



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 8, 2025

CBCA 8343-FEMA

In the Matter of ESCAMBIA COUNTY SCHOOL DISTRICT

Ellen Odom, General Counsel, Escambia County School District, Pensacola, FL; and David J. Bryant, Director, Office of Internal Auditing, Escambia County Public Schools, Pensacola, FL, appearing for Applicant.

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.

Ramoncito J. deBorja, 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 **SHERIDAN, KULLBERG**, and **NEWSOM**.

NEWSOM, Board Judge, writing for the Panel.

Applicant, the Escambia County School District of Florida (the District), seeks arbitration under 42 U.S.C. § 5189a(d) (2018) regarding its application for public assistance for damage caused by Hurricane Sally in 2020. The Federal Emergency Management Agency (FEMA) argues that this arbitration is not properly before the Board because the request for arbitration was filed both too late and too early and because the amount in dispute is below the threshold for arbitrations. We conclude that the arbitration is properly before the Board and that, except for discrete items, the District has established eligibility for the costs claimed.

Background

In September 2020, Hurricane Sally caused widespread wind, storm surge, and flooding across the western Florida panhandle. Flood and wind damage extended inland and into south central areas of the Gulf Coast. A major disaster was declared on September 23, 2020. Applicant Exhibit 2-003, Initial Determination Memorandum (initial DM) at 3¹.

According to the District, the disaster downed trees and branches throughout Escambia County, depositing debris on school campuses and administrative facilities and leaving hazardous tree limbs and stumps. The District engaged its contractor to remove the debris and utilized force account labor to oversee the contractor debris removal operations, which proceeded through December 10, 2020. FEMA established Project number 16777 for this effort. Applicant Exhibit 2-003, Initial DM at 3-4.

During the first quarter of 2021, the District submitted a request for public assistance for the cost of debris removal. It included, among other support, contractor invoices, debris removal reports, listings of debris removed and their global positioning system coordinates, debris size measurements, work orders, records of oversight of the contractor, load tickets, force account equipment and labor summaries, payroll records, photographs, and other support. *See, e.g.*, Applicant Exhibits 2-008, 2-015. The District eventually claimed costs for debris removal and force account labor totaling at least \$956,292.92, plus administrative costs. Request for Arbitration at 4.

On February 28, 2022, the FEMA Infrastructure Branch Director for Region IV issued the initial DM on the District's request for public assistance. Applicant Exhibit 2-003, Initial DM. The initial DM stated that the "amount at issue" was \$829,839.73 and that FEMA "determine[d] \$646,501.49 to be eligible and \$183,338.24 ineligible" for reimbursement. *Id.* at 3, 9. The District noticed what it believed were errors in FEMA's analysis; specifically, it noticed that the initial DM overlooked many of the costs that the District had claimed. On April 26, 2022, the District submitted a timely first appeal to the Florida Department of Emergency Management (FDEM). Applicant Exhibit 2-004. The FDEM transmitted the appeal to FEMA on June 22, 2022. Applicant Exhibit 2-006 at 1.

Roughly sixteen months later, on August 7, 2023, FEMA responded to the first appeal. Applicant Exhibit 2-006 at 1. The parties disagree as to the correct characterization of FEMA's response. The District characterizes it as a "First Appeal Response," Applicant Reply at 3, while FEMA characterizes it as a "First Appeal Decision." FEMA Response at 2.

¹ Record citations are to exhibit pdf page numbers.

However it is characterized, the August 7, 2023, correspondence stated that the Public Assistance Branch had “erroneously omitted” from consideration some of the records submitted by the District. It remanded the matter back to the FEMA Regional Branch for “continued development.” Significant to this dispute, the August 7, 2023, correspondence neither granted nor denied the amounts requested. Instead, it stated that “should FEMA identify subsequent eligibility issues that result in the denial of Public Assistance funds, it will prepare a new DM.” FEMA Exhibit A. Because the August 7, 2023, correspondence is central to this dispute, we quote it extensively below:

The Applicant is appealing the U.S. Department of Homeland Security’s Federal Emergency Management Agency’s (FEMA) denial of funding in the amount of \$183,338.24 for debris removal operations. *The project will be returned to the FEMA Region 4 Public Assistance Branch for continued development as explained below.*

On February 28, 2022, FEMA issued a Determination Memorandum (DM) denying the Applicant’s claimed costs for debris removal operations on the basis that the Applicant did not provide supporting documentation for removal activities. Specifically, FEMA denoted a lack of documentation supporting costs claimed for leaners and hangers. The Applicant’s first appeal includes debris monitoring records for each of its school campus locations, including the leaners and hangers. *Additionally, the Applicant provided five invoices for this project via the Grants Manager Portal on April 6, 2021 that were erroneously omitted from FEMA’s validation of the Applicant’s work and costs; thus, the sample reference in FEMA’s DM did not ensure consideration of the entire invoice population.*

The Applicant provided sufficient documentation to support the continued evaluation of this project with its first appeal. Accordingly Grants Manager Project 167777 will be returned to the Region 4 Public Assistance Branch for the completion of a new sample that includes the missing invoices and consideration of the documentation provided on appeal. *Should FEMA identify any subsequent eligibility issues that result in the denial of Public Assistance funds, it will prepare a new DM identifying the work or costs at issue and provide specific justification for its decision.* This letter constitutes the official notification of this determination to the Applicant.

FEMA Exhibit A (emphasis added). After FEMA’s August 7, 2023 correspondence, FEMA issued no decision for quite some time.

Approximately 18 months later, on February 6, 2025, the District filed this Request for Arbitration (RFA) with the Board. The District asserted in the RFA that the amount in dispute “exceeds” \$500,000, then noted that “the District is entitled to FEMA Public Assistance funding . . . in the amount of \$956,292.92 plus direct administrative costs in the estimated amount of \$140,000.” RFA at 2, 4.

The Board held an initial conference with the parties on February 18, 2025. During the conference, FEMA counsel raised two procedural issues: whether the RFA was untimely, and whether the matter is ripe for arbitration. In our February 24, 2025, Conference Memorandum and Scheduling Order, the Board directed the parties to submit arguments on the merits of the request for public assistance simultaneous with any arguments as to timeliness or ripeness.

On February 26, 2025, which was twenty days after the RFA was filed, FEMA issued another DM (revised DM), revising the amounts in the first DM. FEMA Exhibit B. In the revised DM, FEMA stated that the amount requested was \$1,009,691.10, of which it found the District was eligible for \$610,808.68. FEMA denied \$398,882.42. FEMA Exhibit B at 8.

Discussion

FEMA argues that the RFA is not properly before the Board for three reasons. First, FEMA argues that the RFA is untimely because it was filed more than sixty days after FEMA’s August 7, 2023, correspondence, which FEMA characterizes as a first appeal decision. Second, FEMA argues that the RFA is not ripe because it was filed too soon, *i.e.*, before a hypothetical “subsequent” first appeal decision. Third, FEMA contends that because of FEMA’s revised DM (issued after the RFA was filed), the amount in dispute is now \$398,882.42, below the \$500,000 threshold for arbitration. FEMA Response at 2-3, 7. As to the merits, FEMA makes no legal argument but rather refers us to the revised DM. FEMA Surreply at 4, 7-8. The District, meanwhile, urges the Board to conclude that this arbitration is properly before the Board and the District is eligible for the full amount of public assistance requested. Applicant Reply at 39-40.

We first address the procedural issues followed by a discussion of the merits.

Timeliness

An applicant must submit a request for arbitration “within 60 calendar days from the date of the [FEMA] Regional Administrator’s first appeal decision,” or, alternatively, an applicant may file an RFA if FEMA has not rendered a first appeal decision within 180

calendar days after a timely first appeal. 44 CFR 206.206(b)(3)(iii)(B)(1), (b)(3)(iii)(B)(2) (2022).

FEMA contends that its August 7, 2023, correspondence was a first appeal decision, and because the District filed the RFA on February 6, 2025, more than sixty days after August 7, 2023, the RFA is untimely. FEMA Response at 3. The District counters that FEMA's August 7, 2023, correspondence was not a first appeal decision, that there has been no first appeal decision, and that the District filed this arbitration more than 180 days after its June 22, 2022, first appeal. Therefore, the arbitration is timely. Applicant Reply at 7-8.

The District is correct. The August 7, 2023, correspondence cannot reasonably be construed as a first appeal decision. It contains no decision on eligibility. It merely states that the "project will be returned to the FEMA Region 4 Public Assistance Branch for continued development." Indeed its only reference to eligibility mentions the *possibility* of a *future* denial of public assistance, stating, "[s]hould FEMA identify any subsequent eligibility issues that result in the denial of Public Assistance funds, it will prepare a new DM identifying the work or costs at issue and provide specific justification for its decision." FEMA Exhibit A.

FEMA argues that a decision to remand the matter back to the Region is a first appeal decision. FEMA Response at 5. This position is not reasonable. The regulations contemplate that a Regional Administrator's decision will either grant the first appeal or deny it in whole or part. *See* 44 CFR 206.206(b)(1)(v), (b)(2)(ii)(A). The August 7, 2023, document did neither. That document was not a first appeal decision, and therefore, the sixty-day deadline did not start to run. The RFA is timely because it was filed more than 180 days after the District filed its first appeal.

Ripeness

Next, FEMA contends that the RFA is not ripe. Having just argued that FEMA issued a first appeal decision on August 7, 2023, FEMA now argues that "FEMA has not issued a First Appeal Decision," and therefore, the RFA was filed too early. FEMA Response at 6. FEMA contends that the District should have waited for a new DM, then appealed that new DM, and then sought to arbitrate a hypothetical "subsequent First Appeal decision." *Id.* at 2.

This argument is internally inconsistent and without merit. The regulations contain no ripeness requirement nor do they mention any such thing as a "subsequent first appeal decision." Indeed, the regulations are clear that an applicant may file an RFA if FEMA has not rendered a first appeal decision within 180 calendar days after a timely first appeal.

44 CFR 206.206(b)(3)(iii)(B)(2) (2022).² As we have explained, FEMA has not issued a first appeal decision. This applicant waited far more than 180 days before filing the RFA. Nothing in the regulations require it to wait longer to seek arbitration.

FEMA states that a “significant objective” of the first appeal process is to develop a complete record prior to a second appeal or an arbitration. FEMA Response at 2, 7. It certainly would have been more efficient if FEMA had developed its position in a timely fashion prior to this arbitration. We find nothing in the regulations, however, to support the assertion that an applicant must wait interminably for FEMA to do that. At the time this RFA was filed, it had been nearly five years since the hurricane, more than four years since the District’s request for public assistance, more than three years since the District’s first appeal, and eighteen months since FEMA’s remand. On these facts, one can reasonably question whether allowing more time for FEMA to render a “subsequent first appeal decision” would produce a better record.

Amount in Dispute

FEMA’s third defense is that the amount in dispute is below the \$500,000 threshold for arbitrations, and therefore, this arbitration is not properly before the Board. FEMA Response at 8. Unlike the timeliness and ripeness defenses, this argument is not frivolous. We considered it carefully and conclude that the arbitration meets the applicable threshold.

The statute provides, in relevant part, that an applicant for public assistance may request arbitration to dispute the eligibility for assistance for a dispute of more than \$500,000. 42 U.S.C. § 5189a(d)(1); *see also* 44 CFR 206.206(b)(3)(i)(B). The regulations define “amount in dispute” to mean “the difference between the amount of financial assistance sought . . . and the amount of financial assistance for which FEMA has determined such Public Assistance project is eligible.” 44 CFR 206.206(a).

² This regulation also states that, to request arbitration in the context where FEMA has not issued a first appeal decision, the applicant must first electronically withdraw its pending first appeal before submitting its request for arbitration. 44 CFR 206.206(b)(3)(iii)(B)(2) (2022). Neither party stated whether the applicant withdrew its first appeal prior to filing this RFA. FEMA, however, did not object to the Board’s authority on the ground that the District failed to withdraw its appeal, even though FEMA filed a surreply responding to the District’s asserted right to arbitrate. We infer that the applicant did indeed withdraw its first appeal prior to seeking arbitration, but, in any event, FEMA has waived this objection by failing to raise it.

In prior FEMA decisions, the Board generally has looked to the amount in dispute at the time the RFA was filed to determine whether the RFA met the \$500,000 threshold. *See School Board of Bay County, Florida*, CBCA 7872-FEMA, 24-1 BCA ¶ 38,697, at 188,131-32; *Metropolitan St. Louis Sewer District*, CBCA 6821-FEMA, 20-1 BCA ¶ 37,696 at 183,009-010. At the time this RFA was filed, the District asserted that it was eligible for \$956,292.92, plus administrative costs. It was unknown at that time whether FEMA would grant or deny public assistance, and if it granted assistance, it was unknown how much it might grant. That is because in its August 7, 2023, correspondence, FEMA stated that it may issue a new DM and deny public assistance funds if it identifies “any subsequent eligibility issues.” FEMA Exhibit A. Accordingly, at the time the RFA was filed, the amount in dispute was the entire amount requested or, at least, \$956,292.92.³

FEMA argues that the amount in dispute should be deemed to be the amount in its revised DM which it issued after the RFA was filed. FEMA Response at 7. In *School Board of Bay County* and *Metropolitan St. Louis*, we considered whether events that occur after the RFA was filed can modify the amount in dispute for purposes of determining the Board’s authority to arbitrate. In *Metropolitan St. Louis*, we concluded that the applicant’s voluntary reduction of its claim, after it filed the RFA, to an amount below the threshold, divested the Board of authority to arbitrate. *Metropolitan St. Louis*, 20-1 BCA at 183,011. In *School Board of Bay County*, we concluded that FEMA’s post-RFA analysis increasing the amount it would pay did not tie back to the original RFA and did not deprive the Board of authority to arbitrate. *School Board of Bay County*, 24-1 BCA at 188,131-32.

These facts are similar to those in *School Board of Bay County*. Here, it was FEMA, not the District, that changed its position after the RFA was filed. We find the panel’s reasoning in *School Board of Bay County* persuasive and adopt it here. FEMA’s post-RFA analysis does not modify the amount in dispute for purposes of determining the Board’s authority. Because the amount in dispute at the time the RFA was filed was at least \$956,292.92, the Board has authority to arbitrate.

Eligibility

Turning to eligibility, the District reviews extensively the records it submitted in support of its claim and urges the Board to find that it is eligible for the entire amount claimed. FEMA provides no legal argument on the merits and relies solely on the revised

³ The parties debate whether administrative costs should be included when determining the amount in dispute. We need not decide that issue because we conclude that the amount in dispute meets the threshold even without considering administrative costs.

DM dated February 26, 2025, to support its position as to the District's eligibility for the costs claimed. FEMA Surreply at 4, 7-8.

We note discrepancies in the amount at issue. In its original RFA, the District asserted that it sought at least \$956,292.92. RFA at 4. Later, in its Reply, the District stated that the amount sought is now \$987,967.80, explaining the difference by asserting that "costs have been finalized." Applicant Reply at 37. FEMA's revised DM states that the amount claimed is \$1,009,691.10, of which FEMA states the District is entitled to \$610,808.68 in public assistance and ineligible for \$398,882.42. FEMA Exhibit B. We use the amounts set forth in the revised DM because they reflect FEMA's most recent position.

Apart from *de minimis* rounding errors, the amounts denied fall into several categories: force account equipment, force account materials, contract debris removal and monitoring, purchase order balance/open contract invoices, and deductions for salvage, as listed in the table below.

Description	Applicant's Claim	FEMA's Cost Adjustments	FEMA's Revised Costs	FEMA's Eligibility Issue
Costs Not in Dispute or Minor Rounding Adjustments⁴				
Force Account Labor (Straight Time (ST) Removal)	\$41,284.54	(\$0.04)	\$41,284.50	Rounding
Force Account Labor (Overtime (OT) Removal)	\$50,413.65	(\$0.27)	\$50,413.92	Rounding
Force Account Labor (ST Monitoring)	\$15,957.34	\$0	\$15,957.34	None
Force Account Labor (OT Monitoring)	\$15,933.52	\$0	\$15,933.52	None

⁴

We accept FEMA's rounding adjustments for force account labor.

Description	Applicant's Claim	FEMA's Cost Adjustments	FEMA's Revised Costs	FEMA's Eligibility Issue
Costs in Dispute				
Force Account Equipment	\$39,357.54	(\$1,157.37)	\$38,200.17	Equipment cost code, non-reimbursable items
Force Account Materials	\$5,560.39	(\$571.14)	\$4,989.25	Reduction for supplies covered in FEMA cost codes
Contract Debris Removal and Monitoring	\$793,336.33	(\$344,810.00)	\$448,526.33	Federal Acquisition Regulation (FAR)
Purchase Order Balance/Open Contract Invoices	\$47,847.79	(\$47,847.79)	\$0	Unsupported costs
Salvage		(\$4,496.35)	(\$4,496.35)	
Totals	\$1,009,691.10	(\$398.882.42)	\$610,808.68	

Force Account Equipment

In the revised DM, FEMA denied \$1,157.37 of force account equipment costs. FEMA Exhibit B at 7. We were unable to locate much information from either party about these costs. Within the District's submissions, we found only a cost ledger that provided no meaningful detail. *E.g.*, Applicant Exhibit 9-001, Exhibit 11-001. In the revised DM, FEMA's explanation for its denial was "equipment cost code, non-reimbursable items," which comment was uninformative. FEMA Exhibit B at 7. Accordingly we conclude that the District has not met its burden to establish eligibility for the \$1,157.37 of force account equipment costs that are in dispute, so these costs are denied. The remaining amounts for force account equipment are not in dispute, so they are granted.

Force Account Materials

In the revised DM, FEMA denied \$571.14 in force account material cost. FEMA Exhibit B at 7. We were unable to locate much information from either party about these costs. Within the District's submissions, we found only a cost ledger that provided no meaningful detail. *E.g.*, Applicant Exhibits 9-001, 11-001. In the revised DM, FEMA's explanation for its denial was "reduction for supplies covered in FEMA cost codes," which comment was uninformative. FEMA Exhibit B at 7. Accordingly we conclude that the District has not met its burden to establish eligibility for the \$571.14 in force account material costs that are in dispute, so these costs are denied. The remaining amounts for force account material costs are not in dispute, so they are granted.

Contract Debris Removal and Monitoring

In the revised DM, FEMA denied \$344,810.00 in costs for debris removal and monitoring. FEMA provide some explanation, stating that FEMA determined costs ineligible if the debris that was removed did not meet specific size or other criteria. For example, FEMA denied:

- costs for removal of limbs or branches that measured less than two inches in diameter at the point of break;
- costs for removal of stumps and filling of the rootball hole for stumps where less than fifty percent of the rootball was exposed;
- costs for grinding of stumps that FEMA considered not to be cost-effective; and
- costs for removal of trees that had a diameter of less than six inches, measured four-and-a-half feet above ground level, or if the tree did not have a split trunk or broken canopy or was leaning at an angle greater than thirty degrees.

FEMA Exhibit B at 6-7. We were, however, unable to identify which debris items were found ineligible and unable to locate the evidence upon which FEMA relied. In the revised DM, FEMA referred to "spreadsheet tab 'FAR Review'" which it said provided explanation in column "BV." *Id.* at 6. We found no spreadsheet by that name among the FEMA exhibits, and no spreadsheet with a column header of "BV." While the record contained other spreadsheets, it is unclear whether they were offered to support the revised DM or some earlier analysis that is not in the record.

In contrast, the District provided voluminous information about its debris removal costs, including invoices, proof of payments, contractor daily reports, punch lists, haul tickets, daily debris monitoring reports and timesheets, debris maps, work orders, and more.

Applicant Exhibits 02-001 through 13-004. Accordingly we conclude that the District has met its burden to establish eligibility and reasonableness of these costs, and FEMA has not rebutted that evidence. These costs are granted.

Purchase Order Balance/Open Contract Invoices

In the revised DM, FEMA denied \$47,847.79 in costs for debris removal covered by open purchase orders because, it stated, the District failed to provide sufficient support. FEMA Exhibit B at 7. Like the comments on debris removal costs, the revised DM referred to a spreadsheet tab called “FAR Review” which we were unable to locate in the record. FEMA provided no further explanation. We were unable to ascertain which invoices FEMA contended were unsupported or why the support was deemed insufficient.

In contrast, the District provided voluminous invoices and other supporting information about its debris removal costs, including proof of payments, contractor daily reports, punch lists, haul tickets, daily debris monitoring reports and timesheets, debris maps, work orders, and more. Applicant Exhibits 02-001 through 13-004. Accordingly we conclude that the District has met its burden to establish eligibility, and FEMA has not rebutted that evidence. The purchase order balance/open contract invoice costs are granted.

Salvage

FEMA deducted \$4,496.35 for the proceeds of scrap metal recycling. Exhibit B at 7. FEMA explained that if the District receives revenue from recycling debris, FEMA reduces the public assistance funding by the amount of the revenue received. We agree with FEMA’s denial of these amounts pending the District’s receipt of these funds.

The conclusions are summarized as follows.

Description	Applicant’s Claim	FEMA’s Cost Adjustments	Board Determination	FEMA’s Eligibility Issue
Costs Not in Dispute or Minor Rounding Adjustments				
Force Account Labor (ST Removal)	\$41,284.54	(\$0.04)	Granted with rounding adjustment	\$41,284.50

Description	Applicant's Claim	FEMA's Cost Adjustments	Board Determination	FEMA's Eligibility Issue
Force Account Labor (OT Removal)	\$50,413.65	(\$0.27)	Granted with rounding adjustment	\$50,413.92
Force Account Labor (ST Monitoring)	\$15,957.34	\$0	No dispute	\$15,957.34
Force Account Labor (OT Monitoring)	\$15,933.52	\$0	No dispute	\$15,933.52

Description	Applicant's Claim	FEMA's Cost Adjustments	Board Determination	Amounts Due to Applicant
Costs in Dispute				
Force Account Equipment	\$39,357.54	(\$1,157.37)	Denied as to FEMA cost adjustments; otherwise granted	\$38,200.17
Force Account Materials	\$5,560.39	(\$571.14)	Denied as to FEMA cost adjustments; otherwise granted	\$4,989.25
Contract Debris Removal and Monitoring	\$793,336.33	(\$344,810.00)	Granted	\$793,336.33

Description	Applicant's Claim	FEMA's Cost Adjustments	Board Determination	Amounts Due to Applicant
Purchase Order Balance/Open Contract Invoices	\$47,847.79	(\$47,847.79)	Granted	\$47,847.79
Salvage		(\$4,496.35)	Denied pending District's receipt of funds for salvage	\$0 (pending applicant's receipt of scrap revenue)
Totals	\$1,009,691.10	(\$398,882.42)		\$1,007,962.82

Decision

The panel has determined that the District has proven eligibility in the amount of \$1,007,962.82. We leave to the parties to resolve the amount of administrative costs due to the District as well as salvage costs.

Elizabeth W. Newsom
ELIZABETH W. NEWSOM
Board Judge

Patricia J. Sheridan
PATRICIA J. SHERIDAN
Board Judge

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge