

Senate Democratic Policy Committee Hearing

“An Oversight Hearing on Post-Katrina Reconstruction: Has the Federal Government Left Gulf Coast Residents and Businesses Behind?”

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Good morning Chairman Dorgan and members of the Committee. I am Steve Ellis, Vice President of Programs at Taxpayers for Common Sense, a national, non-partisan budget watchdog organization. In my fifteen years of professional life I have been involved in responding to and helping the nation be better prepared to deal with natural disasters. During that time I have learned that human failures before, during, and after disasters can lead to higher costs – in lives, economic devastation and dollars.

TCS applauds you for looking more closely at certain contracting mishaps in the wake of Katrina, both because of the sizable federal investments being made to rebuild the region and the importance of getting the Gulf Coast back on its economic feet. Also, I would like to take this opportunity to salute the hard work done by the Inspectors General and the Government Accountability Office in looking into the waste, fraud and abuse in the Katrina contracts. Without their tireless efforts we would not know nearly as much as we do about how taxpayers’ investments have been faring in the region. The more we know about what went wrong, the better we are going to be able to dramatically improve contracting operations in future natural disasters.

There are four major time periods for actions surrounding natural disasters. The first is pre-disaster planning and mitigation. The second is immediate disaster response over the first few days following the initial event. Then there is the short-term recovery over the next few months. And finally, the long-term recovery and reconstruction, which naturally leads into pre-disaster planning and mitigation, because we know if you’ve been hit by a disaster once, it can certainly happen again. For this testimony, I’m going to touch on pre-disaster planning, but concentrate on the short- and long-term recovery periods and the contracting activities that occurred then. Immediate disaster response is a different issue that could be discussed separately.

Pre-Disaster Planning

The Government Accountability Office (GAO) and the Comptroller General in particular have repeatedly emphasized the importance of strong planning for effective disaster response.¹ This period sets the stage for all that follows. Acquisition and pre-positioning of gear and supplies, staff training and preparedness, conditional contracts – all of these are hallmarks of effective pre-disaster planning.

Even before Katrina, a major hurricane strike on New Orleans region of the Gulf coast was one of the most predicted catastrophic natural disasters in the country. But we were fundamentally unprepared at the local, state, and national levels to adequately protect and mitigate damage. Besides the obvious shortcomings that Americans watched from their television screens, there were structural impediments and warnings ignored leading up to the storm. We should have been better prepared.

The last major hurricane to damage New Orleans significantly was Hurricane Betsy in 1965. In the years following the disaster, the U.S. Army Corps of Engineers developed a plan of levee protection that strengthened and heightened some of the levees protecting urban areas, particularly along Lake Pontchartrain, but also extended levees into undeveloped areas in East New Orleans. At the time, then freshman Representative Bob Livingston (R-LA) said, “If hurricane protection to the people and properties is the paramount importance ... the portion that you would want to complete first would be those levees surrounding inhabited areas rather than those around uninhabited areas.”² He also went on to state that his suggested approach would be cheaper as well.³ As a result, levees protecting New Orleans were not built as high or strong as they could be. The areas of East New Orleans developed after Betsy were utterly destroyed by Katrina.

The Corps further exposed New Orleans to greater risk by constructing a navigation channel through wetlands into the heart of the city. The Mississippi River Gulf Outlet was later called a “Trojan Horse” that could increase storm surges by as much as 20 to 40 percent and lead surges directly into the city.⁴ After increasing New Orleans risk to catastrophic flooding over the years, Corps officials were seen by the Deputy Director of the Louisiana State University Hurricane Center giggling in the back of the room at the planning, preparation and educational “Hurricane Pam” mock disaster simulation exercise.⁵ It is no surprise that the country and federal agencies were utterly unprepared for Hurricane Katrina.

¹ Testimony of William T. Woods, Director, Acquisition and Sourcing Management, Government Accountability Office before U.S. Senate Subcommittee on Financial Management, Government Information and International Security, Committee on Homeland Security and Governmental Affairs. April 10, 2005.

² Hearing before the Subcommittee on Water Resources of the Committee on Public Works and Transportation. Jan 5, 1978. P. 39

³ *Ibid.* P. 57.

⁴ Joby Warrick and Michael Grunwald. “Investigators Link Levee Failures to Design Flaws.” *Washington Post*. Oct. 24, 2005. P A1.

⁵ NBC Nightly News interview with Ivor Van Heerden. Sep. 2, 2005.

Pre-disaster planning requires contracting operations as well. The Inspector General for Hurricane Katrina Oversight at the Department of Homeland Security developed a list of critical components of this planning:

- Identify prospective suppliers or service providers
- Plan as to how competition will be conducted and maintained
- Define how Stafford Act local preference requirements will be met
- Establish procedures for source-selection by procurement type
- Clearly established and disseminated communication procedures for procurement personnel.⁶

But, even if we did all the proper planning and mitigation, it is clear that with hurricanes of the size and scope of Katrina and Rita hammering the Gulf Coast so close in time and geography, we would be facing significant reconstruction needs.

Natural Disaster Short-Term Recovery

The duration of the short-term recovery largely depends on the scope of the disaster, it could be as little as a few weeks after Day 0 to several months for a disaster with impacts like those of Katrina. During short-term recovery periods, the goal is to move as quickly as possible to provide aid and recovery activities. Efforts are directed at positioning the affected region for long-term recovery and reconstruction by removing debris, relocating displaced people and stabilizing infrastructure. As mentioned previously, adequate pre-disaster planning will entail entering contingent contracts to be executed shortly after the disaster strikes. During the short-term recovery period there may be some sole-source, non-competitive contracting, but these should be structured to be little more than bridges to a period when relatively normal and transparent contracting process can be pursued in accordance with the Federal Acquisition Regulations (FAR) and the Stafford Act (discussed below).

Natural Disaster Long-Term Recovery and Reconstruction

Short-term recovery naturally progresses into long-term recovery and reconstruction activities. The faster you can shift to competitively bid contracts that are directed toward local contractors and subcontractors, the sooner and stronger recovery will take hold and the more resilient the reconstruction effort will be. Recognizing this, the Stafford Act directs federal agencies to give preference in contracts to firms located or primarily conducting business in the disaster-affected area.⁷ The FAR and agency guidance provide exceptions to competitive bidding requirements for emergency circumstances, but the further you get from Day 0 the less plausible these exceptions become. In both short and long term recovery operations, you need enough contract supervision boots on the ground to ensure the taxpayer is getting its money's worth. This

⁶ Testimony of Matthew Jadacki, Inspector General of Hurricane Katrina Oversight, Department of Homeland Security before U.S. Senate Subcommittee on Financial Management, Government Information and International Security, Committee on Homeland Security and Governmental Affairs. April 10, 2005.

⁷ 42 U.S.C. § 5150

includes not only Contracting Officers but also Contracting Officers Technical Representatives (COTRs). These individuals are the taxpayer's eyes and ears and the first line of defense to ensure precious dollars are being spent wisely.

During both the short and long-term recovery periods agencies and contracting officials have to guard against firms and individuals that seek to profit off the crisis. Just like the documented stories of people trying to cash in on disaster claims for non-existent houses, there are some insidious contractors that are more intent on making a quick buck or two than getting honest and fair pay for work in difficult conditions and aiding a vibrant recovery. Because everyone knew Katrina-related expenditures were going to top anything seen in recent history, the Gulf Coast attracted more than its share of shady contractors and schemes.

What Went Wrong

Murphy's law tells us that whatever can go wrong, will go wrong. Pre-disaster planning was superficial or poor at best. Contracts exceeding \$100 million quickly went to the so-called big four: Shaw Group, Bechtel Corp., CH2M Hill, Inc. and Fluor Corp.⁸ From at least as early October 2005, FEMA has been promising to re-bid contracts.

The total number of federal contracts tied to Katrina is remarkable. A May 15, 2005 listing of FEMA contracts is 217 pages long and lists 3,400 contracts ranging from items like \$287.5 million for manufactured housing from Circle B Enterprises (DBA Precision Homes) to \$36.90 for DirecTV in Biloxi, MS.⁹ That total is just FEMA contracts, so it doesn't include hundreds of Corps of Engineers contracts for debris removal, temporary roofing, BlackBerries, you name it.¹⁰

In the first several months after Katrina, TCS poured through the contracts and analyzed the largest contractors. An extensive listing of the contracts and contractors and what our tax dollars bought through December 2005 is available on our web site, www.taxpayer.net.

It's hard to get past some of the ridiculous items precious relief dollars were spent on. Our research uncovered contracts for everything from a Combat Assault & Tactical Vehicle for \$88,584.24 to five pasty decorating tip sets for \$54, from \$14,890.86 for a "Face of FEMA" video to three scimitar-shaped steak knives for \$276.84. Agency branding was important as well: \$6,615,000 worth of 20' x 100' blue sheeting rolls with the FEMA logo, \$24,853 worth promotional logo clothing the Bureau of Reclamation purchased for FEMA, and \$7,200 worth of shirts with "Bureau of Indian Affairs Disaster

⁸ Jonathan Weisman and Griffe Witte. "Katrina Contracts Will Be Reopened; No-Bid Deals Questioned on the Hill." *Washington Post*. Oct. 7, 2005. P A1.

⁹ FEMA Contracts Awarded in Support of Hurricane Katrina (as of May 15, 2006) available at <http://www.dhs.gov/interweb/assetlibrary/CPO-KatrinaContracts.pdf>. Last visited May 17, 2006.

¹⁰ U.S. Army Corps of Engineers awarded contract list available at <http://www.rebuildingthegulfcoast.gov/subcontracting/USACE%20Hurricane%20Contracts.pdf>. Last visited May 17, 2006.

Response” printed on them.¹¹ It is sad to say but you almost expect to see a kid walking around D.C. with taxpayer-bought shirt that says “My Parents Worked on the Katrina Reconstruction and All I Got Was This Lousy T-Shirt.”

Unfortunately, this list appears to only be the tip of the waste iceberg. After the first few days of fumbling, bumbling response, FEMA wanted to appear to be doing something, and spending money was the easiest thing to do. With so much money being shoveled out the door, there is bound to waste, redundancy and confusion. In one case, 10,777 mobile homes that cost taxpayers \$301.7 million were left in Hope, AR. The flood-prone areas in Louisiana made these homes unsuitable for use.¹² I’m reminded of the five “Ps” – prior planning prevents poor performance. Well, the lack of prior planning virtually guaranteed that large sums of taxpayer dollars were going to be doled out in inefficient and suspect manor.

Competitive bidding is crucial for fair, efficient and transparent contracting. Sole source or no-bid contracts may be easier to execute, but they are more expensive, insulate vendors from competition, and create concerns about cronyism and favoritism. Everyone seems to be in agreement on this. For instance, R. David Paulison, the Director of FEMA pointed out at an October Senate hearing, “I’ve been in public service a long time, and I’ve never been a fan of no-bid contracts.”¹³ But that hasn’t stopped them. FEMA has been using hybrid “limited competition” contracts in an attempt assuage concerns, but these have their own problems. In these contracts FEMA establishes a “reasonable” price for the particular goods or services that FEMA needed to procure. FEMA would then contact potential contractors and award contracts to those whose quote fell inside the “reasonable” range. But as Matthew Jadacki, Inspector General of Hurricane Katrina Oversight at the Department of Homeland Security recently pointed out, while limited competition can ensure a “reasonable” price, “the lack of objective evaluation criteria for determining which firms received smaller contracts and which firms received significantly larger contracts again provides a basis for charges of bias or favoritism.”¹⁴

Even with the best contracting process, if no one is there to monitor and demand performance, contracting efforts are going to fail. Several years ago, I served as a COTR on small boat acquisition project for the Coast Guard. Because of my geographic dislocation from the shipyard, I had to be in regular contact to check progress and make frequent and sometimes unannounced visits. The dynamic and chaotic nature of disaster response requires even greater involvement and monitoring by contracting personnel.

The Inspector General (IG) for Hurricane Katrina Oversight at the Department of Homeland Security found that FEMA had roughly 55 contracting personnel (with assistance from temporarily deployed General Services Agency personnel) supporting

¹¹ Taxpayers for Common Sense. Hurricane Katrina Relief and Rebuilding Contracts of Interest. Available at <http://www.taxpayer.net/budget/katrinaspending/contractsofinterest.pdf>. Last visited May 17, 2006.

¹² Bruce Alpert. “Computer System Slowed SBA Storm Loan Response; Report also Faults FEMA Planning.” *New Orleans Times-Picayune*. May 10, 2006. P. 12.

¹³ Supra note 4.

¹⁴ Supra note 2.

Katrina recovery. The IG found that each of the contracting staff was responsible for \$163 million worth of contracts (annualized), which represents seven times the industry average.¹⁵ The GAO found that FEMA only had 17 of the 27 monitors required for contracts regarding temporary housing across the four affected states. Corps personnel told the GAO that lack of monitors slowed the program to temporarily repair damaged roofs.¹⁶

The Debacle Continues

It seems that each passing day brings a new report or allegation of problems with post-Katrina recovery and contracting efforts. The levees failed because of poor design and construction by the Corps. Large out-of-state companies using local companies as fronts to get contracts set-aside for locals. Levees won't be at pre-Katrina level of protection by the start of hurricane season, June 1. Promised re-bidding of no bid contracts are being delayed, denied or bungled.

In some cases large companies, like Flour Corp. have partnered with minority-owned businesses or local businesses to obtain contracts. In the recent travel trailer maintenance contracts, a Flour subsidiary, Del-Jen Industries teamed up with PRI Inc, a California-based Asian-American owned company that qualifies as a minority-owned small business. The PRI/DJI team was very convincing to FEMA: they ended up with four \$100 million contracts out of 36 contracts that were being awarded.¹⁷

In other cases, to take advantage of preferences for local contractors, large contractors from outside the region teamed up with local companies, some apparently formed for just this purpose to get contracts. Tom Stinnett RV Freedom Center in Indiana would seem like an odd "local" contractor for Gulf Coast relief efforts, but because he partnered with several local companies, he was able to pull in contracts that eventually totaled more than \$100 million.¹⁸

The \$3.6 billion contracting bonanza of travel trailer maintenance work was supposed to be skewed toward in-state, small businesses – those that had less than \$30 million in annual sales and regularly conducted business in the state prior to Katrina. Out-of-state businesses were subject to a 30% surcharge on their bid to help local companies.¹⁹ Post-award complaints have consistently pointed out potential cases of large businesses masquerading as small, mysterious new local companies, artificially low bids to evade the surcharge, and cries of favoritism to regular FEMA contractors like Flour, or

¹⁵ Supra note 2.

¹⁶ Government Accountability Office. Briefing for Congressional Staff: Agency Management of Contractors Responding to Hurricanes Katrina and Rita. March 2006. P. 4.

¹⁷ James Varney. "Trailer Deals Go to Flour Ally." New Orleans Times-Picayune. May 9, 2006. P. 1.

¹⁸ Alex Davis. "Indiana RV Dealer's FEMA Contract Has Been a Boon to Business." Associated Press. April 15, 2006.

¹⁹ James Varney. "FEMA Contract List Is Surprise." New Orleans Times-Picayune. April 14, 2006. P. 1.

nepotism in the case of a Jackson, MS company run by Rosemary Barbour, Mississippi Governor Barbour's niece.²⁰

Even after contracts were awarded, there were countless examples of waste. Auditors found numerous cases of fraud by the Corps debris removal contractors. In some cases, dump trucks were dumping less than their full load, leaving the site and then returning for to dump again and collect an additional fee. In other instances the Corps was overestimating the work performed by contractors.²¹ Additionally, the Corps was paying roughly \$31 a cubic yard for debris removal, when local governments were able to contract debris removal for between \$14-\$16.²²

The Corps has highly touted its "Blue Roof" operation, where damaged roofs were temporarily repaired with blue tarps that FEMA acquired. But closer examination reveals that because the Corps selected large prime contractors for the initial work, there were layers upon layers of subcontractors getting a cut of contract without doing the work. The people actually hammering nails were getting pennies on the dollars going to the prime contractors. Separately, when these contracts were open to competitive bids, contractors bid as low as half what the Corps was paying. This is a success story? Yes, the roofs were covered, but taxpayers paid through the nose for this "trickle down" contracting.²³

What Next

Today we are nearly nine months after Day 0, hurricane season starts in less than two weeks and the disaster contracting fiascos continue. The re-bidding of sole source contracts are lurching forward with precious few victories for the local contractors. One recent small victory was that a challenge from AshBritt Inc. – a FL based contractor that initially received large awards for debris removal from the Corps – to local a Mississippi set-aside for work under the Stafford Act was rejected.²⁴

It is clear that disaster recovery has become an industry unto itself and that where there is money to be made, there are companies willing to exploit the taxpayers pocketbook, even on the backs of disaster victims. As we go forward, Congress and the Administration have to work to rein in the rampant contract abuses, by implementing effective pre-disaster planning, further restricting sole source procurement and requiring a certain amount of direct activity by prime contractors. Furthermore, strengthen rules

²⁰ *Ibid.* and Ana Radelat. "FEMA Gives Barbour Niece \$100 Million Contract." Gannett News Service. April 20, 2006.

²¹ Transcript of House Government Reform Committee Hearing on "Contracting and Hurricane Katrina." May 4, 2006. Question and answer between Rep. Henry Waxman (D-CA) and MGEN Don Riley, U.S. Army Corps of Engineers.

²² *Ibid.* Question and answer between Rep. Chip Pickering (R-MS) and MGEN Don Riley, U.S. Army Corps of Engineers.

²³ James Varney and Gordon Russell. "Blue Roof Costs Have Critics Seeing Red." *New Orleans Times-Picayune*. February 19, 2006.

²⁴ Government Accountability Office. Decision in the Matter of AshBritt, Inc. File B-297889; B-297889.2. March 20, 2006.

governing local set-asides so taxpayer dollars don't just go to rebuild buildings and infrastructure, but local economies and lives.

There have been many reports from outside auditors, there have been several Congressional hearings in both chambers. Now is the time to fix our disaster management process and prepare for future disasters, before we waste more taxpayer dollars, before the next hurricane hits.

Thank you very much for inviting me to testify today, I'd be happy to answer any questions you might have.