



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 18, 2024

CBCA 7665-FEMA

In the Matter of SCHOOL BOARD OF BAY COUNTY, FLORIDA

Wendy Huff Ellard of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Jackson, MS, counsel for Applicant; and Chris Bomhoff, Disaster Policy Specialist, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Fort Lauderdale, FL, appearing for Applicant.

Stephanie Stachowicz (Twomey), General Counsel, Dezirée T. Elliott, Senior Attorney, and Matthew Toplak, Recovery Attorney, Florida Division of Emergency Management, Tallahassee, FL, counsel for Grantee; and Cassie Sykes, Appeals Officer, Melissa Shirah, Recovery Bureau Chief, and Melody Cantrell, Recovery Legal Liaison, Florida Division of Emergency Management, Tallahassee, FL, appearing for Grantee.

Emanuel Rier Soto, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Guaynabo, PR; and Christiana Cooley, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **ZISCHKAU**, **SULLIVAN**, and **O'ROURKE**.

SULLIVAN, Board Judge, writing for the Panel.¹

The School Board of Bay County, Florida (Bay County) sought to arbitrate the partial denial by the Federal Emergency Management Agency (FEMA) of its request for

¹ By order dated October 8, 2024, the Chair of the Board directed that Judge Sullivan replace Judge Vergilio on the panel and serve as panel chair.

reimbursement of costs that it incurred for the repair of several buildings at Rutherford High School and Vera Shamplain Sports Complex. For the reasons that follow, we grant in part Bay County's request.

Background

On October 10, 2018, Hurricane Michael made landfall in Bay County. On October 11, 2018, the President declared the event a major disaster which authorized FEMA to obligate public assistance (PA) funds for the repair of buildings and other structures damaged by the storm. The hurricane damaged all of the buildings and other structures on the Rutherford High School campus, located in Bay County. Request for Arbitration (RFA) at 4.

With FEMA's agreement, Bay County hired professional architects to document the damage caused by the hurricane. RFA, Exhibit 7. The architects' reports were submitted to FEMA, RFA, Exhibits 5-2 through 5-87, and FEMA determined the eligible scope of repair for each building. FEMA Exhibit 13.

Using a competitive process, Bay County hired a general contractor, RFA, Exhibit 2 at 5-6, and the general contractor obtained bids for the repair work to be performed. RFA, Exhibit 13. The general contractor obtained bids from known, respected local contractors and advertised in the local paper. *Id.* As work to repair the buildings began, the general contractor and the architects found additional damage and either added the repair of the additional damage to the scope of the original subcontract or issued a change order. RFA, Exhibits 18 through 30 (settlement memos). Bay County did not submit any additional reports to FEMA documenting the additional damages that had been discovered.

Bay County submitted its request for reimbursement, seeking reimbursement of more than \$6 million, based upon initial estimates. RFA, Exhibit 1. Based upon the damages captured in the "damages, descriptions, and dimensions" report, FEMA estimated that Bay County's costs would exceed \$6 million. RFA, Exhibit 4 at 3. FEMA agreed to obligate approximately \$3.8 million, finding that Bay County had failed to provide sufficient "documentation to substantiate claimed work and costs for each facility." RFA, Exhibit 1 at 8. "FEMA was unable to match provided invoices to eligible work." *Id.* FEMA also found that several costs were addressed in a separate emergency project that FEMA funded. *Id.*

Bay County appealed FEMA's determination and requested reimbursement of \$5.7 million. RFA, Exhibit 4 at 5. The requested amount was revised downward during the first appeal to approximately \$4.9 million. *Id.* at 7. FEMA decided that Bay County could be reimbursed only \$3.6 million, after calculating the cost of the work within the eligible scope

using the cost estimating software RSMMeans. *Id.* at 8-10. FEMA deemed this amount to be the reasonable amount to reimburse Bay County for the eligible scope. *Id.*

Bay County filed a request for arbitration in February 2023. Bay County initially sought \$4,910,126.14, but that figure increased to \$5,450,617.34, as Bay County discovered additional costs incurred for the replacement of the roof and the gym floor in building 17. Reply to FEMA’s Response to the Request for Arbitration at 17; Reply to FEMA’s Cost Analysis Report at 12.

In an effort to resolve the dispute during the arbitration proceedings, Bay County prepared a series of settlement memos, identifying, building-by-building, the documentation that it provided to support its claimed costs. For some buildings, Bay County reduced the amount that it was seeking. In response to these memos, FEMA prepared its cost analysis report. FEMA detailed the costs that it could agree to pay and the costs for which it believed Bay County’s documentation was still lacking. In those instances in which FEMA did not agree to the amount that Bay County was seeking, FEMA recommended that Bay County be reimbursed one-hundred-and-ten percent of FEMA’s estimate for the original, approved eligible scope of work. Because these documents present the parties’ disputes by building and represent the parties’ current positions, the panel focused its analysis upon the disputed costs documented in the settlement memos and cost analysis report.

Discussion

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5207 (2018), provides that a local government entity may obtain PA funds “for the repair, restoration, reconstruction, or replacement of a public facility damaged or destroyed by a major disaster and for the associated expenses incurred by the government.” *Id.* § 5172(a)(1)(A). Costs incurred must be “necessary and reasonable” and “adequately documented.” 2 CFR 200.403(a), (g) (2024). Applicants for PA funds bear the burden of substantiating the claim. Public Assistance Program and Policy Guide (PAPPG) (Apr. 2018) at 133. When an applicant seeks PA funds, the applicant and FEMA must agree upon the eligible scope of the repairs to be undertaken. *Id.* at 134. This eligible scope is developed based upon reports of the dimensions and the cause of the damage. *Id.* at 134-35.

There is no dispute that Bay County is an eligible applicant or that its facilities are eligible. Moreover, as shown in the addendum to this decision, the parties agree upon the costs that Bay County should be reimbursed either for entire buildings or for scopes of work within buildings. We leave those agreements undisturbed and include them in the amount that Bay County shall be reimbursed. The panel focused its review on the costs in dispute, which fall into two categories: (1) eligible scope; and (2) reasonableness. We set forth our

findings on specific costs in the addendum. Below, we outline the policy requirements that guided those findings.

Eligible Scope

The development of a project worksheet requires reports on the extent of damage and agreement upon eligible scope. PAPPG at 134-35. If, during construction, an applicant discovers additional, hidden damage, it must report this damage with a description of the damage and an explanation of how the storm caused the damage. *Id.* at 136-37. Failure to report this additional damage to FEMA will jeopardize funding. *Id.*

Bay County's licensed architects documented the damage to each building in reports, and these reports became the basis for the determination of the eligible scope. Where the parties' dispute the eligible scope documented by the architects, the panel agrees with the architects' reports. However, in those instances in which Bay County discovered additional damage that was not documented and reported to FEMA, the panel denies reimbursement because Bay County has not provided documentation to support the eligible scope.

There are other instances in which Bay County and FEMA agreed upon the eligible scope, but the cost support does not match that eligible scope. For example, in building 13, the eligible scope matches the quantity of flooring identified by Bay County's architects, but the cost support shows replacement of flooring in a quantity that far exceeds the eligible scope. When the panel was unable to match the cost support to the eligible scope, we accepted FEMA's recommendation that Bay County should be paid one-hundred-and-ten percent of FEMA's estimate of the original scope.

The panel also noted instances in which the amount that Bay County requested did not reflect the cost that it incurred. For example, Bay County requested reimbursement for costs to replace the flooring in building 17, but the amount requested was more than the total reflected in labor and material invoices. FEMA reimburses the actual costs incurred for eligible work. 44 CFR 206.203(c)(1); PAPPG at 144. Where we were able to determine the actual costs paid, the panel identified the amount that Bay County shall be reimbursed.

For the canopies between buildings and for exterior lights, it appears that Bay County seeks funding for an improved project. The original canopies were made of plywood and polyvinyl (PVC) roofing material, and Bay County replaced them with metal canopies. While applicants may pursue improved projects, FEMA policy only permits reimbursement of the costs to replace the original structure. PAPPG at 106-07. Accordingly, the panel capped the reimbursement for the canopies at the amount that FEMA estimated to replace the original design.

Finally, Bay County also seeks approximately \$700,000 in soft costs, which it calculated to be nineteen-and-a-half percent of the direct subcontractor costs of \$3.6 million. Reply to FEMA's Cost Analysis Report at 9 n.31. An applicant may recover soft costs, which are intended to capture architectural costs, engineering costs, and project management costs. PAPPG at 100. However, like other costs, soft costs must be tied to the performance of eligible work and be adequately documented. *Id.* at 21-22. Other than stating that its soft costs are a percentage of its direct subcontractor costs in a footnote in its final brief, Bay County has provided no explanation of its request for these costs and how they relate to eligible work. The pay application for its general contractor includes approximately \$400,000 in general conditions costs, RFA, Exhibit 5-135 at 3, but there is no way to tie these costs to the percentage of eligible work that the general contractor performed. FEMA states that it has included a portion of soft costs in its estimates, FEMA's Cost Analysis Report at 5 n.12, but it has provided no explanation as to what the amounts were intended to cover or how these amounts were calculated. Without an explanation of the basis for the percentage of soft costs, the panel cannot direct FEMA to reimburse Bay County these soft costs. FEMA may receive from Bay County actual invoices for architect fees, engineering fees, and project management fees and reimburse eligible soft costs consistent with the PAPPG.

Reasonable Costs

We are also required to decide issues of reasonableness. Although the parties' briefs describe the issue of reasonableness as affecting all of the costs that Bay County seeks, the panel only sees FEMA challenging the reasonableness of the roofing costs and one specific heating, ventilation, and air conditioning (HVAC) cost for building 6. As noted above, FEMA must determine that a cost is reasonable as part of its evaluation for reimbursement. A cost is reasonable "if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision to incur the costs was made." 2 CFR 200.404. To ascertain reasonableness, FEMA examines costs to determine "if the cost is comparable to the current market price for similar goods and services in the same geographic area." *Id.* 404(c); PAPPG at 22. FEMA policy further requires that local government applicants for public assistance obtain contracts through full and open competition. PAPPG at 30.

Bay County requests reimbursement for two different types of roofing: the replacement of PVC roofing on four buildings, and the repair of metal roofing on seven buildings. While FEMA challenged the reasonableness of roofing costs for three PVC roof replacements and two metal roof repairs, it also provided a basis to determine the reasonableness of these costs. For the metal roof repairs, FEMA provided an estimate of \$23.22 per square foot, FEMA's Cost Analysis Report at 8, which the panel applied to derive the reasonable cost that Bay County should be reimbursed. For the PVC roof replacement,

FEMA agreed to the cost of the replacement of the roof on building 9. Since the price per square foot for building 9 was the same price as the roof replacement for all of the other roofs (\$18 per square foot), the panel deemed all of the PVC roof replacement costs to be reasonable.

FEMA also found the HVAC cost for building 6 to be unreasonable because the service was obtained, purportedly, without competition. FEMA's Cost Analysis Report at 12. FEMA does not provide a citation for this assertion, and we are unable to find support for it in the record. Moreover, the declaration of the president of Bay County's general contractor states that services were obtained through competition, contrary to FEMA's assertion. RFA, Exhibit 13 ¶ 6. Given that FEMA policy requires competition and Bay County provided evidence that it conducted competition, we discount FEMA's assertion and find the cost reasonable.

Decision

The panel finds that Bay County shall be reimbursed \$4,037,633.52.

Marian E. Sullivan

MARIAN E. SULLIVAN
Board Judge

Jonathan D. Zischkau

JONATHAN D. ZISCHKAU
Board Judge

Kathleen J. O'Rourke

KATHLEEN J. O'ROURKE
Board Judge

Addendum - Analysis of Claims by Building

Building 3

Bay County requests reimbursement of \$135,450 for the replacement of the roof and drywall/acoustic ceiling tile (ACT)/stucco work. Request for Arbitration (RFA), Exhibit 18 at 1. Bay County shall be reimbursed **\$135,450**.

Roof: Bay County's architects reported the need to replace 7250 square feet of polyvinyl chloride (PVC) roof. RFA, Exhibit 5-12 at 2. FEMA included the replacement of the upper roof (4700 square feet) in the eligible scope but denied the replacement of the lower roof because the damage was not adequately documented. FEMA's Cost Analysis Report at 6. The panel accepts the determination of Bay County's architects regarding the size of the roof area that was damaged and in need of replacement. The roofing subcontract lists the replacement of the building 3 roof as a separate line item at a cost of \$135,000. RFA, Exhibit 5-92 at 24-25; *see also* RFA, Exhibit 12 at 55-56 (subcontractor pay application). Bay County also used the same contract line item to support its costs for the roof replacement on building 9, which FEMA has agreed to reimburse. The calculated price for both roofs is \$18 per square foot. We find this amount reasonable. Bay County shall be reimbursed **\$135,000**.

Drywall/ACT/Stucco: FEMA agrees that Bay County should be reimbursed **\$450** for repairs to these items. FEMA's Cost Analysis Report at 6.

Building 4

Bay County requests reimbursement of \$135,194 for four scopes of work: roofing, electrical, drywall/ACT/stucco, and HVAC. RFA, Exhibit 19 at 1. Bay County shall be reimbursed **\$82,452.44**.

Electrical: FEMA agrees that Bay County should be reimbursed **\$1000** for the electrical scope of work. FEMA's Cost Analysis Report at 8.

HVAC: FEMA agrees that Bay County should be reimbursed **\$9034** for HVAC repair. FEMA's Cost Analysis Report at 9.

Roof: Bay County's architects reported the need to repair 2768² square feet of damaged metal roofing, 375 linear feet of the lightning arrester system, and 120 linear feet of metal roof ridge cap. RFA, Exhibit 5-16 at 2-4. FEMA identified this work as eligible. FEMA Exhibit 13 at 212. Bay County seeks \$75,000 for this scope of work. RFA, Exhibit 19 at 3. If this cost is divided by the square footage of the repair, the price would be approximately \$27 per square foot. But we cannot use this figure because we do not have a segregated price for the lightning arrester or the metal ridge cap, which were included in this price. FEMA disputes the cost per square foot used by Bay County and provided its own estimate of \$23.22 per square foot. FEMA's Cost Analysis Report at 8. Using FEMA's estimate for the repair cost, we find the cost of \$64,272.86 ($\23.22×2768 square feet) to be a reasonable cost of repair. To this figure, we add FEMA's estimate for the cost of the metal ridge cap (\$843) and the lightning arrester (\$246). FEMA's Cost Analysis Report at 48. Bay County's architects also reported the need to repair 152 linear feet of metal fascia. RFA, Exhibit 5-16 at 7.³ Bay County requests reimbursement of \$4560 for metal fascia, which the panel concludes is adequately supported by the record. RFA, Exhibits 5-92 at 100-01, 12 at 79. Bay County shall be reimbursed **\$69,921.96** for the roof repair.

Drywall/ACT/Stucco: Bay County's architects documented the need to repair 3602 square feet of ACT. RFA, Exhibit 5-16 at 7-9. FEMA contends that 2843 square feet of ACT repair was completed and reimbursed on a different project worksheet and that another 743 square feet was not adequately documented. FEMA's Cost Analysis Report at 9. The panel finds that the 743 square feet was adequately documented. *See* RFA, Exhibit 5-16 at 9. FEMA, in its initial determination memorandum, only approved \$40.34 for the replacement of the approximately twelve square feet of ACT ($\$3.36$ per square foot). FEMA's Cost Analysis Report at 9. Bay County now requests \$45,600 to repair 10,290 square feet of ACT. RFA, Exhibit 19 at 7. This scope appears to be the replacement of all of the ACT system throughout the building and was covered in a change order with the drywall subcontractor. RFA, Exhibit 10 at 44. Bay County has not provided an architect's report or any other evidence to establish the need to replace 10,290 square feet of ACT as the result of damage caused by the storm. Bay County has also not explained whether there is overlap between the ACT repair completed on a different project worksheet. Bay County shall be

² Bay County provides two conflicting quantities for the required roof repair in building 4. In an exhibit prepared during the arbitration, Bay County states that the eligible metal roof repair work is 808 square feet. RFA, Exhibit 15 at 4. Bay County's architects reported that the damaged area measured 2768 square feet. *See* RFA, Exhibit 5-16 at 2-4. The panel relies upon the architects' measurement.

³ Bay County, in its settlement memo for building 4, mistakenly stated that the architects did not identify this damage. RFA, Exhibit 19 at 4.

reimbursed **\$2496.48**, which is FEMA's estimated price per square foot (\$3.36) multiplied by the 743 square feet of ACT that the panel finds was adequately documented.

Building 6

Bay County requests reimbursement of \$57,300 for three scopes of work: roofing, drywall/ACT/stucco, and HVAC. RFA, Exhibit 20 at 1. Bay County shall be reimbursed **\$56,800**.

Roof: Bay County's architects reported damage to 2520 square feet (2100 square feet on the north side and 420 square feet on the south side) of metal roofing and damage to the lightning arrester system on building 6. RFA, Exhibit 5-26 at 2-4. Based upon the photos of the roof and the scope of work prepared by the architects, FEMA asserts that only the lightning arrester system and 420 square feet of the roof is eligible for repair. FEMA's Cost Analysis Report at 11. The panel accepts the architects' documentation of the eligible damage. The roofing subcontract lists the replacement of the building 6 roof as a separate line item at a cost of \$50,000. Exhibit 12 at 52 (subcontractor pay application). Because the actual amount incurred is less than the amount it would receive if the panel multiplied FEMA's estimate for the cost of the metal roof repair (\$23.22) by 2520 square feet, which results in an estimated cost of \$58,514.40, Bay County shall be reimbursed **\$50,000**.

Drywall/ACT/Paint: Bay County's architects reported damage to gypsum board and ACT in various rooms in building 6, including rooms 32 and 33. RFA, Exhibit 5-26 at 5-13. Bay County provided a change order to the drywall subcontract to support its claim for \$5300 in costs incurred for this work. RFA, Exhibit 10 at 44. The scope of work in that change order is limited to gypsum board repair, painting, and ACT repair in rooms 32 and 33. *Id.* This aligns with the damage described in the architects' report for rooms 32 and 33. *See* RFA, Exhibit 5-26 at 8-10. FEMA asserts that 1764 square feet of ACT repair and sixty-nine square feet of drywall repair was completed on another project worksheet but does not identify rooms 32 and 33 as part of the scope of that other project. FEMA's Cost Analysis Report at 11. Bay County shall be reimbursed for its actual cost of **\$5300**.

HVAC: Bay County's architects documented damage to the roof vent assembly on building 6, which FEMA included in the approved eligible scope. RFA, Exhibit 5-26 at 3; FEMA Exhibit 13 at 215. The HVAC subcontract includes \$2000 for the replacement of the roof vent assembly, RFA, Exhibit 5-100 at 25, but the cost of materials was later deducted from the subcontract. *Id.* at 60. The HVAC subcontractor invoiced \$1500 for work in building 6, RFA, Exhibit 12 at 135, and it does not appear that any additional scope was added for building 6. *See* RFA, Exhibit 5-100 at 25-67. The panel is unable to determine the cost of the materials for this repair. FEMA challenges this cost as unreasonable based upon its

unsupported assertion that the HVAC subcontract was not obtained through competition. FEMA's Cost Analysis Report at 12. Bay County shall be reimbursed **\$1500**.

Building 9

Bay County requests reimbursement of \$100,855.70 for four scopes of work: roofing, electrical, HVAC, drywall/ACT/stucco. RFA, Exhibit 22 at 1. Bay County shall be reimbursed **\$49,257.99**.

Roof: FEMA agrees that Bay County should be reimbursed **\$45,000** for the replacement of the roof. FEMA's Cost Analysis Report at 17.

Electrical: Bay County's architects reported damage to fifteen lights as well as other electrical fixtures in and around the building. RFA, Exhibit 5-38 at 3; RFA, Exhibit 5-40 at 2. FEMA included the other electrical fixtures, but not the fifteen lights, in the eligible scope. FEMA Exhibit 13 at 223-24. Bay County provides the electrical subcontract as support for the costs incurred for the installation of twenty-three lights at a total cost of \$9375.96. RFA, Exhibit 5-105 at 24-25. Moreover, in the first change order, the material costs and associated surcharges and taxes were deducted from the subcontract. *Id.* at 31-32. Because the contract line item for the light installation does not break down the material costs by building, the panel cannot determine the labor costs attributable to this electrical scope in building 9 or cost per light fixture. Bay County provided an invoice and proof of payment for fifteen light fixtures at a total cost of \$1500, which we include in the amount that Bay County shall be reimbursed. RFA, Exhibits 5-105 at 96, 9 at 1, 20-21. FEMA estimated that the eligible scope would cost \$2,182.77. FEMA's Cost Analysis Report at 17. We accept FEMA's recommendation that Bay County be reimbursed **\$3901.05**, which is one-hundred-and-ten percent of FEMA's estimated repair cost (\$2401.05), plus the cost of the fifteen light fixtures (\$1500).

HVAC: Bay County's architects did not report the need to install new duct, insulation, flex, and grills for the HVAC equipment, but Bay County asserts that the architects determined the need for this work and included the scope in a subcontract. RFA, Exhibit 22 at 10. Bay County has not provided an architect's report or any other evidence to establish that this work was needed to repair damage caused by the storm. FEMA did not estimate any costs for HVAC work in building 9. The panel has no basis upon which to direct the reimbursement of HVAC costs for building 9.

Drywall/ACT/Stucco: Bay County's architects did not report the need to repair 1592 square feet of ACT, RFA, Exhibit 22 at 11, and Bay County has not provided an architect's report or any other evidence to establish that this work was needed as a result of damage caused by the storm. FEMA estimated the cost for the ACT repair in building 13 to be \$324.49.

FEMA's Cost Analysis Report at 18. We accept FEMA's recommendation that Bay County be reimbursed **\$356.94**, which is one-hundred-and-ten percent of its estimated repair cost.

Building 12

Bay County requests reimbursement of \$157,362 for four scopes of work: roofing, electrical, HVAC, and drywall/ACT/stucco. RFA, Exhibit 23 at 1. Bay County shall be reimbursed **\$51,902.55**.

Roof: FEMA agrees that Bay County should be reimbursed **\$27,400** for the costs to repair the roof. FEMA's Cost Analysis Report at 20.

Electrical: FEMA agrees that Bay County should be reimbursed **\$18,625** for the electrical scope. FEMA's Cost Analysis Report at 21.

Drywall/ACT/Stucco: Bay County's architects recorded damage to 1201 square feet of ACT. RFA, Exhibit 5-50 at 8-12. FEMA only included approximately twenty square feet of ACT as eligible scope. FEMA's Exhibit 13 at 234-36. Bay County's general contractor quoted a price of \$2.50 per square foot to replace forty feet of ACT in building 12. RFA, Exhibit 5-89 at 26. Bay County's remaining claimed costs arose from change orders 4 and 14, which were for the repair of damage not included in the architects' report. Change order 4 is for "demo and replace[ment] [of] additional acoustic ceiling tile." RFA, Exhibit 23 at 23. Change order 14 is for damages to room 163 discovered during repair and includes demo of the existing ceiling, four soffits, and replacement of the ceiling grid. *Id.* at 24; RFA, Exhibit 10 at 88. The architects' report does document damage to room 163, but the extent of the damage is twelve square feet of ACT, light repair, and painting. RFA, Exhibit 5-50 at 8-9. Bay County shall be reimbursed **\$3002.50** for the 1201 square feet of ACT damage originally identified at the price of \$2.50 per square foot.

HVAC: Bay County's architects reported damage to a fume hood, power vent, and hatch assembly. RFA, Exhibit 5-50 at 2-4. The HVAC subcontract includes the replacement of the fume hood but also includes the cost to replace two HVAC wall package units. RFA, Exhibit 5-100 at 25. The replacement of wall package units was not included in the architects' damage report. Bay County also incurred costs for grills, duct work, and interior HVAC equipment. RFA, Exhibits 5-100 at 64, 5-101 at 2. Apart from the replacement of the fume hood, none of this work was identified in the architects' reports, and Bay County has not provided any other evidence to establish that this work was needed to repair damage caused by the storm. Although the panel is unable to determine the actual cost of these items from Bay County's documents, FEMA provided in its cost analysis report estimates for metal fume hood (\$1492.56) and the power vent (\$1382.49). FEMA's Cost Analysis Report at 58.

Bay County shall be reimbursed **\$2875.05**, the combined total of FEMA's estimates for these two items.

Building 13

Bay County requests reimbursement of \$646,736.09 for the following seven scopes of work: roofing, electrical, flooring, window blinds, window sills, drywall/ACT/stucco, and HVAC. RFA, Exhibit 24 at 1. Bay County shall be reimbursed **\$469,545.73**.

Roof: Bay County's architects reported damage to 7790 square feet of the 17,080 square foot PVC roof, which FEMA included in the approved scope. RFA, Exhibit 5-54 at 2; FEMA Exhibit 13 at 238. FEMA now deems the upper roof of building 13 (14,060 square feet) to be eligible for replacement, but Bay County has not demonstrated how the lower roof (3380 square feet) was damaged or why it is in need of replacement. FEMA's Cost Analysis Report at 23. We accept the determination of Bay County's architects regarding the size of the roof area that was damaged and in need of replacement. The roofing subcontract lists the replacement of the building 13 roof as a separate line item at a cost of \$307,500. RFA, Exhibit 5-92 at 25; *see also* RFA, Exhibit 12 at 53-55 (subcontractor pay application).

FEMA challenges Bay County's claim amount because it is supported only by the line item in the subcontractor's contract. RFA, Exhibits 5-92 at 25, 12 at 54 (subcontractor pay application). FEMA asserts that it cannot validate the amount without a statement of work (SOW). FEMA's Cost Analysis Report at 23. Although the record does not contain the SOW for the roof replacement, the subcontractor's contract includes a description of the work that the contractor was to perform. RFA, Exhibit 5-92 at 25. The architects' reports also contain the square footage of the roof for the building. RFA, Exhibit 5-78 at 2. Although the roofing subcontract was obtained through competition, FEMA also contends that the amount is not reasonable for the quantity of roof damage. FEMA's Cost Analysis Report at 23. Bay County used the same contract line item to support its costs for the roof replacement on building 9, which FEMA has agreed to reimburse. *Id.* at 17. The calculated price for both roofs was \$18 per square foot. We find this amount to be reasonable. Bay County shall be reimbursed **\$307,500**.

Bay County's architects also reported damage to approximately 400 feet of soffit, which FEMA included in the approved scope. RFA, Exhibit 5-54 at 4; FEMA Exhibit 13 at 120. Bay County provides change order 8 to the roofing subcontractor's contract as support for its cost of \$15,300, to repair this damage. RFA, Exhibits 5-92 at 86-87, 12 at 63. Bay County shall be reimbursed **\$15,300** for this approved scope of work.

Electrical: FEMA agrees that Bay County should be reimbursed **\$66,158.67** for the electrical items. FEMA's Cost Analysis Report at 24.

Flooring: Bay County's architects reported damage to vinyl flooring in ten different classrooms in an amount totaling less than 1000 linear feet. RFA, Exhibit 5-54 at 7-30. Bay County's architects also reported damage to 416 square feet of vinyl tile in room 202. *Id.* at 10. FEMA included all of this damage in the eligible scope. FEMA Exhibit 13 at 240-46. FEMA estimated \$6,096.52 to be the cost of the removal and replacement of this flooring. FEMA's Cost Analysis Report at 25. Bay County's subcontract for this work includes square footage amounts that far exceed the damage amounts reported by its architects, and the record contains no explanation as to why. RFA, Exhibit 5-93 at 30-31. We accept FEMA's recommendation that Bay County be reimbursed **\$6,706.17**, which is one-hundred-and-ten percent of its estimated repair cost.

Window blinds: FEMA agrees that Bay County should be reimbursed **\$10,784.10** for these items. FEMA's Cost Analysis Report at 26.

Window sills: Bay County's architects reported damage to window sills in nine classrooms, each measuring thirty-six feet. RFA, Exhibit 5-54 at 7-29. FEMA included all of this damage in the eligible scope. FEMA Exhibit 13 at 240-46. FEMA estimated \$5213.44 for the replacement of these sills.⁴ Bay County's proof of the cost of this work is a change order to a subcontract that describes the work to "cut six (6) house slabs," without any additional information to tie this scope to the replacement of these window sills. RFA, Exhibit 5-93 at 102-03. We accept FEMA's recommendation that Bay County be reimbursed **\$5,734.78**, which is one-hundred-and-ten percent of its estimated repair cost.

Drywall/ACT/Stucco: Bay County's architects reported damage to the drywall, ACT and stucco in building 13, which FEMA included in the eligible scope. RFA, Exhibit 5-54; FEMA Exhibit 13 at 240-46. Bay County provided the drywall subcontract as support for its claim for \$62,857 in incurred costs, but the subcontract only describes the work in building 13 as "finish only, new gyp installed after the storm," and "paint all new gyp with repairs to match the existing paint." RFA, Exhibit 10 at 23. This scope description does not tie sufficiently to the damage described by the architects. Bay County also incurred costs for additional damage to these building elements, including the building sheathing and stucco, but the need for this work was discovered as the repair work proceeded. RFA, Exhibit 10 at 38. Bay County has not provided an architect's report or any other evidence to establish that this work was needed to repair damage caused by the storm. FEMA estimated the cost for the drywall/ACT/paint work to be \$26,601.10, and the cost for the stucco to be

⁴ FEMA's estimate is the cost of the replacement of 306 feet of sills, rather than 324 feet. In the eligible scope report, FEMA misdescribed one of the window sills as eighteen feet, rather than thirty-six feet, long. FEMA Exhibit 13 at 240. The panel has no way to adjust the estimate upward to include the additional eighteen feet.

\$24,957.66. FEMA's Cost Analysis Report at 24. We accept FEMA's recommendation that Bay County be reimbursed **\$56,714.64**, which is one-hundred-and-ten percent of its estimated repair costs for these two scopes of work.

HVAC: Bay County's architects did not report the need to replace the hood supply fan and exhaust fan, but Bay County asserts that the architects determined the need for this work and included the scope in a subcontract. RFA, Exhibits 24 at 26, 5-100 at 25. Bay County has not provided an architect's report or any other evidence to establish that this work was needed to repair damage caused by the storm. FEMA estimated the cost for the HVAC work in building 13 to be \$613.06. FEMA's Cost Analysis Report at 25. We accept FEMA's recommendation that Bay County be reimbursed **\$647.37**, which is one-hundred-and-ten percent of its estimated repair cost.

Building 15

Bay County requests reimbursement of \$431,907 for three items: roofing, electrical, and drywall/ACT/stucco. RFA, Exhibit 25 at 1. Bay County shall be reimbursed **\$147,370.34**.

Roof: Bay County's architects reported damage to 2720 square feet of the metal roof, which FEMA included in the approved scope. RFA, Exhibit 5-58 at 2; FEMA Exhibit 13 at 249. As support for its claimed cost of \$347,700, Bay County provided a change order to the roofing subcontract. RFA, Exhibit 5-92 at 95-96. The scope in the change order includes additional scope not included in the architects' report. As work proceeded, Bay County determined that the entire roof needed to be replaced, but Bay County has not provided an architect's report or any other evidence to establish that this work was needed to repair damage caused by the storm. We accept FEMA's recommendation that Bay County shall be reimbursed **\$76,163.01**, which is one-hundred-and-ten percent of its estimated repair cost.

Electrical: Bay County's architects reported damage to forty lights, two receptacles, a photocell, and a public address system (PAS). RFA, Exhibit 5-60 at 2-8. FEMA included the receptacles, photocell, PAS repair, and twenty lights as the eligible work. FEMA Exhibit 13 at 250-52. Bay County provides electrical subcontract change orders as proof of its costs. RFA, Exhibit 5-105 at 101, 105. Change order 17 totals \$4,065.33 and is for the removal and replacement of eight light fixtures. *Id.* at 101. Change order 19 totals \$44,785 for building 15 and is for "various repairs." *Id.* at 105. The detailed description of work for change order 19 explains that "various repairs" refers to the repair and replacement of fixtures, PAS speakers, and receptacles. *Id.* Bay County shall be reimbursed **\$48,850.33**.

Drywall/ACT/Paint/Stucco: Bay County's architects reported ACT, drywall, and paint damage in various rooms but did not record stucco damage. RFA, Exhibit 5-58 at 5-8. FEMA included only the drywall, ACT, and paint damage in the eligible scope. FEMA

Exhibit 13 at 247-52. Change order 13 for the drywall subcontract covered the repair of ACT, paint, and drywall in building 15 at a cost of \$22,527. RFA, Exhibit 10 at 87. Bay County identified the additional need for the stucco repair as work proceeded. Bay County has not provided an architect's report or any other evidence to establish that this work was needed to repair damage caused by the storm. Bay County shall be reimbursed **\$22,357**.

Building 16

Bay County requested reimbursement of \$75,096.33 for three scopes of work: glass, electrical, and drywall/ACT/stucco. RFA, Exhibit 26 at 1. Bay County shall be reimbursed **\$41,536.16**.

Glass: Bay County's architects reported damage to three aluminum windows, which FEMA included in the approved scope. RFA, Exhibit 5-62 at 3; FEMA Exhibit 13 at 253-54. The window glass subcontractor proposed to provide five units to be placed in three windows. RFA, Exhibit 5-97 at 2. FEMA disputes the need for five windows, but we accept that five units were necessary based upon the measurements provided by the architects and the quote. *Id.* Bay County paid \$30,741.75 (\$15,087.65 for installation and \$15,654.10 for materials). RFA, Exhibits 5-97 at 31-33, 8 at 2, 9 at 104-05, 12 at 105-07.⁵ Bay County shall be reimbursed **\$30,741.75**.

Electrical: Bay County's architects reported the need to replace twenty-eight lights, which FEMA included in the approved scope. RFA, Exhibit 5-64; FEMA Exhibit 13 at 254. FEMA estimated the cost for this scope would be \$10,753.52. FEMA's Cost Analysis Report at 30. Bay County paid the subcontractor \$8,391.55 for the installation of these lights. RFA, Exhibit 5-105 at 102-03. We are unable to determine what the material costs were for these lights. *See* RFA, Exhibit 9 (several invoices for electrical material but no information identifying the type of product or where installed). Bay County also incurred costs for "various repairs" to electrical systems and the demolition and replacement of wiring in building 16. RFA, Exhibit 5-105 at 105-06. This damage was discovered as work proceeded, and Bay County has not provided an architect's report or any other evidence to establish that this work was needed to repair damage caused by the storm. Bay County shall be reimbursed **\$10,521.47**, which is one-hundred-and-ten percent of FEMA's original estimate for the approved scope.

⁵ The amount set forth in Bay County's settlement memo was the original subcontract amount (\$31,731). Through a change order, the material costs were deleted from the subcontract and paid for directly by Bay County. With this change, Bay County saved the taxes on the cost of the materials.

Drywall/ACT/Stucco: Bay County's architects reported the need to paint two exterior doors, which FEMA included in the approved scope. FEMA Exhibit 13 at 253-54. FEMA estimated the cost for this scope to be \$248.13. FEMA's Cost Analysis Report at 31. These costs are included in a change order to Bay County's drywall subcontractor. RFA, Exhibit 10 at 90. Bay County also incurred costs for painting the interior doors and cleaning the exterior columns. *Id.* at 92. This damage was discovered as work proceeded, and Bay County has not provided an architect's report or any other evidence to establish that this additional work was needed to repair damage caused by the storm. Bay County shall be reimbursed **\$272.94**, which is one-hundred-and-ten percent of FEMA's original estimate for the approved scope.

Building 17

Bay County requests reimbursement of \$622,070.50 for costs incurred to repair the roof and replace the flooring in the gymnasium. RFA, Exhibit 27 at 3, 5. Although not included in the settlement memo, FEMA agrees in its cost analysis report that Bay County should be reimbursed **\$3169** for ceiling stucco and ACT repairs. FEMA's Cost Analysis Report at 34. Bay County shall be reimbursed **\$514,927.87**.

Roof: FEMA agrees that Bay County should be reimbursed **\$263,490.06** for the costs to repair the roof. FEMA's Cost Analysis Report at 33.

Floor: Bay County's architects reported that the gym floor had been damaged by water intrusion. RFA, Exhibit 5-66 at 16. FEMA did not include the floor in the approved scope but now does not appear to challenge the scope. FEMA's Cost Analysis Report at 33. Although Bay County claims \$358,070.50 for the flooring, it appears that Bay County incurred \$248,268.81 for the flooring repair (\$103,586.50 for materials and \$144,682.31 for installation). RFA, Exhibit 17 at 5, 7.⁶ FEMA challenges the amount claimed for the subfloor material, asserting that the price for the subfloor material changed from \$2.50 per square foot on the quote to \$40 per square foot. *Id.* at 3, 5. However, the quantity for the subfloor on the invoice is not measured in square feet. Bay County shall be reimbursed **\$248,268.81**.

⁶ It appears that Bay County double counted the cost of materials by adding the original installation quote (\$254,484), which included the materials, to the price of the materials (\$103,586.50) to arrive at the amount in the settlement memo (\$358,070.50).

Building 23

In its settlement memo, Bay County revised its request to \$15,000 for the replacement of the roof. RFA, Exhibit 28 at 1. Bay County shall be reimbursed **\$15,000**.

Bay County's architects reported the need to replace 840 square feet of PVC roofing. RFA, Exhibit 5-78 at 2. FEMA initially denied the request for reimbursement, believing that the roof replacement had been authorized on another project worksheet, but it now deems the roof replacement to be eligible work. FEMA's Cost Analysis Report at 37. FEMA challenges Bay County's claimed amount of \$15,000 because it is supported only by the line item in the subcontractor's contract. RFA, Exhibit 5-92 at 25. FEMA asserts that it cannot validate the amount without a statement of work. FEMA's Cost Analysis Report at 37. Although the record does not contain the SOW for the roof replacement, the subcontractor's contract includes a description of the work that the contractor was to perform. RFA, Exhibit 5-92 at 24. The architects' report contains the square footage of the roof for the building. RFA, Exhibit 5-78 at 2. Although the roofing subcontract was obtained through competition, FEMA also contends that the cost Bay County incurred is not reasonable. FEMA's Cost Analysis Report at 37. Bay County used the same contract line item to support its costs for the roof replacement on building 9, which FEMA has agreed to reimburse. The calculated price for both roofs is \$18 per square foot. We find this amount reasonable. Bay County shall be reimbursed **\$15,000**.

Canopies

In the settlement memo, Bay County revised its request to \$106,389 for the replacement of canopies. RFA, Exhibit 29 at 1. Bay County shall be reimbursed **\$61,705.44**.

Bay County's architects reported the need to replace 1824 square feet (eight feet by 228 feet) of canopies made of plywood and PVC roofing material, which FEMA included in the approved scope. RFA, Exhibit 5-80 at 7; FEMA Exhibit 13 at 282. In the original subcontract for this canopy work, Bay County added another section of canopies measuring 125 feet by ten feet. RFA, Exhibit 5-104 at 2. Through change orders, Bay County ordered additional sections of canopies and concrete footers. Bay County has not provided an architect's report or any other evidence to establish that these additional sections of canopy or the concrete footers were needed to replace canopies damaged by the storm. FEMA contends that, rather than replacing the plywood and PVC canopies, Bay County installed all metal canopies, and, as such, the work constitutes an improved project. The description of the material supplied as "clear anodized" supports this contention. RFA, Exhibit 5-104 at 31. As an improved project, Bay County may only receive the amount that FEMA estimated for the replacement of the original design, which FEMA estimated to be **\$61,705.44**.

Exterior Lights

Bay County requests reimbursement of \$413,170 for costs incurred repairing the exterior lighting. RFA, Exhibit 30 at 1. Bay County shall be reimbursed **\$193,672.28**.

Bay County's architects reported the need to replace thirty-four light poles and associated circuit panels and wiring, which FEMA included in the approved scope. RFA, Exhibit 5-28 at 2-4; FEMA Exhibit 13 at 284-85. FEMA estimated the cost for this scope would be \$193,672.28. FEMA's Cost Analysis Report at 40. We are unable to verify Bay County's costs for this scope. The scope of work associated with the exterior lighting subcontract does not align with the scope of work noted in the architects' report that FEMA approved. *See* RFA, Exhibit 5-110 at 4 (showing costs for installing various scopes of work not identified in architects' report). FEMA considered Bay County's changes to the approved scope to be an improved project. FEMA's Cost Analysis Report at 40. Bay County also seeks costs associated with caisson tube installation, construction of a shed, and crushed rock. RFA, Exhibit 5-110 at 33, 49-54. Although Bay County identified these costs in change orders, this damage was identified as work proceeded, and Bay County has not provided an architect's report or any other evidence to establish that this work was needed to repair damage caused by the storm. Bay County shall be reimbursed **\$193,672.28**, which is FEMA's estimate for the original, approved scope.

Amount to be Reimbursed:

The chart below lists the amounts per building, excluding soft costs, that Bay County shall be reimbursed. For buildings for which there is no dispute, the amounts listed in the claimed amount column come from the table in Applicant's Reply to FEMA's Cost Analysis Report. For buildings in dispute, the amounts listed in the claimed amount column come from Bay County's settlement memos.

The amounts listed in the "FEMA's recommendation" column come from FEMA's Cost Analysis Report. If the building was not in dispute, there is no value listed in that column. For buildings 6, 16 and 17, the amounts that FEMA recommended for the different scopes of work do not equal the total amounts that FEMA recommended for each of these buildings. For example, in building 6, FEMA recommended a total reasonable cost of \$29,881.96, but the total cost for the individual scopes of work adds to \$28,998.28 (\$26,941.16 for roofing, \$1284.36 for ACT/drywall/paint, and \$772.76 for HVAC). FEMA's Cost Analysis Report at 11-12. In these instances, the panel used the total of the individual scopes of work.

Building	Claimed Amount	FEMA's Recommendation	Reimbursable Amount
1	\$116,095.99	No dispute	\$116,095.99
2	\$1,815,612.37	No dispute	\$1,815,612.37
3	\$135,450	\$41,170.59	\$135,450
4	\$135,194	\$58,103.33	\$82,452.44
5	\$67,439.58	No dispute	\$67,439.58
6	\$57,300	\$28,998.28	\$56,800
7	\$42,902.51	No dispute	\$42,902.51
8	\$3250	No dispute	\$3250
9	\$100,855.70	\$47,757.99	\$49,257.99
10	\$58,378.24	No dispute	\$58,378.24
11	\$25,079.82	No dispute	\$25,079.82
12	\$157,362	\$46,644.08	\$51,902.55
13	\$646,736.09	\$283,967.33	\$469,545.73
15	\$431,907.33	\$90,745	\$147,370.34
16	\$75,096	\$13,830.17	\$41,536.16
17	\$622,070.50	\$471,955.37	\$514,927.87
18	\$59,450.72	No dispute	\$59,450.72
21	\$1,123.48	No dispute	\$1,123.48
23	\$15,000	\$4,359.44	\$15,000
Canopies	\$106,389	\$61,705.44	\$61,705.44
Exterior Lighting	\$413,170	\$193,672.28	\$193,672.28
Fence	\$28,680.01	No dispute	\$28,680.01
Total	\$5,114,543.34		\$4,037,633.52