



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 17, 2020

CBCA 6530-FEMA

In the Matter of ST. AUGUSTINE HIGH SCHOOL, INC.
NEW ORLEANS, LOUISIANA

Michael G. Gaffney, Christopher M. Gaffney, and Charles V. Cusimano, III of Gaffney & Gaffney, A Law Corporation, Metairie, LA; and Allen Miller of Phelps Dunbar LLP, New Orleans, LA, counsel for Applicant.

Lynne Browning, Assistant Deputy Director - Public Assistance, 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; and Maureen Dimino, 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 **VERGILIO**, **GOODMAN**, and **KULLBERG**.

The applicant, St. Augustine High School, Inc., New Orleans, Louisiana, seeks compensation to accomplish replacement of light fixtures and window frames in addition to repairs which the Federal Emergency Management Agency (FEMA) had authorized under previous project worksheets for public assistance for the reconstruction of its facility damaged by Hurricane Katrina in August 2005. A hearing before the arbitration panel was held on January 15, 2020, at the commencement of which the parties advised that they had resolved all other claims contained in the arbitration demand.

The applicant offered information in submissions and at the hearing concerning the stature and importance of the high school in the community. However, the facility's eligibility for public assistance had previously been established when FEMA funded prior repairs and maintenance.

The light fixtures and window frames at issue were installed during the construction of the facility in 1951. The light fixtures are pendant (hanging) fixtures affixed to the ceilings in the classrooms on the first floor. The applicant did not seek to replace these fixtures after the hurricane, and they continue to function. The applicant claims that in 2011 a contractor recommended that the fixtures be replaced, based on their exposure for approximately eight weeks after Katrina to conditions resulting from several feet of standing flood waters in the rooms where the fixtures hang. The applicant's witnesses offered anecdotal evidence that the light fixtures had been maintained and allegedly suffered no corrosion prior to Katrina and that they only began to show evidence of corrosion thereafter. Photographs of several corroded, but functioning, fixtures were offered as evidence.

The windows have fixed and moveable panels and remained above the standing water after the hurricane. The applicant offered anecdotal evidence that the window frames had been maintained prior to the hurricane, but have since corroded, and now some of the moveable panels do not properly close.

A FEMA witness who had inspected the building in 2013 testified that he had not seen substantial corrosion on the light fixtures or the window frames at that time. As both items were functioning, he had not recommended replacement. FEMA also presented testimony of a metallurgist who testified that corrosion, commonly known as rust, naturally occurs over time as the result of corrosive agents such as chlorides which are always present in the air in coastal cities such as New Orleans. Corrosion begins immediately after a surface is in contact with corrosive agents and can be mitigated by maintenance, including the cleaning and repainting of painted metal surfaces such as those on the light fixtures and window frames at issue. The record does not detail any maintenance efforts undertaken to prevent corrosion on the light fixtures or window frames after Katrina, despite the approval of public assistance for such.

Discussion

FEMA provides public assistance following a disaster pursuant to the Stafford Act, 42 U.S.C. §§ 5121 et seq. (2012); implementing regulations, 44 CFR 13.36, pt. 206 (2017); and policies and guidance. The applicant has the burden of proving that the costs for which it seeks reimbursement result from damage caused by Hurricane Katrina.

The applicant has not proven that the costs it seeks are the direct result of Hurricane Katrina. The light fixtures and windows continue to function. While they may be corroded, there is no persuasive evidence that the corrosion resulted from the exposure to conditions created by high water after Katrina. The present condition of the items is the result of time and conditions since their installation in 1951, and not solely caused, if at all, by the hurricane that occurred more than fourteen years ago.

The applicant has failed to demonstrate that it is entitled to additional compensation, and FEMA has correctly denied funding for replacement of the light fixtures and window frames.

Joseph A. Vergilio
JOSEPH A. VERGILIO
Board Judge

Allan H. Goodman
ALLAN H. GOODMAN
Board Judge

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge