

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into between the United States of America, acting through the United States Department of Justice and on behalf of the Federal Emergency Management Agency (FEMA) (collectively the “United States”), and the Louisiana Department of Education (“LDOE”), through their authorized representatives. Collectively, the United States and LDOE will be referred to herein as “the Parties.”

RECITALS

A. LDOE is a sub-grantee and recipient of FEMA funds under the Public Assistance (PA) program. FEMA’s PA program operates pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (“Stafford Act,” “the Act”) and FEMA implementing regulations. *See* 42 U.S.C. §§ 5121-5207; 44 C.F.R. §§ 206.1-206.210. Following President George W. Bush’s declaration of a major disaster in Louisiana due to Hurricane Katrina on August 29, 2005, LDOE received PA program funds for the repair and replacement of certain facilities damaged by the hurricane. The PA program limits FEMA contribution of funds to sub-grantees such as LDOE for “repairing, restoring, reconstructing, or replacing” a facility “on the basis of the design of the facility as the facility existed immediately before the major disaster.” 42 U.S.C. § 5172(e)(1)(A)(i); *see* 44 C.F.R. § 206.226 (2006). Pursuant to the “50% Rule,” if the cost to repair a facility to its pre-disaster condition exceeded 50% of the cost of replacing the facility based on the prior facility’s pre-disaster condition, FEMA funded the replacement of the damaged facility. 44 C.F.R. § 206.226(f).

B. On July 28, 2020, the United States filed a complaint-in-intervention in the United States District Court for the Eastern District of Louisiana in the civil action captioned *United States ex rel. Robert Romero v. AECOM, Emergency Response Program Management*

Consultants, AECOM Technical Services, Inc., AECOM Recovery, and Louisiana Department of Education, Docket No. 2:16-cv-15092 (the Civil Action). Among other things, the United States asserted common law causes of action against LDOE in the Civil Action.

C. The United States contends that it has certain civil common law claims against LDOE arising from LDOE's request and receipt, during the period from August 2005 to December 2016, of PA program funds for the replacement of the Florence J. Chester Elementary School Cafeteria Building (Chester Cafeteria Building), which was damaged by Louisiana Hurricane Katrina (DR-1603) in August 2005. Specifically, the United States contends that LDOE received certain payments by mistake and/or was unjustly enriched by FEMA for the replacement of the Chester Cafeteria Building. In the PWs, LDOE requested the obligation of PA funding to replace the Chester Cafeteria Building based on a false or fraudulent damage description, repair estimate, and 50% Rule calculation prepared, reviewed, and submitted to FEMA by a Technical Assistance Contractor (TAC). For example, LDOE certified PWs as accurate that included inaccurate descriptions of the building's structure and foundation; of the building's roof; and of the damage to the building's heating, ventilation and cooling system. Nonetheless, LDOE certified as accurate the false and misleading PWs that were prepared by TACs and submitted to FEMA on behalf of LDOE. Based on these PWs, FEMA obligated funding to replace the Chester Cafeteria Building. LDOE later obtained reimbursement for the Chester Cafeteria Building from FEMA's obligated funds, through the Louisiana Governor's Office of Homeland Security and Emergency Preparedness. This conduct is referred to below as the Covered Conduct.

D. This Settlement Agreement is made in compromise of disputed claims. This Settlement Agreement is neither an admission of liability by LDOE nor a concession by the United States that its claims are not well founded.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. LDOE shall pay to the United States \$1,262,614.01 (“Settlement Amount”), of which \$1,262,614.01 is restitution, by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the Department of Justice, no later than 14 days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and conditioned upon the United States’ receipt of the Settlement Amount, the United States releases LDOE from any civil claim the United States has for the Covered Conduct under the common law theories of negligent misrepresentation, payment by mistake, and unjust enrichment.

3. Notwithstanding the releases given in paragraphs 4 and 5 of this Agreement, or the dismissal of any claims asserted in the Civil Action, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released or otherwise precluded by the doctrine of res judicata:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;

- c. Except as explicitly stated in the Agreement, any administrative liability or enforcement right, or any administrative remedy, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement; and
- f. Any liability of individuals.

4. LDOE waives and shall not assert any defenses LDOE may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

5. LDOE fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that LDOE has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Civil Action and the United States' investigation and prosecution thereof.

6. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of LDOE, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;

- (3) LDOE's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment LDOE makes to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by LDOE, and LDOE shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, LDOE shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by LDOE or any of its subsidiaries or affiliates from the United States. LDOE agrees that the United States, at a minimum, shall be entitled to recoup from LDOE any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine LDOE's books and records and to disagree with any calculations submitted by LDOE or any of its subsidiaries or affiliates regarding any Unallowable Costs included in

payments previously sought by LDOE, or the effect of any such Unallowable Costs on the amount of such payments.

7. LDOE agrees to cooperate fully and truthfully with the United States' investigation of and litigation against individuals and entities not released in this Agreement. Upon reasonable notice, LDOE shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. LDOE further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning the Covered Conduct.

8. This Agreement is intended to be for the benefit of the Parties only.

9. Upon receipt of the payment described in Paragraph 1, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal dismissing with prejudice the United States' claims against LDOE in the Civil Action relating to the Covered Conduct.

10. Upon receipt of the payment described in Paragraph 1, the United States shall promptly file an Unopposed Motion to Dismiss all remaining claims asserted against LDOE in the Civil Action pursuant to Fed. R. Civ. P. 41(a)(2).

11. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

12. Each party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

13. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of Louisiana. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

14. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

15. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

16. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

17. This Agreement is binding on LDOE's successors, transferees, heirs, and assigns.

18. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

19. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

[Signature Pages Follow]

THE UNITED STATES OF AMERICA

DATED: 2/29/2024

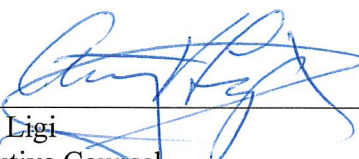
BY: Laura Hill
Laura Hill
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 2/29/2024

BY: Loan "Mimi" Nguyen
Loan "Mimi" Nguyen
Assistant United States Attorney
Eastern District of Louisiana


LOUISIANA DEPARTMENT OF EDUCATION

DATED: 4/1/2024

BY: 

Tony Ligi
Executive Counsel
Louisiana Department of Education

DATED: 3/29/24


BY: _____
Timothy W. Hassinger
Galloway Johnson Tompkins Burr and Smith
Counsel for LDOE