

CITY OF NEW ORLEANS

ED QUATREVAUX, INSPECTOR GENERAL



June 27, 2013

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

RE: Review of Program Management /Construction Management

Dear Mr. White,

Your letter of June 19, 2013 makes a number of points with which we disagree and will address below. We have been advised that the Cooperative Endeavor Agreement is unclear on how reports should be directed, and for that reason we will replace our report with this letter. I have appended your letter, and note that it summarized the four page letter prepared by your contractor.

The principal disagreement involves compensation to the Program Manager/ Construction Manager (PM/CM), Jacobs/CSRS, for services delivered from November 30, 2007 through March 31, 2013. The RSD entered into two contracts for PM/CM services that appear to favor the contractor. We found that compensation to the PM/CM remained close to the contracted amount while the amount of rebuilding in dollar terms was greatly reduced.

The PM/CM received \$18,189,198 for its services in accordance with the 2007 contract. The contract related that the professional fee was for managing the completion of 13 newly constructed or major renovations plus nine other schools estimated to be in construction at the end of the 2007 contract. The estimated cost of rebuilding work in the contract was \$483,930,344.

By the end of the contract, the PM/CM had managed the completion of five new or major renovated schools and 11 major or minor demolition projects. Only \$231,922,820, or 48%, of the estimated \$483,930,344 work was actually completed, yet the PM/CM was paid the entire contracted amount of \$18,189,198.

The 2010 contract called for the PM/CM to be compensated \$26,994,177 for its services. The original contract also stipulated that the professional fee was for: managing the completion of 22 newly constructed or major renovations and 70 minor school renovations; seven demolitions of campuses; mothballing nine historic school buildings; and dismantling or relocating of five temporary education facilities. The estimated cost of rebuilding work in the contract was \$983,487,533.

Amendment #3 to the contract was executed in April 2012 and increased compensation to the PM/CM by \$7,899,903 (29%) to a total of \$34,894,080. At the same time, the amendment reduced the estimated value of work from \$983,487,533 to \$432,840,524, a 56% reduction.

As of March 31, 2013, the PM/CM had managed: completion of seven newly constructed or major renovations to schools (with an additional three estimated to be complete by end of the contract term); 27 minor renovation/stabilization projects; 15 major or minor demolition projects and three mothball projects. The 1st Quarter 2013 Project Status Report showed that only \$235,128,842, or 54%, of the estimated \$432,840,524 was actually completed with eight months left on the contract term. We estimate that the PM/CM was paid \$25,735,412 or 74% of the amended 2010 contract total compensation.

The PM/CM was paid \$43,924,610, or 83%, of the estimated \$53,083,278 called for in the two contracts as amended. At the same time, the estimated value of actual work completed shrank from \$1.5 billion to \$467,051,662, a reduction of 68%.

We are fully aware that the above professional services contracts are not “at-risk” contracts; however, professional services contracts do require services to be performed. We are also aware that there is no provision that calibrates PM/CM compensation precisely with the value of construction completed. However, RSD management should have realized that the PM/CM would require fewer professional staff after the rebuilding program was slowed by two-thirds from its original estimated value. Within the scope of our review, RSD continued to pay for PM/CM services that were underutilized without altering contract language to permit for variations, delays or changes within the rebuilding program.

In response to a question from a potential PM/CM bidder during the re-proposal of these contracted services in 2013, the RSD advised that PM/CM compensation would be reduced if the estimated design/construction schedule was scaled back. Proving that RSD was aware that the PM/CM would need fewer professional staff, on June 19, 2013, the RSD executed Amendment #4 altering the Jacobs/CSRS services contract “to decelerate a portion of the required Staffing and Resources...” that was provided to RSD via Amendment #3 in the amount of \$3,022,763. The issuance of this “credit” for PM/CM services demonstrated that RSD understood that proper management called for the PM/CM contract to be amended to reduce the professional services fee when the construction program was reduced by two-thirds.

The failure to amend the 2007 contract to reduce the professional services fee when only 48% of the construction value was completed cost taxpayers an estimated \$9,472,055 for services not required. The failure to amend the 2010 contract when the value of completed construction projects was reduced by 56% cost taxpayers an estimated \$23,207,386 for services not required.

Your letter stated that the OIG team did not consult with RSD and Jacobs/CSR staff in this project. Your letter failed to mention that RSD and Jacobs/CSR staff refused to meet without RSD counsel present. Requiring the presence of organizational counsel reflects RSD’s attempt to

monitor and control oversight, which is incompatible with independent oversight. A request by employees that their personal counsel be present would have been readily accepted.

I advised your predecessor at RSD that a criminal prosecution in New York City revealed that the construction company had colluded with the independent concrete testing firm to falsify the results of concrete tests at 117 sites in Manhattan. Those sites included the base of the Freedom Tower, Yankee Stadium and the Second Avenue Subway station. The faulty concrete that threatened the structural integrity of them was replaced at considerable expense.

The state Legislative Auditor reported in 2012 that RSD allowed the construction company to hire the concrete testing firm, and recommended that a third party firm conduct the tests. The RSD did not accept the recommendation. On January 30, 2013, the OIG advised the RSD that allowing the construction company to select a testing firm was a poor practice and recommended independent concrete testing (attached). The RSD never responded.

I urge you to reconsider what is an invitation for fraud by substitution of inferior goods, a fraud that could threaten the structural integrity of the buildings that serve our children.

The School Construction Authority of New York City and other governmental entities were established on the belief that educators should not manage construction projects. If it is not too late in the program, I recommend you consider ending the reliance on a contractor to protect the state's interests. In addition, you may wish to consider establishing an Inspector General for the Department of Education.

I wish the RSD success in its rebuilding program.



Ed Quatrevaux
Inspector General
City of New Orleans

cc: Board of Elementary and Secondary Education

OFFICE OF INSPECTOR GENERAL
CITY OF NEW ORLEANS



ED QUATREVAUX
INSPECTOR GENERAL

January 30, 2013

State of Louisiana, Recovery School District
1615 Poydras Street, Suite 1400
New Orleans, LA 70112

Attn: Patrick Dobard
Superintendent, Recovery School District

RE: Oversight of Testing & Inspection Services for School Construction

Dear Mr. Dobard,

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

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

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

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



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

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

"Recommendation 5: RSD should hire testing agencies directly."

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

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

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

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

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

OIG Recommendations:

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



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

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter G. Smith".

Peter G. Smith
First Assistant Inspector General/School Construction Unit

CC: James Clark
Jay Ginsberg



LOUISIANA DEPARTMENT OF EDUCATION

June 19, 2013

Mr. E.R. Quatrevaux, Inspector General
City of New Orleans, Office of Inspector General
525 St. Charles Avenue
New Orleans, Louisiana 70130

RE: Review of Program Management/Construction Management Scope of Services

Dear Mr. Quatrevaux:

We are in receipt of your June 7, 2013, report analyzing the contractual relationship between the Recovery School District and JacobsCSRS, its Program Management/Construction Management firm for the School Facilities Master Plan. We have grave concerns about the release of this report in its current form, given the methodology and process used to conduct the review.

It is clear that the Office of the Inspector General team that completed this review has a fundamental misunderstanding of the type of contract the RSD has with JacobsCSRS. The OIG analyzed JacobsCSRS' performance as if it were an "at risk" construction contract and not the professional services contract that it is.

Additionally, the OIG team did not engage with the RSD or JacobsCSRS in the completion of the report and based its review on a small sample of documents. The review does not take into account a number of important factors that impact the completion of projects including the significant changes that the program went overtime in the number and type of projects, delays due to environmental concerns, non-performance of contractors, and other changes initiated by the RSD.

A more detailed response to these concerns, prepared by JacobsCSRS, is enclosed with this letter. I am disappointed that the OIG would consider releasing a report with such significant methodological flaws, omissions, and factual inaccuracies.

Sincerely,

A handwritten signature in black ink, appearing to read "John White".

John White
State Superintendent of Education

Louisiana Believes

JACOBS/CSRS

PROGRAM MANAGEMENT

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Recovery School District
1615 Poydras St.
Suite 1400
New Orleans, Louisiana 70112

June 14, 2013

Attention: Mr. Ron Bordelon

Re: Review of Program Management/Construction Management Scope of Services for Recovery School District Orleans Parish School Rebuilding Program

Dear Mr. Bordelon:

Per your request, we submit the following observations and comments regarding the June 7, 2013, Report by the City of New Orleans Office of Inspector General (OIG) entitled, "Review of the Program Management/Construction Management Scope of Services for the Recovery School District, Orleans Parish School Rebuilding Program."

We have reviewed the report in detail and have summarized our concerns into the following four categories:

1. OIG's misunderstanding of the contractual relationship between Jacobs/CSRS and the Recovery School District.
2. A refusal of OIG personnel to meet with representatives of Jacobs/CSRS to discuss or understand the project details prior to issuance of its report.
3. A failure by the OIG to consider more than a small sampling of documents in the context of a complex and wide-ranging Program with shifting-needs and goals.
4. A disregard by OIG to follow its own procedures for an investigation of this kind.



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OIG's Misunderstanding of Contract Scope

The report fails to recognize that the contract between the Department of Education and the Program Manager is a contract for professional services and not an "at risk" construction management contract. Such "at-risk" construction contracts are permissible with public entities under Louisiana law only through specific legislative approval. The report also fails to recognize our agency relationship with the Owner. The Program Manager is not in a position, nor does it have a contract obligation, to guarantee delivery of design, construction or any other service provided by the vendors and contractors who are contracted directly with the Owner for the Program. The Program Manager's responsibility is to assist the Owner in managing the Program, which we have done in all respects.

OIG's Refusal to Meet with Program Manager Representatives

The OIG's erroneous findings are based on a small sample of program documents that they selected and nothing else. The report does not mention, nor explain, the fact that the Program Manager offered to help the OIG to fully understand the Program. The OIG, on multiple occasions, canceled its requests for meetings with Program Manager personnel and never conducted an interview with anyone involved with administration of the Program. The Program Manager was never asked to supply any additional Program documents to OIG that reflected the Program Manager's performance of the required services. It is unreasonable that the OIG would or could advocate broad and wide sweeping conclusions and subsequent recommendations without conducting a complete and thorough investigation and without a complete understanding of the dynamics of the Program.

OIG's Inability to Understand Complexity of Program

The report's findings rely on an overly simplistic methodology of comparing forecasted project budgets in the contract with the dollars expended, ignoring the impact of continuous material changes to the Program over the two contract periods. This superficial analysis fails to recognize the dynamic nature of a recovery program. Program changes not considered by the stated methodology of the report include: (1) the change in the number and types of projects, (2) changes in project schedules, (3) the impact of two major amendments to the Master Plan on project delivery, (4) numerous FEMA EHP and

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environmental delays, (5) multiple Owner directed project starts and stops, (6) Owner led project delivery strategy changes, (7) construction market changes and (8) Owner's architect and contractor non-performance. The OIG's selected methodology also fails to recognize staffing and associated costs of the contract deliverables provided to satisfy the grants management responsibilities in the 2010 contract.

The report erroneously assumes that Amendment 3 to the 2010 contract reduced the scope of work when in fact it increased the number of projects and accelerated the delivery schedule for projects that had not been started. Nor did the report recognize Amendment 4 to the 2010 contract that reflects the Owner's reprioritizing and re-scoping of the accelerated project portfolio. This amendment reduces the 2010 contract amount by \$ 3M.

As for the Report's commentary regarding the Program Manager's obligation to provide support to the Owner in connection with the activities of the OIG's Construction Fraud Unit, the Program Manager staffed this position per the Owner's request in anticipation of the OIG's engagement under the Cooperative Endeavor Agreement dated April 17, 2012. As stated above, the Program Manager made these resources available however, the OIG failed to meaningfully engage the Program Manager in discussions of its endeavors relative to this Program.

It is apparent that no real analysis of the Program can be made without taking into account these and several other material factors that would naturally affect the delivery of any program of this magnitude.

OIG Disregarded Its Own Procedures

This report reflects a failure of OIG to follow its own established protocols as required by the City Code, as well as the OIG's contracts with RSD and GOHSEP. OIG has chosen to ignore its own guidelines and investigative protocols in attempting to publish a technically inaccurate Report without affording the RSD and the Program Manager with the requisite time to respond. Further, the OIG has ignored procedures set out in the Association of Inspectors General's "Green Book," which supplies quality standards for OIG reporting.



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Summary

The report's incomplete and inaccurate discussion of the Program Manager's performance on an extremely complex and dynamic disaster recovery rebuilding program is based on an overall lack of understanding of the Program. The inaccurate assessments of the contracts, and a failure to analyze the multiple modifications to the Program's scope, schedule and budget parameters, have produced a flawed report.

Jacobs/CSRS is offended by this report. The idea that an agency with such wide-ranging oversight, powers and responsibilities would publish a report that contains such far reaching conclusions and recommendations without any true study and research to support them is disappointing.

The Jacobs/CSRS team has worked very hard since 2007 to build a sustainable building recovery program to support the innovative and forward-thinking work of the RSD in providing the children of New Orleans with 21st century learning environments. We have provided all of the contract services in a professional and timely manner, and in complete accord with the agreements. In our capacity as Program Manager, we will continue to support and assist you in the leadership and management of this Program.

Sincerely,



John Wallace
Program Director
Jacobs/CSRS Program Management