UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 27, 2026

CBCA 8474-FEMA

In the Matter of MUNICIPALITY OF CANÓVANAS, PUERTO RICO

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Emanuel Rier Soto, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Guaynabo, PR, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **VERGILIO**, **KANG**, and **NEWSOM**.

NEWSOM, Board Judge, writing for the Panel.

The Municipality of Canóvanas, Puerto Rico (Municipality), sued its insurance carrier to seek recovery of damages sustained during Hurricane Maria, which struck Puerto Rico in 2017. The lawsuit resulted in a settlement in which the Municipality received approximately $4,800,000 in insurance proceeds. The Federal Emergency Management Agency (FEMA) reduced the amount of public assistance it provided by the amount of the insurance recovery. In addition, FEMA offset the insurance recovery by the legal fees that the Municipality incurred to pursue the lawsuit, thereby allowing the Municipality to recover its legal fees through FEMA public assistance. At issue here is whether FEMA should also have offset

$584,316.97 in fees for the experts who were retained to support the lawsuit. FEMA denied eligibility for those expert fees, and the Municipality argues that this denial was in error.

We conclude that, in the present circumstances, the expert fees are not eligible for public assistance.

Background

Hurricane Maria struck Puerto Rico in September 2017, causing widespread damage, including damage to the Municipality of Canóvanas. The President declared a major disaster on September 19, 2017, designating the Municipality, among other areas, as adversely affected and authorizing FEMA public assistance funding. DR-4339-PR.[1] The Municipality filed a claim with its insurance carrier. Request for Arbitration (RFA), Exhibit A, First Appeal Analysis at 1.

By law, FEMA cannot provide public assistance funding that duplicates insurance recoveries. 42 U.S.C. § 5155(a) (2018); Public Assistance Program and Policy Guide (PAPPG) (Apr. 2018) at 40; *see also* FEMA Recovery Policy FP 206-086-1, Public Assistance Policy on Insurance (June 29, 2015) at 8-9. FEMA policy requires an applicant to make reasonable efforts to pursue recovery of the insurance proceeds to which it is entitled. PAPPG at 40. If the applicant expends costs to pursue its insurance claim, FEMA offsets the insurance reduction with the applicant's "reasonable costs to pursue the claim." *Id*. In this way, an applicant may recover, through public assistance, the reasonable costs of its insurance litigation.

The Municipality attempted to reach a settlement with the insurance carrier on its claim, without success. First Appeal Analysis at 1. The Municipality then retained the law firm of Farrell, Patel, Jomarron & Lopez (FPJL) to pursue an insurance recovery on a contingent fee basis. *Id*.

The terms of the contract between the Municipality and FPJL are central to this arbitration. Initially, the contract provided that FPJL's compensation was to be nine percent of the insurance recovery, which included "related costs." FEMA Response at 12 (providing translation of paragraph 9 of the contract between the Municipality and FPLJ).[2]

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[1] https://www.fema.gov/disaster-federal-register-notice/initial-notice-1159 (last visited Apr. 27, 2026).

[2] FEMA provided this English translation of paragraph nine of the original contract. This contract and other key exhibits are in Spanish, and the panel generally cannot

FPJL retained experts to support the litigation. FEMA Exhibits 1, 2. As the litigation proceeded, the court issued orders which, according to FPJL, expanded the work scope of the experts beyond what the firm originally anticipated. *See id*; RFA at 11-12 (providing translation of RFA, Exhibit J, Court Minute (Jan. 29, 2021)). FPJL notified the Municipality of the expanding needs for expert support and the additional costs this imposed. FPJL requested that the Municipality agree to modify their contract, explaining:

> As part of the latest order from the Court of First Instance, Superior Court of Carolina, the Court required us to perform a comprehensive review of the Municipality's claim, considering the terms of the insurance contract and the work already completed by the Municipality. This necessitates a forensic audit of all documentation related to repairs and other mitigation expenses following Hurricane Maria in Puerto Rico.

RFA at 12 (providing translation of RFA, Exhibit K, Amendment Request).

The Municipality and FPJL amended their contract in a few ways. They excluded "costs related to the legal process" from the nine-percent contingent fee; they added a requirement to submit the "costs incurred as part of the legal process" to FEMA; and they added a requirement for FPJL to provide a breakdown of those costs to the Municipality for submission to FEMA. FEMA Response at 12.

Eventually, the Municipality and the insurance carrier reached a settlement, and the Municipality recovered $4,860,183.25 on its insurance claim.[3] RFA Supplement at 1. The Municipality provided FEMA with a statement of its final insurance settlement. RFA, Exhibit B, Determination Memorandum at 2-3.

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interpret documents that are in Spanish. In their legal briefs, both parties included English translations of portions of the exhibits. In lieu of requiring the parties to incur the expense of providing complete translations, the Board notified the parties of its intention to resolve this arbitration based upon the limited translations in the briefs and invited the parties' positions on this approach. Neither party objected, although FEMA provided additional context for the translations of certain court records and the Municipality clarified specific aspects of the court records.

[3] The Grantee, Puerto Rico Central Office for Recovery, Reconstruction and Resiliency (COR3), asserts that the experts' reports led to a significant improvement in the insurance carrier's settlement offer, but it provided no evidence to support this assertion. *See* COR3 Reply at 23-24.

During its evaluation of the Municipality's insurance settlement, FEMA inquired about the payments to the litigation experts. *Id.* at 2; First Appeal Analysis at 2. FPJL explained that the Municipality had not yet paid the experts because it was waiting to see if FEMA would reimburse it for the expert costs. FEMA Exhibit 3 at 1. Shortly thereafter, the Municipality paid the experts. Applicant's Reply, Exhibit V.

Ultimately, FEMA denied recovery of the expert fees totaling $584,316.97, concluding that they were not eligible costs. Determination Memorandum at 3-4. The Municipality appealed, but FEMA denied the first-level appeal, concluding that the Municipality had no contractual obligation to pay the expert witnesses and the amounts paid to the experts were neither reasonable nor necessary. First Appeal Analysis at 3. The Municipality subsequently filed its request for arbitration.

Discussion

As noted above, FEMA policy requires an applicant to make reasonable efforts to pursue recovery of the insurance proceeds to which it is entitled. PAPPG at 40. If the applicant expends costs to pursue its insurance claim, FEMA deducts from the insurance recovery the applicant's "reasonable costs to pursue the claim." *Id*. Then FEMA deducts the resulting amount from the public assistance awarded. *Id*. This allows an applicant to recover, through public assistance, the reasonable costs of its insurance litigation.

The question before the panel is whether the expert fees were "reasonable costs to pursue" the Municipality's insurance claim. FEMA contends that the expert costs are not reasonable costs for four reasons: (1) the costs were not supported by the contract between the Municipality and FPJL; (2) to the extent that the costs were supported by that contract, the contract provides that the Municipality's obligation to pay the expert costs was contingent upon its recovery of the costs from FEMA; (3) the subcontract between the law firm and the experts violated Puerto Rican law; and (4) the costs exceed what a prudent person would pay under the circumstances. FEMA Response at 7-9.

The crux of this dispute concerns the first two arguments, both of which depend on the terms of the contract between the Municipality and FPJL. Under the original contract, the nine-percent contingency fee included "related costs." In other words, the firm would have been paid the nine-percent contingency, and no more, regardless of how much it expended on experts or other costs. Paragraph nine of the original contract provided as follows:

> The contingency fee for all Legal Consulting and Representation Services to be provided to THE MUNICIPALITY under this Contract, *including related*

> *costs*, shall be nine percent (9%) of the amount received by THE MUNICIPALITY from the insurance company after THE CONTRACTOR has filed a lawsuit against the insurance company on behalf of the MUNICIPALITY to recover the amount owed to THE MUNICIPALITY for damages caused by Hurricane Irma or María, or both. . . . *In the event that work is performed beyond the fees specified for the services subject to this Contract, THE MUNICIPALITY shall not be required to disburse any additional amount beyond what is provided in the Contract*.

FEMA Response at 12 (emphasis added, footnote omitted).

At FPJL's request, the parties amended paragraph nine to state as follows, with changed language bolded and in italics:

> The fee for the contingent compensation for all consulting and legal representation services to be provided to the Municipality under this Contract, ***except for the costs related to the legal process*****,** shall be nine percent (9%) of the amount received by the Municipality from the insurance company after THE CONTRACTOR has filed a lawsuit against the insurance company on behalf of THE MUNICIPALITY to recover the amount owed to THE MUNICIPALITY for damages caused by Hurricane Irma or María, or both . . . *In the event that work is performed beyond the fees specified for the services subject to this Contract, THE MUNICIPALITY shall not be required to disburse any additional amount beyond what is provided in the Contract.* ***The costs incurred as part of the legal process are to be included as part of the total legal costs to be submitted to FEMA, with a corresponding costs breakdown which THE CONTRACTOR commits to provide to THE MUNICIPALITY for the corresponding proceedings before FEMA*****.**

Id. (footnote omitted) (additional emphasis in bold).

The amended text of the contract deleted the language stating that the contingency fee included "related costs" and replaced it with language that excluded from the contingency fee "the costs related to the legal process." The Municipality contends that the phrase "costs related to the legal process" referred to expert fees, and, by carving out those costs from the contingency fee, the amendment required the Municipality to pay the expert costs in addition to the nine-percent contingency. RFA at 12. In response, FEMA argues that the phrase "costs related to the legal process" is vague and, therefore, the panel should ignore it. FEMA Response at 12-13.

We cannot, however, simply ignore the amendment as FEMA suggests, because our obligation is to interpret the contract in a manner than gives meaning to all parts and leaves no superfluous language. *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991). "Contract interpretation begins with the language of the written agreement." *Coast Federal Bank, FSB v. United States*, 323 F.3d 1035, 1038 (Fed. Cir. 2003) (en banc). For that reason, we do not address whether, under the original contract prior to the amendment, any amounts in excess of the nine-percent contingency would be eligible for reimbursement.

Neither party points us to any definition of the phrase "costs related to the legal process" in the contract. The term could refer to any of the myriad costs that arise during litigation, such as filing fees, copying costs, witness fees, travel expenses, or expert fees. Because the phrase could mean many things, we find it ambiguous. *See LAI Services, Inc. v. Gates*, 573 F.3d 1306, 1314 (Fed. Cir. 2009) (ambiguity exists if "contract language can reasonably be interpreted in more than one way"). If a contract is ambiguous, we turn to extrinsic evidence to determine its meaning. *Greco v. Department of the Army*, 852 F.2d 558, 560 (Fed. Cir. 1988). In considering extrinsic evidence, the parties' contemporaneous beliefs about the contract are probative. *Reliable Contracting Group, LLC v. Department of Veterans Affairs*, 779 F.3d 1329, 1332 (Fed. Cir. 2015). In particular, the parties' interpretation of the contract before the dispute arises is entitled to significant weight. *Max Drill, Inc. v. United States*, 427 F.2d 1233, 1240 (Ct. Cl. 1970) (en banc, per curiam, adopting opinion of the commissioner).

When FPJL proposed to amend the original contract, it stated the amendment was driven by escalating and unanticipated expert costs. That explanation is persuasive evidence that the purpose of the amendment was to exclude expert costs from the contingency fee, and thus, the parties intended the phrase "costs related to the legal process" to refer to expert costs. With that determination, we agree with the Municipality that the contract carves out expert costs from the contingency fee.

But that determination does not resolve the dispute. FEMA notes that the amendment also added language requiring the firm to provide to the Municipality a breakdown of the "cost related to the legal process" (i.e., expert costs) and requiring the Municipality to submit those costs to FEMA. FEMA infers that the purpose of these changes was to make the Municipality's obligation to pay the expert costs contingent upon its recovery of those same costs from FEMA. In FEMA's words, "[t]he amendment's language shows that the Applicant remains contractually responsible only for the 9% contingency fee, while any additional costs were solely intended to be passed along to FEMA." FEMA Response at 13.

The Municipality argues that this amendment did not make the Municipality's obligation to pay the expert costs contingent on FEMA recovery. It simply obligated the law

firm to "invoice" the expert costs "for the Municipality to be able to pay them and that such documentation will be later use[d] to request reimbursement to FEMA." Applicant's Reply at 25.

The Municipality is technically correct that the amendment did not *expressly* state that the Municipality's obligation to pay the expert costs was contingent on reimbursement from FEMA. However, the amendment also did not expressly require the Municipality to pay the expert costs in the first place. The Municipality's payment obligation was defined as follows:

> In the event that work is performed beyond the fees specified for the services subject to this Contract, THE MUNICIPALITY shall not be required to disburse any additional amount beyond what is provided in the Contract.

FEMA Response at 12 (emphasis omitted). Notably, the amendment did not change this language. *See id.* Both before and after the amendment, the Municipality's payment obligation remained to pay only "what is provided in the [c]ontract." We find no language in either the original contract or the amended contract stating that the Municipality was obligated to pay the cost of the experts.

To find the costs of professional services to be eligible, FEMA must consider the adequacy of the contract. 2 CFR 200.459(b) (2023). The contract, as amended, expressly stated that the "fee for the contingent compensation" was nine percent of the recovery, but that fee excluded expert costs, and no language obligated the Municipality to pay for the experts. We reach this conclusion based on the plain language of the contract.

Furthermore, even if the contract amendment had introduced an ambiguity regarding the Municipality's payment obligation, the extrinsic evidence indicates that the parties did not intend the contract to require the Municipality to pay the expert costs unless FEMA committed to reimburse the Municipality. Before the dispute with FEMA arose, FPJL informed FEMA that the Municipality had been withholding payment for the expert fees because it was waiting to see whether FEMA would reimburse those costs. FPJL explained:

> The Municipality of Canóvanas has yet to pay any of the invoices from the experts used during the litigation of the Municipality's insurance claim. As you may know the Municipality had to sue their insurance carrier QBE for payment of their insurance claim in case no. CA2019CV03466. *The Municipality has informed us that they are withholding payment for the services rendered by the experts in the case until FEMA advises if these trial related expenses with be reimbursed in accordance with FEMA's Public*

> *Assistance Policy FP 206-086-1.* To this date they are still waiting for your response. Accordingly, we would appreciate [it] if a formal response is provided to the Municipality in writing in regards to their inquiry.

FEMA Exhibit 3 at 1 (emphasis added). The Municipality's actions in withholding payment of expert fees until it learned whether FEMA would provide reimbursement is compelling extrinsic evidence—dating before the present dispute arose—that the Municipality interpreted the contract as making its payment obligation contingent on FEMA reimbursement. It was only after FEMA asked the Municipality about the status of the payments that the Municipality paid the expert fees. Under federal assistance reimbursement regulations, professional services costs are unallowable when they are "contingent upon recovery of the costs from the Federal Government." 2 CFR 200.459(a).

We conclude that the Municipality had no express obligation to pay the expert costs. In light of our decision, it is not necessary to reach FEMA's remaining arguments.

Decision

The expert costs are not eligible for public assistance.

Elizabeth W. Newsom
ELIZABETH W. NEWSOM
Board Judge

Joseph A. Vergilio
JOSEPH A. VERGILIO
Board Judge

Jonathan L. Kang
JONATHAN L. KANG
Board Judge