



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 17, 2025

CBCA 8460-FEMA

In the Matter of BJC HEALTH SYSTEM

Michelle F. Zaltsberg of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Orlando, FL; and Chris Bomhoff of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Fort Lauderdale, FL, counsel for Applicant.

Kayla Kemp, Missouri Department of Public Safety, Jefferson City, MO, counsel for Grantee.

Rebecca J. Otey and Vanessa Antoun, 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 **LESTER**, **GOODMAN**, and, **NEWSOM**.

LESTER, Board Judge, writing for the Panel.

Early during the COVID-19 pandemic, applicant, BJC Health System (BJC), incurred clinical labor costs through contracts with staffing suppliers for which it now seeks public assistance (PA) funding from the Federal Emergency Management Agency (FEMA). FEMA denied funding because BJC calculated its COVID-related costs by proportionally allocating its total labor costs between COVID-related and non-COVID-related patient care, stating that FEMA policy does not permit the use of that type of proportional allocation method to establish the amount or cost of eligible work performed.

During the pendency of this arbitration, FEMA approved PA funding for COVID-related clinical labor costs incurred by a different private non-profit (PNP) in which the PNP

identified eligible work and its cost using the same proportional allocation method upon which BJC relies. FEMA tells us that the only difference between that project and the matter pending before us is that the project for which the proportional allocation method was permitted was in a different region and was decided by different approving officials than the BJC matter. Because FEMA policy expressly requires consistent implementation and application of policies and regulations across the Nation, and because denial of PA funding here would create an inconsistency with FEMA's decision to allow the use of the proportional allocation method at issue here in another matter, we must grant BJC's request for PA funding.

Background

On March 26, 2020, the President declared COVID-19 a major disaster for the State of Missouri (DR-4490-MO) with an incident period that eventually was defined as running from January 20, 2020, through May 11, 2023. The disaster declaration authorized PA funding for "Category B" emergency protective measures (EPMs) throughout Missouri.

BJC is a PNP healthcare organization that, at the time of the pandemic, operated eleven hospitals, four outpatient centers, eight convenient care facilities, and multiple rehabilitation and long-term care facilities in Missouri.

BJC initially requested PA funding for contract clinical labor costs that BJC had incurred in working with three staffing agencies—Vizient, Clayton Valet, and Paramount Staffing/TalentForce—to support EPMs at ten of BJC's acute care hospitals between January 20, 2020, and September 30, 2021. FEMA prepared Grants Manager Project Number (PN) 185990 to document the work and associated costs.

On December 5, 2023, BJC requested closeout of PN 185990 but, at the same time, asked FEMA to expand the project's scope of work to add costs that BJC had incurred for clinical contract labor from two additional staffing agencies, Aya and ShiftWise, and for additional support costs incurred in performing services at Washington University. Only the costs associated with Aya and ShiftWise are at issue in this arbitration. Because the costs incurred for Vizient, Clayton Valet, and Paramount Staffing/TalentForce and those incurred at Washington University are not at issue here, we focus our factual discussion only on the Aya and ShiftWise costs.

BJC calculated its request for \$8,981,133.62 in PA funding for its Aya and ShiftWise contract staffing service labor costs by allocating the total costs that it incurred in working with Aya and ShiftWise on a proportional basis. That is, if 57% of a health care unit's patients had COVID-19, BJC allocated 57% of that unit's costs to PN 185990. FEMA sent

requests for information (RFIs) to BJC on March 22, 2024, asking BJC to explain the logic of its proportional allocation method. FEMA indicated that “[a] proportional or percentage cost allocation implies that health care professionals were assigned both COVID-19 and non-COVID-19” patients and asked for “an explanation of and a single spreadsheet for each agency detailing the overall cost, percentage taken for pandemic patients, and the resulting claimed amount for each agency” with an explanation “focus[ing] on how this establishes a reasonable cost.” Applicant Exhibit 1 at 2.

On November 21, 2024, after receiving BJC’s response, as well as BJC’s response to a second RFI, FEMA issued its determination memorandum denying BJC’s PA funding request for the Aya and ShiftWise costs. FEMA acknowledged BJC’s representation that it was “only claiming the amount of labor provided from Aya and ShiftWise related to direct patient care and treatment of COVID-19 patients,” Applicant Exhibit 1 at 4, but stated that, for statutory reasons, “FEMA does not reimburse costs based upon ratios or percentages since these costs, while possibly reasonable, are not the actual costs incurred in disaster recovery.” *Id.* at 2. It stated that it “considers a proportion of costs as an approximation of labor cost, not actual pandemic cost.” *Id.* at 4. “The actual costs,” FEMA indicated, “could be lower or higher.” *Id.* at 2. Because “[a]n essential prerequisite for receiving [PA] funding is submitting the necessary information and documentation to substantiate the eligibility and cost of completed work,” and because “[t]he final eligible reimbursement amount is the actual documented cost,” FEMA denied BJC’s request for Aya and ShiftWise funding, finding that “BJC was unable to establish cost reasonableness nor was BJC able to link costs to the declared event.” *Id.* at 4.

On January 16, 2025, BJC filed its first appeal with the grantee, Missouri State Emergency Management Agency (MSEMA), requesting PA funding for its Aya and ShiftWise costs based on its proportional allocation methodology, which MSEMA forwarded to FEMA that same day. In its first appeal request, BJC represented that even FEMA had recognized that BJC’s cost allocation methodology was “conservative,” Applicant Exhibit 2 at 8, and that BJC’s costs were “reasonable when compared to the average national rate for the same work.” *Id.* at 10. FEMA denied the first appeal on April 14, 2025, finding that “FEMA requires documentation showing the specific work performed by contracted staff in order to verify the eligibility of the work; the Applicant was not able to provide documentation with those details.” Applicant Exhibit 4 at 6.

BJC filed its arbitration request with the Board on June 13, 2025. After FEMA filed its response on July 16, 2025, BJC asked for a delay in the submission of its reply brief to allow it time to submit additional documentation to FEMA in an attempt to convince FEMA to change its position on its PA funding request. After further discussions between the parties did not resolve this matter, BJC filed its reply brief on September 8, 2025.

On September 19, 2025, BJC submitted a supplement to its reply brief, notifying the Board that, three days after BJC filed its reply brief, “FEMA approved contract labor costs in a separate project for one of [BJC’s] hospitals, Memorial Hospital–Belleville,” in which “[t]he work and costs . . . approved,” which were performed by Aya (one of the two staffing agencies that provided BJC with services here), “were calculated using the exact same allocation methodology at issue in this arbitration.” Applicant Letter at 1. BJC explained the inconsistency between FEMA’s decision on Memorial Hospital–Belleville’s PA funding request and its decision on BJC’s request as follows:

FEMA states in its response brief that the methodology used by BJC to demonstrate contract labor work was for eligible COVID-19 medical care “does not meet the requirements of FEMA policy” and thus renders BJC’s claim ineligible. BJC argued in its Request for Arbitration and Reply Brief that FEMA has approved similar allocation methodologies for other applicants seeking reimbursement for COVID-19 medical care costs. FEMA did not deny this to be the case and now BJC has documentation showing that FEMA has approved the exact same allocation methodology it is claiming it cannot approve here. FEMA’s decision in the Memorial Hospital–Belleville project directly contradicts FEMA’s position in this matter.

Id. Attached to BJC’s letter were the calculation of requested costs in the Memorial Hospital–Belleville project and FEMA’s project report approving that calculation.

On September 23, 2025, FEMA filed a sur-reply, but it did not address BJC’s September 19 letter. Instead, it stated only that it had “not had sufficient time to review” the letter and would “provide the Panel with any additional information that may be relevant either in a supplemental filing or at hearing.” FEMA Sur-Reply at 1-2. It indicated, though, that “[a]t this time, FEMA maintains its original position that the Applicant is not eligible for PA funding for its [Aya and ShiftWise] contract labor costs during COVID-19.” *Id.* at 2.

By order dated September 26, 2025, the presiding judge in this matter directed FEMA to file a response to BJC’s September 19 reply supplement no later than October 10, 2025, with the following instructions:

Given BJC’s representations that the new evidence . . . presented on September 19 directly contradicts and undercuts FEMA’s position in this arbitration, . . . FEMA shall provide a thorough breakdown of the reasons that the allocation methodology that was accepted in the Memorial Hospital–Belleville matter differs from the one at issue in this arbitration, with sufficient detail that the panel can follow and understand the differences and distinctions between the

two, and shall also explain why, if true, FEMA's acceptance of the allocation methodology in the Memorial Hospital–Belleville matter is not inconsistent with FEMA's rejection of the allocation methodology being used here.

Order at 2.

FEMA filed its response to the reply supplement on October 10, 2025, indicating that because of the then-current lapse in congressional appropriations, personnel upon whom FEMA would normally rely to review the Memorial Hospital–Belleville project and compare it to the project before the Board were unavailable. FEMA Supplement at 1. Nevertheless, FEMA reported that “[w]ith the FEMA employees available[,] FEMA conducted a limited review” and determined that the Memorial Hospital–Belleville project for which FEMA approved PA funding “does use the same percentage calculation the Applicant requests be used in this matter” to determine the costs associated with the care of COVID-19 patients. *Id.* FEMA noted that the Memorial Hospital–Belleville project “was located in Illinois which means it was handled by Region V as opposed to the project before the Panel which was located in Missouri and handled by Region VII.” *Id.* at 2. It reported that, “[o]ther than the amount of money at issue for the contracts[,] the only other difference appears to be the Region in which the project was processed.” *Id.* It represented that “FEMA has noted this distinction and provided the information to FEMA leadership” and that, “[i]f any additional guidance is provided by FEMA leadership, FEMA will relay it to the Panel.” *Id.* at 2-3.

FEMA did not request that the Board suspend consideration of this matter during the lapse in congressional appropriations or pending further guidance from FEMA leadership. Both parties waived an oral hearing and an opportunity to present oral argument to the panel.

Discussion

One of FEMA's main goals in issuing policies governing how and when it will disperse PA funding in different situations is to “ensure *consistent* implementation of programs across the Nation.” Public Assistance Program and Policy Guide (PAPPG) (Apr. 2018) at 8 (emphasis added). In the matter before us, FEMA denied PA funding because it objected to the proportional allocation method that BJC employed to identify and support its claimed emergency COVID-related support costs, finding it impermissible under its regulations and policies. During the pendency of this arbitration, however, FEMA approved the use of the same proportional allocation method upon which BJC relies here to authorize PA funding to Memorial Hospital–Belleville for a different COVID-related support cost project. The only difference that FEMA identifies between the method used here and the method approved in the Memorial Hospital–Belleville project is that the Memorial Hospital–Belleville project was in a different region than the project at issue here.

In resolving FEMA arbitration matters, panels “try to make decisions that [they] believe FEMA itself would have made upon fairly and impartially applying applicable law and FEMA policies to the evidence in the arbitration record.” *Livingston Parish Government*, CBCA 6513-FEMA, 19-1 BCA ¶ 37,436, at 181,939. FEMA has already approved the use of the proportional allocation method at issue here in the Memorial Hospital–Belleville matter. Were we to deny funding to BJC here, it would create an inconsistency in the way that FEMA applies its policies: some PNPs, like Memorial Hospital–Belleville, would be allowed to use the proportional allocation method at issue here while others, for no reason other than that they are located in a different region than Memorial Hospital–Belleville, would not. That would not result in a “consistent implementation of [FEMA] programs across the Nation.” PAPPG at 8. Because FEMA has already approved PA funding in another case based upon what FEMA acknowledges is the same proportional allocation methodology at issue here, we must, to ensure consistency in FEMA’s application of its policies, approve BJC’s request for PA funding here.

To the extent that FEMA raised new arguments in its arbitration response brief (that were not identified in the first appeal decision) questioning whether BJC has established that it performed a proper cost or price analysis when awarding or modifying its support contracts and questioning whether BJC’s professional service costs are allowable, *see* FEMA Response Brief at 19-25, we see no support in the record for FEMA’s newly raised objections.

To the extent that, in response to BJC’s first appeal request, the MSEMA notified FEMA of its own objections to PA funding for BJC (based upon what BJC describes as a factual error on the MSEMA’s part), FEMA did not adopt those objections in the first appeal decision or raise them in this arbitration, and MSEMA did not submit any objections to the Board. We consider them waived.

Decision

For the foregoing reasons, BJC is entitled to \$8,981,133.62 in PA funding for its Aya and ShiftWise contract staffing service labor costs.

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge

Allan H. Goodman

ALLAN H. GOODMAN

Board Judge

Elizabeth W. Newsom

ELIZABETH W. NEWSOM

Board Judge