



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

---

June 7, 2023

CBCA 7652-FEMA, 7653-FEMA

In the Matter of CITY OF BELLE PLAINE, IOWA

Stephen P. Beck, City Administrator of City of Belle Plaine, Belle Plaine, IA, appearing for Applicant.

Dennis T. Harper, Alternate Governor's Authorized Representative, Iowa Homeland Security and Emergency Management Department, Windsor Heights, IA, appearing for Grantee.

Christiana Cooley and Frank Bruscatto, 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**, **ZISCHKAU**, and **CHADWICK**.

**VERGILIO**, Board Judge, writing for the panel.

The City of Belle Plaine, Iowa, is the applicant (or subrecipient) in these arbitrations brought under 42 U.S.C. § 5189a(d) (2018) involving the Federal Emergency Management Agency (FEMA) and a declared disaster. The applicant—supported by the grantee (or recipient), the Iowa Homeland Security and Emergency Management Department—seeks public assistance that FEMA denied under two applications. The first matter (CBCA 7652) involves a damaged corrugated steel culvert and the street area above; the second matter (CBCA 7653) involves the cracking and sinking of three streets, said to be caused by heavy equipment used during debris removal. This decision is the final administrative action on these applications. Rule 613 (48 CFR 6106.613 (2021)).

As with many arbitration matters, the result here is factually driven. The panel concludes that the record does not support payment of public assistance.

### Background

The disaster was an August 2020 derecho—high winds without rain—that uprooted and damaged trees, resulting in a significant amount of debris. The applicant was required to remove large quantities of debris over certain roads, but we have no precise details of trip routes, number of trucks, truck sizes, or truck weights. Although FEMA argues that the number of available trucks undermines the applicant’s position that there were about 100 trucks on the roads each day over a two-week period, we do not find FEMA’s objection persuasive, as the applicant cites an estimated number of trips (not individual trucks) for the period. Trucks carrying debris generated by the disaster traveled the roads, including the road over the culvert. Other vehicles traversed the roads as well, before and after the disaster.

FEMA and the applicant viewed the roads and culvert area in early 2021 (several months after the disaster event). Although snow obstructed the observations, no damage was noted. The record contains only a few photographs of the culvert and portions of the roads at issue during the relevant period. We see no damage that differs from what might be normal wear and tear. Testimony at the 2023 hearing suggesting that trucks carrying debris caused cracks and ruts in the roads is not persuasive given other evidence presented. Further, the record provides no basis to distinguish between damage caused by debris-carrying vehicles and damage that predated the disaster or occurred later from other sources.

That the city administrator, mayor, and members of the public works staff observe and review the streets on an ongoing basis and that mowing and painting crews never reported pre-disaster damage at the culvert is not compelling evidence to help resolve the issues here. The record does not indicate expertise or experience of the individuals or protocols to be following in making observations. Also, there is an absence of formal reports. The applicant routinely performs maintenance by quadrants in the area but did not clearly distinguish the conditions observed after the derecho from those expected normally without the derecho.

Detailed photographs taken shortly after the disaster would have been useful evidence to depict road conditions after the derecho, and there was ample time before the initial inspection or thereafter to detail the alleged damages. A photo of the damaged culvert reveals considerable rust at a seam and corrosion along the base or floor where a fracture occurred, forcing the broken metal upwards. The panel accepts the opinion of a FEMA engineer that the severe corrosion and ensuing damages are evidence of prior conditions of the culvert and of ordinary sagging of the road. Although an applicant’s witness opined that a single truck of sufficient weight could have caused the damage observed, we have no evidence that such a truck traveled the roads, or if it did, when—before the disaster, during debris removal, or unconnected to the disaster and its aftermath. The testimony does not further the applicant’s case.

### Discussion

The applicant seeks \$101,729 to repair the culvert-related damage and another \$100,423.89 to repair segments of three roads. We have authority to arbitrate because the applicant is in a rural area. *See* Rule 602. FEMA denied public assistance in both instances on the grounds that it could not determine that the disaster caused the damage.

The Public Assistance Program and Policy Guide (PAPPG) (June 2020) recognizes that damage to improved property may occur during emergency work involving debris removal operations. The repair of damage to public property, at issue here the culvert and portions of roadways, is eligible for public assistance if the damage was: (1) due to severe conditions resulting from the incident; (2) unavoidable; and (3) not due to improper or excessive use. PAPPG at 138-39. The engineer report from the applicant is premised upon the excessive weight of the debris removal trucks. Because improper or excessive use could serve as a disqualifying factor for public assistance, the report does not further the applicant's position in the absence of proof that the use of such trucks was unavoidable and not reflective of improper or excess use; i.e., more trips of lesser weight could have eliminated or reduced the alleged damage.

The panel here, like FEMA, looks beyond the above provision as it considers the general work and facility eligibility guidance provisions. In particular, the applicant must demonstrate that work is required to address damage caused by the declared incident. FEMA does not provide assistance for repair or damage caused by deterioration or deferred maintenance, or the applicant's failure to take measures to protect a facility from further damage. PAPPG at 51-52. Further, PAPPG provisions regarding permanent work eligibility considerations for roads and bridges, found in section 8.IX.A, specify that an applicant must demonstrate that damage was directly caused by the incident, and in the context of minor damage to roads, one must distinguish between preexisting damage and damage caused by the incident. PAPPG at 168-70.

The engineering reports relied upon by the applicant are premised upon damages arising from utilizing vehicles that exceeded road design parameters. Various assumptions are detailed to demonstrate a reduced useful life of the roadway and culvert. One can conclude that the useful life of the road has been diminished because of the debris removal traffic, however, that loss of useful life is not compensable, and the overloading of the roads and culvert would result in non-compensable damage. The analysis is not persuasive to support public assistance funding.

Based upon this record, expanded from what FEMA had available when it made its determinations, we reach the same conclusions. The record fails to demonstrate that

damages (if such exist) were a direct or indirect result of the disaster incident and not due to deferred maintenance and/or to preexisting conditions.

The panel denies public assistance for the applicant in each of these two cases.

*Joseph A. Vergilio*  
JOSEPH A. VERGILIO  
Board Judge

*Kyle Chadwick*  
KYLE CHADWICK  
Board Judge

**ZISCHKAU**, Board Judge, writing separately.

I would grant the applications. In my view, the documents in the record, coupled with the essentially un rebutted testimony of the licensed transportation and road engineers who actually inspected the culvert and the roads, compellingly show that the damages to the culvert and the roads at issue here were caused by the heavy debris removal and utility repair vehicles that used those specific roads. The city also demonstrated through its records and testimony that the roads were kept in satisfactory condition prior to the storm and were regularly maintained.

*Jonathan D. Zischkau*  
JONATHAN D. ZISCHKAU  
Board Judge