



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 20, 2010

CBCA 1772-FEMA

In the Matter of FORREST COUNTY BOARD OF SUPERVISORS

David B. Miller, Executive Director, Forrest County Board of Supervisors, Hattiesburg, MS, counsel for Applicant.

Thomas M. Womack, Mississippi Emergency Management Agency, Pearl, MS, appearing for Grantee.

Janice Williams-Jones and Jordan Fried, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **BORWICK**, **VERGILIO**, and **KULLBERG**.

This case involves a request by the Forrest County Board of Supervisors (BOS) and the Mississippi Emergency Management Agency (MEMA) for an award of public assistance by the Federal Emergency Management Agency (FEMA) in the amount of either \$202,443 or an amount to be determined by the arbitration panel for repairs to the Forrest County Court Building in Hattiesburg, Mississippi. FEMA has raised two matters related to the proceedings in this arbitration that are addressed in this ruling. First, FEMA contends that this matter should be dismissed because the amount of public assistance being requested is below the \$500,000 statutory threshold for this Board to conduct an arbitration. Second, FEMA contends that this panel's review is limited to a determination of whether FEMA's actions were arbitrary and capricious. A majority of this panel denies FEMA's request that

this matter be dismissed. Additionally, the panel rules that it will hear the evidence in this matter *de novo*.

FEMA's Request for Dismissal

FEMA argues that the amount of public assistance sought in this matter is below the \$500,000 threshold required for an arbitration before this Board, and, consequently, this matter must be dismissed. The authority of this Board to conduct an arbitration in this matter is set forth in the American Recovery and Reinvestment Act of 2009 (ARRA), which states in relevant part the following:

Notwithstanding any other provision of law, the President shall establish an arbitration panel under the Federal Emergency Management Agency public assistance program to expedite the recovery efforts from Hurricanes Katrina and Rita within the Gulf Coast Region. The arbitration panel shall have sufficient authority regarding the award or denial of disputed public assistance applications for covered hurricane damage under section 403, 406, or 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170b, 5172, or 5173) for a project the total amount of which is more than \$500,000.

Pub. L. No. 111-5, § 601, 123 Stat. 115, 164 (2009). The rules for arbitration in this matter state that an applicant “may request arbitration of a determination made by FEMA on application for Public Assistance, provided that the total amount of the project is greater than \$500,000.” 74 Fed. Reg. 44,767 (Aug. 31, 2009) (to be codified at 44 CFR 206.209(b)). The term “project” is defined as follows:

A *project* is a logical grouping of work required as a result of the declared major disaster or emergency. The scope of work and cost estimate for a project are documented on a Project Worksheet (FEMA Form 90-91).

44 CFR 206.200(i) (2008).

FEMA errs in arguing that this matter should be dismissed because the requested amount of public assistance is less than the \$500,000 threshold. The project cost shown on the project worksheet (PW) is \$506,108.35. Although the amount of public assistance sought is \$202,443, that dollar amount is not the project value in this matter. Rather, it is only an

amount suggested by the BOS in its submission to the panel. The statutory dollar threshold has been met in this matter in that the project cost shown on the PW exceeds \$500,000. A majority of this panel, consequently, concludes that it has the authority to conduct the arbitration in this matter.

Standard of Review

FEMA has argued that the panel's review of this matter should be limited to a finding that FEMA's determination should be affirmed unless it was arbitrary and capricious. That same argument has recently been addressed in a decision by another panel, which stated that "[w]e will consider all evidence in the record created for this arbitration proceeding, and we will review that evidence *de novo*." *State of Louisiana, Facility Planning and Control*, CBCA 1741-FEMA, slip op. at 2 (December 9, 2009) (citing *Bay St. Louis-Waveland School District*, CBCA 1739-FEMA, 10-1 BCA ¶ 34,335 (2009)). The panel concurs with the reasoning stated in that decision, and, accordingly, will consider the evidence in this matter *de novo*.

H. CHUCK KULLBERG
Board Judge

ANTHONY S. BORWICK
Board Judge