



Audit Report



OIG-16-019

RESTORE ACT

Texas Made Progress in Establishing Centers of Excellence

December 11, 2015

Office of
Inspector General

Department of the Treasury

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Abbreviations and Acronyms

Centers of Excellence	Centers of Excellence Research Grants Program
TCEQ	Texas Commission on Environmental Quality
RESTORE Act	Resources and Ecosystems Sustainability, Tourist Opportunities and Revived Economies of the Gulf States Act of 2012
RFGA	Request for Grant Application
Treasury	Department of the Treasury
Trust Fund	Gulf Coast Restoration Trust Fund

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*The Department of the Treasury
Office of Inspector General*

December 11, 2015

David A. Lebryk
Fiscal Assistant Secretary

This report presents the results of our audit of the State of Texas's progress to establish a Centers of Excellence Research Grants Program (Centers of Excellence) authorized by the requirements set forth in the *Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012* (RESTORE Act).¹ We performed this audit as part of our ongoing oversight of programs, projects, and activities to be funded under the RESTORE Act. Our audit objective was to assess the Texas Office of the Governor's progress in establishing Centers of Excellence for conducting research in the Gulf Coast region in accordance with Section 1605 of the RESTORE Act. Appendix 1 provides more detail about our audit objective, scope, and methodology.

In brief, we found that the Texas Commission on Environmental Quality (TCEQ), on behalf of the Office of the Governor, made progress in establishing two Centers of Excellence in accordance with the requirements set forth in the RESTORE Act, the Department of the Treasury's (Treasury) regulations² and grant application guidelines,³ and Texas statutes and regulations. Specifically, TCEQ competitively selected two consortia, the Texas OneGulf Consortium and the Subsea Systems Institute, in January 2015, to serve as Centers of Excellence. In April 2015, TCEQ submitted a grant application to Treasury to fund the centers

¹ Pub. L. 112-141, 126 Stat. 588-607 (July 6, 2012)

² On August 15, 2014, Treasury published the Interim Final Rule and the Preamble for 31 CFR Part 34, Department of the Treasury Regulations for the Gulf Coast Restoration Trust Fund. The Interim Final Rule became effective on October 14, 2014.

³ Treasury's application requirements and process are detailed in the "Centers of Excellence Research Grants Program Guidelines and Application to Receive Federal Financial Assistance."

and was subsequently awarded \$4,036,238 in June 2015. We make no recommendations in this report.

As part of our reporting process, we provided TCEQ an opportunity to comment on a draft of this report. In a written response, TCEQ management agreed with our audit report and expressed TCEQ's commitment to continuing its RESTORE program with due accountability and responsibility, and to being good stewards of all RESTORE funds granted to Texas. TCEQ management's response is provided in its entirety in appendix 2.

In a written response, Treasury management noted that it evaluated TCEQ's application to fund Centers of Excellence and confirmed, among other things, that the selection process and resulting selections met the requirements of the RESTORE Act and Treasury regulations. Management further noted that pursuant to its grant management procedures, Treasury disburses funds only after a grantee satisfies all criteria. Treasury management's response is provided as appendix 3.

Background

The RESTORE Act established the Gulf Coast Restoration Trust Fund (Trust Fund) within Treasury to provide funds for environmental and economic restoration of the Gulf Coast region that was damaged by the 2010 Deepwater Horizon oil spill. Deposits into the Trust Fund will be comprised of 80 percent of all civil and administrative penalties paid after July 6, 2012, under the Federal Water Pollution Control Act (the Clean Water Act).⁴ As of February 2015, the Trust Fund had received approximately \$816 million as a result of the Federal government's settlement with the Transocean defendants.⁵ In July 2015, BP Exploration & Production Inc. agreed to settle with the Federal government and the Gulf Coast States for \$18.7 billion, of which approximately \$5.5 billion

⁴ Pub. L. 92-500 (as amended)

⁵ On February 19, 2013, the civil settlement between the Department of Justice and Transocean defendants (Transocean Deepwater Inc., Transocean Offshore Deepwater Drilling Inc., Transocean Holdings LLC, and Triton Asset Leasing GmbH) was approved. Among other things in the settlement, the Transocean defendants paid a \$1 billion civil penalty plus interest. Of this amount, \$800 million plus interest was deposited into the Trust Fund.

plus interest relates to civil and administrative penalties under the Clean Water Act. Of this amount, \$4.4 billion is expected to be deposited into the Trust Fund over 15 years. On October 5, 2015, the Department of Justice published the settlement in a proposed consent decree for a 60 day comment period ending on December 4, 2015. After considering comments, the Federal government and the Gulf Coast States will determine whether to seek court approval of the consent decree.

The RESTORE Act allocates money in the Trust Fund to the following components: (1) 35 percent will be made available to the Gulf Coast States (Alabama, Florida, Louisiana, Mississippi, and Texas) in equal shares under the Direct Component; (2) 30 percent plus 50 percent of interest earned on the Trust Fund will be made available for grants under the Comprehensive Plan Component; (3) 30 percent will be made available for grants under the Spill Impact Component; (4) 2.5 percent plus 25 percent of interest earned on the Trust Fund will be made available to the Science Program Component; and (5) 2.5 percent plus 25 percent of interest earned on the Trust Fund will be made available to the Centers of Excellence Component. Treasury's Office of the Fiscal Assistant Secretary is responsible for administering the Direct Component and the Centers of Excellence Component. The Gulf Coast Ecosystem Restoration Council is responsible for administering the Comprehensive Plan Component and the Spill Impact Component. The National Oceanic and Atmospheric Administration is responsible for administering the Science Program Component.

Under Sections 1603 and 1605 of the RESTORE Act, 2.5 percent of funds plus interest earned on the Trust Fund will be made available to the Gulf Coast States in equal shares to establish Centers of Excellence for the purpose of conducting research in the Gulf Coast region. Each Center of Excellence must focus on science, technology, and monitoring in at least one of the following disciplines: (1) coastal and deltaic sustainability, restoration and protection, including solutions and technology that allow citizens to live in a safe and sustainable manner in a coastal delta in the Gulf Coast region; (2) coastal fisheries and wildlife ecosystem research and monitoring in the Gulf Coast region; (3) offshore energy

development, including research and technology to improve the sustainable and safe development of energy resources in the Gulf of Mexico; (4) sustainable and resilient growth, economic and commercial development in the Gulf Coast region; and (5) comprehensive observation, monitoring, and mapping of the Gulf of Mexico.

The duties of each Gulf Coast State must be carried out by the applicable Gulf Coast State entity or task force, as defined in the act. In the case of Texas, the RESTORE Act specified that the duties will be carried out by the Office of the Governor or an appointee. A TCEQ Commissioner, in his official capacity with TCEQ, was appointed by the Governor to carry out the duties for the State.

Audit Results

We found that TCEQ, on behalf of the Texas Office of the Governor, made progress in establishing Centers of Excellence in accordance with the requirements set forth in the RESTORE Act, Treasury's regulations and grant application guidelines, and Texas statutes and regulations. In January 2015, TCEQ competitively selected two consortia, the Texas OneGulf Consortium and the Subsea Systems Institute, to serve as Centers of Excellence.

Competitive Selection of Centers of Excellence

Section 1605 of the RESTORE Act specifies that the Gulf Coast States use the amounts made available from the Trust Fund to award competitive grants to nongovernmental entities and consortia in the Gulf Coast region, including public and private institutions of higher education, for the establishment of Centers of Excellence. Treasury regulations require a 45 day public review and comment period for each State's rules and policies, including the competitive process. This requirement does not apply to State statutes and regulations that apply to grants made by the State under the Centers of Excellence grant program. In the case of

Texas, TCEQ followed State statutes and regulations⁶ to competitively select two Centers of Excellence.

Texas statutes and regulations stipulate that for procurements exceeding \$25,000, a State agency must post either the entire bid or a notice that includes all information necessary to make a successful bid or proposal in the State's daily business forum. In addition, the agency must continue to either post notice of the procurement until the latest of 21 calendar days after the date the notice is first posted; the date the State agency will no longer accept bids; or the date the State agency decides not to make the procurement. A contract or procurement award made by a State agency that violates the applicable minimum time for posting is void.

TCEQ published a Request for Grant Applications (RFGA) in the Texas Electronic State Business Daily and also made the RFGA available to the public through the Texas e-Grants system, seeking entities to serve as the State's Centers of Excellence. The RFGA was issued on October 27, 2014, for a 21 day period consistent with the State's public notice requirement. TCEQ sought comments and questions from potential applicants consistent with TCEQ's established grant rules. Questions and comments received were reviewed by TCEQ, and responses were provided through posted addenda to the RFGA.

The RFGA advised bidders that the State intended to select and establish two Centers of Excellence. One center would focus on a combination of the five disciplines of science and technology outlined in Section 1605 of the RESTORE Act; while the other center would focus strictly on one of the five disciplines concentrated on environmentally sensitive offshore energy exploration, development, and production. TCEQ required that each Center of Excellence applicant be a consortium of participants for the purpose of fostering collaboration between interested parties. This collaboration is consistent with the RESTORE Act requirement that States give priority to entities and consortia that demonstrate the ability to establish the broadest cross section of participants

⁶ 30 TAC Sec. 14.1 (2014) *et seq.*, "Grants" and TCEQ's General Administrative Procedures

with interest and expertise in the required Center of Excellence focus disciplines.

To adhere to Texas laws prohibiting conflicts of interest in procurement actions, TCEQ imposed a period of no-contact between applicants and TCEQ representatives involved in selecting the Centers of Excellence from the time the RFGA was issued until the selections were announced.

In response to the RFGA, TCEQ received multiple proposals from consortia applying to serve as the Center of Excellence focused on a combination of the five RESTORE Act disciplines. However, there was only one proposal for the Center of Excellence that would focus solely on offshore energy exploration, development, and production. TCEQ requested that certain agencies serving on the Texas RESTORE Act Advisory Board⁷ nominate members to serve on an independent proposal evaluation team. After this team's initial scoring of the proposals, TCEQ requested that the two highest scoring applicants under consideration for the multi-discipline Center of Excellence submit a "Best and Final Application" that was evaluated by a different independent evaluation team. Proposals were evaluated on the following criteria: qualifications of major consortium participants, qualifications of other consortium participants, key technical personnel, consortium organization, the general nature of the activities to be performed, and the anticipated cost-effectiveness.

In a press release dated January 16, 2015, the State's designated TCEQ Commissioner⁸ announced the selection of two consortia to establish Centers of Excellence in Texas. The Texas OneGulf Consortium, led by Texas A&M University Corpus Christi, will focus on all five disciplines detailed in the RESTORE Act. The

⁷ The Texas RESTORE Act Advisory Board is made up of representatives for 11 State agencies: TCEQ, Texas Parks and Wildlife, Texas General Land Office, Texas Workforce Commission, Texas Department of Transportation, Texas Railroad Commission, Texas Department of Agriculture, Texas Comptroller of Public Accounts, Texas Water Development Board; Public Utility Commission of Texas and the Office of the Governor – Economic Development and Tourism Division. As part of their duties, members help develop the multiyear implementation and State expenditure plan for the State, as required by the RESTORE Act.

⁸ TCEQ is led by three commissioners. On March 28, 2013, the Governor of Texas designated one of them to represent the State of Texas on the Gulf Coast Ecosystem Restoration Council.

Subsea Systems Institute, led by the University of Houston, will focus on the discipline of environmentally sensitive offshore energy exploration, development, and production. TCEQ plans to follow the State's established policies and procedures for administering the Centers of Excellence grants.

Grant Application and Award Notification

In April 2015, TCEQ submitted its "RESTORE Act Centers of Excellence Research Grant Program Financial Assistance Application" to Treasury for funding. As required in the application, TCEQ included a description of the competitive process used to select the Centers of Excellence, the policies and procedures that TCEQ plans to use to administer the Centers of Excellence grants, and a summary of TCEQ's experience with issuing and monitoring subawards. The application also called for an estimated budget, key personnel, and a timeline including tasks and major milestones, which were also provided.

On June 9, 2015, Treasury issued a notice of award granting TCEQ \$4,036,238 to establish two Centers of Excellence.

Next Steps

TCEQ will subaward grants in equal amounts to Texas A&M University Corpus Christi for the Texas OneGulf Consortium and the University of Houston for Subsea Systems Institute to formally establish Texas's Centers of Excellence.

* * * * *

We appreciate the courtesies and cooperation extended by your staff as we inquired about these matters. Major contributors to this report are listed in appendix 4. A distribution list for this report is provided as appendix 5. If you have any questions, you may contact me at (202) 927-5762 or Cecilia Howland, Audit Manager, at (202) 927-8782.

/s/

Deborah L. Harker
Director, Gulf Coast Restoration Audits

As part of our oversight of programs, projects, and activities authorized by the *Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012* (RESTORE Act), we initiated an audit of the State of Texas's progress to establish a Centers of Excellence Research Grants Program (Centers of Excellence) in March 2014. The objective of our audit was to assess the Texas Office of the Governor's progress in establishing Centers of Excellence in accordance with Section 1605 of the RESTORE Act.

To accomplish our objective, we conducted fieldwork at Texas Commission on Environmental Quality (TCEQ) headquarters in Austin, Texas, and at our office in Washington, D.C. We performed our fieldwork between March 2014 and July 2015 which comprised the following steps.

- We reviewed applicable Federal laws, regulations, and procedures related to the establishment of the Centers of Excellence, including:
 - RESTORE Act requirements;
 - Department of the Treasury (Treasury) Interim Final Rule for RESTORE Act and Preamble, 31 CFR Part 34, effective October 14, 2014; and
 - Treasury RESTORE Act Centers of Excellence Research Grants Program Guidelines and Application to Receive Federal Financial Assistance, November 2014.

- We reviewed Texas administrative code and standards, policies and procedures, and applicable Office of the Governor's documents:
 - Tex. Water Code Sec. 5.124 (2014), "Authority to Award Grants";
 - 30 TAC Sec. 14.1 (2014) *et seq.*, "Grants";
 - Texas Contract Management Guide, "Ethical Standards and Policies"; and
 - Office of the Governor's letter appointing the TCEQ Commissioner as Texas's representative to the Gulf Coast Ecosystem Restoration Council, March 28,

2013.

- We reviewed TCEQ documents, including:
 - Request for Grant Application (RFGA) Solicitation #582-15-52002, “Grants for Center of Excellence under RESTORE” issued October 27, 2014, and subsequent addenda;
 - General Administrative Procedures, “Procurements & Contracts;”
 - Guide for Administrative Procedures, “Point of Payment;”
 - Purchasing and Contracting Guidelines User Manuals; and
 - Delegation Matrix of Authority for Contracts, Grants, Encumbrances and Procurement, January 17, 2014.

- We interviewed key TCEQ officials and staff responsible for establishing the Texas Centers of Excellence, including: Commissioner; General Counsel; Special Projects Coordinator; Procurement and Contracts Section Manager; Special Counsel; Contract Staff Attorney; and the Executive Assistant to the Commissioner.

We conducted this performance audit in accordance with 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 on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix 2
Texas Commission on Environmental Quality Response

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 20, 2015

Cecilia K. Howland, CIA
Audit Manager
U.S. Department of Treasury
Office of Inspector General
740 15th Street, N.W., Suite 600
Washington, DC 20220

Dear Ms. Howland:

Thank you for providing a copy of the draft audit report entitled, RESTORE Act: Texas has Made Progress in Establishing Centers of Excellence, and the opportunity to provide responsive comments to the findings of the Office of Inspector General. I am writing to provide those comments.

TCEQ is pleased to note your conclusions and agree with your report. We appreciate all the help and guidance we have received from the U. S. Department of Treasury in our efforts to ensure we meet all requirements related to RESTORE activities. We are committed to continuing our RESTORE program with due accountability and responsibility, and to being good stewards of all RESTORE funds granted to Texas.

We look forward to working with you in the future.

Respectfully,

A handwritten signature in black ink, appearing to read "Toby Baker", written over a white background.

Toby Baker
Commissioner

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Appendix 3
Treasury Management Response



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

ASSISTANT SECRETARY

DEC 2 2015

Ms. Deborah L. Harker
Director, Gulf Coast Restoration Audits
Office of the Inspector General
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Ms. Harker:

This letter responds to the draft audit report (Report) titled *Texas Made Progress in Establishing Centers of Excellence (OIG-16-xxx)*. Treasury appreciates your office's work over the course of the audit.

As the Report notes, section 1605 of the RESTORE Act requires a competitive process for selecting Centers of Excellence. In the Report, your office observes that the Texas Commission on Environmental Quality (TCEQ), on behalf of the Office of the Governor, made progress in establishing two Centers of Excellence in accordance with the RESTORE Act, Texas statutes and regulations, and Treasury's regulations and grant application guidelines.

During Treasury's review of TCEQ's grant application to fund its Centers of Excellence, Treasury evaluated the application to confirm, among other things, that the selection process and resulting selections met the requirements of the RESTORE Act and Treasury regulations. Pursuant to Treasury's grants management procedures, Treasury disburses funds only after Treasury concludes that the grantee satisfies all criteria.

We continue to work with the eligible entities for Centers of Excellence grants so that they become familiar with the requirements of the RESTORE Act, the Treasury regulations, and programmatic terms and conditions.

Sincerely,

David A. Lebryk
Fiscal Assistant Secretary

Appendix 4
Major Contributors to This Report

Cecilia K. Howland, Audit Manager
Michael A. Levin, Auditor-in-Charge
Lawrence Gonzalez, Auditor
Kevin A. Guishard, Referencer

Department of the Treasury

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Fiscal Assistant Secretary
Deputy Assistant Secretary, Fiscal Operations and Policy
Office of the Deputy Chief Financial Officer, Risk and Control
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Office of Strategic Planning and Performance Management

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