

# LIVINGSTON PARISH

Office of the President

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**MIKE GRIMMER**  
Parish President

**ANDREW K. ROWE, CPA**  
Director of Finance

**WAYNE MARTIN**  
Director DPW

July 9, 2010

Mark DeBosier  
Deputy Director – Disaster Recovery Division  
Governor’s Office of Homeland Security &  
Emergency Preparedness  
7667 Independence Boulevard  
Baton Rouge, LA 70806

Re: Livingston Parish Appeal—Supplement No. 1

FEMA Project Worksheet #5590-0 (FEMA-1786-DR-LA)  
GV2-188 – Waterway Debris Removal  
Zero Obligated Project

FEMA Project Worksheet #5591-0 (FEMA-1786-DR-LA)  
GV2-187 – Waterway Debris Removal Monitoring  
Zero Obligated Project

FEMA Project Worksheet #5593-0 (FEMA-1786-DR-LA)  
GV2-186 – Waterway Debris Removal Monitoring  
Zero Obligated Project

FEMA Project Worksheet #5594-0 (FEMA-1786-DR-LA)  
GV2-185 – Waterway Debris Removal  
Zero Obligated Project

FILED  
CLERK OF COURT  
PARISH OF LIVINGSTON

2011 FEB 24 PM 4: 15

*DeBosier*  
DEPUTY CLERK

Dear Mr. DeBosier:

Livingston Parish respectfully supplements its appeal of the determinations of FEMA in the subject Project Worksheets.

Project Worksheet #5590-0 addresses the removal of Hurricane Gustav debris outside the Livingston Parish Gravity Drainage Districts (GDDs).

Project Worksheet #5591-0 addresses waterway debris removal monitoring inside Livingston Parish GDDs 1, 2, and 5 performed by Alvin Fairburn & Associates, L.L.C. (“AFA”).

P. O. Box 427 • Livingston, Louisiana 70754  
(225) 686-2266 • (225) 686-7079 Fax

**SCANNED**

**Exhibit  
17 (B)**

Project Worksheet #5593-0 addresses waterway debris removal monitoring outside the Livingston Parish GDDs performed by Professional Engineering Consultants Corporation ("PEC").

Project Worksheet #5594-0 addresses waterway debris removal inside the Livingston Parish GDDs 1, 2, and 5.

The total amount sought by this appeal is:

P W 5590	\$21,721,419.44
P W 5591	\$5,267,463.25
P W 5593	\$3,501,198.94
P W 5594	\$15,645,457.69

and totals the sum of \$46,135,539.32.

#### I. SUPPLEMENTAL EVIDENCE/ATTACHMENTS

##### A. Exhibit C: External Hard Drive, PEC Monitor Billing

This external hard drive contains, in electronic format, the data supporting PEC's billing under PW 5593 under its Project Nos. 10683 and 10805.<sup>1</sup>

#### II. PROCUREMENT CONSIDERATIONS

##### a. Debris Removal Contractor

FEMA has previously found Livingston Parish used acceptable procurement standards for its debris removal contractor in its Project Worksheet 54v1 which provides in part:

FEMA has determined that the Parish's use of acceptable procurement standards supports the determination that their contracted costs are reasonable and comply with OMB Circular A-87 (Cost Principles for State, Local, and Indian Tribal Governments). Furthermore, in the absence of complete debris removal quantity estimates, the contractor's bids were reviewed and the record of past performance, ability to mobilize, and financial resources were factors in determining the "lowest responsible bidder," as required by 44 CFR §13.36(d)(ii)(D).

<sup>1</sup> In March 2010, PEC began separating its billing under different Project Numbers for (i) leaners, hangers, and roadside debris monitoring (all of which will be under Project Number 10683 as of June 2010) and (ii) drainage monitoring (all of which will be under Project Number 10805 as of June 2010).

Upon the Parish determining the need to remove immediate threats from its drains, the Parish secured a proposal from its debris removal contractor, IED, which the Parish was then able to compare with the competing bid previously submitted by DRG. The Parish likewise sought copies of other similar contracts from other parishes and secured the contract between Pointe Coupee and Phillips & Jordan, Inc. for comparison purposes. The Parish cost analysis for amending its contract with IED is outlined by the former Parish Office of Emergency Preparedness Director, Brian Fairburn, in the file memorandum entitled "Livingston Parish Costs Analysis for Canal Addendums for IED Debris Contracts Procured August 31, 2008".<sup>2</sup>

Additionally, the discussion relating to NRCS issues in the original appeal supports the procurement decision of the Parish.

b. Monitoring

(i) Livingston Parish

On or about September 4, 2008, the Parish solicited proposals for monitoring from AFA, PEC, Camp Dresser & McKey ("CDM"), and AllSouth Consulting Engineers.<sup>3</sup> Three proposals were received in response to this solicitation, one each from AFA, PEC, and CDM.<sup>4</sup> The proposal of PEC was judged superior due to the experience of its personnel, however some of PEC's prices exceeded the lowest bidder, AFA.<sup>5</sup> The Parish President, Mike Grimmer, contacted the president of PEC, Tony Arkol, and negotiated lower prices, more in line with the lowest bids received. These negotiations are chronicled in the Declarations of Mike Grimmer<sup>6</sup> and Tony Arkol.<sup>7</sup> The proposal of CDM was rejected due to its excessive prices.<sup>8</sup>

(ii) Gravity Drainage Districts

Upon expanding its efforts to address immediate threats in the Parish's Gravity Drainage Districts, two of the Gravity Drainage Districts were regularly represented by AFA, which thus chose AFA for its price reasonableness as the lowest bidder and knowledge of the particular Gravity Drainage Districts.

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<sup>2</sup> See Exhibit 42.

<sup>3</sup> See Exhibit 43, Affidavit of Brian Fairburn concerning Livingston Parish monitor procurement.

<sup>4</sup> See Exhibits 43 A, B, and C.

<sup>5</sup> See Exhibit 43, Affidavit of Brian Fairburn.

<sup>6</sup> See Exhibit 44, Declaration of Mike Grimmer.

<sup>7</sup> See Exhibit 45, Declaration of Tony Arkol.

<sup>8</sup> See Exhibit 43, Affidavit of Brian Fairburn.

### III. USACE-WETLANDS

Since filing the original appeal, Livingston Parish has received three (3) additional No Permit Required (NPR) notices from the U.S. Army Corps of Engineers.<sup>9</sup>

### IV. ACCESS DEBRIS: ANOTHER RED HERRING

The project worksheets made the subject of this appeal inaccurately criticize the alleged amount and volume of access cleared for drainage debris removal and the debris that resulted from this access clearing. The project worksheets also mischaracterize the way in which the parish monitors accounted for it.

In some instances, the contractor necessarily had to clear vegetation to gain access to waterways that held eligible debris. The contract recognized that this would be the case, and called for the contractor to receive a separate fee based on the acreage cleared. This fee was an appropriate and unavoidable part of the cost of the debris removal.

PW 5590 addressed debris removal outside the gravity drainage districts. The PW stated that "the debris removed for the waterway was mixed and loaded with vegetative debris generated from the cleared access pathways. No attempt was made to separate waterway debris from access road debris." PW 5590 goes on to say that "[b]ecause FEMA does not know the actual volume of material removed from the streams (versus that associated with constructing the 'access roads') or the associated cost, the reasonableness of the cost of the work is unknown." This simply is not true.

Outside the drainage districts, the monitors observed the work as it was performed. Vegetation removed for access was stored separately on the ground from eligible debris taken from the streams. However, the access vegetation and the eligible storm debris all had to be hauled away, and it would not have been efficient for the contractor to make separate trips based on the vegetation hauled nor reasonable to expect that he do so. Instead, the monitors, who personally observed the work in progress, noted on each contemporaneously prepared haul ticket the percentage of each load that constituted eligible debris. This is readily apparent in the sample tickets attached as Exhibit 47. The monitors separately documented the acreage cleared for access, as the contract required.

PW 5594 addressed debris removal inside the drainage districts. PW 5594 contained similar statements to those made in PW 5590 concerning access vegetation. The monitors who supervised the work inside the drainage districts did not follow the same methodology as those who worked outside the districts. However, they have accounted separately for the access vegetation and the eligible storm debris in a reasonable and logical fashion. The statements in PW 5594 therefore also mischaracterize the facts.

The monitors of the work outside the drainage districts did not contemporaneously distinguish access vegetation from eligible storm debris hauled from the work site. However, it

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<sup>9</sup> See Exhibit 46.

is possible to identify the access vegetation removed with the storm debris to a reasonable certainty – and it does not amount to much. The drainage district monitors, AFA, conducted a case-control study that allows FEMA to accurately distinguish the eligible debris hauled inside the districts. <sup>10</sup> 94% of the material hauled inside the drainage district consisted of eligible storm debris.

The contract between the Parish and the debris removal contractor recognized that some stream segments would present problems due to vegetation or topography. The contract provided for an added fee if these problems necessitated the use of specialized equipment. The contract monitors determined in advance whether this would be the case and noted this on the work orders as they issued them. The only access clearing that occurred inside the drainage districts occurred in response to work orders that noted the access problems and authorized the use of specialized equipment. Consequently, AFA was able to exclude all normal work orders as items of concern – any debris hauled in response to these work orders involved eligible storm debris.

Based on this simple, clear-cut criterion, AFA concluded that only 35% of the debris from inside the drainage districts came from streams where access might have been cut. AFA's study went on to show that only a small percent of the vegetation from these streams consisted of access vegetation.

After narrowing their focus to work orders that called for specialized equipment, AFA identified streams that were cleaned from within the waterbody, without clearing access, and those where access was cleared. AFA then compared the average cubic yards of vegetation hauled per surface acre of the different stream categories. This comparison showed that the streams where access was cleared yielded, on the average, 14% more vegetation hauled, which one could reasonably attribute to the access vegetation.

Based on these calculations, only 6% of the vegetation hauled inside the drainage districts consisted of ineligible access vegetation. <sup>11</sup> Thus the total debris removed from drains in the GDDs after removing access was 155,325.8 cubic yards (165,240.3 cubic yards less 6%)<sup>12</sup>, our original calculation of 1 every 600 feet.)

The person identified as the author of PWs 5590 and 5594, Robert Jennings, knew better than to make the statements those PWs contain concerning access vegetation. Mr. Jennings, along with FEMA's debris lead, Jeffery Jones, as well as other FEMA and GOHSEP personnel, met with the GDD monitors on June 16, 2009 to review the AFA study. Mr. Jennings at that time, if not before, learned that accounting for access vegetation was not a problem at all outside the drainage districts. He also learned that, inside the drainage districts, access vegetation amounted to only 6% of the material reflected on the haul tickets. This minimal volume could easily be excluded in determining reimbursement. <sup>13</sup>

<sup>10</sup> See Exhibit 48, Affidavit of Ted York.

<sup>11</sup> Id.

<sup>12</sup> See Exhibit 49, Livingston Parish Drainage Summary.

<sup>13</sup> See Exhibit 48 and Exhibit 48-B, June 16, 2009 attendance roster.

V. MORE IRONY

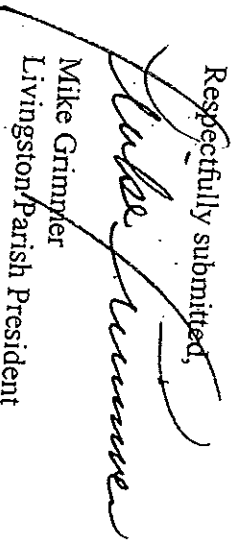
Livingston Parish has learned that Pointe Coupee Parish was paid in full for the removal of debris in its drains, largely based on the monitor's record of linear feet cleaned, without photographs<sup>14</sup> or engineering studies to prove eligibility.


Once again, this evidences the inequitable treatment of Livingston Parish in its Public Assistance requests to FEMA.

VI. CONCLUSION

Livingston Parish urges favorable consideration of this appeal.

Respectfully submitted,

  
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Livingston Parish President

  
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<sup>14</sup> See Exhibit 50, samples of Monitor Data supporting payment to Pointe Coupee Parish.