

(b) Applicability. An applicant or subgrantee (hereinafter “applicant” for purposes of this section) may request arbitration of a determination made by FEMA on an application for Public Assistance, provided that the total amount of the project is greater than $500,000, and provided that:

(1) the applicant is eligible to file an appeal under §206.206; or...

(2) A statement as to the reasons the State and the local government cannot perform or contract for performance of the requested work.

(3) A written agreement from an eligible applicant that such applicant will be responsible for the items in subparagraph (b)(1) (i) and (ii) of this section, in the event that a State is legally unable to provide the written agreement.

(c) Implementation. (1) If the Regional Administrator approves the request, a mission assignment will be issued to the appropriate Federal agency. The mission assignment letter to the agency will define the scope of eligible work, the estimated cost of the eligible work and the billing period frequency. The Federal agency must not exceed the approved funding limit without the authorization of the Regional Administrator.

(2) If all or any part of the requested work falls within the statutory authority of another Federal agency, the Regional Administrator shall not approve that portion of the work. In such case, the unapproved portion of the request will be referred to the appropriate agency for action.

(3) If an impact-State requests assistance in providing evacuation and sheltering support outside an impact-State, FEMA may directly reimburse a host-State for such eligible costs through a grant to a host-State when FEMA determines that a host-State has sufficient capability to meet some or all of the sheltering and/or evacuation needs of an impact-State, and a host-State agrees in writing to provide such support to an impact-State.

(d) Time limitation. The time limitation for completion of work by a Federal agency under a mission assignment is 60 days after the President’s declaration. Based on extenuating circumstances or unusual project requirements, the Regional Administrator may extend this time limitation.

(e) Project management. (1) The performing Federal agency shall ensure that the work is completed in accordance with the Regional Administrator’s approved scope of work, costs and time limitations. The performing Federal agency shall also keep the Regional Administrator and Grantee advised of work progress and other project developments. It is the responsibility of the performing Federal agency to ensure compliance with applicable Federal, State and local legal requirements. A final inspection report will be completed upon termination of all direct Federal assistance work. Final inspection reports shall be signed by a representative of the performing Federal agency and the State. Once the final eligible cost is determined (including Federal agency overhead), the State will be billed for the nonFederal share of the mission assignment in accordance with the cost sharing provisions of the FEMA-State Agreement.

(2) Pursuant to the agreements provided in the request for assistance the Grantee shall assist the performing Federal agency in all State and local jurisdictional matters. These matters include securing local building permits and rights of entry, control of traffic and pedestrians, and compliance with local building ordinances.

(2) the applicant had a first or second level appeal pending with FEMA pursuant to §206.206 on or after February 17, 2009.

c) Governing rules. An applicant that elects arbitration agrees to abide by this section and applicable guidance. The arbitration will be conducted pursuant to procedure established by the arbitration panel.

d) Limitations—(1) Election of remedies. A request for arbitration under this section is in lieu of filing or continuing an appeal under §206.206.

(2) Final agency action under §206.206. Arbitration is not available for any matter that obtained final agency action by FEMA pursuant to §206.206 prior to February 17, 2009. Arbitration is not available for determinations for which the applicant failed to file a timely appeal under the provisions of §206.206 prior to August 31, 2009, or for determinations which received a decision on a second appeal from FEMA prior to February 17, 2009.

e) Request for arbitration—(1) Content of request. The request for arbitration must contain a written statement and all documentation supporting the position of the applicant, the disaster number, and the name and address of the applicant’s authorized representative or counsel.

(2) Submission by the applicant to the Grantee, the FEMA Regional Administrator, and the arbitration administrator. An applicant under paragraph (b)(1) of this section must submit its request for arbitration in writing simultaneously to the Grantee, the FEMA Regional Administrator, and the arbitration administrator within 30 calendar days after receipt of notice of the determination that is the subject of the arbitration request or by September 30, 2009, whichever is later. An applicant under paragraph (b)(2) of this section must make a request for arbitration in writing and, if FEMA has not issued a decision on the appeal, submit a withdrawal of the pending appeal, simultaneously to the Grantee, the FEMA Regional Administrator, and the arbitration administrator by October 30, 2009.

(3) Submission by the Grantee to the arbitration administrator and FEMA. Within 15 calendar days of receipt of the applicant’s request for arbitration, the Grantee must forward the name and address of the Grantee’s authorized representative or counsel, and may forward a written recommendation in support or opposition to the applicant’s request for arbitration, simultaneously to the FEMA Regional Administrator, the arbitration administrator, and the applicant.

(4) Submission of FEMA’s response. FEMA will submit a memorandum in support of its position, a copy of the Project Worksheet(s), and any other supporting information, as well as the name and address of its authorized representative or counsel, simultaneously to the arbitration administrator, the Grantee, and the applicant, within 30 calendar days of receipt of the applicant’s request for arbitration.

(5) Process for submissions. When submitting a request for arbitration, the applicant should describe its claim with sufficient detail so that the circumstances of the dispute are clear to the arbitration panel. All papers, notices, or other documents submitted to the arbitration administrator under this section by the applicant, the Grantee, or FEMA will be served on each party’s authorized representative or counsel. The submitting party will make such service by courier or overnight delivery service (such as Federal Express, DHL, United Parcel Service, or the United States Postal Service overnight delivery), addressed to the party, representative, or counsel, as applicable, at its last known address.

(f) Selection of arbitration panel. The arbitration administrator will select the arbitration panel for arbitration and notify the applicant, FEMA, and the Grantee of the names and identities of the arbitrators selected for the panel.

(g) Preliminary conference. The arbitration panel will hold a preliminary conference with the parties and/or representatives of the parties within 10 business days of the panel’s receipt of FEMA’s response to the request for arbitration. The panel and the parties will discuss the future conduct of the arbitration, including clarification of the disputed issues, request for disqualification of an arbitrator (if applicable), and any other preliminary matters. The date and place of any oral
hearing will be set at the preliminary conference. The preliminary conference will be conducted by telephone.

(h) Hearing—(1) Request for hearing. The panel will provide the applicant and FEMA with an opportunity to make an oral presentation on the substance of the applicant’s claim in person, by telephone conference, or other means during which all the parties may simultaneously hear all other participants. If the applicant or FEMA would like to request an oral hearing, the request must be made no later than the preliminary conference.

(2) Location of hearing. If an in-person hearing is authorized, it will be held at a hearing facility of the arbitration panel’s choosing.

(3) Conduct of hearing. Each party may present its position through oral presentations by individuals designated in advance of the hearing. These presentations may reference documents submitted pursuant to paragraph (e) of this section; the parties may not provide additional paper submissions at the hearing. If the panel deems it appropriate or necessary, it may request additional written materials from either or both parties or seek the advice or expertise of independent scientific or technical subject matter experts.

(4) Closing of hearing. The panel will inquire of each party whether it has any further argument. When satisfied that the record is complete, the panel will declare the hearing closed, unless a post-hearing submission of additional information or a memorandum of law is to be provided in accordance with this paragraph. The hearing will be declared closed as of the date set by the panel for the submission of the additional information or the memorandum of law.

(5) Time limits. The panel will endeavor to hold the hearing within 60 calendar days of the preliminary conference.

(6) Postponement. The arbitration panel may postpone a hearing upon agreement of the parties, or upon request of a party for good cause shown. Within 10 business days of the postponement, the arbitration panel will notify the parties of the rescheduled date of the hearing.

(7) Record of the hearing. There will be no recording of the hearing, unless a party specifically requests and arranges for such recording at its own expense.

(8) Post-hearing submission of additional information. A party may file with the arbitration panel additional information or a memorandum of law after the hearing upon the arbitration panel’s request or upon the request of one of the parties with the panel’s consent. The panel will set the time for submission of the additional information or the memorandum of law.

(9) Reopening of hearing. The hearing may be reopened on the panel’s initiative under compelling circumstances at any time before the decision is made.

(i) Review by the arbitration panel. (1) Determination of timeliness. Upon notification by FEMA, or on its own initiative, the arbitration panel will determine whether the applicant timely filed a request for arbitration.

(2) Substantive review. The arbitration panel will consider all relevant written materials provided by the applicant, the Grantee, and FEMA, as well as oral presentations, if any. If the panel deems it appropriate or necessary, it may request additional written materials from either or both parties or seek the advice or expertise of independent scientific or technical subject matter experts.

(j) Ex parte communications. No party and no one acting on behalf of any party will engage in ex parte communications with a member of the arbitration panel. If a party or someone acting on behalf of any party engages in ex parte communications with a member of the arbitration panel, the party that engaged in such communication will provide a summary or a transcript of the entire communication to the other parties.

(k) Decision—(1) Time limits. The panel will make every effort to issue a written decision within 60 calendar days after the panel declares the hearing closed pursuant to paragraph (h)(4) of this section, or, if a hearing was not requested, within 60 calendar days following the receipt of FEMA’s response to the request for arbitration. A decision of the panel may take longer than
§ 206.221 Definitions.

(a) Educational institution means:
(1) Any elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965; or
(2) Any secondary school as defined by section 801(h) of the Elementary and Secondary Education Act of 1965; or
(3) Any institution of higher education as defined by section 1201 of the Higher Education Act of 1965.

(b) Force account means an applicant’s own labor forces and equipment.

(c) Immediate threat means the threat of additional damage or destruction from an event which can reasonably be expected to occur within five years.

(d) Improved property means a structure, facility or item of equipment which was built, constructed or manufactured. Land used for agricultural purposes is not improved property.

(e) Private nonprofit facility means any private nonprofit educational, utility, emergency, medical, or custodial care facility, including a facility for the aged or disabled, and other facility providing essential governmental type services to the general public, and such facilities on Indian reservations. Further definition is as follows:

(1) Educational facility means classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes, but does not include buildings, structures and related items used primarily for religious purposes or instruction.

(2) Utility means buildings, structures, or systems of energy, communication, water supply, sewage collection and treatment, or other similar public service facilities.

(3) Irrigation facility means those facilities that provide water for essential services of a governmental nature to