



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 26, 2022

CBCA 7298-FEMA

In the Matter of VILLAGE OF PINECREST, FLORIDA

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

Christiana Cooley and Shahnam Thompson, 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 **KULLBERG**, **ZISCHKAU**, and **O'ROURKE**.

The applicant, Village of Pinecrest, Florida (Village), requested arbitration under 42 U.S.C. § 5189a(d) (2018) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), claiming that the Federal Emergency Management Agency (FEMA) wrongly denied virtually all of the public assistance (PA) funding requests for various categories of debris clearance and removal activities performed between October 18 and December 16, 2017, in response to damage caused by Hurricane Irma on September 10, 2017.

Some of the categories of work have been resolved by the parties during the arbitration proceedings here. For the unresolved categories, FEMA argues that the Village

failed properly to document and monitor the debris cleanup work and thus the costs incurred by the Village are ineligible for PA funding. Because we conclude that the Village presented substantial and detailed documentation, affidavits, and testimony at the arbitration hearing supporting the vast majority of its cleanup costs and that the Village properly monitored the work effort, we grant the Village's request for reimbursement in the amount of \$1,509,716.82 in PA funding and direct that FEMA and the Village determine the remaining amount for force account labor.

Background

On September 10, 2017, Hurricane Irma made landfall in southern Florida with high winds, heavy rainfall, and tidal surge which resulted in extensive damage to trees and other vegetation throughout the Village, a municipality covering an eight-square-mile area. The widespread damage throughout the state of Florida resulted in a major disaster declaration, which authorized PA funding in all Florida counties.

In the weeks leading up to the storm, the Village's public works department closely monitored the development of Hurricane Irma and began contacting five debris removal contractors in preparation for the inevitable cleanup. Three of the five contractors responded and began to station their equipment within the Village's boundaries in preparation for the work. With respect to debris monitoring, the Village planned to use internal force account labor but also to rely on Miami-Dade County to monitor the pickup and hauling of debris. Prior to the storm, the Village understood that Miami-Dade County would handle the remainder of debris processing beyond the Village's initial debris removal effort. However, after the storm had passed, the Village learned that Miami-Dade's debris contracts extended only to the pickup and hauling away of properly cut and tossed debris. Accordingly, the Village required its contractors to perform additional cut and toss work to convert the debris to manageable sizes for pickup and hauling.

On the day following Irma's landfall, the Village assessed the extent of the damage and determined that most streets were impassable, thousands of trees were damaged, and many power lines were down. Homes were without power, and emergency service providers could not navigate safely within the Village. The Village contracted with SFM Services, Inc. (SFM) to perform the vast majority of the debris removal and clearance work. Other contractors were also brought in to handle specialty cleanup work.

Within several days, the Village and SFM developed a routine for the debris removal work. Each afternoon, the Village's public works director, Mark Spanioli, and the Village's public works foreman and arborist, Gary Krackenberger, would conduct a visual observation of the Village's condition and areas requiring debris removal. The next morning, Mr. Spanioli and Mr. Krackenberger would meet with the SFM project manager and provide a

map of the locations that required debris removal services. SFM would then send out its crews to those locations to complete the work. The Village clearly informed SFM of FEMA's requirements, including that SFM could only work on trees where necessary to eliminate immediate threats to life and safety or to eliminate immediate threats to improved public or private property. The Village also communicated that only trees referred to as "leaners and hangers" that were two inches or more in diameter and that posed a threat to public health and safety on public property could be removed by SFM. During the workday, Mr. Spanioli and Mr. Krackenberger would travel between worksites, filling out daily logs and taking photographs. According to Mr. Krackenberger, he and Mr. Spanioli "did not photograph every single hanging hazardous limb of two inches in diameter or more that SFM removed because that is an impossible task, and [their] understanding from the debris monitoring guidance provided by FEMA is that a photograph of every tree was not required."

This arbitration concerns FEMA's denial of the Village's request for reimbursement for work conducted following the hurricane. FEMA denied the Village's request for funding to repair damage caused by Hurricane Irma, stating that "the work/cost is ineligible for Public Assistance funding." The Village seeks arbitration of FEMA's denial, arguing primarily that it should be reimbursed in full because FEMA's request for information (RFI) and first appeal determination were untimely in violation of the Stafford Act and that FEMA is in default. The Village argues alternatively that its grant consisted of eligible debris removal work substantiated by adequate documentation provided to FEMA.

There are six categories of work for which the Village sought PA funding: (1) removal of hazardous limbs and trees (\$729,360); (2) cut and toss road clearance operations (\$752,827.50); (3) waterway debris removal (\$30,440); (4) force account and mutual aid labor and equipment (\$19,098.83); (5) stump grinding (\$2500); and (6) loading debris from the right of way and hauling to final disposal including tipping fees (\$105,256.01). FEMA asserts the Village failed to support most of its request for reimbursement for hazardous limb and tree removal performed by three contractors between October 18 and December 16, 2017. FEMA also maintains that the Village's entire request for reimbursement for cut and toss work, waterway debris removal, and force account and mutual aid labor and equipment is ineligible.

Categories (5) and (6) were resolved prior to the arbitration hearing. Of the \$59,528.75 in PA funding for debris loading and \$45,727.26 in tipping fees sought by the Village, FEMA has now determined that the Village's documentation supports a total of \$88,114.28 in funding, consisting of \$42,972 for the debris loading and hauling and \$45,142.28 for tipping fees. The Village has agreed to waive its right to pursue the remaining \$17,141.73 for debris loading and hauling and tipping fee claims. Additionally, the Village has withdrawn its claim of \$2500 for stump grinding.

Discussion

I. FEMA's Untimely Responses

Before addressing the PA eligibility for debris removal, we must first address the Village's argument that it is entitled to full reimbursement because FEMA's appeal determinations were untimely. The Stafford Act states that an applicant may request arbitration at the Board "180 days after the Administrator's receipt of the appeal if the Administrator has not provided the applicant with a final determination on the appeal." 42 U.S.C. § 5189a(d)(5)(B). The Stafford Act is clear that the remedy for FEMA's failure to timely respond to an applicant's appeal is arbitration before the Board, rather than granting full PA funding. Without condoning FEMA's repeated untimely responses,¹ we reject the Village's argument that it is entitled to full PA reimbursement due to FEMA's untimely responses and proceed to determine the eligibility of funding for debris removal and force account labor.

II. Debris Removal

The Stafford Act authorizes FEMA to make PA grants for "[p]erforming on public or private lands or waters any work or services essential to saving lives and protecting and preserving property or public health and safety, including . . . debris removal." 42 U.S.C. § 5170b(a)(3)(A). As prescribed by regulation implementing this statute, FEMA may only

¹ On October 7, 2019, the Village submitted to the Florida Department of Emergency Management (FDEM) an appeal of FEMA's initial determination, which denied all PA funding for the Village's debris removal and force account labor. On December 2, 2019, FDEM forwarded the Village's appeal to FEMA. Throughout the following year, the Village repeatedly inquired into the status of its appeal and notified FEMA that FEMA had failed to meet its ninety-day statutory deadline to issue a decision. On November 3, 2020, FEMA denied the Village's appeal as untimely because FEMA determined that the sixty-day period for appeals expired on Sunday, October 6, 2019. In *Village of Pinecrest, Florida*, CBCA 7011-FEMA, 21-1 BCA ¶ 37,798, we held that the Village had timely submitted its appeal and directed FEMA to evaluate the Village's appeal on the merits. FEMA confirmed receipt of our decision on February 19, 2021. On May 17, 2021, the Village again requested the status of its appeal. On June 15, 2021 (beyond FEMA's ninety-day deadline), FEMA issued a RFI to the Village. On August 10, 2021, the Village submitted its response. The Village's submission initiated another ninety-day deadline for FEMA's response, but FEMA did not issue its first appeal determination until November 17, 2021, ninety-nine days after it had received the Village's response.

provide PA funding for debris removal that is in the “public interest.” 44 CFR 206.224(a) (2021). Two situations cited in the regulation for showing debris removal to be in the public interest are “when it is necessary to: (1) eliminate immediate threats to life, public health, and safety; or (2) eliminate immediate threats of significant damage to improved public or private property.” *Id.* “Debris includes, but is not limited to, vegetative debris, construction and demolition debris, sand, mud, silt, gravel, rocks, boulders, and vehicle and vessel wreckage.” Public Assistance Program and Policy Guide (PAPPG) (Apr. 2018) at 44.

Although neither the Stafford Act nor its implementing regulations establish a standard for monitoring debris removal, FEMA guidance states as follows:

For FEMA to determine the eligibility of debris removal operations, the Applicant must provide debris types, quantities, reduction methods, and pickup and disposal locations. FEMA requires the Applicant to monitor all contracted debris operations to document this information and ensure that its contractor removes eligible debris. If the Applicant does not monitor contracted debris removal operations, it will jeopardize its PA funding for that work.

PAPPG at 57. Debris monitoring considerations and responsibilities may vary depending on the type of debris being removed and are described in detail in the PAPPG and FEMA’s Public Assistance Debris Monitoring Guide (DMG) (Oct. 2010).

Hazardous Limbs and Trees

The Village is seeking PA funding for fourteen invoices totaling \$729,360 for the removal of hazardous limbs and trees performed by three of the Village’s contractors – SFM, TreeHugger, and Mesis – between October 18 and December 16, 2017. This dollar amount represents only the costs incurred for the cutting of limbs and trees. It does not include costs (previously reimbursed by FEMA) for the hauling away of the resulting debris. Included in the record to support the Village’s incurred costs are detailed invoices with crew logs and daily reports prepared by the contractors and the Village employees, photographs of some of the trees with GPS coordinates, maps for each day showing where work was performed, affidavits of the Village arborist and the president of SFM, and testimony of the Village’s public works director. FEMA asserts that the Village failed to provide the requisite documentation – a photograph with GPS coordinates of every limb removed – to support most of its claim for \$729,360 in hazardous limb and tree removal. According to FEMA, the Village’s documentation substantiates cuts to only 131 out of the roughly 8000 trees cut by the Village’s contractors, entitling the Village to funding of only \$9825.

The Village’s request for reimbursement for its removal of hazardous limbs and trees falls under the category of vegetative debris. “Eligible vegetative debris may include tree

limbs, branches, stumps, or trees that are still in place, but damaged to the extent they pose an immediate threat.” PAPPG at 49. “These items are not eligible if the hazard existed prior to the incident, or if the item is in a natural area and does not extend over improved property or public-use areas.” *Id.* Because contractors typically charge debris removal based on a unit price for volume or weight, FEMA “encourages applicants to procure branch or limb removal on a one-time charge per tree basis as opposed to a unit price per limb or branch to facilitate more cost-effective operations.” *Id.* FEMA has specific eligibility criteria and documentation requirements for funding these items based on a price per each item instead of by volume or weight, and if an applicant does not provide sufficient documentation, it will jeopardize its PA funding. *Id.* FEMA guidance states as follows:

The Applicant must provide all of the following documentation to support the eligibility of removing tree limbs, branches, stumps, or trees that are still in place:

- Specifics of the immediate threat with the U.S. National Grid (USNG) location and photographic or video documentation that establishes the item is on public property;
- Diameter of each item removed (measurement must be 2 feet up the trunk from the ground for stumps and 4.5 feet up for trees);
- Quantity of material to fill root-ball holes; and
- Equipment used to perform the work.

Id. at 51.

FEMA’s Disaster Assistance Fact Sheet DAP9580.204 (2009) (Fact Sheet), referred to in the DMG, provides as follows with regard to the necessity of documentation regarding removal of hazardous limbs:

Applicants should submit a spreadsheet containing the location of the trees, the number of limbs cut on each tree, and a certification that the limbs were two inches or larger in diameter. The location should include the name of the street/road and GPS coordinates for each tree or cluster of trees along public rights-of-way and the street address or parcel number for hazardous limbs cut on private property. Applicants may also submit photographs to document the number of hazardous limbs cut. If the applicants contracted for the removal of hazardous limbs on a per-tree basis, the number of limbs cut per tree is not necessary.

Considering the Stafford Act, the debris removal regulations, and FEMA policy found in the PAPPG, DMG, and Fact Sheet, we believe that an applicant is not required to have a

photograph of each and every limb that was cut to support its reimbursement. Rather, we consider the totality of evidence, including the invoices, work logs, daily reports, photographs, maps, affidavits, and testimony relating to the performance, monitoring, and observations of the debris removal work, to determine if the applicant provided adequate support for its claimed costs.

We first examine eleven invoices from the Village's contractor, SFM, which performed the vast majority of the hazardous limb and tree removal work. SFM contracted with the Village at a price of \$75 per tree with one-to-five limbs and \$90 per tree with six-or-more limbs. In total, the SFM invoices account for the removal of limbs from 8011 trees. Each invoice shows a job number, that the work was for Hurricane Irma cleanup in the Village, the date of performance for the work being charged, crew information, the number of trees serviced with one-to-five limbs and the number of trees with six-or-more limbs, the associated unit prices, subtotal prices, and the total invoice price. The invoices are supported by SFM logs that identify the date of the work, the crew name, the area where the work was performed, tally marks for the number of trees with one-to-five limbs and six-or-more limbs, and a sign-off line for the Village's monitor. Also supporting the invoices are photographs² of some of the trees and limbs, most with GPS coordinates, and the Village monitors' daily worksheets that depict the date of the work, that the work was in response to Hurricane Irma, the work location, observation check boxes, handwritten notes, signature of the monitor, and, in some cases, the times of the day when the work was monitored. Finally, the Village's public works department created daily maps denoting the locations where SFM removed tree limbs based on a combination of notes, photographs, and photographic metadata.

Mr. Spanioli testified that he confirmed the quantity of tree limb work billed on each invoice by examining the daily reports and photographs from Village personnel and SFM. Additionally, Mr. Spanioli reviewed and signed SFM's logs each day to validate SFM's work. He also compared the unit prices on the invoices with the contract rates. According to Mr. Spanioli, each crew consisted of two-to-four laborers using a variety of equipment including chainsaws, bobcats, and bucket trucks. He testified that FEMA did not inform the Village that it required a photograph of each tree cut and that he did not understand the guidance to require such documentation. The Village collected photographs from Village

² The invoices contain a total of 296 photographs. The Village has also submitted a collection of 406 numbered photographs of damaged or downed trees, with GPS coordinates and diameter data summarized in an accompanying spreadsheet. FEMA asserts that its debris specialist reviewed each photograph and the corresponding documentation, and identified thirty-one spreadsheet photographs and 125 invoice photographs that depict hazardous trees and limbs sufficient to present an imminent threat to public or improved property.

personnel, including Mr. Spanioli, Mr. Krackenberger, and Nicole Tobias, from police dashcam footage, and from SFM. Mr. Spanioli felt that the Village sufficiently substantiated the work based on his and Mr. Krackenberger's daily monitoring of the work, their analysis of the daily logs, the Village's worksheets, the photographs, and the maps.

We find that the eleven invoices, which account for \$718,110 in hazardous limb and tree removal work, are adequately supported by the Village's documentation and the testimony of Mr. Spanioli. Considered in the aggregate, the information contained within the invoices, daily logs, worksheets, photographs, maps, affidavits, and testimony support a finding that the SFM's debris removal work was necessary to eliminate threats to life and/or public or improved property. The photographs demonstrate that broken limbs and trees obstructed roadways, blocked traffic signs, and endangered utilities such as power lines. Indeed, the daily logs and worksheets include information regarding "hazardous conditions," "broken branches hanging over roadway," "tree blocking fire hydrant," "damaged utility box," and "branches caught in electric lines." The affidavits of the Village's arborist and SFM's president, along with the testimony of Mr. Spanioli, bolster the conclusions that we draw from the photographs, maps, and daily reports.

The remaining invoices provided from subcontractors, TreeHuggers for \$9500 and Mesis for \$1750, are unaccompanied by supporting documentation. The arbitration record merely contains the lump-sum invoices, without work logs, daily reports, photographs, or supporting testimony. We agree with FEMA that, without adequate documentation of what work was performed, we are unable to conclude that the work solely related to removing hazardous trees or limbs that posed an imminent threat to life or improved public or private property. 44 CFR 206.225(a)(3). Although the invoices from both contractors include a brief description of the work, we are unable to distinguish which portion of the costs are attributable to storm-related tree and limb removal versus standard vegetative maintenance. Accordingly, we do not find that the Village adequately supported its claimed costs for the work performed by TreeHuggers and Mesis.

Waterway Debris Removal

The Village seeks \$30,440 for waterway debris removal. Waterway debris removal necessary to eliminate the immediate threat to life, public health and safety, or improved property is eligible for PA funding. PAPPG at 52. Removal of debris in a waterway that does not meet this criterion is not eligible even if the debris is deposited by the incident. *Id.* For FEMA to determine that debris removal from waterways is eligible, FEMA policy requires the applicant to provide documentation that (1) establishes legal responsibility; (2) includes the basis of the immediate threat determination; (3) identifies locations, types, and quantities of debris; and (4) demonstrates that the debris claimed was deposited by the incident and was not pre-existing. *Id.* at 53.

The Village has provided four invoices totaling \$30,440 for the waterway debris removal work. The record shows that the Pinecrest canals are storm water management channels that interconnect with canals throughout Miami-Dade County. The canals are navigable waterways and are used by residents. Hurricane Irma caused vegetative debris, including large trees, to fall into the canals and obstruct the waterways. Mr. Spanioli testified that the downed vegetative debris posed a threat to public safety, obstructed the waterway from navigation, and created storm water management issues with the potential of causing backup blockage of the flow of water. Mr. Spanioli also testified that the trees in the canal were within two feet of the water surface and, in his opinion, met the FEMA criteria for waterway debris removal. Similar to the Village's approach with the hazardous trees and limbs, Mr. Spanioli and his team created maps with the addresses and GPS coordinates of where debris removal work was performed in the canals. Mr. Spanioli attested to the validity of the aerial photographs showing the debris and the maps of the work locations found in the record.

The Village has submitted three invoices from a contractor, Big Ron's Tree Service, which can be associated with maps indicating the locations where debris was removed from the canal and aerial photographs that show the condition of the waterway before and after the storm. The invoices show the date and location where the work was performed, a brief description of the work, notes taken by the crew, and the rates and total cost of the work. Further, the record includes an affidavit from Mr. Krackenberger and a spreadsheet documenting the equipment used to complete the work. Mr. Spanioli testified to his understanding of how the work was performed, including seeking approval from homeowners for access to private property bordering the canal and using bridges for cranes. The invoices were reviewed and approved for payment by Messrs. Spanioli and Krackenberger.

The other invoice, for work performed by Y.A. Rubio Landscaping, Inc., also identifies the date, location, and description of debris removal work being performed, along with crew size, equipment, and pricing. This invoice is similarly supported by Mr. Spanioli's testimony, an affidavit from a horticulturist, and photographs and a video taken at the work location, namely Pinecrest Gardens, a public park. Concerning the invoices, Mr. Spanioli confirmed that either he or Mr. Krackenberger reviewed and signed off on the amount billed.

FEMA asserts it is unable to determine the nature, necessity, or precise location of the Village's waterway debris removal. More specifically, FEMA states that it cannot distinguish between pre-disaster and post-disaster debris without more complete records. We have previously determined that a lack of such evidence is sufficient justification to deny reimbursement. *See State of Louisiana, Department of Natural Resources, Office of Coastal Restoration & Management, CBCA 2918-FEMA, 13 BCA ¶ 35,325, at 173,395-96* (finding applicant did not prove that Hurricane Katrina deposited sediment or debris that applicant

proposed to dredge from bayous); *see also Livingston Parish*, CBCA 3608-FEMA, 14-1 BCA ¶ 35,645, at 174,544 (denying reimbursement because the panel was unable to determine if debris was caused by hurricane or natural flooding). FEMA points to its policy requirement that, for navigable waterways, removal and disposal of debris that obstructs the passage of vessels is eligible to a maximum depth of two feet below the low-tide draft of the largest vessel that used the waterway prior to the incident. PAPPG at 52. FEMA says that any debris below this zone is not eligible unless it is necessary to remove debris extending upward into an eligible zone. *Id.* Further, FEMA argues that it cannot determine from the photographs and invoices whether some of the work was normal maintenance versus disaster debris removal.

We are satisfied that the Village's documentation, along with Mr. Spanioli's testimony, supports its claim for reimbursement. We find that the record evidence adequately demonstrates that the waterway debris removal eliminated an immediate threat to life, health, or property; that the Village identified the specific locations and types of debris; and that the debris was deposited in the waterways as a result of Hurricane Irma. Accordingly, we find the Village is entitled to reimbursement for \$30,440 for the costs of waterway debris removal.

III. Debris Clearance – Cut and Toss

The Village seeks \$752,827.50 in PA funding for cut and toss work performed by SFM between October 16 and December 15, 2017. The Village contracted with SFM to collect fallen limbs and trees and other vegetative debris, cut it into manageable lengths, and move this debris from roads and public rights of way into piles that would later be hauled to landfills by Miami-Dade vehicles. FEMA previously paid for the loading and hauling by Miami-Dade of approximately 199,000 cubic yards of vegetative debris. The Village states that the cut and toss operations were necessary and in the public interest because clearing the debris allowed for safe use of the roads and rights of way throughout the Village.

FEMA argues that the cut and toss work is ineligible for funding because the Village failed to substantiate the quantities of debris (trees, limbs, and other vegetative material) that were processed in the cut and toss operation. FEMA also argues that the costs for the equipment used for the cut and toss work improperly included standby costs for some of the equipment that was not in use on a continuous basis.

The Stafford Act authorizes FEMA to make PA grants for “[p]erforming on public or private lands or waters any work or services essential to saving lives and protecting and preserving property or public health and safety, including . . . clearance of roads . . . necessary to the performance of emergency tasks and essential community services.” 42 U.S.C. § 5170b(a)(3)(C). “Cut and toss” often refers to the practice of debris clearance.

Unlike debris removal, which includes the hauling to and disposing of debris at a temporary or final disposal site, debris clearance is just the clearance of debris to allow passage. The Fact Sheet states that the documentation requirements for hazardous debris removal “only apply when applicants are collecting, hauling, and disposing of debris. They do not apply during the emergency debris clearance phase when crews clear roads to provide emergency access.” Fact Sheet at 3. Certainly, the cut and toss work must be in the public interest, such as eliminating threats to life or public health and safety and eliminating threats to improved public or private property. *See* 44 CFR 206.224(a). For this debris clearance work, we look to see whether the contracted work involved clearing roadways, sidewalks, and rights of way consistent with the public interest. Further, the amount paid for the work must be reasonable compared to the quantity of work performed. Finally, the applicant must have the work monitored so that the work performed falls within the definition of debris clearance and the quantity of work billed reflects the quantity of work performed.

The Village’s cut and toss work claim is based on nine invoices that are supported by additional documentation and testimony provided at the arbitration hearing. FEMA has not explicitly challenged the supporting documentation or any of the specific invoices but asserts that the Village’s entire claim for \$752,827.50 is ineligible for funding because the “Village’s documentation is insufficient to quantify either the actual, active labor and equipment hours or the volume of debris processed during the cut and toss.” Additionally, FEMA highlights fourteen line item charges in the invoices for stump grinding work totaling \$6930³ and 134 line item charges for “miscellaneous tools, gas, and oil” totaling \$43,570 that it asserts are ineligible for PA funding.

The nine invoices, which are substantially similar in format to the hazardous limb and tree removal invoices, show a job number, that the work was for Hurricane Irma cleanup in the Village, the dates the work was performed, crew information, line item descriptions of the personnel or equipment used by each crew, associated price-per-hour, total hours, subtotal amounts charged, and the total invoice price. Included within the line items of personnel and equipment of each crew is a line item for “misc. tools, gas, oil,” which is charged at \$20 per hour on all invoices. According to testimony from the Village’s public works director, each crew generally consisted of three-to-five laborers plus a supervisor. Each invoice was approved and signed by one of the Village monitors. Six of the invoices⁴ are supported by daily log sheets prepared by SFM that record the date of work, crew name, address of work, type of personnel and equipment used, start and end time, total personnel,

³ Invoices 239409, 239391, 139001, and 239390.

⁴ Invoices 138982, 138983, 138985, 139001, 139006, and 139009.

and equipment hours for each line item. Six of the invoices⁵ are supported by daily worksheets prepared by the Village, which identify the date of work, that the work was in response to Hurricane Irma, the work location, observation check boxes, handwritten notes, the monitor's signature, and, in some cases, the time of day when the work was monitored. The record contains two invoices⁶ that are unaccompanied by daily logs or worksheets. Mr. Spanioli testified that, to his knowledge, the Village created daily worksheets for each invoice and reviewed each invoice with the logs and worksheets to substantiate the costs found in the invoices. The record also contains a letter from SFM that defines its cut and toss work and distinguishes the work from its removal of hazardous "leaners and hangers," described in section II, above. Finally, the record contains a certification from Miami-Dade County that it performed hurricane-related debris collection and disposal services and that its monitoring company reported the collection and disposal of 199,325 cubic yards of hurricane debris from the Village.

Like the hazardous limb and tree removal work, we find that the nine invoices for cut and toss work performed by SFM are adequately supported by the Village's documentation and the testimony of Mr. Spanioli. In the daily worksheets, the Village's monitors noted their observations of work being performed, such as "hazardous conditions," "vegetative debris on swale," "obstructed sidewalk," "down tree," and "clogged storm drain." Mr. Spanioli similarly testified that the cut and toss work was necessary to clear roadways and provide emergency and public access throughout the Village. Considering the invoices, supporting documentation, and testimony, we are satisfied that the cut and toss work was performed in the public interest, as required for reimbursement.

As for the reasonableness of costs, FEMA has not presented any evidence or argument suggesting the listed price per hour or total hours of each line item are erroneous or unreasonably high. FEMA asserts that billing for large equipment, such as front-end loaders and backhoes, is unreasonable because such equipment is not typically employed for cut and toss work. However, Mr. Spanioli testified that this large equipment was needed to clear large limbs and full trees that had fallen into roadways and rights of way by pushing the debris to the side of the road for the Miami-Dade loading and hauling operations. Similarly, we do not agree with FEMA that the line items charging for miscellaneous tools, gas, and oil are ineligible for reimbursement as "cost plus percentage of cost" charges. Those line items, like the other line items, are based on a flat rate of \$20 per hour, which is not a percentage of the total cost. Given the work involved here, we find the pricing for the labor and equipment to be reasonable.

⁵ Invoices 138982, 138983, 138985, 139006, 139009, and 239409.

⁶ Invoices 239390 and 239391.

We also find that the Village adequately documented the quantity of debris cut and tossed. The Miami-Dade monitoring report of 199,325 cubic yards of collected debris is a sufficient representation of the quantity of debris cut and tossed. We find FEMA's assertion that the recorded quantity is inaccurate because the cut and tossed debris is intermingled with removed hazardous limbs and trees unpersuasive because, logically, the debris from the limb and tree removal operation would have to be cut and tossed in an orderly manner with the other debris that was already on the ground. Mr. Spanioli explained that the tree and limb crews would cut the hazardous limbs and then the cut and toss crews would break down the debris and push it to the side of the road. We find this strategy reasonable and sufficiently supported by the documentation and testimony. Regarding the fourteen line items for a stump grinder with operator, we conclude that the record supports eligibility of this work as part of the effort to clear the rights of way and allow Miami-Dade to haul the other debris collected as part of the cut and toss operations.

Accordingly, we find that the Village is entitled to reimbursement for \$752,827.50 for the eligible costs of the cut and toss work.

IV. Force Account and Mutual Aid Labor and Equipment

The Village seeks reimbursement in the amount of \$19,098.83 for force account police overtime and equipment and for mutual aid police overtime and equipment. "Force account" means an applicant's own labor forces or equipment. 44 CFR 206.221. When an applicant does not have sufficient resources to respond to an incident, it may request resources from another jurisdiction through a "mutual aid" agreement. The Village used force account police officers as well as City of South Miami police officers to assist with traffic control during debris clearing operations. This traffic control was required in order to ensure the safety of the crews clearing debris and the public on the rights of way. The Village's request for costs for force account police overtime and equipment totals \$13,458.19 while the mutual aid police overtime and equipment request totals \$5640.64.

FEMA asserts that the Village's request is ineligible primarily based on its position that the underlying debris removal work is ineligible. As explained above, we have found the vast majority of the Village's debris removal work eligible for reimbursement, so this basis for FEMA's denial must fail. FEMA additionally argues that the Village's documentation includes payroll discrepancies between the overtime memoranda, employee time sheets, and earnings statements.

Force account overtime labor and equipment and mutual aid overtime and equipment are eligible expenses relating to debris removal work in certain circumstances. 44 CFR 206.228; *see City of New Orleans, Louisiana*, CBCA 2875-FEMA, 13 BCA ¶ 35,401, at 173,690-91 (finding that the city was entitled to force account labor reimbursement which

represented an incremental disaster-related cost to the existing regular time labor resources of the applicant); *Miami-Dade County, Florida*, CBCA 7204-FEMA, 22-1 BCA ¶ 38,017, at 184,625 (finding force account equipment eligible for PA funding when directly tied to underlying eligible work).

The Village submitted multiple forms of documentation in support of its claimed costs for force account police overtime and equipment. The Village created a spreadsheet listing the names, identification numbers, and job titles of the officers who performed the force account duties as well as the dates and hours worked, the hourly and overtime rates, the labor costs, the types and costs of equipment used (police cars), and the total costs of labor and equipment. Attached to the spreadsheet are Pinecrest police overtime memoranda that state the name, rank, and identification number of the officer, date of overtime requested, total hours worked, scheduled duty hours and regular days off, a description of overtime activity, and the signature of the officer and approving superior. The description of overtime activity generally states “debris detail,” but some also state the street location of the detail. In addition to the overtime memoranda, the documentation includes the employee time sheets and earning statements for the relevant pay periods. Our review of this documentation shows that the police officers were paid at a regular pay rate for the overtime work for which the Village requests reimbursement. However, the Village’s calculations for its claimed costs, which total \$13,458.19, use the higher overtime pay rates instead of the regular pay rates that were actually paid to the police officers. Accordingly, FEMA and the Village will need to recalculate the correct amount of force account pay reimbursement using the regular rates rather than the overtime rates.

The Village also submitted its mutual aid agreement with the City of South Miami, which states that the work was for “post Irma debris pickup” and includes the dates of work, officer pay, fringe benefits, vehicle costs, and total costs. Attached to the agreement is a statement of the work the City of South Miami officers performed, which reads, “The officer’s primary responsibility was to provide Maintenance of Traffic (MOT) and security for the crews performing debris cutting, road clearing, and cleanup.” Like the force account police documentation, the mutual aid documentation includes a similar spreadsheet and overtime memoranda from the City of South Miami Police Department. It also includes an invoice from the City of South Miami, which lists each officer’s pay, fringe benefits, vehicle costs, and total costs. Here, the amount that the Village requested is based on a correct calculation of the costs billed by the City of South Miami. We find that the Village is entitled to reimbursement for the full \$5640.64 for the Miami-Dade mutual aid police overtime and equipment.

Because the underlying debris removal work was eligible and the Village has submitted adequate documentation, we find that the Village is entitled to reimbursement for

its force account police overtime and equipment. However, FEMA and the Village will need to recalculate the correct amount using the regular rates rather than the overtime rates.

Decision

We grant the Village's request for reimbursement for hazardous tree and limb removal in the amount of \$718,110. We grant the Village's entire request for reimbursement for waterway debris removal and cut and toss work in the amounts of \$30,440 and \$752,827.50, respectively. We find that the Village is entitled to reimbursement for its force account police overtime and equipment; however, the parties will need to recalculate the total force account labor using the correct regular time pay rates. Finally, we grant the Village's request for reimbursement of \$2698.68 for force account equipment and \$5640.64 for mutual aid labor and equipment. Accordingly, we grant the Village's request for reimbursement in the amount of \$1,509,716.82 in PA funding and direct that FEMA and the Village determine the remaining amount for force account labor.

Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Board Judge

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge

Kathleen J. O'Rourke
KATHLEEN J. O'ROURKE
Board Judge