FEMA is a reimbursement process, the City was forced to scrape together meager available capital funding to initiate a limited number of projects.

In September 2005, the City contracted with a company to start stabilizing its buildings, installing temporary roofs, and taking other protective measures. By December 2005, the City was in the process of selecting architectural firms to initiate work on the Criminal Justice Complex at Tulane and Broad, which housed Criminal District Court, Municipal and Traffic Court, NOPD Headquarters/Garage/Facilities, DA's Office, Crime Lab and three prisons owned by the City. With the exception of three facilities that FEMA has declared greater than 50 percent damaged and eligible for replacement, all of these other facilities have been renovated and are in operation. **It must be noted that the Capital Project's architectural staff consisted of only two persons for most of the time between the event in 2005 and 2007.**

In search of alternatives, the City began working with a consultant hired by FEMA in 2006 to develop a listing of tasks that would be covered under Project Management. Although project management was a covered cost under each Project Worksheet (PW), the amount available for project management was far less than what was needed, due to the extremely undervalued PWs. Numerous meetings were held with State and FEMA representatives to determine parameters for contracting for Project Management Services in an effort to ensure future reimbursements.

On January 23, 2007, a letter was sent from the State to FEMA relative to, "the concept of providing a Project Worksheet PW for the most impacted parishes authorizing them to hire additional staff or enter into a contract with a firm to provide Program Management Services". FEMA responded to the State in letters dated February 20, 2007 and May 1, 2007, that Project management costs will be applied on a project-by-project basis based on ranges (9 – 12 percent) determined by historical data

## Internal Draft Response to OIG Report

on costs of providing project management support. The State responded that a single PW should be the method of delivery. On May 29, 2007 FEMA denied this request. FEMA initiated a massive task of increasing individual PWs to increase the percentages for project management. In letters dated June 13, 2007 and June 26, 2007, the State and City responded in support of the use of one PW to fund eligible project management costs based on the magnitude of the recovery. **A single PW for a Project Management Pilot Program was finally authorized** in a **September 5, 2007** notice from FEMA to the State, which was revised on August 17, 2009. The City was issued Project Worksheet # 17452 by FEMA for consolidated project management services.

At the same time the City and the State were lobbying FEMA to create a single PW for Project Management costs, the City was moving forward under the process already available and issued Requests For Proposals (RFPs) for select areas of services that would be needed to manage the recovery of critical City facilities and infrastructure, including construction management, architecture and design services, and public infrastructure project management. The goal of these services was to augment internal capabilities in order to expedite the recovery. The City evaluated the responses to this RFP while working to get FEMA to approve the single PW for Project Management. When the City received authorization from FEMA for a single PW for Project Management in September 2007, the City was able to utilize a comprehensive project management structure. A determination was made to cancel the separate RFPs and move toward a full service provider.

**In future efforts to evaluate the New Orleans recovery program, the OIG would be well-served by augmenting its examination teams with external subject-matter experts and resources that are familiar with federal, state and local processes and procedures involved in emergency, disaster and recovery management. It is apparent from the methods and approaches employed in this report that the OIG attempted to interpret raw data without adequate discussion with the City and without the project or program management expertise to conduct an informed assessment.**

Finally, the Association of Inspectors General "Principles and Standards For Offices of Inspector General" states that reports of inspections, evaluations, or reviews should, "...present the findings, conclusions and recommendations in a persuasive manner" ("seventh qualitative standard"). It also states that "sufficient, competent, and relevant evidence is to be obtained to afford a reasonable basis for inspection, evaluation, and review findings and conclusions" ("fourth qualitative standard"). Reports issued by the Office of Inspector General consistently lack substantiation or attribution for significant claims and statements and for that reason do not present, "...

## Internal Draft Response to OIG Report

in a persuasive manner.” The City strongly requests that future reports comprehensively substantiate and attribute report claims and statements using footnotes and attached and specifically referenced documents and witness statements.

Setting the above as a backdrop to all processes used and decisions made by the City in initiating this infrastructure project management services contract, the City provides the following specific responses to the findings contained in the OIG's Draft Report. A formal response from MWH is referenced throughout the City's responses to the findings, and is hereby attached to and made a part of the City's response. As an affected entity, we request that MWH's response be attached to the finalized OIG report as required by Chapter 2, Article XIII, §2-1120(9)(c) of the City Code.

### **FINDING 1. THE CITY SELECTED MWH THROUGH A FLAWED PROCUREMENT PROCESS THAT FAILED TO PRODUCE MEANINGFUL COMPETITION.**

***City's Response:*** The finding is wrong. The Inspector General applied a deficient understanding to render an incorrect analysis and finding.

The City has previously remarked the Inspector General's misunderstanding of basic professional services procurement theory and practice. The Inspector General has not improved his understanding, and the City will repeat.

By definition, professional services procurement practice applies subjective factors to reach subjective management decisions in the City's best interest. It cannot be otherwise. No more than an individual must engage a physician or attorney based on lowest price must the City select professional services providers based on objective criteria.

Furthermore, as clearly stated in City Requests for Proposals,

“This Request for Proposals and any related discussions or evaluations by anyone create no rights or obligations whatsoever. The City may cancel or modify this solicitation at any time at will, with or without notice. Anything to the contrary notwithstanding, the Professional Services contract executed by the City and the selected applicant, if any, is the exclusive statement of rights and obligations extending from this solicitation.”

The Inspector General's statements that, “A basic tenet of fair (professional services) competition is that ... all proposers must be treated equally,” and that professional

## Internal Draft Response to OIG Report

services proposers must "... compete on a level playing field" are completely wrong. Just as a private attorney has no right to represent a client, proposers in City professional services solicitations have no right to anything. Again, it cannot be otherwise in professional services solicitations inherently resolved on subjective factors by the responsible City executive exercising official judgment in the City's best interest.

Because it cannot be otherwise, the requirement in City Charter Section 6-308 (5) that the City award professional services contracts, "...on the basis of a competitive selection process ...established by executive order of the Mayor" takes a particular meaning. In the public interest, it means that the professional services solicitation process must permit the responsible executive to render knowledgeable decisions in the City's many and changing interests. The competition is internal to the City, and it is based on information relevant to the need. Because information is never complete, the issue in the end is whether the executive rendered an informed and responsible decision in the City's interest. The standard is not objective selection criteria. The standard is not whether another might decide differently. The standard is not the Inspector General's understanding. The standard is whether the executive responsible for the City administration reasonably obtained relevant information and reasonably applied it in the City's need.

Supplying extensive information about its experience, credentials, and plans, MWH submitted proposals in all three City's solicitations for Architectural Design Services, Construction Management Services, and Public Infrastructure Project Manager Services. The Inspector General does not say that MWH lacked the qualifications to perform the consolidated services. The Inspector General does not say that the Mayor could not have reasonably selected MWH to perform the consolidated services in the circumstances prevailing and with the information obtained. City selection panels received and reviewed proposals. They reported findings to the Mayor. He reviewed proposals and findings, consolidated them, and, in the City's urgent need and interest, reasonably selected MWH to perform the combined work. The Inspector General's understanding, analysis, and finding are wrong.

See attached MWH response (Attachment A).

**FINDING 2. MWH WAS NOT REQUIRED TO SUBMIT A COMPETITIVE COST PROPOSAL AND THE CITY HAD NO ASSURANCE THAT MWH'S FEES ARE COMPETITIVE.**

City's Response: In developing the scope of work for the MWH contract, the City sought the assistance of internal and external reviewers, which included experienced community leaders and industry experts, to properly vet the rates, scope of work, and

## Internal Draft Response to OIG Report

the contract as a whole. The City researched the rates for Project Management used by other parishes and local agencies (i.e. Jefferson Parish, the Superdome, etc.) The City thus negotiated rates with MWH that were consistent with the market, competitive, and ultimately reimbursable by FEMA.

See attached MWH response (Attachment A).

**FINDING 3. MWH HAS REFUSED TO PROVIDE EVIDENCE THAT IT IS HONORING ITS CONTRACTUAL OBLIGATION TO CHARGE THE CITY ITS "MOST FAVORED CUSTOMER RATES".**

*City's Response:* As stated above in the City's response to Finding 2, the rates negotiated in the MWH contract were competitive and consistent with the market. The City has not found any other public contracts held by MWH for which they provide comparable services, making "most favored customer rates" meaningless for this contract.

See attached MWH response (Attachment A).

**FINDING 4. THE CITY IMPROPERLY PAID MWH FOR NEGOTIATING THE CONTRACT.**

*City's Response:* The City did not pay MWH for negotiating its contract with the City, and MWH did not bill the City for negotiating its contract. This assertion by the OIG is incorrect, irresponsible, and without any basis in fact. The \$42,711.88 invoice referenced in the OIG's Draft Report represented fees for services that MWH provided to expedite the establishment of a project management structure.

According to the invoice, which was approved by the head of the Office of Recovery Management at the time, these services included MWH's development of a plan for the management structure between the City, MWH and FEMA, conducting preliminary assessments of the City's management infrastructure, developing plans for software and systems infrastructure, and reviewing FEMA project worksheets. The City determined that MWH incurred reasonable fees in connection with the aforementioned tasks requested by the City and the fees invoiced to the City represented time spent on those tasks, not for negotiating MWH's contract.

See attached MWH response (Attachment A).

## Internal Draft Response to OIG Report

### **FINDING 5. THE CONTRACT DID NOT REQUIRE MWH TO ASSIGN KEY PERSONNEL TO THE INFRASTRUCTURE PROJECT.**

***City's Response:*** The finding is wrong. Section 2.3 of the contract requires MWH to "prepare and update a staffing projection, to be reviewed with [the City] not less than monthly." The City reviews and revises MWH's personnel assignments on a monthly basis as part of its invoice review process. Further, the City and the originating departments supported by MWH under this contract have fully exercised the right of approval and request for key personnel replacement.

See attached MWH response (Attachment A).

### **FINDING 6. THE CONTRACT CALLS FOR MWH TO BE PAID ON A TIME AND MATERIALS BASIS, A FORM OF COMPENSATION THAT PRESENTS A HIGH RISK OF EXCESSIVE CHARGES.**

***City's Response:*** MWH bills the City for services provided based on a fee schedule, but the City has capped the total cost for the MWH contract at eight percent (8%) of the overall cost of the recovery program. This 8% cap is well below the threshold that FEMA established for project management costs, which is nine percent (9%) to twelve percent (12%) of project costs. Further, the City closely monitors MWH's charges and expenditures, and adjusts the payment structure to control the cost as needed. The City has not paid excessive charges for project management.

See attached MWH response (Attachment A).

### **FINDING 7. THE CONTRACT CALLS FOR MWH TO BE PAID FOR EXPENSES ON A COST-PLUS-PERCENTAGE-OF-COST BASIS, A FORM OF COMPENSATION THAT IS SPECIFICALLY PROHIBITED UNDER FEMA RULES.**

***City's Response:*** The OIG's Draft Report erroneously applies the "cost plus" label to a small part of the MWH contract and then characterized the entire contract as "cost plus". The OIG recognizes that labor, the largest component of the contract, is billed at an agreed upon hourly billing rate schedule, which is not done in cost plus contracts. The only component of the contract that allows MWH to add fees to their expenses relates to the reimbursement of their "other direct costs" (i.e. travel and mileage expenses). This is commonplace in the industry and is not prohibited by FEMA rules.

In response to this OIG Draft Report, the City requested MWH to provide a written clarification for any and all cost issues referred to in the 2006 Department of Homeland Security (DHS) report cited by OIG. MWH has provided us with the following

## Internal Draft Response to OIG Report

response: "The contract referenced in the OIG report was executed days after Katrina, and did not contain the same terms as MWH's current contract with the City. Because these contracts are so different, a comparison is not appropriate. However, it is worth clarifying further that FEMA has reimbursed the State and then the City for all costs associated with that 2005 drain cleaning contract".

See attached MWH response (Attachment A).

### **FINDING 8. THE NOT-TO-EXCEED CONTRACT COST WAS NOT BASED ON A REALISTIC BUDGET FOR THE INFRASTRUCTURE PROJECT.**

*City's Response:* The finding is wrong. Within a month after Hurricane Katrina, the City began damage assessments and came up with an estimate of \$400 million for facilities alone. The estimate for damage to streets is \$450 million to \$500 million. FEMA has acknowledged that the budget for these projects would evolve as damage estimates were refined and the actual cost of repair was incurred, which is also acknowledged by the OIG in draft report. Based on the subsequent Comprehensive Damage Reports (CDRs) completed for many of the City's facilities, the cost estimates have increased substantially and have been affirmed by FEMA through increased versions to PWs. As more projects move into construction, the City anticipates that the overall cost estimates will continue to increase.

As stated above in the City's response to Finding 6, the 8% not-to-exceed cap that the City placed on project management costs in the MWH contract is well below the mean national averages for project management costs recognized by FEMA (See Attachment B). It is important to note that MWH is below the 8% cap, and thus the cap is an effective cost control measure.

See attached MWH response (Attachment A).

## Internal Draft Response to OIG Report

### **FINDING 9. MWH'S BILLINGS FOR CAPITAL PROJECTS PROVIDE NO BASIS FOR ALLOCATING COSTS TO SPECIFIC PROJECTS OR FOR KEEPING MWH'S FEES IN LINE WITH OVERALL PROJECT COSTS.**

*City's Response:* On August 17, 2009, FEMA provided standard operating procedures for the Single PW for Project Management Pilot Program to all 23 sub-grantees that were recipients of the pilot program (Attachment D), even though the project had been approved on September 5, 2007. Prior to the promulgation of these standard operating procedures in August 2009, FEMA did not require project management costs to be billed to specific projects under the single PW for Project Management Pilot Program. Rather, costs were billed to the PW and FEMA has approved reimbursement of those costs. But in July 2009, even before receiving the procedures from FEMA, the City began requiring MWH to bill their project management time against specific projects as a further cost control measure.

The invoices submitted to the City by MWH are consistent with the terms of the contract. Project management costs and fees are routinely reviewed and invoices are accompanied by supporting backup documentation. This process provides mechanisms for both parties to assure that all activities and billings are done in accordance with the contract. MWH has worked with the City to ensure program management documentation complies with applicable regulations and maximize FEMA reimbursements to the City.

See attached MWH Response (Attachment A).

### **FINDING 10. THE CITY ALLOWED MWH'S FEES TO MOUNT FASTER THAN THE RATE OF PROGRESS ON CAPITAL PROJECTS**

*City's Response:* This finding further demonstrates the OIG's lack of understanding about project management practices. The City has aligned its approach to infrastructure project management with industry standards, specifically with the distribution of project management costs through the life cycle of projects. Project management work is front loaded, meaning the majority of project management activities occur in the early life cycle of infrastructure projects, such as planning, designing, and the bid and award phases. During the construction phase, project management responsibilities are reduced, and thus project management fees are less. Similarly, MWH's level of effort has been higher to get the recovery program moving and get hundreds of projects into design. When these projects move to construction, their level of effort will be reduced, as will their costs.

## Internal Draft Response to OIG Report

See attached MWH response (Attachment A).

### **FINDING 11. THE STATE REVOLVING FUND HAS BEEN DEPLETED TO EXPEDITE PAYMENTS TO MWH WITHOUT REGARD TO WHETHER EXPENDITURES WILL BE REIMBURSED.**

*City's Response:* This statement by the OIG is inaccurate. The OIG's Draft Report includes no evidence upon which to conclude that the State Revolving Fund (the "Fund") has been depleted. The OIG has not provided the City with any basis for this statement. Contrary to the OIG's Draft Report, the Fund is not depleted. As of February 28, 2010, shortly before the Draft Report was issued, the Fund had approximately \$107 million in cash available (See Attachment C). As of April 14, 2010, the Fund had \$102.8 million in cash available.

While the OIG may object to the City utilizing the State Revolving Fund to pay contractors, this is a specific intent of the Fund defined in the Cooperative Endeavor Agreement (CEA) entered into by the State of Louisiana and the City. The CEA explicitly allows payments for project management and other recovery-related professional services costs from the fund. The City used the fund to pay MWH based on specific contract authority and detailed analysis in accordance with the State of Louisiana CEA. In addition, the State validates and authorizes payment of the invoices.

See attached MWH response (Attachment A).

### **FINDING 12. THE CITY PAID MWH \$1,309,572 FOR UNSPECIFIED EXPENSES DURING THE FIRST 18 MONTHS OF THE CONTRACT.**

*City's Response:* The finding is wrong. Please see the comprehensive response from MWH refuting the OIG's claims attached (Attachment A). The City has reviewed the invoices in questions and has not paid for unspecified expenses.

See attached MWH response (Attachment A).

### **FINDING 13. MWH EMPLOYEES SOUGHT REIMBURSEMENT FOR GIFTS TO CITY EMPLOYEES AND ELECTED OFFICIALS.**

*City's Response:* The City respects ethics laws and rules regarding acceptance of gifts. The OIG's Draft Report makes broad and unsubstantiated suggestions about potential violations of ethics laws. Finally, MWH was not reimbursed for any gifts or meals as insinuated in the OIG's Draft Report.

## Internal Draft Response to OIG Report

See attached MWH response (Attachment A).

### **FINDING 14. THE CITY USED THE MWH CONTRACT AS A VEHICLE FOR PROCURING OTHER PROFESSIONAL SERVICES WITHOUT COMPETITION.**

*City's Response:* The finding is wrong. Procurement requirements apply to City contracts, not to those of its vendors. Integrated Disaster Solutions and Wink Design Group engaged as subcontractors to MWH, not as City contractors. As stated in its attached response (Attachment A), MWH reviewed and separately approved the City's requests that it subcontract the two firms. As with all prime contractors, MWH was responsible to manage its subcontractors.

See attached MWH response (Attachment A).

## ATTACHMENT B

U.S. Department of Homeland Security  
Federal Emergency Management Agency  
Louisiana Transitional Recovery Office  
One Seine Court  
New Orleans, Louisiana 70114  
(504) 762-2018 office  
(504) 762-2899 fax



# FEMA

May 1, 2007

Colonel Thomas Kirkpatrick  
State Coordinating Officer  
State of Louisiana  
415 North 15<sup>th</sup> Street  
Baton Rouge, LA 70802

RE: Project Management Funds  
City of New Orleans, Orleans Parish  
FEMA-1603-DR-LA

Dear Colonel Kirkpatrick:

This is in response to your letter dated January 23, 2007, requesting project management funds for the severely impacted Parishes. As you know, our Public Assistance (PA) section has been working closely with your staff and severely impacted subgrantees to develop an operational methodology for providing support on a project-by-project basis. As a result, FEMA is ready to implement an initiative to provide the City of New Orleans (CNO) with additional consideration of their specific project management needs.

To clarify, FEMA public assistance recognizes project management as the oversight of an eligible project from the design phase (when necessary) to the completion of the work. These activities include direct management of projects in the concept and design stages, the procurement activities for architectural/engineering services and performance of work, and the review and approval of the project design (Response and Recovery Directorate 9525.6). These activities must not be confused with tasks that are addressed by the subgrantee's sliding scale administrative allowance, or any other part of the scope of work not recognized as project management.

There are a number of acceptable ways to arrive at an estimate for project management costs. FEMA encourages the use of appropriate local data as a primary source for estimating. Any time local data is used, FEMA has a responsibility to verify the information prior to implementing the data. The CNO provided historical data on the cost of providing project management support through the Capital Projects Administration (CPA) for a three year period prior to Hurricane Katrina. During this time, the CNO paid an average of 11% for project management (in addition to A&E fees) for projects between \$500,000 and \$1 million. This data has been verified for reasonableness, and has been approved for use.

Colonel Kirkpatrick  
May 1, 2007  
Page 2 of 2

Extrapolating this rate using the R.S. Means national averages to account for economies of scale and project size, suggests that an appropriate range for estimating project management costs for the CPA is:

Project Size	%
under \$500,000	12
\$500,000 to \$1,000,000	11
\$1,000,000 to \$5,000,000	10
Greater than \$5,000,000	9

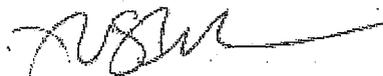
Project management costs will be applied on a project-by-project basis, when it is determined that these tasks are necessary to complete the eligible scope of work. This approach applies to both small and large projects, and is consistent with the previously mentioned R&R directorate policy 9525.6, and guidance on Master Service Agreements (MSA).

This methodology to arrive at a more accurate estimate for project management costs only addresses the CNO, as it is based on their historical data. Other subgrantees that were severely impacted by Hurricanes Katrina and Rita may also be considered for a customized estimate for project management. When available, the methodology should be based on documented project management costs that the subgrantee incurred in the past. For those subgrantees where historical project management data is not available, FEMA will work with your staff and the subgrantee to develop a reasonable methodology to estimate their anticipated costs.

This approach should provide adequate support for the eligibility of project management on a project-by-project basis and set expectations with the State and the CNO as to the type of work and documentation necessary to perform the eligible repairs. We estimate that this approach will increase existing funding for project management by approximately \$10 million. I have instructed the PA Section to proceed with implementation of this initiative for the CNO.

Please do not hesitate to contact me if you need any additional information.

Sincerely,



James Stark  
Director

Louisiana Transitional Recovery Office

cc: Dr. Edward J. Blakely, Executive Director, City of New Orleans  
Gil Jamieson, Associate Deputy Administrator, GCRO



**REVOLVER FUND BALANCES**

To: Harrison Boyd, Director of PDU  
From: Anthony Trasatti, Project Manager  
Date: 6 April 2010

Dear Mr. Boyd,

Below is a status of the Revolver accounts as of and for the month ending 28 February 2010 and as confirmed by Hancock Bank Statements:

**The Revolving Account:**

This Monthly Period (February 2010)

Beginning market value: \$27,862,821.90  
Dividends and interest: \$230.70  
Other Receipts: \$186,107.34  
Disbursements: \$230.70-  
Ending market value: \$28,048,929.24

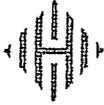
**The Construction Account:**

This Monthly Period (February 2010)

Beginning market value: \$83,703,184.02  
Dividends and interest: \$743.05  
Other receipts: \$743.05-  
Disbursements: \$3,906,903.39-  
Ending market value: \$79,797,766.73

**The combined ending market value of the two accounts equals \$107,846,695.97**

*Attachment C*



## PROJECT MANAGEMENT FEES THROUGH 2009

To: Harrison Boyd, Director of PDU

From: Anthony Trasatti, Project Manager 

Date: 6 April 2010

Dear Mr. Boyd,

Over the last several months the PDU has undertaken several steps to look at MWH project management fees and the allocation of costs among projects. More recently, the PDU has also undertaken steps to develop an allocation model to distribute project management fees to the various funding sources at the project level based on the dollar value that each funding source contributes to the recovery project.

Per your request of determining whether MWH has exceeded 8% of the design and construction costs for recovery projects through year end of December 2009, as of December 2009, the allocation model suggests that MWH project management fees billed to date do not exceed 8% of the estimated design and construction costs. The allocation model is an iterative and dynamic model that requires the following decisions in order to properly calculate the baseline for determining whether MWH has exceeded their limit;

- Conclusive list of those projects that are being managed by MWH under their contractual obligation;
- Conclusive list of those projects that are being managed by CPA and whether MWH project management fees are allowable;
- Conclusive list of those projects that were transferred between CPA and MWH and the agreed lifecycles for those projects managed by MWH;
- Conclusive list of the alternate projects or projects that should be "zeroed-out";
- Conclusive schedule of the project lifecycles and the agreed "progress percentage" allowable for each phase of the lifecycle;
- Line item review of each project to agree on the estimated design and construction cost;

Please understand that each of the items above will be incorporated into the allocation model as those decisions are made. It is our preference that those decisions become "institutionalized" and part of MWH's database which is a source for many of the data fields within the allocation model.

# ATTACHMENT D

## Single PW for Project Pilot Program - Standard Operating Procedure FEMA Public Assistance Program DR-1603/DR-1607

### 1. Introduction

A Single PW for Project Management Pilot Program was authorized by the September 5, 2007 letter from Jim Stark, Director, Transitional Recovery Office to Col. Kirkpatrick, GOHSEP. With the concurrence and commitment of all parties, the Pilot Program initiative will deliver additional project management consideration to the initial 23 pre-identified Sub-grantees.

*The intent is to provide additional consideration of Project Management funding for severely-impacted Sub-grantees using a single, or limited number of aggregated, single-PWs grouped logically at the Sub-grantee's request.*

### What is Project Management?

Project Management (PM) is the scope of non-construction activities necessary to move a specific project forward, including:

- Management of Design – scoping, bidding, awarding, scheduling, monitoring, reviewing the design of repairs
- Management of Construction – scoping, bidding, awarding, scheduling, monitoring, processing payments, reviewing, testing, and acceptance of the construction work

Project Management is particularly relevant for severely impacted Sub-grantees with multiple, complex and inter-related projects that are unable to move forward effectively due to the lack of sufficient qualified staff to assist them in completing their recovery efforts. PM is similar to architectural and engineering (A&E) design as they are both professional services that can be eligible if the work is reasonable and necessary to perform the eligible scope of repair.

Heavily impacted applicants with a diverse set of recovery projects necessarily have different needs than those applicants with only minimal or minor damage. These severely impacted applicants may under normal circumstances have little or no expertise, and minimal resources available for work typically associated with disaster recovery. It is the intent of this SOP to recognize that there is some reasonable level of effort associated with management of an applicant's

### The Eligibility of PM and PM contracts

Guidance for determining eligibility of PM, in Public provided in FEMA Policy 9525.6, *Project Supervision grantees*. Eligible project management activities a grantee would have performed in the absence of Fed

There are a number of potential issues for Sub-grant PM services. These include contract tasks that are t

Attachment D

P. 9

## **Single PW for Project Pilot Program - Standard Operating Procedure FEMA Public Assistance Program**

DR-1603/DR-1607

eligibility, a lack of necessary oversight or cost tracking, and challenges with suitable documentation linking work performed with eligible projects. This Standard Operating Procedure (SOP) outlines roles and responsibilities for the Sub-grantee, State and FEMA to minimize the risk associated with these issues.

### **Establishing PM Costs**

For the Katrina and Rita recovery, most large, permanent work projects were estimated using the Cost Estimating Format (CEF) - particularly those for severely-impacted Sub-grantees. Funding for project management, within the CEF, is based on industry standards or averages.

The preferred approach for establishing PM costs is for the Sub-grantee (with the assistance of the State and FEMA) to develop a reasonable scope of work and timeline. Based on that scope and schedule, the appropriate level of effort can then be determined. Once the reasonable effort has been determined, the cost of that effort can then be determined. Project Management costs can also include the cost of field offices and office supplies necessary to support the above effort.

The goal is to provide a reasonable level of funding, based on a reasonable level of effort and cost.

This SOP outlines the process for documenting the increase in funding above typical industry standards and the tasks associated with PM in the recovery effort.

### **Reporting Requirement**

This Pilot Program is an exception to the normal practice of including PM on each appropriate permanent work PW. Because this single-PW approach is a Pilot Program initiative, FEMA expects the State to provide a quarterly status report for the 23 Sub-grantees. These summaries will allow FEMA and the State to perform periodic checks for each Sub-grantee and add a quality assurance component to the process. FEMA reserves the right to terminate the Pilot Program initiative and return to the standard PA process for PM.

## **2. Projects Eligible for PM Consideration**

The Pilot Program is designed to deliver appropriate funding consideration of Project Management for Sub-grantees and their projects that require PM to perform the underlying, eligible scope of repair work (typically construction PWs). The Pilot Program does not change the basic eligibility and application of PM in the PA Program.

- The Pilot Program will primarily focus on large, permanent work construction projects
- Emergency work may be considered – this is only applicable to large, emergency work projects involving construction of facilities;

## **Single PW for Project Pilot Program - Standard Operating Procedure FEMA Public Assistance Program**

DR-1603/DR-1607

- Small projects typically will not be included unless they are incomplete, require the same PM tasks to be performed and/or logically fit into the Sub-grantee grouping, for example where a small project PW is logically associated with other PW's at 1 site.
- Completed projects should not be considered

### **3. Importance of getting information from State and Sub-grantee**

Sub-grantees should initiate the request for additional PM consideration with the State and be prepared to document both the tasks to be performed and the reasonable costs to perform the tasks.

The State should review the Sub-grantee request and forward their recommendation to the FEMA Project Management Team and Public Assistance Coordinator (PAC). The State recommendation should be properly documented and include a copy of the Sub-grantee-provided information. The FEMA PAC, Operations Lead and Project Management Team will review the State recommendation and respond in writing.

The FEMA review will result either in a request for more information or approval / denial of the recommendation. It is important that FEMA, the State and the Sub-grantee work openly and collaboratively at this stage to understand the boundaries of PM and set appropriate expectations for eligibility of tasks and reasonableness of costs.

### **4. Documenting eligible tasks to be performed**

It is very important that the Sub-grantee understands the scope of PM activities eligible under the PA program. Most activities undertaken by a Sub-grantee that are recovery-related can be categorized as either:

- Not eligible under PA, or
- Eligible and covered by the Administrative Allowance, or
- Eligible and part of project management (required to design or construct the facility.)

The State and FEMA need to understand how the Sub-grantee is going to perform PA-eligible PM activities and how they will be documented. Therefore, as part of their original request, the Sub-grantee will:

- Document eligible PM activities by task to be undertaken, and
- Document whether the tasks will be performed with existing in-house resources, new in-house staff or with contract staff.

## **Single PW for Project Pilot Program - Standard Operating Procedure FEMA Public Assistance Program**

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### **5. Writing the Single-PW for PM**

When FEMA provides written approval of the State's recommendation for PM support to a particular Sub-grantee, a single-PW for PM can be written. Each PW will be different given the needs and circumstances of the Sub-grantee; however, there are certain common elements that must be captured in the PW, including:

- A copy of the September 5, 2007 Stark letter authorizing a single-PW for PM pilot program,
- The Sub-grantee's request,
- The Sub-grantee's list of approved PM tasks,
- The Sub-grantee's documentation of reasonable costs,
- A list of the underlying permanent work projects themselves and the associated PW number,
- A summary of the project, original amount included in the PWs for PM and the new individual PM contribution of that project to the overall PW cost estimate,
- The State's recommendation regarding the Sub-grantee request, and
- A copy of any bid packets, contract or other documentation let for the PM work.

To the greatest extent practical FEMA will attempt to incorporate the sub-grantee's list of eligible PM tasks into the PW scope of work in order to facilitate grants management and sub-grantee reimbursement.

### **6. De-obligating duplicated PM from the underlying construction PWs**

At the same time the single-PW is written, PW versions will be written for all current, associated projects de-obligating any PM funding. The versions should reference the single-PW for PM. The de-obligating PWs will be entered into NEMIS at approximately the same time that the single-PW for PM is obligated.

### **7. Handling Special Considerations**

In many cases, the writing of a single-PW for PM will result in a large number of PW versions de-obligating PM from existing PWs. QA/QC should be notified that these PWs are being written and are related to a change in PM funding for that Sub-grantee. This will facilitate efficient reviews and assist with timing the obligation / de-obligation process.

### **8. Handling Improved and Alternate Project Status**

The single-PW approach can include projects that have different project status, including improved Projects. The associated PM activities will be subject to the same limitations (including capping) as the underlying work as appropriate. The PW will require that all costs associated with non-eligible work be tracked and accounted for separately. This is particularly relevant for Improved Projects where there is additional

## **Single PW for Project Pilot Program - Standard Operating Procedure FEMA Public Assistance Program**

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non-PA eligible work. The Sub-grantee is responsible for the PM costs associated with the ineligible work.

PM cost associated with Alternate Projects will be included with the Alternate Project and are not to be included in the rollup PW created under this program.

### **9. Reviewing Contracts**

The State will work with Sub-grantees to review contract terms and conditions to ensure that both the scope and cost are eligible and reasonable. Project management contracts, whether MSAs or more traditional agreements, must:

- Comply with the procurement requirements of Title 44 of the Code of Federal Regulations (44 CFR), Part 13.36. As a reminder, contracts that are contingent on the Sub-grantee's receipt of FEMA funding or are based on the contractor's cost plus a percentage of cost or are a percentage of construction shall not be used.
- Be reviewed to ensure no duplication in scope with the Sub-grantee's staff duties or other contract work, and
- Provide for documentation of the work that is traceable back to specific, eligible projects.

### **10. Costs and Versioning PM PWs**

PM PWs will be versioned on a case by case basis, justified by changes in the scope of work.

### **11. Roles and Responsibilities**

#### **Sub-grantee**

The Sub-grantee is responsible for submitting a request to the State for consideration of project management on a single-PW. The Sub-grantee and State must determine the eligible project management tasks and a methodology for estimating reasonable project management costs.

During operations, the Sub-grantee is responsible for managing the project management contractor, accounting for costs on a project-by-project basis and maintaining documentation. The Sub-grantee will submit periodic, single invoices to the State for PM activities and include backup. The Sub-grantee's documentation must include the billing of each project management contractor or force account payroll records, and this documentation must correlate to the actual construction projects (underlying PW's). At closeout, the Sub-grantee must provide project specific source documentation and a summary of expenditures.

## **Single PW for Project Pilot Program - Standard Operating Procedure FEMA Public Assistance Program**

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**Note:** Some Sub-grantees have entered into project management agreements, but have not tracked their time down to a specific project or PW. For these Sub-grantees FEMA will write PM PW versions to prorate or allocate the costs to date using the underlying PWs as a proportional basis; however, the work going forward will be tracked on a PW basis.

The proration will need to be evaluated for reasonableness. This is intended to mean that the costs to date should be in line with the cost of the level of effort expended on the underlying projects, for eligible scope. Ideally, an analysis showing the scope, effort and cost of the effort on the work performed to date would result in a similar amount to the cost to date and would therefore justify the cost to date. Regardless, costs going forward must be tracked on a PW basis.

### **State**

The State will work with the Sub-grantee to develop an internal analysis of the numbers of PWs, project dollars and the requests to FEMA for a single-PW for PM. The State will submit the request to FEMA. The State is responsible for reviewing the Sub-grantees procurement practices and contract with each project management contractor prior to the start of work and ensuring the Sub-grantee is aware of eligible PM tasks. Further, the State is responsible for explaining the documentation requirements to each Sub-grantee.

During operations, the State will monitor construction progress, reporting and documentation to ensure it is consistent with the provisions of a single project management PW process. The State will review, provide details, and notify FEMA of any event that may trigger the need to version the single-PW. This should include any changes in project status, significant versions to any related construction PWs that may require additional PM funding, and any Special Considerations information already made available to the State. At closeout, the State will participate in the review of all Sub-grantee documentation based upon project specific accounting.

### **FEMA**

FEMA will review and approve each request and analysis from the State for a single-PW for PM. As Sub-grantees are approved, FEMA will obligate a single-PW for PM costs and de-obligate PM costs included in any associated construction PWs. The single-PW will be written to include a listing of eligible project management tasks and the underlying construction PWs. FEMA will participate in the closeout efforts.

## **12. Sample Language**

The following items are examples of Typical Project Management Tasks

Note – this list should be furnished in writing by the Sub-grantee and represent only those activities that they *would* have performed in the absence of Federal funding. This

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## Single PW for Project Pilot Program - Standard Operating Procedure FEMA Public Assistance Program

DR-1603/DR-1607

list is not exhaustive and does not imply these are the only tasks that can be eligible for a project; nor do they imply that these tasks are reasonable or necessary for a particular project.

- Procurement activities for A/E services
- Procurement activities for construction contract
- Work with department's "User agency" and A/E contractor to develop the scope of work
- Establish the design scope and review document development
- Management/oversight of any required owner-furnished testing & inspection services
- Meet A/E consultants at various phases during document preparation
- Evaluate scope changes or additions proposed by the A/E consultants
- Evaluate construction cost estimates
- Review preliminary and final plans and specifications to ensure they:
  - Comply with Design Standards,
  - Comply with applicable Codes and Standards, and
  - Comply with any and all permitting restrictions/requirements (federal, state, or local entities with jurisdiction for the facility, etc.).
- Coordinate/manage design and construction schedules
- Provide safety & permits information for Building Permit
- Coordinate with Sub-grantee's financial department to ensure adequate project funding
- Recommend final documents for bid advertisement
- Review all addenda
- Attend pre-bid meetings
- Attend bid openings and review A/E bid tabulations
- Recommend award of construction contract to governing authority or recommend rejection of bids
- Attend pre-construction meetings
- Review all A/E and contractor payment applications for acceptability
- Maintain schedules on the deadlines of document submittals and completion of construction schedule
- Review the Schedule of Values and Proposed Construction Schedules
- Make routine site visits to evaluate progress, performance and compliance
- Attend progress meetings
- Prepare and maintain detailed project files
- Provide ongoing monitoring/reporting to Sub-grantee Administrator
- Evaluate Change Order proposals, (scope of work and costs) for changes or additions during construction phase
- Participate in the Substantial Completion Inspection and reviewing/approving A/E punch list of unfinished work.
- Recommend Substantial Completion Certificate
- Process Substantial Completion Certificates thru any lien period

**Single PW for Project Pilot Program - Standard Operating Procedure  
FEMA Public Assistance Program**

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- Review all completed work with the A/E and reviewing A/E recommendation for Final Acceptance.
- Review contractor's final Pay Application, clear Lien and Privilege Certificate and Consent of Surety.

**Program Level Tasks:** The scope of work may also contain tasks that apply to more than one PW, or where the work done under one PW can be used on other PWs with little or no change. These tasks can be prorated between underlying projects; however, this should be approved in advance and tracked separately.

**13. Approved Sub-grantees for PM Pilot Program**

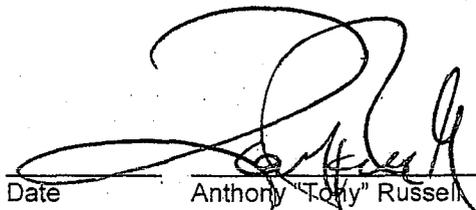
Currently the following 23 Sub-grantees are approved for consideration in the Pilot Program:

1. City of New Orleans Capital Projects Administration (CNO)
2. Sewer & Water Board of New Orleans (SWBNO)
3. Jefferson Parish
4. St. Bernard Parish
5. Facilities Planning & Control (FP&C)
6. Orleans Parish School Board (OPSB)
7. Cameron Parish Police Jury
8. Cameron Parish School Board
9. Recovery School District (RSD)
10. Plaquemines Parish
11. St Bernard Parish School Board
12. Archdiocese of New Orleans
13. Delgado Community College
14. Plaquemines Parish School Board
15. St Tammany Parish School Board
16. Tulane
17. Vermillion Parish School Board
18. Orleans Levee District
19. Jefferson Parish Public School System
20. Orleans Parish Criminal Sheriffs Dept.
21. Holy Cross
22. LSU Health Science Center – New Orleans
23. LSU HSCD Medical Center

**APPROVED:**

  
8/17/09

Mark DeBosier  
Assistant Deputy Director  
GOHSEP

  
Date

Anthony "Tony" Russell  
Acting Director, TRO  
FEMA

8/17/2009  
Date

## APPENDIX B: OIG CONSIDERATION OF OFFICIAL RESPONSE FROM CITY OF NEW ORLEANS

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A draft internal review copy of the OIG's Review of City of New Orleans Professional Services Contract With MWH Americas, Inc. for Project Infrastructure Project Management (the "Draft Report") was provided to City officials on March 4, 2010. In the transmittal letter, the OIG offered the City an opportunity to schedule an exit conference to discuss the Draft Report's findings with OIG staff. City officials chose not to meet with the OIG staff prior to responding to the Draft Report.

On April 15, 2010, in accordance with City Code section 2-1120(9)(c), the City submitted to the OIG a written response to the findings of the Draft Report. The City's response is attached to the final report as Appendix A.

The findings in this report relate to the City's procurement and management of a major contract for professional services and the OIG's recommendations are directed at City officials responsible for carrying out these functions. Although City officials are responsible for evaluating and responding to these findings and recommendations, the City relied heavily on its contractor, MWH Americas, Inc. (MWH), in responding to the report. The City included an extensive response prepared by MWH as "Attachment A" to the City's response. We have not attached MWH's response to the final report because MWH is not an entity of City government and is not responsible for the City's procurement and contract oversight practices.

The OIG considered the City's response and made changes to its final report where appropriate. The OIG now replies to the City's response regarding each of the 14 findings.

**FINDING 1. THE CITY SELECTED MWH THROUGH A FLAWED PROCUREMENT PROCESS THAT FAILED TO PRODUCE MEANINGFUL COMPETITION.**

**CITY RESPONSE TO FINDING 1:**

*The finding is wrong. The Inspector General applied a deficient understanding to render an incorrect analysis and finding.*

*The City has previously remarked the Inspector General's misunderstanding of basic professional services procurement theory and practice. The Inspector General has not improved his understanding, and the City will repeat.*

*By definition, professional services procurement practice applies subjective factors to reach subjective management decisions in the City's best interest. It cannot be otherwise. No more than an individual must engage a physician or attorney based on lowest price must the City select professional services providers based on objective criteria.*

Furthermore, as clearly stated in City Requests for Proposals,

*"This Request for Proposals and any related discussions or evaluations by anyone create no rights or obligations whatsoever. The City may cancel or modify this solicitation at any time at will, with or without notice. Anything to the contrary notwithstanding, the Professional Services contract executed by the City and the selected applicant, if any, is the exclusive statement of rights and obligations extending from this solicitation."*

*The Inspector General's statements that, "A basic tenet of fair (professional services) competition is that ... all proposers must be treated equally," and that professional services proposers must "... compete on a level playing field" are completely wrong. Just as a private attorney has no right to represent a client, proposers in City professional services solicitations have no right to anything. Again, it cannot be otherwise in professional services solicitations inherently resolved on subjective factors by the responsible City executive exercising official judgment in the City's best interest.*

*Because it cannot be otherwise, the requirement in City Charter Section 6-308 (5) that the City award professional services contracts, " ... on the basis of a competitive selection process ... established by executive order of the Mayor" takes a particular meaning. In the public interest, it means that the professional services solicitation process must permit the responsible executive to render knowledgeable decisions in the City's many and changing interests. The competition is internal to the City, and it is based on information relevant to the need. Because information is never complete, the issue in the end is whether the executive rendered an informed and responsible decision in the City's interest. The standard is not objective selection criteria. The standard is not whether another might decide differently. The standard is not the Inspector General's understanding. The standard is whether the executive responsible for the City administration reasonably obtained relevant information and reasonably applied it in the City's need.*

*Supplying extensive information about its experience, credentials, and plans, MWH submitted proposals in all three City's solicitations for Architectural Design Services, Construction Management Services, and Public Infrastructure Project Manager Services. The Inspector General does not say that MWH lacked the qualifications to perform the consolidated services. The Inspector General does not say that the Mayor could not have reasonably selected MWH to perform the consolidated services in the circumstances prevailing and with the information obtained. City selection panels received and reviewed proposals. They reported findings to the Mayor. He reviewed proposals and findings, consolidated them, and, in the City's urgent need and interest, reasonably selected MWH to perform the combined work. The Inspector General's understanding, analysis, and finding are wrong.*

**OIG COMMENT:**

The OIG stands by Finding 1 of its report.

The City's response does not dispute the factual basis for the finding. Instead, the City argues that the Charter does not require fair and open competition for professional services contracts. The City contends that the requirement for a competitive selection process is met by a competition that is "internal to the City" and based on subjective factors.

The citizens of New Orleans passed a Charter amendment in 1995 requiring that professional service contracts be awarded on the basis of a competitive selection process. According to the Louisiana Supreme Court, the driving force behind civic support for the Charter amendment creating a competitive selection process for the award of professional service contracts was a desire to "minimize or restrict political patronage in the awarding of consultant contracts."<sup>1</sup> The intent in requiring a competitive selection process is to limit the discretion of the Mayor to award contracts based on purely subjective factors known only to the Mayor. There can be no genuine competition without clear, fair rules that are consistently applied to all competitors. The argument that the City has no duty to treat businesses who seek public contracts fairly reflects attitudes of a by-gone era and ignores modern procurement principles, such as those embodied by the American Bar Association's Model Procurement Code for State and Local Government. The Model Procurement Code incorporates the following objectives for a sound procurement process: (1) to ensure the fair and equitable treatment of all persons who deal with the procurement system, and (2) to foster effective broad-based competition within the free enterprise system.

The City runs the risk that reputable businesses will simply choose not to seek City contracts if they do not have confidence in the fairness and integrity of the selection process, and the City will be deprived the benefits of robust, market-driven competition.

**FINDING 2. MWH WAS NOT REQUIRED TO SUBMIT A COMPETITIVE COST PROPOSAL AND THE CITY HAD NO ASSURANCE THAT MWH'S FEES ARE COMPETITIVE.**

**CITY RESPONSE TO FINDING 2:**

*In developing the scope of work for the MWH contract, the City sought the assistance of internal and external reviewers, which included experienced community leaders and industry experts, to properly vet the rates, scope of work, and the contract as a whole. The City researched the rates for Project Management used by other parishes and local agencies (i.e. Jefferson Parish, the Superdome, etc.) The City thus negotiated rates with MWH that were consistent with the market, competitive, and ultimately reimbursable by FEMA.*

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<sup>1</sup> *Alliance for Affordable Energy v. Council of the City of New Orleans*, 96-0700 (La. 7/2/96), 677 So.2d 424.

**OIG COMMENT:**

The OIG stands by Finding 2 of its report.

The City's response acknowledges that the City did not require MWH to submit a competitive price proposal, but contends that the City's market research ensured that rates negotiated with MWH were competitive. As evidence, the City references a table, created by MWH, of rates currently charged by other firms for project management services provided to the New Orleans Sewerage & Water Board, the Orleans Parish Criminal Sheriff, and one Louisiana jurisdiction (Cameron Parish) not directly related to the City. The table, attached to this report as Appendix C, shows rate schedules that are not only remarkably similar but, with the exception of Cameron Parish, identical. The striking similarity of these rates is not an indication of a healthy, competitive market but rather suggests potential collusion among firms. The risk of collusive practices is sharply increased when rates are established through private negotiations rather than through genuine competition.

At the time the Draft Report was completed, the City was unable to locate 12 out of the 24 proposals submitted in response to the three RFPs. The OIG was unable to compare all price proposals received for the project management contract in its Draft Report. After receiving the Draft Report, the City provided 10 of the previously missing proposals, including proposals received from two firms the City rated highly in its evaluations: Richard C. Lambert Consultants, LLC, and Shaw Environmental & Infrastructure, Inc. The rate schedules submitted by these firms, as well as the rate schedules submitted by two other highly rated proposers (Burk-Kleinpeter, Inc. and Regional Management Group) discussed in the text of the report are attached as Appendix D. These schedules show a range of rates submitted by four qualified competitors for the MWH contract that are, for the most part, substantially lower than the rates the City negotiated with MWH. To ensure that the City received the benefit of truly competitive rates, the City should have required MWH to compete with rates offered by other qualified firms seeking this contract.

**FINDING 3. MWH HAS REFUSED TO PROVIDE EVIDENCE THAT IT IS HONORING ITS CONTRACTUAL OBLIGATION TO CHARGE THE CITY ITS "MOST FAVORED CUSTOMER RATES."**

**CITY RESPONSE TO FINDING 3:**

*As stated above in the City's response to Finding 2, the rates negotiated in the MWH contract were competitive and consistent with the market. The City has not found any other public contracts held by MWH for which they provide comparable services, making "most favored customer rates" meaningless for this contract.*

**OIG COMMENT:**

The OIG stands by Finding 3 of its report. The City's response does not dispute the factual basis of the finding.

**FINDING 4. THE CITY IMPROPERLY PAID MWH FOR NEGOTIATING THE CONTRACT.**

**CITY RESPONSE TO FINDING 4:**

*The City did not pay MWH for negotiating its contract with the City, and MWH did not bill the City for negotiating its contract. This assertion by the OIG is incorrect, irresponsible, and without any basis in fact. The \$42,711.88 invoice referenced in the OIG's Draft Report represented fees for services that MWH provided to expedite the establishment of a project management structure.*

*According to the invoice, which was approved by the head of the Office of Recovery Management at the time, these services included MWH's development of a plan for the management structure between the City, MWH and FEMA, conducting preliminary assessments of the City's management infrastructure, developing plans for software and systems infrastructure, and reviewing FEMA project worksheets. The City determined that MWH incurred reasonable fees in connection with the aforementioned tasks requested by the City and the fees invoiced to the City represented time spent on those tasks, not for negotiating MWH's contract.*

**OIG COMMENT:**

After reviewing the City's response, the OIG has modified Finding 4 of its report to state that the City improperly paid MWH for pre-contract services rather than for "negotiation" of the contract.

We have reviewed MWH's invoice and timesheets for the relevant period and do not agree with the City's statement that the invoice provides a description of the services MWH provided to the City. The MWH invoice and timesheets, which describe the services only as "PRE-CONTRACT," are attached to this report as Appendix E. The MWH timesheets, together with the record of email communications between MWH and the City, indicate that the billings during the pre-contract period were for time spent negotiating the terms of the contract, including the roles of various members of the project management team and the scope of work incorporated in the final contract document. The two MWH executives whose timesheets account for most of the hours billed were the individuals responsible for conducting negotiations on MWH's behalf. Their emails suggest that these negotiations were their primary activity during that time. Because of the lack of specificity in MWH's billings, however, we are not able to eliminate the possibility that MWH performed other services during this time period. We have therefore modified this finding.

**FINDING 5. THE CONTRACT DID NOT REQUIRE MWH TO ASSIGN KEY PERSONNEL TO THE INFRASTRUCTURE PROJECT.**

**CITY RESPONSE TO FINDING 5:**

*The finding is wrong. Section 2.3 of the contract requires MWH to "prepare and update a staffing projection, to be reviewed with [the City] not less than monthly. The City reviews and revises MWH's personnel assignments on a monthly basis as part of its invoice review process. Further, the City and the originating departments supported by MWH under this contract have fully exercised the right of approval and request for key personnel replacement.*

**OIG COMMENT:**

The OIG stands by Finding 5 of its report. The City's response does not dispute the factual basis of the finding.

**FINDING 6. THE CONTRACT CALLS FOR MWH TO BE PAID ON A TIME AND MATERIALS BASIS, A FORM OF COMPENSATION THAT PRESENTS A HIGH RISK OF EXCESSIVE CHARGES.**

**CITY RESPONSE TO FINDING 6:**

*MWH bills the City for services provided based on a fee schedule, but the City has capped the total cost for the MWH contract at eight percent (8%) of the overall cost of the recovery program. This 8% cap is well below the threshold that FEMA established for project management costs, which is nine percent (9%) to twelve percent (12%) of project costs. Further, the City closely monitors MWH's charges and expenditures, and adjusts the payment structure to control the cost as needed. The City has not paid excessive charges for project management.*

**OIG COMMENT:**

The OIG stands by Finding 6 of its report. The City's response does not dispute the factual basis of the finding.

**FINDING 7. THE CONTRACT CALLS FOR MWH TO BE PAID FOR EXPENSES ON A COST-PLUS-PERCENTAGE-OF-COST BASIS, A FORM OF COMPENSATION THAT IS SPECIFICALLY PROHIBITED UNDER FEMA RULES.**

**CITY RESPONSE TO FINDING 7:**

*The OIG's Draft Report erroneously applies the "cost plus" label to a small part of the MWH contract and then characterized the entire contract as "cost plus". The OIG recognizes that labor, the largest component of the contract, is billed at an agreed upon hourly billing rate schedule, which is not done in cost plus contracts. The only component of the contract that allows MWH to add fees to their expenses relates to the reimbursement of their "other direct*

costs" (i.e. travel and mileage expenses). This is commonplace in the industry and is not prohibited by FEMA rules.

*In response to this OIG Draft Report, the City requested MWH to provide a written clarification for any and all cost issues referred to in the 2006 Department of Homeland Security (DHS) report cited by OIG. MWH has provided us with the following response: "The contract referenced in the OIG report was executed days after Katrina, and did not contain the same terms as MWH's current contract with the City. Because these contracts are so different, a comparison is not appropriate. However, it is worth clarifying further that FEMA has reimbursed the State and then the City for all costs associated with that 2005 drain cleaning contract."*

**OIG COMMENT:**

The OIG stands by Finding 7 of its report.

The City's statement that the OIG characterized the entire contract as "cost plus" is inaccurate. The report states that the contract calls for MWH to mark up its direct costs by approximately 23%. This mark-up is a cost-plus-percentage-of-cost provision that is prohibited by FEMA reimbursement rules, which are described in 44 C.F.R. §13.36(f)(4), appended to this report as Appendix F.

**FINDING 8. THE NOT-TO-EXCEED CONTRACT COST WAS NOT BASED ON A REALISTIC BUDGET FOR THE INFRASTRUCTURE PROJECT.**

**CITY RESPONSE TO FINDING 8:**

*The finding is wrong. Within a month after Hurricane Katrina, the City began damage assessments and came up with an estimate of \$400 million for facilities alone. The estimate for damage to streets is \$450 million to \$500 million. FEMA has acknowledged that the budget for these projects would evolve as damage estimates were refined and the actual cost of repair was incurred, which is also acknowledged by the OIG in draft report. Based on the subsequent Comprehensive Damage Reports (CDRs) completed for many of the City's facilities, the cost estimates have increased substantially and have been affirmed by FEMA through increased versions to PWs. As more projects move into construction, the City anticipates that the overall cost estimates will continue to increase.*

*As stated above in the City's response to Finding 6, the 8% not-to-exceed cap that the City placed on project management costs in the MWH contract is well below the mean national averages for project management costs recognized by FEMA (See Attachment B). It is important to note that MWH is below the 8% cap, and thus the cap is an effective cost control measure.*

**OIG COMMENT:**

The OIG stands by Finding 8 of its report.

The City's response reflects a misguided notion that a cost estimate is a budget. A budget requires not only a cost estimate, but also funding to match the cost estimate. The City chose to include non-FEMA eligible work among the projects to be managed by MWH. But the City did not have sufficient funding from bonds, grants, or other sources to complete this work and therefore had not developed a realistic budget for projects to be managed by MWH. The City relied on a cost estimate rather than on a budget to calculate the cap on MWH's fees. This resulted in overstating the maximum amount MWH could bill without exceeding the 8% cap.

**FINDING 9. MWH's BILLINGS FOR CAPITAL PROJECTS PROVIDE NO BASIS FOR ALLOCATING COSTS TO SPECIFIC PROJECTS OR FOR KEEPING MWH'S FEES IN LINE WITH OVERALL PROJECT COSTS.**

**CITY RESPONSE TO FINDING 9:**

*On August 17, 2009, FEMA provided standard operating procedures for the Single PW for Project Management Pilot Program to all 23 sub-grantees that were recipients of the pilot program (Attachment D), even though the project had been approved on September 5, 2007. Prior to the promulgation of these standard operating procedures in August 2009, FEMA did not require project management costs to be billed to specific projects under the single PW for Project Management Pilot Program. Rather, costs were billed to the PW and FEMA has approved reimbursement of those costs. But in July 2009, even before receiving the procedures from FEMA, the City began requiring MWH to bill their project management time against specific projects as a further cost control measure.*

*The invoices submitted to the City by MWH are consistent with the terms of the contract. Project management costs and fees are routinely reviewed and invoices are accompanied by supporting backup documentation. This process provides mechanisms for both parties to assure that all activities and billings are done in accordance with the contract. MWH has worked with the City to ensure program management documentation complies with applicable regulations and maximize FEMA reimbursements to the City.*

**OIG COMMENT:**

The OIG stands by Finding 9 of its report.

The City's response does not dispute the factual basis for the finding, but argues that the City lacked clear guidance from FEMA before August 17, 2009, that project-by-project accounting was required for project management expenses. Written records, however, show that FEMA advised the City of this requirement much earlier, before MWH had submitted any billings to the City under the project management contract. Appended to this report as Appendix G are a letter dated September 5, 2007, from FEMA to the Louisiana State Coordinating Officer and the initial version of the FEMA Project Worksheet for project management costs (PW 17452) dated

January 23, 2008. Each of these documents clearly states that the City must track project management costs on a project-by-project basis to satisfy FEMA reimbursement requirements.

**FINDING 10. THE CITY ALLOWED MWH'S FEES TO MOUNT FASTER THAN THE RATE OF PROGRESS ON CAPITAL PROJECTS.**

**CITY RESPONSE TO FINDING 10:**

*This finding further demonstrates the OIG's lack of understanding about project management practices. The City has aligned its approach to infrastructure project management with industry standards, specifically with the distribution of project management costs through the life cycle of projects. Project management work is front loaded, meaning the majority of project management activities occur in the early life cycle of infrastructure projects, such as planning, designing, and the bid and award phases. During the construction phase, project management responsibilities are reduced, and thus project management fees are less. Similarly, MWH's level of effort has been higher to get the recovery program moving and get hundreds of projects into design. When these projects move to construction, their level of effort will be reduced, as will their costs.*

**OIG COMMENT:**

The OIG stands by Finding 10 of its report.

The City's statement that it "aligned its approach to infrastructure project management with industry standards" is at odds with the evidence we obtained from reviewing billing records and interviewing City officials responsible for managing the MWH contract. The PDU Director described serious problems with the City's contract management during the first 19 months of the MWH contract. He told our staff that MWH reported to multiple managers within City government, was given overlapping task assignments, and was assigned to tasks that were not project-related. He also said that MWH had multiple, unnecessary layers of managers on projects. This description of contract management problems was supported by our review of MWH billing records.

The PDU Director said that the City's failure to manage the contract effectively for the first 19 months led to excessive costs, as reflected in the analysis prepared by the City's financial management consultant, appended to this report as Appendix H. This analysis shows that as of the end of July 2009, 36% of MWH billings could not be allocated to any project, much less to any measure of progress. The City's July 2009 analysis applied industry standards to calculate the progress value of MWH's services and determined that MWH's fees exceeded the rate of progress on projects.

The PDU Director told our staff in November 2009 that the City was instituting changes in the management of MWH's contract, including reducing the number of projects MWH would manage, to bring excessive costs under control. The City may have made changes in recent

months to improve the management of this contract, but the facts reported in Finding 10 are supported by the relevant evidence.

**FINDING 11. THE STATE REVOLVING FUND HAS BEEN DEPLETED TO EXPEDITE PAYMENTS TO MWH WITHOUT REGARD TO WHETHER EXPENDITURES WILL BE REIMBURSED.**

**CITY RESPONSE TO FINDING 11:**

*This statement by the OIG is inaccurate. The OIG's Draft Report includes no evidence upon which to conclude that the State Revolving Fund (the "Fund") has been depleted. The OIG has not provided the City with any basis for this statement. Contrary to the OIG's Draft Report, the Fund is not depleted. As of February 28, 2010, shortly before the Draft Report was issued, the Fund had approximately \$107 million in cash available (See Attachment C). As of April 14, 2010, the Fund had \$102.8 million in cash available.*

*While the OIG may object to the City utilizing the State Revolving Fund to pay contractors, this is a specific intent of the Fund defined in the Cooperative Endeavor Agreement (CEA) entered into by the State of Louisiana and the City. The CEA explicitly allows payments for project management and other recovery-related professional services costs from the fund. The City used the fund to pay MWH based on specific contract authority and detailed analysis in accordance with the State of Louisiana CEA. In addition, the State validates and authorizes payment of the invoices.*

**OIG COMMENT:**

After reviewing the City's response, the OIG has modified the wording of Finding 11 of its report to state that the State Revolving Fund has been partially depleted to expedite payments to MWH without regard for whether expenditures will be reimbursed. Finding 11 was not intended to mean that the fund had been exhausted, hence the wording has been changed to clarify the intended meaning.

**FINDING 12. THE CITY PAID MWH \$1,309,572 FOR UNSPECIFIED EXPENSES DURING THE FIRST 18 MONTHS OF THE CONTRACT.**

**CITY RESPONSE TO FINDING 12:**

*The finding is wrong. Please see the comprehensive response from MWH refuting the OIG's claims attached (Attachment A). The City has reviewed the invoices in questions and has not paid for unspecified expenses.*

**OIG COMMENT:**

The OIG stands by Finding 12 of its report.

The MWH invoices did not itemize the expenses charged to the City, hence the City could not have determined by reviewing invoices what costs it was paying for. MWH submitted employee expense reports and receipts for a variety of expenses, including gifts to City employees, with the invoices. MWH has stated that expenses for employee gifts and meals were not charged to the City, but it is impossible to verify this statement based on the documentation provided. MWH could easily resolve all questions about expenses charged to the City by providing an itemization for its expense billings. MWH has declined to provide this itemization.

**FINDING 13. MWH EMPLOYEES SOUGHT REIMBURSEMENT FOR GIFTS TO CITY EMPLOYEES AND ELECTED OFFICIALS.**

**CITY RESPONSE TO FINDING 13:**

*The City respects ethics laws and rules regarding acceptance of gifts. The OIG's Draft Report makes broad and unsubstantiated suggestions about potential violations of ethics laws. Finally, MWH was not reimbursed for any gifts or meals as insinuated in the OIG's Draft Report.*

**OIG COMMENT:**

After reviewing the City's response, the OIG has modified the wording of Finding 13 of its report to state that MWH employees sought reimbursement from MWH for gifts to City employees and elected officials. As discussed in Finding 12, it is not possible to determine from the documentation MWH has provided whether or not MWH charged the City for these expenses. Finding 13 was not intended to mean that the City reimbursed MWH for the gifts, hence the wording has been modified to clarify the intended meaning.

**FINDING 14. THE CITY USED THE MWH CONTRACT AS A VEHICLE FOR PROCURING OTHER PROFESSIONAL SERVICES WITHOUT COMPETITION.**

**CITY RESPONSE TO FINDING 14:**

*The finding is wrong. Procurement requirements apply to City contracts, not to those of its vendors. Integrated Disaster Solutions and Wink Design Group engaged as subcontractors to MWH, not as City contractors. As stated in its attached response (Attachment A), MWH reviewed and separately approved the City's requests that it subcontract the two firms. As with all prime contractors, MWH was responsible to manage its subcontractors.*

**OIG COMMENT:**

The OIG stands by Finding 14 of its report.

APPENDIX C

**BILLING RATES FOR RECOVERY TYPE PROGRAMS**

Labor Categories	MWH City of New Orleans	Ozanne Construction Company Orleans Parish Criminal Sheriff	Royal Engineers & Consultants Cameron Parish	Burke Kleinpeter Inc. NO S&WB	CH2M Hill NO S&WB	Chester Engineering NO S&WB
	ORDA Recovery PM	OPCSO Recovery PM	Facilities/DPW Recovery PM	Wastewater Recovery PM	Water & Power Recovery PM	Drainage Recovery PM
<b>Management Level</b>						
Program Principal/Executive	\$275	\$275	\$240	\$275	\$275	\$275
Program Manager	\$244	\$244	\$233	\$243	\$243	\$243
Deputy Program Manager	\$193	\$193	\$222			
<b>Principal Level</b>						
Engineer	\$182	\$182	\$205	\$182	\$182	\$182
Project Controls Specialist	\$182	\$182	\$205	\$182	\$182	\$182
Construction Manager	\$182	\$182	\$205	\$182	\$182	\$182
Architect	\$182	\$182	\$205	\$182	\$182	\$182
Project Cost Estimator	\$166	\$166	\$187	\$166	\$166	\$166
Professional	\$152	\$152	\$171	\$152	\$152	\$152
<b>Supervising/Lead Level</b>						
Engineer	\$152	\$152	\$171	\$153	\$153	\$153
Project Controls Specialist	\$152	\$152	\$171	\$153	\$153	\$153
Resident Engineer	\$152	\$152	\$171	\$153	\$153	\$153
Architect	\$145	\$145	\$163	\$145	\$145	\$145
Project Cost Estimator	\$134	\$134	\$151	\$134	\$134	\$134
Professional	\$134	\$134	\$151	\$134	\$134	\$134
Monitor/Inspection Manager	\$96	\$96	\$108	\$96	\$96	\$96
Technician	\$96	\$96	\$108	\$96	\$96	\$96
Adminstrator	\$96	\$96	\$108	\$96	\$96	\$96
<b>Associate/Support Level</b>						
Engineer	\$114	\$114	\$129	\$114	\$114	\$114
Project Controls Specialist	\$114	\$114	\$129	\$114	\$114	\$114
Resident Engineer	\$114	\$114	\$129	\$114	\$114	\$114
Architect	\$109	\$109	\$122	\$109	\$109	\$109
Project Cost Estimator	\$109	\$109	\$122	\$108	\$108	\$108
Professional	\$109	\$109	\$122	\$108	\$108	\$108
Technician	\$88	\$88	\$99	\$88	\$88	\$88
Monitor/CAD & Design/Inspector	\$88	\$88	\$99	\$88	\$88	\$88
Administrative	\$77	\$77	\$86	\$77	\$77	\$77
Clerical	\$65	\$65	\$73	\$65	\$65	\$65

Source: Public contract records

**APPENDIX D**

**CURRENT BILLING RATE SCHEDULE  
BURK-KLEINPETER, INC.**

**Personnel:**

Personnel cost is reimbursed based on hourly billing rates by category as follows:

<i>Classification</i> -----	<i>Billing Rate</i>
Principal-----	\$245.00
Vice President-----	\$180.00
Project Engineer-----	\$135.00
Senior Civil Engineer -----	\$130.00
Civil Engineer -----	\$115.00
Civil Engineer Intern -----	\$90.00
Senior Mechanical Engineer -----	\$130.00
Mechanical Engineer -----	\$110.00
Senior Electrical Engineer-----	\$130.00
Electrical Engineer-----	\$110.00
Architect -----	\$115.00
Environmental Engineer -----	\$130.00
Environmental Scientist-----	\$135.00
Planner -----	\$100.00
Senior CAD Technician -----	\$94.00
Landscape Architect-----	\$102.00
CAD Drafter-----	\$76.00
Construction Manager-----	\$125.00
Senior Construction Inspector -----	\$70.00
Construction Inspector -----	\$60.00
Clerical -----	\$45.00

The above hourly billing rates are effective through December 31, 2007 and may be updated no more than once per year from the date of execution of this agreement. The maximum increase for any one year shall not exceed six percent per year and must be submitted to the OWNER for approval prior to adjustment of those rates for the new year.

**Travel & Subsistence:**

All travel and subsistence expenses are invoiced at actual cost plus 10% handling. Cost of mileage is computed at the prevailing rate.

**DBE Participation:**

The Bidder (Richard C. Lambert Consultants, LLC) agrees to use its Best Efforts to fully comply with the DBE program, including all reporting requirements and any specific contract goals for DBE participation."

**Current Hourly Rates:**

<u>Category of Personnel</u>	<u>Hourly Rate</u>
Principal Engineer / Principal Architect	\$175.00
Project Engineer	\$125.00
Project Architect	\$125.00
Staff Engineer	\$85.00
Staff Architect	\$85.00
Construction Manager	\$85.00
Construction Observer	\$65.00
Technician	\$62.00
Interior Design / Space Planning	\$75.00
CADD Operator	\$60.00
Administrative	\$40.00

**Signature:**



5/29/07

**Richard C. Lambert, PE, Principal**

**Date**

**Richard C. Lambert Consultants, LLC**  
521 N. Causeway Blvd.  
Mandeville, LA 70448  
985-727-4440

**Address of Office to perform work:**  
#1 Poydras St.  
1400, #10  
New Orleans, LA 70130

e mail: [rmccloskey@rclconsultants.com](mailto:rmccloskey@rclconsultants.com)

## Section 5 – Costs

The table provided below provides the fee schedule by job title anticipated for this project on an hourly rate basis. The hourly rates provided are exclusive of expenses, which will be billed separately. The rates shown are applicable through December 31, 2007. An escalation factor may be applied to these rates for every subsequent year beyond 2007. For any labor category that may be required and is not mentioned below, a labor rate will be established that is mutually acceptable to the Regional Management Group (RMG) and the Office

of Recovery Management. Based on the hourly rates provided below, RMG Team would propose a contract with not-to-exceed funding limits. Also, we are committed to further reviewing these rates and any factors impacting these rates with the Office of Recovery Management, if selected, to assure cost reasonableness. All additional expenses incurred will be billed at 1.0 times the actual cost. Copies will be charged at \$0.10 each and mileage at the current approved federal rate.

2007 Labor Rates For Services	
Category	Rate
Principal/Program Manager	\$190
Project Manager	\$175
Senior Engineer/Scientist	\$155
Mid-Level Engineer/Scientist	\$130
Junior Engineer/Scientist	\$95
Senior Planner/FEMA Specialist	\$125
Junior Planner/FEMA Specialist	\$100
Senior Architect	\$145
Mid-Level Architect	\$120
Entry-Level Architect	\$90
Scheduler	\$145
Cost Estimator	\$125
Senior GIS/Database Analyst	\$120
Mid-Level GIS/Database Analyst	\$95
Entry-level GIS/Database Analyst	\$75
Senior Construction Manager	\$125
Construction Manager	\$95
Senior CADD Technician	\$85
CADD Technician	\$70
Clerical	\$50
Administrative Assistant	\$60

### *Alternative Cost Savings*

RMG is pleased to provide this proposal and rates regarding Public Infrastructure

Project Management and Related Services to the ORM as requested in the RFP. However, we believe in the opportunity to

rates are taken from the specific rates developed for federal contracting and have been approved by DCAA. No costs will be incurred without the expressed written authorization of the City's designated point of contact.

### 5.4 Management Information System (MIS)

Our MIS planning, forecasting, and management processes are used by experienced and empowered project and task managers to measure work performance against the budget and schedule. Our MIS planning, forecasting, and management processes are able to determine the amount of work remaining with respect to the plan, how much that work will cost, and the time required to complete.

### Tracking Cost Reimbursable Task Estimates to Actual Cost

Our MIS provides task management with real-time information to track task estimates/budgets to actual cost on a daily, weekly, or monthly basis.

Our MIS fully integrates program cost and schedule management, contract management, and technical and regulatory management. The MIS is used to assemble report information in a timely, user-friendly format regardless of the type of funding. The MIS provides an integrated system for the program manager, working in close coordination with the cost scheduler, to manage and control cost performance against budgets on all projects.

### Planning and Scheduling

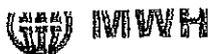
Our MIS planning and scheduling module utilizes Primavera Project Planner (P3), which our cost schedulers use on all projects to prepare cost and resource-loaded schedules.

### 5.5 Cost Reporting Capabilities

Shaw can invoice individual buildings by funding source, if the value of the scope of work on each individual building is identified by the related funding source. For example, if FEMA will not consider reimbursement for all of the ceiling tiles as only 15% were damaged by the storm, then the ceiling tile work would be divided into discrete activities so that 15% of the ceiling tile is one activity and the remaining 85% is another activity. The identification of funding sources will be done during the proposal phase, so that when the contractor furnishes the cost loaded schedule at the NTP, the activities are correctly defined by funding source. This level of accountability would give the FEMA, state, and insurance entities confidence that the cost related to their discrete elements of work has been accurately identified, performed and invoiced.

Category	Position Title	Bill Rate
Category M	Technical Publications Asst 1	40.00
	Laborer 1	
Category N	Administrative Asst 1	47.00
	Drafter 1	
	Procurement Asst 2	
	Laborer 2	
	Equipment Operator 1 Technician 1	
Category O	Administrative Asst 2	57.00
	Transaction Processing Asst 3	
	Laborer 3	
	Equipment Operator 2	
	Technician 2 Scientist 1	
Category P	Administrative Asst 3	68.00
	Scheduler 1	
	Project Controls Cost Sch 1	
	Project Accountant 1	
	Drafter 2	
	Transaction Processor 1	
	Equipment Operator 3	
	Foreman Technician 3 Engineer 1	
Category Q	Admin/Exec Asst 4	76.00
	Subcontract Admin 1	
	EH&S Specialist 1	
	Scientist 2	
Category R	Subcontract Admin 2	86.00
	Admin/Exec Asst 4	
	Drafter 3 Engineer 2	
Category S	Project Accountant 2	96.00
	Engineer/Scientist 3	
Category T	Subcontract Administrator 3	104.00
	Drafter 4	
	Proj Controls Cost Sched 2 EH&S Specialist 2	
Category U	Project Accountant 3	112.00
	Project Controls Cost Sch 3	
	Transaction Processing Mgr 1	
	EH&S Spec 3 Project Scientist 4	
Category V	Project Accountant 4	120.00
	Site Superintendent 1	
	Engineer 3 Scientist 4	
Category W	Project Controls Cost Sch 3	129.00
	Subcontract Admin 4	
	Site Superintendent 2	
	Engineer 4	
	Project Engineer 3	
	Project Scientist 4	
	Client Program Mgr 1	
Project Manager 1		
Category X	Scientist 5	155.00
	Project Engineer 4	
	Business Line Mgr 1	
Category Y	Engineer 5	170.00
	Scientist 6	
	Contract Admin 5	
	Project Engineer 5	
	Program Manager	
	Project Controls Mgr 3	
	Client Program Mgr 3	
	Project Manager 2	
Business Line Mgr 2		

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.



**APPENDIX E**

Please Reference Invoice No. With Payment

Please Remit To: MWH Americas, Inc.  
SLG East  
Dept. 2729  
Los Angeles, CA 90084-2729

City of New Orleans - Office of Recovery Development Administration  
1300 Perdido Street  
New Orleans, LA 70112

Date: 24-Mar-08  
Invoice No.: 117267UA  
Contract No.: CO9701HX01  
CCN: 73431  
FILE NO.: R01002.1.3

Attention: Dr. Edward J. Blakely

PC 450 - 29820

FOR PROFESSIONAL SERVICES RENDERED DURING 11-NOVEMBER-2007 THROUGH 29-DECEMBER-2007.  
FOR THE CITY OF NEW ORLEANS OFFICE OF RECOVERY AND DEVELOPMENT ADMINISTRATION  
INFRASTRUCTURE PROJECT MANAGEMENT IN ACCORDANCE WITH OUR CONTRACT DATED DECEMBER 21, 2007.

**A. LABOR**

**TASK 1 - PDU TECHNICAL CONSULTATION**

**MANAGEMENT LEVEL**

Name	Billing Classification	Billing Rate	Hours	Total
S. Mansour	Program Principal/Executive	\$ 275.03	69.5	\$ 19,114.59
L. Cookmeyer	Program Manager	\$ 243.52	70.0	\$ 17,046.40
G. Kolonovsky	Deputy Program Manager	\$ 193.27	15.0	\$ 2,899.05

**PRINCIPAL LEVEL**

Name	Billing Classification	Billing Rate	Hours	Total
M. Herbert	Professional	\$ 152.16	24.0	\$ 3,651.84
<b>Total - Task 1</b>				<b>\$ 42,711.88</b>

**TASK 2 - PROJECT MANAGEMENT**

Total - Task 2 \$ -

**TASK 3 - PLANNING PHASE MANAGEMENT**

Total - Task 3 \$ -

**TASK 4 - PROJECT CONTROLS**

Total - Task 4 \$ -

**TASK 5 - DESIGN PHASE MANAGEMENT**

Total - Task 5 \$ -

**TASK 6 - BID AND AWARD PHASE MANAGEMENT**

Total - Task 6 \$ -

**TASK 7 - CONSTRUCTION PHASE MANAGEMENT**

Total - Task 7 \$ -

**TASK 8 - PROJECT COMMISSIONING & CERTIFICATION PHASE**

Total - Task 8 \$ -

**TASK 9 - PROJECT FURNITURE, FIXTURES & EQUIPMENT**

Total - Task 9 \$ -

**TASK 10 - SUPPLEMENTAL SERVICES**

Total - Task 10 \$ -

*Handwritten initials: JM*

Total Labor Cost: \$ 42,711.88

Total Due This Invoice \$ 42,711.88

Amount Previously Billed \$ -

Amount Billed To Date \$ 42,711.88

001 C3100 SRC \$ 12,984.41  
 002 C3600 SRC \$ 13,112.55  
 003 F2100 SRC \$ 13,539.67  
 004 P2100 SRC \$ 3,075.26

PAGE 1 OF 1

TOTAL \$ 42,711.88

# AMERICAS Employee Timesheet

Employee: Mansour, Souheil  
 Employee ID: 104996  
 Class: Salaried Exempt Regular 8  
 Printed: Mar 20, 2008 2:23 PM



Revision: 3  
 Schedule: Americas  
 Period Ending: Nov 9, 2007  
 Page: 1

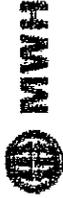
Line No	Job Cost Code	Hours Type	Exp Cost Code	Charge Description	Sat 11/3	Sun 11/4	Mon 11/5	Tue 11/6	Wed 11/7	Thu 11/8	Fri 11/9	Line Totals
1		ST		W...								
2		ST		...								
3		ST		...								
4		ST		...								
5		ST		...								
6		ST		...								
7		HL		...								
8		AL		...								
9	8007157	ST		City of N.O.-LA Reco very Mgmt.			1.0	5.0	3.0	3.0	1.0	13.0
10	8007157.020103.PM PRE-CONTRACT	ST		...								
11	8867210	ST		...								
12												
13												
14												
15												
		Regular					9.0	9.0	9.0	9.0	4.0	40.0
		Overtime										
		Total					9.0	9.0	9.0	9.0	4.0	40.0

Signature: Herbert, Michelle (106538)      Date: Nov 9, 2007 1:35 PM

By signing this timesheet you are certifying that hours were incurred on the charge and day specified in accordance with company policies and procedures

Approval: Hartley, Raymond G. (104605)      Date: Nov 9, 2007 1:42 PM

AMERICAS  
Employee Timesheet



Employee: Mansour, Souheil  
Employee ID: 104996  
Class: Salaried Exempt Regular 8  
Printed: Mar 20, 2008 2:30 PM

Revision: 3  
Schedule: Americas  
Period Ending: Nov 16, 2007  
Page: 1

Line No	Job Cost Code	Hours Type Exp Cost Code	Charge Description	Sat 11/10	Sun 11/11	Mon 11/12	Tue 11/13	Wed 11/14	Thu 11/15	Fri 11/16	Line Totals
1		ST	2004 New Orleans								
2		ST	30-Day Payroll								
3	HOLIDAY	HL	Holiday								
4		ST	New Orleans								
5		ST	New Orleans								
6		ST	New Orleans								
7		AL	Paid Time Off								
8		ST	Program								
9		ST	Sanitary								
10		ST	Utility								
11		ST	WP9 SEWER								
12	8007157	ST	City of N.O.-LA Reco			2.5	3.0	3.0	2.0	2.0	12.5
13	8007157.020103.PM PRE-CONTRACT	8007157.020103.	very Mgmt.								
14											
15											
	Regular					8.0	8.0	8.0	8.0	8.0	40.0
	Overtime					8.0	8.0	8.0	8.0	8.0	40.0
	Total										

Signature: Herbert, Michelle (106538)

Date: Nov 16, 2007 11:59 AM

By signing this timesheet you are certifying that hours were incurred on the charge and day specified in accordance with company policies and procedures

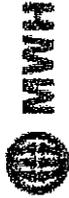
Approval: Hartley, Raymond G. (104605)

Date: Nov 16, 2007 12:12 PM

AMERICAS  
Employee Timesheet

Employee: Mansour, Souheil  
Employee ID: 104996  
Class: Salaried Exempt Regular 8  
Printed: Mar 20, 2008 2:32 PM

Revision: 4  
Schedule: Americas  
Period Ending: Nov 30, 2007  
Page: 1



Line No	Job Cost Code	Hours Type Exp Cost Code	Charge Description	Sat 11/24	Sun 11/25	Mon 11/26	Tue 11/27	Wed 11/28	Thu 11/29	Fri 11/30	Line Totals
1	[REDACTED]	ST	WPA SEWER SYST								
2	[REDACTED]	ST	Repair								
3	[REDACTED]	PM	ing effort								
4	[REDACTED]	ST	og wall mkt								
5	[REDACTED]	ST	New Orleans								
6	[REDACTED]	ST	New Orleans								
7	[REDACTED]	HL	[REDACTED]								
8	[REDACTED]	AL	[REDACTED]								
9	[REDACTED]	PTO,PAID	Emer Sewer								
10	8007157	ST	City of N.O.-LA Reco								
	8007157.020103.PM PRE-CONTRACT	8007157.020103.	very Mgmt.								
11											
12											
13											
14											
15											
	Regular					8.0	8.0	8.0	8.0	8.0	40.0
	Overtime					8.0	8.0	8.0	8.0	8.0	40.0
	Total					16.0	16.0	16.0	16.0	16.0	80.0

Signature: Herbert, Michelle (106538)      Date: Nov 30, 2007 1:36 PM

By signing this timesheet you are certifying that hours were incurred on the charge and day specified in accordance with company policies and procedures

Approval: Hartley, Raymond G. (104606)      Date: Nov 30, 2007 1:39 PM



# AMERICAS Employee Timesheet



Employee: Mansour, Souheil  
 Employee ID: 104996  
 Class: Salaried Exempt Regular 8  
 Printed: Mar 20, 2008 2:35 PM

Revision: 3  
 Schedule: Americas  
 Period Ending: Dec 21, 2007  
 Page: 1

Line No	Job Cost Code	Hours Type Exp Cost Code	Charge Description	Sat 12/15	Sun 12/16	Mon 12/17	Tue 12/18	Wed 12/19	Thu 12/20	Fri 12/21	Line Totals
1	8007157	ST	WP9 SEWER EVALUATION								
2	8007157	ST	Utility Cost								
3	8007157	ST	36-Day Shift								
4	8007157	ST	2004 New Contract								
5	8007157	ST	City of N.O.-LA Recce very Mgmt.			2.0	2.0	4.0	4.0	1.5	13.5
6	8007157	HL									
7	8007157	AS									
8	8007157	AS									
9	8007157	AS									
10	8007157	AS									
11	8007157	AS									
12	8007157	AS									
13	8007157	AS									
14	8007157	AS									
15	8007157	AS									
		Regular				8.0	8.0	8.0	8.0	8.0	40.0
		Overtime									
		Total				8.0	8.0	8.0	8.0	8.0	40.0

Signature: Herbert, Michelle (106538)      Approval: Hartley, Raymond G. (104605)  
 Date: Dec 21, 2007 1:42 PM      Date: Dec 21, 2007 1:48 PM







AMERICAS  
Employee Timesheet



Revision: 3  
Schedule: Americas  
Period Ending: Nov 23, 2007  
Page: 1

Employee: Cookmeyer, Lise F.  
Employee ID: 106091  
Class: Salaried Exempt Regular &  
Printed: Mar 20, 2008 2:30 PM

Line No	Job Cost Code	Hours Type Exp Cost Code	Charge Description	Sat 11/17	Sun 11/18	Mon 11/19	Tue 11/20	Wed 11/21	Thu 11/22	Fri 11/23	Line Totals
1		ST	WATER SYST								
2		ST									
3	8007157	ST	City of N.O.-LA Reco very Mgmt.				4.0	4.0			12.0
4		AL									
5		HL									
6		ST									
7											
8											
9											
10											
11											
12											
13											
14											
15											
Regular						10.0	10.0	4.0	8.0	8.0	40.0
Overtime											
Total						10.0	10.0	4.0	8.0	8.0	40.0

Signature: Hepting, Corinne M. (110109)      Approval: Mansour, Souheil (104995)  
Date: Nov 23, 2007 8:05 AM      Date: Nov 23, 2007 10:08 AM

AMERICAS  
Employee Timesheet

Employee: Cookmeyer, Lisa F.  
Employee ID: 106091  
Class: Salaried Exempt Regular 8  
Printed: Mar 20, 2008 2:32 PM

Revision: 4  
Schedule: Americas  
Period Ending: Nov 30, 2007  
Page: 1



Line No	Job Cost Code	Hours Type Exp Cost Code	Charge Description	Sat 11/24	Sun 11/25	Mon 11/26	Tue 11/27	Wed 11/28	Thu 11/29	Fri 11/30	Line Totals
1	[REDACTED]	ST	WP9 SEWER STATION								
2	[REDACTED]	ST	Utility								
3	[REDACTED]	ST	36-Day								
4	[REDACTED]	ST	2004 New								
5	[REDACTED]	ST	City of Mgmt								
6	8007157	ST	City of N.O.-LA Reco			2.0	6.0	6.0	6.0		20.0
7	8007157.020.103.PM PRE-CONTRACT		very Mgmt.								
8											
9											
10											
11											
12											
13											
14											
15											
	Regular					10.0	10.0	10.0	10.0		40.0
	Overtime					10.0	10.0	10.0	10.0		40.0
	Total					20.0	20.0	20.0	20.0		80.0

Signature: Cookmeyer, Lisa F. (106091) Approval: Nolan, Susan N. (107651)  
 Date: Nov 29, 2007 7:51 PM Date: Nov 30, 2007 8:37 AM

By signing this timesheet you are certifying that hours were incurred on the charge and day specified in accordance with company policies and procedures

# AMERICAS Employee Timesheet

Revision: 1  
Schedule: Americas  
Period Ending: Dec 14, 2007  
Page: 1

Employee: Cookmeyer, Lisa F.  
Employee ID: 106091  
Class: Salaried Exempt Regular 8  
Printed: Mar 20, 2008 2:34 PM



Line No	Job Cost Code	Hours Type	Exp Cost Code	Charge Description	Sat 12/8	Sun 12/9	Mon 12/10	Tue 12/11	Wed 12/12	Thu 12/13	Fri 12/14	Line Totals
1		ST		WP9 SEWER ST. EVALUATION			4.0					4.0
2		ST		Utility Cost								
3		ST		36-Day Cleanout								
4		ST		2004 New City								
5		ST		City of N.O. v. Mgmt.								
6	8007157	ST		City of N.O.-LA Recovery Mgmt.						2.0		2.0
7	8007157.020103.PM PRE-CONTRACT	ST	8007157.020103.	Emerg. Assess								8.0
8												
9												
10												
11												
12												
13												
14												
15												
		Regular					8.0	8.0	8.0	8.0	8.0	40.0
		Overtime					8.0	8.0	8.0	8.0	8.0	40.0
		Total										

Signature: Cookmeyer, Lisa F. (106091)      Date: Dec 14, 2007 7:21 AM

By signing this timesheet you are certifying that hours were incurred on the charge and day specified in accordance with company policies and procedures

Approval: Nolan, Susan N. (107651)      Date: Dec 14, 2007 6:08 AM

# AMERICAS Employee Timesheet



Employee: Cookmeyer, Lisa F.  
 Employee ID: 106091  
 Class: Salaried Exempt Regular 8  
 Printed: Mar 20, 2008 2:35 PM

Revision: 1  
 Schedule: Americas  
 Period Ending: Dec 21, 2007  
 Page: 1

Line No.	Job Cost Code	Hours Type Exp Cost Code	Charge Description	Sat 12/15	Sun 12/16	Mon 12/17	Tue 12/18	Wed 12/19	Thu 12/20	Fri 12/21	Line Totals
1		ST	WPS SEMINAR								0
2		ST	EVALUATION								0
3		ST	REGULAR								0
4		ST	REGULAR								0
5		ST	REGULAR								0
6		ST	REGULAR								0
7	8007157	ST	City of N.O.-LA Rebo very Mgmt.			2.0					2.0
8	8007157.020103	8007157.020103									
9											
10											
11											
12											
13											
14											
15											
Regular						8.0	9.0	6.0	9.0	8.0	40.0
Overtime						8.0	9.0	6.0	9.0	8.0	40.0
Total						16.0	18.0	12.0	18.0	16.0	80.0

Signature: Cookmeyer, Lisa F. (106091) Approval: Nolan, Susan N. (107651)  
 Date: Dec 21, 2007 6:56 AM Date: Dec 21, 2007 12:30 PM

By signing this timesheet you are certifying that hours were incurred on the charge and day specified in accordance with company policies and procedures

# AMERICAS Employee Timesheet

Employee: Cookmeyer, Lisa F.  
Employee ID: 106091  
Class: Salaried Exempt Regular 8  
Printed: Mar 20, 2008 3:48 PM

Revision: 1  
Schedule: Americas  
Period Ending: Dec 28, 2007  
Page: 1



Line No	Job Cost Code	Hours Type Exp Cost Code	Charge Description	Sat 12/22	Sun 12/23	Mon 12/24	Tue 12/25	Wed 12/26	Thu 12/27	Fri 12/28	Line Totals
1	8007157	ST	WPS SEWER S...								
2	8007157	ST	EMERGENCY REPAIR								
3	8007157	ST	Utility C...								
4	8007157	ST	36-Day S...								
5	8007157	ST	2004 New C...								
6	8007157	ST	City of N.O.-LA Reco								
7	8007157	ST	City of N.O.-LA Reco								
8	8007157	HL	...								
9	8007157	AL	...								
10											
11											
12											
13											
14											
15											
Regular											
Overtime											
Total											

Signature: Cookmeyer, Lisa F. (106091)      Approval: Mansour, Souheil (104996)  
Date: Dec 28, 2007 11:41 AM      Date: Dec 28, 2007 1:02 PM









## 44 CFR 13.36 - Procurement.

Code of Federal Regulations - Title 44: Emergency Management and Assistance (December 2005)

Linked as: <http://cfr.vlex.com/vid/13-36-procurement-19833982>

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### TITLE 44 - EMERGENCY MANAGEMENT AND ASSISTANCE

#### CHAPTER I - FEDERAL EMERGENCY MANAGEMENT AGENCY, DEPARTMENT OF HOMELAND SECURITY

#### SUBCHAPTER A - GENERAL

#### PART 13 - UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

#### subpart c - POST - AWARD REQUIREMENTS

#### 13.36 - Procurement.

(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) Procurement standards. (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the

performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (i) The employee, officer or agent, (ii) Any member of his immediate family, (iii) His or her partner, or (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only (i) After a determination that no other contract is suitable, and (ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual

responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to: (i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and (ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) Competition. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of section 13.36. Some of the situations considered to be restrictive of competition include but are not limited to: (i) Placing unreasonable requirements on firms in order for them to qualify to do business, (ii) Requiring unnecessary experience and excessive bonding, (iii) Noncompetitive pricing practices between firms or between affiliated companies, (iv) Noncompetitive awards to consultants that are on retainer contracts, (v) Organizational conflicts of interest, (vi) Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement, and (vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations: (i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and (ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) Methods of procurement to be followed (1) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing

services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in 13.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present: (A) A complete, adequate, and realistic specification or purchase description is available; (B) Two or more responsible bidders are willing and able to compete effectively and for the business; and (C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply: (A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids; (B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond; (C) All bids will be publicly opened at the time and place prescribed in the invitation for bids; (D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest.

Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and (E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply: (i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical; (ii) Proposals will be solicited from an adequate number of qualified sources; (iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees; (iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and (v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is

infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies: (A) The item is available only from a single source; (B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; (C) The awarding agency authorizes noncompetitive proposals; or (D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms. (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include: (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises; (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) Contract cost and price. (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see 13.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

**(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.**

(g) Awarding agency review. (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc.

when: (i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or (ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or (iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a brand name product; or (iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or (v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system.

Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows: (1) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold) (2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000) (3) Compliance with Executive Order 11246 of September 24, 1965, entitled Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees) (4) Compliance with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair) (5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a7) as supplemented by Department of Labor regulations (29 CFR Part 5).

(Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation) (6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers) (7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

(Contracts, subcontracts, and subgrants of amounts in excess of \$100,000) (13) Mandatory standards

U.S. Department of Homeland Security  
Louisiana Transitional Recovery Office  
Cap-Salas Court  
New Orleans, LA 70114  
(504) 762-2018 office  
(504) 762-2699 fax



# FEMA

September 5, 2007

Colonel Thomas Kirkpatrick  
State Coordinating Officer  
State of Louisiana  
415 North 15<sup>th</sup> Street  
Baton Rouge, LA 70802

Re: Project Management Status

Dear Colonel Kirkpatrick:

FEMA and the State have identified 20 Subgrantees that have expressed an interest in project management support or who have drawn down only a fraction of their obligated recovery dollars to date. FEMA believes that funding eligible project management activities should be on a project by project basis and reflected on the specific permanent work project worksheets (PWs); the State believes that this approach will be too burdensome on the State and Subgrantees and has promoted an approach involving a single PW for funding project management for multiple projects. It remains our position that providing project management costs on construction PWs is consistent with policy and will provide more accurate accounting and documentation without significantly increasing the effort to manage grants in a responsible and accountable manner.

However, in an effort to resolve this critical issue and bring additional, much needed support to Subgrantees, FEMA has further defined a potential single project management PW process and implementation based on the information provided by the State. This approach which is diagrammed in Attachment A describes the responsibilities of FEMA, the State, and the Subgrantee in formulating and managing a single PW for project management of multiple projects. It is important to recognize that these activities and the associated documentation are essential to accounting and maximizing the eligible costs. With the concurrence and commitment of all parties to complete these activities, FEMA will entertain a pilot initiative to deliver project management to these 20 Subgrantees using a single PW approach.

The following sections provide a summary of the activities and responsibilities for each organization:

#### **Subgrantee**

The Subgrantee is responsible for submitting a request to the State for project management on a single PW. The Subgrantee and State are responsible for identifying groups of projects based upon criteria such as location, recovery zone, category of work, type, contracting, and schedule. In addition, the Subgrantee and State must determine the eligible project management tasks and a methodology for estimating reasonable project management costs.

Colonel Kirkpatrick  
September 5, 2007  
2 of 3

During operations, the Subgrantee is responsible for managing the project management contractor, tracking costs on a project by project basis and maintaining documentation. The Subgrantee submits periodic, single invoices to the State for project management activities and includes backup. The Subgrantee's documentation must include the billing of each project management contractor and these billings must correlate to the actual construction projects. At closeout, the Subgrantee must provide project specific source documentation and summary of expenditures.

#### State

The State works with the Subgrantee to develop an internal analysis of numbers of PWs, project dollars and request to FEMA for a single PW for project management of a group of projects. The State submits the request to FEMA. The State is responsible for reviewing the Subgrantees procurement practices and contract with each project management contractor prior to the start of work and ensuring the Subgrantee is aware of eligible project management tasks. Further, the State is responsible for explaining the documentation requirements to each Subgrantee.

During operations, the State will monitor tasks performed, construction progress, reporting and documentation to ensure it is consistent with the provisions of a single project management PW process. The State will review, provide details, and notify FEMA of any event that may trigger the need to version the single PW. This should include any changes in project status, significant versions to any related construction PWs that may require additional PM funding, and any Special Considerations information the State is aware of. At closeout, the State will participate in the review of all Subgrantee documentation based upon project specific accounting.

#### FEMA

FEMA will review and approve each request and analysis from the State for a single PW for project management. As Subgrantees are approved, FEMA will obligate a single PW for project management costs and de-obligate project management costs included in any associated construction PWs. The single PW will be written to include a listing of eligible project management tasks and the underlying construction PWs. FEMA will participate in the closeout efforts.

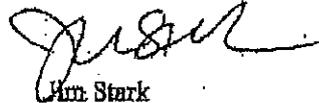
We believe that a single PW approach for project management may be viable if the State and Subgrantees diligently follow this process. Once FEMA and the State have agreed upon suitable Subgrantees and submitted fully documented requests, the process can begin.

This single PW approach will be undertaken as a pilot initiative. As such FEMA also expects the State to provide a quarterly status report for the 20 applicants. These summaries will allow FEMA and the State to perform periodic checks for each applicant and add some quality assurance to this process. FEMA reserves the right to terminate the pilot initiative and go back to the standard PA process for project management.

Colonel Kirkpatrick  
September 5, 2007  
3 of 3

I look forward to your concurrence with this process. Upon receipt of your written concurrence, our staffs will coordinate on the standard language and operations level details needed to make this work and set a schedule for rollout. Please do not hesitate to call with questions or concerns.

Sincerely,



Jim Stark  
Director  
Louisiana Transitional Recovery Office

Enclosure

# PROJECT WORKSHEET REPORT

DECLARATION NO. FEMA-LA - DR1603  
 FIPS NO. 071-55000-00  
 APPLICANT NAME NEW ORLEANS, CITY OF  
 SUBDIVISION  
 FEMA PW # 17452 VSN 0 REF# PM-CNO1

PREPARED DATE 01/23/2008  
 REPORT DATE 02/01/2008 10:19  
 INF TYPE  INF  
 NON-INF  
 REC

CATEGORY E. Public Buildings COUNTY ORLEANS FUNDING OPTION COST SHARE 1  
 STD PROJECT NO. 599 PROJECT TITLE MULTIPLE FACILITIES THROUGHOUT CITY OF NEW ORLEANS  
 PROJECTED Cmpltn Dt 02/28/2007 ACTUAL Cmpltn Dt WORK COMPLETE AS OF 01/08/2008 : 0 %

ELIGIBILITY Yes AMOUNT ELIG \$5,567,159.22 FEDERAL SHARE \$5,567,159.22 PRIORITY Normal  
 BEGIN DESIGN DT BEGIN CONSTR DT  
 END DESIGN DT END CONSTR DT  
 PREPARER LUCIAN BARHAM  
 ROLE PO DATA SOURCE  
 STATE  
 DATE OBLGTD PACKAGE DATE  
 PACKAGE ID

PW REVIEWER DATA		
	REVIEWER NAME	DATE
INITIAL REVIEW		
FINAL REVIEW		

MT PROP  Yes  No  
 PNP QUESTIONS  Yes  No  
 ATTACH  Yes  No  
 VALIDATED  Yes  No  
 STATE RVWD  Yes  No

Does the Scope of Work change the pre-disaster conditions at the site?  Yes  No  Unsure  
 Special Considerations issues included?  Yes  No  Unsure  
 Is there insurance coverage on this facility?  Yes  No  Unsure  
 Hazard Mitigation proposal included?  Yes  No  Unsure



# PROJECT WORKSHEET REPORT

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PREPARED DATE 01/23/2008

FIPS NO. 071-55000-00

REPORT DATE 02/01/2008 10:19

APPLICANT NAME NEW ORLEANS, CITY OF

INF TYPE  INF  
 NON-INF  
 REC

SUBDIVISION

FEMA PW # 17452 VSN 0 REF# PM-CNO1

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SITE NUMBER 1 of 1

FACILITY NAME MULTIPLE FACILITIES THROUGHOUT CITY OF NO

Latitude 29.95264

ADDRESS 1300 PERDIDO ST., NEW ORLEANS, LA 70112

Longitude -90.7669

CITY ORLEANS PARISH

STATE LA ZIP 70112

Was this site previously damaged?  Yes  No  Unsure

SITE NUMBER 1 - LOCATION

1300 PERDIDO ST., NEW ORLEANS, LA 70112

SITE NUMBER 1 - DAMAGE DIMENSIONS AND DESCRIPTION

HURRICANE KATRINA CAUSED CATASTROPHIC DAMAGE DURING THE INCIDENT PERIOD OF AUGUST 29, 2005 TO NOVEMBER 1, 2005 WHICH RESULTED IN DAMAGES TO MULTIPLE FACILITIES THROUGHOUT THE CITY OF NEW ORLEANS.

# PROJECT WORKSHEET REPORT

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INF TYPE  INF

SUBDIVISION

NON-INF

FEMA PW # 17452 VSN 0 REF# PM-CNO1

REC

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## SITE NUMBER 1 - SCOPE OF WORK

PW PM-CNO1

NOTE - THE CATEGORY FOR THE UNDERLYING PERMANENT WORK BEING MANAGED MAY INCLUDE CATEGORIES C THROUGH G.

PROJECT MANAGEMENT COSTS- THIS VERSION PROVIDES AN ESTIMATE OF ANTICIPATED PROJECT MANAGEMENT (PM) COSTS DIRECTLY ASSOCIATED WITH THE CITY OF NEW ORLEANS, CAPITAL PROJECTS ADMINISTRATION'S MANAGEMENT OF THE RESTORATION/REPAIR OF MULTIPLE FACILITIES. FACILITY-SPECIFIC PM COSTS ARE ELIGIBLE IN ACCORDANCE WITH FEMA POLICY 9526.6, PROJECT AND MANAGEMENT COSTS OF SUB GRANTEES AND 44 CFR.

ATTACHED MEMO FROM JAMES STARK TO COL. THOMAS KIRKPATRICK, DATED 05-01-07, DOCUMENT REASONABLE COSTS FOR ESTIMATING PURPOSES BASED ON THE CITY'S HISTORIC COST FOR PERFORMING THESE ACTIVITIES ON CONSTRUCTION PROJECTS FOR THE THREE YEARS PRIOR TO THE DISASTER. A FOLLOW-UP MEMO FROM JAMES STARK TO COL. THOMAS KIRKPATRICK, DATED 09-05-07 PROVIDES FOR THE CONSOLIDATION OF PROJECT MANAGEMENT FUNDS INTO ONE PROJECT WORK SHEET.

THIS PROJECT WORKSHEET PROVIDES FOR 109 FACILITIES WITHIN CAPITAL PROJECTS GEOGRAPHICAL DETAILING APPLICABLE ESTIMATED PROJECT MANAGEMENT FUNDS. IT IS ANTICIPATED THAT VERSIONS TO THIS PW WILL BE WRITTEN TO APPEND CRIMINAL JUSTICE AND PUBLIC WORKS PROJECTS.

IN ADDITION, CNO WILL SELF-PERFORM CERTAIN PROJECT MANAGEMENT TASKS OR ADD TO THE MWH PM SCOPE OF WORK TO ACCOMPLISH THE RESTORATION/REPAIRS AS REQUIRED.

**THE APPLICANT WILL BE REQUIRED TO DOCUMENT PM COSTS ON A PROJECT-BY-PROJECT BASIS;** THESE UNDERLYING PERMANENT WORK PROJECTS ARE LISTED IN THE ATTACHMENTS.

ATTACHMENTS: MEMO FROM JAMES STARK TO COL. THOMAS KIRKPATRICK DATED 05-01-07

MEMO FROM JAMES STARK TO COL. THOMAS KIRKPATRICK DATED 09-05-07

COPY OF THE AGREEMENT BETWEEN CNO AND MWH AMERICAS, INC. 12-17-07

DRAFT STANDARD OPERATIONAL PROCEDURES (SOP) DATED 01-11-08

LIST OF PROJECT MANAGEMENT FUNDING OF GEOGRAPHICAL CAPITAL PROJECTS

TYPICAL PROJECT MANAGEMENT TASKS FOR CAPITAL PROJECT ADMINISTRATION PROJEC

# PROJECT WORKSHEET REPORT

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FEMA PW # 17452 VSN 0 REF# PM-CNO1

REC

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## SITE NUMBER 1 - SCOPE OF WORK

TS

TYPICAL PROJECT MANAGEMENT TASKS FOR CAPITAL PROJECT ADMINISTRATION PROJECTS.

PROVIDED BY THE CITY OF NEW ORLEANS, MARCH 1, 2007

1. MANAGING CAPITAL PROJECTS PORTION OF THE PROCUREMENT PROCESS
  - A. A/E DESIGN SERVICES
  - B. CONSTRUCTION CONTRACT
2. ESTABLISHING DESIGN SCOPE AND REVIEWING DOCUMENT DEVELOPMENT
  - A. WORKING WITH DEPARTMENTS TO DEVELOP THE SCOPE OF WORK
  - B. MEETING A/E CONSULTANTS AT VARIOUS PHASES DURING DOCUMENT PREPARATION
  - C. EVALUATING SCOPE CHANGES OR ADDITIONS PROPOSED BY THE A/E CONSULTANTS DURING THE DESIGN PHASE
  - D. EVALUATING CONSTRUCTION COST ESTIMATES
3. REVIEWING PRELIMINARY AND FINAL PLANS AND SPECIFICATIONS TO ENSURE THEY:
  - A. COMPLY WITH CITY DESIGN STANDARDS
  - B. COMPLY WITH APPLICABLE CODES AND STANDARDS (ADA, FLOODPLAIN, ETC?)
4. PROVIDING DEPARTMENT OF SAFETY & PERMITS INFORMATION FOR BUILDING PERMIT
5. FORWARDING FINAL DOCUMENTS TO BUREAU OF PURCHASING FOR BID ADVERTISEMENT
6. ATTENDING BID OPENINGS AND REVIEWING A/E BID TABULATIONS
7. FORWARDING BID TABULATION TO OFFICE OF ECONOMIC DEVELOPMENT FOR DISADVANTAGE BUSINESS ENTERPRISES FOR DISADVANTAGE BUSINESS ENTERPRISES PROGRAM
8. REVIEWING ALL A/E AND CONTRACTOR PAYMENT APPLICATIONS FOR ACCEPTABILITY
9. MAINTAINING SCHEDULES ON THE DEADLINES OF DOCUMENT SUBMITTALS AND COMPLETION OF CONSTRUCTION SCHEDULE NECESSARY TO EFFECTIVELY MANAGE LARGE VOLUME OF PROJECTS
10. REVIEWING WITH THE A/E, SCHEDULE OF VALUES AND PROPOSED CONSTRUCTION SCHEDULES
11. MAKING ROUTINE SITE VISITS WITH A/E AND CONTRACTOR TO EVALUATE PROGRESS, PERFORMANCE AND COMPLIANCE
12. PREPARING AND MAINTAINING DETAILED PROJECT FILES
13. PROVIDING ONGOING MONITORING/REPORTING TO CAPITAL PROJECTS ADMINISTRATOR
14. EVALUATING CHANGE ORDER PROPOSALS, (SCOPE OF WORK AND COSTS) FOR CHANGES OR ADDITIONS DURING CONSTRUCTION PHASE
15. PARTICIPATING IN THE SUBSTANTIAL COMPLETION INSPECTION AND REVIEWING/APPROVING A/E PUNCH LIST OF UNFINISHED WORK.
16. PROCESSING SUBSTANTIAL COMPLETI

ON CERTIFICATES THRU THE LAW DEPARTMENT TO BEGIN THE 45-DAY LIEN PERIOD.

17. REVIEWING ALL COMPLETED WORK WITH THE A/E, AND REVIEWING A/E RECOMMENDATION FOR FINAL ACCEPTANCE.
18. PROCESSING OF CONTRACTOR'S FINAL PAY APPLICATION, CLEAR LIEN AND PRIVILEGE CERTIFICATE AND CONSENT OF SURETY.

# PROJECT WORKSHEET REPORT

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APPLICANT NAME NEW ORLEANS, CITY OF

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 NON-INF  
 REC

SUBDIVISION

FEMA PW # 17452 VSN 0 REF# PM-CNO1

## COST ESTIMATE

ITEM	VSN	CODE	MATERIAL AND/OR DESCRIPTION	UOM	QTY	UNIT PRICE	COST
1	0	0000	WORK TO BE COMPLETED	LS	1	\$0.00	\$0.00
2	0	9000	WIND DAMAGE	LS	1	\$1,251,291.62	\$1,251,291.62
3	0	9000	FLOOD DAMAGE	LS	1	\$4,315,867.60	\$4,315,867.60

Eligible Amounts:	Total (this version)	\$5,567,159.22
	Total Oblig To Date	\$0.00
	Unobligated + Obligated	\$5,567,159.22
	Federal Share for Obligated and Unobligated	\$5,567,159.22

## SPECIAL CONSIDERATIONS

- 1 Does the damaged facility or item of work have insurance coverage and/or is it an insurable risk (e.g., buildings, equipment, vehicles, etc.)?  Yes  No  Unsure  
 COMMENTS : 02/01/2008 14:54:47 THE STATUS OF INSURANCE IS ON FILE AT THE JFO IN BATON ROUGE, LA.
- 2 Is the damaged facility located within a floodplain or coastal high hazard area and/or does it have an impact on a floodplain or wetland?  Yes  No  Unsure  
 COMMENTS : 02/01/2008 14:54:47 MAY VARY DUE TO LOCATIONS OF FACILITY.
- 3 Is the damaged facility or item of work located within or adjacent to a Coastal Barrier Resource System Unit or an Otherwise Protected Area?  Yes  No  Unsure
- 4 Will the proposed facility repairs/reconstruction change the pre-disaster conditions (e.g., footprint, material, location, capacity, use or function)?  Yes  No  Unsure
- 5 Does the applicant have a hazard mitigation proposal or would the applicant like technical assistance for a hazard mitigation proposal?  Yes  No  Unsure
- 6 Is the damaged facility on the National Register of Historic Places or the state historic listing? Is it older than 50 years? Are there more, similar buildings near the site?  Yes  No  Unsure
- 7 Are there any pristine or undisturbed areas on, or near, the project site? Are there large tracts of forestland?  Yes  No  Unsure
- 8 Are there any hazardous materials at or adjacent to the damaged facility and/or item of work?  Yes  No  Unsure  
 COMMENTS : 02/01/2008 14:54:47 POSSIBLE HAZARDOUS MATERIALS ON FLOOR OF EQUIPMENT ROOM.
- 9 Are there any other environmental or controversial issues associated with the damaged facility and/or item of work?  Yes  No  Unsure

# PROJECT WORKSHEET REPORT

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REC

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**ENVIRONMENTAL - Environmental Review not complete. See below for status.**

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Laws and Executive Orders Review - Other Laws/EOs review in-process.

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NEPA Level of Review

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### Standard Conditions

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1. Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.
2. This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.
3. If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.

# PROJECT WORKSHEET REPORT

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SUBDIVISION

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FEMA PW # 17452

VSN 0

REF# PM-CNO1

REC

## GENERAL COMMENTS

02/01/2008 - THE FEMA PUBLIC ASSISTANCE PROGRAM IS A COST REIMBURSEMENT PROGRAM. THE FOLLOWING STEPS DESCRIBE THE PROCESS FOR PROJECT WORKSHEETS AND FUNDING PLUS THE RESPONSIBILITY OF EACH PARTY.

FEMA AND SUBGRANTEE IDENTIFY AND DESCRIBE A SCOPE OF ELIGIBLE WORK ON PROJECT WORKSHEETS.

COSTS CAN BE ACTUAL, OR

COSTS CAN BE ESTIMATED FOR EXPENSES PROJECTED FOR A SPECIFIED PERIOD OF TIME OR A LARGE PROJECT REQUIRING SEVERAL YEARS TO REBUILD, OR

COSTS CAN BE A COMBINATION OF ACTUAL AND ESTIMATED.

PW COSTS ARE BASED ON BEST AVAILABLE INFORMATION AT THE TIME AND DO NOT REPRESENT AUDITABLE COSTS AT THIS TIME.

SUBGRANTEE SUBMITS A REQUEST TO THE GRANTEE FOR REIMBURSEMENT OF EXPENSES AND TO DRAW DOWN THE FUNDS FOR WORK COMPLETED ON A SPECIFIC PW SUPPORTED WITH DOCUMENTATION REQUIRED BY GRANTEE.

SUBGRANTEE COMPLETES WORK AND REQUESTS GRANTEE FOR CLOSEOUT OF PROJECT WORKSHEET. RECORDS MUST BE AUDITABLE AND RETAINED FOR THREE YEARS AFTER CLOSEOUT OF THE SUB-GRANTEE.

GRANTEE CERTIFIES (AUDITS) WORK AND COSTS. RECORDS MUST BE AUDITABLE BY THE GRANTEE. GRANTEE RELEASES BALANCE OF FUNDS IF APPROVED.

FEMA OBLIGATES MORE FUNDS IF APPROVED OR DE-OBLIGATES ACCORDING TO REVIEW OF GRANTEE AUDIT.

FEMA WILL ADJUST FUNDING ON ALL LARGE PROJECTS BASED ON THE ACTUAL ELIGIBLE COSTS INCURRED. A FINAL INSPECTION AND PROGRAM REVIEW WILL DETERMINE AND VALIDATE THE APPROPRIATE ELIGIBILITY AND ASSOCIATED COSTS INCURRED.

BACKUP MATERIALS ATTACHED - LL - 2-1-08

## PW REQUIRED REVIEWS

REVIEW	REVIEW STATUS	RECOMMENDATION	ASSIGNED REVIEWER	REVIEWER	DATE SUBMITTED	DATE REVIEWED
Initial	Submitted				02/01/2008	
Final	Submitted					

HAGGERTY

partners for public sector excellence



City of New Orleans

Progress Payments  
July 2009

# MWH Summary of MWH Invoiced Activities (through July)

MWH Construction and Design Budget			
Construction Budget	Design Budget	Total	%

FEMA and Revolver	480,086,175	43,946,100	524,032,275	88%
CDBG	23,775,643	1,231,469	25,007,112	4%
Other	43,587,772	4,288,054	47,875,826	8%
Total	547,449,590	49,465,623	596,915,213	100%
%	92%	8%	100%	

## MWH Invoice Summary

Total Invoiced thru July	18,794,632	39%
Remaining	28,958,585	61%
Project Mgt Budget (8%)	47,753,217	100%

PM Allocated Costs	6,834,840	36%
Project Direct Codes	11,959,792	64%
Total Invoiced thru July	18,794,632	100%

- ◆ The chart above shows the MWH projected design and construction costs, and from that amount is derived the 8% project management fee of \$47.8 million
- ◆ The chart below shows that MWH has billed 39% of their projected management fee, and of that amount, 36% was "allocated" across all projects (i.e. 36% of the billing was coded to 69100001 program management)
- ◆ These charts only include Capital Projects, and does NOT include DPW invoices or project management activity

# MWH Progress Payment Matrix

PROGRESS PAYMENT MATRIX				
	Planning Design	Bid and Award Contracting	Construction Complete	Cumulative
Planning Design	12.5%			12.5%
	25.0%			25.0%
		17.5%		42.5%
		17.5%		60.0%
		35.0%		80.0%
			20%	20%
			20%	40%
			40%	100.0%

"CALCULATED" PROGRESS PAYMENT MATRIX			
	Cumulative Percentage	MWH Dollar Value of Project by Phase	Calculated Progress Value (thru July)
Planning	12.5%	103,921,374	1,039,214
Design	25.0%	342,631,928	6,862,639
Bid and Award	42.5%	40,059,760	1,362,033
Contracting	60.0%	59,833,955	2,872,030
Construction	80.0%	16,313,247	1,044,048
Complete	100.0%	34,154,929	2,732,394
		596,915,213	15,902,357

◆ The MWH management fee of \$47.8 million is based on \$597 million of "managed" design and construction costs. These costs will be impacted by:

Projects that get re-assigned from MWH to other departments/contractors

Projects that are only "partially managed" by MWH (i.e. only through contracting or only the construction phase)

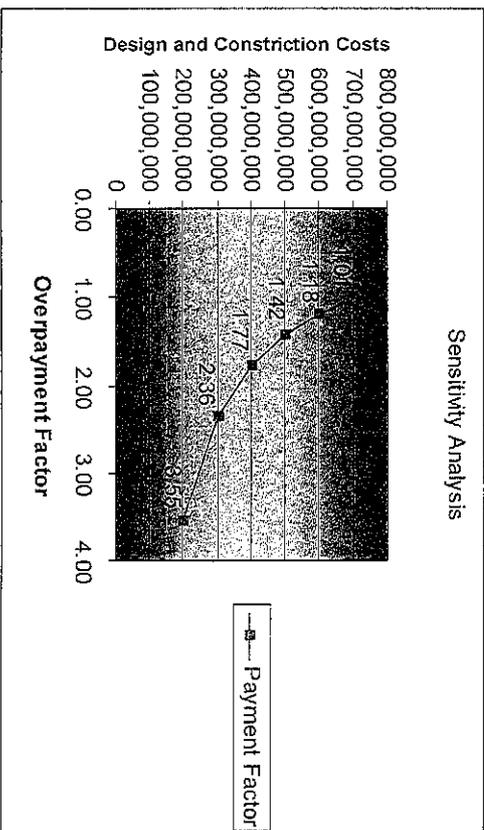
Projects where the actual design and construction costs are reduced because of scope limitations, budgetary limitations, or simply revisions to the estimated cost.

◆ The chart below shows the calculated progress value of project management fees at \$15.9 (resulting in a current payment factor of 1.18 (18.8M/15.9M))



## Overpayment Sensitivity Analysis

- ◆ The chart below shows an overpayment sensitivity analysis if the total design and construction costs reduce. At a projection of \$597 M, the payment factor is a value of 1.18 using the following figures:
  - Current invoice amount through July of \$18.8M
  - Calculated Progress Payment through June of \$15.9M
- ◆ To be at a payment factor of 1.0 the projected value of design and construction costs would have to be greater than \$700M
- ◆ As the projected design and construction costs decrease, the overpayment factor increases





# Progress Payment Matrix (less Mahalia Jackson)

PROGRESS PAYMENT MATRIX				
	Planning Design	Bid and Award Contracting	Construction Complete	Cumulative
Planning	12.5%			12.5%
Design	12.5%			25.0%
Bid and Award		17.5%		42.5%
Contracting		17.5%		60.0%
Construction			20%	80.0%
Complete			20%	100.0%
			40%	

"CALCULATED" PROGRESS PAYMENT MATRIX				
	Cumulative Percentage	MWH Dollar Value of Project by Phase	Calculated Progress Value (thru July)	
Planning	12.5%	103,921,374	1,039,214	
Design	25.0%	342,631,928	6,852,639	
Bid and Award	42.5%	40,059,780	1,362,033	
Contracting	60.0%	59,833,955	2,872,030	
Construction	80.0%	16,313,247	1,044,048	
Complete	100.0%	5,473,111	437,849	
		<b>568,233,395</b>	<b>13,607,811</b>	

- ◆ The MWH management fee of \$45.4 million is based on \$568.2 million of "managed" design and construction costs. These costs will be impacted by:

Projects that get re-assigned from MWH to other departments/contractors

Projects that are only "partially managed" by MWH (i.e. only through contracting or only the construction phase)

Projects where the actual design and construction costs are reduced because of scope limitations, budgetary limitations, or simply revisions to the estimated cost.

- ◆ The chart below shows the calculated progress value of project management fees at \$13.6 (resulting in a current payment factor of 1.38 (18.8M/13.6M))



# MWH Projects By Priority/Other

"CALCULATED" PROGRESS PAYMENT MATRIX PRIORITY PROJECTS		
Cumulative Percentage	MWH Dollar Value of Project by Phase	Calculated Progress Value (thru June)
12.5%	2,945,832	29,458
25.0%	117,788,935	2,355,779
42.5%	44,499,624	1,512,987
60.0%	24,028,828	1,153,384
80.0%	10,990,106	701,447
100.0%	56,870,227	77,670
	201,194,122	5,830,724
"CALCULATED" PROGRESS PAYMENT MATRIX OTHER PROJECTS		
Cumulative Percentage	MWH Dollar Value of Project by Phase	Calculated Progress Value (thru June)
12.5%	101,059,113	1,010,591
25.0%	229,673,119	4,593,462
42.5%	1,772,227	60,256
60.0%	59,305,373	2,846,658
80.0%	6,264,020	400,897
100.0%	731,963	58,556
	398,805,805	8,970,421

- ◆ The upper chart shows the progress value of Priority Projects
- ◆ The lower chart shows the progress value of Other Projects
- ◆ On a relative progress basis, the Priority Projects are further along than Other Projects (i.e. 2.9% complete vs. 2.2%)



# Summary of the Binders (Charters)

FUNDING BY BINDER (CHARTER)			
Total Funding	Current Budget	% Funded	Funding Shortage

Priority	98,358,749	186,314,754	53%	87,956,005
Other	112,240,358	477,431,655	24%	365,191,297
Re-assigned	24,460,662	28,905,925	85%	4,445,263
<b>Total</b>	<b>235,059,769</b>	<b>692,652,334</b>	<b>34%</b>	<b>457,592,565</b>
MWH (less re-assigned)	210,599,107	663,757,104	32%	453,147,302

PROJECT BUDGETS BY BINDER (CHARTER)				
Construction Budget (calc)	Design Budget (calc)	Project Mgt (calc)	Total	%

Priority	156,987,432	15,526,230	13,801,093	186,314,754	27%
Other	402,280,376	39,785,971	35,365,308	477,431,655	69%
Re-assigned	24,355,918	2,408,827	2,141,180	28,905,925	4%
<b>Total</b>	<b>583,623,726</b>	<b>57,721,028</b>	<b>51,307,580</b>	<b>692,652,334</b>	<b>100%</b>
%	84%	8%	8%	100%	

- ◆ The summary of the binder (charter) design and construction costs is generally consistent with MWH's financial spreadsheet
- ◆ The total funding includes FEMA, CDBG, obligations, etc but does not include the Revolver as a funding source
- ◆ The binders (charters) illustrate the funding gap



# Previous 5-Month Breakdown by Task

		LABOR VALUE (MARCH THROUGH JULY 2009)								
TASK DESCRIPTION	TASK NUMBER	March	April	May	June	July	5-Month Total	%		
PDU Technical Consultation	Task 1	2,546	1,599	457	228	0	4,831	0.1%		
Project Management	Task 2	434,346	364,106	340,722	526,185	395,259	2,060,618	28.5%		
Planning Phase Mgt	Task 3	19,591	21,279	15,443	16,910	3,998	77,221	1.1%		
Project Controls	Task 4	335,090	322,623	212,145	324,623	234,682	1,429,163	19.8%		
Design Phase Mgt	Task 5	321,943	224,468	186,768	217,573	214,654	1,165,406	16.1%		
Bid and Award Phase Mgt	Task 6	32,857	34,436	57,184	53,859	31,422	209,758	2.9%		
Construction Phase Mgt	Task 7	352,882	269,984	216,473	290,934	264,861	1,394,835	19.3%		
Project Commissioning and Certification	Task 8	0	304	3,500	803	0	4,607	0.1%		
Supplemental Services	Task 10	134,090	172,361	148,500	197,890	219,769	872,610	12.1%		
	Sub-total	\$1,633,345.70	\$1,411,161.16	\$1,180,891.24	\$1,629,005.63	\$1,364,645.00	\$7,219,048.73	100.0%		