



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 19, 2013

CBCA 3320-FEMA

In the Matter of UNIVERSITY OF SOUTHERN MISSISSIPPI

Mark W. Garriga of Butler, Snow, O'Mara, Stevens & Cannada, PLLC, Ridgeland, MS, and Jon Mark Weathers and Truette Roberts, University of Southern Mississippi, Hattiesburg, MS, counsel for Applicant.

Allison Killebrew and Robert R. Latham, Jr., Mississippi Emergency Management Agency, Pearl, MS, appearing for Grantee.

Linda D. Litke and Christie E. Rachal, Office of Chief Counsel, Federal Emergency Management Agency (FEMA), Department of Homeland Security, Biloxi, MS, counsel for FEMA.

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

In this arbitration matter brought pursuant to the authority of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 601, 123 Stat. 115, 164 (2009), and regulation, 44 CFR 206.209 (2010), the Federal Emergency Management Agency (FEMA) has filed a motion to strike portions of the applicant's pre-hearing brief. The submission notes that the parties had agreed to not further supplement the documents in the evidentiary record and that the Board had authorized the parties to submit pre-hearing briefs to summarize the issues in dispute regarding the ownership of the property in question. FEMA further references its request for clarification and the Board response. FEMA objects to portions of the applicant's brief, particularly those portions that address legal arguments not raised previously by the applicant.

The applicant's brief does not contain material contrary to regulation or Board order. The applicant has not supplemented the record with additional documentation. The applicant has identified the legal arguments it will address during the upcoming hearing. Such fall within the stated purposes of briefing. A goal of this arbitration process is to reach the correct legal result based upon the facts presented. FEMA has failed to establish a basis to strike portions of the brief. Accordingly, the Board hereby denies FEMA's motion.

While resolution of this motion has been pending, FEMA filed, unsolicited by the Board, a response to the matters raised by the applicant in its brief. The applicant has asserted that while FEMA made the submission in contravention of applicable regulations and Board orders, it does not object to the submission, and does not intend to make a written submission in response.

FEMA's submission is accepted. While not requested by the Board, it should serve to focus and sharpen the presentations at the hearing.

JOSEPH A. VERGILIO
Board Judge

CANDIDA S. STEEL
Board Judge

H. CHUCK KULLBERG
Board Judge