



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 18, 2025

CBCA 8376-FEMA

In the Matter of DALLAS INDEPENDENT SCHOOL DISTRICT

Edward Sorola, Executive Director, Financial and Accounting Services, Dallas Independent School District, Dallas, TX; and Nik Simonson, Director, Jeb McPherson, Public Entity Practice Leader, and Deb Gallagher, Public Entity Practice Leader, Disaster Recovery Services, LLC, Seattle, WA, appearing for Applicant.

Amanda DeBerry Koehn, Office of General Counsel, The Texas A&M University System, College Station, TX, counsel for Grantee; and Sherri LaCour, Division Chief, Zachary M. Hood, Section Chief, Texas Division of Emergency Management, Austin, TX; and Andrea Sanders, Section Chief, Texas Division of Emergency Management, Fort Worth, TX, appearing for Grantee.

Rebecca J. Otey, Margaret Bushko, and John Ebersole, 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**, **VERGILIO**, and **GOODMAN**.

GOODMAN, Board Judge, writing for the Panel.

On March 7, 2025, the Dallas Independent School District (applicant) filed a request for arbitration (RFA) seeking to obtain public assistance (PA) denied by the Federal Emergency Management Agency (FEMA) relating to \$2,623,946.59 in force account labor (FAL) costs during the COVID-19 pandemic. A hearing was held in this matter on June 10, 2025.

Applicant seeks \$2,623,946.59 in straight-time and overtime FAL PA funding for the performance of emergency protective measures (EPMs) during the COVID-19 pandemic. FEMA determines the eligibility of emergency work overtime costs based on an applicant's pre-disaster written labor policy, provided the policy, *inter alia*, "[h]as set *non-discretionary criteria* for when the Applicant activates various pay types." Public Assistance Program and Policy Guide (PAPPG) (Apr. 2018) at 23 (emphasis added). "Extraordinary costs (such as call-back pay . . .) for essential employees who are called back to duty during administrative leave to perform eligible Emergency Work are eligible if costs are paid in accordance with a labor policy that meets the criteria [listed for pre-disaster pay policies]." *Id.* at 25.

FEMA correctly contends that even though applicant requests PA for reimbursement for the various costs at issue, its pre-disaster written labor policy lacks the required non-discretionary criteria for the activation of the pay types at issue. *See* FEMA Response to RFA (Apr. 9, 2025) at 2.

Applicant's pre-disaster written labor policy reads in pertinent part:

Supplemental Pay Information

The following information provides the framework for Dallas ISD Supplemental Earnings:

1. Supplemental earnings are not guaranteed wages and may be amended or eliminated at any time.
2. Supplemental earnings are not included in individual base salaries quoted by the Compensation Department.
3. *Authorization to pay approved supplemental compensation requires permission from the Executive Director of the Campus/Department prior to actual work being performed.*

RFA, Exhibit 13, Compensation Resource Book (2019-2020) at 20 (second emphasis added); *see also* RFA, Exhibit 6 (Compensation Plan).

Applicant's pre-disaster written labor policy requires that personnel in specific high-level positions within the applicant's organization make discretionary determinations before authorizing supplemental pay, which includes extra duty pay. RFA, Exhibit 13 at 19-20. This discretion is exercised by the executive director of the campus or department "prior to actual work being performed." *Id.* at 20. We find that applicant's pre-disaster labor

policy requires the exercise of discretion to activate and implement extra pay provisions, contrary to the requirements of the PAPPG. *See* PAPPG at 23. As the PAPPG's non-discretionary requirement has not been met, PA is not available.

FEMA also contends that insufficient documentation was provided to FEMA or in this record to support the requested pay types and that applicant failed to tie its associated costs to eligible EPMs. FEMA Response to RFA at 3. Despite the voluminous record, applicant has failed to demonstrate that any requested labor costs, whether straight-time or overtime, qualify for reimbursement. Broad descriptors such as those used by applicant here do not distinguish between eligible and ineligible work. *See, e.g.*, PAPPG at 21 (to be eligible, costs must be directly tied to the performance of eligible work), 133 (it is applicant's responsibility to substantiate its claim as eligible).

Decision

The request for PA is denied.

Allan H. Goodman

ALLAN H. GOODMAN

Board Judge

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.

Board Judge

Joseph A. Vergilio

JOSEPH A. VERGILIO

Board Judge