



FEMA

December 18, 2006

Colonel Thomas Kirkpatrick
State Coordinating Officer
Louisiana Office of Homeland Security and Emergency Preparedness
415 North 15th Street
Baton Rouge, Louisiana 70802

Re: FEMA-1607-DR-LA
City of Lake Charles (019-41155-00)
1st Appeal – Eligibility of Emergency Material Purchases (Radios) – PW 173

Dear Colonel Kirkpatrick:

This is in response to the State's Analysis and Determination letter dated May 16, 2006, transmitting the first appeal of the eligibility of emergency material purchases (radios) for the City of Lake Charles.

Background

Prior to Hurricane Rita, the City of Lake Charles became aware of the communications problems that developed in Southeastern Louisiana after Hurricane Katrina and believed it was necessary to expand its existing communication system to mitigate against similar problems. Both in anticipation of and subsequent to Hurricane Rita, the City purchased various materials (radios, rechargeable radio batteries, battery chargers, repeaters, antennas, cable, installation and programming) in order to enhance its existing system. The City began receiving the materials on September 30, 2005, and proceeded to have them installed and programmed for use by both its employees and those from other jurisdictions that responded.

PW 173 was prepared, documenting the applicant's costs of \$411,059 for this work. However, the Project Officer (PO) noted in the PW that the applicant incurred no damage to its communication system and that the additional equipment was merely used to supplement and expand the existing system. As such, the PW submitted was ineligible and was obligated for zero dollars. The applicant has appealed this determination.

In support of the applicant's appeal, the State claims that the purchases made by the applicant were reasonable under the circumstances that existed at the time.

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Given the widespread destruction throughout the region and the significant response operations that followed, it was essential to be able to communicate quickly and efficiently between the various responding agencies.

In addition to the amount documented in PW 173, \$25,940 of emergency communication costs mistakenly documented in PW 248 will also be considered in this appeal. These costs have not been approved in PW 248 nor in the subsequent response to the appeal of that PW.

Discussion

Three days prior to the disaster, the applicant ordered communications system components (70 VHF portable radios and related accessories) to expand its existing system in order to reduce or eliminate communication problems similar to those encountered in Southeastern Louisiana after Hurricane Katrina. During the response to the disaster, the applicant ordered 120 additional 800-MHz radios to provide to responders from out of the area in order to maintain adequate communications. Although the components were not received until six to nine days after the storm had passed, they were used during the emergency response phase of the disaster.

PW 173 was originally written to document these purchases. Included in the scope of work were costs for radios, radio batteries, chargers, repeaters, antennas, cable, installation and programming. In addition, the costs for radio batteries and chargers that should have been attributed to PW 173 were documented on PW 248.

Under Section 403 of the Stafford Act, emergency protective measures to save lives and protect public health and safety are eligible, including emergency communications necessary for carrying out disaster relief functions. Included in that are the necessary materials required to perform such work. In accordance with Title 44 of the Code of Federal Regulations (CFR), Part 206.225(c), FEMA may provide emergency communications necessary for carrying out disaster relief functions as deemed appropriate. These emergency communications measures are intended to supplement but not replace normal communications that remain operable after a disaster. The FEMA Public Assistance Guide (FEMA 322, page 51) goes on to state that such measures are not meant to replace or expand the applicant's pre-disaster communication system.

In reviewing the appeal information submitted, the applicant claimed that it purchased the initial 70 additional radios and related accessories in order to expand its communication system. Since the work to expand the applicant's communications system was initiated three days prior to the disaster and the system experienced no significant documented damage as a result of the disaster, that portion of the work does not appear to meet the intent of the emergency communications provisions of 44 CFR §206.225 (c).

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The pre-disaster condition of the applicant's communications system does not dictate the eligibility for Public Assistance (PA) funding. It is the responsibility of the local government to provide and maintain appropriate communications systems for both normal and emergency situations. The applicant had such a system, compatible with the parish system, but somewhat limited in its interoperability with other outside agencies. The fact that the applicant recognized the limitations of its communications system and had planned and initiated actions to correct them prior to the disaster demonstrates the responsibility it has to adequately prepare for such events. In addition, without significant documented damage to its communication system, the applicant's actions do not meet the intent of the governing regulations. Emergency communications measures are intended to supplement an applicant's damaged system in order to return it to a level of reasonable effectiveness, not expand it beyond its pre-disaster configuration. Given this information, the purchase of the 70 additional radios and accessories is not eligible for reimbursement.

However, the purchase of the 120 additional 800-MHz radios is considered to be a supplement to the existing system, allowing the applicant to maintain necessary communications with other responders (including various federal and state agencies) that could not have been possible within the existing system. As such, the associated costs of that purchase shall be eligible for funding.

Under 44 CFR Part 13, equipment is defined as personal property with a life expectancy of more than one year and a purchase cost of more than \$5,000 per unit. All other materials are defined as supplies under the regulation. Further, in accordance with FEMA Policy 9525.12, Section 7.A.1, disposition of residual supplies, whether used or unused, purchased by a subgrantee with an aggregate current fair market value exceeding \$5,000 requires compensation to FEMA as described in 44 CFR 13.33(b) when the supplies are no longer needed for the current operation of the PA Program. As a result, all residual supplies with an aggregate value of more than \$5,000 at the end of their approved PA program use, regardless of their condition (used or unused), are subject to salvage value calculation and compensation back to FEMA.

Under the definitions and guidance contained in the regulations and applicable policy, the applicant's purchase of the 800-MHz radios and accessories requires compensation to FEMA for the residual, fair market value of those supplies. Based on information provided by the vendor of the supplies and the short time period during which the supplies were utilized, a salvage value of 50 percent is considered appropriate and reasonable.

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Considering this information and the eligibility discussed above, the eligible costs for the applicant's emergency communications purchases are as follows (see attached calculation sheet for details):

All radios and associated materials (including costs from PW 248) = \$ 436,998.85
Less ineligible radios for system expansion = \$ 48,243.56
Less salvage value of 800-MHz radios and associated materials = \$ 187,047.36
Total = \$ 201,707.93

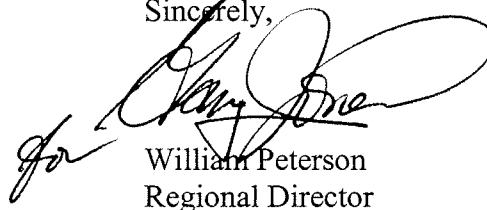
Conclusion

The applicant's purchase of 120 800 MHZ radios and related material and services was a necessary and reasonable expense that is eligible under the Public Assistance Program. Therefore, the cost of \$201,707.93 for emergency material purchases is considered eligible and the appeal is partially approved. Please advise the applicant of my decision. A PW Version will be prepared to obligate the eligible cost of the materials previously denied in PW 173.

The applicant may submit a second appeal to the Director of Recovery for FEMA, through your office, in accordance with 44 CFR §206.206. If the applicant decides to pursue a second appeal, the applicant must provide documentation supporting its position and identify the applicable provisions of federal law, regulation or policy with which it believes this action was inconsistent. FEMA will review and consider the required analysis and recommendation provided by the State should it support the applicant's appeal. The second appeal must be submitted to our office within 60 days of the Applicant's receipt of this determination.

If you have any questions, please contact James Stark, Director, Louisiana Transitional Recovery Office at (504) 762-2000.

Sincerely,



William Peterson
Regional Director

Attachment

MATERIALS AND SALVAGE VALUE FOR PW 173 (AND 248) CITY OF LAKE CHARLES APPEAL

VENDOR	MATERIAL	QUANTITY	COST	TOTAL	ELIGIBLE PER APPEAL	QUANTITY	COST	TOTAL
LRC	CP200 RADIOS	70	\$372.00	\$26,040.00	\$0.00	Not Eligible - No Salvage Value		
	NNTN4851A BATTERIES	70	\$53.00	\$3,710.00	\$0.00	Not Eligible - No Salvage Value		
	BASE STATION & REPEATER	2	\$6,768.00	\$13,536.00	\$0.00	Not Eligible - No Salvage Value		
	NNTN4851A BATTERIES (Double charge)	70	\$53.00	\$3,710.00	\$0.00	No Salvage Value		
	BATTERY RETURNS (Double charge refund PW 248)	70	(\$53.00)	(\$3,710.00)	\$0.00	No Salvage Value		
	FREIGHT	1	\$962.00	\$962.00	\$0.00	No Salvage Value		
	FREIGHT	1	\$400.00	\$400.00	\$0.00	No Salvage Value		
	MISC	1	\$2,065.56	\$2,065.56	\$0.00	No Salvage Value		
	LABOR	17	\$90.00	\$1,530.00	\$0.00	No Salvage Value		
MOTOROLA	XTS-5000 RADIOS	100	\$2,694.40	\$269,440.00	\$269,440.00	100	\$1,347	\$134,720
	NTN1667 TRICHEM CHARGER	100	\$72.00	\$7,200.00	\$7,200.00	100	\$36	\$3,600
	XTS-5000 RADIOS	20	\$2,694.40	\$53,888.00	\$53,888.00	20	\$1,347	\$26,940
	NTN1667 TRICHEM CHARGER	20	\$72.00	\$1,440.00	\$1,440.00	20	\$36	\$720
	WPLN4108 MULTI CHARGER	2	\$567.36	\$1,134.72	\$1,134.72	2	\$283.68	\$567.36
LRC	NTN-8297 BATTERY	100	\$125.00	\$12,500.00	\$12,500.00	100	\$62.50	\$6,250
	FREIGHT	1	\$200.00	\$200.00	\$200.00			
	FREIGHT	1	\$400.00	\$400.00	\$400.00			
LRC (FROM PW 248)	HNN-9701A BATTERY (for existing equipment)	50	\$128.00	\$6,400.00	\$6,400.00	50	\$64	\$3,200
	NTN-7144A BATTERY (for existing equipment)	50	\$110.00	\$5,500.00	\$5,500.00	50	\$55	\$2,750
	NTN-1177A BATTERY (for existing equipment)	10	\$788.00	\$7,880.00	\$7,880.00	10	\$394	\$3,940
	NTN-8297 BATTERY	50	\$125.00	\$6,250.00	\$6,250.00	50	\$63	\$3,125
	RAPID CHARGER	5	\$494.00	\$2,470.00	\$2,470.00	5	\$247	\$1,235
	FREIGHT	1	\$750.00	\$750.00	\$750.00	No Salvage Value		
	FREIGHT	1	\$400.00	\$400.00	\$400.00	No Salvage Value		
LRC	PROGRAMMING	120	\$90.00	\$10,800.00	\$10,800.00	No Salvage Value		
	FREIGHT	1	\$400.00	\$400.00	\$400.00	No Salvage Value		
GLOBALSTAR	PHONE RENTAL	1	\$1,702.57	\$1,702.57	\$1,702.57	No Salvage Value		
TOTAL COST FROM PW 173 AND PW 248					\$388,755.29	\$187,047.36		
						Net after salvage \$201,707.93		