



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 8, 2025

CBCA 8292-FEMA

In the Matter of SEVIER COUNTY, TENNESSEE

Tyler C. Huskey of Gentry, Tipton, McLemore, Pigeon Forge, TN; and W. Morris Kizer of Gentry, Tipton, McLemore, Knoxville, TN, counsel for Applicant; and Joe Ayers, Director of Sevier County Emergency Management Agency, Sevierville, TN, appearing for Applicant.

Jessica Burr, Public Assistance Manager, Tennessee Emergency Management Agency, Recovery Division, Nashville, TN, appearing for Grantee.

Ramoncito J. deBorja and Rebecca Wells, 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), **LESTER**, and **CHADWICK**.

BEARDSLEY, Board Judge, writing for the Panel.

The applicant, Sevier County, Tennessee, seeks reimbursement for private property debris removal monitoring costs under project worksheet (PW) #00038 related to wildfires in the State of Tennessee in 2016. Because the applicant did not tie the costs incurred for debris removal monitoring to eligible work or adequately document those costs, we find that the costs are ineligible for public assistance (PA) funding. However, we return the matter to FEMA for further review and development to determine if some of the costs claimed are eligible for PA funding as section 324 management costs or Direct Administrative Costs (DAC).

Background

On December 15, 2016, the President declared a major disaster (FEMA-4293-DR-TN) in the State of Tennessee due to the wildfires that burned from November 28, 2016, through December 9, 2016, in Sevier County. In a letter dated February 2, 2017, FEMA approved the applicant's request for PA funding for personal property debris removal (PPDR) but outlined conditions for PPDR eligibility. In the letter, FEMA specifically required, for FEMA to approve a property for PPDR, "the submission of additional documentation" to confirm that the property was privately owned and the "structure [was] without insurance coverage for the proposed operation." It also required the "submission of additional documentation" to show that a standing dead tree is hazardous, to include a requirement that a "licensed arborist must certify all hazardous trees are dead, dying or pose an immediate threat as a direct result of the event." FEMA also stated in the letter that, for each property, certain documents were required, to include an "[a]ssessment sheet/information that depicts the eligible scope of work for that property." In addition, according to the letter, the applicant had to provide "a full and complete roster of all private property onto which it expects to enter to remove debris/demolition under this authority," "each individual property owner's insurance information," "the statement of loss and the insurance settlement for each individual property," and "document compliance with all necessary local, state and federal permits and applicable Environmental and Historic Preservation laws, regulations, and Executive Orders." In the letter, FEMA stated that "[t]ypically, the documentation should be compiled into a property-specific Compliance Review Package and submitted in batches prior to the start of work."

The applicant read the February letter to require it to have licensed professionals (e.g., engineers and arborists) perform site assessments, collect and document insurance information, and obtain a right of entry form from property owners in order to determine which properties the applicant contended were eligible for PPDR. The applicant hired a contractor, Thompson Consulting Services (Thompson),¹ to perform these site assessments, and based on its assessments, the applicant requested PPDR for seventy-four properties, submitting batches to FEMA for review and approval. Instead, based on its own assessment, which the applicant was unaware FEMA had conducted, FEMA approved 109 properties for PPDR. Only twenty-six of the 109 properties approved for PPDR by FEMA had also been identified for PPDR by the applicant.

¹ The contract with Thompson initially did not contain a ceiling price or "not to exceed" cost. The Thompson contract was amended, however, to include a "not to exceed" cost in the amount of \$1,800,000. See FEMA Response Exhibit L, Thompson Amendment 1 (Apr. 25, 2017).

Under PW #00043, FEMA approved PA funding for PPDR for the 109 eligible properties and obligated \$545,000 (\$5000 for each of the 109 eligible sites). The applicant later submitted an additional forty-eight properties for PPDR, but FEMA determined that those forty-eight properties were not eligible for PPDR. The applicant ultimately only engaged in FEMA-eligible PPDR for the twenty-six properties deemed eligible by FEMA and identified by the applicant. Under PW #00043, FEMA provided PA funding in the amount of \$381,851.35, the applicant's actual costs for debris removal for those twenty-six properties.

The applicant submitted a first appeal asking that FEMA fund PPDR for the forty-eight additional properties. FEMA denied the first appeal because the applicant failed to demonstrate that the trees and debris threatened the safety of the public and removal was, therefore, in the public interest. The applicant submitted a second appeal to FEMA in which it had reduced the number of additional properties at issue from forty-eight to twenty-four, and because the PPDR work associated with those twenty-four properties had been completed with donated resources, the applicant only requested a total of \$10,671.24 for the costs of engineer and arborist site assessments. FEMA determined that the twenty-four properties at issue in the second appeal were not eligible for PPDR and that, therefore, the costs of the engineers and arborists in the amount of \$10,671.24 were ineligible because they were not tied to eligible work. *Id.* at 4.

FEMA created PW #00038 to capture costs associated with the required monitoring of eligible PPDR. Under PW #00038, the applicant requested \$527,276.94 for debris removal monitoring in conjunction with the PPDR. This request included the costs for Thompson "to develop the application process for the PPDR program" and to "assist[] with the procurement of contractors, and other experts to evaluate properties that were identified for inclusion into the PPDR program." Request for Arbitration (RFA) at 13. "Engineers [and] arborists were tasked with providing a professional opinion regarding the immediate needs to remove any debris that posed a threat to public health [and] safety, or was a threat to public infrastructure." *Id.* Thompson managed the PPDR program by developing "an application process for property owners to request inclusion into the PPDR program." *Id.* "Thompson compiled applications, conducted site assessments, developed a scope of work, and requested engineers [and] arborists to evaluate properties at which the scope of work required an engineer's opinion regarding the necessary actions to eliminate the public hazards. Thompson[] coordinated with FEMA's Joint Field Office to develop the application packet, and the compliance review package as noted within the PPDR approval letter." *Id.*

The applicant included in the record the invoices and time sheets that identify the costs incurred for data management specialists, a site assessment engineer, a debris monitor,

a disposal site monitor, an operations manager, and a site survey technician and the tasks performed (i.e., monitoring, site assessments, etc.). The invoices and time sheets do not reference, however, the property for which the work was done and do not provide any detail of the work completed.

FEMA denied the applicant PA funding in the amount of \$486,076.94 for PW #00038 because the applicant failed to detail how its claimed costs were tied to the performance of eligible work. Recognizing that, in fact, the applicant incurred costs for debris removal monitoring for the twenty-six PPDR-eligible properties, but lacking adequate documentation and detail as to the costs incurred, FEMA had an independent estimator² prepare an estimate utilizing contracted hourly rates for debris removal monitoring for twenty-six properties, as follows:

FEMA estimated that debris removal of 26 homes – based on the 26 properties for which PPDR actually occurred – would consist of approximately 6,864 cubic yards of Construction and Demolition Debris. . . . FEMA estimated for the [a]pplicant to complete debris removal work, the [a]pplicant would need to have used four debris loader/hauler crews with 30 cubic yard haulers averaging eight loads a day, and would take approximately eight days to complete. . . . Using this analysis, FEMA estimated and approved a reasonable cost of \$41,200 (out of the [a]pplicant's \$527,276.94 claimed costs) for debris removal monitoring for PW #00038.

FEMA's Response to Applicant's Request for Arbitration at 17 (citing FEMA's Response, Exhibit B, FEMA Determination Memorandum (DM) PW #00038 at 4).

FEMA defines eligible activities associated with debris removal monitoring to include but not be limited to:

- Field supervisory oversight
- Monitoring contracted debris removal at both the loading and disposal sites
- Compiling documentation, such as load tickets and monitor reports, to substantiate eligible debris

² The estimator had no knowledge of the location or nature of the disaster that resulted in the PPDR when he prepared the estimate.

- Training debris monitors on debris removal operations, monitoring responsibilities and documentation processes, and FEMA debris eligibility criteria

Public Assistance Program and Policy Guide (PAPPG) (Jan. 2016) at 57. While PW #00038 was titled “Debris Removal Monitoring,” the scope of work in PW #00038 was described as:

Provide disaster monitoring services of all disaster debris, demolition and demolition debris removal.

...

Structural assessment of damages [and] destroyed properties.

...

Development of FEMA project worksheets [and] supporting documentation (Categories A-G).

RFA, Exhibit 8 at 4.

On April 16, 2025, the panel held an arbitration hearing during which the applicant’s witness, Mr. Ayers, testified that its costs claimed under PW #00038 for the twenty-six properties at which PPDR occurred included (1) \$103,452³ for debris removal monitoring costs; (2) \$32,656 in expenses for the site assessments (i.e., engineers and arborists) for the twenty-six properties before PPDR; and (3) \$97,292 (\$3742⁴ x 26) in administrative costs for the twenty-six properties. According to Mr. Ayers, the administrative costs claimed consisted of personnel to review the property owners’ insurance policies to determine eligibility, verification of legal ownership, preparation of batch submittals for PPDR, and financial oversight. The total claimed for the twenty-six properties under PW #00038 is \$233,400. Mr. Ayers testified further that the other costs claimed under PW #00038 include (1) \$22,266.25 for the site assessments for the other forty-eight properties that were not

³ Recognizing that FEMA has paid \$41,200 for debris removal monitoring for the twenty-six properties, the applicant requests \$62,252 (\$103,452-\$41,200) more for debris removal monitoring for the twenty-six properties.

⁴ The applicant calculated the administrative costs per property by dividing the total administrative costs for seventy-four properties by seventy-four (\$276,980/74 = \$3742).

eligible for PPDR, and (2) \$179,616 in administrative expenses for those forty-eight properties. The total amount claimed under PW #00038 for the forty-eight properties equals \$201,882.25. Mr. Ayers further confirmed that the amount claimed for all seventy-four properties was reduced from \$527,276.94 to \$435,282.25 without an explanation for the reduction. Deducting the \$41,200 paid to the applicant by FEMA for debris removal monitoring further reduces the total amount claimed to \$394,082.

FEMA asserts that the applicant has failed to demonstrate that its claimed debris removal monitoring costs were directly tied to the performance of eligible work and failed to identify documentation to support its claimed debris removal monitoring costs. FEMA also contends that the applicant's claimed debris removal monitoring costs were not reasonable because those costs were greater than the actual PPDR costs.

Discussion

FEMA requires applicants to monitor all contracted debris operations to ensure that both the type and quantity of work claimed are accurate and eligible. PAPPG at 56. This work includes documenting the types and quantity of debris, quantities reduced, reduction methods, and pickup and disposal sites. *Id.* at 57. FEMA policy requires that, to be eligible, costs must be “[d]irectly tied to the performance of eligible work,” “[a]dequately documented,” and “[n]ecessary and reasonable to accomplish the work properly and efficiently.” *Id.* at 21; *see* 2 CFR 200.403(g) (2024). “The [a]pplicant is responsible for providing documentation to demonstrate its claimed costs are reasonable.” PAPPG at 22. “It is the applicant’s burden to support its application for PA funding.” *Jackson County, Florida*, CBCA 7279-FEMA, 22-1 BCA ¶ 38,075, at 184,907 (citing *City of Hattiesburg, Mississippi*, CBCA 7228-FEMA, 22-1 BCA ¶ 38,029, at 184,685). Consequently, to recover debris removal monitoring costs, the applicant has to provide documentation to demonstrate that it incurred costs to effectively monitor PPDR activities at PPDR-eligible properties and that those associated costs were reasonable. Here, PPDR activities occurred at only twenty-six PPDR-eligible properties, which limits the costs that the applicant can recover for debris removal monitoring to those costs incurred for monitoring PPDR at those twenty-six properties.

The applicant has failed, however, to document those costs for debris removal monitoring for the twenty-six PPDR-eligible properties. Even though as part of the record the applicant submitted invoices and time sheets for Thompson that purport to support the costs claimed, the invoices and time sheets fail to tie the monitoring work done to a specific property. Although Mr. Ayers testified that the applicant incurred \$103,452 for debris removal monitoring costs for PPDR at the twenty-six PPDR-eligible properties, Mr. Ayers pointed to no specific documents to support this amount, nor did he describe how he arrived

at this amount. Given that the documents in the record are not tied to specific properties, it is unclear how Mr. Ayers could segregate the costs for debris removal monitoring only for the twenty-six properties. As a result of this inability to delineate which costs the applicant incurred for debris removal monitoring for the twenty-six properties, FEMA's estimate of \$41,200 for debris removal monitoring for the twenty-six properties seems reasonable based on the estimator's testimony and calculations. The panel, therefore, adopts FEMA's estimate of costs in the amount of \$41,200 for debris removal monitoring for those twenty-six properties as the more reasonable amount. The applicant is not eligible for PA funding for the additional costs claimed for debris removal monitoring at those twenty-six properties.

At the hearing, the applicant segregated its costs and claimed \$22,266.25 for assessment costs for the forty-eight properties at which PPDR did not occur. FEMA has already denied these assessment costs in a second appeal on the grounds that the assessment costs for the PPDR-ineligible forty-eight properties were also ineligible for PA funding because the assessment costs were not tied to eligible work. "A FEMA final agency determination or a decision of the Assistant Administrator for the Recovery Directorate on a second appeal constitutes a final decision of FEMA. Final decisions are not subject to further administrative review." 44 CFR 206.206(c)(1). We will not revisit the final decision made by FEMA on a second appeal regarding the eligibility of the assessment costs⁵ for the additional forty-eight properties. As a result, the \$22,266.25 in assessment costs for the forty-eight properties is ineligible for PA reimbursement.

For the twenty-six PPDR-eligible properties, the applicant claims \$32,656 in expenses for site assessments and \$97,292 in administrative costs. For the additional forty-eight properties, the applicant claims \$179,616 in administrative costs. The applicant asserts that all of these costs should be reimbursed as debris removal monitoring costs under PW #00038. The applicant contends that the engineering and arborist fees claimed fall into the categories of "field supervisory oversight and compiling documentation," Applicant's Reply to FEMA's Response to Applicant's RFA at 6, asserting as follows:

FEMA required engineers and certified arborists to be in the field to verify the work. . . . In addition, the arborist fees and engineering fees fall within the monitoring costs as each of the fees were incurred as required by FEMA for debris removal. Walls could not be demolished and trees, stumps and root

⁵ The fact that the applicant, in its second appeal to FEMA, claimed less assessment costs (\$10,671.24 instead of \$22,266.25) for fewer additional properties (twenty-four instead of forty-eight), although not explained, does not alter the applicability of FEMA's second appeal decision to the assessment costs claimed for all forty-eight additional properties.

balls could not be removed, and thereafter hauled away, without certifications by the professional engineers and arborists.

Id. at 6-7. Although the applicant describes the costs claimed under PW #00038 as all debris removal monitoring costs, at the hearing it became apparent to the panel that the applicant was requesting funds for project management and design services, in addition to debris removal monitoring costs, and that these costs may be eligible for PA funding as section 324 management costs (also called Category Z costs), instead. PAPPG at 36-37, 141. “Section 324 of the Stafford Act authorizes PA funding for management costs. Management costs are indirect costs, administrative expenses, and other expenses a [r]ecipient or [s]ubrecipient incurs in administering and managing PA awards that are not directly chargeable to a specific project.” *Id.* at 36-37 “Examples of [section 324 management costs] include, but are not limited to “Preliminary Damage Assessments (PDAs)” and “[o]rganizing damage sites into logical groups.” *Id.* at 37. These costs could also be considered direct administrative costs. “If the [r]ecipient or [s]ubrecipient incurs administrative costs that it tracks, charges, and accounts for directly to a specific eligible project, the costs are eligible as [DAC].” *Id.* “Costs associated with the following activities are eligible as DAC . . . (this list is not all-inclusive):

- Visiting, surveying, and assessing the damage site
- Developing the detailed site-specific damage description
- ...
- Collecting, copying, filing, or submitting documents to support the claim.”

Id. at 38.

Costs which are considered project management and/or design services differ from eligible debris monitoring costs. Project management and design services are expenses for the initial design and oversight of work performed related to an eligible project from the design phase (when necessary) to the completion of work. These costs should be documented and claimed separately. The eligibility of this work and its cost will be evaluated on a case-by-case basis.

Applicant’s Exhibit 21 at 2, FEMA’s March 2021 Public Assistance Debris Monitoring Guide; *see also* PAPPG at 36.

If the costs claimed fit into the types of work described in the PW #00038 statement of work or are considered debris removal monitoring costs, these costs, as presented in this arbitration, suffer the same deficiencies as the other costs claimed for debris removal monitoring as described above (i.e., not tied to eligible work, not segregated by property, amount not documented). In addition, the total amount claimed for debris removal monitoring costs is not reasonable given that the total costs claimed exceed the costs incurred to perform PPDR on the twenty-six eligible properties. As debris removal monitoring costs, therefore, these costs are not eligible for PA funding. The panel cannot evaluate, however, whether some of these costs can be recovered as section 324 management costs or DAC because FEMA has not reviewed these costs as section 324 management costs or DAC. We, therefore, return this matter to FEMA to evaluate the extent to which the assessment and administrative costs for the twenty-six properties, and the administrative costs for the additional forty-eight properties, are eligible for PA funding as section 324 management costs or DAC. *See Pedernales Electric Cooperative, Inc.*, CBCA 8383-FEMA, slip op. at 12 (July 25, 2025) (citing *Charlotte County, Florida*, CBCA 8405-FEMA, 25-1 BCA ¶ 38,840, at 189,009 (returning matter to FEMA for further development and evaluation of a particular cost claim)).

Decision

The applicant is eligible for the \$41,200 in PA funding already authorized by FEMA for debris removal monitoring for the twenty-six PPDR-eligible properties. The applicant is not eligible for PA funding beyond the \$41,200 for debris removal monitoring for the twenty-six PPDR-eligible properties. The applicant is not eligible for the costs claimed for debris removal monitoring for the forty-eight additional properties. The applicant is not eligible for PA funding for the costs claimed for the assessments tied to the forty-eight additional properties, as these costs were denied by FEMA in a second appeal. With regard to the administrative costs claimed for all seventy-four properties and the assessment costs for the twenty-six PPDR-eligible properties, we return this matter to FEMA for further development and review.

Erica S. Beardsley

ERICA S. BEARDSLEY

Board Judge

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.

Board Judge

Kyle Chadwick

KYLE CHADWICK

Board Judge