

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ANCHORAGE, A Municipal)	
Corporation,)	
)	
Plaintiff,)	Case No. 14-166C
)	(Senior Judge Damich)
v.)	
)	
UNITED STATES,)	
)	
Defendant.)	

DEFENDANT’S RESPONSE REGARDING DAMAGES

Pursuant to the Court’s December 9, 2021 Order (ECF No. 254), defendant, the United States, respectfully submit this response regarding damages. As the United States understands the Court’s order, there is a discrepancy regarding the amount of damages claimed by Anchorage in this case. As we demonstrated in our post-trial briefing, Anchorage bears the burden of establishing its damages claims. Any differences or discrepancies present in Anchorage’s presentation of its alleged damages claim demonstrates the unreliability of the damages calculation Anchorage presented during trial in this case.

The Government established that Anchorage has not demonstrated that the amounts it seeks as alleged damages in this case are supported by the evidence presented. More specifically, the amounts presented by plaintiff and referenced in the Court’s order are not reliable calculations of Anchorage’s alleged damages for the primarily legal reasons stated in our post-trial brief (ECF No. 242 at 130-140), including the following:

- Anchorage must deduct from its damages claim the \$91,290,163 in Alaska state funds that it has already received as a reimbursement for its expenditures, just as Anchorage deducted from its damages the \$11,279,059 it received as a reimbursement from ICRC and the other contractors. PDX3 at 17; ECF No. 242 at 137-38, 139 (citing *Cnty. Health Choice v. United States*, 970 F.3d 1364, 1379 (Fed. Cir. 2020)).

- Anchorage's damages must account for the \$117,780,814 in value Anchorage received as a result of the project, more than half of the initial estimated project value of \$207 million. *See* Opinion (ECF No. 253) at 24 n.19; ECF No. 242 at 139.
- Anchorage has never asserted any legal basis to claim the portion of funds contributed by the Federal Government as part of its damages. Anchorage has admitted that it never received those funds and never recorded those funds as an asset or an advance to MARAD on its financial statements. ECF No. 242 at 137, 139.
- Anchorage cannot recover its claimed future costs to remove the OCSP structure, in part because the evidence proved that Anchorage has already rejected the removal project Anchorage claims will occur. ECF No. 242 at 131-34.

Respectfully Submitted,

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