



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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July 21, 2023

CBCA 7693-FEMA

In the Matter of ACADIA PARISH POLICE JURY

Adam T. Ferguson and Michael A. Lange of Ferguson Lange PLLC, Miami Beach, FL, counsel for Applicant.

Lynne Browning, Assistant Deputy Director, and Daniel Crothers, Public Assistance Section Chief, Governor's Office of Homeland Security and Emergency Preparedness, Baton Rouge, LA, appearing for Grantee.

Charles Schexnaildre, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Baton Rouge, LA; and Stanley Thompson Jr., 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 **RUSSELL**, **VERGILIO**, and **GOODMAN**.

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

The Acadia Parish Police Jury is the applicant in this arbitration brought under 42 U.S.C. § 5189a(d) (2018) involving the Federal Emergency Management Agency (FEMA) and a declared disaster with an incident period at the end of August and early September 2021. The applicant seeks public assistance for mosquito abatement following the disaster. Initially, and in a first appeal determination, FEMA denied public assistance. FEMA concluded that the applicant had failed to submit a required written validation to justify FEMA taking further action on the request. Here, the applicant asks the panel to determine that its submissions should be deemed adequate to require FEMA to process the application. The panel concludes that the applicant submitted with the request for a first appeal a written validation that satisfies FEMA requirements such that FEMA must further

process the request for public assistance. This decision is the final administrative action on the application. Rule 613 (48 CFR 6106.613 (2021)).

### Background

The Public Assistance Program and Policy Guide (PAPPG) (June 2020) recognizes that public assistance may be available for mosquito abatement:

Mosquito abatement measures may be eligible when a [state, local, territorial, or tribal] government public health official validates in writing that a mosquito population poses a specific health threat as discussed further in Appendix G: Mosquito Abatement. FEMA consults with the [Center for Disease Control and Prevention (CDC)] to determine the eligibility of mosquito abatement activities. FEMA only provides [public assistance] funding for the increased cost of mosquito abatement. This is the amount that exceeds the average amount based on the last 3 years of expenses for the same period.

PAPPG at 126.

A declared disaster, Hurricane Ida, occurred at the end of August and early September 2021, leaving standing water and vegetative debris, which serve as breeding grounds for mosquitos. The applicant had aerial spraying performed on September 22–24, 2021. It seeks \$275,677.50 in public assistance for mosquito abatement. Initially, (1) the applicant did not submit to FEMA a written validation from a public health official establishing that a mosquito population posed a specific health threat to the population, and (2) the applicant did not establish with supporting documentation that the cost of disaster-related mosquito abatement procedures exceeded the average amount based on the prior three years of expenses for the same period.

A February 24, 2022, letter from the Regional Medical Director, State of Louisiana, Department of Public Health, states that the applicant's decision to initiate aerial spraying was based on experiences from prior hurricanes, reports from concerned citizens, and the recommendation of the mosquito abatement company.

FEMA had before it in the first appeal a written determination dated August 8, 2022, from the Public Health Entomologist of the Louisiana Department of Health specifying that he had reviewed the applicant's mosquito landing rates and application maps, would have discussed particulars with the applicant, and would have advocated that the supplied counts were sufficient to warrant CDC's recommendation to FEMA for approval, although he voiced concerns about the average costs of the prior three years. FEMA had considered an earlier written determination by that entomologist that named specific parishes that he

viewed as viable to receive public assistance; the applicant is not among the parishes named. The document does not specify that the individual is proffering a position with respect to any or all unnamed parishes.

### Discussion

The applicant seeks \$275,677.50 in public assistance for mosquito abatement costs that it contends it incurred as a result of or relating to a declared disaster. The applicant is in a rural area. We have authority to resolve this arbitration. *See* Rule 602. FEMA denied public assistance, both initially and in a first appeal, on the grounds that the applicant failed to provide a necessary or timely written validation.

The PAPPG sets forth the standards the panel considers in resolving this arbitration. Initially, the applicant did not satisfy the requirements for a written validation. Further, the February 2022 statement that the “decision to initiate aerial spraying was based on experiences from prior hurricanes, reports from concerned citizens, and the recommendation of the mosquito abatement company” does not satisfy the requirements for public assistance.

However, the applicant included with its first appeal documentation—written support from a public health entomologist. This statement from the state entomologist supports the applicant’s actions and the request, and it complies sufficiently with the PAPPG to merit further consideration by FEMA.

FEMA is correct that an earlier written statement from the entomologist addressed parishes other than the applicant’s. However, the earlier statement does not specify that the entomologist had considered or deemed any non-identified parish as ineligible to put forward for public assistance. FEMA goes too far in drawing an adverse inference from the statement (that, by not being named as potentially eligible, the applicant is not eligible). Further, the subsequent writing by the individual opines that a review of mosquito landing rates and application maps supports a conclusion that the request for public assistance should be put forward. The opinion is conditioned on how FEMA calculates the average costs for mosquito abatement, which FEMA has yet to calculate.

The applicant has provided written validation of its disaster-related need for mosquito abatement that is sufficient to move the application forward in the process. The record does not support the notion that the application must be denied at this stage. The guidelines do not specify that the application must be submitted, reviewed, and accepted prior to aerial spraying. Without such specific guidance, or FEMA-explained rationale supporting a contrary conclusion, the panel concludes that the applicant’s spraying in an emergency situation does not act as a bar to receiving public assistance. Because FEMA has not made determinations on other aspects of the application (e.g., the costs of mosquito abatement for

the prior three years or the appropriateness of aspects of the aerial spraying), the panel offers no comments on these matters. Additionally, FEMA has yet to consult with the CDC, if deemed appropriate.

Decision

The panel concludes that FEMA inappropriately ended its review of the applicant's request for public assistance. FEMA must take further steps in considering the application.

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

*Beverly M. Russell*  
BEVERLY M. RUSSELL  
Board Judge

*Allan H. Goodman*  
ALLAN H. GOODMAN  
Board Judge