



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

---

May 21, 2018

CBCA 5933-FEMA

In the Matter of PLAQUEMINES PARISH GOVERNMENT

Michael G. Gaffney of Gaffney & Gaffney, Metairie, LA; and Peter Barbee, Plaquemines Parish Attorney, Belle Chasse, LA, counsel for Applicant.

Carla Richard, Executive Officer-Legal Services, and Danielle Aymond, Executive Counsel, Governor's Office of Homeland Security and Emergency Preparedness, Baton Rouge, LA, counsel for Grantee.

Michelle Buckalew, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC; and Charles F. Schexnaildre and Frank E. Bruscato, 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 **HYATT**, **VERGILIO**, and **GOODMAN**.

The applicant, the Plaquemines Parish Government, seeks payment in addition to what the Federal Emergency Management Agency (FEMA) has paid under a project worksheet for public assistance for the reconstruction of facilities damaged by Hurricane Katrina. The expenses arose after the applicant defaulted the original contractor performing work and the bonding company which declared bankruptcy failed to complete performance. The applicant incurred various costs which were not priced in the original project worksheet as it secured another contractor and saw to the completion of the work. FEMA has paid what it considers to be costs to perform the work, when such costs arose directly from the hurricane, including costs not already incurred by the original contractor.

Although the panel is split on its authority to resolve this arbitration matter, *Plaquemines Parish Government*, CBCA 5933-FEMA, 18-1 BCA ¶ 36,966, the panel

unanimously agrees both that there is no basis to revisit that determination, as requested by FEMA during the hearing in this matter, and that the applicant has not demonstrated entitlement to additional compensation.

The issue here need not be belabored. FEMA provides public assistance following a disaster pursuant to the Stafford Act, 42 U.S.C. §§ 5121 et seq. (2012), implementing regulations 44 CFR 13.36, pt. 206 (2017), and policies and guidance. Costs at issue here, such as additional costs the applicant incurred for an architect/engineering firm to come up with plans for a completion contractor, for the completion contractor to correct work not performed properly by the initial contractor, and for expenses incurred until the follow-on contractor was on-site and could complete various work, would not have been incurred but for the defaults and were not the result of the hurricane. The applicant seeks reimbursement for ineligible costs.

FEMA does not bear the risk of default by the contractor or surety. As FEMA has concluded, costs arising only because of the default of the initial contractor and/or surety are not costs of eligible work directly resulting from a disaster; FEMA has paid for costs to complete the work required by the hurricane. This position of FEMA is consistent with statute and implementing regulations and guidance. The suggestion by the applicant that it may be entitled to payment up to the price of the next low bidder on the original contract lacks support in statute, regulation, and guidance. One looks to eligible work; once the applicant made an award to the original contractor, the pricing proposed by a non-awardee is not relevant. The applicant can receive, as it has here, the costs it incurred to perform eligible work.

The applicant has failed to demonstrate that it is entitled to additional compensation. The application is denied.

*Joseph A. Vergilio*  
JOSEPH A. VERGILIO  
Board Judge

*Catherine B. Hyatt*  
CATHERINE B. HYATT  
Board Judge

*Allan H. Goodman*  
ALLAN H. GOODMAN  
Board Judge