



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 6, 2023

CBCA 7596-FEMA

In the Matter of SECOND WIND CORPORATION

Phyllis M. Chestang, Executive Director of Second Wind Corporation, Altadena, CA, appearing for Applicant.

Ryan Buras, Deputy Director for Recovery, David Gillings, Public Assistance Officer, and Nicholas Vaquero, Program Manager, Governor's Office of Emergency Services, Mather, CA, appearing for Grantee.

Frank Bruscato and Charles Schexnaildre, 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 **ZISCHKAU**, **SULLIVAN**, and **CHADWICK**.

CHADWICK, Board Judge, writing for the panel.

The applicant, which states that it is a nonprofit corporation, sought arbitration of a denial by the Federal Emergency Management Agency (FEMA) of public assistance grant funding. FEMA found that the applicant "did not demonstrate it either owns or operates an eligible" private, nonprofit disaster-relief entity. Having obtained clarification from the applicant regarding the grounds for its arbitration request, the panel concludes that the Board lacks statutory authority to arbitrate this matter.

Our arbitration authority extends to disputes "of more than \$500,000" when the applicant operates in an urban area. 42 U.S.C. § 5189a(d)(1), (3) (2018); *see* Board Rule 602 (48 CFR 6106.602 (2021)). We take note that the applicant is located in greater Los Angeles, California, which is urban. The amount genuinely in dispute here with respect to

eligibility for FEMA public assistance certainly does not exceed \$500,000. Substantially all of the cost documentation submitted by the applicant is for expenses of the applicant's executive director, rather than corporate expenses of the applicant itself.

To the extent that *any* of the costs in the record before us were actually paid by the applicant, the two largest cost categories (\$184,172.76 in university tuition and fees and \$1.4 million itemized as "WAGES/INCURRED COSTS-LOSSES" for "work opportunities/contracts" which were allegedly "stolen") are linked to the executive director, not to the applicant, and do not, in any event, reflect costs of responding to a particular disaster. With those two, plainly irrelevant cost categories removed, the remaining costs, of whatever origin, total significantly less than \$500,000. Accordingly, it is evident from the record that we lack authority to proceed.

Decision

The arbitration is dismissed for lack of authority.

Kyle Chadwick

KYLE CHADWICK
Board Judge

Jonathan D. Zischkau

JONATHAN D. ZISCHKAU
Board Judge

Marian E. Sullivan

MARIAN E. SULLIVAN
Board Judge