



# Audit Report



OIG-15-039

RESTORE ACT: Mississippi's Center of Excellence Was Not Selected through Competitive Award

July 22, 2015

Office of  
Inspector General

Department of the Treasury

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## Abbreviations and Acronyms

|             |  |
|-------------|--|
| MDEQ        | Mississippi Department of Environmental Quality  |
| RESTORE Act | Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 |
| 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*

July 22, 2015

David A. Lebryk  
Fiscal Assistant Secretary

This report presents the results of our audit of the State of Mississippi's progress to establish a Center of Excellence Research Grants Program (Center 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).<sup>1</sup> 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 Mississippi Department of Environmental Quality's (MDEQ) progress in establishing a Center of Excellence for conducting research in the Gulf Coast region in accordance with Section 1605 of the RESTORE Act. Appendix 1 provides more detail of our audit objective, scope, and methodology.

In brief, we found that Mississippi's Center of Excellence was not selected through competitive award as required by the RESTORE Act. Instead, Mississippi's Governor named the Center for Gulf Studies<sup>2</sup> as the State's Center of Excellence in March 2013, after receiving support from the Mississippi Research Consortium<sup>3</sup> and

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

<sup>2</sup> The Center for Gulf Studies is an administrative unit of the University of Southern Mississippi's Department of Marine Science in partnership with the University of Mississippi, Jackson State University, and Mississippi State University. After the Deepwater Horizon oil spill, researchers from the University of Southern Mississippi were among the first to document and assess the scope of the spill. University officials explained that the continued need for monitoring and research of the spill led to the formation of the Center for Gulf Studies in October 2012.

<sup>3</sup> The consortium is comprised of members from four Mississippi research universities: Jackson State University, Mississippi State University, the University of Mississippi, and the University of Southern Mississippi. The consortium's board serves as science and technology research advisors to Mississippi's executive branch and the legislature.

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MDEQ. When the Department of the Treasury (Treasury) published draft RESTORE Act regulations<sup>4</sup> in August 2014, Mississippi began discussions to develop a process for selection of a Center of Excellence that would comply with the act and the regulations. That said, we recommend that the Fiscal Assistant Secretary ensures that MDEQ selects its Centers of Excellence through a competitive process in accordance with the RESTORE Act and Treasury regulations prior to disbursing grant funds to MDEQ for funding Centers of Excellence.

As part of our reporting process, we provided MDEQ an opportunity to comment on a draft of this report. In a written response, the Executive Director of MDEQ agreed with our finding and expressed commitment to ensuring the Center of Excellence is selected through a competitive process in accordance with the RESTORE Act, Treasury regulations, and State law. MDEQ published its Draft Request for Proposals for public comment on February 3, 2015. The final Request for Proposals followed on April 6, 2015, and closed on May 7, 2015. It is the State's position that this corrective action plan will address any concerns regarding the selection of the Center of Excellence. We verified that MDEQ made its Centers of Excellence competitive selection process available for public comment. We also confirmed that MDEQ published the final Request for Proposals on April 6, 2015, and it was open through May 7, 2015. MDEQ's response is provided in appendix 2.

In a written response, Treasury management agreed with our recommendation and acknowledged MDEQ's response. In its response, Treasury management also committed to evaluating MDEQ's grant application and ensuring that the selection process and resulting selection address the requirements of the RESTORE Act and Treasury regulations. Treasury management further stated that grant funds would not be disbursed until an applicant met all required criteria, including an award through the competitive selection process. Treasury management's response is provided as appendix 3.

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<sup>4</sup> 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.

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## 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.<sup>5</sup> While the total amount that will eventually be deposited into the Trust Fund is unknown at this time, as of February 2015, the Trust Fund had received approximately \$816 million as a result of the government's settlement with the Transocean defendants.<sup>6</sup> Litigation is ongoing with other defendants, most notably BP Exploration and Production Inc.

The RESTORE Act allocates money in the Trust Fund to the five components as follows: (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

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<sup>5</sup> Pub. L. 92-500 (as amended)

<sup>6</sup> 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.

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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 Mississippi, the RESTORE Act named MDEQ as the State entity with this responsibility.

## **Finding**

### **Mississippi's Center of Excellence Was Not Selected through Competitive Award**

We found that MDEQ did not competitively award the State's Center of Excellence as required by the RESTORE Act. Section 1605 of the act specified that Gulf Coast States use 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. Instead, the Mississippi Governor named the Center for Gulf Studies as the Center of Excellence in March 2013 after receiving support from the Mississippi Research Consortium and MDEQ. As a result, potential parties that were able and interested in being Mississippi's Center of Excellence did not have the opportunity to compete.

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At the time the Center for Gulf Studies was named Mississippi's Center of Excellence, Treasury had not yet published the RESTORE Act regulations to guide the Gulf Coast States in following a competitive award process. Nonetheless, Mississippi officials proceeded with designating a Center of Excellence to keep pace with any potential funding opportunities and believed the selection was compliant with the RESTORE Act. The former Executive Director of MDEQ told us that State officials had a number of conversations with Treasury officials since September 2013 when the initial draft Treasury regulations were published and were waiting until the Treasury regulations were finalized to take further action regarding the Centers of Excellence.

It was not until the draft RESTORE Act regulations were published in August 2014 that detailed procedures and clarifying information regarding the Centers of Excellence were available.<sup>7</sup> Among other things, the regulations specify that MDEQ is responsible for conducting a competitive grant award process to select the State's Centers of Excellence. Furthermore, the regulations stipulate that when applying for funding, the State must describe the competitive process used to select one or more Centers of Excellence. Specifically, the State must demonstrate that rules and policies for selecting a Center of Excellence, including the competitive process, were published for public review and comment for a minimum of 45 days, and adopted after consideration of meaningful input from the public. This stipulation for public review and comment on the competitive process does not apply to a process required by State law or regulation. On multiple occasions, we inquired about MDEQ's process for selecting the Center for Gulf Studies as the Center of Excellence but MDEQ officials did not provide an explanation. Additionally, MDEQ did not make its selection process available for public comment, nor did it use a process required by State law or regulation when selecting the Center for Gulf Studies.

Although the Center for Gulf Studies was publically named as Mississippi's Center of Excellence, Treasury has not yet awarded Mississippi a grant for its Center of Excellence. It should be noted that it is not until the State applies to Treasury for funding that the

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<sup>7</sup> While published in August 2014, the RESTORE Act regulations became effective in October 2014.



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State's selection of a Center of Excellence is reviewed by Treasury. Without final RESTORE Act regulations, Treasury was not in a position in March 2013 to accept funding applications or to acknowledge Mississippi's designation of the Center for Gulf Studies. It was not until publication of Treasury's draft interim final rule in August 2014 that State officials began discussions to develop a competitive process for selection of Mississippi's Centers of Excellence in compliance with the act and the regulations. Subsequent to the end of our fieldwork, in February 2015 MDEQ released its *Draft Request for Proposals for Mississippi's RESTORE Act Center of Excellence* for a 45-day public comment period.

Upon its initial selection in March 2013, Center for Gulf Studies officials began discussing science coordination and focus areas, considering the makeup of external working groups, and planning for mitigation of potential conflicts of interests so that grants could be issued and projects started timely. Center officials also hired a director who has since departed. We learned that the Center for Gulf Studies has ceased its initial planning efforts until the final determination of Mississippi's Centers of Excellence is resolved.

#### MDEQ Response

In a written response, the Executive Director of MDEQ agreed with the facts in the audit report and our finding. MDEQ is committed to ensuring the State of Mississippi's Center of Excellence is selected through a competitive process in accordance with the RESTORE Act, Treasury regulations, and State law. On February 3, 2015, MDEQ published its Draft Request for Proposals for public comment. The final Request for Proposals was published on April 6, 2015, and closed on May 7, 2015. It is the State's position that this corrective action plan will address any concerns regarding the selection of the Center of Excellence. See appendix 2 for the MDEQ response in its entirety.

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### OIG Comment

We verified that MDEQ complied with the RESTORE Act and Treasury's regulations by making its Centers of Excellence competitive selection process available for public comment. We also confirmed that MDEQ published the final Request for Proposals on April 6, 2015, and that submissions were accepted through May 7, 2015.

## **Recommendation**

We recommend that the Fiscal Assistant Secretary ensures that MDEQ selects its Centers of Excellence through a competitive process in accordance with the RESTORE Act and Treasury regulations prior to disbursing grant funds to MDEQ for funding Centers of Excellence.

### Treasury Management Response

Treasury management agreed with our recommendation and acknowledged MDEQ's response. In its response, Treasury management also committed to evaluating MDEQ's grant application and ensuring that the selection process and resulting selection address the requirements of the RESTORE Act and Treasury regulations. Treasury management further stated that grant funds would not be disbursed until an applicant met all required criteria, including an award through the competitive selection process. See appendix 3 for management's response in its entirety.

### OIG Comment

Management's response meets the intent of our recommendation.

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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 Mississippi's progress to establish a Center of Excellence Research Grants Program (Center of Excellence) in March 2014. The objective of our audit was to assess Mississippi Department of Environmental Quality's (MDEQ) progress in establishing a Center of Excellence for conducting research in the Gulf Coast region in accordance with Section 1605 of the RESTORE Act.

To accomplish our objective, we conducted fieldwork at the Center for Gulf Studies office at Stennis Space Center, Mississippi, and Department of the Treasury (Treasury) Office of Inspector General's office in Washington, D.C., between March and October 2014 which comprised the following steps.

- We reviewed applicable Federal laws, regulations, and procedures related to the establishment of Centers of Excellence, including:
  - RESTORE Act requirements;
  - 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, August 2014.
- We reviewed MDEQ's website and key documents, including:
  - Press Release naming the Center of Excellence, March 2013;
  - MDEQ 2013 Newsletters and Annual Report;
  - Mississippi Research Consortium letter to the Governor recommending the Center for Gulf Studies as the Center of Excellence, February 2013; and
  - Governor's letter to the National Oceanic and Atmospheric Administration confirming the naming of the Mississippi Center of Excellence, April 2013.

- We reviewed the State of Mississippi’s website for procurement and contracting guidance and documents, including *Mississippi Procurement Manual*, July 2014.
- We interviewed key officials responsible for establishing Mississippi’s Center of Excellence, including:
  - Former Executive Director, MDEQ;
  - Restoration Coordinator, MDEQ;
  - Chief Administrative Officer, MDEQ; and
  - Center for Gulf Studies, Acting Director.

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  
Mississippi Department of Environmental Quality Response



STATE OF MISSISSIPPI  
PHIL BRYANT  
GOVERNOR  
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY  
GARY C. RIKARD, EXECUTIVE DIRECTOR

May 14, 2015

Ms. Debbie Harker, CPA, MBA  
Audit Director  
U.S. Department of the Treasury  
Office of Inspector General  
740 15<sup>th</sup> Street, N.W., Suite 600  
Washington, D.C. 20220

RE: Response to Finding in draft audit report RESTORE ACT: *Mississippi's Center of Excellence Was Not Selected Through Competitive Award*

Dear Ms. Harker:

Please find below the State of Mississippi's official response to the finding conveyed in the above mentioned draft report received from you by my office via email communications on May 1, 2015. We understand that this response will be incorporated into your final audit report which will be submitted to the Fiscal Assistant Secretary of the U.S. Department of the Treasury.

**Mississippi's Response to the Finding Reported in RESTORE ACT: *Mississippi's Center of Excellence Was Not Selected Through Competitive Award:***

The State of Mississippi does not dispute any of the factual assertions or conclusions drawn by Treasury OIG in its report. As stated within the report, the State has begun the process of a competitive selection of a Center of Excellence which the State contends is compliant with Treasury regulations, as well as state law.

As stated, the State made available its Draft Request for Proposals on February 3, 2015. Comments were received and addressed, with the final Request for Proposals published on April 6, 2015. The submission period closed May 7, 2015. Two submissions were received. The evaluation of those submissions has not yet concluded.

Appendix 2  
Mississippi Department of Environmental Quality Response

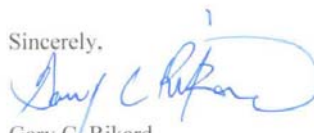
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Ms. Debbie Harker  
May 14, 2015  
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It is the State's position that this corrective action plan should resolve any concerns regarding the selection of the Center of Excellence for Mississippi.

Please feel free to contact my office if you should need any further assistance.

Sincerely,



Gary C. Rikard  
Executive Director

Appendix 3  
Treasury Management Response



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C.

ASSISTANT SECRETARY

June 25, 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 *Mississippi's Center of Excellence Was Not Selected Through Competitive Award, OIG-15-xxx*. Treasury appreciates your office's work over the course of the audit and values your feedback on this issue. This letter provides Treasury's official comment and reply to the Report.

As the Report notes, section 1605 of the RESTORE Act requires a competitive process for selecting Centers of Excellence. In the Report, your office recommends that the Fiscal Assistant Secretary ensure that the Mississippi Department of Environmental Quality (MDEQ) selects its Center(s) of Excellence through a competitive process in accordance with the RESTORE Act and Treasury regulations prior to disbursing grant funds to the MDEQ for funding Centers of Excellence.

In the written response from the Executive Director of the MDEQ, he explained that the MDEQ published its Draft Request for Proposals on February 3, 2015, followed by a review of comments and publication of its final "Request for Proposals" on April 6, 2015 that closed on May 7, 2015. According to the Executive Director, the MDEQ received two submissions and the evaluation of the submissions is not yet complete. Treasury looks forward to receiving MDEQ's grant application to establish Center(s) of Excellence. Treasury will evaluate the application to confirm, among other things, that the selection process and resulting selection address 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, including that the state competitively selected its center(s).

We will 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 regulation, and programmatic terms and conditions.

Sincerely,

David A. Lebryk  
Fiscal Assistant Secretary



Appendix 4  
Major Contributors to This Report

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Cecilia K. Howland, Audit Manager  
Michael A. Levin, Auditor  
Dionne L. Smith, Auditor  
Justin D. Summers, Referencer

**Department of the Treasury**

Deputy Secretary  
Under Secretary for Domestic Finance  
Fiscal Assistant Secretary  
Deputy Assistant Secretary, Fiscal Operations and Policy  
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