



RRR Division - Region VI

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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
TOMMIE A. VASSEL, President Pro-Tem

625 ST. JOSEPH STREET
NEW ORLEANS, LA 70165 • 504-529-2837 OR 52W-ATER
www.swbnola.org

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: October 15, 2009

Re: Sewerage & Water Board of New Orleans – Disaster# 1603 FIPS # 071-06A69-00
Arbitration Request of Project Worksheets 4031.

Dear Arbitration Panel,

Please accept this correspondence as the Sewerage and Water Board of New Orleans' official request to have Pw#4031 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

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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 History

The East Bank Wastewater Treatment Plant protective Berm was topped by a 17' storm surge that caused significant damages throughout the facility. The brackish water submerged the clarifiers for 60-75 days and proved to be highly corrosive. Further, the water contained biologically corrosive agents as a result of the Katrina disaster above and beyond the normal corrosive nature of Lake Pontchartrain water.

Pursuant to CFR 44 (206.206), the Sewerage & Water Board of New Orleans (S&WB) appealed the denial of repairs of storm related corrosion for the clarifiers at the East Bank Waste Water Treatment Plant (EBWWTP). The ineligibility determination of these damages will require the S&WB to fund approximately \$2,187,500.00 (Clarifiers 1,2,3,5,7,8) and \$125,000 (clarifier 4) from its operating budget to repair what are, in our opinion, eligible storm related damages.

Case History

On February 13, 2006 FEMA PAC Alex Greenberg prepared "version 0" for zero dollars (\$0), speciously declaring that: **(BATES STAMP 00119)**

"Unfortunately, after FEMA inspection, repair and replacement of Eight Clarifiers not eligible for reimbursement (pre-disaster corrosion and some minor mechanical damages over long period of time). All Clarifiers functional and in use. Minor damages as motor replacement and hangers on rake arm suction tubes was covered by PW's SWB217 and SWB253." **(BATES STAMP 00120)**

We were flabbergasted that Mr. Greenberg could make such erroneous assertions almost six (6) months after flooding occurred; unfortunately however, we became accustomed to responding to Mr. Greenberg's unsubstantiated and obdurate denials of S&WB projects.

After numerous discussions with the State and FEMA - On April 5, 2006 FEMA PAC Richard Leidy prepared "version 1" for \$1,887,793.62. Leidy overturned Greenberg's testimonial by declaring: **(BATES STAMP 00126)**

"Hurricane Katrina caused catastrophic damage at the East Waste Water Treatment Plant which resulted in the entire plant being under 16 feet of sewage contaminated brackish flood water for 1-1/2 weeks. This resulted in extensive damage to the eight clarifiers' internal drive equipment and electrical control systems by flood. The facility and all equipment is located above ground. ...The mechanical and electrical control equipment associated with the 160' diameter wastewater clarifiers was severely damaged from this immersion. Due to the critical public health and safety function of this facility, several of the clarifiers are now operating totally on local manual control at great risk to their damaged mechanical components. The other clarifiers are off-line and awaiting repairs. ... All equipment is above ground and was damaged by flooding." **(BATES STAMP 00133,00135)**

Other than the length of time submerged (estimated by Leidy), we were pleased that FEMA at least acknowledged damages were evident and directly linked to Katrina; even though the scope of damages and repairs still fell short. Predictably however, during review (on April 20, 2006) M.MCMILLIN (FEMA Reviewer) surmised:

"This Project Worksheet is being made ineligible as per Project Officers assessment and FEMA Policy – 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 – see PG. 23 FEMA Public Assistance Guide." **(BATES STAMP 00132)**

Again we found ourselves dismayed by this statement. We can only assume that M.MCMILLIN did not read Leidy's PW submission, nor did he view the attached photographic evidence of damages; further since he did not visit the site he would have had to have made an "arm-chair" decision based solely on Greenberg's original flawed hypotheses.

Eventually (June 16, 2007) "version 1" was obligated to affirm Leidy's findings, presumably based on comments by L Williams (FEMA QA/QC) almost a year earlier (June 16, 2006):

"This Large Project (version 1) is being approved as it appears to contain eligible work..." **(BATES STAMP 00230)**

As you can plainly see, the journey to get to this point was long and painful; however with eligibility finally acknowledged, we began the process of obtaining the entire eligible scope of work. While "version 1" allowed for some of the repairs, many of the damages were yet to be acknowledged.

On August 27, 2007 "version 3" was prepared by FEMA PO Gary Durney to address the following damages: **(BATES STAMP 00237)**

"The applicant intends to hire a contractor to perform the following work at seven of the eight clarifiers (1, 2, 3, 5, 6, 7, and 8):

- 1. Drain and clean the clarifier - to access corrosion damaged components*
- 2. Replace the outer scum baffle with new steel unit - corrosion damage*
- 3. Inspect and repair the launder trough supports and replace the hardware with 316 SS components - corrosion damage*
- 4. Replace the plow / skimmer arm steel channel and hardware - corrosion damage*
- 5. Sandblast and paint the structural steel on the catwalks - corrosion damage*
- 6. Repair damaged submerged structural steel components on the center column and plow arms - corrosion damage*
- 7. Sandblast and paint all newly installed steel. Corrosion /coating failure."*

Durney then deemed the damages ineligible based on the following rationale:

"The clarifier equipment and structure were previously coated to mitigate the effects of the corrosive nature of the wastewater on the equipment. This coating, if intact, would also protect the equipment from the corrosive effects of the floodwaters. Corrosion is currently evident only at locations where this coating has failed. Failure of the coating was not a result of the relatively short term of exposure to the brackish floodwater. Therefore, had the protective coating been maintained it would have protected the equipment and structure from any corrosion caused by the flooding and would have eliminated the need for this work." **(BATES STAMP 00241)**

Consequently, we submitted our first appeal requesting that a "version" be developed to acknowledge eligibility and estimated additional repair costs of \$2,312,500.

On February 10, 2009 FEMA denied the SWB appeal stating:

"FEMA cannot determine if the observed damage, inspected over three years after the disaster, was caused as a direct result of the disaster or caused by the lack of prudent action on the part of the applicant. Therefore, the damages can not be determined to be the direct result of the disaster, and the appeal denied" **(BATES STAMP 00012)**

FEMA's Appeal One Analysis alleges that the S&WB did not "practice due care" or "prudent measures to protect the facility".

"...but it was evident on November 14, 2008 that the applicant took no precautions to reduce its impact to corrosion damages from the time of the disaster to the date of the site visit...If protective measures had been taken as soon as practical after the disaster to prevent corrosion, such as sandblasting and re-applying the protective coating, the damages to the facility would not have been left to further damage."

“Based on the site inspection and information provided by the applicant in its appeal, it was clear that the applicant did not practice due care or take prudent measures to protect its facility and prevent further corrosion damage to its clarifiers.”

“As of November 14 2008, parts of the applicant’s facility are in need of major repair and replacement, rather than sand-blasting and a re-application of the protective coating. It cannot be determined if the observed damaged was caused as a direct result of the disaster or caused by lack of prudent action of the part of the applicant. Therefore the applicant proposed work is not eligible.”

“Even if FEMA were to agree that corrosion was more likely than not caused by Hurricane Katrina, as asserted by the applicant, FEMA can not determine the extent of the disaster damages based on the information provided by the applicant in its appeal. Because the applicant did not take action immediately after the disaster, it contributed to the corrosion damages which will require the replacement of structural steel rather than the repair and cleaning of the steel.”

S&WB response:

Maintaining that the S&WB did not engage in preventive measures is not only impertinent, but also glaringly inaccurate. The contracts for Onyx Industrial to clean and restore the entire facility including the Clarifiers were executed on September 26, 2005 and October 17, 2005 respectively; immediately following the storm. The contract and the related Clarifiers worksheets reveal that 2,104.5 man-hours were spent on the Clarifiers cleanup/restoration project between October 2005 and January 2006: well before Greenberg’s first effort at a PW (February 2006). The prudent decision to undertake this extensive project demonstrates that we took immediate and appropriate actions to restore the facility and protect its equipment. Moreover FEMA eventually acknowledges that this work took place with the obligation of \$1,887,793.62 (“version 1”) for extensive cleaning and restoration of the facility including the Clarifiers.

For additional consideration, the Force Labor Summary of Clarifiers work orders (**BATES STAMP 00347**) illustrate a continued maintenance program that included 490 Clarifiers work orders (post disaster September 2005 – December 2008), establishing that the facility was never neglected or not maintained. Additionally, other vendor worked on the clarifiers in support of Onyx Industrial contract.

FEMA’s assumption that *“it was obvious that the damage to the clarifiers was made worse over time”* is essentially correct. In spite of our attempts to restore the Clarifiers and continually maintain the facility after Katrina, the damages continued to worsen with time; which is the natural progression of corrosion. In other words, the mix of brackish water and microbiological agents that submerged the Clarifiers created the corrosive breakdown process of affected metals. Efforts (cleaning) to minimize the effects were unsuccessful - in fact, the only way to prevent the further deterioration was if FEMA would have supported our initial requests for permanent repairs to the Clarifiers as detailed in “version 0”.

To further support that damages to the Clarifiers are inline with damages that can be expected from exposure to corrosive environment and microbiological agents, the S&WB submitted with our first appeal the following professional papers:

- Corrosion of Metals in Marine Environments Overview (**BATES STAMP 00259**)
- Preventing Hydrogen Sulfide and Microbiologically Influenced Corrosion in Wastewater Facilities (**BATES STAMP 00282**)
- Biological Corrosion Failures (**BATES STAMP 00288**)
- Microbiologically Influenced Corrosion, *AMPTIAC*, A Department of Defense Technical Publication (**BATES STAMP 00298**)

These publications clearly validate how the EBWWTP's exposure (submersion) to the corrosive mix of brackish floodwaters and microbiological organisms can produce debilitating corrosive damage to metal components.

Contrary to FEMA's opinions, the S&WB performed the necessary initial actions to clean and restore the Clarifiers. We are not, nor have never been in the habit of deferring maintenance and crucial repairs; and strenuously object to any assertion to the contrary.

Without a doubt, this entire situation is the product of unfounded opinions early in the process. Rather than adequately review and evaluate all available information, the first preparer simply determined that the damages were not storm-related. Eventually, this was overturned as evidence clearly indicated that submersion in floodwaters caused damages to the Clarifiers; just not all of the damages...?? When denying the remaining damages, FEMA relied on the notion that the S&WB did nothing to prevent the damages from worsening.

Hurricane Katrina unmistakably damaged the Clarifiers' steel components. We have demonstrated that we performed "*due care*" and attempted to prevent additional damages. Unfortunately, cleaning could not reverse the damages to the metal parts of the Clarifiers due to the submersion in floodwaters. We are confident that had FEMA promptly acknowledged the corrosion, as opposed to categorically denying **all** costs; questions such as "*how much was caused by Katrina?*" would never have been asked, as a teamwork approach would have been employed to categorize, quantify and fund **all** eligible repair costs in early 2006.

Sought Resolution

With this request for arbitration, we implore the Arbitration Panel to rightfully declare the damages eligible and fund the repair and replacement of the damaged components, thus restoring the Clarifiers to their pre-disaster condition (design, function and capacity).

At an estimated cost of \$2,312,500; this includes:

1. Drain and clean the Clarifiers - ***to access corrosion damaged components***
2. Replace the outer scum baffles with new steel unit - ***corrosion damage***
3. Inspect and repair the launder trough supports and replace the hardware with 316 SS - components - ***corrosion damage***
4. Replace the plow/skimmer arm steel channels and hardware - ***corrosion damage***
5. Sandblast and paint the structural steel on the catwalks - ***corrosion damage***
6. Repair damaged submerged structural steel components on the center columns and plow arms - ***corrosion damage***
7. Sandblast and paint all newly installed steel. - ***corrosion/coating failure***

Civilian Board of Contract Appeals (CBCA)

October 15, 2009

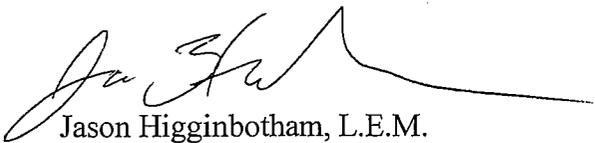
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In closing, the Board is requesting to have a face-to-face hearing in response to this request. Please notify my office of the time date and location that this arbitrary hearing will be facilitate. The Board appreciates in advance the support of this 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 be advised of my contact information as follows:

Mr. Jason Higginbotham, LEM
625 St. Joseph Street
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 1 and 2

Area Photo's of Claifiers at the EBWWTP days after Katrina

CC:

Gary Jones, Acting Regional Administrator
w/attachments

Mr. Mark Riley, Deputy Director Louisiana GOHSEP
w/attachments

