



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-1603-DR-LA
Tangipahoa Parish School System (105-UEUKD-00)
1st Appeal - Force Account Labor Eligibility – Project Worksheet (PW) 174

Dear Colonel Kirkpatrick:

This is in response to the State's letter of August 9, 2006, transmitting the first appeal of Force Account Labor eligibility for Tangipahoa Parish School System (applicant).

Background

With the approaching landfall of Hurricane Katrina, the applicant closed all its schools and placed its staff on administrative leave. Six schools were subsequently designated as shelters for evacuees, requiring the applicant to call back and utilize force account labor to clear debris and make emergency repairs.

On August 27, 2005, (two days before Hurricane Katrina), Mark Kolwe, Assistant Superintendent of Finance & Support Services, established a policy memorandum, *Hurricane Katrina Overtime Rates*, specifying the overtime rates to be used during this disaster. The memorandum announced: the regular hourly rate would be paid for hours up to 40 hours to employees who work 35 hours per week; time and a half would be paid on all hours worked over 40 hours; and double time would be paid for work performed after 10pm and on Sundays or holidays. Furthermore for the hours worked while the school system was closed, the memorandum indicated employees would be paid their regular hourly rate in addition to what they would have received if they had not come in to work.

Based on the memorandum, the applicant claimed \$83,369.02 in force account labor costs. Instead, the project officer submitted PW 174 in the amount of \$24,628.44 for force account labor. The project officer reviewed the Force Account Labor Summary sheets submitted by the applicant.

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The project officer disregarded the *Hurricane Katrina Overtime Rates* memorandum and calculated the overtime of each permanent employee, thereby eliminating the regular time by eight hours per weekday, where applicable. Based on FEMA guidelines, the project officer concluded that regular time hours are not eligible in calculating the cost of emergency work. The applicant is appealing the difference of \$58,740.58.

Discussion

In support of the applicant's position, the State claims that the *Hurricane Katrina Overtime Rates* memorandum provides for regular and overtime compensation for the employees. The State further supports this memorandum as, ". . . a preexisting and non-discretionary payroll policy [which] was found to contain specific language that provided for regular and overtime compensation for its array of employees".

An analysis of the applicant's memorandum, *Hurricane Katrina Overtime Rates* revealed it is applied selectively to this disaster, which is inconsistent with FEMA guidelines. According to FEMA Policy 9525.7 (7) (D) *Labor Costs – Emergency Work*, "[s]traight time and overtime will be determined according to the applicant's written policies and labor union contracts in effect prior to the disaster." It is the intent of this guidance that the applicant's policies apply uniformly in both disaster and non-disaster situations. In a review of the eight hours deducted by the project officer for each permanent employee, based on Title 44 Code of Federal Regulations (CFR) §206.228(a)(4) "[t]he straight – or regular-time salaries and benefits of a subgrantee's permanently employed personnel are not eligible in calculating the cost of eligible work under sections 403 and 407 of the Stafford Act..." Accordingly, the project officer was correct in deducting the regular time of eight hours per weekday for each permanent employee in calculating the applicant's force account labor costs.

Conclusion

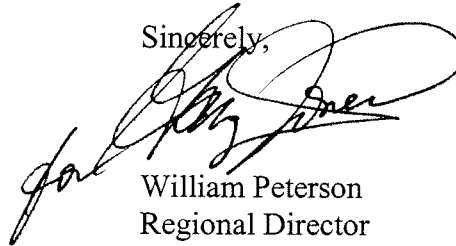
In light of this information, the appeal is denied. Please inform the applicant of my determination. The applicant may submit a second appeal to the Director of Recovery for FEMA, through your office, in accordance with 44 CFR §206.206. If the applicant decides to pursue a second appeal, the applicant 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.

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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 your 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,

A handwritten signature in black ink, appearing to read "William Peterson", written over a circular stamp or seal.

William Peterson
Regional Director