

FRED MILLS, JR.
State Senator
District 22
Parishes of:

Iberia, St. Martin, St. Landry, Lafayette

COMMITTEES

Health and Welfare, Chairman
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Local and Municipal Affairs



SENATE
STATE OF LOUISIANA

1010 Martin Street
Parks, LA 70582
Phone: (337) 845-4240
(800) 259-3142
Fax: (337) 845-4095

800 S. Lewis Street, Suite 203
New Iberia, LA 70560
Phone: (337) 365-8484
(800) 258-3795
Fax: (337) 365-2730

March 13, 2019

Honorable Governor John Bel Edwards
State of Louisiana
P. O. Box 94004
Baton Rouge, LA 70804

Mr. James Waskom, Director
GOHSEP
State of Louisiana
7667 Independence Boulevard
Baton Rouge, LA 70806

RE: Indian and Little Indian Bayous, FEMA 1607-PW4562

Dear Governor Edwards and Director Waskom:

As every one of you is aware, there have been ongoing and difficult discussions regarding the scope of work, actual work done, and payments to the contractor on the above-referenced project.

On December 18, 2008, Mr. Abshire sent an email to Ms. Kisha Killmer, GOHSEP AI / EHP Group Lead, stating that, "the GDD8 accepted bids and engaged a contractor for the project as described in the PW." Further, the Louisiana Legislative Auditor, in an email from Liz Martin dated January 28, 2019 provided a detailed statement on the project's original eligible scope of work, and that email contained an attachment referencing the original PW and made reference to the highlighted text that begins on page six (6) which clearly states that scope of work to be comprised of 67 GPS sites and 950 cubic yards of debris.

Also, based upon a letter from GOHSEP signed by its then-Director, Kevin Davis, dated January 31, 2014, he stated: "Regarding quantities of debris, we can report that the original PW was written estimating approximately 950 cubic yards of eligible debris." He further indicated in the letter that GOHSEP validated and approved payment for only the original 950 cubic yards estimated in the PW.

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Of major significance, based upon an email forwarded on February 24, 2015 by Gavin Abshire, the former President of the Gravity Drainage District 8 of Ward 1 of Calcasieu Parish (GDD8), to Billy Broussard, as per an original email dated September 29, 2008, Robert Kleinschmidt, Assistant District Attorney for Calcasieu Parish, the following point was emphasized: "Gavin, first and foremost, before any action, I would get approval from the FEMA rep. These guys are paying the bill. Personally, I would like to see the contractor fulfill his contract. The contractor is to deliver 950 cubic yards of material for the price.....Once the material is delivered, **shut down the contractor.**" That did **NOT** happen!

In fact, in a letter dated November 26, 2008, drafted by Kelly Fontenot to Thomas Kirkpatrick, State Coordinating office of FEMA / State Joint Field Office, Fontenot states: "The work began soon thereafter (the July 24, 2008 contract) but was interrupted not only for Hurricanes Gustav and Ike but for further contract negotiations when it was determined that the volume of eligible debris related to Hurricane Rita was anticipated to exceed the original debris quantities estimated by FEMA. **The District had to coordinate with FEMA officials, state representatives as well as the contractor to determine how to handle the financial ramifications of the remaining debris removal. It was decided to have the existing contractor continue work and request that a version to the District's FEMA PW be written. The version request was signed on October 8, 2008, but the District has not yet received the approval to have FEMA write the version. However, work is continuing in anticipation of that approval.**"

It is abundantly clear that everyone involved in negotiating this contract knew that the contract called for the removal of a very specific scope of work to entail 67 GPS sites entailing 950 cubic yards of debris removal, which is in direct conflict with contentions made by the Superintendent of GDD8 and Rusty Stutes, who serves as its legal counsel, that the contract called for "all the debris in the bayou to be cleared."

To buttress this fact, on September 10, 2008, Kelly Fontenot, Business Compliance and Fraud Analyst at the Calcasieu Parish Police Jury, in an email to Dan Kennedy, FEMA, and Billy Crabb (Witt Associates, GOHSEP's contractor) entitled "Federal Acquisition Regulations and equitable adjustment for Indian Bayou," stated: "Please let this email serve as our request for both FEMA and the State to reassess the quantity of debris being removed from these laterals and adjust our PW totals accordingly."

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As a result of Ms. Fontenot's letter, PW Version 1 was written. Also, on August 20, 2008, Billy Crabb sent an email to Kirk Harmon, GOHSEP's Field Monitor, in which he states: "Please note it is very important that we get with FEMA and request a version to capture any debris that is going to be over the contracted allotted amount. Please be advised that this is not a quick fix (get a version obligated), so whenever you can make a determination over the 850 cubic yards there may be, we need to turn this information over to FEMA ASAP and request a version in advance to keep the contractor from having to stop and wait on orders."

Also on August 20, 2008, Kelly Fontenot forwarded the email referenced in the preceding paragraph to Dan Kennedy, FEMA, in which she states: "Please review this string of emails. The responses sound like the State is leaning to at least a scope alignment version – if not more." Fontenot also made a hand-written notation on the email time and date stamped "7:55 a.m. 8/21/08," in which she states per TCW (telephone conversation with) Dan (Kennedy): "He (Dan) has requested that Billy Crabb and the state debris monitor meet with us. Dan's opinion is that the state monitor should only tell us what is eligible or not. If it is ineligible, then we have to decide whether to pick it up at our cost. If we do not, then the full contract should be reimbursed. "

FEMA and GOHSEP granted GDD8's request for three times the original debris in an area which originally had 630 cubic yards of debris, thus totaling 1,890 (630 x 3) cubic yards of debris. FEMA also prepared PW1 on December 22, 2008 in which FEMA obligated \$410,187.60 for contract work. Based upon FEMA policy, cost is established at bid opening. Since the contractor originally bid \$204,000 for 950 cubic yards of debris, computing the additional obligated funds is relatively straightforward: $\$204,000 / 950 \times 1,890 = \$405,852.63$. That's an estimate and when other costs were factored in, FEMA derived its \$410,187.60 figure. As is obvious, and as stated in Mark DeBosier's email of March 3, 2016 to Ben Plia, GOHSEP's legal counsel, entitled "Billy Broussard's Chronology," the attachment applicable for the email stated: "Amount: \$410,187.60 (contract) + \$42,840 (FAL & FAE – Forced Account Labor and Forced Account Equipment). Scope: More contract debris at 63 (sic) specific sites."

The foregoing itemizations, all of which can be readily substantiated with support documentation upon request, justify my request for GOHSEP to make a payment request to FEMA for the additional debris that PW1 obligated for contract work less the \$204,000 that has already been remitted per the original contract. Furthermore, such a request is certainly not

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unprecedented. Specifically, pertaining to this same PW, there was a close out on November 29, 2012, but there was a subsequent payment request (#8), labeled: "Project 4562 for contract work." That request was dated November 30, 2015, and the Hurricane Rita Disaster Declaration is still open. Utilizing this option would prevent this from being a cost to the GDD8 / Calcasieu Parish and/or the State of Louisiana and/or the State's contractors.

Additionally, since the total debris removed was 6,200 cubic yards, using the allocation just provided (i.e. \$214.74 per cubic yard), additional payment is required of \$925,529.40 $[(6,200 - 1,890) \times \$214.74]$. Thus, total payment required is $\$925,529.40 + [\$410,187.60 - \$204,000] = \$1,131,717$. As per the language of the scope of work for PW1 (page 10 of 19), states: "Temporary hire of a foreman to oversee along with a state debris person on a daily basis to verify the eligibility of the debris removal and maintain a safe work environment while overseeing the progress of the contractor." Apparently, it was reported and required that monitors be there on a daily basis and further is not even in dispute that these GOHSEP and/or GDD8 monitors both ordered and directed the removal of the 6,200 cubic yards of debris, it is irrefutable that all prerequisites triggering the fulfillment of all aspects of PW1 were fully met, thus justifying payment of the preceding amount to contractor Billy Broussard.

Sincerely,



FRED H. MILLS, JR.
LOUISIANA STATE SENATOR
DISTRICT 22

cc: Billy Broussard