



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 12, 2014

CBCA 3872-FEMA

In the Matter of ST. TAMMANY PARISH GOVERNMENT

Kelly M. Rabalais and Angel L. Byrum, Legal Department, Office of the Parish President, St. Tammany Parish Government, Mandeville, LA, counsel for Applicant.

Mark Riley, Deputy Director, Mark DeBosier, State Coordinating Officer, Carla Richard, Appeals Manager, and William J. Patrigo, Appeals Specialist, Governor's Office of Homeland Security and Emergency Preparedness, Baton Rouge, LA, appearing for Grantee.

Charles F. Schexnaildre and Jamie A. Flowers, Jr., Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Baton Rouge, LA, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **SOMERS**, **GOODMAN**, and **SHERIDAN**.

St. Tammany Parish Government, Louisiana (the Parish), has asked a panel of the Civilian Board of Contract Appeals to determine, through arbitration, that the Parish is eligible to recover from the Federal Emergency Management Agency (FEMA) the legal and accounting fees incurred in connection with resolving disputes with its contractors over the cost of debris monitoring services. The Parish seeks reimbursement of these costs as a public assistance grant under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §§ 5121-5207 (2012).

FEMA has filed a motion to dismiss the case. FEMA asserts that the Parish did not provide sufficient information to establish its claim. Specifically, FEMA contends that, although the Parish claims reimbursement for what appears to be a sum certain for incurred legal and accounting fees, the Parish fails to provide any invoices or other documentation in its request for arbitration to prove those costs were actually incurred, e.g., invoices.

For the reasons explained below, based on the record that currently exists, we reject FEMA's arguments for dismissal.¹ Therefore, this panel will proceed with the arbitration.

Background

In April 2005, the Parish executed a contract with what is now Omni Pinnacle ("the Omni contract") for major disaster work so as to facilitate immediate clean-up following a natural disaster. Subsequently, in August 2005, Hurricane Katrina struck the Louisiana and Mississippi coastlines. The Parish activated the Omni contract on September 5, 2005. The original scope of work under the Omni contract called for the removal of non-burnable debris from the Parish right-of-way. This contract required Omni to make the determination as to whether the debris was eligible, to haul the eligible debris from the Parish right-of-way, and to deposit the debris in an eligible landfill.

Due to the magnitude of damage caused by the hurricane, the Parish and Omni expanded the scope of work under the contract multiple times. To facilitate completing the work, beginning on September 8, 2005, Omni entered into subcontracts with at least twenty-two individuals and firms. These subcontractors then entered into their own subcontracts, resulting in hundreds of entities being involved in the debris removal project. The debris removal project was substantially complete by January 30, 2007.

When the Omni contract was first activated, the Parish supplied its own personnel to monitor the debris removal activities. However, once the vast scope of the project became clear, the Parish contracted with Shaw Environmental and Infrastructure, Inc. (Shaw) to assume the responsibility of monitoring the debris removal project (referred to as the Shaw monitoring contract).

Pursuant to the terms of the Stafford Act and the relevant regulations, FEMA issued a Stafford Act grant to the State of Louisiana. Louisiana, as the grantee, issued subgrants to

¹ In reaching this conclusion, we considered all arguments made by the Parish, FEMA, and the State of Louisiana. Arguments that are not addressed in this decision are not necessary for ruling on respondent's motion to dismiss.

the various political subdivisions needing assistance. The Parish received several subgrants by submitting project worksheets to the State through the Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP).

In administering these grants, the Parish hired a certified public accountant and a certified internal auditor to review invoices and supporting documentation for debris removed under the Omni contract and the Shaw monitoring contract. When the Parish failed to pay Omni for certain billed work, based upon audits that allegedly revealed charges for ineligible work, several of Omni's subcontractors filed suit against the Parish.

The Parish retained the law firm of Orrill, Cordell & Beary, LLC. When discussions between the Parish, Omni, and Shaw broke down, the Parish, with the assistance of counsel, engaged in protracted litigation against Omni, Omni's subcontractors, and Shaw, from 2006 through 2012. Ultimately, these disputes ended with settlements.

On September 4, 2012, the Parish submitted a project worksheet to the GOHSEP. Through the project worksheet, the Parish sought, in part, reimbursement for legal fees incurred as a result of the litigation. FEMA denied the Parish's project worksheet, stating that the legal fees were not a necessary expense for the proper administration of the grant or to carry out the scope of the work, and characterized the legal expenses as ineligible contract dispute costs.

Discussion

We treat respondent's motion to dismiss as one for failure to state a claim upon which relief may be granted. The law is clear that such a motion will be granted only when the facts asserted by the appellant do not entitle it to a legal remedy. We assume that all well-pled factual allegations plausible on their face are true and indulge all reasonable inferences in favor of the non-movant. *E.g., Océ North America, Inc. v. Department of Health and Human Services*, CBCA 2115, 11-1 BCA ¶ 34,677; *Blackstone Consulting, Inc. v. General Services Administration*, CBCA 718, 08-1 BCA ¶ 33,770.

In its request for arbitration, the Parish asks us to determine whether "the legal and accounting fees incurred in connection with the resolution of disputes by the Parish with its contractors over the costs of debris monitoring services [are] an eligible cost of the work . . . necessary . . . for . . . administration of the grant[.]" Based on the plain language of the request, the panel need only determine whether the Parish is entitled to reimbursement for such costs at this juncture.

The panel finds that, based on the current record, the request for arbitration puts forth sufficient evidence to state a claim in accordance with 44 CFR 206.209(e) (2013). This regulation requires that a request for arbitration “contain a written statement and all documentation supporting the position of the Applicant.” The Parish has submitted documents regarding the procurement of counsel, as well as a sample of relevant pleadings from the litigation with its contractors, in an effort to describe the type of expenses for which it seeks reimbursement. FEMA relied upon those very same documents to deny the Parish’s claim for reimbursement.

We have examined the documents submitted by the Parish and conclude that the information is sufficient to state a claim upon which relief could be granted. *See, e.g., City of New Orleans, Louisiana, CBCA 3344-FEMA, 13 BCA ¶ 35,362* (rejecting FEMA’s motion to dismiss based upon the applicant’s submission of incomplete information). The decision as to whether the type of expenses identified in the project worksheet are allowable and eligible under the grant program will be resolved after full development of the record.

Decision

FEMA’s motion to dismiss is denied. The panel will contact the parties to schedule further proceedings in the near future.

JERI KAYLENE SOMERS
Board Judge/Panel Chair

ALLAN H . GOODMAN
Board Judge

PATRICIA J. SHERIDAN
Board Judge