



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 27, 2026

CBCA 8576-FEMA

In the Matter of WASHINGTON COUNTY, FLORIDA

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

Jasmyn Allen and John Ebersole, 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), **SHERIDAN**, and **KULLBERG**.

BEARDSLEY, Board Judge, writing for the Panel.

The applicant, Washington County, Florida (the County), requested arbitration of the Federal Emergency Management Agency's (FEMA) denial of public assistance (PA) to fund

the paving portion of the applicant's hazard mitigation proposals (HMPs)¹ for 285 dirt and gravel roads with a total cost of \$55,952,149.22.²

Background

On October 10, 2018, Hurricane Michael made landfall thirty-five miles south/southwest of Washington County, Florida, as a category five hurricane with sustained winds of 160 miles per hour. As a result, the President declared a major disaster for the State of Florida. Following the disaster, the County submitted a request for PA for damages to, among other things, 285 dirt and gravel roads and associated ditches. The damage eroded "surfaces and slopes and deposited silt, sediment, and debris into the roadside ditches." FEMA's Exhibit 1 at 3.³ FEMA segregated the roads into zones and wrote a separate project for each of the seventeen zones.

FEMA presented a section 406 HMP for the projects. The HMP would "place [a] turf reinforced erosion control blanket over structural refill to allow superior hydrostatic pressure relief and allow for ecologically native vegetative growth. In addition, the Applicant propose[d] to install non-woven geotextile along the roads and quicklime mix to promote soil stabilization." Applicant's Exhibit 24. The County's engineers, however, determined that the proposed HMP was not feasible because "neither measure nor a combination of the measures would prevent future similar damages to the road surface, which were caused by inundation from the storm, high intensity/heavy rains, surface flooding, and high velocity flood waters causing erosion and making roads impassable." Applicant's Exhibit 26, Declaration of Jason Crenshaw (Apr. 11, 2025) ¶ 5. The County, instead, proposed replacing the geotextile fabric with an asphalt surface. Applicant's Exhibit 20, Declaration of Allen Massey (Apr. 11, 2025) ¶ 6.

In early July 2020, FEMA rejected the applicant's proposal to replace the geotextile fabric with an asphalt surface because they "are using an appendix J justification that is not

¹ FEMA often refers to PA-funded hazard mitigation as section 406 hazard mitigation.

² In its request for arbitration, the County asserts that the amount in dispute is \$55,952,149.22. FEMA asserts that it denied \$55,995,791.23 in ineligible mitigation costs. The panel is unable to determine which amount is correct and references both amounts in this decision.

³ For all exhibits, the request for arbitration, and FEMA's response, .pdf page numbers are cited.

applicable to the mitigation proposed. Therefore they are not appropriate or cost effective . . . and do not meet the requirements of the [Public Assistance Program and Policy Guide (PAPPG)].” Applicant’s Exhibit 29 at 4. Appendix J allows specific “mitigation measures to be considered cost-effective if the measures do not exceed 100 percent of the eligible repair cost.” PAPPG (Apr. 2018), Appendix J, at 190. Appendix J states, “Roadways and Railways: Where shoulders are susceptible to overflow from adjacent water courses, stabilize shoulders and embankments with geotextile fabric” and “Roadways: Use geotextile drainage blankets between the pavement section and subbase to strengthen subgrade.” *Id.* at 191, ¶ II.C, .D.

To comply with Appendix J, FEMA’s mitigation group supervisor recommended adding the following language to the HMP scope of work (SOW):

Applicant proposes to restore the damaged road base, to pre-disaster condition. Add a geotextile over the base, then place an aggregate cover prior to placing 2 IN of Superpave asphalt topcoat. Install a textile backed sod, along the shoulder/ditch embankments to create an engineered system to prevent erosion from a future similar event.

Applicant’s Exhibit 29 at 3 (citing PAPPG, Appendix J, ¶ II.C). FEMA’s mitigation group supervisor stated that this scope “would be acceptable for their proposal and meet the PAPPG requirements.” *Id.* He said further that “[i]f they use something similar to this and utilize their same length, width, depths as already stated in their HMPs, it will pass the muster.” *Id.*

For these seventeen projects, the applicant chose to participate in “FEMA’s Public Assistance Alternative Procedures (PAAP) for Permanent Work Pilot for Hurricanes Florence and Michael (‘Michael PAAP’) authorized by Section 428 of the Stafford Act.” FEMA’s Exhibit 1 at 4 (citing FP 104-009-7 (Oct. 15, 2018)). “These procedures provided for a fixed-cost subaward based on the estimated cost of restoring the damaged [roads] to pre-disaster condition, along with the estimated cost for cost-effective hazard mitigation measures associated with the actual restoration scope of work (SOW) to be implemented.” *Id.* Under the Michael PAAP, FEMA offered the County a fixed-cost agreement in the aggregate amount of \$160,190,551.75, which included a section 406 hazard mitigation proposal for “each of the 17 [grants manager] projects, which [required] the installation of woven geotextile over the [roads’] base material, the placement of an aggregate cover and an overlay of two inches of Superpave Asphalt. The HMP also included the installation of sod along the [roads] to create a ‘connected engineered system.’” FEMA’s Exhibit 1 at 3-4 (footnote omitted). “For Alternative Procedures Projects, FEMA, the Recipient, and the Applicant must reach agreement on the capped amount within 12 months of the declaration date.” PAPPG at 109. Prior to the established deadline for acceptance of April 19, 2021, the

applicant accepted FEMA's section 428 fixed-cost offer for the seventeen projects. FEMA's Exhibit 1 at 4.

In 2022, the applicant submitted SOW changes for each project "to construct a geogrid, geotextile or paving geotextile with an alternative roadway surface material and a connected engineered system to prevent erosion with a shoulder turf option." FEMA's Response at 4 (citing FEMA's Exhibit 1 at 5). FEMA "approved the HMP SOW changes for two [grants manager projects], 87488 and 87459." *Id.*; see Applicant's Exhibits 22, 23. However, FEMA later, in March 2023, determined that it wrongly approved the HMP SOW changes for these two projects because "the [a]pplicant submitted the amendments up to a year after [the Michael PAAP] deadline" of April 19, 2021, and "the applicant's amendments seek to change the roadway surface to material other than asphalt, negating the proposed hazard mitigation." FEMA Exhibit 1 at 6 (footnote omitted).

Thereafter, FEMA reviewed the initial HMP and HMP SOW changes and determined, among other things, that "[p]aving gravel roads with asphalt is an Improved Project." FEMA Exhibit 1 at 4. As a result, on May 13, 2024, FEMA notified the County that it would be denying and de-obligating "approximately \$79.6M (fed share \$59.7M)" for ineligible hazard mitigation. Applicant's Exhibit 30. FEMA issued seventeen determination memos (DMs) on February 13, 2025, denying "\$55,952,149.22 in mitigation costs associated with the paving portion of the HMPs, which included the placement of an aggregate cover." Request for Arbitration (RFA) at 11-12. In the DMs, FEMA explained that it "erred in approving the Applicant's HMP SOW, which added geotextile fabric and aggregate base, prior to placing two inches of Superpave [asphalt] to unpaved roads." Applicant's Exhibits 3-19 at 6. FEMA further stated that "[p]aving of an unpaved roadway will not reduce the potential of future, similar damage," and "the work to pave an unpaved road is considered an improvement by PA [p]olicy and is not eligible 406 [m]itigation." *Id.* FEMA also indicated that the applicant "has not demonstrated that the HMP SOW is cost effective mitigation." *Id.* FEMA advised that the geotextile fabric would only be eligible as a mitigation measure if the County paved the roads. *Id.* at 7 ("Although FEMA cannot fund the paving of the roadways, applying woven geotextile fabric is effective hazard mitigation . . . if the roadways are paved."). "If the [a]pplicant chooses not to pave the roadway, the costs associated with placing geotextile fabric will be denied." *Id.*

In the first appeal decision, FEMA determined that:

[O]verlaying asphalt pavement on top of dirt/gravel roads is not eligible Section 406 Hazard Mitigation, and its approval as part of the Applicant's Section 428 Alternative Procedures project was in error. FEMA will allow the [County] to amend the project to include the ineligible work as an

improvement under the applicant's section 428 Alternative Procedures scope of work. In addition, FEMA will authorize eligible 406 mitigation in the amount of \$23,622,964.62 for sod and geotextile fabric bringing the [County's] available capped total to \$104,238,402.53, with the policy requirement that the [County] must complete the work to retain the eligible 406 mitigation costs identified.

FEMA's Exhibit 1 at 1, 11. As a result, FEMA reduced the section 406 hazard mitigation funding to \$23,622,964.62 in eligible mitigation costs for sod and geotextile fabric, removing \$55,995,791.23 in ineligible paving costs. FEMA's Response at 5 (citing FEMA's Exhibit 1 at 7-11). "FEMA continued to obligate \$80,615,437.91 for repairs for the road surfaces, shoulders, and ditches, bringing the eligible fixed-cost offer total to \$104,238,402.53." *Id.* at 6.

The County filed an RFA asking the Board to determine that paving unpaved roads is an eligible hazard mitigation measure under section 406, to allow the County time to prove that the seventeen HMP SOWs at issue are cost effective, and to remove from the Michael PAAP any projects that do not include a cost-effective HMP so that they can be funded on estimates for the completion of remaining work. RFA at 30.

Discussion

"Hazard mitigation is *any* sustained action taken to reduce or eliminate long-term risk to people and property from natural hazards and their effects." PAPPG at 97 (citing 42 U.S.C. § 5172(e) (2018) and 44 CFR 206.226(e) (2018)) (emphasis added). "FEMA has authority to provide PA funding for cost-effective hazard mitigation measures for facilities damaged by the incident." *Id.* at 97. FEMA's current position, under the Michael PAAP, is that it will fund the installation of geotextile drainage blankets as a hazard mitigation measure but not the cost of paving the roads because, according to FEMA, paving the roads is an improved project and not a hazard mitigation measure. FEMA's position is based on the PAPPG's specific mention that "[I]aying asphalt on a gravel road" is an improved project. *Id.* at 110. FEMA, however, points to no restriction in the Stafford Act, FEMA regulation, or policy that precludes paving as a mitigation measure, provided it is cost effective. In fact, FEMA's own mitigation handbook "lists paving an unpaved roadway as a recommended hazard mitigation option." FEMA's Exhibit 1 at 10 (citing FEMA, Hurricane and Flood Mitigation Handbook for Public Facilities, P-2181, at 1-7 (Mar. 2022)). FEMA has authority to provide PA funding for "permanent restoration of damaged facilities, including cost-effective hazard mitigation to protect the facilities from future damage." PAPPG at 19. The applicant's expert witnesses, both licensed engineers, have convinced the panel that paving dirt and gravel roads can protect roads from future, similar damage caused by flooding.

“Washout of the road surface absolutely would not occur in future events because there would no longer be dirt/rock surfaces to be washed out if the road surface[s] are paved with asphalt.” Exhibit 26, Crenshaw Declaration, ¶ 7; Exhibit 27, Declaration of Donald Stanley, (Apr. 11, 2025) ¶ 7. The panel concludes that, in this case, paving the dirt and gravel roads is a hazard mitigation measure.

Even if paving dirt and gravel roads is a hazard mitigation measure, FEMA asserts that paving dirt and gravel roads in order to use geotextile fabric is not cost effective. FEMA’s Response at 7 (citing PAPPG, Appendix J, at 191). In order to be funded for hazard mitigation under the PA programs, “[m]itigation measures must be cost-effective.” PAPPG at 98.

FEMA considers mitigation measures to be cost-effective if any of the following criteria are met:

- The cost for the mitigation measure does not exceed 15 percent of the total eligible repair cost (prior to any insurance reductions) of the facility or facilities for which the mitigation measure applies.
- The mitigation measure is specifically listed in Appendix J: Cost-Effective Hazard Mitigation Measures, AND the cost of the mitigation measure does not exceed 100 percent of the eligible repair cost (prior to any insurance reductions) of the facility or facilities for which the mitigation measure applies.
- The Recipient or Applicant demonstrates through an acceptable benefit-cost analysis (BCA) methodology that the measure is cost-effective. FEMA’s BCA software¹ provides appropriate BCA methodologies.

Many mitigation measures that do not meet the first two requirements above prove to be cost-effective based on a BCA. If the mitigation measure is not cost-effective based on the first two criteria, FEMA, the Recipient, and the Applicant will work together to develop a BCA to determine whether it is cost-effective.

Id.

FEMA correctly reads Appendix J to say that the use of geotextile fabric on a paved road is a cost-effective mitigation measure, PAPPG at 190-91, but, without support, asserts

that “[t]he combined expense of paving gravel roads and laying the geotextile fabric renders it no longer cost effective as a hazard mitigation measure.” FEMA’s Response at 7. However, there are other ways to demonstrate that a hazard mitigation measure is cost effective. The County acknowledges that “the additional mitigation funding that FEMA continues to deny, for paving, would need to be confirmed cost-effective through additional collaborative work with FEMA and the State.” Applicant’s Reply at 7. The applicant has requested the opportunity to provide an acceptable BCA to support its assertion that the combined expense of paving dirt and gravel roads and laying geotextile fabric is a cost-effective hazard mitigation measure. FEMA provides no reason why such a BCA cannot be developed. The panel, therefore, requires that FEMA and the applicant work together to develop such a BCA in order to determine if paving and laying geotextile fabric is a cost-effective hazard mitigation measure. Of course, because there are seventeen projects, it may be necessary to perform seventeen BCAs.

In the event that the County’s hazard mitigation measures are determined to be cost effective, the County is entitled to funding of those costs up to the capped amount of \$160,190,551.75 (this amount included funds for each project to add woven geotextile over the base and an asphalt topcoat) that FEMA offered and the County accepted under the Michael PAAP for these seventeen projects prior to the twelve month deadline.

The capped funding under the Alternative Procedures Program is determined by the total fixed-cost amount established based on the aggregate of the estimates to restore disaster damaged facilities [here, roads] to pre-disaster design and function and the estimated cost for cost-effective hazard mitigation measures associated with the actual restoration SOW to be implemented.

FEMA’s Exhibit 1, FEMA’s First Appeal Response, at 9 (citing the Michael PAAP at 2). FEMA asserts that the capped total here is \$104,238,402.53. *Id.* at 11. The section 428 agreement, however, is still in place with a cap of \$160,190,551.75, and should the parties determine that paving and laying geotextile fabric is a cost-effective hazard mitigation measure, the available funding under the Michael PAAP is capped at \$160,190,551.75, not at \$104,238,402.53.

In the event that some of the seventeen projects are found not to be cost effective after conducting a BCA, the projects can proceed outside of the fixed-cost agreement and the section 428 process with actual eligible and reasonable costs funded in accordance with standard PA procedures. FEMA argues that it lacks authority to alter a section 428 fixed-cost agreement beyond the twelve-month deadline for changes. “FEMA’s ability to adjust fixed-cost offer projects is constrained once the agreement has been accepted.” FEMA’s Surreply at 2 (citing PAPPG at 109 and FEMA’s Exhibit 6). “Once the Applicant signs and submits

either the Fixed Cost Agreement Letter or a Letter of Undertaking, . . . it may not revert back to a project funded based on actual costs.” PAPPG at 109. FEMA, however, repeatedly changed the section 428 fixed-cost agreement by reducing the funds available, removing paving as a hazard mitigation measure, rebranding the paving as an improved project, requiring that the County pave the roads for the geotextile fabric to be eligible as a mitigation measure, and approving and unapproving various iterations of the HMP SOW. These changes all occurred after the County had accepted the fixed-cost offer. FEMA argues that “[w]hile FEMA may permit non-substantial changes to the SOW under certain circumstances, . . . the Applicant’s proposed SOW does not meet the criteria for eligible, cost-effective hazard mitigation and is beyond a non-substantial change.” FEMA’s Surreply at 3. By approving such substantial changes, FEMA has demonstrated that it has discretion to change the section 428 fixed-cost agreement. Moreover, FEMA has indicated that it “does have the capacity to” remove the “428 projects from the fixed-cost agreement” and section 428 process if ordered to do so by the panel. FEMA’s Response at 11. The panel, therefore, requires FEMA to remove those projects, for which the HMP SOW (to include laying geotextile fabric and paving) is determined not to be cost effective, from the fixed-cost agreement and the section 428 process and fund those projects as a standard PA project.

Decision

The panel concludes that, in this case, paving dirt and gravel roads is an eligible hazard mitigation measure if cost effective. FEMA and the applicant will work together to prepare a BCA for each project to determine if the HMP SOWs at issue are cost-effective hazard mitigation measures. For those hazard mitigation measures determined to be cost effective, the hazard mitigation measures will be funded under the section 428 fixed-cost agreement that is capped at \$160,190,551.75. For hazard mitigation measures determined not to be cost effective, those projects can be removed from the fixed-cost agreement and the section 428 process and funded as a standard PA project.

Erica S. Beardsley

ERICA S. BEARDSLEY

Board Judge

Patricia J. Sheridan

PATRICIA J. SHERIDAN

Board Judge

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge