



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 27, 2025

CBCA 8077-FEMA

In the Matter of CITY OF FLORIDA CITY, FLORIDA

Ernest B. Abbott of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Washington, DC; Michelle Zaltsberg of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Orlando, FL; and Jordan Corbitt of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Houston, TX, counsel for Applicant.

Stephanie Houpp, Deputy Executive Director and General Counsel, Kelly Ann Kennedy, Senior Attorney, and Caleb Keller, Senior Attorney, Florida Division of Emergency Management, Tallahassee, FL, counsel for Grantee; and Melissa Shirah, Recovery Bureau Chief, Cassie Sykes, Recovery Appeals Officer, and Melody Cantrell, Recovery Legal Liaison, Florida Division of Emergency Management, Tallahassee, FL, appearing for Grantee.

Emanuel Rier Soto, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Guaynabo, PR; and 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 **VERGILIO**, **KULLBERG**, and **ZISCHKAU**.

ZISCHKAU, Board Judge, writing for the Panel.

Florida City, Florida (Florida City or applicant) here arbitrates the partial denial of its request for public assistance (PA) by the Federal Emergency Management Agency (FEMA) for debris removal and other related work applicant alleges it incurred due to Hurricane Irma. FEMA denied a majority of Florida City's requested PA because (1) Florida City used a time and materials (T&M) contract type beyond certain time limitations and (2) FEMA perceived

deficiencies in Florida City's work documentation for its T&M work and unit price-based contract work (e.g., the contract price for collecting and disposing of a cubic yard (unit) of vegetative debris). Based on the record and applicable regulations, Florida City's use of the T&M contract type after Hurricane Irma was declared a disaster does not prevent Florida City from recovering its costs for T&M work, and Florida City's work documentation for debris removal and related unit price-based work adequately supports \$1,432,444.49 in PA funding.

On September 10, 2017, Hurricane Irma was declared a major disaster. Its rain, wind, and tidal surge caused extensive damage to Florida City. Applicant Exhibit 1 at 3. After Hurricane Irma dissipated, Florida City conducted an extensive debris removal effort. Request for Arbitration (RFA) at 5-6. Applicant hired Looks Great Services, Inc. (LGS) to remove debris and Disaster Program and Operations, Inc. (DP&O) to monitor the debris removal work. *Id.*

Under Grants Manager Project (GMP) 30618, applicant sought PA funding for debris removal costs incurred between September 18 and October 18, 2017. Applicant Exhibit 1 at 3. FEMA denied a portion of applicant's initial request for PA funding. *Id.* at 3. Applicant appealed, and FEMA rescinded the initial determination memorandum (DM) to allow for a further review of the project. *Id.* at 3-4. Applicant then submitted additional documentation and revised the amount of its PA funding request. *Id.* at 4. In the second DM, FEMA denied \$1,545,765.50 of the \$2,804,867.27 applicant requested. *Id.* at 3, 23. Florida City filed a RFA on April 22, 2024.

Applicant seeks \$1,528,791.57 in PA funding for four cost categories: \$486,276.53 for LGS time and materials (T&M) costs associated with staging the removal of debris and tree bracing; \$36,432 in unit price costs for the removal of vegetative and construction and demolition (C&D) debris; \$848,025 in LGS unit price costs for the removal of dangerous leaning trees (leaners) and hanging branches (hangers); and \$158,058.04 for DP&O's debris monitoring services. Applicant's Confirmation of Costs at Issue at 1-3.

FEMA makes several arguments as to why Florida City is not entitled to PA for any of its claimed costs. For each category of work, the panel has considered the specific facts and record documentation, arguments, and relevant FEMA guidance and determined the eligible amount of PA for Florida City.

Florida City's Use of a T&M Contract

From September 11 through September 16, 2017, Florida City issued task orders authorizing LGS to conduct emergency road clearing services and reduce, remove, and dispose of debris. Applicant Exhibits 16-18. On September 14, the mayor of Florida City

and LGS signed a letter agreement for debris work with these payment terms: “Florida City will be invoiced per LGS hourly rates as provided in the LGS rate sheet for hourly labor and equipment.” Applicant Exhibit 25 (September 14 letter agreement). The letter agreement and the task orders contain not-to-exceed prices. FEMA does not challenge the validity of any of the Florida City’s agreements with LGS.

On September 15, 2017, Florida City and LGS executed a Continuing Services Agreement, which incorporated a “Price Proposal Form” with two parts—part A (T&M pricing) and part B (unit pricing). Applicant Exhibit 14 at 15-16. Part A states:

Emergency Services—EMERGENCY ROAD CLEARING—from roads to right-of-way [ROW], and Utility ROW during the FEMA State, and city declared 72-hours immediate disaster. Includes Emergency cutting and removing of dangerous limbs that are an immediate threat to public safety, health and welfare.

See the EMERGENCY Road clearing Rate Sheet: *LIMITED 72 HOURS ONLY*.

Id. at 15 (emphasis added). A “LABOR AND EQUIPMENT” section then follows with the “per hour” rate for various types of equipment and/or personnel forming LGS’s T&M rates. In support of its request for PA, Florida City submitted invoices to substantiate its LGS T&M costs for work occurring between September 18 and October 18, 2017. Applicant Exhibits 94-96. In each invoice, LGS duplicated all twenty-eight line items of work types from part A of the pricing form and their respective unit prices and then entered the “bid item quantity” for those line items under which work was performed. *Id.* LGS’s invoices to Florida City for its T&M work thus used the same T&M rates as those listed in part A of the pricing form. *See id.*

FEMA’s Public Assistance Program and Policy Guide (PAPPG) generally disfavors the use of T&M contracts in disaster relief efforts. PAPPG (Apr. 2018) at 32. “FEMA may reimburse costs incurred under a T&M contract only if all of the following apply: [n]o other contract was suitable; [t]he contract has a ceiling price that the contractor exceeds at its own risk; and [t]he applicant provides a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.” *Id.* (citing 2 CFR 200.318(j) (2018)). FEMA cites its Debris Monitoring Guide (DMG FEMA 327) as support for reimbursing T&M costs incurred only within the first seventy hours of the disaster declaration. DMG at 43. However, the DMG was superseded in Appendix L of the PAPPG (Jan. 2016).

FEMA provides two arguments as to why the timing of Florida City's T&M costs make Florida City's T&M costs ineligible. First, FEMA asserts that because the DMG did not allow T&M costs incurred seventy hours after disaster declaration, and Florida City seeks reimbursement for T&M costs incurred more than seventy hours after Hurricane Irma was declared a disaster, Florida City's T&M costs are ineligible for reimbursement. FEMA Response at 20 n.5. Second, because LGS's contract with Florida City includes the phrase "LIMITED 72 HOURS ONLY," FEMA argues LGS was not authorized to charge T&M rates to Florida City for work that occurred more than seventy-two hours after the disaster. *Id.* at 20.

Florida City does not dispute that it seeks reimbursement for T&M costs incurred more than seventy hours after Hurricane Irma. Instead, Florida City explains why it met the PAPPG's requirements for T&M work. RFA at 14. After Hurricane Irma, a large amount of metal fragments, trees and limbs (mixed-debris) presented a safety risk to Florida City residents. *Id.* The nearest mixed-debris waste facility was one-hundred sixty-one miles away, and, given the amount of mixed-debris impacting Florida City, Florida City determined that the T&M contract type was the most suitable to achieve efficient and cost-effective debris removal. *Id.* at 15; Applicant Exhibit 21 at 2. Florida City deployed T&M crews to separate mixed debris ahead of unit price debris removal crews. RFA at 15-16; Applicant's Response to FEMA Issues at 4. Through various task orders, Florida City also shows that it set a ceiling price for its T&M contract with LGS. Applicant Exhibits 16, 18, 25. As evidence that Florida City attentively monitored LGS's T&M work, Florida City explains that its project manager held daily scope of work meetings with LGS, reviewed daily work tickets, and employed DP&O to monitor work and maintain daily work logs. Applicant Exhibit 22 at 2. Each day, prior to beginning work, the Florida City project manager also discussed with work crews the most efficient and cost-effective debris removal methods. *Id.*

Florida City also disputes FEMA's interpretation of its contract with LGS. Florida City argues that FEMA incorrectly interprets the phrase "LIMITED 72 HOURS ONLY." Applicant's Reply at 2-4. It contends that this phrase only prohibited LGS from billing Florida City for emergency services work performed more than seventy-two hours after the declared disaster. *Id.* at 3-4. We agree with Florida City that the September 14 letter agreement authorized LGS to charge T&M rates for debris removal work that occurred more than seventy-two hours after Hurricane Irma was declared a disaster. We conclude that neither the PAPPG nor Florida City's agreement with LGS precluded Florida City from performing eligible T&M work beyond the initial seventy-two hours. The September 14 letter agreement between Florida City and LGS requires that LGS invoice Florida City "per LGS hourly rates as provided in the LGS rate sheet for hourly labor and equipment." Applicant Exhibit 25. The terms of the letter agreement and the task orders authorized LGS to bill Florida City using T&M rates until the debris hazards could be eliminated.

Furthermore, “there is no absolute bar to using a T&M contract.” *Harris County, Texas*, CBCA 6909-FEMA, 21-1 BCA ¶ 37,754, at 183,270 (2020) (citing FEMA’s 2019 Procurement Disaster Assistance Team Field Manual). In disaster relief efforts, the use of a T&M contract is situation dependent. *See* PAPPG at 32 (explaining the circumstances in which the T&M contract is acceptable). Here, based on the record as to the severity of the hazardous debris and the necessity of hourly debris removal crews to address mixed debris, we determine that Florida City sufficiently justified its use of the T&M contract type. The task orders issued by Florida City also established a ceiling price, and Florida City demonstrated that it maintained a high-degree of oversight over the T&M work. Daily scope meetings identified the most efficient and cost-effective debris collection and removal methods, DP&O monitored the debris collection and removal work, and Florida City further reviewed DP&O’s daily work logs.

Documentation of the Work

FEMA argues that Florida City inadequately documented all \$486,276.53 in T&M costs, \$848,025 in unit price leaner and hanger costs, \$36,432 in unit price debris removal costs, and associated debris monitoring costs. Specific to Florida City’s T&M costs, FEMA challenges the documentation associated with the tree bracing performed by T&M crew 301 and the debris sorting and staging performed by T&M crews 201, 401, 503, and 701.

An applicant’s costs must be “[a]dequately documented.” PAPPG at 21. The documentation should explain the “who, what, when, where, why, and how much” of each claimed cost. *Id.* at 133. A failure to provide sufficient documentation jeopardizes PA funding. *Id.* at 49. Vegetative debris that poses an immediate threat include limbs and branches extending over public-use areas that could fall and cause personal injury or damage to improved public property. *Id.* at 49. When documenting the removal of vegetative debris, applicants must generally also provide “photograph or video documentation that establishes the item is on public property” and record the “[d]iameter of each item removed.” *Id.* at 51. Eligible broken limbs and branches must be “[two inches] or larger in diameter (measured at the point of break).” *Id.* at 49. Trees eligible for removal must have “a diameter of [six] inches or greater measured [four-and-a-half] feet above ground level,” and a “split trunk,” “broken canopy,” or be leaning “at an angle greater than [thirty] degrees.” *Id.* at 50. FEMA reimburses tree bracing costs when the applicant shows that bracing a tree “is less costly than removal and disposal.” *Id.* at 49.

Generally, FEMA does not reimburse private property debris removal (PPDR), including debris removal from private, gated communities. PAPPG at 54-55; FEMA Exhibit 1 at 1. The exception to FEMA’s general rule barring PPDR arises when debris on private property threatens public health, safety, or a community’s economic recovery efforts and removal of the PPDR is in the public interest. PAPPG at 54. If an applicant believes

that it is entitled to this exception, it must submit a written notice to FEMA. PAPPG at 54; FEMA Exhibit 1 at 1. Even then, if an applicant receives approval to conduct PPDR in a gated community, FEMA only funds debris placed on a private road within the gated community. PAPPG at 55. FEMA will, however, fund the removal of “limbs or branches extend[ing] over the public ROW” that “pose an immediate threat” when “[t]he applicant removes the hazard from the public ROW (without entering private property).” PAPPG at 49; *see also* FEMA Exhibit 2.

T&M 301

LGS’s T&M 301 crew (T&M 301) braced trees impacted by Hurricane Irma. Applicant Witness Testimony (Apr. 21, 2025) at 5-6. The cost associated with T&M 301 is \$93,452.50. Applicant Exhibit 101 at 1.

Many of the braced trees were new trees that Florida City planted shortly before Hurricane Irma made landfall. Applicant’s Reply to FEMA’s July 26, 2024, Request at 2. The parties therefore dispute whether the braced trees qualify as “improved property” under 44 CFR 206.221(d) (2018). Florida City contends that if the braced trees are improved property, its documentation need only show that the tree bracing eliminated or lessened the threat that the newly planted trees would be further damaged. Applicant’s Reply to FEMA Response at 17. FEMA counters that the braced trees are not improved property and asserts that Florida City’s documentation did not show that the braced trees posed a threat to the public ROW or improved property. FEMA Response at 20-21. When FEMA reviewed Florida City’s tree bracing costs, it also identified twenty instances where it believes Florida City duplicated its tree bracing reimbursement requests. FEMA Exhibit 18 at 10.

A daily log documents Florida City’s tree bracing efforts. *See* Applicant Exhibits 39-51. The daily logs note the day the work occurred, the hours worked, equipment used, and includes photographs showing every braced tree. *Id.* Accompanying each photograph is the approximate address of the tree and the tree’s GPS coordinates. *Id.* Florida City also submitted a tree bracing cost analysis showing that it would have been more costly for T&M 503 crews to remove the trees that it chose to brace. Applicant Exhibit 84.

The panel examined the totality of the documentation submitted and ascertained which braced trees posed a threat to people, the public ROW, and improved property. When reviewing FEMA’s claim that Florida City duplicated a portion of its tree bracing costs, the panel found merit with FEMA’s duplication argument and has accordingly reduced Florida City’s claimed tree bracing costs to remove duplicated claimed costs. *Compare* Applicant Exhibit 44 at 5-8, 10-13, 15-20, 22-26, 28, *with* Applicant Exhibit 45 at 3-15, 20-22, 25-28. In total, the panel determines that Florida City is entitled to \$85,571.94 in tree bracing costs.

T&M 201, T&M 401, T&M 503, and T&M 701

As detailed above, Florida City seeks \$392,824.03 for the costs incurred by T&M crews 201, 401, 503, and 701. These crews sorted debris later picked up by the unit price crews and transported to the debris removal facility. FEMA challenges the adequacy of the documentation associated with this work.

The T&M 201 crew worked at Florida City's Loren Robert Park, Fasulo Park, and a city-owned recreational vehicle (RV) park. Applicant Witness Testimony at 6. After the storm, the public parks contained vegetative and mixed-debris. *Id.* at 6-7. T&M 201 separated debris in the public ROW and moved it to pick-up locations so that it could be removed by unit price crews. *Id.* at 7. At the RV park, debris from damaged mobile homes mixed with vegetative debris. *Id.* T&M 201 sorted the vegetative debris from the mobile home debris and established separate pick-up locations so that the unit price crews could more easily remove the debris. *Id.* The T&M 401 crew was a manual labor crew that removed debris from city streets, public areas, and ROWs and staged the debris for removal by the unit price debris removal crews. *Id.* at 6. The T&M 701 crew sorted debris at Loren Roberts Park on September 22, 2017. Applicant Exhibit 85 at 3.

The documentation substantiating the work performed by T&M 201, 401, and 701 includes a spreadsheet indicating the date, location, hours worked, a brief description of the work performed, and the specific DP&O debris monitor who supervised each T&M crew. *See* Applicant Exhibit 85. The debris monitors ensured that the T&M crews complied with FEMA's documentation requirements and only removed debris from public property that threatened public health and safety. Applicant Exhibit 92 ¶ 6.

The T&M 503 crew moved debris that straddled public and private property lines to the ROW. Applicant Witness Testimony at 11. Representatives from Florida City and DP&O met daily to determine where to send T&M 503. *Id.* at 11-12. Often, T&M 503 crews used a bucket truck and chainsaws to clear this debris. *Id.* at 13. According to a DP&O representative, bucket trucks and chainsaws are the types of equipment often used when removing limbs and branches straddling the public ROW. *Id.* Despite working near private property, the DP&O witness testified that the T&M 201 and T&M 503 crews did not enter private property to remove limbs or trees. *Id.* at 10-13. DP&O's debris monitors understood that entering private property was strictly forbidden and, as a result, would have prevented and reported any unauthorized PPDR. *See id.* at 13. Florida City argues that if vegetation was removed from the backyard of a private property, it was likely the homeowners, not LGS employees, that removed the vegetation from their own property. *Cf. id.* at 10, 13.

For each day that T&M 503 performed work, there is a document that substantiates the day, hours worked, the rate billed, equipment used, the personnel that performed the work, and the assigned DP&O debris monitor. *See* Applicant Exhibits 53-82. Florida City's documentation also includes an address and GPS location where the work was performed and images of the specified location before and after the work was performed. *Id.*

FEMA makes several arguments as to why Florida City inadequately documented its T&M work. In some locations, FEMA asserts, the debris sorting and staging performed by crews 201, 401, and 701 occurred on the same day and location as unit price debris removal work. FEMA Exhibit 17.1 at 6-7. According to FEMA, it determined that overlapping T&M and unit price work was ineligible because it could not discern the difference between the work performed by the T&M crews and the unit price crews. *Id.* On some of the T&M 503 work tickets, FEMA argues that the claimed T&M work occurred after the city completed debris pickup at the locations identified on the work ticket. FEMA Response at 22. Since Florida City explains that T&M crews sorted and staged debris in preparation for removal, Applicant's Response to FEMA Issues at 4, FEMA did not expect T&M crews to return to areas where debris pickup was completed. At some of the locations where Florida City performed T&M work, FEMA determined Florida City's documentation was inadequate because FEMA could not identify a debris ticket linking the T&M work to subsequent unit price debris removal. *See* FEMA Exhibit 17.1 at 4. If Florida City's T&M crews separated debris, FEMA expected to see documentation that unit price crews picked up the separated debris. *Id.* at 7.

Florida City distinguishes the work performed by T&M crews from the work performed by the unit price crews by explaining that T&M crews collected and sorted the debris into piles and the unit price debris crews removed the debris. Applicant Witness Testimony at 6-7; Applicant's Response to FEMA Issues at 4-5. Since the T&M crews and unit crews performed different tasks, it is not disqualifying that sometimes T&M and unit price crews worked in the same location. When T&M work appears to occur at a location after debris pickup is complete or there is no debris ticket showing that sorted debris was removed, Florida City explains that the debris tickets associated with project 30622, which began the day after project 30618 concluded, corroborate Florida City's T&M work. Applicant's Reply to FEMA Response at 10. These debris tickets show that the reason some of Florida City's T&M work is not associated with a debris ticket from project 30618 is because the debris removal occurred as part of project 30622. *Id.*

At the locations where T&M 503 crews worked and at some of the locations where T&M 201 and 401 crews worked, FEMA identified trees and other vegetation on private property that disappeared after Hurricane Irma. FEMA Exhibits 18 at 5-6; 17.2 at 9, 20-21. FEMA made this observation by comparing aerial images taken before the disaster with aerial images taken after the disaster. *See id.*; FEMA Exhibits 6.1-6.10. Relying on this

observation, FEMA concluded that T&M crews 503, 201, and 401 performed unauthorized PPDR. *See* FEMA Exhibit 18 at 5-6. In support of this assertion, FEMA points out that T&M 503 used bucket trucks to relocate debris to the ROW. FEMA Exhibit 20 at 2. FEMA's opinion is that it is not practical to use a bucket truck to remove vegetation straddling public and private property and that it is more likely Florida City used a bucket truck to remove debris located entirely on private property. *Id.* at 2-3.

Apart from reiterating that the use of a bucket truck is not unusual when removing debris straddling private property and asserting that T&M crews did not remove debris from private property, Florida City questions FEMA's reliance on analyzing images taken before and after Hurricane Irma. Applicant's Reply to FEMA Response at 8; *see also* Applicant Witness Testimony at 13; Applicant's Response to FEMA Issues at 4. It states that seasonal changes, the impact of Hurricane Irma, and the actions of homeowners, not the work of T&M crews, caused a reduction in vegetation on private property after Hurricane Irma. Applicant's Reply to FEMA Response at 8; Applicant Witness Testimony at 10.

Reviewing Florida City's documentation of its T&M work along with the witness testimony provided by the DP&O representative, the panel is satisfied that the totality of Florida City's evidence supports its claim for reimbursement. Florida City sufficiently documented the location, personnel, scope of work, cost, and equipment used in performing its T&M work. Based on the evidence before us, the panel is also convinced that applicant's T&M costs do not include unauthorized PPDR. Accordingly, Florida City is entitled to \$392,824.03 for the work associated with the T&M 201, T&M 401, T&M 503, and T&M 701 crews.

Unit Price Leaners and Hangers

Florida City used unit price crews to remove dangerous leaning trees and hanging branches. Applicant's Written Testimony at 13-14. A DP&O debris monitor accompanied each crew. *Id.* The debris monitors ensured that the crews only removed trees and limbs that threatened public health and safety. *Id.* Debris monitors also measured each leaner or hanger to make sure that LGS did not remove leaners or hangers that did not meet FEMA requirements. *Id.* at 14. The removal of leaners and hangers often occurred concurrently with the T&M work. *Id.* at 8. Florida City seeks PA of \$848,025 for this work.

Florida City used leaner and hanger tickets (L&H tickets) to document the leaner and hanger removal work. Each ticket lists the debris monitor's name, the crew that removed the leaner or hanger, the time and date of removal, the type of debris removed (i.e., leaner or hanger), a photograph, measurement(s), GPS location, and a physical address of the removed leaner or hanger. *See* Applicant Exhibit 28A. The record also contains work orders for leaners and hangers. Applicant Exhibits 27, 93. The leaner and hanger work orders list the

debris ticket number for the leaner or hanger, the relevant measurement, and its location. *Id.* Florida City admits that sometimes the size of the tree, amount of damaged branches, and the spatial relationship between the tree and ROW made it difficult to take a picture showing that the leaner or hanger threatened the ROW. Applicant's Written Testimony at 13. In these instances, Florida City believes that the added GPS location data provides enough information to discern that a leaner or hanger threatened the ROW. *Id.*

In denying Florida City's L&H costs, FEMA claims there are several issues with Florida City's L&H tickets. Applicant Exhibit 19 at 3-7. Generally, these issues included: L&H tickets with the same supporting documentation; non-hazardous downed trees; branches improperly characterized as leaners or hangers; leaners and hangers that do not appear to meet the requisite diameter requirements; L&H tickets with photographs that do not illustrate the threat posed by the leaner or hanger; leaner tickets that show trees leaning at less than thirty degrees; L&H tickets with location data suggesting the leaner or hanger was removed from private property; and L&H tickets that do not include a photograph of the hazardous leaner or hanger. *Id.*; FEMA Exhibit 19 at 9; 16; FEMA Response at 29. For all L&H tickets, FEMA asserts that because Florida City's L&H tickets contain only a written notation of the removed leaner or hanger's dimension, and not a photograph validating that each removed leaner or hanger met FEMA's dimension requirements, Florida City's documentation is inadequate. *See, e.g.,* FEMA Exhibits 16 at 26; 21 at 6.

The panel reviewed Florida City's L&H tickets and determined a majority of them eligible for reimbursement. For some L&H tickets, the panel agrees with FEMA and has reduced the eligible amount by subtracting the unsupported L&H tickets from the eligible total. We determine that Florida City has shown eligible costs for the work amounting to \$805,624.

Vegetative and C&D Debris Removal Tickets

Florida City seeks PA for 176 debris tickets, nearly all relating to vegetative debris removal by LGS, totaling \$36,432. FEMA contends that 175 of the tickets related to work in a private, gated community. The record shows the GPS coordinates associated with the 175 vegetative debris tickets correspond to locations within the Village of Palm Bay private, gated community. FEMA Exhibit 20 at 3. Determining that these tickets reflected unauthorized PPDR, FEMA denied Florida City \$36,042 in PA. Applicant Exhibit 19 at 1; *see also* FEMA Exhibit 20 at 3. FEMA also denied the remaining \$390 because the GPS coordinate associated with C&D debris ticket 11941 was outside of Florida City's jurisdiction. *See* Applicant Exhibit 19 at 3; FEMA Response at 3.

Florida City addresses the denied \$36,042 in unit price vegetative debris costs by claiming that all crews understood that PPDR was unauthorized and DP&O would have

prevented any crews from entering private property. Applicant Witness Testimony at 11. Regarding C&D ticket 11941, Florida City maintains that it did not remove debris from locations outside of Florida City limits. RFA at 41.

While the PAPPG states that debris removal from private residential property within a gated community is not eligible for PA, it provides that debris placed on a private road within the gated community may be eligible if the applicant makes the required showing with supporting documentation. PAPPG at 54-55. Although there is evidence supporting a public interest determination, the record does not contain evidence of the applicant's legal authority to remove the debris and the required indemnification undertaking. We also find inadequate support for C&D ticket 11941. Accordingly, we find the requested amounts ineligible.

Debris Monitoring Costs

Florida City seeks \$158,058.04 for the debris monitoring services provided by DP&O. Applicant's Confirmation of Costs at 1. Eligible debris monitoring activities are "[f]ield supervisory oversight," "[m]onitoring contracted debris removal at both the loading and disposal sites," "[c]ompiling documentation, such as load tickets and monitor reports, to substantiate eligible debris," and "training debris monitors." PAPPG at 57. Applicants must submit adequate documentation of claimed costs tied to eligible work. PAPPG at 21.

Initially, Florida City submitted invoices supporting \$238,444 in debris monitoring costs. Applicant Exhibit 1 at 19. In the DM, FEMA determined that Florida City failed to justify \$63,594 of its claimed debris monitoring costs because some of the DP&O debris monitor invoices did not correlate with work orders and load tickets. Applicant Exhibit 1 at 20; *see also* FEMA Response at 32. FEMA then further reduced Florida City's claimed debris monitoring costs by \$94,464.04 to ensure that Florida City only received reimbursement for debris monitoring costs tied to eligible work. *Id.* Before the Board, Florida City seeks \$158,058.04, the total amount that FEMA previously denied.

Florida City asserts that it audited the debris monitoring costs and found substantiation for the \$63,594 FEMA determined unsupported by work orders and load tickets. Applicant's Reply to FEMA Response at 25-26; Applicant Exhibits 37, 38. For the remaining \$94,464.04, Florida City states that because all of the work claimed under project 30618 was eligible for reimbursement, FEMA should not have reduced its debris monitoring costs. It also challenges FEMA's assertion that FEMA policy supports reducing debris monitoring costs in proportion to the amount of work FEMA determines eligible. Applicant's Reply to FEMA Response at 26.

Florida City's invoicing audit sufficiently substantiates the \$63,594 that FEMA determined was unsupported by DP&O invoices, work orders, and load tickets. As FEMA

states, however, the PAPPG only allows reimbursement of costs tied to eligible work. Accordingly, Florida City is only entitled to debris monitoring costs proportional to the amount of eligible work.

We now calculate the additional debris monitoring costs using the T&M and L&H costs we have found eligible. Adding \$1,284,019.97, which is the additional amount of the T&M and L&H costs the panel determines Florida City is entitled to, with \$1,178,715.49, the amount FEMA determined Florida City was entitled to in the final DM, less previously awarded debris monitoring costs, equals \$2,462,735.46. Dividing that amount by the total amount Florida City requested for non-debris monitoring costs (\$2,804,867.27 minus \$238,444.32) yields 95.96 percent. Multiplying this percentage by \$238,444.32 yields \$228,810.80, the total amount Florida City is entitled to receive for debris monitoring. FEMA already found \$80,386.28 in debris monitoring costs eligible in the DM, so subtracting that from \$228,810.80 equals \$148,424.52, the additional amount determined by the panel for debris monitoring costs.

Decision

In sum, we determine that Florida City is entitled to additional eligible costs of \$85,571.94 (T&M 301), \$392,824.03 (T&M 201, 401, 503, and 701), \$805,624 (L&H), and \$148,424.52 (debris monitoring) for a total of \$1,432,444.49.

Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Board Judge

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge

VERGILIO, Board Judge, writing separately.

I part company with the determination of the majority. I conclude that the record fails to justify payment of public assistance to the applicant for costs sought under the time and materials agreement for the period beyond seventy-two hours after the disaster.

An agreement between the applicant and Looks Great Services of MS, Inc. (LGS), bears signature dates of September 15, 2017. Applicant Exhibit 14. The document has blanks such that there is no indication that the City Clerk has attested to the agreement or its

validity. The agreement relates to disaster debris removal and disposal. Pricing in part A covers:

Emergency Services—EMERGENCY ROAD CLEARING—from roads to right-of-way [ROW], and Utility ROW during the FEMA State, and city declared 72-hours immediate disaster. Includes Emergency cutting and removing of dangerous limbs that are an immediate threat to public safety, health and welfare.

Id. at 15. Within that part, labor and equipment (equipment with operators) is priced generally on an hourly basis. This is the time and materials aspect of the agreement. Part B relates to debris removal, reduction and disposal operations and debris removal and reduction non-emergency services. Pricing is on a per unit basis for various categories, including right-of-way vegetative collection and public right-of-way construction and demolition collection.

Subsequently, with a date of September 16, 2017, the applicant issued a task order authorizing LGS “to begin coordination and mobilization of labor and equipment to facilitate removal of debris hazards: ‘Debris Removal’ Debris hazards (Leaner and hanger and Right of entry) for Florida City Public Right of way damages to residential properties.” Applicant Exhibit 18. Further, “[t]he Task order dollar amount is estimated and limited at \$3,300,000.00 and will end on October 18, 2017.” *Id.*

The disaster from Hurricane Irma was declared on September 10, 2017. During the period from September 18 through October 17, 2017, the applicant incurred various costs. FEMA has provided public assistance at unit cost rates for portions of vegetative debris, construction and demolition debris, and reduction but has not provided assistance for the time and materials rates.

As the majority notes, the Public Assistance Program and Policy Guide (PAPPG) specifies that FEMA may reimburse costs incurred under a T&M contract only if specific conditions are satisfied, including: no other contract was suitable and the applicant provides a high degree of oversight to obtain reasonable assurance of efficient methods and effective cost controls. PAPPG (Apr. 2018) at 32.

The support for the “no other contract was suitable” requirement rests on the mayor’s statements. However, I deem such a conclusion without outside support to be unpersuasive. The applicant utilized rates that were applicable in the immediate aftermath of the hurricane. The record does not support a conclusion that such pricing was reasonable for the period here in question or that unit pricing would not have been available and more economical. The

applicant can pay what it wishes to obtain services; however, there are limitations for reimbursement with public assistance.

The applicant's use of a different contractor to assist in the oversight process could satisfy the necessary prong. However, for me, this third party's participation in daily meetings and agreeing upon the work to be performed does not demonstrate that efficient methods and effective cost controls actually resulted. I find the record unconvincing. I would not provide public assistance for these costs sought by the applicant.

Joseph A. Vergilio
JOSEPH A. VERGILIO
Board Judge