



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 23, 2023

CBCA 7578-FEMA

In the Matter of BOARD OF TRUSTEES OF BAY MEDICAL CENTER

Wendy Huff Ellard of Baker Donelson, Bearman, Caldwell & Berkowitz, PC, Jackson, MS; Robert C. Jackson of Hand Arendall Harrison Sale, LLC, Panama City, FL; and Jordan Corbitt of Baker Donelson, Bearman, Caldwell & Berkowitz, PC, Houston, TX, counsel for Applicant.

Stephanie Stachowicz, General Counsel, Florida Division of Emergency Management, Tallahassee, FL, counsel for Grantee; and Marija Diceviciute, Appeals Officer, and Melissa Shirah, Recovery Bureau Chief, Florida Division of Emergency Management, Tallahassee, FL, appearing for Grantee.

Ramoncito DeBorja, 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 **SHERIDAN**, **SULLIVAN**, and **O'ROURKE**.

SULLIVAN, Board Judge, writing for the panel.

Board of Trustees of Bay Medical Center (Bay Medical) sought to arbitrate the first appeal decision of the Federal Emergency Management Agency (FEMA) denying Bay Medical's request for public assistance (PA) funds to repair elements of one of its facilities damaged during Hurricane Michael. We find that Bay Medical has satisfied the requirements to prove that the damage resulted from the natural disaster for two elements of the facility.

Background

In October 2018, as noted in FEMA’s initial determination in this matter, “Hurricane Michael caused devastating winds, torrential rain, and tidal surge which resulted in extensive damage throughout the panhandle of Florida.” FEMA Response to Request for Arbitration, Exhibit A at 1. The President signed a major disaster declaration on October 11, 2018.

Bay Medical requested PA funds to repair five elements in its North Central Energy Plant Building and Systems—the roof, parapet walls on the edge of the roof, the lightning protection system, the interior finishes (drywall, ceiling tiles, carpet, etc.), and the chiller towers. In the record before the panel, Bay Medical has provided several items in its attempt to establish the cause of the damage:

Chiller Towers. Bay Medical described the damage to the chiller towers caused by “wind borne debris” as damage to the fill sheets, fill tubes, exterior casing panels, the shroud around the fan blades, and the railing along the top of tower number 1. Request for Arbitration (RFA) Exhibit 7. This description is supported by the report and declaration of an expert that Bay Medical hired to assess the damage and fix and replace the systems. RFA Exhibit 6; Declaration of Charles Weathersby (Jan. 24, 2023).

Roof. Bay Medical provided the reports of licensed engineers, but these reports state that less than twenty-five percent of the roof needs to be repaired. RFA Exhibit 4. The reports do not explain the cause of the damage, the extent of the damage, or what needs to be repaired. The pictures that accompanied the reports do not provide any further information. Bay Medical also provided the declaration of a roofing expert, who disagreed with FEMA’s expert as to the cause of the roof damage, but provided no information regarding the cause of the damage, other than generally to attribute it to the hurricane, or the scope of the damage to be repaired.

Parapet Walls. Bay Medical provided the same report prepared by licensed engineers in support of its claim for the replacement of the parapet walls, but the report provides no description of the cause of the damage, the extent of the damage, or what needs to be repaired. The pictures that accompanied the report show blue tarps covering the entirety of the wall but do not provide any further information regarding the nature of the damage or needed repairs.

Lightning Protection System. FEMA does not dispute that the lightning protection system was damaged as a result of the hurricane and agrees that portions of the system (air terminals) need to be replaced. Instead, FEMA contends that the remaining cable could have been repaired. Bay Medical provided the declaration of a licensed architect, who explained

that repair was not feasible because “grounding continuity could not be established.” Declaration of Steve Jerrigan (Jan. 24, 2023).

Interior Finishes. Bay Medical seeks to repair damage to acoustic ceiling tiles, walls, and flooring in five rooms within the building attributed to water intrusion. RFA Exhibits 4, 7. While the pictures provided show standing water in rooms, Bay Medical provided no statements or reports to establish that the quantities of ceiling tiles, flooring, or drywall sought are necessary to repair the damage caused by the water intrusion.

Pre-Disaster Condition. Bay Medical provided a declaration from the Director of Facilities at the time of the disaster. Declaration of Sammy Sims (Nov. 14, 2022). The director attested that he supervised a robust program of maintenance, including preventative maintenance, and inspection activities. He explained that Bay Medical kept extensive records documenting these activities, but these records were destroyed in the damage resulting from the hurricane. The director also identified a picture appended to his declaration as that of his former office, where a set of the maintenance records was kept. The picture shows a heavily damaged building with the missing walls and interiors open to the elements. Bay Medical also provided two maintenance logs, which show work to address reported issues and checks of the HVAC system. Bay Medical was subject to unannounced inspections by federal entities to ensure that the facility complied with the requirements for facilities that received Medicare funds. Bay Medical passed inspections in 2017 and 2018, just before the disaster.

FEMA’s Prior Determinations. FEMA denied Bay Medical’s initial request, stating that Bay Medical “was unable to provide a detailed description of disaster-related damages and dimensions and the associated scope of work (SOW) related to these expenses.” FEMA Response to Request for Arbitration, Exhibit A at 4. FEMA denied Bay Medical’s first appeal, finding that “[a]ll information provided by [Bay Medical] in its appeal is appropriate to accurately assess the repairs needed following the disaster, however, the information provided is not sufficient for FEMA to validate the predisaster condition of the facility.” *Id.*, Exhibit B at 12.

Discussion

There is no dispute that Bay Medical is an eligible entity or that the facility at issue is an eligible facility. As noted, the basis for FEMA’s denial changed between the initial determination and the first appeal. In its response to the request for arbitration, FEMA now asserts that Bay Medical has not provided sufficient information and documentation to establish that the repairs for which it seeks reimbursement were “required as the result of the major disaster event.” 44 CFR 206.223(a)(1) (2021). We have examined the record and

determine that for two of the elements—the chiller towers and the lightning protection system—Bay Medical has met its burden with regard to causation.

Bay Medical has established that the chiller towers were damaged as result of the wind-blown debris generated during the hurricane. With this damage, the chillers no longer functioned properly. The reports and invoices provided establish the cause and scope of the damage and the fact that the chillers were maintained and working prior to the disaster. We find that Bay Medical should be reimbursed for the costs to replace and repair the chillers.

Bay Medical has also established, and FEMA does not dispute, that the lightning protection system was damaged. The dispute focuses on whether parts of the system may be repaired versus replaced. FEMA concedes that the air terminals were blown away and need to be replaced but contends that the cable can be spliced together as a repair rather than a replacement. Based upon the statement of Bay Medical’s architect that a repair would be insufficient, we find that Bay Medical should be reimbursed the costs to replace the entire lightning protection system.

We find that Bay Medical has not established the extent of the damage to the roof or the parapet walls and that coating the roof was required to address this damage. Similarly, Bay Medical has not met its burden to establish the interior damages for which it seeks funds.

Decision

We grant Bay Medical’s request for PA funding to replace and repair the chillers and replace the lightning protection system.

Marian E. Sullivan

MARIAN E. SULLIVAN
Board Judge

Patricia J. Sheridan

PATRICIA J. SHERIDAN
Board Judge

Kathleen J. O’Rourke

KATHLEEN J. O’ROURKE
Board Judge