



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 18, 2025

CBCA 8142-FEMA

In the Matter of MIAMI-DADE COUNTY, FLORIDA

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Before the Arbitration Panel consisting of Board Judges **ZISCHKAU**, **O'ROURKE**, and **CHADWICK**.

ZISCHKAU, Board Judge, writing for the Panel.

Miami-Dade County, Florida (Miami-Dade or applicant), has sought arbitration of the denial of its request for public assistance (PA) by the Federal Emergency Management Agency (FEMA) for overtime hours incurred by Miami-Dade Corrections Department (MDCD) employees administering COVID-19 specific operating procedures at MDCD correctional facilities. FEMA challenges the timeliness of Miami-Dade's first appeal, the adequacy of its documentation, and the eligibility of its work. For the reasons stated below,

we conclude that Miami-Dade's first appeal was timely and the COVID-19 work is eligible. Accordingly, we find applicant eligible for PA of \$3,672,792.13.

Background

Pursuant to Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §§ 5121–5207 (2018), the President declared the COVID-19 pandemic a national emergency. Proclamation No. 9994, 85 Fed. Reg. 15337 (Mar. 18, 2020). During the COVID-19 pandemic, MDCD, which is managed by Miami-Dade County, aligned the operating procedures at its Metro-West Detention Center (MWD), Pre-Trial Detention Center (PTD), and Turner Guilford Knight Correction Center (TGK) with Centers for Disease Control and Prevention (CDC) COVID-19 guidelines for correctional and detention facilities. Request for Arbitration (RFA) at 3.

Between March 2020 and February 2022, MDCD used emergency daily activity reports (EDARs) to track the force account labor (FAL) overtime hours associated with the COVID-19-related operating procedure modifications. FEMA Exhibit 1 at 1; RFA at 4. Each EDAR contained a section where employees filled in a job code, information about the location of the work, a short description of the work performed, who performed it, and the number of overtime hours. *See* Applicant's Reply at 8-10. Through "housing criteria" tables, MDCD also tracked the number of inmates at each correctional facility and the type of housing each inmate occupied. Applicant's Supplement to the Record at 027672.

For inmates awaiting the results of a COVID-19 test, exposed to COVID-19, or displaying mild COVID-19 symptoms, MDCD created quarantine housing units. Applicant's Reply, Exhibit A at 2-3; Applicant's Additional Documentation at 027896, 027936. In MDCD's housing criteria tables, quarantine housing units are called "[q]uarantine," "[q]uarantine/[t]esting" or "[q]uarantine/[i]ntake." *See, e.g.*, Applicant's Supplement to the Record at 027672, 027713, 027815. Across all three MDCD facilities, the average percentage of inmates in quarantine units during the incident period was approximately ten percent of the inmate population. *See* Applicant's Supplement to the Record at 027672-027831.¹ MDCD used job code CR0007 to track the overtime hours MDCD personnel spent at quarantine housing units "for the management and monitoring of inmates

¹The panel relied on the data provided by Miami-Dade in the housing criteria tables for MWD, PTD, and TGK to calculate the average number of inmates in quarantine units from March 2020 to February 2022. At PTD, the average number of inmates in quarantine during this period was nine percent; at MWD, it was fifteen percent; and, at TGK, it was seven percent.

... awaiting results of a COVID-19 test in accordance with CDC guidelines.” Applicant’s Reply at 9. More specifically, the job duties under CR0007 included temperature scanning, distribution of face coverings, enforcement of face covering mandates, distribution of COVID-19-related signage, and providing security while MDCD clinicians administered medical care, screening, testing, and diagnostics for the inmates. Applicant’s Additional Documentation at 027936-027937; Applicant’s Reply at 9; RFA at 4. Miami-Dade requests \$2,736,428.88 for the FAL overtime costs associated with CR0007 during the incident period. Applicant’s Reply at 2.

Job code CR0006 tracked the overtime hours associated with pre-positioning or relocating essential services, supplies, food, and equipment necessary to operate the quarantine units. Applicant’s Reply at 8; Applicant’s Additional Documentation at 027936. Miami-Dade requests \$95,640.06 for the FAL overtime costs associated with CR0006. Applicant’s Reply at 2.

If inmates experienced severe COVID-19 symptoms that required medical assistance beyond what MDCD facilities could provide or arrived at an MDCD facility with worsening COVID-19 symptoms, MDCD transported these inmates to nearby hospitals. Applicant’s Reply at 8, Exhibit A at 4; Applicant’s Additional Documentation at 027935-36; Applicant’s Supplement to the Record at 027643. During transfer to the hospital, two correctional officers accompanied each inmate. Applicant’s Reply, Exhibit A at 4. Job code CR0003 tracked the overtime hours MDCD personnel spent transferring inmates to local hospitals. *Id.* at 4. Miami-Dade requests \$2212.36 for the FAL overtime costs associated with CR0003. Applicant’s Reply at 1.

MDCD housed inmates transferred to local hospitals in what MDCD called a hospital service unit (HSU). *See* Applicant’s Supplement to the Record at 027665 (outlining security procedures for hospital service units at Jackson Memorial Hospital and other community hospitals). Job code CR0004 tracked the overtime hours MDCD personnel spent “manag[ing] and monitoring” inmates in hospital service units. Applicant’s Reply at 8; Applicant’s Additional Documentation at 027938. Specifically, MDCD personnel provided security to hospital clinicians administering medical care to the transferred inmates. Applicant’s Additional Documentation at 027938. According to Miami-Dade, without the security MDCD personnel provided, hospital clinicians could not have safely provided COVID-19-related medical care. *Id.* Miami-Dade requests \$838,510.83 for the FAL overtime costs associated with CR0004. Applicant’s Second Affidavit at 2.

Overall, COVID-19-related overtime work, which applicant is seeking reimbursement for in this arbitration, accounted for 8.11 percent of the total overtime hours incurred in 2020,

4.98 percent of the overtime hours incurred in 2021, and 0.99 percent of the overtime hours incurred in 2022. Applicant's Second Affidavit, Exhibit 1.

Miami-Dade's first request for PA totaled \$3,896,761.56. FEMA Exhibit 1 at 1. FEMA issued a determination memorandum (DM) on August 16, 2023, approving only \$42,910.01 for emergency disinfection and deep cleaning at the three MDCD correctional facilities. *Id.* Fifty-eight days later, on October 13, 2023, Miami-Dade submitted its first appeal to the Florida Division of Emergency Management (FDEM or grantee). RFA at 5. FDEM forwarded Miami-Dade's first appeal to FEMA on February 23, 2024, one hundred and thirty-three days after FDEM received Miami-Dade's first appeal. *See id.* FEMA denied Miami-Dade's first appeal because FEMA determined it was untimely. FEMA Exhibit 2 at 1. Miami-Dade then requested arbitration.

Discussion

Miami-Dade asks the Board to find its first appeal timely and, consistent with the per job code cost breakdown detailed above, requests \$3,672,792.13. RFA at 14. FEMA maintains that Miami-Dade's request for PA funding is ineligible because Miami-Dade did not timely file its first appeal. FEMA Response at 2. Alternatively, FEMA argues that Miami-Dade's cost documentation is not detailed enough to support the claimed costs and that the work is ineligible for PA. *Id.* at 2-3.

Timeliness

After an applicant receives a decision from FEMA regarding its initial PA funding request, it "must file appeals within [sixty days]." 44 CFR 206.206(c)(1) (2020).² Within sixty days of receiving applicant's first appeal, grantee "will review and forward" the appeal to FEMA. *Id.* 206.206(c)(2). FEMA interprets 206.206(c)(1)-(2) to mean that because FDEM forwarded Miami-Dade's appeal to FEMA one-hundred and thirty-three days after receiving it, Miami-Dade's first appeal is untimely. FEMA Response at 24. FEMA further argues that its decision on timeliness is a final determination that is not subject to further administrative review. *Id.*

² An August 2021 regulatory amendment altered the language of 44 CFR 206.206, but, as FEMA explains in its reply brief, this amendment only applies to national emergencies declared on or after January 1, 2022. *See* FEMA Response at 6 n.1. The COVID-19 pandemic was declared a national emergency in March 2020.

The Board may review FEMA's determination that applicant's first appeal was untimely. The Stafford Act allows an applicant to "request arbitration [by the Board] to dispute the eligibility for assistance." 42 U.S.C. § 5189a(d)(1). Included in the Board's authority to resolve eligibility disputes is the authority to resolve questions of procedural eligibility (i.e., whether an applicant followed the procedural steps required to bring the dispute before the Board). *Board of Trustees of Bay Medical Center*, CBCA 7826-FEMA, 24-1 BCA ¶ 38,492, at 187,096. Timeliness is a question of procedural eligibility allowing the Board to decide if Miami-Dade timely filed its first appeal. *Id.*

When an applicant timely files its first appeal with the grantee but the grantee does not timely forward applicant's appeal to FEMA, which is what happened here, the applicant's first appeal is timely. *Monroe County Sheriff's Office*, CBCA 8147-FEMA, 24-1 BCA ¶ 38,703, at 188,183; *Larimer County, Colorado*, CBCA 7450-FEMA, 23-1 BCA ¶ 38,256, at 185,784; *City of Beaumont, Texas*, CBCA 7222-FEMA, 22-1 BCA ¶ 38,018, at 184,632.

In *City of Beaumont*, the Board explained that the Stafford Act provides "the right to appeal to the applicant, who perfects its appeal by filing it within sixty days after receiving notice of the funding" determination. 22-1 BCA at 184,632. The Stafford Act does not "contemplate that, once the applicant files a timely appeal within the sixty-day deadline . . . the appeal may retroactively be deemed untimely" because the grantee did not timely forward to FEMA the applicant's appeal. *Id.* Miami-Dade met the Stafford Act's sixty-day filing requirement when it submitted its first appeal to FDEM on October 13, 2023, fifty-eight days after Miami-Dade received FEMA's denial of its request for PA funding.

Adequate Documentation

Miami-Dade's costs must be "adequately documented" to receive PA. 2 CFR 200.403(g); Public Assistance Program and Policy Guide (PAPPG) (Apr. 2018) at 21. The PAPPG explains that an applicant's cost documentation "should provide the 'who, what, when, where, why and how'" of each claimed cost. PAPPG at 133. FEMA argues that applicant's cost documentation does not provide enough information about the what and why of each claimed cost. FEMA Response at 24-30.

FEMA's position is that the EDAR description of work does not provide enough details about the work MDCD personnel performed. FEMA Response at 25. For example, in an EDAR numbered "0051795," the description of work is "enhanced staffing for the management and monitoring of inmates in quarantine housing unit." *Id.*; Applicant's Exhibit 051795. FEMA asserts that such a vague description of work lacks necessary information about why the applicant's employee engaged in the claimed overtime work and what "enhanced staffing" entails. FEMA Response at 25.

Regarding who performed the work, FEMA policy disallows applicants from receiving PA for overtime hours worked by “[s]econd-level supervisors and above (e.g., commissioners, mayors, department directors, police and fire chiefs)” unless certain exceptions apply. PAPPG at 25. In the location description section of the EDARs, MDCD employees sometimes included the term “supervisor.” For example, in an EDAR numbered “1208197,” the employee wrote “8th Floor Supervisor” in the “Location Description” section. Applicant’s Exhibit 1208197. FEMA interprets the use of the term “supervisor” as indicating that the employee is a second-level supervisor. FEMA Response at 27.

Miami-Dade disagrees with FEMA’s assessment that the EDARs lack sufficient detail. As explained in the background section, each job code is associated with a more detailed description of work. Miami-Dade points to the descriptions of work that accompany these job codes as providing the detail needed to determine eligibility requirements. Applicant’s Reply at 8-9. Moreover, Miami-Dade asserts that, since historically FEMA and FDEM accept EDARs as an acceptable form for tracking disaster response force account labor costs, the EDARs associated with this PA request meet FEMA’s documentation requirements. *Id.*, Exhibit A at 1.

We find that Miami-Dade adequately documented its costs. Together, the brief work descriptions and the descriptions of work tied to each job code sufficiently explain the overtime work performed and why the employee performed it. The affidavits and supplemental exhibits Miami-Dade submitted into the record provide sufficient information for the panel to determine work eligibility. Based on the record, the panel also finds that Miami-Dade is not requesting reimbursement for work performed by second-level supervisors. The term “supervisor,” as it is used in applicant’s EDARs, refers to the task of overseeing the work performed under one of the job codes, not the employee’s job title. The job titles associated with the employees incurring the overtime hours are: “Correctional Officer,” “Correctional Corporal,” and “Correctional Sergeant.” Applicant’s Reply, Exhibit A at 5. Employees in these job classes are entitled to overtime wages because they do not qualify as second-level supervisors. *See* PAPPG at 25 n.88.

Eligibility of Work

The PAPPG states that even when a declared disaster causes an increase in operating costs, FEMA generally does not reimburse applicants for the increased costs of operating a facility. PAPPG at 42. The exception is that additional operating costs are eligible if (1) “[t]he services are specifically related to eligible emergency actions to save lives or protect public health and safety;” (2) “[t]he costs are for a limited period of time based on the

exigency of the circumstances;” and (3) “[t]he Applicant tracks and documents the additional costs.” PAPPG at 61.

FEMA’s position is that because correctional facilities routinely treat inmates suffering from illnesses and provide security, this type of work at the quarantine housing units, local hospitals, and during transport to local hospitals reflect costs that MDCD would have incurred under normal operating procedures. FEMA Response at 30-31. Regarding the PAPPG’s exception to the general rule that FEMA does not reimburse applicants for increased operating costs, FEMA argues that Miami-Dade does not meet the exception because Miami-Dade did not show that the services related to eligible emergency actions to save lives, and, moreover, Miami-Dade did not provide adequate documentation. *Id.* at 31-32.

We do not agree with FEMA. First, Miami-Dade has adequately shown that the services were eligible emergency actions to save lives and protect public health and safety and the costs incurred for those actions were directly attributable to the eligible work. Second, we have found that Miami-Dade sufficiently documented its overtime work in the EDARs, witness statements, and the inmate housing charts. Third, FEMA issued COVID-19 pandemic specific guidelines that authorize PA for the emergency protective measures taken by Miami-Dade here. *See* FEMA Exhibits 10-13; Applicant’s Supplemental Production, Exhibit A-10. These guidelines allow FEMA to provide PA funding for COVID-19 specific emergency protective measures (EPMs) and COVID-19-related medical care work. The guidelines that apply here are: Fact Sheet: Coronavirus (COVID-19) Pandemic: Eligible Emergency Protective Measures (COVID-19 Fact Sheet); Coronavirus (COVID-19) Pandemic: Work Eligible for Public Assistance (Interim) (FEMA Policy 104-009-19) (Eligible EPM Interim Guidance); Coronavirus (COVID-19) Pandemic: Safe Opening and Operation Work Eligible for Public Assistance (Interim) (version 2) (FEMA Policy FP-104-21-0003) (O&O Policy); and Coronavirus (COVID-19) Pandemic: Medical Care Costs Eligible for Public Assistance (FEMA Policy 104-010-04) and its update, Coronavirus (COVID-19) Pandemic: Medical Care Eligible for Public Assistance (Interim) (version 2) (FEMA Policy 104-21-004). FEMA Exhibits 10-13; Applicant’s Supplemental Production Exhibit A-10 (O&O Policy).

Security at Hospital Service Units (CR0004)

The Eligible EPM Interim Guidance states that FEMA may provide PA for “[l]aw enforcement and security.” FEMA Exhibit 12 at 5. This guidance makes security an eligible EPM if it is necessary to provide “[m]edical care, in accordance with COVID-19-specific policy or subsequent updates.” FEMA Exhibit 12 at 3 & n.10 (citing FEMA Policy 104-010-04 as the relevant COVID-19-specific policy, subsequently updated in FEMA

Policy 104-21-004 (collectively, the COVID-19 Medical Care Policies)). What the COVID-19 Medical Care Policies consider eligible medical care work depends on the type of facility providing the medical care. FEMA Exhibits 11 at 2-3; 13 at 3-4. At primary health care facilities, which include licensed hospitals and facilities that provide medical care services, “[n]ecessary medical treatment of COVID-19 patients” is an eligible medical care activity. FEMA Exhibits 11 at 3, 8; 13 at 4,14).

MDCD transferred inmates with severe and worsening COVID-19 symptoms to primary health care facilities to receive needed medical care. Applicant’s Reply at 8. Therefore, the security work that MDCD employees performed under job code CR0004 supported eligible medical care work. According to a hospital nurse, the local hospitals could not have administered medical care to MDCD inmates without the security MDCD employees provided. *See* Applicant’s Additional Documentation at 027938. Since the security provided under job code CR0004 was necessary to perform eligible medical care work, the panel determines that Miami-Dade is entitled to PA for costs of \$838,510.83 claimed under job code CR0004.

Medical Transportation Security (CR0003)

Overtime hours for security that MDCD employees provided during the emergency transportation of COVID-19 positive inmates to local hospitals are eligible for reimbursement if the security was necessary to provide “medical care, in accordance with COVID-19 specific policy or subsequent updates.” FEMA Exhibit 11 at 3. The COVID-19 Medical Care Policies identify the costs for “emergency medical transport related to COVID-19” as an eligible expense. *See id.*, FEMA Exhibit 13 at 3-4. We found above that the MDCD security was necessary at the medical care facilities, and, thus, the security needed to transport the COVID-19 positive inmates to those facilities was also necessary. As a result, the overtime costs of \$2212.36 associated with CR0003 are reimbursable.

Security and Other Activities at Quarantine Housing Units (CR0007)

Under FEMA’s O&O Policy, eligible PA applicants may receive PA funding for “[s]creening and temperature scanning,” “COVID-19 diagnostic testing,” “distribution of face masks,” and “[i]nstallation . . . of signage to support social distancing.” Applicant’s Supplemental Production Exhibit A-10 at 5. At the quarantine units, MDCD employees charging overtime to job code CR0007 distributed face masks, performed screening and temperature scanning, and distributed COVID-19-related signage. Applicant’s Additional Documentation at 027936-37. Therefore, under the O&O Policy, the overtime work tasks under job code CR0007 are eligible for PA funding.

Activities performed under CR0007 also included security provided to inmates in quarantine units and security for MDCD clinicians who provided medical care to inmates in the quarantine units and performed COVID-19 testing and screening activities. Applicant's Additional Documentation at 027935-37. Security is an eligible EPM under FEMA policy, particularly here where it is necessary to provide "medical care, in accordance with COVID-19 specific policy or subsequent updates." FEMA Exhibit 10 at 1-2 (identifying security and law enforcement as eligible EPMs); Exhibit 12 at 3-5 (FEMA may provide PA for law enforcement and security in support of eligible emergency work). FEMA defines temporary medical facilities as "a facility separate from the primary medical care facility that is used to provide medical care services when the primary medical care facility is overwhelmed by the declared event." FEMA Exhibits 11 at 9; 13 at 14. MDCD's primary medical clinics were inadequate to handle the COVID outbreaks at the facilities, requiring MDCD's separate quarantine housing units to handle the overflow needs for inmates needing COVID-19-specific medical care, screening, testing, diagnostics, and temperature checks. The record shows that quarantine units were in operation in one or more of the three facilities every month from May 2020 through February 2022 (the end of the incident period). These MDCD quarantine units were temporary medical facilities.

At temporary medical facilities, "[t]riage and medically necessary tests and diagnosis related to COVID-19" is eligible medical care work. FEMA Exhibits 11 at 3; 13 at 4. Thus, the security provided in support of the medical care, COVID-19 testing, screening, and diagnostics in the quarantine units was an eligible EPM. For temporary medical facilities, FEMA policy also allows reimbursing "[o]perating costs including . . . staffing" as an eligible EPM which makes the security provided to inmates in the quarantine housing reimbursable. FEMA Exhibits 11 at 4; 13 at 5. In sum, the COVID-19 Fact Sheet, the O&O Policy, Eligible EPM Interim Guidance, and the COVID-19 Medical Care Policies make the entirety of the overtime work performed under CR0007, in the amount of \$2,736,428.88, eligible for reimbursement.

Quarantine Unit Mobilization Costs (CR0006)

At temporary medical facilities, "mobilization . . . costs associated with setting up . . . the temporary or expanded medical facility" are eligible for PA. FEMA Exhibits 11 at 4; 13 at 5. The \$95,640.06 in costs incurred under job code CR0006 were for overtime hours spent relocating and pre-positioning the equipment, supplies, food, and other essential services needed to establish and operate the quarantine units. Because MDCD's quarantine units were temporary medical facilities, the costs incurred under job code CR0006 are eligible for PA.

Decision

We conclude that Miami-Dade's first appeal was timely. We find that Miami-Dade has adequately shown that the services under each job code were eligible emergency actions to save lives and protect public health and safety and that the costs incurred for those actions were directly attributable to the eligible work. We further find that Miami-Dade sufficiently documented its overtime work in the EDARs and other documents in the record. FEMA issued COVID-19 pandemic specific guidelines that authorize PA for the EPMs taken by Miami-Dade during the period at issue. Miami-Dade shall be reimbursed the following costs: \$838,510.83 for CR0004, \$2212.36 for CR0003, \$2,736,428.88 for CR0007, and \$95,640.06 for CR0006, for a total of \$3,672,792.13.

Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Board Judge

Kathleen J. O'Rourke
KATHLEEN J. O'ROURKE
Board Judge

Kyle Chadwick
KYLE CHADWICK
Board Judge