



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 2, 2025

CBCA 8447-FEMA

In the Matter of THE MULFORD CORPORATION

Kara Magoolaghan, Project Manager of The Mulford Corporation, Yonkers, NY, appearing for Applicant.

Joseph Stinson, Section Chief, Recovery Administrative Support Unit, New York State Division of Homeland Security and Emergency Services, Latham, NY, appearing for Grantee.

Alecia Frye and 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 **BEARDSLEY** (Chair), **VERGILIO**, and **SHERIDAN**.

BEARDSLEY, Board Judge, writing for the Panel.

The applicant, the Mulford Corporation, is a 501(c)(3) private nonprofit (PNP) organization requesting public assistance (PA) funds for permanent repairs to two low-income housing facilities. The Federal Emergency Management Agency (FEMA) denied the applicant's request for PA funds because it determined that the applicant did not have the legal responsibility to make the disaster-related repairs and, therefore, was ineligible to receive PA funds for the work. We agree with FEMA and deny the request for PA funds.

Background

In September 2023, severe storms and flooding impacted New York State, including Westchester County, where the facilities in question are located. On January 30, 2024, the President declared the event a major disaster, which authorized FEMA to obligate PA funding for both emergency and permanent work.

In August 2024, FEMA issued two determination memos – one, FEMA Exhibit 1, denying the applicant’s request for \$129,000 to replace sump pumps and a water heater in the Palisades Towers and Walsh Homes (project 747679) due to flooding from the storm, and the other, FEMA Exhibit 2, denying the applicant’s request for \$525,000 for interior and exterior repairs at the Palisade Towers and Loehr Court Apartments (project 747684). FEMA denied both requests upon finding that the applicant had not established that it had legal responsibility to perform disaster-related repairs to the properties. FEMA Exhibit 1 at 3; FEMA Exhibit 2 at 3.

The applicant appealed¹ FEMA’s denials, and FEMA, in an April 2025 first appeal decision, found again that the applicant had failed to show that it had legal responsibility for the disaster-related repairs. Applicant Exhibit 1 at 5-6. In May 2025, the applicant filed its request for arbitration (RFA) seeking \$554,000 for repairs to the Palisades Towers (exterior masonry damage, flooded units, damaged water heaters, and sump pump damage) and Walsh Homes (sump pump damage). RFA at 1-2.

The facilities at issue are owned by the Municipal Housing Authority for the City of Yonkers (MHACY), which leases them to Yonkers Preservation LLC (YP) and Schlobohm Housing Development Fund Corporation (HDFC)² “for the rehabilitation . . . of a residential rental project for persons and families of low-income.” Applicant Exhibit 5 at 1. The managing member of YP is Yonkers Preservation Managers LLC (YPM). Applicant Exhibit 8 at 1, 76; Applicant Exhibit 9. YPM’s operating agreement states that the company was formed to serve as the managing member of YP and to maintain, to operate, and to manage, among other things, the affordable housing project. Applicant Exhibit 8 at 28. L&M D+B Yonkers Preservation LLC has a fifty-percent interest in YPM and is designated

¹ In its appeal, the applicant sought only \$425,000 of the \$525,000 that FEMA denied for project 747684, for a total amount sought for both projects of \$554,000. Applicant Exhibit 1 at 1, 4.

² HDFC executed the lease “solely as nominee for, and on behalf of,” YP. Applicant Exhibit 5 at 1. YP possesses “the entire equitable and beneficial leasehold ownership in the Project.” *Id.*

as the managing member. Applicant Exhibit 8 at 60, 76; Applicant Exhibit 9. Mulford Yonkers Preservation LLC (Mulford LLC) holds the other fifty-percent interest in YPM. *Id.* The applicant is the sole member of Mulford LLC. Applicant Exhibit 9. Neither YPM nor YP have any “staff, internal maintenance team, or operational infrastructure to perform or direct repairs.” Applicant’s Reply at 4.

The lease between MHACY (Landlord) and YP and HDFC (collectively, Tenant) states, “Tenant shall, at its own cost and expense and without the need for Landlord’s prior consent, repair or replace any damage or injury to all or any part of the Premises and Improvements³ thereon.” Applicant Exhibit 5 at 14. If the improvements are damaged or destroyed by “fire, earthquake, act of God or other casualty,” “Tenant shall repair or restore the Improvements, so long as Tenant in good faith determines that it is feasible to do so and in such event Tenant provides or causes to be provided sufficient additional funds which, when added to insurance proceeds, will fully effect such repair or restoration.” *Id.* at 19. The applicant is not named in the lease; however, the applicant asserts that it “has assumed full financial responsibility for repairs to ensure the safety and habitability of these low-income housing facilities,” RFA at 3, and that it has paid for capital repairs necessary for the facilities and is the only entity here with “staff, [an] internal maintenance team, or operational infrastructure to perform or direct repairs.” Applicant’s Reply to FEMA at 4. The applicant provided payment records to show that it has historically contributed to the cost for management services and maintenance costs for the facilities on behalf of YP. Applicant Exhibits 10-14. The applicant asserts further that YP and YPM “are holding and asset management vehicles, commonly used in affordable housing structures, that rely entirely on their members to carry out obligations under ground leases and regulatory agreements.” Applicant’s Reply at 4.

The property management agreement indicates that YP engaged MHACY “to act as the management agent for the Project⁴ and to manage, operate, maintain the Project on the

³ The term “improvements” is defined in the lease as “any and all buildings, structures, utility installations, paving, landscaping and other improvements now or hereafter located on the Premises, and all fixtures and non-movable equipment thereon, and any subsequent alterations, additions or replacements to or of any of the foregoing, made in connection with the Tenant’s development and construction of the Premises containing: (a) twelve (12) buildings on three (3) sites containing 853 units.” Applicant Exhibit 5 at 3.

⁴ The project is “known as Yonkers RAD [Rental Assistance Demonstration] Preservation” and “contained 853 residential apartment units located at multiple addresses in Yonkers, New York.” Applicant Exhibit 6 at 1. The residential apartments consisted of “807 RAD Units and forty-six (46) HAP [Housing Assisted Payments]-Assisted Units.” *Id.*

terms and conditions hereinafter set forth.” Applicant Exhibit 6 at 1. MHACY is required to maintain the project in a condition reasonably acceptable to YP, including performance of maintenance and repair work as may be necessary, and needs approval from YP for any projects or improvements over \$2500 that were not included in the operating budget. Applicant Exhibit 6 at 10-11. YP’s operating agreement requires that YPM “take all action that may be necessary or appropriate for the proper development, maintenance and operation of the” low-income housing facilities and to keep the facilities in “good working order and condition” and to “promptly repair or replace any damage” to them. Applicant Exhibit 7 at 65. The YPM operating agreement states that “the Members [Mulford LLC] agree that the Company [YPM] shall cause the Ground Lessee [YP] to hire the Management Agent to serve as the initial management agent for the Project pursuant to a Property Management Agreement. The parties agree that MHACY shall be the Management Agent.” Applicant Exhibit 8 at 38. The operating agreement delineates Mulford LLC’s responsibilities in relation to YPM, and those responsibilities include “securing HUD approval for the Project under RAD,” “securing a payment in lieu of taxes agreement for the Project,” and “providing any guarantees” all at YPM’s cost. *Id.* at 35. Mulford LLC’s responsibilities under YPM’s operating agreement do not include repairs or damage restoration.

Discussion

There is no dispute that the facilities at issue here provide noncritical essential services to the general public and are considered eligible facilities. Public Assistance Program and Policy Guide (PAPPG) (June 2020) at 43, 46. Instead, the dispute centers around the question of whether the applicant has legal responsibility to perform the disaster-related repairs for which PA funds are sought. 44 CFR 206.223(a)(3) (2024). “To be eligible, work must be the legal responsibility of the [a]pplicant requesting assistance.” PAPPG at 52. FEMA policy focuses on legal ownership as proof of legal responsibility:

When the [a]pplicant requests PA funding to restore a facility, it is the [a]pplicant’s responsibility to provide proof that it owns the facility. To determine ownership, FEMA may review deeds, title documents, and local government tax records.

Ownership of a facility is usually sufficient to establish the [a]pplicant’s legal responsibility to restore the facility, provided it is not under construction by a contractor or leased to another entity at the time of the incident.

Housing Authority of the City of Fort Myers, Florida, CBCA 8138-FEMA, 25-1 BCA ¶ 38,749, at 188,377 (quoting PAPPG at 53). “To determine legal responsibility for Permanent Work, FEMA evaluates whether the Applicant claiming the costs had legal

responsibility for disaster-related restoration of the facility at the time of the incident based on ownership and the terms of any written agreements (such as for facilities under construction, leased facilities, and facilities owned by a Federal agency).” PAPPG at 52. “If a facility is leased, ‘FEMA reviews the lease agreement to determine legal responsibility for repair of damage caused by the incident.’” *Housing Authority*, 25-1 BCA at 188,377-78 (quoting PAPPG at 53). “If the lease does not specify either party as responsible, FEMA considers the owner of the facility legally responsible for the costs to restore the facility.” PAPPG at 53.

Since these facilities are leased to YP, we look to the lease to determine if it specifies who is responsible for the disaster-related repair costs. Since the lease provides that YP is responsible to repair or replace disaster-related damage, YP is legally responsible for the costs to repair and restore the disaster damage to the facilities. YP, however, is not an eligible applicant under FEMA’s PA program.

Instead, the applicant seeks PA funding for repairs in place of YP. The applicant contends that it has joint or shared legal responsibility for the repairs to the impacted facilities through its status as the sole member of Mulford LLC, which is a fifty-percent non-managing member of YPM, which is the managing member of YP. The applicant’s status as a non-managing member of YPM, however, provides no line of ownership or legal responsibility to the applicant. The applicant has provided documentation in the form of organizational charts, operating agreements, and management documents to support its assertion of legal responsibility for the claimed facility repairs. While these documents describe, in detail, the duties of the varying entities as they relate to YP, these documents do not transfer legal responsibility for disaster-related repairs to the applicant or grant the applicant a possessory interest in or exclusive control of the facility. *Housing Authority*, 25-1 BCA at 188,378. Although YPM may have a duty to repair or replace any damage as the managing member of YP, nothing supports a finding that the applicant is responsible for disaster-related repairs of the facilities or that the applicant has operational authority over the services provided at the facilities. Moreover, the applicant cannot stand in place of an entity that fails to meet the required eligibility. The applicant, therefore, has failed to establish that it has legal responsibility for the costs to repair the facilities.

FEMA also asserts that the applicant is ineligible for PA funding for permanent repairs because another federal agency, the United States Department of Housing and Urban Development (HUD), has specific authority (Community Development Block Grant for Disaster Recovery (CDBG-DR)) for disaster repair work to affordable housing. FEMA’s Response to Request for Arbitration at 14-15 (citing 44 CFR 206.226(a)); *see* PAPPG at 54 (“FEMA evaluates its authorities against [Other Federal Agencies (OFA)] authorities.”). “Generally, disaster assistance will not be made available under the Stafford Act when

another Federal agency has specific authority to restore facilities damaged or destroyed by an event which is declared a major disaster.” 44 CFR 206.226(a)(1). The applicant contends that the OFA exclusion does not apply here because HUD does not have the specific authority to restore the facilities. The panel, however, need not determine if the OFA exclusion applies because the panel has determined, for another reason, that the applicant is not eligible to receive PA funding.

Decision

For the foregoing reasons, the Mulford Corporation is ineligible for PA funding, and the request for PA funds is denied.

Erica S. Beardsley

ERICA S. BEARDSLEY

Board Judge

Joseph A. Vergilio

JOSEPH A. VERGILIO

Board Judge

Patricia J. Sheridan

PATRICIA J. SHERIDAN

Board Judge