

Unified Public Assistance Project Decision Team
Eligibility Decision
Decision Date: March 27, 2009

Dispute #: 12
Subgrantee: City of Slidell
DR: 1603
PW(s): 16127
Project: Municipal Auditorium


Description of Dispute

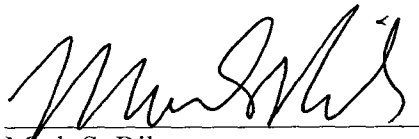
- (1) Technical feasibility of floodwall as 406 mitigation measure or code requirement per local floodplain management ordinance,
- (2) Eligibility of replacement building versus repair.

Unified PAPDT Decision

Concur with applicant on item 1. Further evaluation needed to determine eligibility of item 2.

- (1) FEMA has determined the construction of an "I-Wall" around the perimeter of the building is eligible under "NFIP Compliance". The applicant disputes the technical feasibility of any type of flood wall based on the limitations between the facility and the fire station, the required design-height of the wall, the rate of inundation, and other technical and practical reasons. The July 16, 2008 letter from Burk-Kleinpeter, Inc. to the Slidell City Engineer outlines the reasons such a wall is technically infeasible. The FEMA Public Assistance Project Decision Team concurs with the explanation in said letter of July 16, 2008.
- (2) Further evaluation of the applicant's proposal for a replacement building (including technically feasible options to comply with the local floodplain management ordinance and possible 406 mitigation proposals) is needed to determine eligible scope of work and costs. A follow-up meeting or site visit will be scheduled.

~~DRAFT ONLY~~

Charles R. Axton
FEMA Lead
Unified PA Project Decision Team
3-27-09


Mark S. Riley
Assistant Deputy Director
Disaster Recovery

- Concur
 Non-Concur

Recommend
concur
w/ 1
3-25-09

Unified Public Assistance Project Decision Team
Eligibility Decision
Decision Date: March 27, 2009

Dispute #: 33
Subgrantee: Port of New Orleans
DR: 1603
PW(s): 16127
Project: Nashville Avenue Wharf High Mast Lighting; Sanitary Sewer Lift Stations #3 and 5

Description of Dispute

Eligibility of A/E fees beyond the PA Guide Engineering Curves.

Unified PAPDT Decision

Concur with applicant.

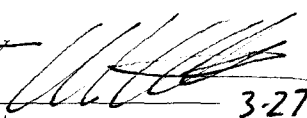
FEMA will delete the comments in the PWs related to reasonableness of A/E fees limited to curves, and that costs beyond curves are thus ineligible.

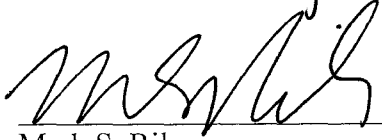
FEMA will adjust PWs for large projects to include the following comment, "Actual eligible costs, to include applicable A/E fees, will be reconciled at closeout."

Small projects will be adjusted as appropriate per the standard closeout process.

The FEMA PA Guide Engineering Curves are intended for estimating purposes only. The determination of reasonable costs encompasses many complex factors which are normally addressed in the closeout process, as will be the case with the Port of New Orleans. If the A/E fees are seemingly high related to project costs, the applicant will provide a justification for consideration during closeout.

and as agreed to

CA ~~DRAFT ONLY~~  3-27-09
Charles R. Axton
FEMA Lead
Unified PA Project Decision Team


Mark S. Riley
Assistant Deputy Director
Disaster Recovery

- Concur
- Non-Concur

*Recommend
concur as amended
M/S
3-26-09*

Unified Public Assistance Project Decision Team
Eligibility Decision
Decision Date: March 27, 2009

Dispute #: 21
Subgrantee: New Orleans Public Belt Railroad
DR: 1603
PW(s): 17792, 17793, 17794, 17796, 17797, 17798
Project: 406 Mitigation Proposal Related to Steel Ties

Description of Dispute

Eligibility of 406 mitigation for the replacement of wooden ties and connections with steel ties.

Unified PAPDT Decision

Concur with applicant on the completed 406 mitigation measures. Additional information would be needed to determine if further 406 mitigation measures would still be allowable and appropriate for those sections in which the displaced wooden ties were used in the repair.

- (1) The applicant proposed a 406 mitigation measure to install steel ties for the curve and turnout sections of the line. The original FEMA PO supported the mitigation and determined the proposal to be cost-effective with a BCA of 6.12. The mitigation proposal was subsequently denied for the following reason; "This 406 hazard mitigation proposal to utilize steel railroad ties versus the applicant(s) pre-disaster practice of creosote railroad ties does not prevent or limit future inundation of the rail system." The justification for denial is inconsistent with FEMA Disaster Assistance Policy 9526.1, Hazard Mitigation Funding Under Section 406 (Stafford Act), which in Part VI.A. states the purpose of 406 mitigation is to, "enhance a facility's ability to resist similar damage in future events." Similarly, 406 mitigation following earthquakes is not limited to measures which prevent ground shaking but typically the impacts of ground shaking. All steel ties and related connections installed to date as specified in the original FEMA PO's Hazard Mitigation Proposals, and completed during the original repair, are eligible.
- (2) If the applicant is seeking additional funding for 406 mitigation for those sections repaired with the pre-event wood cross ties, additional information will be needed to determine eligibility of the hazard mitigation. As is stated in FEMA Policy 9526.1, Part VII.A., mitigation "opportunities usually present themselves during the repair efforts." If the repairs have been completed in sections, whether identified in the original FEMA PO's Hazard Mitigation Proposals or other sections of track, the opportunity for mitigation may not be appropriate at this date.

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3-27-09

Charles R. Axton
FEMA Lead
Unified PA Project Decision Team

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Mark S. Riley
Assistant Deputy Director
Disaster Recovery

- Concur
- Non-Concur

*Recommended
Concurrence
ajl
3-26-09*

Unified Public Assistance Project Decision Team
Eligibility Decision
Decision Date: March 27, 2009

Dispute #: 8
Subgrantee: Facility Planning and Control
DR: 1603
PW(s):
Project: LSU Health Sciences Center

Description of Dispute

- (1) Eligibility of 406 mitigation beyond the ABFE,
- (2) Eligibility of new structures or structural additions under 406 mitigation,
- (3) FEMA requirement of most cost-effective versus cost-effective,
- (4) Eligibility of 406 mitigation proposal related to the LSU Health Sciences Center.

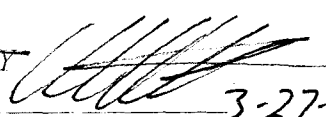
Unified PAPDT Decision

Concur with applicant, on items 1, 2, and 3. Further evaluation of 406 mitigation proposal needed to determine eligibility of item 4.

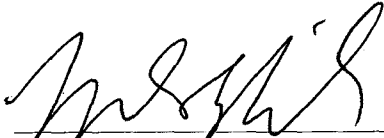
- (1) In accordance with the June 9, 2008 letter from the Director of the Louisiana Transitional Recovery Office to the Louisiana State Coordinating Officer, "FEMA will not fund Section 406 HM proposals for elevation beyond the level specified in the adopted floodplain management code or the ABFE, whichever is higher." This statement is inconsistent with FEMA Disaster Assistance Policy 9526.1, which states under VII.E, "The costs of meeting applicable codes/standards in accordance with 44 C.F.R. 206.226(d) and minimum National Flood Insurance Program requirements are regulatory requirements that are distinct from hazard mitigation. Funding for these costs is considered separately". Thus, applicants may propose and FEMA may consider and deem eligible 406 mitigation measures that elevate beyond the adopted floodplain management code or the ABFE. Mitigation measures considered under 406 mitigation are not inherently bound by regulatory requirements, thus the referenced statement in said June 9, 2008 letter is hereby rescinded. All 406 mitigation proposals must still be cost-effective and comply with all other requirements specified in statute, regulations, and policy.
- (2) FEMA has issued the following statement in the denial of 406 mitigation proposals, "Mitigation is limited to repair work of damaged components only and cannot result in construction of new buildings, or expansion of functions and/or capacity of existing buildings." This statement is appropriate for the majority of cases but FEMA Disaster Assistance Policy 9526.1 allows for additional flexibility under VII.A, which discusses how 406 mitigation opportunities usually present themselves in repair, must be related to disaster related damage, and must be performed on the parts of the facility that were actually damaged. This section of policy logically and most commonly would result in construction of new

buildings or expansion of buildings not being appropriate, thus ineligible, under the policy. However, VII.A of the policy concludes with the following statement in bold, "Exceptions to this provision will be reviewed on a case-by-case basis" providing FEMA with the authority to consider mitigation proposals and potentially fund mitigation measures that result in construction of new buildings or expansion of buildings. An example of a 406 mitigation proposal resulting in such may include a critical facility (ie hospital or fire station), which was subject to heavy damage, critical components (ie mechanical/electrical) of the building were heavily damaged or destroyed and must be elevated in order to prevent future disaster damages from a similar event, elevation of critical components without new construction would result in displacement of essential functions on other floors, thus the only practical means of attaining the critical component elevation would be via the construction of a new building or expansion of the existing building(s). All 406 mitigation proposals must still be cost-effective and comply with all other requirements specified in statute, regulations, and policy.

- (3) FEMA has inserted the following language when 406 mitigation measures have been denied, "When more than one viable mitigation solution is available, FEMA's obligation for the prudent stewardship of federal disaster funds requires funding the most cost-effective option only." While this statement is appropriate in a theoretical sense, it seems to lose applicability in a practical sense. All mitigation measures must be cost effective in accordance with statute, regulation, and policy. The appropriate approach is for FEMA, the State, and the applicant to discuss mitigation measures together, determine which options are appropriate, technically feasible, and cost-effective.
- (4) Further evaluation of the applicant's 406 mitigation proposal is needed to determine if eligible. A follow-up meeting or site visit will be scheduled.

CA
~~DRAFT ONLY~~  3-27-09

Charles R. Axton
FEMA Lead
Unified PA Project Decision Team



Mark S. Riley
Assistant Deputy Director
Disaster Recovery

- Concur
- Non-Concur

*Recommend
concur
myl
3-26-09*