



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 19, 2019

CBCA 6434-FEMA

In the Matter of PLAQUEMINES PARISH GOVERNMENT

Michael G. Gaffney and Christopher M. Gaffney of Gaffney & Gaffney, Metairie, LA, counsel for Applicant.

Lynne Browning, Assistant Deputy Director, and Jaron Herd, Appeals Manager, Governor's Office of Homeland Security and Emergency Preparedness, Baton Rouge, LA, appearing for Grantee.

Charles Schexnaildre and John Dimos, 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**, **SULLIVAN**, and **CHADWICK**.

Plaquemines Parish Government (PPG) moves for the correction of technical or arithmetic errors in the decision issued by the panel. *Plaquemines Parish Government*, CBCA 6434-FEMA, 19-1 BCA ¶ 37,457. PPG asserts that the decision contains an error in finding that PPG and its experts “did not provide a basis for funding the repairs for damage that was the direct result of Hurricane Katrina.” *Id.*, at 181,993.

PPG moves for correction pursuant to Rule 613 of the Rules of the Civilian Board of Contract Appeals (CBCA), rules that were issued in March 2019 for arbitrations to be conducted by the Board pursuant to 42 U.S.C. §5189a(d) (2019). PPG cannot invoke this

rule because these rules apply to arbitration of matters arising from disasters that occurred after January 1, 2016. Rule 601 (48 CFR 6106.601) (2019).

PPG's request for arbitration was governed by regulations established by FEMA in 44 CFR 206.209 (2009). These regulations provide that "[a] decision of the majority of the panel shall constitute a final decision, binding on all parties. Final decisions are not subject to further administrative review." 44 CFR 206.209(k)(3). There is no provision for reconsideration or correction of technical errors in these regulations. *Id.* This provision for no further review "is consistent with the general rule that once an arbitrator issues a decision, he has discharged his duty and has no continuing authority to revise the decision." *Louisiana Department of Natural Resources*, CBCA 4984-FEMA, 16-1 BCA ¶ 36,394, at 199,431. Absent a showing of an obvious error apparent on the face of the decision, an ambiguity that requires clarification, or a failure to consider an issue raised by the parties, the panel has no authority to revisit its decision. *Id.*

PPG's request does not fall within one of these exceptions to the general rule for no further review. Instead, PPG asks the panel to re-examine its determination that, although PPG's experts had "persuasively explained how the inundation of salt water accelerated the deterioration of the fort, PPG and its experts did not provide a basis for funding the repairs for damage that was the direct result of Hurricane Katrina." *Plaquemines Parish Government*, 19-1 BCA at 181,993. This finding flowed from our finding that PPG's "experts described the condition of the fort following Hurricane Katrina, but did not separate that damage from the pre-existing condition of the fort." *Id.* PPG asserts that its experts did provide a basis in the materials that were provided to the panel. While these materials provided dollar estimates for the work that PPG wanted to undertake (amounts disputed by FEMA), the materials and other information provided by PPG did not provide the basis for determining that the damage to be repaired was the direct result of Hurricane Katrina. Because PPG and its experts did not attempt to isolate the damage that was the direct result of the disaster from pre-existing damage, the panel had no basis on which to overturn FEMA's determination not to fund the repairs.

We decline to accept PPG's request to reconsider our decision in this matter.

Jeri Kaylene Somers
JERI KAYLENE SOMERS
Board Judge

Marian E. Sullivan
MARIAN E. SULLIVAN
Board Judge

Kyle Chadwick
KYLE CHADWICK
Board Judge