



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 24, 2025

CBCA 8312-FEMA

In the Matter of EARLY EDUCATION AND CARE, INC.

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Caleb Keller, Senior Attorney, and Kelly Ann Kennedy, Senior Attorney, Florida Division of Emergency Management, Tallahassee, FL, counsel for Grantee; Cassie Sykes, Recovery Appeals Officer, and Melody Cantrell, Recovery Legal Liaison, Florida Division of Emergency Management, Tallahassee, FL, appearing for Grantee.

Jasmyn Allen, 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 **BEARDSLEY** (Chair), **GOODMAN**, and **SULLIVAN**.

GOODMAN, Board Judge, writing for the Panel.

Early Education and Care, Inc. of Panama City, Florida (applicant or EEC), has requested arbitration pursuant to section 423 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. § 5189a (2018), to recover public assistance (PA) from the Federal Emergency Management Agency (FEMA). This arbitration concerns the parties' mixed-use analyses (MUA) regarding applicant's Jenks Facility (the facility), which was damaged by Hurricane Michael in October 2018. Because applicant's MUA fails to show that more than 50% of the facility was used for eligible purposes, its facility repair costs are not eligible for public assistance.

Background¹

Applicant is organized under Florida law as a 501(c)(3) private, non-profit (PNP) corporation, which provides Head Start and Early Head Start programming (Head Start) for children and their families. Applicant is an eligible PNP applicant under FEMA's public assistance (PA) program and seeks PA under three FEMA projects: 83597, 86254, and 127172. For the projects, applicant seeks \$5,002,218.62, representing the difference between applicant's alleged costs as calculated in its MUA and the costs calculated under FEMA's lower eligibility percentage. RFA at 2. Applicant characterizes the amount in controversy as the "Total Potential Amount in Controversy," as there are issues as to duplication of some costs. *Id.*; Applicant's Exhibit II at 58-63.

The panel previously determined that applicant provided at least three eligible services from the facility and that the facility was not purely an administrative building, as FEMA contended. *Early Education and Care, Inc.*, CBCA 7235, 22-1 BCA ¶ 38,059, at 184,795-97. Following the panel's decision, FEMA performed an MUA on the building, assuming that the only eligible services provided in the building were the three eligible services we identified. FEMA's MUA showed that only 28.42% of the building was being used for eligible services.²

Applicant challenges FEMA's analysis, arguing that it should have been provided the opportunity to explain to FEMA all of the eligible services that were provided in the building. Applicant acknowledges that a portion of the facility was leased to another, non-eligible entity, Florida Probation Service LLC, and therefore an MUA is required. RFA at 6. Applicant asserts that had FEMA provided it with the opportunity to show additional eligible services (beyond the three services the panel identified), it would have been able to demonstrate that 66.67% of the building was used for eligible services. *Id.*; Applicant's Exhibit III, Applicant's Mixed-Use Analysis.

¹ We write "primarily for the parties," Rule 613 (48 CFR 6106.613 (2024)), include only those facts relevant to the resolution of the issues presented, "and omit unnecessary details." *School Board of Bay County, Florida*, CBCA 7889-FEMA, 24-1 BCA ¶ 38,518, at 187,220.

² FEMA contends that after the panel found that applicant provided eligible services in the previous arbitration, the panel failed to undertake the required MUA. The panel is charged with arbitrating disputes between applicants and FEMA. Rule 602. Arbitration panels do not prepare MUAs in the first instance; rather, panels only review MUAs prepared by the parties.

Discussion

Applicant presents two issues to be decided in this arbitration: (1) whether the additional Head Start services described in the RFA are eligible, non-critical, essential, PNP, social-type services; and (2) whether applicant's administrative and storage areas used in direct support of those services should be included in the eligible space figures used in the MUA. RFA at 4-5. Because we decide that applicant cannot establish that more than 50% of the space was used for eligible purposes when the administrative and storage spaces are deducted from the eligible space, we need not decide the first issue.

For PNPs providing non-critical, eligible services, FEMA policy requires two eligibility determinations. Public Assistance Program and Policy Guide (PAPPG) (Apr. 2018). First, FEMA must determine that the PNP was providing eligible services from the facility (i.e., applicant eligibility). PAPPG at 11. Second, FEMA must determine that only eligible services are provided from the facility or, if not, perform an MUA (i.e., facility eligibility). *Id.* at 15-16. "If the eligible PNP owns the entire facility and leases a portion of it to another entity, the facility is eligible provided that the PNP dedicates more than 50 percent of the facility for eligible services." *Id.* at 16. The PNP must also show that the facility is used "for eligible services for more than 50 of the [sic] percent of operating time." *Id.* If the MUA shows that more than half, but less than all, of the building is used for eligible services, FEMA will pro rate the public assistance funds to the percentage of eligible services used. *Id.* If the MUA shows that less than half of the building was used for eligible services, the PNP may not receive public assistance for the repair or replacement of the building. *Id.*

In preparing an MUA, FEMA policy requires that "[w]ith the exception of custodial care facilities and museums, administrative and support buildings essential to the operation of PNP non-critical services are NOT eligible facilities." PAPPG at 13 (table 2). There is no other mention of the treatment of administrative and support areas in tables 2 or 3 of the PAPPG. *See id.* at 13, 14. In addition, FEMA policy defines closets (i.e., storage spaces) as common space that is not included as eligible space in the calculation of mixed-use space. *Id.* at 16.

Applicant's MUA is comprised of a spreadsheet and several floor plans of the facility. Applicant's Exhibit III.³ The first and third floor plans, which appear to be identical, show the facility's linear dimensions from which square footage may be calculated. *Id.* at 7, 9. The second floor plan indicates, as "rental space," the ineligible area rented to another entity

³ Applicant explained that this version of its MUA (Applicant's Exhibit III) differs slightly from one prepared previously (FEMA's Exhibit 9) and asks the panel to consider this version. Applicant's Response to Board's April 3, 2025, Order at 1.

and labels—J1 through J84—the areas used by applicant. *Id.* at 8. The use of each area, including the position titles of those occupying various offices, is entered on the second floor plan, which shows the arrangement of offices, conference rooms, hallways, storage rooms, closets, and common areas. *Id.*

The spreadsheet provides an “analysis summary” and “totals” of applicant’s MUA:

Total Facility Square footage	22,650.00
Total Room Space	14,049.97
Total [sq. ft.] less all rooms (Hallways, Common spaces)	8600.03
Excluded Space [Rooms]	1139.69
Space Dedicated to Eligible Uses	8607.53
Space Analyzed for Purposes of MUA	12,910.29
% of Space Dedicated to Eligible Uses	66.67%
Space Dedicated to In-eligible [sic] Uses	4302.75
% of Space Dedicated to Ineligible Uses	33.33%

Applicant’s Exhibit III at 1.

Applicant divided the space it deemed as dedicated to eligible uses (8607.53 square feet (sq. ft.)) by the space analyzed for purposes of the MUA (12,910.29 sq. ft) to determine that 66.67% of the space was for eligible uses. Notably, applicant’s calculation of the space dedicated to “eligible” uses includes the administrative and storage spaces for the activities.

On April 3, 2025, the panel directed applicant to identify the total square footage of the administrative and storage areas. Applicant responded that the total square footage of these areas was 2602.12. Applicant identified twenty-three areas, which by their description were used for administrative or storage/common areas. There were seven areas with less than 100 sq. ft. (storage and file rooms); fifteen areas between 101 and 146 sq. ft. (copy rooms, file rooms, a server room, and administrative support areas); and one area of 351 sq. ft. (maintenance area). Applicant’s Response to Board’s April 3, 2025, Order at 5; *see* RFA at 15.

When these areas are deducted from the eligible space, the amount of eligible space is reduced to 6005.41 sq. ft. ($8607.53 - 2602.12 = 6005.41$). Dividing the reduced eligible space amount by the space analyzed for purposes of the MUA results in 46.5% of the space being devoted to eligible uses ($6005.41/12,910.29 = 46.5\%$). Accordingly, even if the additional services described in the current RFA were PNP eligible, non-critical, essential, social-type services, less than 50% of the space was used for eligible purposes.

Decision

Applicant's MUA analysis, when adjusted by the square footage of the administrative and storage spaces, fails to show that more than 50% of the space was used for the provision of eligible services. Applicant's facility is not eligible for public assistance.

Allan H. Goodman

ALLAN H. GOODMAN
Board Judge

Erica S. Beardsley

ERICA S. BEARDSLEY
Board Judge

Marian E. Sullivan

MARIAN E. SULLIVAN
Board Judge