



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 23, 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, appearing for Grantee.

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

The Federal Emergency Management Agency (FEMA) has requested a stay of arbitration proceedings. The applicant, the Plaquemines Parish Government, opposes the request.

The applicant disputes FEMA's denial of expenses it claimed on a project worksheet for public assistance for repairs said to arise from Hurricane Katrina. The expenses arose after the applicant defaulted the original contractor performing work and the subsequent bankruptcy of a bonding company which 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. The applicant is involved in third-party litigation with the successor in interest to the original contractor.

FEMA issued an initial and a first level appeal determination. Here the applicant seeks to recover costs (related to the default and bankruptcy) disallowed by FEMA. FEMA asks that the arbitration proceeding be stayed until the applicant's litigation and attempt to recoup costs is complete. It contends that because of the pending related litigation (under which the contractor could recover some of the costs it seeks) the claims in this arbitration request are not ripe for review. Indeed, it asserts that should the litigation result in judgment in the applicant's favor for the full amount here in dispute, the issues of this arbitration would be moot. The applicant asserts that full recovery through the litigation is not possible given bankruptcy determinations.

The agency has denied the applicant's request for further relief, finding zero entitlement. As a majority of the panel concluded, *Plaquemines Parish Government*, CBCA 5933-FEMA, 18-1 BCA ¶ 36,966, the agency made this arbitration ripe for review with the issuance of its first-level appeal determination. The panel can resolve both entitlement and quantum. Should there be relief found owing to the applicant by the panel, the applicant would be obligated to compensate the agency for any recovery through the litigation process, so as not to double-recover its expenses. Entitlement and quantum are not solely dependent upon the litigation.

There is not a sufficient basis to stay these proceedings (particularly for what may be an extended period of time). The panel denies the request of the agency, which now is to file and serve its answer to the arbitration request as directed by rules and an order of the panel.

Joseph A. Vergilio
JOSEPH A. VERGILIO
Board Judge

Catherine B. Hyatt
CATHERINE B. HYATT
Board Judge

Allan H. Goodman
ALLAN H. GOODMAN
Board Judge