



**OVERSIGHT OF DEPARTMENT OF JUSTICE
EXPENDITURES RELATED TO HURRICANE RITA,
ROOF REPAIR AT THE FEDERAL CORRECTIONAL
COMPLEX, BEAUMONT, TEXAS**

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Introduction

The Office of the Inspector General, Audit Division, has completed a limited scope audit of the Federal Bureau of Prisons' (BOP) Contract Number DJB50211005. The contract was awarded as a firm fixed price contract for \$5,180,233, to D.K. Haney Construction, Inc., on October 11, 2005, to repair or replace roofing at the Federal Correctional Complex (FCC) Beaumont, Texas. The contract was funded from fiscal year 2006 hurricane supplemental funding. The objectives of the audit were to determine whether BOP had adequate justification for using a sole source contract, obtained fair and reasonable pricing, and awarded the contract on an arm's-length basis.

This audit was conducted in coordination with the President's Council on Integrity and Efficiency (PCIE) as part of its examination of relief efforts provided by the federal government in the aftermath of Hurricanes Katrina and Rita. As such, a copy of the report will be forwarded to the PCIE Homeland Security Working Group, which is coordinating the Inspectors General review of this important subject.

Background

The BOP's South Central Regional Office located in Dallas, Texas, provides administrative oversight and support to 21 federal prisons, including the FCC Beaumont, and 5 community corrections offices. The Beaumont FCC houses low, medium, and high-security male inmates in three units — Federal Correctional Institution (FCI) Beaumont Low, FCI Beaumont Medium, and the United States Penitentiary (USP) Beaumont, respectively.¹ In addition to the three housing units, FCC Beaumont has a Central Administration Building and some centrally shared warehouse facilities. A satellite Federal Prison Camp (Camp) housing minimum-security male inmates is adjacent to the complex.

¹ Each unit at FCC Beaumont is managed by a warden. None of the wardens is designated as the overall warden-in-charge of the FCC.

On September 24, 2005, Hurricane Rita made landfall 30 miles east of the complex with maximum sustained winds of 110 miles per hour, causing extensive damage to the roofing at FCC Beaumont. All of the roofing for the Low Security Area, the Medium Security Area, the USP, and the Central Administration Building sustained such extensive damage that replacement of the roofing was required. The remaining buildings in the FCC, consisting of the centrally shared warehouses and the Camp, also sustained significant damage. Officials at FCC Beaumont provided photographs showing punctures to the roofs resulting from Hurricane Rita (see Appendix I). The Contracting Officer for this acquisition told us that an extreme emergency existed at FCC Beaumont because of the large inmate population housed in the damaged areas. The following table shows the number of inmates housed at FCC Beaumont at the time of Hurricane Rita and as of our site visit to the facility on March 13, 2006.

**FCC BEAUMONT INMATE POPULATION BY HOUSING UNIT
(EXCLUDING THE CAMP²)**

Housing Unit	Inmate Population on 9/24/2005	Inmate Population on 3/13/2006
Low Security Unit	2,015	1,844
Medium Security Unit	1,761	305
United States Penitentiary (USP)	1,359	1,327
Total	5,135	3,476

Source: FCC Beaumont

On September 24, 2005, 5,135 inmates were housed in the areas to be repaired under this contract. Following the storm, the Regional Director and the 3 FCC Beaumont wardens decided to move 1,761 inmates housed at the Medium Security Unit to other BOP institutions in order decrease the workload on FCC Beaumont staff. FCC Beaumont staff were also victims of the hurricane, and needed time off from work to make repairs to their property, file insurance claims, and to bring home family members displaced because of the storm. In addition, because of a lack of hotel rooms, staff from other BOP institutions were temporarily housed at the vacated Medium Security Unit as part of management's effort to help FCC Beaumont staff recover from the storm. At the time of our site visit to FCC Beaumont, staff temporarily assigned to FCC Beaumont had returned to their duty stations and 305 inmates had been assigned to the Medium Security Unit.

² In addition to the 5,135 inmates in the higher security units, at the time of the hurricane FCC Beaumont housed 559 inmates at the Camp. The contract we reviewed did not include the Camp. A separate contract to replace roofing at the Camp had not been awarded as of June 13, 2006.

Audit Methodology

We conducted the audit in accordance with Government Auditing Standards and included such tests of internal controls, procedures, and documentation as were considered necessary to accomplish the audit objectives. Our methodology included a review of applicable contract file documentation and interviews of staff at the South Central Regional Office in Dallas, Texas, and the BOP's Field Acquisition Office in Grand Prairie, Texas. We also conducted a site visit to FCC Beaumont to interview staff and to document some of the roofing repairs and replacements (see Appendices II and III).

Sole Source Contract

A sole source contract is the result of an agency entering into a contract after soliciting and negotiating with only one vendor. The Federal Acquisition Regulation (FAR) requires contracting officers to promote full and open competition in soliciting offers and awarding government contracts. However, there are exceptions to the requirement for full and open competition, such as the allowance for contracting officers to limit competition to eligible Section 8(a) contractors, which is what was used for this contract.³

To determine whether the subject contract qualified for Section 8(a) competition, we interviewed the Contracting Officer and reviewed the contract file. The award was made in accordance with a Partnership Agreement between the Department of Justice (Department) and the Small Business Administration (SBA) that defines responsibility for sole source contracts under the provisions of the SBA Section 8(a) program. Under this agreement, the SBA is responsible for approving both the terms of the contract and the Department's selection of the contractor as a qualified participant in the SBA's Section 8(a) program. We found that this process was properly documented in the contract file. We reviewed the Contracting Officer's request to SBA and SBA's acceptance of the terms of the contract and approval of the contractor, D.K. Haney Construction, Inc., as a qualified participant in the SBA's Section 8(a) program.

We determined that use of a sole source contract was an acceptable acquisition method due to the contractor's status under Section 8(a) of the

³ The Small Business Administration defines a certified Section 8(a) firm as a firm owned and operated by socially and economically disadvantaged individuals and eligible to receive federal contracts under the SBA's Section 8(a) Business Development Program.

Small Business Act and in accordance with the Partnership Agreement between the Department and the SBA.

Reasonable Cost

In negotiated contracts, the FAR requires that contracting officers purchase supplies and services from responsible sources at fair and reasonable prices. The FAR also prescribes various methods for ensuring that the final negotiated price is fair and reasonable.

To determine whether the subject contract was awarded at a fair and reasonable price, we interviewed the Contracting Officer and reviewed applicable documents from the contract file. We reviewed the Contracting Officer's cost and profit analysis, price analysis, and the summary of negotiations from the contract file and determined that they were in accordance with the FAR and documented that the government received a fair and reasonable price.

In the cost and profit analysis, and the price analysis, the Contracting Officer estimated that the project would cost approximately \$6.47 per square foot by dividing the \$5,180,233 from the contractor's final proposal by 800,000 square feet.⁴ In the same documents, we observed that the \$6.47 per square foot estimated for the FCC Beaumont contract was less than amounts paid for the Duro-Last roofing on previous contracts for the South Central Regional Office, which ranged in price from \$6.63 per square foot to \$13 per square foot.⁵ In addition, we reviewed a memorandum to the Contracting Officer from the Assistant Administrator for Facilities at the South Central Regional Office explaining that \$6.50 per square foot for Duro-Last roofing was a more cost effective solution for the government than \$18 per square foot for 3-ply modified bituminous (built-up) roofing that could have been specified for the FCC Beaumont contract.⁶ We also found the Contracting Officer's summary of negotiations showed that two rounds of negotiations were held with the contractor.⁷

⁴ The 800,000 square feet used by the Contracting Officer was an approximation, taken from schematics, provided by Southern Central Regional Office.

⁵ Duro-Last is a thermoplastic film laminated to a polyester fabric that is fastened to the existing roof deck.

⁶ Bituminous (built-up) roofing consists of multiple layers of saturated roofing felt capped with asphalt (tar) and aggregate (gravel).

⁷ During each round of negotiation, the scope of the work to be performed was clarified and the contractor lowered the price from the original bid.

The following table summarizes the final negotiated costs to repair the roofing at FCC Beaumont.

SUMMARY OF THE FINAL NEGOTIATED COST

Work to be Performed	Cost
Temporary Roof Repairs	\$80,254
Low Security Area	1,776,779
Medium Security Area	1,597,657
USP	1,542,863
Central Administration Building	182,680
Total	\$5,180,233

Source: BOP, Field Acquisition Office Contract File

We also found that the BOP has procedures in place to adequately monitor contract expenses. These procedures require the contractor to submit certified invoices for payment. The FCC Beaumont Facilities Manager and Contract Specialist monitoring the work performed by the contractor review the invoices for work performed and certify that the work was completed. They then certify and approve the invoices for payment. As of May 5, 2006, the contractor had received 6 payments totaling \$4,721,793 of the \$5,180,233, for completing 91 percent of the work required by the contract. The contractor had submitted the appropriate signed documentation, and the Facilities Manager and the Contract Specialist had certified the work performed and the invoices for payment. The Contract Specialist stated that the same procedures will be followed when the contractor submits its final invoice for the remaining 9 percent of the contract. The following table summarizes the expenses that we reviewed.

PROJECT EXPENSES THROUGH 5/5/2006

Date	Payment	Amount Remaining
10/11/2005		\$5,180,233
11/25/2005	\$1,713,414	3,466,819
12/19/2005	892,296	2,574,523
1/23/2006	386,311	2,188,212
3/6/2006	624,496	1,563,716
3/29/2006	595,955	967,761
4/26/2006	509,321	458,440
Total	\$4,721,793	91% of Total Award

Source: FCC Beaumont Contract File

In our judgment, the BOP obtained a fair and reasonable price for the roofing project. In addition, monitoring of expenses for the project was adequate to ensure that the contractor had only been paid for work actually performed and actual expenses did not exceed the contract award amount. As the contract was awarded as a firm fixed price contract, the risk of cost overruns is mitigated.

Arm's-Length Transactions

The standard of arm's-length transactions includes independence of the parties involved and the absence of any relationship among the parties, other than a professional relationship. Transactions conducted on an arm's-length basis alleviate concerns regarding conflicts of interest and undue influence. To determine whether the contract was awarded on an arm's-length basis, we interviewed the Contracting Officer, the Section Chief of the BOP Field Acquisition Office, and FCC Beaumont staff and reviewed contract file documentation.

We asked the Contracting Officer and the Section Chief for the BOP Field Acquisition Office, Construction Contracting Section, to explain how they ensured that the contract was awarded on an arm's-length basis. The Section Chief told us that he reports to BOP Headquarters and not the South Central Regional Office and considers himself to be independent from South Central Regional Office management. He also stated that, even though the Contracting Officer has an office in the South Central Regional Office's facility because most of his work must be coordinated with its staff, the Contracting Officer is also BOP Headquarters staff. In addition, FCC Beaumont staff told us that they provided no input to the Contracting Officer on the selection of the sole source contractor. The Contracting Officer confirmed that he had not discussed the selection of the contractor with FCC Beaumont personnel.

The Contracting Officer told us that he has no relationship with the contractor other than a professional business relationship. The Contracting Officer and the Section Chief also told us that they have no social involvement with the contractor and neither had any family members employed by the contractor. We also reviewed documentation from the contract file, including a certification of procurement integrity, signed by the Contracting Officer. The certification is specific to this contract and states that the contracting officer has no knowledge of a violation or possible violation of the Federal Procurement Policy Act. This Act prohibits procurement officials from disclosing procurement information to unauthorized parties, discussing future non-federal employment with a bidder on the contract, and accepting anything of value from a bidder on the contract (this restriction also applies to the official's family). We consider these to be essential components of awarding a contract on an arm's-length basis.

We also asked why a contractor from Fort Worth, Texas, was selected instead of one from Houston or Beaumont, Texas. FCC Beaumont staff assured us that it was highly unlikely that any Houston area roofing firm could have responded as quickly as D.K. Haney because there was so much roof damage in the Houston area.

Based on the organizational structure described to us by the Contracting Officer and the Section Chief, their statements describing their relationship with the contractor, and our review of the contract file we concluded that negotiations for the contract to replace or repair the damaged roofing at FCC Beaumont were conducted on an arm's-length basis.

Conclusion

In our judgment, BOP's use of a sole source contract for repair and replacement of roofing at FCC Beaumont was appropriate, a fair and reasonable price was obtained, and the contract was awarded on an arm's-length basis.



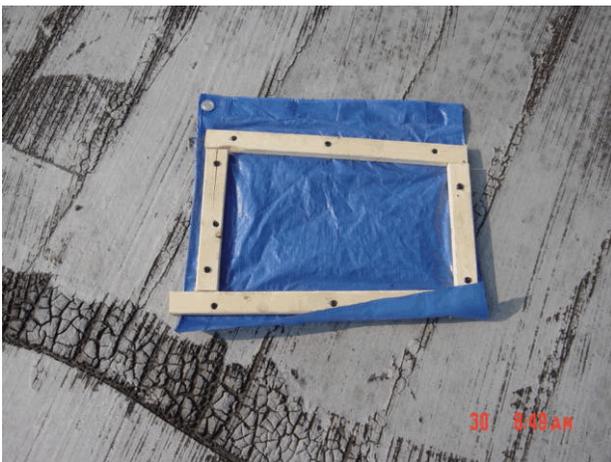
The overall status of the report is closed. We previously furnished the BOP with copies of a working draft of this report and requested comments. The BOP declined to comment because no recommendations were made.

EXAMPLES OF DAMAGE CAUSED BY HURRICANE RITA



Source: FCC Beaumont Officials

EXAMPLES OF TEMPORARY REPAIRS



Source: FCC Beaumont Officials

EXAMPLES OF COMPLETED ROOF REPAIRS



Source: OIG Auditors, March 13, 2006