



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 20, 2010

CBCA 1783-FEMA

In the Matter of CITY OF WESTWEGO

James L. Butler, City Accountant, Westwego, LA, appearing for Applicant.

Mark S. Riley, Deputy Director, and William J. Patrigo, Appeals Specialist, Louisiana Governor's Office of Homeland Security and Emergency Preparedness, Baton Rouge, LA, appearing for Grantee.

Kim A. Hazel and Linda M. Davis, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **STERN**, **BORWICK**, and **POLLACK**.

During the month of August 2005, Hurricane Katrina (Katrina) damaged the city hall and police station building in the City of Westwego, Louisiana (Westwego). The police station and city hall are two separate facilities connected by a common structural wall. Katrina caused the building complex to flood with six inches of water. Westwego requests that this arbitration panel find that the cost of the repairs necessary to restore the building to its condition prior to Katrina is greater than fifty percent of the replacement cost of the building. Westwego requests that this panel direct the Federal Emergency Management Agency (FEMA) to award a public assistance grant to replace the building and reject FEMA's contention that it is only responsible for the cost of building repairs.¹ This panel

¹ The FEMA regulation at section 206.226(f) of title 44 of the Code of Federal Regulations delineates when a public assistance grant should be made for repairs to a facility and when such a grant should be made for replacement. This section provides: "(1) A

has the authority to decide this matter under section 601 of Public Law 111-5, the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 601, 123 Stat. 115, 164-66 (2009), and 44 CFR 206.209 (2009).

Project worksheets (PWs), assessing the damage to the building, were prepared by FEMA, beginning March 2006. These worksheets treated the city hall and police station as two separate facilities. Other PWs were prepared in June 2006 and January 2007 detailing extensive repair costs. The PWs stated that the roof sustained major damages, that the tongue and groove decking was warped (from water penetration), and that flooding caused a moisture and mold buildup under the entire vinyl floor and up to the full nine foot height of the walls. In addition, these PWs listed other items that were damaged in the facility as a result of Katrina. Each of these PWs authorized replacement of the buildings based on meeting the fifty percent replacement rule threshold. The PWs were obligated and accepted.

Another PW was issued by FEMA on March 24, 2008, combining the work required on both buildings. This “preliminary” PW listed fifty-three items of flood damage to city hall and fifty-two items of flood damage to the police station. This PW stated that Westwego had completed temporary repairs to some items, to allow for continued use of the building. The PW stated that no permanent repairs had been made. The PW estimated repairs at \$775,240.41 or 74.67 % of the estimated replacement cost of \$1,038,247.94. Westwego began hiring architects and engineers to begin the process for building replacement. Evidence was presented at the hearing that, as of the date of the hearing, under \$40,000 had been spent on temporary repairs.

About three months after the issuance of this PW, FEMA revised the PW and stated that the building square footage that was being used was incorrect. In addition, the PW eliminated most of the items that FEMA previously listed as having been damaged. The PW, as revised, set forth the base repair cost at \$337,094 and the replacement cost at \$1,012,693. This newest PW concluded, for the first time, that the facility was not eligible for replacement and that almost all of the permanent repairs had already been completed.

At the hearing Westwego presented witnesses who testified as to the still-existing damage to the building, including extensive damage to the roof and interior. These witnesses testified that the roof sheathing was warped and the purlins damaged as a result of water

facility is considered repairable when disaster damages do not exceed 50 percent of the cost of replacing a facility to its predisaster condition, and it is feasible to repair the facility so that it can perform the function for which it was being used as well as it did immediately prior to the disaster. (2) If a damaged facility is not repairable . . . approved restoration work may include replacement of the facility.”

intrusion from Katrina. Pictures were presented showing existing roof damage. Westwego also presented evidence of water intrusion behind walls, floor damage, and mold intrusion in the building. The revised PW issued by FEMA did not reflect these conditions. We are convinced that this evidence demonstrates that FEMA's latest PW understates the extent of the damage requiring repair.

FEMA witnesses testified that almost all damage from Katrina has been repaired and that there was no damage to the roof sheathing, purlins, and walls. These witnesses testified that all of FEMA's assessments, before the revised PW in June 2008, were incorrect.

We are faced with contradictory testimony from the witnesses at the hearing, all who appeared credible. As a result, we place a great deal of weight on the written record. We find that all PWs for a period in excess of two years documented extensive damage to the building. These PWs were obligated and accepted by applicant. There is no evidence that any of the work (other than some of the roof repair) listed in the PWs was actually performed. We conclude that the building was damaged as set forth in the combined PW issued in March 2008. For us to conclude otherwise would require us to reject all PWs that FEMA issued for a period in excess of two years as well as other documents, including pictures, in the record.

We find that the extensive repairs listed on the March 2008 PW are to be used in making the calculation of repair versus replacement costs under FEMA regulations.

Both FEMA and Westwego agree that the replacement cost (as used in the determination of whether the facility qualifies as a replacement project) of the facility (composed of city hall and the police station as consolidated by FEMA in the last PW) is \$1,012,693. Westwego has submitted various repair estimates for the damaged buildings totalling \$320,813.75 for city hall and \$292,938 for the police station, totalling \$613,751.75, or about sixty-one percent of the replacement cost. FEMA claims that Westwego's analysis is flawed and that numerous items were erroneously included in the repair scope of work. Under a best case (for Westwego) scenario, FEMA submits that the costs to repair the facility are no greater than \$410,238, or about forty-one percent of the replacement costs.

Westwego has presented a detailed item-by-item breakdown of the costs for each item listed on FEMA's PWs. Based on the testimony at the arbitration hearing and the documentary evidence presented by the parties, we find that Westwego's costs are more reflective of the likely actual repair cost. We accept the estimated amounts submitted by Westwego.

We find the Westwego city hall and police station qualify for replacement.

FEMA is to fund the replacement cost of the building.

JAMES L. STERN
Board Judge

ANTHONY S. BORWICK
Board Judge

HOWARD A. POLLACK
Board Judge