

**FEMA Should Disallow  
\$82.4 Million of Improper  
Contracting Costs  
Awarded to Holy Cross  
School, New Orleans,  
Louisiana**





# HIGHLIGHTS

## ***FEMA Should Disallow \$82.4 Million of Improper Contracting Costs Awarded to Holy Cross School, New Orleans, Louisiana***

**April 14, 2015**

### **Why We Did This**

Holy Cross received an \$89 million FEMA grant award for 2005 Hurricane Katrina damages to its campus in the Ninth Ward of New Orleans. By 2011, the school had completed work on 12 of its 16 projects. However, at the time of our audit, Louisiana had not submitted a final claim for the 12 projects and FEMA had closed only 1 large project.

### **What We Recommend**

FEMA should disallow \$82.4 million as ineligible contract costs unless FEMA grants an exemption for all or part of the costs as provided for in 2 CFR Part 215.4.

#### **For Further Information:**

Contact our Office of Public Affairs at (202) 254-4100, or email us at [DHS-IG.OfficePublicAffairs@oig.dhs.gov](mailto:DHS-IG.OfficePublicAffairs@oig.dhs.gov)

### **What We Found**

Holy Cross did not follow Federal procurement standards in awarding 21 contracts totaling \$82.4 million. As a result, FEMA has no assurance that costs were reasonable. This is especially true for projects that FEMA funds at 100 percent of the costs. Further, the lack of open and free competition increased the risk of fraud, waste, and abuse and decreased opportunities for small businesses, minority-owned firms, and women's business enterprises to compete for federally funded work. For the most part, we do not question costs that Holy Cross incurred to reopen school in January 2006, or to operate temporary facilities in the Ninth Ward. However, in 2007, Holy Cross decided to relocate from the Ninth Ward to the Gentilly neighborhood of New Orleans. Holy Cross set up a temporary campus in Gentilly in 2007 and began work on permanent facilities there in 2008. By 2007, exigent circumstances no longer existed, so Holy Cross should have procured competitive bids according to Federal regulations for the work in Gentilly.

Since 2005, FEMA has obligated \$260.3 million for Louisiana to manage this disaster, but we continue to identify subgrantees like Holy Cross that could have benefited from better grant management from the State.

### **FEMA Response**

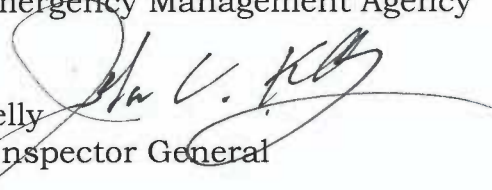
FEMA officials generally agreed with our findings and recommendation pending its review of our supporting documents. FEMA's written response is due within 90 days.



OFFICE OF INSPECTOR GENERAL  
Department of Homeland Security  
Washington, DC 20528

APR 14 2015

MEMORANDUM FOR: George A. Robinson  
Regional Administrator, Region VI  
Federal Emergency Management Agency

FROM: John V. Kelly   
Assistant Inspector General

SUBJECT: *FEMA Should Disallow \$82.4 Million of Improper Contracting Costs Awarded to Holy Cross School, New Orleans, Louisiana*  
Audit Report Number OIG-15-65-D

We audited Federal Emergency Management Agency (FEMA) grant funds awarded to Holy Cross School (Holy Cross) in New Orleans, Louisiana. The Louisiana Governor's Office of Homeland Security and Emergency Preparedness (Louisiana), a FEMA grantee, awarded Holy Cross \$89.3 million for damages resulting from Hurricane Katrina, which occurred in August 2005. The award provided 100 percent funding for eligible project costs for temporary buildings, replacement of permanent buildings and facilities, demolition of damaged facilities, and replacement of contents. We audited nine projects totaling \$88.6 million, or about 99 percent of the total award (see appendix A). By 2011, Holy Cross had completed work on 12 of its 16 projects. However, at the time of our audit, Louisiana had not submitted a final claim for the 12 projects and FEMA had closed only 1 large project.

### **Background**

Holy Cross School is a Catholic, private nonprofit college preparatory boy's middle and high school founded in 1849 by the Congregation of Holy Cross that covers grades 5-12. Hurricane Katrina devastated the Holy Cross school buildings located in the lower Ninth Ward neighborhood of New Orleans. The lower Ninth Ward remained uninhabitable for several weeks following the disaster in August 2005. Just weeks following Hurricane Katrina, Holy Cross began holding classes for displaced students at the Dunham School in Baton Rouge. In November 2005, school administrators returned to New Orleans and began holding classes at Cabrini High School.

Holy Cross worked under exigent conditions to reopen its first temporary campus in January 2006 in the Ninth Ward. In 2007, the Brothers of the Congregation of Holy Cross and their board of directors decided to relocate the



school from the Ninth Ward to the Gentilly neighborhood of New Orleans. In May 2007, Holy Cross began setting up its temporary campus in Gentilly and started operating the school there in August 2007. Construction of permanent facilities in Gentilly started in 2008. Holy Cross completed construction of four permanent buildings—a middle school and high school in August 2009, an administration building in March 2010, and a student center in February 2011. Holy Cross used contractors to perform all work.

### **Results of Audit**

Holy Cross did not follow Federal procurement standards in awarding 21 contracts totaling \$82.4 million. As a result, FEMA has no assurance that costs were reasonable. This is especially true when the Federal share is 100 percent because, when FEMA pays the entire cost of the project, the applicant has no financial exposure to excessive or unnecessary costs. Further, the lack of open and free competition increased the risk of fraud, waste, and abuse and decreased opportunities for small businesses, minority-owned firms, and women's business enterprises to compete for federally funded work.

We reviewed 23 contracts totaling \$85.0 million that Holy Cross awarded primarily for three phases of work:

1. installing temporary classrooms under exigent circumstances on its original Ninth Ward campus to reopen the school in January 2006;
2. installing temporary classrooms on its new Gentilly campus in 2007 and 2008; and
3. construction and purchase of contents, beginning in 2008, for four new facilities in Gentilly.

We considered work in the first phase to reopen the school at its original Ninth Ward location to be exigent work. We generally consider circumstances exigent when lives or properties are at-stake or, as in this case, when a city or community needs to reopen its schools. We considered exigent circumstances to be over once Holy Cross' first temporary campus opened in January 2006. Holy Cross awarded two noncompetitive contracts totaling \$2,326,598 for this work.<sup>1</sup> One contract for \$1,752,074 was for temporary modular classrooms. The other was for a \$574,524 construction contract that Holy Cross awarded for other exigent work needed to reopen the school by January 2006. The construction contractor billed for work on a prohibited cost-plus-a-percentage-of-cost basis. Therefore, we questioned the \$99,144 in markups on costs, but

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<sup>1</sup> See table 1, Net Contract Award Amount, line 5 plus line 12.



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did not question the remaining \$2,227,454 because these contracts were for exigent work.<sup>2</sup>

Holy Cross awarded the other 21 contracts totaling \$82,679,297 for the second and third phases of work.<sup>3</sup> We questioned \$82,261,103<sup>4</sup> for 19<sup>5</sup> of the 21 contracts because Holy Cross did not follow Federal procurement standards after exigent circumstances ended. Because Holy Cross contracted for this work more than a year after the disaster, it had ample time to award the 19 contracts properly. The work to relocate temporary school operations to Gentilly did not begin until 2007, and construction of permanent facilities did not begin until 2008.

These findings occurred, in part, because Louisiana did not fulfill its grantee responsibilities to ensure Holy Cross was aware of and complied with Federal procurement standards. Since 2005, FEMA has obligated \$260.3 million for Louisiana to manage this disaster, but we continue to identify subgrantees like Holy Cross that could have benefited from better grant management.

### **Finding A: Improper Contracting**

Holy Cross did not follow Federal procurement standards in awarding 21 of the 23 disaster-related contracts. As a result, open and free competition did not always occur, which increased the risk of fraud, waste, and abuse and decreased the opportunities for small businesses, minority-owned firms, and women's business enterprises to compete for federally-funded work. In addition, because competition was inadequate, FEMA has no assurance that costs were reasonable. Therefore, we question \$82.4 million as ineligible.

Federal regulations at 2 Code of Federal Regulations (CFR) Part 215 and 44 CFR Part 13, in part, require that subgrantees:<sup>6</sup>

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<sup>2</sup> See table 1, Net Contract Award Amount, lines 5 plus 12, minus Procurement Violation Questioned Cost line 5.

<sup>3</sup> See table 1, Total Net Contract Award Amount minus lines 5 and 12.

<sup>4</sup> See table 1, Total Procurement Violation Questioned Cost minus line 5.

<sup>5</sup> See table 1, Total Number of Contracts minus lines 5, 11, and 12.

<sup>6</sup> Recipients of Federal grants or subgrants must comply with applicable Office of Management and Budget administrative requirements, which include applicable procurement standards. For private non-profit entities, the applicable requirements are located in 2 CFR 215 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations (Office of Management and Budget relocated the requirements from Circular A-110 in 2004 ). Although FEMA has not codified these requirements, the requirements are applicable to FEMA grants and subgrants to private-non-profit entities. We included citations from FEMA's 44 CFR 13 for similar procurement standards that apply to state, local, and tribal governments because Holy Cross representatives said that the only guidance they received during the initial "kickoff meeting" with FEMA and State representatives was in 321 FEMA Guidebook (which refers to the requirements of 44 CFR 13) and that they were, therefore, not aware of 2 CFR 215.



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1. perform procurement transactions in a manner to provide, to the maximum extent practical, open and free competition and make awards to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality, and other factors considered (2 CFR 215.43 and 44 CFR 13.36(c)(4) and 44 CFR 13.36(d)(3)(iv));
2. not use prohibited “cost-plus-a-percentage-of-cost” or “percentage-of-construction-cost” method of contracting (2 CFR 215.44(c) and 44 CFR 13.36(f)(4));
3. include required provisions in contracts and subcontracts, such as those relating to termination for cause, compliance with Equal Employment Opportunity and labor laws, and prohibition of “kickbacks” (2 CFR Part 215.48 and Appendix A to Part 215—Contract Provisions; and 44 CFR 13.36(i));
4. make positive efforts by taking specific steps to try to utilize small businesses, minority-owned firms, and women’s business enterprises, whenever possible (2 CFR 215.44(b) and 44 CFR 13.36(e));
5. prepare and document some form of cost or price analysis in connection with every procurement action (2 CFR 215.45 and 44 CFR 13.36(f)(1)); and
6. maintain a system for contract administration to ensure contractor conformance with the terms, conditions, and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract (2 CFR 215.47 and 44 CFR 13.36(b)(2)).

As table 1 shows, Holy Cross awarded—

- 17 of 23 contracts with inadequate competition;
- 6 of 23 contracts using the cost-plus-a-percentage-of-cost or percentage-of-construction-cost method of contracting;
- 21 of 23 contracts that did not include required provisions;
- 20 of 23 contracts without making positive efforts to utilize small businesses, minority-owned firms, and women’s business enterprises, whenever possible;
- 13 of 23 contracts without preparing and documenting some form of cost or price analysis; and
- 10 of 23 contracts without properly administering and monitoring the contracts.



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**Table 1: Questioned Contract Cost and Procurement Violations**

Scope of Work	Net Contract Award Amount	Procurement Violation Questioned Cost	Number of Contracts	Violations of Procurement Standards 1 - 6 Listed in Finding A Above					
				1*	2	3	4	5	6
<b>Construction Contractor</b>									
1. Permanent Construction Work	\$66,021,699	\$66,021,699	1			x	x	x	
2. Gentilly Temporary Campus Work	2,958,514	2,958,514	4	x		x	x	x	x
3. Ninth Ward Additional Temporary Campus Work After School Opening	298,530	298,530	1	x	x	x	x	x	x
4. Ninth Ward Code Work After School Opening	115,631	115,631	1	x	x	x	x	x	x
5. Ninth Ward Temporary Campus Work*	574,524	99,144	1	*	x	x	x	x	x
<b>Total Construction Contractor</b>	<b>\$69,968,898</b>	<b>\$69,493,518</b>	<b>8</b>						
<b>Architectural and Engineering</b>									
6. Design Work Permanent	\$ 5,248,222	\$ 5,248,222	1		x	x	x	x	
7. Gentilly Temporary Campus Work	118,500	118,500	1	x		x	x	x	x
<b>Total Architectural and Engineering</b>	<b>\$ 5,366,722</b>	<b>\$ 5,366,722</b>	<b>2</b>						
<b>Project Management</b>									
8. Permanent Campus Work	\$ 4,207,519	\$ 4,207,519	1	x	x	x		x	
9. Gentilly Temporary Campus Work	193,736	193,736	1	x	x	x	x	x	x
<b>Total Project Management</b>	<b>\$ 4,401,255</b>	<b>\$ 4,401,255</b>	<b>2</b>						
<b>Other Contractors</b>									
10. Replacement of Contents	\$ 1,920,220	\$ 1,920,220	6	x		x	x		
11. State Contracts – <b>NO VIOLATIONS</b>	418,194	0	2						
12. Modular Buildings in Ninth Ward*	1,752,074	0	1	*		x	x	x	x
13. Demolition of Old Campus	658,362	658,362	1			x	x		
14. Demobilization of Modular Buildings	520,170	520,170	1			x	x		
<b>Total Other Contractors</b>	<b>\$ 5,269,020</b>	<b>\$ 3,098,752</b>	<b>11</b>						
<b>Total</b>	<b>\$85,005,895</b>	<b>\$82,360,247</b>	<b>23</b>	<b>17</b>	<b>6</b>	<b>21</b>	<b>20</b>	<b>13</b>	<b>10</b>

Source: Holy Cross contracts, related contract documentation, and Office of Inspector General (OIG) analysis.

\* These two noncompetitive contracts were for exigent work in the Ninth Ward.



## **Inadequate Competition**

Holy Cross awarded 17 contracts totaling \$12,139,248<sup>7</sup> without open and free competition, including 15 contracts totaling \$9,812,650<sup>8</sup> for non-exigent work and 2 contracts for exigent work totaling \$2,326,598.<sup>9</sup> We question all costs for the 15 contracts for non-exigent work. For the two exigent work contracts totaling \$2,326,598, we question only \$99,144 in prohibited markups on costs (see section below on Prohibited Contracts).

Federal regulations require open and free competition; however, FEMA's practice has been to allow contract costs it considers reasonable, regardless of whether the contract complies with Federal procurement regulations. We do not agree with this practice because the goals of proper contracting relate to more than just reasonable cost. FEMA's normal practice of allowing contract costs it determines reasonable provides no deterrent to improper contracting and undermines good grant management.

Without open and free competition, FEMA has little assurance that contract costs are reasonable. This is especially true when FEMA funds 100 percent of the grant because applicants have no financial exposure and, thus, no incentive to save costs. Open and free competition usually increases the number of bids received and thereby increases the opportunity for obtaining reasonable pricing from the most qualified contractors. It also allows greater opportunity for small businesses, minority firms, and women's enterprises to compete for federally funded work. Open and free competition also helps to discourage and prevent favoritism, collusion, fraud, waste, and abuse. Open and free competition allows all responsible sources to compete for contracts.

***Project Management Contractor*** — Holy Cross advertised the project management services on permanent work as a request for qualifications and awarded the contract based solely on qualification with no consideration for price. Holy Cross also awarded the project management services on temporary campus work at the Gentilly Campus to the same contractor without open and free competition. Both these contracts were also prohibited percentage-of-construction-cost contracts (see section on Prohibited Contracts, later in this report).

Holy Cross contends that FEMA categorized the temporary facility work awarded without publically advertising as emergency work and therefore allowed an exception to the bidding requirements. However, FEMA's categorization of work as Category B — Emergency Protective Measures has no

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<sup>7</sup> See table 1, lines 2, 3, 4, 5, 7, 8, 9, 10, and 12.

<sup>8</sup> See table 1, lines 2, 3, 4, 7, 8, 9, and 10.

<sup>9</sup> See table 1, lines 5 and 12.





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bearing on whether work is exigent for contracting purposes. The questioned Category B temporary facility work was work that Holy Cross' contractor started in April 2007 and completed in August 2007, nearly 2 years after the disaster occurred. As stated previously, exigent conditions ended after Holy Cross completed the first temporary campus in January 2006. From that point forward, Holy Cross should have followed Federal contracting regulations.

Holy Cross representatives also said that FEMA reviewed the project management contract and determined that the fee was reasonable and eligible. Holy Cross officials then sought reimbursement for the costs. However, FEMA officials said they only advise subgrantees that contracts must comply with applicable procurement standards (Federal, State, and local), be of reasonable cost, and pertain only to an eligible scope of work. When we asked FEMA officials about this, they emphasized that the subgrantee is responsible for complying with Federal regulations.

Holy Cross officials said that they publicly advertised the project management work for the permanent facility. However, Holy Cross did not consider price as a factor in selecting the successful firm. Holy Cross representatives said they did not know they were required to consider price in awarding the professional service contract for project management. The *FEMA Public Assistance Guide 322* states that only procurement of architectural or engineering services can consider only contractor qualifications.

**Construction Contractor Temporary Campus Work** — Holy Cross awarded seven temporary campus work contracts totaling \$3,947,199<sup>10</sup> to its construction contractor without open and free competition. These contracts also included three prohibited cost-plus-a-percentage-of-cost contracts (see section on Prohibited Contracts, later in this report). Rather than publicly advertise these seven contracts, Holy Cross awarded the work to one preferred construction contractor without open and free competition. This occurred despite the fact that Holy Cross' own procurement policy required it to establish a "competitive environment" for the purchase of goods and services.

Holy Cross representatives said they believed that contracts connected with Category B — Emergency Protective Measures were exempt from the requirement to advertise given the emergency nature of the work. However, as we noted earlier, FEMA's categorization of work as Category B — Emergency Protective Measures has no bearing on whether work is exigent for contracting purposes. We questioned the Category B temporary facility work because Holy Cross' contractor started the work in 2007, nearly 2 years after the disaster occurred; exigent conditions did not exist after Holy Cross reopened its school in the Ninth Ward in January 2006.

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<sup>10</sup> See table 1, lines 2-5.



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**Other Contractors** — Holy Cross awarded six contracts for building contents totaling \$1,920,220 without open and free competition. Holy Cross did not advertise or otherwise publicize its procurements to all potential qualified bidders. Holy Cross also gave unfair competitive advantage to one contractor because Holy Cross allowed the contractor to provide assistance in the design of the specifications for bleachers before it awarded the contract. Federal regulations at 2 CFR 215.43 and 44 CFR 13.36(c)(1) require grant recipients to conduct all procurement transactions in a manner to provide, to the maximum extent practical, open and free competition. Additionally, Federal regulations at 2 CFR 215.43 state that contractors who develop specifications or statements of work for the specific procurements be excluded from competing for such procurements.

Holy Cross officials provided us their invitations to bid to a preselected group of vendors as evidence of competition for six of these contracts. Holy Cross officials said the invitations provided evidence of sufficient competition because the Federal regulations did not require them to advertise procurements. Also, Holy Cross officials provided documentation from Louisiana approving the procurement of these six contracts. We asked Louisiana officials how they determined the contracts were competitive. Louisiana officials responded that Holy Cross received quotes from vendors and chose the vendor with the lowest bid and therefore provided adequate competition. However, Louisiana officials incorrectly concluded these actions constituted open and free competition as Holy Cross officials did not provide all prospective bidders an opportunity to bid.

Holy Cross officials contended that they complied with all requirements regarding “open and free competition” in connection with all contracts for permanent work, including the six contracts for the replacement of contents, because obtaining multiple bids from multiple preselected contractors did not restrict competition in any way.

For one of the six contracts, Holy Cross officials said that Federal regulation did not require them to provide open and free competition because they used an existing state cooperative purchasing contract. FEMA encourages cooperative purchasing. According to Federal regulations at 44 CFR 13.36(b)(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.”

However, to use a state purchasing contract, Holy Cross would have had to abide by the terms and conditions of the contract, which it did not. Holy Cross did not abide by the terms and conditions because the contract specifically excluded certain equipment that Holy Cross purchased and included a dollar-



purchasing threshold that Holy Cross exceeded. Therefore, Holy Cross did not procure the purchase properly.

### **Prohibited Contracts**

Holy Cross awarded \$10,638,162 for six contracts using prohibited cost-plus-a-percentage-of-cost and percentage-of-construction-cost contracts.<sup>11</sup> Regulations at 2 CFR 215.44(c) and 44 CFR 13.36(f)(4) clearly prohibit the “cost-plus-a-percentage-of-cost” or “percentage-of-construction-cost” methods of contracting.

Federal regulations at 2 CFR 215.44(c) and 44 CFR 13.36(f)(4) prohibit the use of cost-plus-a-percentage-of-cost contracts and percentage-of-construction-cost because they provide no incentive for contractors to control costs—the more contractors charge, the greater the profit. Additionally the *FEMA 321 Policy Digest* (p. 20) and the *FEMA 322 Public Assistance Guide* (p. 40) state that cost-plus-a-percentage-of-cost contracts are not eligible for FEMA funding.

Holy Cross officials said that FEMA and Louisiana knew about their use of these contracts, yet did not tell them Federal regulations prohibited such contracts. However, FEMA officials told us that they do not provide advice on procurements other than to inform applicants they must follow the regulations. FEMA officials also said it is Holy Cross’ responsibility to follow the regulations. It is Louisiana’s responsibility to monitor its subgrantees to ensure compliance with Federal regulations. Further, as part of the grant award process, Holy Cross officials signed Louisiana documents certifying they were knowledgeable about Public Assistance guidelines including those in 44 CFR.

***Architectural and Engineering Contractor*** — Holy Cross awarded a \$5,248,222 prohibited percentage-of-construction-cost contract to its Architectural and Engineering contractor for the design of the permanent school. Holy Cross awarded the contract using 8 percent of total construction cost—the more the building cost, the more the firm could charge.

Holy Cross officials said they publicly advertised the Architectural and Engineering contract for permanent work and ultimately awarded the contract to design the permanent school buildings to the same joint venture Architectural and Engineering firm that had designed some of the temporary facilities. Holy Cross representatives said that the contract used for the permanent work design was a standard American Institute of Architects contract providing for the fee to be calculated based upon a percentage of construction costs. However, regardless of the terms of the standard contract, Federal regulation strictly prohibited percentage-of-construction-cost contracts.

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<sup>11</sup> See table 1, lines 3, 4, 5, 6, 8, and 9.



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Holy Cross representatives said that they were unaware of any regulation restricting the manner in which they could calculate the Architectural and Engineering fee.

**Project Management** — Holy Cross awarded two noncompetitive and prohibited percentage-of-construction-cost contracts totaling \$4,401,255 for project management of a permanent school and temporary campus. These percentage-of-construction-cost contracts consisted of \$4,207,519 for management of permanent construction and \$193,736 for management of temporary campus construction. The fee for these contracts was 6 percent of total construction costs—again, the higher the construction costs, the more the project management stood to gain.

Holy Cross again said that Louisiana and FEMA officials were aware of the manner in which they awarded the fee-based contracts and neither Louisiana nor FEMA advised them of any problem with using a percentage-of-construction-cost. Holy Cross representatives said that they were unaware of any regulation preventing the fee from being based on a percentage of construction costs. They assumed that it was acceptable because that is how FEMA estimated the fee in the project worksheets. However, FEMA develops project worksheets based on estimated building costs, not actual costs, and doing so does not constitute approval or support for using an unallowable method of paying project management costs.

**Construction Contractor** — Holy Cross awarded \$988,685 for three prohibited cost-plus-a-percentage-of-cost contracts to its construction contractor for temporary campus work.<sup>12</sup> Although all three of these contracts are entirely ineligible, we did not question all of the costs because one contract was for exigent work to construct a temporary campus. As we discuss previously, for this \$574,524 exigent contract, we questioned only \$99,144 for improper markups.

### **Other Contracting Problems**

Holy Cross did not comply with other Federal procurement standards in awarding 21 of 23 contracts we reviewed totaling \$84,587,701.<sup>13</sup> Specifically, Holy Cross did not:

- include all the required provisions in 21 contracts;
- make efforts to ensure the use of small businesses, minority-owned firms, and women's business enterprises to the fullest extent practicable for 20 of the contracts;

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<sup>12</sup> See table 1, lines 3, 4, and 5.

<sup>13</sup> See table 1, Total Net Contract Award Amount minus line 11.



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- perform a cost or price analyses on 13 of the contracts; and
- maintain an adequate contract administration system for 10 temporary campus work contracts.

**Required Provisions** — Holy Cross did not include all required provisions in 21 of its contracts totaling \$84,587,701. Federal regulations set forth the required provisions for contracts and subcontracts, such as Equal Employment Opportunity, compliance with labor laws, and prohibition of “kickbacks.” These provisions document the rights and responsibilities of the parties and minimize the risk of misinterpretations and disputes.

Holy Cross representatives said that they believed the required provisions should only be included in contracts where applicable. For example, Holy Cross representatives correctly pointed out that the *Davis-Bacon Act* is specifically not applicable to Federal Public Assistance grants under the *Robert T. Stafford Disaster Relief and Emergency Assistance Act*, as amended (*Stafford Act*). Furthermore, Holy Cross representatives said that they were unclear whether the provisions were required for non-construction contracts and even if required, failure to include all of the provisions is not a sufficient basis for questioning the costs associated with the contracts. Finally, Holy Cross officials said that even if they made technical mistakes, FEMA essentially waived the requirement by determining that the costs associated with the contracts were eligible.

Holy Cross representatives said that they publically advertised the contract for the permanent construction work and included all applicable provisions of 2 CFR 215 in the contract. Holy Cross representatives provided an excerpt from 1 out of the 21 contracts and said that either they included the required contract provisions or the provisions were not applicable. We disagreed with their assessment of the inclusion of provisions. The contracts did not specifically address certain important provisions, such as the *Contract Work Hours and Safety Standards Act*, the *Copeland Anti-Kickback Act*, *Clean Air Act*, and the *Energy Policy and Conservation Act*. Further, it is important to note that we questioned these contract costs for multiple procurement violations, not solely because of the missing provisions.

**Small and Minority- or Women-Owned Businesses** — Holy Cross did not make positive efforts on 20 contracts totaling \$80,380,182 to ensure the use of small businesses, minority-owned firms, and women’s business enterprises whenever possible.<sup>14</sup> Federal regulations require subgrantees to take specific steps to assure the use of these types of firms whenever possible. The steps include using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce to solicit and use these firms. Holy Cross could only

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<sup>14</sup> See table 1, lines 1, 2, 3, 4, 5, 6, 7, 9, 10, 12, 13, and 14.



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provide documentation to show they made efforts to award contracts to these firms for 3 contracts valued at \$4.6 million out of the 23 contracts we reviewed totaling \$85 million.<sup>15</sup>

**Cost or Price Analysis** — Holy Cross awarded \$81,488,949 for 13 contracts without performing a cost or price analysis in connection with each procurement action.<sup>16</sup> Federal Regulations require some form of cost or price analysis and documentation in the procurement files in connection with every procurement action. The absence of a cost or price analysis increases the risk of unreasonable contract costs and misinterpretations or errors in pricing relative to scopes of work.

Holy Cross officials said that they relied on the cost estimate FEMA prepared before Holy Cross advertised for the construction work. To support this, Holy Cross supplied four cost estimates that FEMA prepared to obligate the Federal funding. However, Holy Cross officials did not provide support for how they used FEMA estimates to assess the reasonableness of the construction cost bids.

**Contract Administration** — Holy Cross awarded \$6,011,509 for 10 contracts without maintaining an adequate contract administration system.<sup>17</sup> This occurred in large part because Holy Cross did not always require written contracts, which typically describe the contract terms, the responsibilities of the parties to the contract, and compensation. Holy Cross could not have properly administered contracts that do not contain expected terms and conditions.

Holy Cross officials did not produce documents showing they adequately monitored the work performed for the 10 contracts. Therefore, they could not support that contractors adequately completed the scopes of work or that they made payments that agreed with contract terms. Federal regulations at 2 CFR 215.47 require a system for contract administration be maintained to ensure contractor conformance with the terms, conditions, and specifications of the contract and to ensure adequate and timely follow up of all purchases. The regulations also require that recipients evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract.

Holy Cross officials said they maintained many contract administration documents, closely monitored projects as to the scope of work and price, and used an Architectural and Engineering and project management firm to administer the work. However, Holy Cross could not produce written contracts

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<sup>15</sup> See table 1, lines 8 and 11.

<sup>16</sup> See table 1, lines 1, 2, 3, 4, 5, 6, 7, 8, 9, and 12.

<sup>17</sup> See table 1, lines 2, 3, 4, 5, 7, 9, and 12.



for 7 of the 10 contracts or provide documents adequately supporting its contract administration system. Holy Cross could not have adequately administered the contracts without written contracts to define the terms, conditions, and specifications of the agreements.

## **Finding B: Grant Management**

The contracting issues previously presented generally occurred because Louisiana, as the grantee, did not effectively execute its responsibilities under its grant from FEMA to ensure Holy Cross complied with Federal regulations and FEMA guidelines. In its FEMA-State Agreement, Louisiana, as the grantee, agreed to “comply with the requirements of laws and regulations found in the Stafford Act and 44 CFR.” Further, according to 44 CFR 13.37(a)(2), the grantee is required to ensure that subgrantees are aware of requirements Federal regulations imposed on them; and 44 CFR 13.40(a) requires the grantee to manage the day-to-day operations of subgrant activity and monitor subgrant activity to ensure compliance with applicable Federal requirements.

It was Louisiana’s responsibility to ensure Holy Cross complied with applicable Federal regulations and FEMA guidelines. It is FEMA’s responsibility to hold Louisiana accountable for proper grant administration. Therefore, it is critical that Louisiana understand Federal contracting procedures and comply with Federal guidelines, and that FEMA take steps to ensure that this occurs. We are not making any recommendations related to grant management in this report because (1) as a result of our previous audits, FEMA has repeatedly advised Louisiana of its grant management responsibilities; and (2) in the almost 10 years since Hurricane Katrina, Louisiana has made significant progress in educating subgrantees on Federal procurement requirements. Since 2005, FEMA has obligated \$260.3 million for Louisiana to manage this disaster, but we continue to identify subgrantees like Holy Cross that could have benefited from better grant management.

Finally, Louisiana did not execute its responsibility to ensure Holy Cross complied with applicable Federal regulations and FEMA guidelines. In addition, Louisiana did not provide Holy Cross with proper guidance on at least some of the contracts in question.

## **Recommendation**

We recommend that the Regional Administrator, FEMA Region VI, disallow \$82,360,247 as ineligible contract costs, unless FEMA grants an exemption for all or part of the costs as provided for in 2 CFR Part 215.4 (see table 3 in appendix A for breakdown of questioned costs by project).



## **Discussion with Management and Audit Follow-up**

We discussed the results of our audit with Holy Cross officials during and after our audit and included their comments in this report, as appropriate. We also provided a draft report in advance to FEMA, Louisiana, and Holy Cross officials. We considered their comments in developing our final report and incorporated their comments as appropriate.

During our fieldwork, Holy Cross provided written comments on our findings and recommendation in an email. Holy Cross strongly disagreed with our findings and recommendation regarding procurement. We discussed the draft report at exit conferences with FEMA on April 8, 2014, and March 5, 2015, and with Louisiana and Holy Cross officials on July 15, 2014. We have included FEMA Region VI Louisiana Recovery Office report comments in this report. We removed the requested report language addressed in FEMA's comments (see appendix B). FEMA officials generally agreed with our findings and recommendations, pending their review of our supporting documents. Holy Cross Officials disagreed with our findings on procurement and questioned costs. Louisiana officials also generally disagreed with our findings, but withheld specific comments.

Within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include the contact information for responsible parties and any other supporting documentation necessary to inform us about the status of the recommendations. Please email a signed pdf copy of all responses and closeout request to [Christopher.Dodd@oig.dhs.gov](mailto:Christopher.Dodd@oig.dhs.gov). Until we receive and evaluate your response, we will consider the recommendation open and unresolved.

Major contributors to this report were Christopher Dodd, Director; Paige Hamrick, Director; Jeffrey Campora, Senior Auditor; and John Polledo, Senior Auditor.

Please call me with any questions at (202) 254-4100, or your staff may contact Christopher Dodd, Director, Central Regional Office - South, at (214) 436-5200.





## Appendix A

### Objective, Scope, and Methodology

Our audit objective was to determine whether Holy Cross (Public Assistance Identification Number 071-U1Z17-00) accounted for and expended Federal Emergency Management Agency (FEMA) grant funds according to Federal regulations and FEMA guidelines for 16 projects—13 large and 3 small projects (FEMA Disaster Number 1603-DR-LA).<sup>18</sup> The audit covered the period August 29, 2005, through September 25, 2012, the cutoff date of our audit. Because of the size of the award and number of projects, we have divided this audit into phases. During the first phase, we reviewed FEMA’s allocation of Holy Cross’ insurance proceeds and the \$52.9 million obtain-and-maintain insurance requirement. During this second phase, we reviewed the methodology Holy Cross officials used to award \$85.0 million in disaster-related contracts. As shown in table 2, Holy Cross’ insurance proceeds as of September 2012 reduced the gross award amount of \$89.3 million to a net award of \$86.6 million. Table 3 describes the nine projects we audited and the amounts we questioned under each project.

**Table 2: Gross and Net Award Amounts**

	<b>Gross Award Amount</b>	<b>Insurance Reductions</b>	<b>Net Award Amount</b>
All Projects	\$89,346,449	(\$2,791,984)	\$86,554,465

Source: FEMA Project Worksheets.

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<sup>18</sup> Federal regulations in effect at the time of Hurricane Katrina set the large project threshold at \$55,500.



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**Table 3: Schedule of Questioned Costs**

Project Number	Category of Work*	Gross Award Amount	Net Award Amount (After Insurance Reduction)	Questioned Costs (Finding A)**
5964	B	\$ 6,322,343	\$ 6,322,343	\$ 3,906,551
12705	B	873,054	739,559	397,674
12753	E	12,650,999	11,597,573	12,650,999
12965	E	14,541,175	14,165,416	14,272,036
13136	E	7,970,166	7,941,101	8,322,552
13237	E	14,018,670	13,811,367	13,784,330
13333	E	26,951,577	26,471,726	26,204,568
18224	E	4,557,192	4,271,966	2,163,175
19251	E	701,016	701,016	658,362
Totals		\$88,586,192	\$86,022,067	\$82,360,247

Source: Project Worksheets, Holy Cross contracts, related contract documentation, OIG analysis.

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

\*\* We questioned the entire amount that Holy Cross awarded to its contractors for eligible disaster work even if FEMA had not yet obligated these costs.

We conducted this performance audit between October 2012 and March 2015 pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objective. We conducted this audit by applying the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.

We interviewed FEMA, Louisiana, and Holy Cross officials; gained an understanding of Holy Cross' method of accounting for disaster-related costs; reviewed Holy Cross' procurement policies and procedures and contracting documents; and performed other procedures considered necessary to accomplish our objective. As part of our standard auditing procedures, we notified the Recovery Accountability and Transparency Board of all contracts the subgrantee awarded under the grant to determine whether the contractors



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Department of Homeland Security

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were debarred or whether there were any indications of other issues related to those contractors that would indicate fraud, waste, or abuse. As of the date of this report, the Recovery Accountability and Transparency Board's analysis of contracts was ongoing. When it is complete, we will review the results and determine whether additional action is necessary. We did not perform a detailed assessment of Holy Cross' internal controls over its grant activities because it was not necessary to accomplish our audit objective.



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**Appendix B**

U.S. Department of Homeland Security  
Louisiana Recovery Office  
1500 Main Street  
Baton Rouge, Louisiana 70802  
(225) 339-6610 office  
(225) 382-0153 fax



**FEMA**

March 13, 2015

MEMORANDUM FOR: Christopher Dodd, Acting Director  
Central Regional Office  
Office of Inspector General  
U.S. Department of Homeland Security

FROM: Thomas M. (Mike) Womack  
Director  
Louisiana Recovery Office

*Thomas M. Womack*  
Digitally signed by THOMAS M WOMACK  
DN: cn=US, o=U.S. Government, ou=Department  
of Homeland Security, ou=FEMA, ou=People,  
on=THOMAS M WOMACK,  
0.9.2342.19200300.100.1.1=0001134728.FEMA  
1  
Date: 2015.03.12 14:13:50 -0500

SUBJECT: FEMA Response to DRAFT Audit Report and Exit Conference  
*FEMA Should Disallow \$82.4 Million of Improper Contracting Costs  
Awarded to Holy Cross School, New Orleans, Louisiana*  
FEMA Disaster Number 1603-DR-LA  
DRAFT Audit Report Number OIG-15-XX-D

On March 5, 2015, the Office of Inspector General (OIG) conducted an Exit Conference with the Federal Emergency Management Agency (FEMA) concerning draft Audit Report Number OIG-15-XX-D (Audit Report) titled “*FEMA Should Disallow \$82.4 Million of Improper Contracting Costs Awarded to Holy Cross School, New Orleans, Louisiana.*” This memorandum provides FEMA’s conditional response to the draft Audit Report’s two findings and one recommendation. FEMA requests the OIG include this memorandum as an attachment to the final Audit Report once it is distributed and published on the OIG’s website.

**Background:**

On March 5, 2015, the OIG conducted an Exit Conference with FEMA concerning the revised draft Audit Report for Holy Cross School (Holy Cross) dated March 3, 2015. The OIG attributed many of the revisions in the draft Audit Report to addressing numerous comments from Holy Cross representatives. Overall, the OIG indicated the direction of the draft Audit Report was similar to the previously provided draft. The OIG stated that the reduction of approximately \$400,000 in the total questioned costs for the revised draft Audit Report was due to Holy Cross awarding work under existing state contracts.

**OIG Draft Audit Findings and FEMA Responses:**

***Finding A: Improper Contracting –***

The OIG determined Holy Cross did not follow Federal procurement standards in awarding 21 of 23 disaster-related contracts. The Audit Report states that open and free competition did not always



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Department of Homeland Security

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## Appendix B (Continued)

Christopher Dodd  
OIG-15-XX-D- FEMA Response to Draft Audit Report and Exit Conference  
March 13, 2015  
Page 2

occur, which increased the risk of fraud, waste, and abuse and decreased the opportunities for small businesses, minority-owned firms, and women's business enterprises to compete for Federally-funded work. Further, the OIG questions the reasonableness of the costs because competition was inadequate.

Finding A provides the basis of the OIG's sole recommendation to disallow \$82,360,247 as ineligible contract costs. Specifically, the draft Audit Report questions this amount as ineligible contract costs due to three main issues:

- 1.) Inadequate Competition,
- 2.) Prohibited Cost-Plus-Percentage-of-Costs Contracts, and
- 3.) Other Contracting Problems (i.e. Holy Cross failed to include required contract provisions, perform cost or price analysis, or provide documents evidencing a contract administration system).

**FEMA's Response:** FEMA agrees Holy Cross should comply with all Federal, State, and local procurement standards; however, in accordance with 44 C.F.R. §§ 13.22 & 13.52(a)(3), FEMA must perform a cost reasonableness analysis to determine if the claimed costs were reasonable and allowable for the level of effort required to perform the eligible work. Any costs determined unreasonable will be de-obligated from the applicable Project Worksheets (PWs).

During the Exit Conference on March 5, 2015, FEMA mentioned concerns with some of the language in Finding A of the draft Audit Report. Specifically, the draft Audit Report states that FEMA headquarters should explore providing disincentives or other negative consequences to applicants that do not follow procurement regulations.<sup>1</sup> Since the OIG directs the draft Audit Report to FEMA Region VI, the objectives and goals should be attainable for FEMA Region VI. FEMA recommends the deletion of this section of the audit report as FEMA Region VI does not have unilateral authority to develop and implement the suggested disincentives or other negative consequences suggested on behalf of the Agency. The OIG stated it would follow-up with its internal management regarding the inclusion of this language in the final Audit Report.

### ***Finding B: Grant Management –***

The OIG determined the contracting issues presented in Finding A generally occurred because the Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP), the grantee, did not effectively execute its responsibilities to ensure Holy Cross complied with Federal regulations and FEMA guidelines. Finding B did not result in a specific audit recommendation as the OIG recognized: 1) FEMA's past efforts to advise GOHSEP of its grant management responsibilities, and 2) GOHSEP's significant progress in educating sub-grantees on Federal procurement requirements.

**FEMA's Response:** FEMA agrees in part with this Finding and recognizes GOHSEP's efforts to ensure sub-grantees comply with all applicable Federal grant requirements, including procurement standards.

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<sup>1</sup> See Draft Audit Report Number OIG-15-XX-D, dated March 3, 2015, p. 8.



## Appendix B (Continued)

Christopher Dodd  
OIG-15-XX-D- FEMA Response to Draft Audit Report and Exit Conference  
March 13, 2015  
Page 3

While Finding B did not result in an audit recommendation, FEMA again expressed concerns with some of the language in the finding. Specifically, the draft Audit Report states that GOHSEP did not provide Holy Cross with proper guidance on at least some of the contracts in question. Therefore, the OIG believes FEMA should consider asking GOHSEP to absorb some of the questioned costs to hold it accountable for its responsibilities as the grantee.

FEMA is not aware of any legal authority or specific Agency policy, and the OIG did not reference any such authority, requiring grantees to absorb costs for inadequately performing grant management responsibilities. Specifically, 44 C.F.R. Part 13, Subpart D, references later disallowances and adjustments to a grantee “in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award...” but provides no authority for FEMA to apply punitive costs to the grantee for alleged deficient grant management responsibilities.<sup>2</sup> This language in the draft Audit Report appears directed towards FEMA headquarters and not an obtainable goal for FEMA Region VI. FEMA recommends the deletion of this section of the audit report as FEMA Region VI does not have unilateral authority to develop and implement the suggested punitive costs onto the grantee under existing law, regulation, and policy. The OIG stated it would follow-up with its internal management regarding the inclusion of this language in the final Audit Report.

### **OIG Audit Recommendation and FEMA Response:**

***OIG Recommendation:*** We recommend that the Regional Administrator, FEMA Region VI, disallow \$82,360,247 as ineligible contract costs, unless FEMA grants an exemption for all or part of the costs as provided for in 2 CFR Part 215.4 (see table 3 in appendix A for breakdown of questioned costs by project).

***FEMA's Response:*** As stated above for Finding A, FEMA agrees Holy Cross should comply with all Federal, State, and local procurement standards; however, FEMA must perform cost reasonableness studies to determine if the claimed costs were reasonable for the level of effort required to perform the eligible work.

During the Exit Conference on March 5, 2015, FEMA expressed its desire to fully resolve and close the final Audit Report in a timely manner. FEMA acknowledged Holy Cross was an eligible sub-grantee performing eligible work to eligible disaster-damaged facilities. In fact, the draft Audit Report only focuses on the eligibility of the questioned contract costs. Accordingly, FEMA asked the OIG if cost reasonableness studies would be an acceptable approach to addressing this recommendation. The OIG stated this would be an acceptable method as long as FEMA provided sufficient documentation to support its determinations. The OIG acknowledged that only FEMA could determine cost reasonableness. FEMA will perform a cost reasonableness analysis and de-obligate any costs determined unreasonable from the applicable PWs.

### **Other Issues:**

The draft Audit Report states the OIG notified the Recovery Accountability and Transparency Board (RATB) of all contracts Holy Cross awarded under the grant to determine whether the

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<sup>2</sup> See 44 C.F.R. § 13.52



OFFICE OF INSPECTOR GENERAL  
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## Appendix B (Continued)

Christopher Dodd  
OIG-15-XX-D- FEMA Response to Draft Audit Report and Exit Conference  
March 13, 2015  
Page 4

contractors were debarred or whether there were any indications of other issues related to those contractors that would indicate fraud, waste, or abuse.<sup>3</sup> FEMA requested the OIG provide a copy of the transmittal documentation to the RATB and any response the OIG may have received from the RATB. The OIG stated it would follow-up with its internal management about providing this documentation to FEMA. FEMA reiterates its request for this information is necessary in order to develop a comprehensive final Agency determination.

**Conclusion:**

At the conclusion of the Exit Conference on March 5, 2015, FEMA requested the OIG provide copies of all source documentation upon issuing the final Audit Report. FEMA will submit its corrective action plan response to the OIG within 90 days of receiving the final Audit Report.

If you have any questions concerning this response, please contact Kent Baxter, Audit Coordinator and Management Analyst at (940) 898-5330.

cc: George A. Robinson, Regional Administrator, FEMA Region VI  
Kevin Davis, Director, GOHSEP  
Mark Riley, Deputy Director of Disaster Recovery Division, GOHSEP  
Mark DeBosier, Assistant Deputy Director, Public Assistance, GOHSEP  
Bernard Plaia, Attorney, GOHSEP  
R. Kent Baxter, Management Analyst, Office of the Regional Administrator  
Kathy Hill, Risk Management (HQ-OCFO)  
Gary McKeon, Audit Liaison (HQ-OPPA)

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<sup>3</sup> Id. p. 20.



## **Appendix C**

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## **Appendix C (Continued)**

### **External**

Director, Louisiana Governor's Office of Homeland Security  
and Emergency Preparedness  
Deputy Director of Disaster Recovery Division, Governor's Office of Homeland  
Security and Emergency Preparedness  
State Coordinating Officer, Governor's Office of Homeland Security and  
Emergency Preparedness  
Louisiana Legislative Auditor  
Headmaster, Holy Cross School  
Chief Financial Officer, Holy Cross School

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