

October 28, 2009

Civilian Board of Contract Appeals (CBCA)
Attn: CBCA Clerk of the Board
1800 F Street, NW
Washington, DC 20405

Date Rec'd:	10/30/09		
Rec'd by:	lg		
Director		Action	
Deputy		Info	X
XA			
Analyst			
DAD			X
DOD			
MIT			
MGT			
NP			
File			X
Suspense Date:	11/19/09		

09-10-5083

Dear Members of the Civilian Board of Contract Appeals:

The Sabine Pass Port Authority (SPPA), located at 5960 South 1st Avenue, in Sabine Pass, Texas, is seeking arbitration on their "Request for Public Assistance" for the damages that the Port sustained from Hurricane Rita, FEMA 1606 DR TX. The SPPA qualifies for the arbitration panel's consideration as this request would involve more than \$500,000 in Public Assistance grants and the letter from the State of Texas's Division of Emergency Management informing the Port Authority of FEMA's 2nd Appeal denial was received after February 17, 2009.

As this request will explain, and the attached documentation will support, FEMA's decisions to deny SPPA's 1st and 2nd Appeals to accept their "Request for Public Assistance" to help them recover from the devastating effects of Hurricane Rita should be overturned based on two overriding factors which fall under 44 CFR 206.202 (f)(2) that states that FEMA can extend the period for filing RPA's "based on extenuating circumstances beyond the grantee's or subgrantee's control."

1. The potential eligible applicant, the Sabine Pass Port Authority, believed they were requesting Public Assistance properly on October 5, 2005 (the President declared a Major Declaration on September 24, 2005) when they contacted FEMA via the assistance phone lines. Ms. Sherri Drodgy, SPPA's Manager, called FEMA's 1-800 phone number and spoke to Robert, FEMA ID #708-10, about applying for Public Assistance on behalf of the SPPA. The FEMA employee understood the situation and consequently tried to enter SPPA's information and request into the system, but was unsuccessful. The FEMA employee suggested that Ms. Drodgy use her personal Social Security Number in order to, at the very least, get the Port into the FEMA intake system; she was given the ID #93-159-4770. Admittedly, this is not the proper channel for requesting Public Assistance, but for a potential eligible entity that had never applied for FEMA assistance previously nor was knowledgeable about the Public Assistance grant process; this verbal submittal was believed to be the correct path at that time. It is clear that a good faith effort was made to make a proper "Request for Public Assistance" before the deadline for RPA's had passed.

Arbitration

RR Division - Region VI	
LOG #	09-10-156
Received	10/30/09
BY	DD
DUE	11/19/09
DE-LOG	

2. According to 44 CFR Part 206, Subpart G – Public Assistance Project Administration - §206.202 Application procedures b. “Grantee. You are the grant administrator for all funds provided under the Public Assistance grant program. Your responsibilities under this section include:
 1. Providing technical advice and assistance to eligible subgrantees;
 2. Providing State support for project identification activities to include small and large project formulation and the validation of small projects;
 3. Ensuring that **all** (emphasis added) potential applicants are aware of available public assistance; and
 4. Submitting documents necessary for the award of grants.”

The Sabine Pass Port Authority was not initially made aware of nor did they receive a notification from the State of Texas Division of Emergency Management of the availability of public assistance in which they were potentially eligible to receive due to the “extenuating circumstances” surrounding the scheduling of the Hurricane Rita Applicant’s Briefing. This briefing was held in Beaumont, TX at the Elegante Hotel between October 3 and October 8, prior to the date in which many entities were even allowed to enter back into their physical addresses for the first time since the storm’s passing, including the Sabine Pass Port Authority.

We understand the need to schedule the Applicant’s Briefing as quickly as possible after an event and we applaud the Texas Division of Emergency Management and FEMA for their diligent work, however due to many factors/extenuating circumstances, this briefing was not sufficient:

1. Many public entities with close proximity to the Gulf were not allowed to enter onto their properties until after this briefing was held.
2. Electricity was not restored in certain impacted areas until after this briefing was held.
3. Communication systems in certain impacted areas were not restored until after this briefing was held.
4. Regular mail deliveries to certain impacted areas did not begin until after this briefing was held. Even to this day, the US Postal Service does not recognize the physical address of the Sabine Pass Port Authority: 5960 South 1st Avenue, Sabine Pass, TX, 77655 (Please see attachment A).

With the lack of power, access to property, no cell phone coverage, lack of mail delivery, etc. in certain devastated areas, communicating the correct time, place and date of the Applicant’s Briefing in Beaumont, TX to ensure that all potential eligible applicants were aware of the availability of public assistance was extremely difficult. So difficult, in fact, that after two years from that initial briefing, there was still so much widespread confusion with the Public Assistance grant process that the Texas State Division of Emergency Management held another Applicant Briefing in Beaumont, TX on November 7, 2007. The title of this briefing was: “Applicant’s Briefing +2 Years, Hurricane Rita – FEMA 1606 DR TX” (Please see attachment B).

Immediately following this Applicant's Briefing on November 7, 2007, the SPPA hired Leap Engineering, LLC, a well-respected engineering firm out of Beaumont, TX to assess the Hurricane Rita damages and provide the SPPA with a Capital Expenditures Master Plan (Please see attachment C).

Hurricane Rita made landfall along the Texas Coast on September 24, 2005, and it caused such unprecedented damages to the Port of Sabine Pass that the Port was temporarily condemned for over a month. It wasn't until November 2005 before the clean-up of the grounds and waterways could begin. We have attached post-disaster photographs of the conditions of SPPA's:

1. T-Head Pier (Please see attachment D);
2. Marina (Please see attachment E);
3. the Bulkhead (Please see attachment F);
4. Dock B (Please see attachment G);
5. Dock C (Please see attachment H);
6. and Dock D (Please see attachment I).

We have also attached photographs of repairs that have already been made on the property (Please see attachment J). However, there remains a large amount of critically important unfunded eligible work that still needs to be started and completed (Please see attachment K) as the SPPA's Insurance Policy did not cover the majority of the storm surge damages (Please see attachment L).

The Sabine Pass Port Authority is a small entity, but with a big responsibility as it is the first port of entry for Port Arthur which is home to many critical oil refinery operations. For the 2004/2005 Fiscal Year, the Sabine Pass Port Authority employed a total of 8 full and part time positions. This included a Port Manager, an Executive Assistant, maintenance help and guards. A Disaster Recovery Specialist for the Port was not hired until September of 2007. The annual budget for FY '04/'05 was \$428,104, of which \$130,000 was budgeted for property tax revenue.

The Sabine Pass Port Authority fully understands that it is not eligible to receive funding for work that has already been completed.

Thank you for your consideration.

Sincerely,



Kathleen Hicks
Disaster Recovery Specialist and Authorized Representative
Sabine Pass Port Authority
P.O. Box 318
Sabine Pass, TX 77655