



Audit Report



OIG-15-036

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

June 10, 2015

Office of
Inspector General

Department of the Treasury

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Abbreviations and Acronyms

Alabama Council	Alabama Gulf Coast Recovery Council
Center of Excellence	Center of Excellence Research Grants Program
DCNR	Department of Conservation and Natural Resources
MESC	Marine Environmental Sciences Consortium
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*

June 10, 2015

David A. Lebryk
Fiscal Assistant Secretary

This report presents the results of our audit of the State of Alabama'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).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 Alabama Gulf Coast Recovery Council's (Alabama Council)² 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 Alabama's Center of Excellence was not selected through competitive award as required by the RESTORE Act. Instead, the Alabama Council selected the Dauphin Island Sea Lab, home of the Marine Environmental Sciences Consortium (MESC),³ after deliberating on what would be in the State's best interest. It was not until the Department of the Treasury (Treasury)

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

² As defined in Section 1603 of the RESTORE Act, the Alabama Council is comprised of the Governor of Alabama, who serves as Chairperson; the Director of the Alabama State Port Authority; the Chairman of the Baldwin County Commission; the President of the Mobile County Commission; the Mayor of the city of Bayou La Batre; the Mayor of the town of Dauphin Island; the Mayor of the city of Fairhope; the Mayor of the city of Gulf Shores; the Mayor of the city of Mobile; and the Mayor of the city of Orange Beach.

³ MESC is comprised of 22 academic institutions from the State of Alabama and is also referred to as the Dauphin Island Sea Lab, the facility where MESC operates.

issued RESTORE Act regulations,⁴ effective in October 2014, that members of the Alabama Council concluded they would need to reconsider the selection. That said, we recommend that the Fiscal Assistant Secretary ensures that the Alabama Council selects its Centers of Excellence through a competitive process in accordance with the RESTORE Act and Treasury regulations prior to disbursing grant funds to the Alabama Council for funding Centers of Excellence.

As part of our reporting process, we provided the Alabama Council and the Alabama Department of Conservation and Natural Resources (DCNR)⁵ an opportunity to comment on a draft of this report. In a written response, the Commissioner of DCNR, on behalf of the Alabama Council, 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 and Treasury regulations. The response acknowledged that while the RESTORE Act regulations were not in existence at the time the Alabama Council selected a Center of Excellence, compliance with the regulations is a requirement to receive grant funding from Treasury. Committed to complying with the RESTORE Act regulations, on December 17, 2014, the Alabama Council published competitive selection procedures for the Centers of Excellence for public comment. The public comment period closed on February 2, 2015. The Alabama Council's response in its entirety is provided in appendix 2.

In a written response, Treasury management agreed with our recommendation and acknowledged that on May 13, 2015, the Alabama Council published its competitive process for selection of Centers of Excellence and released a solicitation for proposals. Management committed to evaluating Alabama's grant application to establish Centers of Excellence and ensuring that the selection process and resulting selection address the requirements of the

⁴ 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.

⁵ The Alabama Council entered into a Memorandum of Understanding with the Alabama DCNR for administrative support necessary to carry out decisions made by the Alabama Council under the RESTORE Act.

RESTORE Act and Treasury regulations. Management also noted that grant funds will not be disbursed until an applicant has met all required criteria, including an award through the competitive selection process. Management's response in its entirety is provided in 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.⁶ 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.⁷ Litigation is ongoing with other defendants, most notably BP Exploration and Production Inc.

The RESTORE Act allocates money in the Trust Fund to 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

⁶ Pub. L. 92-500 (as amended)

⁷ 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.

Center of Excellence Component. Treasury's Office of the Fiscal Assistant Secretary is responsible for administering the Direct Component and the Center 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 Alabama, the RESTORE Act named the Alabama Council as the State entity with this responsibility.

Finding

Alabama's Center of Excellence Was Not Selected through Competitive Award

We found that the Alabama Council did not competitively award the State's Center of Excellence as required by the RESTORE Act. Section 1605 of the act specified that the 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 Alabama Council selected the Dauphin Island Sea Lab after internal deliberations regarding what would be in the State's best interest. As a result, potential parties that were able and interested in being a Center of Excellence did not have the opportunity to compete.

During the Alabama Council's May 2013 meeting, the Alabama Council decided to move forward with the process of selecting a Center of Excellence. According to Alabama State officials, the decision to proceed in selecting a Center of Excellence was to keep pace with any potential funding opportunities. At that time, the Alabama Council was aware that certain other Gulf Coast States had selected, or were in the process of selecting Centers of Excellence. In addition, the Alabama Council had received inquiries from stakeholders such as the National Oceanic and Atmospheric Administration and the National Academy of Science regarding funding and implementation related to the Centers of Excellence. The Governor of Alabama's former Chief of Staff communicated the Governor's thoughts concerning the State's best interest in selecting a Center of Excellence. That is, after discussions with multiple potential candidates and interested parties, the Governor felt strongly that the Dauphin Island Sea Lab would be the ideal choice. Subsequently, the Alabama Council discussed the qualifications of the Dauphin Island Sea Lab and other organizations and unanimously approved the Dauphin Island Sea Lab as Alabama's Center of Excellence. The Alabama Council made the decision public along with meeting minutes summarizing the selection process. Additionally, the Dauphin Island Sea Lab issued its own statement to announce it had been selected as the Center of Excellence. The Executive Director of the Alabama Council and the Director of the State Lands Division of DCNR both confirmed that the Alabama Council selected the Dauphin Island Sea Lab by unanimous vote after a thorough discussion of candidates and believed the selection was compliant with the RESTORE Act.

It was not until the RESTORE Act regulations were published in August 2014 that detailed procedures and clarifying information

regarding the Centers of Excellence were available.⁸ Among other things, the regulations specify that the Alabama Council 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. In the case of Alabama's Center of Excellence, the Alabama Council did not make the selection process available for public comment when choosing the Dauphin Island Sea Lab.

Although the Dauphin Island Sea Lab was publically named as Alabama's Center of Excellence, Treasury has not yet awarded Alabama a grant for its Center of Excellence. In accordance with Treasury's regulations, it is not until Treasury reviews a State's application to fund a Center of Excellence that Treasury officially acknowledges the State's selection. Without final RESTORE Act regulations, Treasury was not in a position in May 2013 to accept funding applications or to acknowledge Alabama's designation of the Dauphin Island Sea Lab. It was not until Treasury's regulations became effective in October 2014, that the Alabama Council concluded that it would need to revisit its selection process. The Director of MESC (i.e., Dauphin Island Sea Lab) was informed by an administrator for the Alabama Council that the selection of the Center of Excellence would need to be reconsidered. Subsequent to the end of our fieldwork, the Alabama Council proactively released its *Center of Excellence Draft Solicitation for Proposals and Draft Competitive Process for Selection* (December 17, 2014), for public comment.

Upon its selection in May 2013, Dauphin Island Sea Lab officials had begun to plan the structure and operations of the Center of Excellence program which included consideration of the scientific disciplines that would be pursued and the locations within the Gulf

⁸ While published in August 2014, the RESTORE Act regulations became effective in October 2014.

Coast region where research would primarily be focused. Additionally, the Dauphin Island Sea Lab officials had assessed its staffing needs, drafted a grant application, and designed a grant review and award process. In early 2014, the Dauphin Island Sea Lab officials also began to reach out to external parties to form the boards and committees needed to review grant applications. In July 2014, we learned that the Dauphin Island Sea Lab had ceased its initial planning efforts until final determination of its status as an Alabama Center of Excellence is resolved.

Alabama Council Response

In a written response, the Commissioner of DCNR, on behalf of the Alabama Council, agreed with our finding and expressed commitment to ensuring that Centers of Excellence are selected through a competitive process in accordance with the RESTORE Act and Treasury regulations. The response acknowledged that while the RESTORE Act regulations were not in existence at the time the Alabama Council selected the Center of Excellence, compliance with the regulations is required to receive grant funding from Treasury. Committed to complying with the RESTORE Act regulations, on December 17, 2014, the Alabama Council published competitive selection procedures for the Centers of Excellence for public comment. The public comment period closed on February 2, 2015. See appendix 2 for the Alabama Council response in its entirety.

OIG Comment

We verified that the Alabama Council has taken the initial step to comply with the RESTORE Act and Treasury's regulations by making its Centers of Excellence competitive selection process available for public comment. The public comment period was open from December 17, 2014 through February 2, 2015.

Recommendation

We recommend that the Fiscal Assistant Secretary ensures that the Alabama Council selects its Centers of Excellence through a competitive process in accordance with the RESTORE Act and

Treasury regulations prior to disbursing grant funds to the Alabama Council for funding Centers of Excellence.

Treasury Management Response

Treasury management agreed with our recommendation and acknowledged that on May 13, 2015, the Alabama Council published its competitive process for selection of Centers of Excellence and released a solicitation for proposals. Management committed to evaluating Alabama's grant application to establish Centers of Excellence and ensuring that the selection process and resulting selection address the requirements of the RESTORE Act and Treasury regulations. Management also noted that grant funds will not be disbursed until an applicant has 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.

* * * * *

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 Eileen Kao, Audit Manager, at (202) 927-8759.

/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 Alabama'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 the Alabama Gulf Coast Recovery Council's (Alabama Council) 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 Marine Environmental Sciences Consortium offices in Dauphin Island, Alabama, 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 the Alabama Council's website and key documents, including:
 - Memorandum of Understanding between the Alabama Council and the Alabama Department of Conservation and Natural Resources for administration of RESTORE Act funds; and
 - Alabama Council's press releases and meeting minutes.
- We reviewed the Dauphin Island Sea Lab's website for press releases.

- We interviewed key officials responsible for establishing Alabama’s Center of Excellence, including:
 - Executive Director, Alabama Council;
 - Director, State Lands Division of Department of Conservation and Natural Resources; and
 - Executive Director, Marine Environmental Sciences Consortium (i.e. Dauphin Island Sea Lab).

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
Alabama Council Response



ROBERT BENTLEY
GOVERNOR

STATE OF ALABAMA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
64 NORTH UNION STREET, SUITE 468
MONTGOMERY, ALABAMA 36130
(334) 242-3486
FAX (334) 242-3489

N. GUNTER GUY, JR.
COMMISSIONER
CURTIS JONES
DEPUTY COMMISSIONER

April 1, 2015

Ms. Marla A. Freedman
Assistant Inspector General for Audit
Office of the Inspector General
Department of the Treasury
Washington, DC 20220

**RE: Alabama Gulf Coast Recovery Council's Center of Excellence
Competitive Selection Process**

Dear Ms. Freedman:

As Commissioner for the Alabama Department of Conservation and Natural Resources, Administrator for the Alabama Gulf Coast Recovery Council (Alabama Council), I am writing in response to your email of March 2, 2014 requesting written comments to the draft audit report related to the Department of Treasury Office of Inspector General's audit to assess the Alabama Council's progress in establishing Alabama's Center of Excellence (COE) Research Grant Program. The following response, for inclusion within the "Placeholder" section on page two of the draft report, represents the Alabama Council's commitment to ensuring our Center of Excellence is selected through a competitive process pursuant to the RESTORE Act and Treasury regulations.

As noted in this report, following passage of the RESTORE Act, the Alabama Council began receiving inquiries from various stakeholders regarding the entity that would be serving on behalf of the State of Alabama as its COE, and it also became aware of other States designating COEs. Subsequently, at a meeting on May 10, 2013, the Alabama Council discussed the possibility of proceeding with selection of a COE for the State of Alabama.

At the meeting, the Alabama Governor's then Chief of Staff communicated the Governor's thoughts concerning the selection of a Center of Excellence, indicating that, after discussions with multiple potential candidates and interested parties, the Governor felt that the Dauphin Island Sea Lab (administrative home for Alabama's Marine Environmental Sciences Consortium encompassing more than 20 colleges and universities around the State of Alabama), would be the logical choice. Council members engaged in further discussion regarding the qualifications, experience and existing infrastructure of potential organizations. The Alabama Council members ultimately approved the Dauphin Island Sea Lab as the state's COE by unanimous vote following a motion made by the Mayor of the Town of

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Appendix 2
Alabama Council Response

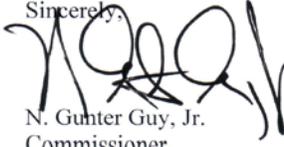
Dauphin Island which was seconded by the Chairman of the Baldwin County Commission. This vote was taken during a public meeting and, thereafter, meeting minutes summarizing these deliberations were published for the public and posted on the Alabama Council's website.

As noted in this report, the Alabama Council's discussion and COE designation occurred prior to Treasury providing its Interim Final Rule in August of 2014, and it was not until then "that detailed procedures and clarifying information regarding the Centers of Excellence were available." At this time, the Alabama Council reviewed the interim regulations which outlined a more detailed and specific process for a state's selection of a COE than set forth in the RESTORE Act itself. While not yet effective at that time, these regulations stated that each state, prior to selecting a COE, must publish a description of its competitive selection process for public review and comment for a 45-day period. The Alabama Council recognized that this new regulation, while not contained in the RESTORE Act nor in existence at the time of its 2013 selection of a COE, would be a requirement in connection with any grant application submitted to the US Treasury for COE funding. As the regulations did become final in October of 2014, the Alabama Council prepared for publication of its competitive selection process documents for a 45-day public comment period in order to initiate the process for selecting an entity to serve as the COE for the State of Alabama.

At a public meeting on December 17, 2014, the Alabama Council announced that it would be publishing its "Center of Excellence Research Grants Programs Draft Solicitation for Proposals and Draft Competitive Process for Selection" for public review and comment through February 2, 2015. As detailed in the draft documents, both the draft "Solicitation for Proposals" and draft "Competitive Process for Selection" were posted on the Alabama Council's website as well as additional websites. Announcements regarding availability of the draft documents were also distributed through the Alabama Council's email list and email lists maintained by several other organizations. The Alabama Council appreciates recognition in this report of its proactive measures.

Following close of the comment period, the Alabama Council began review and consideration of all public comments it received and anticipates issuing final competitive process and solicitation documents (and making them publicly available through similar methods) by this April. Accordingly, the Alabama Council is already complying and will continue to comply with all applicable RESTORE Act and Treasury regulation requirements regarding selection of a COE for the State of Alabama.

Thank you for this opportunity to respond to this draft audit report on behalf of the Alabama Gulf Coast Recovery Council.

Sincerely,

N. Gunter Guy, Jr.
Commissioner

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Appendix 3
Treasury Management Response



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

ASSISTANT SECRETARY

May 26, 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 *Alabama'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, supplementing earlier technical comments.

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 Alabama Gulf Coast Recovery Council (Alabama Council) select 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 Alabama Council for funding Centers of Excellence.

In the written response from the Commissioner for the Alabama Department of Conservation and Natural Resources (DCNR), which serves as administrator for the Alabama Council, he explained that the Alabama Council published its draft "Solicitation for Proposals" and the draft "Competitive Process for Selection" in December 2014, for public review and comment. We understand that on May 13 the Alabama Council published its competitive process for selection and released a solicitation for proposals. Treasury now looks forward to receiving Alabama'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

Eileen J. Kao, Audit Manager
Marco T. Uribe, Auditor-in-Charge
Michael A. Levin, Auditor
Kevin A. Guishard, Referencer

Department of the Treasury

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

Office of Management and Budget

OIG Budget Examiner

State of Alabama

Alabama Gulf Coast Recovery Council
Commissioner, Department of Conservation and Natural
Resources
Chief Examiner, Department of Examiners of Public Accounts