



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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March 14, 2022

CBCA 7279-FEMA

In the Matter of JACKSON COUNTY, FLORIDA

Wendy Huff Ellard of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Jackson, MS; Michelle Zaltsberg of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Orlando, FL; and Danielle Aymond of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Baton Rouge, LA, counsel for Applicant; and Wilanne Daniels, County Administrator of Jackson County, Florida, Marianna, FL, appearing for Applicant.

Sherin Joseph, Appeals Officer, and Melissa Shirah, Recovery Bureau Chief, Florida Division of Emergency Management, Tallahassee, FL, appearing for Grantee.

Shahnam Yazdani 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, DRUMMOND,** and **SHERIDAN.**

Jackson County, Florida (applicant), sought to arbitrate the denial by the Federal Emergency Management Agency (FEMA) of its request for public assistance (PA) funds to repair road damage caused by Hurricane Michael and for debris removal activities. Although FEMA approved funding for debris removal, FEMA denied the applicant's request for additional funds because the applicant did not demonstrate that the damages were disaster-related nor that the damages were unavoidable and not due to the improper or excessive use of removal equipment or due to other non-eligible bases. We agree with FEMA's determination that the costs sought to repair road damage are not eligible for PA funds.

### Background

In October 2018, Hurricane Michael caused extensive damage in Jackson County, including the felling of trees and blockage of roadways. Due to the widespread damage, a major disaster was declared by the President (FEMA-4399-DR-FL) on October 11, 2018. Following the disaster, the applicant conducted debris removal activities to clear the roadways as part of a FEMA project. The applicant claims that the equipment and trucks used to remove debris after the disaster, as well as other vehicular traffic, caused damage to many of the roadways. The applicant requested \$20,318,582.18 in PA funds to repair the damage. FEMA partially denied the applicant's claim, obligating \$871,616.83 for reimbursement, and finding \$19,446,965.35 ineligible under FEMA's PA program. The applicant appeals FEMA's denial.

### Discussion

It is the applicant's burden to support its application for PA funding. *See City of Hattiesburg, Mississippi*, CBCA 7228-FEMA (Jan. 20, 2022). To be eligible for financial assistance under the PA program, an item of work must be required as a result of the emergency or disaster. 44 CFR 206.223(a)(1) (2020). Damage caused during the performance of emergency work, such as debris removal, may be eligible for PA funding. FEMA's policy guide explains that such damage is eligible if it was "[d]ue to severe conditions resulting from the incident; [u]navoidable; and [n]ot due to improper or excessive use." Public Assistance Program and Policy Guide (PAPPG) (Apr. 2018) at 83.

The applicant argues that the road damages were largely caused by the disaster or debris removal activities and are eligible for funding. However, the applicant has failed to properly support its claim and demonstrate that the roads and associated areas (e.g., shoulders, guardrails, embankments, etc.) (hereafter referred to as roads) are eligible for relief. Despite the great number of trees that covered many roads as a result of the disaster, the applicant has failed to quantify sufficiently any damage. The documentation the applicant provided does not demonstrate that the road damages were incident-related or that they were unavoidable and not due to improper or excessive use. The record does not provide sufficient documentation of the pre-disaster condition of the roads, such as maintenance records, to demonstrate that the particular road damages resulted from the disaster rather than from prior deterioration or deferred maintenance. The record does not distinguish between damages caused by the applicant's debris removal activities and the actions of private citizens and volunteers. Moreover, the record demonstrates that vehicle weights exceeded expected road capabilities, which caused some of the damage that could have been avoided or limited, e.g., by use of proper protective mats. The applicant has exaggerated the damage that resulted from the disaster and provided insufficient specifics to support its claim for relief. The applicant has not met its burden.

Decision

The panel finds that, even with this expanded record, FEMA correctly determined the applicant has not demonstrated that its road damages are eligible for PA funding.

*Patricia J. Sheridan*

PATRICIA J. SHERIDAN

Board Judge

*Joseph A. Vergilio*

JOSEPH A. VERGILIO

Board Judge

*Jerome M. Drummond*

JEROME M. DRUMMOND

Board Judge