



RRR Division - Region VI

LOG# 09-10-093

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Arbitration

"RE-BUILDING THE CITY'S WATER SYSTEMS FOR THE 21ST CENTURY"

Sewerage & Water Board OF NEW ORLEANS

C. RAY NAGIN, President
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Clerk of the Board

Civilian Board of Contract Appeals (CBCA)
1800 F ST., NW, Washington, 20405
Sixth Floor, 1800 M St. NW
Washington, DC 20036

Date Rec'd:	10/19/09	09-10-5027
Rec'd by:	LS	
Director		
Deputy		X
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Analyst		
DAD		X
DOD		
MIT		
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NP		
File		X
Suspense Date:	11/11/09	

Date: October 15, 2009

Re: Sewerage & Water Board of New Orleans – Disaster# 1603 FIPS # 071-06A69-00
Arbitration Request of Project Worksheets 4165.

Dear Arbitration Panel,

Please accept this correspondence as the Sewerage and Water Board of New Orleans' official request to have Pw#4165 administered through the American Recovery and Reinvestment Act of 2009.

Impact of Katrina and the failures of the Federal levees system on the S&WB

The Sewerage and Water Board of New Orleans has a long and significant history. It was created in 1896 by the State Legislature in response to a demand for elimination of open sewerage and poor drainage.

Prior to Hurricane Katrina the Board was financially sound and had a productive capital program that maintained our Water, Sewer and Drainage system. With a staff of 1,200 the Board was able to respond to the preventive maintenance requirements to maintain its massive system. Today, the Board has approximately only 900 employees. We were looking forward to continuing to provide reliable services to the citizens of New Orleans, however, on August 29, 2005, Hurricane Katrina impacted Southeast Louisiana and the Gulf Coast of Mississippi and Alabama.

The resulting breach and overtopping of the federal levee system flooded all but 20% of the City of New Orleans/Orleans Parish. The exception of Algiers (the Westbank portion of the City) and what has come to be known as the "Sliver by the River", roughly described as that area between St. Charles Avenue on the North, and the Mississippi River on the South, very roughly from the Carrollton Avenue/St. Charles Avenue intersection area in the west thru the Audubon Park area, Uptown, Lower Garden District, Warehouse District, Part of the CBD, the French Quarter, and part of Fauborg Marigny

in the east. The remaining approximately eighty percent (80%) of the City was flooded and uninhabitable.

The Westbank (Algiers) portion of the City never lost water pressure, and the Algiers Water Plant, at times, literally and figuratively, a beacon in the night, and at first the only operating water plant in the entire area, supplied water, via Water Tank Trucks, to all comers, including the military, FEMA, the hotels, and the cruise ships providing living accommodations to thousands of displaced City employees and their families.

The international technical community estimated that once the levees were sealed, it would take about 3 - 4 months to dewater (their term)/drain the City, about 6 months to restore the Drinking Water System, and about 1 year to restore the Wastewater (Sewerage) System.

The City was declared drained on September 19, 2005, about three (3) weeks after the storm - Not the predicted 3 - 4 months.

With regards to the Water System, water pressure for fire protection was restored on September 6, 2005, about one (1) week after the storm. Potable water was restored to the area between the 17th Street Canal and the Industrial Canal (from the River to the Lake) on October 5, 2005, or about five (5) weeks after the storm - not the predicted 6 months.

Potable water was restored to almost all of the area east of the Industrial Canal on December 8, 2005, or about fourteen (14) weeks after the storm - again, not the predicted six (6) months, or twenty-four (24) weeks.

Today the Sewerage and Water Board is still experiencing the impacts of Katrina, impacting the sewer, water and drainage Systems. Still today the Boards Water system has not been restored to it Pre-Katrina water production capacity due to high volumes of water leaks. Also numerous sewer stations continue to operate on portable pumps, half the capacity of the station. An underpass drainage station still has not been repaired. The above is due to the overall destruction of the Board system and the time it takes to design and construct new faculties. If that were not enough, the Board still finds itself working through the FEMA process to get version and scope alignment so that it can begin the bid and construction process to restore its systems.

Project Background

On August 29, 2005, a tidal surge, heavy winds, severe rain, and flooding from Hurricane Katrina caused extensive damage to the Sewerage and Water Board of New Orleans' facilities. Approximately 12,000 fire hydrants on the east bank of New Orleans were damaged by floodwater. Ninety percent of the hydrants were secured with anti-theft devices. Most of the anti-theft devices were badly corroded and inoperable.

In response to New Orleans Fire Department's concerns that ATDs (Anti-theft Devices) were malfunctioning during post-Katrina [extensive] firefighting activities, the S&WB promptly investigated, finding widespread problems with ATDs that were in floodwater-inundated areas. **(BATES STAMP 00091)** Sensibly assuming that ATDs were not designed to be submerged in the highly corrosive brackish waters left standing by Katrina, we removed and sent several ATDs to the manufacturer for analysis.

The report from the manufacturer validated our concerns, concluding that the intrusion of salt into the ATD's internal mechanisms caused them to lock-up, creating a perilous situation. In response to the report and in consideration of the safety implications for the residents of Orleans Parish, we immediately ordered the rehabilitation of all flooded fire hydrants that included the replacement of their ATDs. **(BATES STAMP 00092)**

For the purpose of establishing the number of eligible impacted hydrants for reimbursement, the S&WB identified a total of 11,039 flooded fire hydrants from a gross total fire hydrant inventory of 13,235 under the S&WB's responsibility. From that total only 9,003 fire hydrants that were flooded with greater than 24" or greater and the ATD was replaced with a new ATD. **(BATES STAMP 00204)** The S.&W.B. also demonstrated to the FEMA project officers that it had a pre-established maintenance program on the fire hydrant network system. **(BATES STAMP 00391)**

Fire hydrants rehabilitation contract unit costs:

Purchased directly from the manufacturer (at lower than pre-disaster cost):

Anti-Theft \$185.00 x 9,003 = \$1,665,555.00

Competitively and locally bid rehabilitation of flooded fire hydrants:

Removal of damaged device	\$30.00
Clean and Grease	\$29.00
Flushing and static pressure test	\$19.00
Pressure wash and repaint	\$15.00
Install new device	<u>\$5.00</u>

Total \$98.00 x 11,039 = \$1,081,882

Total rehabilitation cost flooded fire hydrants in greater than 24": **\$2,747,377.00**

Case History

The project officer wrote the project worksheet stating that the cost of the contract to repair/replace all devices including labor and material is \$3,000,000.00. The project officer also noted "*unfortunately, after FEMA inspection, repair and replacement of anti-theft devices are not eligible for reimbursement (pre-disaster corrosion damage over long period of time).*" FEMA's final reviewers determined that the project worksheet was "*ineligible as per project officer assessment and FEMA Policy pg. 23 of Public Assistance Guide - work must be required as a direct result of the declared disaster. Damage that results from a cause other than the designated event, or from pre-disaster damage, is not eligible.*" The project worksheet was obligated for \$0.00. **(BATES STAMP 00095)**

Initially, FEMA denied funding for the ATDs, specifically asserting that Katrina did not damage them. In response to this and in acknowledgement of routinely similar declarations by the Project Officer involved, we appealed. Consequently, in the denial of our first appeal (which was considered and ruled on by the same individuals who made the initial decision), FEMA opined that we did not demonstrate that the devices were damaged, nor did they directly observe any disaster-related damages. **(BATES STAMP 00001)**

We found this position particularly puzzling considering in early 2007, while evaluating S&WB disputes appeals, FEMA engaged NISTAC: **(BATES STAMP 00130)**

"Identifying and resolving issues between FEMA and the Sewerage and Water Board of New Orleans (Board) as a result of Hurricanes Katrina and Rita"

In their final report titled *"Technical Assistance for Sewerage and Water Board of New Orleans NISTAC Analysis of need, Plan of Action, and Funding Options"*, NISTAC concluded [with regards to PW 4165] that: **(BATES STAMP 00197)**

"These devices were damaged by the storm. FEMA should review their decision to deny payment for replacement of those that were submerged in the brackish floodwaters. The NISTAC team believes this should be paid."

In response to the NISTAC report, the S&WB and FEMA began working on revising identified PWs, including PW 4165. We genuinely believed we were collaborating in good faith with FEMA, with the shared goal of preparing a Version to fund the ATD replacements, and continued to obtain and submit backup documents in an attempt to provide all requested information FEMA needed to fund the project.

Unfortunately, after working with FEMA (and complying with all of their requests); we, along with the State [of Louisiana] Appeals Team, were told that FEMA will no longer resolve disputes outside of the appeals process, and that all statutory requirements (including deadlines) will be enforced. Additionally, we were told that we would need to submit our [second] appeal for the ATDs to FEMA HQ, which we did on May 23, 2008. **(BATES STAMP 00075)**

Disappointingly, after working with FEMA in good faith and relying on their declared intentions to resolve our outstanding issues and after submitting the formal second appeal, FEMA rejected our second appeal. Astonishingly, the rejection was simply based on FEMA's opinion that we did not submit our second appeal within the allotted sixty-day timeframe, regardless of the merits of our position and the documentation provided as outline in are request for reconsideration submitted to the State of Louisiana of June 26,2009. **(BATES STAMP 00081)** Whereas, FEMA did reply to our reconsideration request and directed the Board to submit the concerns to the arbitration process to resolve the dispute of Project Worksheet 4165. **(BATES STAMP 00085)**

Sought Resolution

With the information from the New Orleans Fire Department, the S&WB's Network Department's staff and the analysis of the ATD manufacturer, in order to protect the citizens of Orleans Parish from the risk of large scales fires and eliminate immediate threats to life, public health and safety and improved property, The S&WB had no choice but to order the rehabilitation of the flooded and damaged fire hydrants and replacement of all flooded ATD's even though the Board was suffering a financial crisis due to the Federal levees failure. The S&WB agrees with FEMA's finding and does not request reimbursement for the hydrants that were replaced in the non-flooded areas. However, the Board does request the reimbursement of 9,003 fire hydrants that were flood totaling \$2,747,377.00

Civilian Board of Contract Appeals (CBCA)

October 15, 2009

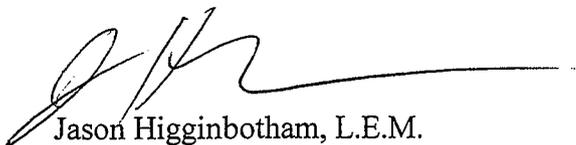
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In closing, the Board is requesting to have a face-to-face hearing in response to this request. Please notify my office of the time date and location that this arbitrary hearing will be facilitate. The Board appreciates in advance the support of this arbitration process, and will be happy to provide any additional information required. If you have any questions or concerns regarding this correspondence, please contact me at (504)218-3235.

As the Board's contact for this arbitration process please note my contact information as follows:

Mr. Jason Higginbotham, LEM
625 St. Joseph Steet
Room 117
New Orleans, La 70165
Office: 504 585 2015
Cell: 504-218-3235
Fax: 504-522-8721
Email: Jhigginbotham@swbno.org

Sincerely,



Jason Higginbotham, L.E.M.
Director of Emergency Management
& Applicant's Authorized Representative

Attachments

Backup Documentation Book

Photos of Damaged Anti-theft Devices as a result of Katrina

CC:

Gary Jones, Acting Regional Administrator

w/attachments

Mr. Mark Riley, Deputy Director Louisiana GOHSEP

w/attachments

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