



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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January 6, 2022

CBCA 7207-FEMA

In the Matter of CITY OF JACKSONVILLE, FLORIDA

Laura Boeckman and Tiffany Douglas Pinkstaff, Office of General Counsel, City of Jacksonville, Jacksonville, FL, counsel for Applicant.

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

Christiana Cooley, 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**, **GOODMAN**, and **KULLBERG**.

The applicant, the City of Jacksonville, seeks review of the denial of public assistance in the amount of \$940,034.11 for removal of debris following Hurricane Irma. The Federal Emergency Management Agency (FEMA) has requested that this matter be dismissed because the applicant sought an extension of the 180-day period for removal of debris under a pilot program, and FEMA's denial of a time extension is not subject to review in an arbitration by this panel. For the reasons stated below, the panel denies FEMA's request for dismissal. In ruling on the merits of the applicant's request for arbitration, the panel finds that the applicant has failed to show that FEMA's denial of its request for a time extension was improper.

### Background

Hurricane Irma, a category 4 hurricane, struck the State of Florida in September of 2017. The City of Jacksonville suffered damage due to wind, torrential rain, and tidal surges, and a disaster declaration was issued on September 10, 2017. On November 21, 2017, the applicant's representative executed an agreement with FEMA in which the applicant elected to participate in a pilot program for accelerated debris removal. The agreement provided that "[f]or the sliding scale, the [applicant] accepts responsibility for any costs related to debris operations after six months from the date of incident unless, based on extenuating circumstances, FEMA grants a time extension." The 180-day period for debris removal commenced on September 10, 2017, which was the date of the disaster declaration.

The applicant removed approximately two million cubic yards of debris during the six-month period allowed under the pilot program, but not all work related to debris removal was completed within that period. At most, a negligible amount of debris remained for disposal, and the applicant's remaining work consisted mostly of paperwork and documentation to support debris monitoring and the labor and equipment necessary to restore temporary debris storage areas.

On February 24, 2018, the State of Florida forwarded to FEMA the applicant's request for an extension of the completion date for debris removal under the pilot program from March 10, 2018, to September 10, 2018. The applicant requested the extension because of the large quantity of debris that had to be removed, and the request noted that 90% of the work had been completed. FEMA denied the request for the time extension in its letter dated September 11, 2020, which noted the applicant's failure to show any extenuating circumstances to justify such a delay. The applicant appealed the denial. On July 14, 2021, FEMA informed the applicant that the denial of a time extension was not appealable.

On September 10, 2021, the applicant submitted to the Board its request for arbitration. The applicant's request sought a time extension under the pilot program so that it could recover its remaining costs related to debris removal in the amount of \$940,034.11. FEMA requested that the panel dismiss this matter because the denial of a time extension under the pilot program is not appealable.

### Discussion

The panel addresses, initially, the question of whether FEMA's denial of the applicant's request for an extension of time under the pilot program is properly before the Board for arbitration. If the applicant's request is properly before the Board, the panel's inquiry then turns to whether FEMA properly denied the request. The panel addresses those issues in turn.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5207 (2018) (Stafford Act), provides that “an applicant . . . may request arbitration to dispute the eligibility for assistance or repayment of assistance provided for a dispute of more than \$500,000 for any disaster that occurred after January 1, 2016.” *Id.* § 5189a(d)(1). “Such arbitration shall be conducted by the Civilian Board of Contract Appeals and the decision of such Board shall be binding.” *Id.* That section also provides the following:

- (5) Eligibility – To participate in arbitration under this subsection, an applicant–
  - (A) shall submit the dispute to the arbitration process established under the authority granted under section 601 of Public Law 111-5; and
  - (B) may submit a request for arbitration after the completion of the first appeal under subsection (a) at any time before the Administrator of the Federal Emergency Management Agency has issued a final agency determination or 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. The applicant’s request shall contain documentation from the administrative record for the first appeal and may contain additional documentation supporting the applicant’s position.

*Id.*

The Stafford Act also provides for “alternative procedures . . . for any major disaster or emergency declared on or after January 29, 2013.” 42 U.S.C. § 5189f(a). “Participation in the alternative procedures . . . shall be at the election of a State, tribal or local government, or owner of a private nonprofit facility consistent with procedures determined by the Administrator.” *Id.* § 5189f(d)(1). With regard to debris removal, that section of the Stafford Act includes the following:

- (2) For debris removal under sections 5170(a)(3)(A), 5173, and 5192(a)(5) of this title–
  - (A) making grants on the basis of fixed estimates to provide financial incentives and disincentives for the timely or cost-effective completion if the State, tribal or local government, or owner or operator of the private nonprofit facility agrees to be responsible to pay for any actual costs that exceed the estimate;

(B) using a sliding scale for determining the Federal share for removal of debris and wreckage based on the time it takes to complete debris and wreckage removal;

....

*Id.* § 5189f(e)(2)(A)–(B).

FEMA erroneously argues that this matter is not properly before the Board because the applicant has no right to appeal the denial of a time extension. “An eligible applicant, subrecipient, or recipient may appeal any determination previously made related to an application for or the provision of Federal assistance . . . .” 44 CFR 206.206 (2017). The applicant appealed a determination related to an application for or provision of such assistance, and the Board finds that the applicant has brought this matter for arbitration consistent with applicable statute and regulation.

FEMA cites its Public Assistance Alternative Procedures (PAAP) Pilot Program Guide for Debris Removal, which was dated June 28, 2017, and superseded on June 28, 2018 (guide). The PAAP guide states that appeals under 44 CFR 206.206 are limited to “[s]ubaward approval and obligation” and “[c]orrective actions resulting from compliance reviews such as an audit.” Additionally, the guide also states that those “participating in this pilot program must abide by the elements of this guidance,” but it goes on to state that “all other statutory, regulatory and policy requirements of the Public Assistance program apply and are not affected by the alternative procedures.”

The applicant in this matter has properly brought a claim for funding from FEMA, and it has met the requirements for arbitration before the Board. The applicant’s request for a time extension was a request for additional funding because a time extension was necessary to recover the cost of debris removal after the end of the time period allowed under the pilot program. FEMA argues that the PAAP guide limits this Board to arbitration of matters related to “approval and obligation.” That language is too general to support FEMA’s position that a request for a time extension precludes arbitration. Nothing else in statute or regulation suggests that participation in the pilot program limits an applicant’s right to request arbitration.

The panel’s discussion, accordingly, turns to whether FEMA properly denied the request for a time extension. FEMA’s PAAP guide allows for only such extensions to be granted in “unusual” circumstances. Other guidance in FEMA’s regulations requires showing “extenuating circumstances” in order to receive a time extension. 44 CFR 206.204(c)(2)(ii). In this matter, the applicant does not meet either standard. The applicant has argued at length that a large, if not unprecedented, quantity of debris had to be removed

from the Jacksonville area. Such an argument reiterates an obvious fact applicable in all disasters, which is the magnitude of the work in the aftermath, but it does not explain how the applicant is relieved from responsibility for its failure to complete debris removal within the 180-day period allowed in the pilot program. At most, the applicant seeks relief from its decision to participate in the pilot program, but the panel does not find that the applicant has the right to undo such an election. Accordingly, the panel does not find that FEMA's denial of a time extension was improper.

Decision

The applicant's claim is denied.

*H. Chuck Kullberg*

H. CHUCK KULLBERG  
Board Judge

*Beverly M. Russell*

BEVERLY M. RUSSELL  
Board Judge

*Allan H. Goodman*

ALLAN H. GOODMAN  
Board Judge