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October 27, 2009

Arbitration

AR Division - Region VI	
LOG #	<u>09-10-155</u>
Received	<u>10/29/09</u>
BY	<u>AD</u>
DUE	<u>11/18/09</u>
DE-LOG	_____

Civilian Board of Contract Appeals
6th Floor, 1800 M Street NW
Washington, DC 20036

09-10-5073

Date Rec'd:	<u>10/29/09</u>	
Rec'd by:	<u>LG</u>	
	Action	Info
Director		
Deputy		<u>K</u>
XA		
Analyst		
DAD	<u>X</u>	
DOD		
MIT		
MGT		
NP		
File		<u>K</u>
Suspense Date:	<u>11/18/09</u>	

Re: Applicant: St. Bernard Parish Sheriff's Office
Project Worksheet: 16989
Disaster No.: FEMA-1603-DR-LA

Gentlemen:

I represent the St. Bernard Parish Sheriff's Office in the above-captioned matter.

Please accept this letter as a formal request on behalf of the St. Bernard Parish Sheriff's Office in the State of Louisiana for arbitration regarding FEMA's denial of \$3,416,961.39 in Force Account Labor and Force Account Equipment submitted in Project Worksheet 16989 for the period from August 1, 2006, through December 31, 2006.

The following statement sets forth the argument of the St. Bernard Parish Sheriff's Office in support of its position.

I. PROCEDURAL BACKGROUND

Applicant, St. Bernard Parish Sheriff's Office, submitted Project Worksheet 16989 seeking reimbursement in the amount of \$4,137,581.96 in Force Account Labor and Force Account Equipment incurred to provide law enforcement services to protect the life, health and safety of residents of St. Bernard Parish during the period from August 1, 2006, through December 31, 2006. (See PW 16989 attached as Exhibit 1.) On December 19, 2007, FEMA approved only \$720,620.00 of the \$4,137,581.96 requested by the St. Bernard Parish Sheriff's Office.

Applicant, St. Bernard Parish Sheriff's Office, filed a First Appeal of FEMA's denial. On April 29, 2008, the FEMA Regional Administrator sustained FEMA's determination on the First Appeal. The St. Bernard Parish Sheriff's Office then filed a Second Appeal. On April 16, 2009, FEMA denied the Applicant's Second Appeal.

II. FACTUAL BACKGROUND

On August 29, 2005, Hurricane Katrina struck St. Bernard Parish in Louisiana with winds in excess of 170 mph causing massive flooding which affected the entire parish.

The magnitude of the destruction in St. Bernard was unprecedented and posed unique circumstances both in terms of duration of the emergency situation created by Hurricane Katrina as well as in the exceptional challenges faced by law enforcement personnel seeking to protect the property, life, health and safety of residents of St. Bernard. (See photographs attached hereto as Exhibit 2.)

Abandoned, destroyed, and/or condemned buildings throughout the parish created a hazardous landscape that required vigilant and frequent patrols to protect property, life, health and safety. Damaged traffic signs and signals combined with power outages while the parish tried to rebuild infrastructure forced deputies to work extended hours in order to maintain a safe environment.

Prior to August 29, 2005, St. Bernard was a thriving parish consisting of approximately 67,000 residents.

Hurricane Katrina flooded the entire parish and completely devastated the infrastructure of the parish.

The entire parish of St. Bernard was eviscerated by Hurricane Katrina. There was no area, building or home that escaped catastrophic flooding, standing water, and/or wind damage. The SBPSD lost all buildings and stations, which housed every division and department as well as 95% of its vehicles and water craft.

No other area that was struck by Katrina or any subsequent hurricane faced such complete devastation. Our neighbors in Plaquemines, Orleans, Jefferson and St. Tammany, as well as the Mississippi Gulf Coast each had areas within their borders that did not flood, allowing for much quicker restoration of department structure and services.

Through the period covered in PW 16989, large areas of St. Bernard were still without electricity, sewerage or gas service.

During the time in question, a large swath of the most densely populated area of St. Bernard was still affected by a massive oil spill, with the Sheriff's Department being the only agency to enforce quarantine.

In 2006 commerce was practically non-existent in St. Bernard Parish. Most of the largest retail dealers in St. Bernard Parish, such as Sears, K-Mart and Wal-Mart had not reopened as a direct

result of the devastating effects of Hurricane Katrina. Likewise, Murphy Oil Refinery had also not yet reopened as a result of Hurricane Katrina. In 2006 there was not a single full scale grocery store open anywhere in St. Bernard Parish. There were no full scale restaurants open in St. Bernard Parish at the time.

Pre-Katrina, St. Bernard Parish had approximately 67,000 residents. In 2006, it is believed that only approximately 19,000 citizens had returned to St. Bernard Parish in any capacity. Many of these individuals were not living in their permanent homes but were residing in trailers and other temporary housing.

During the period encompassed by PW 16989, the St. Bernard Parish Sheriff's Office was operating with a reduced staff of approximately 50% of its pre-Katrina strength. That staff generally resided in temporary housing and operated out of temporary facilities.

Conversely, while the staff of the St. Bernard Parish Sheriff's Office had been practically cut in half, incidents of crime dramatically increased in 2006 based upon a comparison of pre-Katrina criminal filings and 2006 filings. In 2004, the District Attorney for St. Bernard filed 11,060 cases. In 2006, the District Attorney filed 8,253 cases. Filings were down 25% while population was down approximately 70%.

Since Hurricane Katrina and during the period in question, there have been an increasing number of arrests in St. Bernard Parish which were directly related to conditions created by Hurricane Katrina.

Since Hurricane Katrina and during the period in question there had been an increasing number of arrests of individuals with gang affiliations. In several of the arrests made post-Katrina, the suspects were members or affiliated with MS-13, a West Coast based Hispanic gang. It should be noted that there had never been evidence of the presence of this gang in St. Bernard Parish prior to Hurricane Katrina.

During the period encompassed by PW 16989, St. Bernard experienced a massive influx of transient and migrant workers, including many undocumented workers who were unable to speak English, heavily taxing a department which only required two translators before Katrina.

Additionally, during the period in question, FEMA trailer parks were established in St. Bernard which posed unique problems to law enforcement officers. The trailer parks led to an increase in domestic violence as well as an increase in drug activity. However, due to the configuration of the trailers and the close proximity of other trailers, the number of Sheriff's Office personnel required to safely effect arrests in the trailer parks had to be increased.

During the time in question, St. Bernard experienced significant increases in sex crimes, crimes against children, fiduciary abuse of the elderly, drug law violations and most significantly, incidents of theft. While crime increased as the number of Sheriff's Office personnel decreased, the

St. Bernard Parish Sheriff's Office also experienced a decrease in the number of other groups that used to assist the St. Bernard Parish Sheriff's Office in crime prevention prior to Hurricane Katrina.

For example, during the time in question, there was a complete lack of Louisiana State Police presence in St. Bernard Parish although there are three (3) major state highways running through St. Bernard Parish.

Likewise, St. Bernard was unable to obtain assistance from the Louisiana National Guard who were spread thin at the time performing missions in New Orleans as well as Iraq and Afghanistan.

Prior to Hurricane Katrina, St. Bernard Parish was also fortunate to have very vigilant and proactive neighborhood watch groups which assisted in crime prevention in their neighborhoods. Obviously, due to the decimated condition of many of the neighborhoods in St. Bernard Parish, many of these watch groups no longer existed during the time in question.

Prior to Hurricane Katrina, the St. Bernard Parish Sheriff's Office also enjoyed the support provided by the services of 30 voluntary reserve deputies who assisted the Sheriff's Office. During the period in question, however, this reserve corps no longer existed.

Thus, while St. Bernard Parish experienced an increasing amount of criminal activity directly related to Hurricane Katrina, it had, at the same time, experienced a decreased amount of resources to deal with the escalating crime problems.

The aftermath of Hurricane Katrina during the period in question placed a tremendous burden on the uniformed enforcement component of the St. Bernard Sheriff's Department as it encountered a much higher work load with a diminished work force. The department increased neighborhood patrols to compensate for having less street lighting and fewer residents whose presence normally would be a natural crime deterrent.

Because living conditions in the Parish of St. Bernard were so harsh with few amenities, it was very difficult to recruit job candidates to work for the St. Bernard Parish Sheriff's Office during the period in question in order to fill vital law enforcement positions.

Even neighboring agencies, which were offering higher salaries and a significant improvement in quality of life, were faced with similar problems.

As a result of all the foregoing reasons, the St. Bernard Parish Sheriff's Office had to resort to emergency overtime and temporary hires to attempt to deal with the increasing criminal activities which posed threats to the health and safety of the general public in St. Bernard Parish.

III. ISSUE PRESENTED FOR REVIEW

The issue to be decided by the arbitration process is whether the work performed by the applicant, St. Bernard Parish Sheriff's Office, for the period from August 1, 2006, through December 31, 2006, and submitted pursuant to PW 16989 is eligible for reimbursement. Applicant respectfully submits that the evidence overwhelmingly supports the applicant's position that the amounts submitted/in PW 16989 for Force Account Labor and Force Account Equipment are eligible for reimbursement.

IV. ARGUMENT IN SUPPORT OF APPLICANT'S POSITION

A. APPLICABLE LAW

42 U.S.C. 5170 (b) provides:

Federal agencies may on the direction of the President, provide **assistance** essential to meeting immediate threats to life and property resulting from a major disaster, as follows:

(1) Federal resources, generally. Utilizing, lending, or donating to State and local governments Federal equipment, supplies, facilities, personnel, and other resources, other than the extension of credit, for use or distribution by such governments in accordance with the purposes of this **Act**.

(2) Medicine, food, and other consumables. Distributing or rendering through State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster **assistance** organizations medicine, durable medical equipment, food, and other consumable supplies, and other services and **assistance** to disaster victims.

(3) **Work and services to save lives and protect property. Performing on public or private land or waters any work or services essential to saving lives and protecting and preserving property or public health and safety, including –**

(A) debris removal;

(B) **search and rescue**, emergency medical care, emergency mass care, emergency shelter, and provision of food, water, medicine, durable medical equipment, and other essential needs, including movement of supplies or persons;

- (C) clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services;
- (D) provision of temporary facilities for schools and other essential community services;
- (E) demolition of unsafe structures which endanger the **public**;
- (F) warning of further risks and hazards;
- (G) dissemination of **public** information and **assistance** regarding health and safety measures;
- (H) provision of technical advice to State and local governments on disaster management and control;
- (I) reduction of immediate threats to life, property, and public health and safety; and**
- (J) provision of rescue, care, shelter, and essential needs –
 - (i) to individuals with household pets and service animals; and
 - (ii) to such pets and animals.

44 C.F.R. 206.225 defines eligible work as follows:

(a) General, (1) Emergency protective measures to save lives, to protect public health and safety, and to protect improved property are eligible.

(2) In determining whether emergency work is required, the Regional Administrator may require certification by local State, and/or Federal officials that a threat exists, including identification and evaluation of the threat and recommendations of the emergency work necessary to cope with the threat.

(3) In order to be eligible, emergency protective measures must:

- (i) Eliminate or lessen immediate threats to lives, public health or safety; or
- (ii) Eliminate or lessen immediate threats of significant additional damage to improved public or private property through measures which are cost effective.

Applicant, St. Bernard Parish Sheriff's Office submits that all of the Force Account Labor and Force Account Equipment submitted for reimbursement in PW 16989 meets the eligibility requirements of 44 C.S.R. 206.225.

B. ALL OF THE WORK PERFORMED WAS DONE AS A DIRECT RESULT OF HURRICANE KATRINA AND ALL WAS DIRECTED TO SAVING LIVES AND PROTECTING PUBLIC HEALTH, SAFETY AND PROPERTY THUS MAKING THE WORK ELIGIBLE FOR REIMBURSEMENT.

Applicant, St. Bernard Parish Sheriff's Office, submits that a review of the circumstances facing law enforcement officers in St. Bernard Parish during the time period in question as well as a review of the documentation submitted in support of PW 16989 indicates that the labor and equipment costs submitted were all a direct result of Hurricane Katrina and were all directed to saving lives, protecting public health and safety and property. As noted earlier in Section II of this request for arbitration, the magnitude of the destruction in St. Bernard Parish was unprecedented. All infrastructure had been destroyed, and neighborhoods throughout the entire parish had been decimated.

Through the period covered in PW 16989, large areas of St. Bernard were still without electricity, sewerage or gas service.

Abandoned, destroyed, and/or condemned buildings throughout the parish created a hazardous landscape that required vigilant and frequent patrols to protect property, life, health, and safety. Damaged traffic signs and signals combined with power outages while the parish tried to rebuild infrastructure forced deputies to work extended hours in order to maintain a safe environment.

During the period encompassed by PW 16989, the St. Bernard Parish Sheriff's Office was operating with a reduced staff of approximately 50% of its pre-Katrina strength.

Conversely, while the staff of the St. Bernard Parish Sheriff's Office had been practically cut in half, incidents of crime dramatically increased in 2006 based upon a comparison of pre-Katrina criminal filings and 2006 filings. In 2004, the District Attorney for St. Bernard filed 11,060 cases. In 2006, the District Attorney filed 8,253 cases. Filings were down 25% while population was down approximately 70%.

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Additionally, during the period in question, FEMA trailer parks were established in St. Bernard which posed unique problems to law enforcement officers. The trailer parks led to an increase in domestic violence as well as an increase in drug activity. However, due to the configuration of the trailers and the close proximity of other trailers, the number of Sheriff's Office personnel required to safely effect arrests in the trailer parks had to be increased.

While crime increased as the number of Sheriff's Office personnel decreased, the St. Bernard Parish Sheriff's Office also experienced a decrease in the number of other groups that used to assist the St. Bernard Parish Sheriff's Office in crime prevention prior to Hurricane Katrina.

For example, during the time in question, there was a complete lack of Louisiana State Police presence in St. Bernard Parish although there are three (3) major state highways running through St. Bernard Parish.

Likewise, St. Bernard was unable to obtain assistance from the Louisiana National Guard who were spread thin at the time performing missions in New Orleans as well as Iraq and Afghanistan.

Prior to Hurricane Katrina, St. Bernard Parish was also fortunate to have a very vigilant and proactive neighborhood watch groups which assisted in crime prevention in their neighborhoods. Obviously, due to the decimated condition of many of the neighborhoods in St. Bernard Parish, many of these watch groups no longer existed during the time in question.

Prior to Hurricane Katrina, the St. Bernard Parish Sheriff's Office also enjoyed the support provided by the services of 30 voluntary reserve deputies who assisted the Sheriff's Office. During the period in question, however, this reserve corps no longer existed.

Thus, while St. Bernard Parish experienced an increasing amount of criminal activity directly related to Hurricane Katrina, it had, at the same time, experienced a decreased amount of resources to deal with the escalating crime problems.

The aftermath of Hurricane Katrina during the period in question placed a tremendous burden on the uniformed enforcement component of the St. Bernard Parish Sheriff's Office during the period in question in order to fill vital law enforcement positions.

Even neighboring agencies, which were offering higher salaries and a significant improvement in quality of life, were faced with similar problems.

As a result of all the foregoing reasons, the St. Bernard Parish Sheriff's Office had to resort to emergency overtime and temporary hires to attempt to deal with the increasing criminal activities which posed threats to the health and safety of the general public in St. Bernard Parish.

Additionally, because of the severe shortage of law enforcement manpower available to deal with the increased crime resulting from conditions attributable to Hurricane Katrina, the St. Bernard Parish Sheriff's Office re-assigned personnel from non-emergency units to work within the units considered to be performing emergency services.

For example, FEMA denied reimbursement for work performed by the Criminal Investigations Bureau and the Special Investigations Division as not being attributed to protecting property, life, health or safety from hazards created as a direct result of the disaster. However, even though these divisions are normally engaged in detective/narcotics work, during the period in question these employees were placed on expanded, regular street patrol overtime shifts to respond to the increased threat to public safety and to lessen immediate threats to improved public and private property. Over and above their investigative duties, during the time period at issue, members of these divisions performed patrol functions in uniforms and marked patrol cars.

Enforcement personnel assigned to the CIB/SID Division performed backfill duties to the Field Operations Bureau (patrol) during the period in question.

Furthermore, due to serious shortages of investigative personnel, combined with the amount and dangerous nature of the crimes attributable to the disaster that required investigation, CIB/SID personnel had to perform their own investigative duties as well as assist the patrol division for public safety reasons. This personnel issue was directly related to the declared disasters. The personnel were required to work extended shifts to accomplish the aforementioned functions, resulting in their being paid overtime. No other option existed due to personnel and hiring shortages. Not performing both functions would have endangered the general public as well as law enforcement personnel.

Large portions of diverse functional groups within the Applicant's organization were assigned additional or different duties as a direct result of the disaster.

Applicant asserts that FEMA erroneously denied reimbursement for the Corrections Department as not being directly attributable to the declared disasters.

As stated above, St. Bernard experienced a marked increase in crime after Hurricane Katrina. The spike in crime was directly attributable to conditions created by the disaster including but not limited to the large influx of transients into the area, the infiltration of gangs into the parish after the storm, and the concentration of people in FEMA trailer parks leading to increased drug activity and domestic violence. There was also an increase in the amount of thefts during the period in question which could be attributed to the fact that many homes were uninhabited with few surrounding neighbors to deter thieves from stealing valuable items from the homes.

Obviously, when crime increases there is a need to incarcerate the perpetrators of the crimes in order to protect the health, safety and property of citizens.

Because the Sheriff's Office was operating with only approximately 50% of its pre-Katrina staff and because of its inability to attract new hires, the St. Bernard Parish Sheriff's Office was required to operate a detention facility for clear public safety reasons with a much smaller existing staff, which resulted in no other option than to increase shift durations and pay overtime to affected employees. The SBPSD sought assistance from the State of Louisiana with prison staffing issues, more specifically from the Louisiana National Guard, to no avail due to lack of training and liability issues.

Contrary to FEMA's assertions, the labor costs submitted on behalf of the Corrections Department were directly related to the increase in crime attributable to the disaster and were incurred to reduce threats to life, property and safety by taking criminals off the streets.

FEMA also wrongfully denied reimbursement for work performed by Community Relations personnel when this work also was performed in order to protect property, life and safety as a direct result of the disaster.

The two officers assigned to Community Relations worked specifically to rebuild the SBPSD neighborhood watch program, which was vitally important to public safety and the protection of property in 2006. Neighborhoods suffered from street after street of vacant houses, with random remodeled houses, scattered within. These neighborhoods were inundated daily with federal, state, and local government agencies, along with private utility companies, insurance companies, contractors and NGOs (church and charity groups). This allowed criminals of opportunity to travel through these areas with little fear of contact by law enforcement. Vigilant neighbors became the first line of defense in combating this crime problem and were organized entirely by the efforts of the two officers of the Community Relations division after the declared disaster.

Applicant submits that FEMA was incorrect in denying the labor costs associated with Court Services. The increasing crime directly attributable to the disaster led to an increased burden on the judicial system. Similarly, due to the widespread destruction to property resulting from the disaster, there were many civil court cases which were directly attributable to the disasters.

The Court Services section of the SBPSD was severely decreased in size due to the personnel issues after Katrina. However, court continued to be held and it is mandatory and clearly in the public interest for the SBPSD to perform court security. Prior to the SBPSD administering court security, there had been many instances of violence directed at civilians as well as court personnel including assaults with firearms and homicide. The atmosphere in the courts in 2006 was very emotionally charged, as people dealt with criminal issues as well as civil issues directly related to the disaster. A severe shortage of personnel mandated that the available employees be ordered to work longer shifts and be paid overtime accordingly.

Obviously the overall increase in crime which was attributable to the disasters combined with the severe shortage of law enforcement personnel placed a burden on the entire St. Bernard Sheriff's Office requiring the entire department to perform additional duties in order to achieve its mission in ensure the public order and safety.

The scope of the damage and its aftermath, combined with the Sheriff's mandate to ensure public safety regardless of personnel or recruiting issues forced the department to extend the tours of duty of each of its sworn and qualified law enforcement officers, which resulted in the accrual of significant overtime expenses.

In FEMA's denial of Applicant's Second Appeal dated April 16, 2009, it noted that:

"FEMA approved over \$9 million for overtime cost for the Applicant's regular employees and straight-time and overtime costs for temporary employees (see PWs 39, 11504, 11609, 12570, 13243, 13732 and 13879) from August 2005 to July 2006".

Applicant questions why FEMA has only now decided that the labor and equipment costs submitted for August 1, 2006, through December 31, 2006, are not eligible for reimbursement when those exact same labor and equipments costs had been approved by FEMA for reimbursement from August 2005 to July of 2006. The situation facing law enforcement in St. Bernard Parish remained fundamentally unchanged throughout 2006. It seems very arbitrary for FEMA to suddenly deny reimbursement for the very same items which it found eligible for reimbursement from August 2005 through July of 2006.

For example, FEMA allowed reimbursement for July of 2006 of labor and equipment costs associated with the Criminal Investigations Bureau, Special Investigations Division, Corrections, Criminal Records and Court Services. There was basically no change in circumstance from July of 2006 through the remaining months of 2006; yet FEMA allowed reimbursement for those divisions for July of 2006 while denying reimbursement for the same divisions for the rest of 2006. The services performed by these divisions from August 1, 2006, through December 31, 2006, were just as attributable to protecting property, life, health and safety from hazards created as a direct result of the disasters as they were in July of 2006. Applicant submits that it was arbitrary and unreasonable for FEMA to change its position regarding the eligibility of reimbursement for labor and equipment costs when there had been no fundamental change from January to July 2006 when the costs were deemed to be reimbursable and August to December of 2006 when the same costs were now deemed ineligible by FEMA.

V. REQUEST FOR HEARING

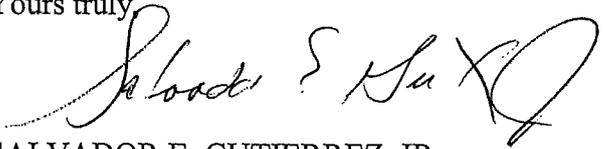
Applicant, St. Bernard Parish Sheriff's Office, respectfully requests a hearing in this matter at which time it wishes to make an oral presentation in person.

V. CONCLUSION

In conclusion, the Applicant, St. Bernard Parish Sheriff's Office, formally requests an arbitration regarding FEMA's denial of \$3,416,961.39 in Force Account Labor and Force Account Equipment submitted in Project Worksheet 16989 for the period from August 1, 2006, through December 31, 2006.

Thanking you in advance for your time and consideration in this matter, I remain

Yours truly



SALVADOR E. GUTIERREZ, JR.

SEG:vag
Enclosures

cc: FEMA

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