



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 10, 2025

CBCA 8205-FEMA

In the Matter of CITY OF MIAMI BEACH, FLORIDA

Juan Ramón Mestas, Deputy Chief, Fire Operations, and Emergency Manager, of City of Miami Beach, Miami Beach, FL, appearing for Applicant; and Henry J. Hunnefeld, First Assistant City Attorney, Freddi Mack, Senior Assistant City Attorney, and John Rigling, Consultant, City of Miami Beach, Miami Beach, FL, counsel for Applicant.

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

Ramoncito J. deBorja and Rebecca J. Otey, 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), **RUSSELL**, and **VOLK**.

VOLK, Board Judge, writing for the Panel.

In this arbitration, the City of Miami Beach, Florida (applicant or City) seeks \$2,358,235 in public assistance (PA) funding for overtime costs of City police officers responding to the COVID-19 pandemic. The Federal Emergency Management Agency (FEMA) denied reimbursement, determining that the City failed to demonstrate that the police officers' activities qualified as eligible emergency protective measures. We conclude that some, but not all, of the overtime hours for which the City seeks reimbursement are supported by adequate documentation and eligible for PA funding.

Background

On March 25, 2020, the President of the United States declared COVID-19 a major disaster in Florida, enabling applicants such as the City to request PA funding from FEMA to reimburse costs for emergency protective measures undertaken during the incident period, which ran from January 20, 2020, to May 11, 2023. This arbitration is limited to police overtime costs incurred by the City during March 2020.

FEMA guidance in effect at that time provided that emergency protective measures undertaken to “[e]liminate or lessen immediate threats to lives, public health, or safety” were eligible for PA funding. Public Assistance Program and Policy Guide (PAPPG) (Apr. 2018) at 57. The PAPPG provided a non-exhaustive list of eligible emergency protective measures that may be undertaken to “save lives or protect public health or safety.” *Id.* at 58. That list included “[s]ecurity, such as barricades, fencing, or law enforcement.” *Id.*

In addition to the PAPPG, FEMA issued guidance specific to COVID-19. In a fact sheet applicable to work performed from January 20, 2020, through September 14, 2020, FEMA urged officials to act “pursuant to public health guidance.” FEMA’s Exhibit A, Coronavirus (COVID-19) Pandemic: Eligible Emergency Protective Measures Fact Sheet at 1 (May 10, 2023) (COVID-19 Fact Sheet) (“FEMA urges officials to, without delay, take appropriate actions that are necessary to protect public health and safety pursuant to public health guidance and conditions and capabilities in their jurisdictions.”). The COVID-19 Fact Sheet provided a non-exhaustive list of emergency protective measures for which FEMA indicated it may provide assistance. *Id.* at 2-3. That list included “[s]ecurity and law enforcement.” *Id.* at 3.

The City requested \$2,358,235 in PA funding for overtime expenditures for the City’s police officers during March 2020. The City calculated this amount based on the overtime hours recorded by the police officers under an overtime code created by the City to track hours relating to the COVID-19 pandemic.

After the City submitted its request, FEMA asked the City to provide descriptions of the work performed by each employee and how the work was directly related to COVID-19 emergency protective measures. In response, the City provided FEMA with contemporaneous activity logs from the police officers and the following summary of their overtime activities:

- Police personnel were involved with enforcement of county and city ordinances and security, to include management, control, and reduction of immediate threats to public health and safety.

- Police personnel were assigned to patrol several citywide sites (e.g., boardwalks, piers, parks, an open-air mall, and restaurants) and enforce social distancing, gathering size limitations, closures, and curfews.
- Police personnel were redirected from their regular duties to provide services to include personal protective equipment (PPE) and supplies distribution for COVID-19, tasks for compliance with county and city ordinances, decontamination of the police headquarters and/or substations, and staffing security checkpoints in strategic areas.

Applicant's Request for Arbitration at 2.

In an August 2023 determination memorandum, FEMA denied the City's reimbursement request. FEMA found that most of the claimed activities were a continuation of routine services provided by the police department such as patrolling, traffic control, and administrative duties. FEMA also found that if the City's request included work for any eligible emergency protective measure, that work was not adequately documented. FEMA denied the City's first appeal on the same grounds, and the City requested arbitration.

Discussion

FEMA first argues that the City's claimed work activities are not eligible emergency protective measures under FEMA's COVID-19 policies. FEMA explains that the City's request for reimbursement "primarily focuses on measures to enforce social distancing (e.g., patrolling areas such as boardwalks, piers, parks, an open-air mall, and restaurants to enforce city and county ordinances, and CDC guidelines)." FEMA contends that these costs are ineligible for PA because "measures to enforce social distancing are not listed as [emergency protective measures] in any of FEMA's applicable policies" and because the City's social distancing enforcement activities were "mitigation efforts to reduce a future event," rather than "the direct result of the disaster." We disagree.

Another Board panel recently considered similar arguments in the City's arbitration request relating to costs incurred by its fire department. In *City of Miami Beach, Florida*, CBCA 7878-FEMA, 24-1 BCA ¶ 38,689, at 188,102-03, the City assigned lifeguards to enforce beach closures and social distancing ordinances. FEMA argued that these activities were not eligible emergency protective measures because they were not a direct result of the disaster. The panel disagreed, explaining that social distancing enforcement activities lessened immediate threats to lives and public health. *Id.* at 188,103. We reach the same conclusion.

Contrary to FEMA's position, the City police officers' enforcement of social distancing ordinances in March 2020 was an eligible emergency protective measure under the plain language of the applicable guidance. As discussed above, both the PAPPG and FEMA's COVID-19 Fact Sheet identified security and law enforcement within non-exhaustive lists of eligible emergency protective measures. The COVID-19 Fact Sheet began by "urg[ing] officials to, without delay take appropriate actions that are necessary to protect public health and safety pursuant to public health guidance." The City used its law enforcement personnel to do as FEMA urged. Nothing in the guidance suggests that eligible law enforcement costs would not include social distancing enforcement activities.

We also disagree with FEMA's argument that the City's social distancing enforcement activities were "mitigation efforts to reduce a future event," rather than the direct result of the disaster. The social distancing requirements that the City's officers enforced would not have existed but for COVID-19. These activities were undertaken to "save lives or protect public health or safety," PAPPG at 58, during the COVID-19 disaster, not to mitigate some distinct future event.

FEMA relies on some of its own second appeal decisions, the most relevant of which is *Jackson County*, FEMA-4528-DR-MS (Sept. 27, 2023). In that matter, Jackson County, Mississippi, sought reimbursement for the costs of security contractors that it hired to patrol beaches and enforce social distancing requirements. FEMA denied the request and the County's appeals. FEMA's reasoning in *Jackson County* is generally the same as its position in this arbitration. While FEMA's position in this arbitration may be entirely consistent with the position it has taken in other matters, we are not persuaded that its position comports with a plain reading of the applicable guidance. We conclude that overtime costs for the City's police officers to enforce social distancing ordinances during March 2020 were eligible emergency protective measures.

That conclusion does not fully resolve this arbitration, as FEMA challenges whether the \$2,358,235 requested by the City is recoverable even if the police officers' social distancing enforcement activities are eligible emergency protective measures. Based on its review of the City's documentation, FEMA found that most of the claimed activities were a continuation of routine services provided by the police department such as patrolling, traffic control, and administrative duties. FEMA argues that the City fails to present adequate documentation to support recovery of its claimed costs and that the City's expenditures constitute ineligible increased operating costs for the City's police department, rather than costs of eligible emergency protective measures. We agree with these arguments in part.

In our review of the police officers' activity logs, we find that the logs often do not establish that the officer was actually engaged in enforcement of social distancing

requirements or any other activity specific to COVID-19. For example, the description in one officer's logs, though recorded under the City's COVID-19 overtime code, stated "Spring Break 2020." This indicates that the hours most likely should have been recorded under the overtime code that the City uses to record overtime work related to events and visitors for spring break, which the City acknowledges requires significant police overtime during March in a normal year. Applicant's Exhibit 15 at CMB 449-63.

Many of the activity logs indicate only a location or patrol area. *E.g.*, Applicant's Exhibit 15 at CMB 584 ("OCEAN DRIVE FOOT BEAT"), CMB 566 ("Area 3 North . . . Bravo Shift"). Other logs provide only a general description of the officer's duties without any indication that they were performing an activity specific to COVID-19. *E.g.*, *id.* at CMB 641 ("CID Major Crimes"); Applicant's Exhibit 16 at CMB 851 ("PEU - SUPERVISOR . . . Normal Duties"). The costs for these hours are not recoverable.

Nonetheless, a significant number of the City's activity logs are sufficient to establish that the officer was engaged in social distancing enforcement or other eligible COVID-19 work. *E.g.*, Applicant's Exhibit 15 at CMB 521 ("Conducting COVID 19 Social Distancing and mask CDC Guidelines enforcement"), CMB 464 ("5-10 Street Beach Closure . . . Beach Closure/COVID-19 Restriction").

The City's claimed costs are eligible for PA funding only to the extent that they are supported by an activity log (within Applicant's Exhibits 15 to 22) affirmatively indicating—on the log's face—that the officer's time was spent enforcing social distancing requirements or performing other eligible work specific to COVID-19, as opposed to simply patrolling or conducting other routine police activities. If the activity log is not clear on its face, or if it is not clear what portion of a block of time was spent on activities specific to COVID-19, the costs of those hours are not recoverable. We return the matter to the parties to evaluate which hours and costs claimed by the City meet these criteria.

Decision

Social distancing enforcement activities undertaken by the City's police officers during March 2020 were emergency protective measures and are eligible for PA funding, but the City's claimed costs are recoverable only to the extent that they are supported by an activity log affirmatively indicating—on its face—that the officer's time was spent enforcing social distancing requirements or performing other eligible work specific to COVID-19.

Daniel B. Volk

DANIEL B. VOLK
Board Judge

Erica S. Beardsley

ERICA S. BEARDSLEY
Board Judge

Beverly M. Russell

BEVERLY M. RUSSELL
Board Judge