UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 21, 2026

CBCA 8767-FEMA

In the Matter of GASPARILLA ISLAND BRIDGE AUTHORITY

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

Christiana Cooley, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **BEARDSLEY**, **VOLK**, and **NEWSOM**.

BEARDSLEY, Board Judge, writing for the Panel.

The Gasparilla Island Bridge Authority (GIBA) seeks arbitration of the Federal Emergency Management Agency's (FEMA) denial of its request for public assistance (PA) to repair damages to the Boca Grande Causeway Bridge and Roadway (Grande Causeway) caused by Hurricane Milton. FEMA determined that GIBA is not eligible for PA funds because the Grande Causeway is a federal-aid highway that the Federal Highway Administration (FHWA) has specific authority to restore under the Emergency Relief (ER) program. We conclude that the FHWA has specific authority under its ER program to restore and repair the Grande Causeway and, therefore, the Grande Causeway is not eligible for FEMA PA.

Background

GIBA requested PA funding to repair disaster damage to the Grande Causeway caused by Hurricane Milton in October 2024. The Grande Causeway is two-and-a-half miles long and includes three bridges. Request for Arbitration (RFA) at 6. It is the only land link between Gasparilla Road in Placida, Florida, and Gasparilla Road in Boca Grande, Florida, and the only ingress and egress to and from Gasparilla Island. *Id*.

In 1952, a private company constructed the Grande Causeway pursuant to a fifty-year lease with the state of Florida. RFA at 8 (citing Exhibit 4). The state of Florida later conveyed the Grande Causeway to GIBA, an independent special taxing district, along with the obligation to operate, maintain, repair, and reconstruct the Grande Causeway by collecting tolls. *Id.* at 8-9 (citing Exhibit 15). To date, no federal funds have been used to construct, maintain, or repair the Grande Causeway. RFA at 8.

FEMA issued a determination memorandum denying GIBA's request for PA, finding that because the Grande Causeway is "part of a rural major collector road" and the FHWA has legal responsibility for any repairs, funding the work under the PA program would be an impermissible duplication of benefits. Applicant's Exhibit 2 at 4. FEMA denied GIBA's first appeal on similar grounds, finding that, as a designated federal-aid roadway under the specific authority of another federal agency (the FHWA), the Grande Causeway is ineligible for PA funding. Applicant's Exhibit 1 at 3.

Discussion

The FHWA has specific authority under its ER program to restore and repair the Grande Causeway, rendering the Grande Causeway ineligible for PA funding. FEMA's Public Assistance Program and Policy Guide (PAPPG) (June 2020) states:

> Permanent Work to restore roads and bridges is eligible [for PA funding] unless restoration is under the specific authority of another Federal Agency such as FHWA.

PAPPG at 169. As the PAPPG explains, FEMA does not provide PA when another federal agency "has more specific authority" for the work at issue. *Id*. at 54. The PAPPG provides:

> *(h) Work Under the Authority of Other Federal Agencies* [OFAs]
>
> OFAs have authority to conduct work that may overlap with FEMA's authority. FEMA's authority is broad and most OFA authorities are more specific than FEMA's authorities.
>
> FEMA evaluates its authorities against OFA authorities. Some of the Factors that FEMA considers when evaluating whether an OFA has more specific authority are whether the OFA's authority is specifically and exclusively:
>
> - Available for a particular type of facility, work, or activity;
> - Applicable to a Presidential Declaration under the Stafford Act;
> - Specific to an incident or type of incident; or
> - Delineated under direction by Congress.
>
> In such cases, FEMA does not provide assistance for the facilities or work even if that OFA does not provide funding for the facility or work. This restriction includes any activities or costs related to the work that falls under OFA authorities as the costs are not related to eligible work. The Applicant should apply to the respective agency for assistance with a facility or work under that agency's authority.

Id. (footnote omitted).

The PAPPG further recognizes the specific authority of the FHWA's ER program as follows:

> FHWA has authority to restore public roads under the [ER] Program. Roads that are eligible for ER assistance are identified as Federal-aid routes, which include highways on the Federal-aid highway system and all other public roads not classified as local roads or rural minor collectors. The ER Program is activated separately from Presidential declarations under the Stafford Act and may not be activated for all incidents. Federal-aid routes are ineligible for Permanent Work even if the ER Program is not activated or if the program is activated but FHWA does not provide funding for the work.

PAPPG at 169 (footnote omitted).

Under the ER program, the FHWA has authority to fund the "repair or reconstruction of highways, roads, and trails . . . that . . . have suffered serious damage as a result of . . . a natural disaster over a wide area, such as by a flood, hurricane, tidal wave, earthquake, severe storm, wildfire, or landslide." 23 U.S.C. § 125(a) (2024). While the same types of natural disasters may otherwise provide a basis for PA, GIBA cannot self-select FEMA's PA program—in place of the FHWA's ER program—by declining to enter into a section 129 agreement with the FHWA, which is a condition for toll road eligibility under the ER program. *See id.* § 129. GIBA does not dispute that the Grande Causeway qualifies as a major collector, Exhibit 17(a), and would qualify as a federal-aid highway if GIBA entered into a section 129 agreement. GIBA, instead, asserts that the Grande Causeway is eligible for PA because it cannot enter into a section 129 agreement and, as a result, is not eligible for the FHWA ER program. RFA at 10-11.

The decision to enter into a section 129 agreement is, however, entirely within GIBA's control. GIBA's argument that its enabling statute does not authorize it to enter into a section 129 agreement, *see* RFA at 9, 16, 18, is not persuasive or established by the record. GIBA points to no specific provision in the statute to support its conclusion. As FEMA explains, the relevant Florida statute expressly provides that GIBA "is empowered to enter into interlocal agreements . . . to exercise jointly with any other public agency of the state or Federal Government any power, privilege, or authority which such agencies or the district might exercise jointly." FEMA Response at 12 (quoting Exhibit 15 at 12). There is also no support for GIBA's assertion that it is precluded from signing a section 129 agreement because it would have "to cede control over its toll collections to" the FHWA or "limit its ability to collect tolls under a Section 129 agreement or Memorandum of Understanding with the FHWA." *See* Applicant Reply at 3 n.10.

Even so, and contrary to GIBA's characterization, Applicant Reply at 9, the issue is not merely a matter of avoiding a duplication of benefits from the two programs. In the FHWA's ER program, Congress authorized a program that is specific to the circumstances now presented by GIBA and includes certain conditions for recovering funds under the program. One such condition, for toll roads such as the Grande Causeway, is agreeing to the provisions of 23 U.S.C. § 129. GIBA cannot use its own refusal to agree to statutory conditions under the ER program as a basis to exempt itself from that program and seek recovery under FEMA's PA program as an alternative. As FEMA correctly explains, it does not have authority to disburse funds from its Disaster Relief Fund "to fund activities that Congress has assigned to another Federal agency" through a statute more specific to the work at issue. FEMA Response at 5 & n.24 (citing United States Government Accountability Office, GAO-04-261SP, Principles of Federal Appropriations Law, vol. I, at 2-21 (3d ed. 2004) (GAO Redbook)). When Congress has established a program that is specific to the work at issue, an applicant cannot opt into FEMA's more general PA program by declining to meet the conditions of the program that more specifically addresses the work at issue. *See United States v. Bormes*, 568 U.S. 6, 12-13 (2012) ("[A] 'precisely drawn, detailed statute pre-empts more general remedies.'" (quoting *Hinck v. United States*, 550 U.S. 501, 506 (2007))).

Decision

Because the Grande Causeway would be eligible under the FHWA's ER program if GIBA agreed to the section 129 agreement, a condition that Congress imposed, we conclude that GIBA is ineligible for FEMA public assistance.

Erica S. Beardsley
ERICA S. BEARDSLEY
Board Judge

Daniel B. Volk
DANIEL B. VOLK
Board Judge

Elizabeth W. Newsom
ELIZABETH W. NEWSOM
Board Judge