



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 15, 2026

CBCA 8853-FEMA

In the Matter of CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA

Alexander J. Holtzman and Michael Levin-Gesundheit, Office of the City Attorney, San Francisco, CA; Chris Bomhoff of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Fort Lauderdale, FL; and Wendy Huff Ellard of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Jackson, MS, counsel for Applicant.

Carl DeNigris, Assistant Chief Counsel, Jasmine Jones, Senior Counsel, and Trevor Morris-Seekins, Counsel, California Office of Emergency Services, Mather, CA, counsel for Grantee; and Robert Larsen, Public Assistance Officer, Eli Owen, Assistant Director, Fan Jia, Program Manager, and Tama Harville and Destiny Saechou, Associate Governmental Program Analysts, appearing for Grantee.

Alecia Frye and Emanuel Rier Soto, 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**, **SHERIDAN**, and **NEWSOM**.

LESTER, Board Judge, writing for the Panel.

Applicant, the City and County of San Francisco, California (the City), seeks public assistance (PA) funding pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §§ 5121-5207 (2024), for costs incurred to support emergency protective measures (EPMs) that it put in place during the first four months of the COVID-19 pandemic. Most of the costs for which the City seeks PA funding relate to the City's transition of the Moscone Center South into a temporary emergency operations center (EOC), but some claimed costs relate to work performed to benefit temporary field offices

and medical clinics that the City established to combat the spread of the COVID-19 virus, rather than the EOC. The specific costs for which the City seeks PA funding here are as follows:

- \$1,260,787.28 in contract labor costs that the City incurred to convert the Moscone Center South from a convention center into an EOC;
- \$19,603.06 in utility costs that the City paid during the first four months of the operation of the Moscone Center EOC;
- \$603,045.23 in costs associated with renting and installing audio/visual (A/V) equipment for use at the Moscone Center EOC;
- \$55,740.39 in costs of purchasing disinfecting supplies for the EOC;
- \$595,991.70 in costs (both for increased bandwidth and labor) related to facility alterations through which telecom, internet, and electrical services were supplied to the EOC;
- \$982,956.47 in costs for meals that the City provided to employees working at the EOC between March and June 2020;
- \$117,549.18 in straight-time labor-hour costs of temporary City employees who were reassigned from their original work projects so that they could assist in technology work at the Moscone Center EOC;
- \$918,430.30 in costs for EPMs at both the Moscone Center EOC and various temporary field offices and medical clinics that the City established; and
- \$51,025 in costs incurred to rent portable toilets and handwashing stations at a particular field care clinic at which the City provided the public with COVID-19 testing.

After considering the record that the parties developed in this arbitration, we find that the City has provided sufficient support to obtain PA funding for some of the costs for which it seeks reimbursement, but we deny some of the City's requests.

Background

I. FEMA's COVID-Related Policies

On March 22, 2020, the President declared the COVID-19 pandemic a major disaster in the state of California (FEMA-4482-DR-CA), with an incident period beginning on January 20, 2020, and eventually running through May 11, 2023. *See* <https://www.fema.gov/disaster/4482> (last visited Sept. 15, 2026). The President's disaster declaration authorized PA funding for Category B EPMs. *Id.*

On March 19, 2020, FEMA released its “Fact Sheet, Coronavirus (COVID-19) Pandemic: Eligible Emergency Protective Measures” (March 2020 Fact Sheet), in which it “urge[d] officials to, without delay, take appropriate actions that are necessary to protect public health and safety pursuant to public health guidelines and conditions and capabilities in their jurisdictions.” FEMA Exhibit 2 at 1. In this March 2020 Fact Sheet, FEMA stated that “eligible emergency protective measures taken to respond to the COVID-19 emergency at the direction or guidance of public health officials may be reimbursed under Category B of FEMA’s [PA] Program.” *Id.* Such EPMs included, but were not limited to, the following categories, if not funded by another federal agency: “[m]anagement, control, and reduction of immediate threats to public health and safety,” including EOC costs; the “[p]urchase and distribution of food, water, ice, medicine, and other consumable supplies, to include personal protective equipment”; the “[m]ovement of supplies and persons”; and “[c]ommunications of general health and safety information to the public.” *Id.* at 1-2. FEMA also stated that its Public Assistance Program and Policy Guide (PAPPG) (Apr. 2018) provided “[f]urther information about eligible emergency protective measures.” *Id.* at 2.

FEMA Policy FP 104-009-19 (Sept. 1, 2020), titled “Coronavirus (COVID-19) Pandemic: Work Eligible for Public Assistance (Interim),” superseded the March 2020 Fact Sheet for “work performed on or after September 15, 2020.” FEMA Exhibit 1 at 1. For work “[p]rior to this date, policies in place when the work was completed [would] apply.” *Id.* at 2. Because the costs at issue in this arbitration run from March through June 2020, this policy is not applicable here.

On April 5, 2021, FEMA issued Policy FP 104-21-0003, titled “Coronavirus (COVID-19) Pandemic: Safe Opening and Operation Work Eligible for Public Assistance (Interim)” (FEMA Safe O&O Policy). *See* FEMA Exhibit 3. Pursuant to a revision to that policy issued September 8, 2021, the FEMA Safe O&O Policy applied to work conducted from January 20, 2020 (the beginning of the incident period) until the declared conclusion of the disaster. *Id.* at 2.

II. The City’s EOC Activities

On January 30, 2026, as concerns about what became known as the COVID-19 virus were increasing, the City activated its EOC, which was located at 1011 Turk Street in San Francisco. Applicant Exhibit 23 ¶ 3. The Turk Street EOC could accommodate approximately fifty people in normal situations but far less than that when social distancing was required. *Id.* The City’s 911 call center was also located at 1011 Turk Street. *Id.* As the virus spread and the number of infections increased, the City determined that, because of the health risks to employees at the combined EOC/911 call center due to the small size

of the Turk Street space, it was not feasible for the EOC, which served as a unified command center, to remain at that location.

Accordingly, on March 16, 2020, the City relocated its EOC to the much larger Moscone Convention Center South, where it remained until June 30, 2021 (although the City's claims here run from March 2020 through only June 2020). Applicant Exhibit 23 ¶ 3. The City also brought significantly more workers into the EOC than when the EOC was stationed at Turk Street but worked to adopt and enforce appropriate social distancing requirements. The City owns the Moscone Center, which is normally used year round as a conference and special events venue. Applicant Exhibit 21 at 1. Nevertheless, the City had a management agreement with the Moscone Center Joint Venture (MCJV) to operate the property on the City's behalf. Under the management agreement, the City "is generally responsible for costs of operation of the Convention Center in accordance with an approved budget," as well as "necessary capital expenditures," Request for Arbitration (RFA) Exhibit 4 at 00018, while the MCJV receives a management fee, can enter into agreements to rent out the convention center, and can run food and beverage concessions and merchandise operations (with a percentage of sales being returned to the City). *Id.* at 00021, 00062-63.

Between March and June 2020, to reconfigure and set up the south building of the Moscone Center as an EOC, the City paid for MCJV contract labor, which worked to install various protective barriers, install telecom and internet lines, upgrade electrical and A/V capabilities, and perform other necessary work in the building. The City also decided to provide meals at the EOC for its employees because of what it believed were the scarce options for the purchase of nearby food while working. Separately, outside the context of the EOC, the City purchased cleaning and infection-protective supplies as EPMs for various facilities and pulled some of its existing straight-time force account labor (FAL) from other projects to assist in establishing EPMs.

III. The City's Requests for PA Funding

As owner of the Moscone Center, the City did not claim any lease costs for the space. Applicant Exhibit 21 at 1. It also paid all base maintenance and operating costs to the MCJV, which it was obligated to do under its pre-COVID management agreement with the MCJV, and did not seek PA funding for those costs. *Id.*

The City submitted a request for PA funding of \$35,143,959.32 for costs associated with using the Moscone Center as its EOC (including contract costs that the City paid the MCJV for the City's use of the Center) and separately submitted a request for PA funding of \$37,826,272.83 for costs incurred for EPMs, some of which related to facilities other than the EOC (including straight-time FAL, purchased materials, and the cost of renting portable

toilets and handwashing stations at a field medical care center) and some of which related to the EOC itself (including meals that the City provided employees at the EOC). In total, the City sought PA funding of \$72,970,232.15.

On April 5, 2025, FEMA issued a determination memorandum (DM) denying \$2,682,313.51 of the \$37,826,272.83 in costs that the City had requested to support EOC- and non-EOC-related EPMs. FEMA Exhibit 5. On June 19, 2025, FEMA issued a DM denying \$3,119,236.05 of the City's \$35,143,959.32 request for its Moscone Center EOC costs, asserting that the denied amount was tied to what FEMA described as the City's "request for reimbursement for the cost of using its own facility" and finding that the City had failed to demonstrate how the costs of operating an EOC at its own facility related to eligible COVID-19 EPMs. FEMA Exhibit 4 at 1, 3.

On August 13 and September 23, 2025, the California Governor's Office of Emergency Services (Cal OES or grantee) submitted to FEMA the City's first appeals of the two DM denials. In its August 13 appeal, the City disputed \$2,023,218.48 of the \$2,682,313.51 that FEMA had denied, and, in the September 23 appeal, it sought recovery of all \$3,119,236.05 that FEMA had denied. On January 27, 2026, the FEMA Region 9 Regional Administrator denied, in its entirety, the City's September 23 appeal seeking \$3,119,236.05 in funding. *See* RFA Exhibit 1. On March 3, 2026, the Regional Administrator partially granted the August 13 appeal by awarding an additional "\$108,422.52 in costs associated with laundering related expenses for uniforms, washers and dryers, and hand sanitizer" but otherwise denied the appeal. RFA Exhibit 2 at 00006.

IV. Proceedings Before the Board

On March 30, 2026, the City filed a RFA with the Board, challenging the two appeal decisions in a consolidated filing and seeking to require FEMA to increase by \$5,034,032.01 (that is, the \$3,119,236.05 and \$2,023,218.48 sought in the August 13 and September 23 appeals, less the \$108,422.52 amount granted in the August 13 appeal) the amount obligated as PA funding for the operation of the City's EOC at the Moscone Center from March through June 2020 and for field clinic operations that had been denied in the two first appeals. FEMA filed its response to the RFA on April 30, 2026; the City filed its reply on May 14, 2026; and FEMA filed a surreply on May 28, 2026.

At the parties' request, the Board conducted a hearing in this matter on July 16, 2026, at which the City presented testimony from two witnesses: (1) ChiaYu Ma, who was the Chief Financial Officer of the City's Technology Information System (TIS) at the time of the disaster and who testified about TIS's budgetary treatment of reassigned temporary employees used to provide EPM services; and (2) Adrienne Bechelli, the Chief Deputy

Director of San Francisco Department of Emergency Management, who testified about the reasons that the City had moved its EOC, which the City called its “COVID Command Center” (CCC), to the Moscone Center and the reason that it incurred the costs for which it was seeking PA funding. FEMA elected not to present any witnesses at the hearing but provided oral argument in support of its positions in this matter. The Board subsequently requested some clarifying information from the City, which the City filed on August 5, 2026.

Discussion

I. COVID-Related Category B EPM Funding

FEMA may provide PA funding for EPMs that are necessary to save lives and protect public health and safety. 44 CFR 206.225(a)(1) (2024). For EPMs to be eligible for PA funding, the applicant must establish that work was required as a result of an immediate threat resulting from the declared incident. *Id.* 206.223(a)(1), 206.225(a)(3)(I); PAPPG at 19, 57-58.

The costs for which the City seeks PA funding here were incurred between March and June 2020. FEMA issued two policies governing COVID-related PA funding that supplement the PAPPG and that are applicable to the costs that the City claims here as having been incurred during that period of time: (1) the March 2020 Fact Sheet and (2) the FEMA Safe O&O Policy. The March 2020 Fact Sheet specifically identified costs incurred to support EOCs as eligible for PA funding. March 2020 Fact Sheet at 1. The FEMA Safe O&O Policy lists a number of specific types of costs, such as the purchase and distribution of face masks, cleaning and disinfection, and COVID-19 diagnostic testing, as eligible for funding. FEMA Safe O&O Policy at 5.

II. The City’s EOC Relocation Costs

A. Eligibility of Work to Establish and Operate the Moscone Center EOC

In the PAPPG, FEMA recognizes that “Emergency Operation Center (EOC)-related costs” incurred in response to a presidentially-declared disaster are a part of the “emergency protective measures and costs that are eligible” for PA funding. PAPPG at 58.

When the pandemic was beginning to spread, the City activated its EOC in a building on Turk Street, which shared space with the City’s 911 call center. The City asserts that, soon thereafter, it realized that it could not continue to use its Turk Street facility as its EOC because it was too small to allow individuals to maintain sufficient distance from one another, which was a then-prevailing safety protocol. The City decided that the much larger

Moscone Center was a much better place from which to run an EOC during the COVID-19 pandemic because it would allow the City to bring in a significantly larger group of employees to assist in the COVID-19 response than originally designated and would allow for appropriate distancing between individuals. The City seeks PA funding for the cost of retrofitting the south building of the Moscone Center as an EOC and of moving the EOC from Turk Street to the Moscone Center.

FEMA denied the bulk of the City's request for PA funding as inconsistent with the PAPPG. FEMA acknowledges that, under the PAPPG, if a state or local government "provides essential community services at a facility that is unsafe . . . as a result of the incident, temporar[y] relocation of these services to another facility is eligible" for PA funding. PAPPG at 76. FEMA argues, though, that the City "has not satisfied the PAPPG's requirements to show that the original facility was 'unsafe, inaccessible, or destroyed as a result of the [COVID-19] incident.'" FEMA's Surreply Brief (May 28, 2026) at 5 (quoting PAPPG at 76). In addition, FEMA also cites to another PAPPG provision requiring that "[t]he capacity of the temporary facility must not exceed the pre-disaster capacity of the facility that housed the displaced services." PAPPG at 77. It argues that, because the Moscone Center offered significantly greater square footage and capacity than Turk Street, the transfer of the EOC to Moscone Center is ineligible for PA funding. FEMA's position is that the City was required to attempt to retrofit the Turk Street space, as best as possible, for continued use as the EOC or to move to a different space of no greater size than Turk Street. Under FEMA's view, satisfying the then-common safety guidance for mandatory physical distancing between individuals by opening a new larger EOC is ineligible for PA funding.

The circumstances here highlight the awkwardness of attempting to apply the language in the PAPPG to the COVID-19 pandemic, which clearly was not written with that type of disaster in mind. *See Joint Meeting of Essex and Union Counties*, CBCA 7407-FEMA, 22-1 BCA ¶ 38,223, at 185,643 (discussing how "the PAPPG was written with natural disasters, fires, and floods in mind rather than a pandemic like COVID-19"). The concept of maintaining the same facility size when transferring to a new temporary building seems tied to the destruction or loss of the original facility and the need to move into temporary quarters while the original is being repaired or restored. Here, the Turk Street building was not destroyed. It just was not feasible for use as an EOC during the COVID-19 pandemic. In light of the nature of the disaster at issue here, it is difficult to square FEMA's position that the City was unable to expand the square footage of its EOC to accommodate the then-common safety guidance to maintain distance between individuals to reduce the likelihood of spreading the virus with FEMA's mission of assisting state and local governments to "save lives [and] protect public health [and] safety." PAPPG at 58. FEMA's suggestion that PA funding would be available only to attempt to retrofit the small Turk

Street space into something useable, without expanding its size, clearly would not have been workable, given then-current safety protocols.

Reading FEMA’s policy guidance as a whole, we reject the argument that the City was barred from seeking PA funding for increasing its available square footage to create a safer EOC in the circumstances here. We interpret the PAPPG and FEMA’s supplementary COVID-19 policies “in line with meeting the goals behind the PA program[,] . . . consistent with the President’s emergency declaration and subsequent major disaster declaration.” *Joint Meeting of Essex and Union Counties*, 22-1 BCA at 185,644. The PAPPG makes clear that, when a disaster strikes, a state or local government can establish an EOC to coordinate disaster relief activities and that the costs of establishing that EOC, including the costs to lease a facility, are eligible for PA funding:

The Applicant may use its EOC to direct and coordinate resources and response activities for a period of time. Response activities conducted at EOCs are eligible provided they are associated with eligible work. Costs associated with operating the EOC are also eligible, including, but not limited to:

- Increased utility costs
- *Costs to lease a facility*
- Supply costs
- Meal costs, as described in Chapter 2: VI.B.8

PAPPG at 62 (emphasis added). At one point during the hearing in this matter, FEMA suggested that perhaps the City could have maintained Turk Street but opened a second EOC elsewhere, splitting the EOC’s functions between locations. Presumably, costs associated with opening a second EOC would have been eligible for PA funding under the PAPPG. In fact, in a recent second appeal decision in another matter, FEMA did just that, authorizing PA funding for costs incurred at several EOCs that a state established and opened in response to the COVID-19 disaster. See FEMA Second Appeal Decision, *Harris County*, FEMA-4485-DR-TX, GMP 698842 (Mar. 4, 2025) (providing PA funding for EOC costs where the Applicant had “established EOCs in multiple locations to address the COVID-19 pandemic response and significantly expanded emergency response staffing”) (<https://www.fema.gov/appeal/immediate-threat-104> (last visited Sept. 15, 2026)).

Although FEMA views the costs of establishing an EOC at the Moscone Center as a transfer of work from the Turk Street building, it seems clear that the COVID-19 pandemic created a situation that required the City to establish a new and expanded EOC from what it had in place. The City referred to the Moscone Center EOC as its CCC, which was limited

to and focused exclusively on dealing with the effects of the COVID-19 pandemic on the City's population. It allowed for life-saving safety protocols that the Turk Street EOC, which also housed the City's 911 call center and other City services (which did not move to the Moscone Center), could not have accommodated. We view the EOC that the City established at the Moscone Center not as one that transferred from Turk Street but as a new type of EOC, focused on COVID-19, that required very different safety protocols from what was previously required. The PAPPG provides that, for a new EOC, costs associated with leasing a facility to host the EOC are eligible for PA funding. PAPPG at 62. In light of the nature of the disaster at issue here and the need at the time for social distancing, we cannot accept FEMA's position that the Moscone Center's use as an EOC is ineligible for PA funding simply because it had a significantly larger square footage than the Turk Street space.

With regard to FEMA's position that it was unnecessary from a safety standpoint for the City's EOC to move to the Moscone Center, we reject it. The Turk Street facility could accommodate only about fifty people before COVID-19 and even less than that when social distancing became necessary. Applicant Exhibit 37 (Written Direct Testimony of Adrienne Bechelli (July 7, 2026) (Bechelli Testimony) ¶ 6). During the pandemic, hundreds of people, and sometimes up to several hundred at a time, were required to staff the EOC. *Id.* Evidence that the City placed into the record and photographs of the Moscone Center EOC seen in newspaper articles to which the City has cited in its briefing show the large increase in activity and number of engaged individuals from what a pre-COVID EOC would have seen. We cannot ignore the well-known safety guidance that was in place early in the pandemic. The City's decision to open its EOC at the Moscone Center was reasonable from a safety standpoint, and the work necessary to open and operate that facility is eligible for PA funding.

We address the costs that the City claims it incurred to perform that eligible work below.

B. Specific EOC Costs Incurred

1. "Management" (Contract Labor) Costs

a. Treating "Management" Costs as a Substitute for Rent

The City seeks PA funding of \$1,260,787.28 for what it describes as "management" costs for the Moscone Center EOC, which it believes it should be reimbursed as a substitute for rent. Because the City owns the Moscone Center, the City did not pay rent to use it. Nevertheless, the City had a pre-existing management agreement in place with the MCJV through which the MCJV was managing and operating the Center. Under its management

agreement, the City paid the MCJV an annual fee to manage and operate the Moscone Center, RFA Exhibit 4 at 00021, but the City still remained “generally responsible for costs of operation of the Convention Center in accordance with an approved budget,” for “all necessary capital expenditures,” and “for the cost of all capital improvements.” *Id.* at 00018, 00024.¹

The City asserts that the costs underlying the \$1,260,787.28 figure for which it seeks PA funding were incurred for MCJV employee labor (plus benefits) that the MCJV used to set up and operate the Center, as part of its management agreement, from March to June 2020:

The \$1,250,787.28 claimed . . . is for labor provided by MCJV to make the Moscone Center operational as an EOC. . . . [T]his included workers to clean and sanitize the site according to COVID-specific protocols, provide security, and reconfigure spaces as the pandemic—and the resulting needs at the EOC—evolved over time.

Applicant’s Supplemental Information Submission (Aug. 5, 2026) at 2 (citing Bechelli Testimony ¶ 8); *see* RFA at 13 (“The City incurred \$1,260,787.28 in contract labor costs required to operate the EOC” at the Moscone Center.). The City claims that, “[r]ather than negotiating an entirely new [management] agreement [with the MCJV], the City utilized its pre-existing . . . agreement that required [certain] payment terms in order to stand up the EOC as quickly as possible due to the threat posed to the community by COVID-19.” RFA at 14.² “In other words,” it explains, “the costs incurred for the MCJV to manage and operate the temporary EOC space was the cost to lease the facility.” *Id.* “Since costs to lease a temporary facility to house an EOC are eligible under the PAPPG,” the City argues, “the claimed temporary facility management and operation contract labor is eligible,” without regard to whether such costs would normally qualify for PA funding. *Id.* at 14-15.

We reject the City’s position that we render MCJV labor or “management” costs as automatically eligible for PA funding, without identification of the actual work performed,

¹ The term “capital expenditures” is defined in the management agreement as “all expenditures for building additions, alterations or improvements, and for purchases of additional or replacement furniture, machinery or equipment.” RFA Exhibit 4 at 00025.

² In its RFA, the City repeatedly refers to its agreement with the MCJV as a “lease agreement.” A review of the agreement makes clear that it is a management agreement through which the City pays the MCJV an annual management fee to manage and operate the Moscone Center building, not a lease. *See* RFA Exhibit 4.

by treating the costs as a substitute for a lease. Although lease costs for an EOC used in response to a disaster are eligible for PA funding, PAPPG at 62, the City incurred no lease costs because it owns the building in which it opened its COVID-19 EOC. We cannot accept the City's view that we should pretend that contract labor costs of more than \$1 million were a substitute for rental costs and that we can award them, in total, without any evaluation of whether the actual costs incurred are of a type eligible for PA funding. The City has cited no provisions within the PAPPG that would allow FEMA (or the panel) to create such a legal fiction. The City can obtain PA funding for the contract labor costs only if it can establish the eligibility of those costs.

b. Contract Labor Eligibility

"FEMA provides PA funding for contract costs based on the terms of the contract if the Applicant meets Federal procurement and contracting requirements." PAPPG at 30. The City tells us that the MCJV, pursuant to its management contract with the City, billed it for the labor costs that it incurred in transforming the Moscone Center into an EOC. According to the City, "[a]ll of the employees providing the covered labor [totaling \$1,260,787.28] were MCJV employees, not City employees—*i.e.*, contract (not force account) labor." Applicant's Supplemental Information Submission at 3. The City acknowledges that it "does not know whether the individuals providing the labor were existing or temporary MCJV employees." *Id.* Nevertheless, it asserts that "[a]s the employees were contractors, the status of each employee is irrelevant to the eligibility of the costs" because, pursuant to policy, FEMA "provides PA funding for contract costs based on the terms of the contract." *Id.* (citing PAPPG at 30). Because the City's management contract required it to pay all operations costs at the Moscone Center, the contract labor costs are, according to the City, automatically eligible for PA funding.

FEMA's main argument in challenging the City's eligibility for PA funding for these costs is that these contract labor costs are ineligible because the transfer of the EOC to the Moscone Center is not eligible for PA funding. As previously discussed, we reject FEMA's argument about the eligibility of the Moscone Center EOC.

FEMA also objects to costs associated with opening and retrofitting the Moscone Center because they "simply represent ineligible increased operating costs." FEMA's Surreply Brief at 5. To the extent that FEMA is claiming that, because it operated an EOC before COVID-19, costs incurred during COVID-19 cannot be considered anything but an ineligible increase in operating costs, the PAPPG conflicts with that position. The PAPPG appears to treat EOCs differently than other types of facilities, generally providing funding for increased costs without regard to the limitations that it imposes on such funding for other facilities. *See* PAPPG at 62. Even if an EOC was considered to be like any other facility,

the PAPPG provides that, if an applicant “incur[s] additional costs related to operating a facility as a result of the incident because of an increased demand for the services the facility provides,” PAPPG at 60, such costs are eligible for PA funding if they meet the following criteria:

- The services are specifically related to eligible emergency actions to save lives or protect public health and safety or improved property;
- The costs are for a limited period of time based on the exigency of the circumstances; and
- The Applicant tracks and documents the additional costs.

PAPPG at 60-61. Included in that list are “EOC facility costs (e.g., utilities).” *Id.* at 61. Here, we have already found that the reconstituted EOC was necessary for safety reasons and was designed to save lives. Further, the EOC at the Moscone Center operated for a limited period, running from March 2020 through July 2021 (although the costs claimed here run from March 2020 through only June 2020). To the extent that the City can document increased costs from work necessary to open and operate the EOC during the period at issue here, they would be eligible for PA funding.

c. The City’s Contract Labor Cost Support

FEMA finally objects that the City has not established what work the contract labor performed or that all of it was associated with and necessary for the establishment or operation of the Moscone Center EOC. In one of the two first appeal decisions giving rise to this arbitration matter, FEMA noted that “the operations summary and invoices [that the City submitted to FEMA] reflect only the costs paid to the [MCJV] without identifying the actual work performed,” meaning that the City has failed to “demonstrat[e] how the services were directly tied to eligible emergency protective measures.” RFA Exhibit 1 at 00003.

Under the PAPPG, to support a claim for necessary contract costs, the applicant should provide a copy of its contract with the vendor, identify the dates worked, and, “[f]or time and materials (T&M) contracts, [provide] monitoring information.” PAPPG at 139 (table 10). Regardless of whether the City’s management contract with the MCJV was a T&M contract on its face, it was applied in that manner, with the City and the MCJV agreeing that the City would reimburse the MCJV for all labor costs that the MCJV incurred in converting the Moscone Center into an EOC. *See Information Systems & Networks Corp. v. United States*, 64 Fed. Cl. 599, 605 (2005) (“In a time and materials type contract, the contractor provides ‘supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit and (2) materials at cost.’” (quoting 48 CFR 16.601 (1998))).

As even the City acknowledges, there are problems with the City's contract labor record-keeping. As far as we can tell, the City has no documentation showing what the MCJV contract labor did at any given time—it has presented no “monitoring information” showing what work was performed, in which portion of the EOC it was performed at any given time, when it was performed, or who performed it. The City admits that it does not even “know whether the individuals providing the labor were existing or temporary MCJV employees.” Applicant's Supplemental Information Submission at 3. That lack of documentation is problematic to the City's funding request. *See City and County of San Francisco, California*, CBCA 8852-FEMA, slip op. at 5 (Aug. 25, 2026) (FEMA policy requires an applicant seeking funding for contractor costs to show the “‘who, what, when, where, why, and how much’ for each item claimed.” (quoting PAPPG at 133)).

That being said, it is clear from the evidentiary record and the testimony at the hearing that at least a significant portion of the contract labor work performed was necessary to convert the Moscone Center into a COVID-related EOC. Although we recognize that “[i]t is the applicant's obligation to provide sufficient documentation to support recovery on claimed costs,” *Pedernales Electric Cooperative, Inc.*, CBCA 8383-FEMA, 25-1 BCA ¶ 38,867, at 189,153 (citing *City of Miami Beach, Florida*, CBCA 8205-FEMA, 25-1 BCA ¶ 38,738, at 188,324-25), the City in this case has provided documentation showing that it actually incurred the claimed contract labor costs, and it is clear that at least a significant portion of that work related to the Moscone Center EOC conversion.

In its DM and first-appeal decision, FEMA's main opposition to the City's PA funding request was the alleged ineligibility of the Moscone Center EOC itself, based on the increase in size from the Turk Street EOC. The documentary support for the contract labor costs was not a central focus, and FEMA devoted little time to reviewing contract labor records to determine whether some of those costs, were the transfer of the EOC to the Moscone Center deemed eligible for PA funding, would support recovery. With a poorly developed record on this point, and because it is clear that a significant portion of the contract labor time was devoted to eligible Moscone Center EOC set-up work, we believe it appropriate to return this matter to FEMA for further development and review. *See, e.g., Sevier County, Tennessee*, CBCA 8292-FEMA, 25-1 BCA ¶ 38,877, at 189,227 (returning matter to FEMA for further development of a particular cost claim); *Pedernales Electric*, 25-1 BCA at 189,154, 189,158 (same); *Charlotte County, Florida*, CBCA 8405-FEMA, 25-1 BCA ¶ 38,840, at 189,009 (same).

During that review, the City will need to account for those costs that the City would have incurred for the operation (or non-operation) of the Moscone Center even if it had not been used as an EOC. As noted above, a provision in the City's pre-COVID management agreement with the MCJV for the Moscone Center provided that the “City is generally

responsible for costs of operation of the Convention Center in accordance with an approved budget.” RFA Exhibit 4 at 00018. It seems clear that, during the early stages of the COVID-19 pandemic, the City would still have incurred some contract labor costs through the MCJV to maintain a facility the size of the Moscone Center, even if it had been closed to public access. Under the PAPPG, an applicant can recover only the “*additional costs*” of operating a facility, above and beyond what the applicant *would* have paid absent the disaster. PAPPG at 60 (emphasis added). The City tells us that it has extracted from its PA funding request all base costs that it would have incurred had it not used the Moscone Center as an EOC, *see* Bechelli Testimony ¶ 7; Applicant Exhibit 21 at 1, but it never identifies what costs it incurred but did not charge FEMA, their amount, or any calculations showing how the costs not requested compare either in type or amount to the costs actually being requested. That means that we have no ability, based on evidentiary support in the record, to confirm the City’s assertion. Further, it appears from the City’s submissions that the “base operating costs” that it excluded from its PA funding request relate solely to “licenses, subscriptions, taxes, insurance, and non-event-specific supplies.” Applicant’s Supplemental Information Submission at 3 n.1. Those seem unlikely to be the *only* Moscone Center costs for which the City would have been responsible had it not converted the Center into an EOC—ongoing maintenance and security, if not other activities, would have still been required even if the building had been temporarily shuttered. To the extent that, upon further review, FEMA finds that the City has not provided evidence of the costs that it would have incurred absent the Moscone Center’s conversion to an EOC, it may consider that factor as part of its PA funding analysis.

2. Utilities

The City seeks \$19,603.06 in PA funding for utility costs (\$8474.50 for water and \$11,128.56 for trash) that the MCJV charged while the Moscone Center was being used as an EOC. *See* RFA at 5, 18; RFA Exhibit 10 at 00087. Normally, “FEMA does not provide PA funding for utility, maintenance, or operating costs in a temporary facility, even if these costs increase.” PAPPG at 79. Increased utility costs for an EOC are an exception to that rule. *Id.* at 60-61, 62. Accordingly, increased utility costs, beyond what the City would normally incur for utilities at the site, are eligible.

One of FEMA’s stated reasons for denying these costs was that, because the Moscone Center was larger than the Turk Street EOC, any costs incurred to transfer the EOC to the Moscone Center and then use it as an EOC are automatically ineligible for PA funding. *See* FEMA’s Response Brief at 19 (“[N]othing in FEMA policy would allow for the payment of the Applicant’s transition to the convention center in this matter or the utility costs incurred at that location.”). We rejected that position above. The City was entitled to open a new

EOC. Costs incurred to establish and operate that new EOC are not ineligible simply because the new EOC is larger than the original.

Nevertheless, as discussed above, an applicant can recover only the “*additional costs*” of operating a facility, above and beyond what the applicant *would* have paid absent the disaster. PAPPG at 60 (emphasis added); *see id.* at 62 (defining as eligible “[i]ncreased utility costs” at an EOC). The City was responsible for operating costs at the Moscone Center before it opened the EOC there, and it has provided us with no specific information identifying what it was paying monthly for utilities there before the COVID-19 pandemic or what utility costs it would have incurred had the City not opened its EOC there. Instead, the City says merely that it “is entitled to reimbursement for the costs that are directly attributable to the emergency use of the facility as an EOC, distinct from its preexisting obligations.” Applicant’s Reply Brief at 13-14.³ We disagree. The City cannot receive funding for utility costs that it would have incurred even if it had not opened an EOC at the Moscone Center.

As noted above, “[i]t is the applicant’s obligation to provide sufficient documentation to support recovery on claimed costs.” *Pedernales Electric*, 25-1 BCA at 189,153. The City provides no estimate, much less evidence, of what utility costs it would have incurred. Normally, its failure to do so means that the City has failed to satisfy its burden of proof for PA funding. Nevertheless, since we are returning this matter to FEMA to review the City’s contract labor support, the City may present additional information to FEMA during that review to attempt to establish what the increase in its utility costs was. *See Sevier County, Tennessee*, 25-1 BCA at 189,227; *Pedernales Electric*, 25-1 BCA at 189,154.

3. Rented A/V Equipment

The City seeks \$603,045.23 in PA funding to cover the costs of equipment rented to allow it to provide critical emergency response activities at the EOC, including A/V equipment required by EOC staff to monitor conditions in the City, communicate with relevant entities, and generate and broadcast public safety messages. *See* RFA at 18; RFA Exhibit 19. The City paid that amount directly to MCJV to reimburse it for its payment to Projection Technology, a company that provided the A/V equipment and the labor necessary to install and configure it. The City’s records reflect that, during each week beginning March 16 and running the week of June 29, 2020, the City incurred A/V equipment rental

³ During an opening statement at the July 16 hearing, the City asserted that the utility costs which the City seeks here are those that were above and beyond the utility costs normally incurred at the Moscone Center. We can find nothing in the evidentiary record supporting that statement.

and associated labor costs in the identified amounts at the EOC. *See* Applicant's Supplemental Information Submission at 5-6.

"When the Applicant leases equipment, FEMA provides PA funding based on the terms of the lease." PAPPG at 28. "Leasing costs are eligible if . . . [t]he Applicant performed an analysis of the cost of leasing versus purchasing the equipment; and . . . [t]he total leasing costs do not exceed the cost of purchasing and maintaining equipment during the life of the eligible project." *Id.* (footnote omitted).

In addition to its position that the use of the Moscone Center as an EOC is ineligible for PA funding, a position that we have already rejected, FEMA argues that the City's documentation to support its A/V costs is insufficient to demonstrate the necessity of the work or how it is directly tied to an eligible facility. FEMA's Response Brief at 21-22. Yet, like its review of the City's contract labor costs, FEMA has never effectively reviewed the City's support for these costs. It originally denied them because the Moscone Center EOC was, in its view, not an eligible facility. We return this cost claim to FEMA for further review and evaluation. *See Sevier County, Tennessee*, 25-1 BCA at 189,227; *Pedernales Electric*, 25-1 BCA at 189,154.

4. Facility Internet, Telecom, and Electrical Service Alterations

The City asserts that it incurred \$595,991.70 in costs needed to make temporary alterations to the Moscone Center's electrical, telecom, and internet systems to accommodate the needs of the Center's use as an EOC. RFA at 21; RFA Exhibit 14; Applicant's Supplemental Information Submission at 3. This work included installing power outlets, establishing internet access, setting up phones consistent with established EOC protocols, and installing a series of large briefing screens that allowed on-site EOC staff to track known disease spread and the availability of isolation and quarantine rooms in the area. RFA at 21-22; Bechelli Testimony ¶ 8. The City alleges that "[w]ithout these services, the EOC could not have functioned properly due to the needs of the EOC for electricity and broadband exceeding the capabilities" of the Center. RFA at 21-22.

Putting aside its argument about the ineligibility of the Moscone Center as an EOC, which we have previously rejected, FEMA argues that the City has failed to submit sufficient documentation to meet its burden of showing that the requested costs were tied directly to eligible EPMs, FEMA's Surreply Brief at 8-11, even though it does not challenge that the costs claimed were actually incurred. The City's descriptions of the work performed makes it clear that the work was tied to the establishment of the Moscone Center EOC. Further, FEMA has previously recognized that "[a]s part of operating EOCs and temporary medical facilities, necessary supply costs, including IT supplies such as computers, are eligible."

Second Appeal Decision, *Harris County*, FEMA-4485-DR-TX, GMP 698842 (Mar. 4, 2025). We return this claim to FEMA to reconsider the extent to which the claimed costs are eligible for PA funding. *See Sevier County, Tennessee*, 25-1 BCA at 189,227; *Pedernales Electric*, 25-1 BCA at 189,154.

5. Supplies for the EOC

The City seeks \$55,740.39 for disinfecting supplies, such as Clorox wipes, that were used to disinfect the EOC between March and June 2020. RFA at 18; RFA Exhibit 11. FEMA policy specifically authorizes funding for that type of activity “in excess of the Applicant’s regularly budgeted costs.” FEMA Safe O&O Policy at 5; *see* March 2020 Fact Sheet at 1-2 (authorizing “[EOC] costs” including “[d]isinfection of eligible public facilities”). FEMA’s sole objection to paying these costs is that the Moscone Center EOC is not an eligible facility, an argument that we have already rejected. FEMA has not questioned whether these costs were actually incurred. These costs are eligible for PA funding.

6. Meals for EOC Workers

The City seeks PA funding to cover \$982,956.47 in costs for meals that the City provided to EOC workers during the first four months of the EOC’s Moscone Center operation. RFA at 24; RFA Exhibit 16. Of that amount, the City paid \$584,068.39 to the MCJV that manages the Moscone Center and \$398,888.17 to various San Francisco restaurants that delivered meals to the Moscone Center between March and June 2020. *See* RFA Exhibit 16. The City alleges that, during that time, “EOC workers were working in a high-paced environment that didn’t facilitate extended breaks for meals, hospitals were overflowing with patients in critical condition, and uncertainty about how the virus spread was rampant.” RFA at 22. It asserts that “[b]ecause the EOC played such a critical role in the COVID-19 emergency response, the City could not afford to have COVID-19 spread through the EOC and render critical staff unable to perform the[ir] response coordination activities.” *Id.* at 23. It also asserts that “EOC employees were working extended/abnormal hours” on “quick turnaround tasks that did not provide a reasonable amount of time for employees to provide their own meals.” *Id.* at 23-24. The City tells us that it “thus determined that COVID-19 rendered acquisition of food not reasonably available for its EOC staff because those individuals would have put themselves and the community at significant risk should they contract and spread COVID-19 while seeking food.” *Id.* at 24.

In support of its representations, the City offers the declaration of the Chief Deputy Director of the San Francisco Department of Emergency Management, who explained why the City believed that it needed to provide food for EOC workers from March to June 2020:

During the early months of the pandemic, many food establishments in the vicinity of the Moscone Center were closed or operating at severely reduced capacity. Staff deployed to the COVID-19 EOC at the Moscone Center were expected to work long hours, often having working meetings during lunchtime. The intensity and continuity of emergency operations at the EOC left insufficient time for employees to leave the facility, locate open food establishments, and return while maintaining infection control protocols throughout.

Declaration of Adrienne Bechelli (May 14, 2026) ¶ 5.

The PAPPG provides that FEMA may provide PA funding for meals brought in and provided to employees working at an EOC if the following conditions are satisfied:

Provision of meals, including beverages and meal supplies, for employees and volunteers engaged in eligible Emergency Work, including those at EOCs, is eligible provided the individuals are not receiving per diem and one of the following circumstances apply:

- Meals are required based on a labor policy or written agreement that meets the requirements of Chapter 2:V.A.1;
- Conditions constitute a level of severity that requires employees to work abnormal, extended work hours without a reasonable amount of time to provide for their own meals; or
- Food or water is not reasonably available for employees to purchase.

PAPPG at 63. “FEMA only reimburses the cost of meals that are brought to the work location and purchased in a cost-effective and reasonable manner, such as bulk meals.” *Id.*

It is undisputed that the EOC employees did not receive per diem and that the meals in question were brought to the EOC, meaning that the City has overcome those hurdles to PA funding entitlement. Nevertheless, to obtain funding, the meals must also satisfy one of the three specific circumstances identified in the PAPPG. Because it is clear that the City did not have a labor policy or written agreement requiring it to provide meals to EOC employees, the City has attempted to show that it meets the other two scenarios: that its EOC employees’ work conditions were so extended and abnormal that they could not be expected to obtain their own meals and that food was not reasonably available for purchase.

We do not doubt that, in the circumstances existing in early 2020, the City’s decision that it should provide meals for its employees at the Moscone Center was reasonable as a

means of showing appreciation for their efforts in a chaotic atmosphere. Nevertheless, the question before us is whether the City is entitled to PA funding to reimburse it for making that decision. The Board recently faced a similar situation in *Bowling Green-Warren County Community Hospital Corp.*, CBCA 8327-FEMA, 26-1 BCA ¶ 38,961 (2025), where an applicant which ran a medical facility had contracted for food service “[f]or the continuity of both COVID-19 and non-COVID-19 patient care during a critical staffing shortage.” *Id.* at 189,667. There was no question that the facility owner’s decision to provide its staff with food service was a reasonable discretionary action on its part, but FEMA cannot be expected to fund costs that are incurred more for convenience and morale than absolute necessity. Because the applicant in *Bowling Green* had shown only “that it incurred increased costs in order to maintain operations,” the Board determined that the meal services were “not eligible for PA.” *Id.*

We must find the same here. Although the City cites to the abnormally long hours that employees assigned to the EOC had to work, which allegedly prevented them from having any time to provide for their own meals, its employee time records do not provide adequate support for that position. Further, the City indicates that a shelter-in-place health directive from the City’s Public Health Department closed restaurants, making it impossible for employees to obtain meals outside of the Moscone Center, but the directive contained exceptions for grocery stores and carry-out restaurants, *see* RFA Exhibit 15 at 00100-02, and more than 40% of the meal costs for which the City seeks PA funding were for food from local bakeries, pizzerias, taquerias, and other restaurants and food services in the area. *See* RFA Exhibit 16. Although we do not doubt the City’s good faith in deciding to provide meals for its EOC workers, that does not mean that the costs incurred fit within the parameters of FEMA’s emergency services funding policies. We, like the panel in *Bowling Green*, find that their costs are not eligible for PA funding.

III. EPM Supplies and Labor

A. Straight-Time Temporary Employee Force Account Labor Costs

The City seeks PA funding of \$117,549.18 (a reduction from its original request of \$117,808.46) for the straight-time labor-hour costs of eighty-nine temporary employees from the City’s TIS department, whom the City assigned to work on technology projects at the EOC in response to the COVID-19 pandemic.⁴ RFA at 15-17; RFA Exhibit 20. None of the

⁴ In its RFA, the City originally sought PA funding for the straight-time labor costs of one additional employee who performed pandemic-related emergency protective measures work but whose salary was funded by a state grant that allegedly could not be used

eighty-nine workers was hired specifically to deal with COVID-related issues. Instead, the City's employment of each of those eighty-nine employees pre-dated the commencement of the COVID-19 pandemic, each of them having been hired as temporary exempt (TEX) employees (as opposed to permanent exempt (PEX) employees). Prior to the COVID-19 outbreak, TIS would assign each TEX employee to work a specific project for another City department, and that City department benefitting from the work typically would either assume responsibility for the TEX employee's salary or reimburse TIS for the labor costs associated with that project.

Normally, under the PAPPG, although FAL overtime costs incurred by budgeted employees who provide emergency work in response to a disaster—whether they be permanent employees or seasonal employees working during their normal season of employment—might be eligible for PA funding, their straight-time FAL costs would not be. PAPPG at 24 (fig. 11). For “unbudgeted employees” performing emergency services, though, both overtime costs *and* straight-time labor-hour costs may be eligible. *Id.* The City claims that the eighty-nine TEX employees who worked on technology projects at the EOC were “unbudgeted” for reasons explained by Ms. Ma, TIS's then-Chief Financial Officer:

At [TIS], as an internal service department, we hire PEX/TEX employees not only to cover the regular operations, but mostly to work on capital projects and/or work orders. Those PEX/TEX employees track their time and bill their work by the hour to whatever the projects or work orders they are assigned to. During the declaration of COVID emergency, we had to reassign these employees to help support EOC and [Departmental Operations Centers] activities, and they had to charge their hours to [the] COVID project to reflect their actual work effort. I believe those hours should be reimbursable by FEMA as [TIS] did not have a regular operating budget to fund these TEX employees.

RFA Exhibit 8 at 00081. Ms. Ma expanded on that explanation in her testimony at the hearing before the Board:

Before the pandemic, to the extent they had already been hired by the City, these employees were temporarily assigned to City departments other than TIS to perform specific projects based on those departments' need for technology

to pay for EPM work. RFA at 17. In its reply brief, the City withdrew its request for PA funding for this employee's work. Applicant's Reply Brief at 5. As a result, we no longer need to address that PA funding request.

services and billed their time for work they performed to those departments. The TIS budget did not contain operating funds to pay for these employees. Instead, the departments to which these employees were providing technology services paid for the employees' time.

In the early months of COVID-19, the City reassigned these employees to work on emergency technological measures for the COVID-19 response In working on COVID-19 emergency technology projects, these employees' salaries were no longer funded by work orders from the other departments to which they had previously been providing services. Instead, these employees were now funded and billed their time to the COVID-19 response. TIS still had no regular operating budget to fund these employees.

Applicant Exhibit 38 (Written Direct Testimony of ChiaYu Ma (July 7, 2026) ¶¶ 8-9).

In the PAPPG, FEMA identifies four types of “unbudgeted” employees potentially eligible for PA funding: (1) an “[e]ssential employee called back from administrative leave”; (2) a “[p]ermanent employee funded from [an] external source”; (3) a “[t]emporary employee hired to perform eligible work”; and (4) a “[s]easonal employee working outside [the] normal season of employment.” PAPPG at 24 (fig. 11). Because the TEX employees were not called back from administrative leave to perform COVID-19-related work, the first category does not apply. Because the City's employment of the TEX employees at issue here predated the COVID-19 disaster (meaning that they were not hired specifically for the purpose of performing work in response to that disaster) and because the temporary employees were asked to perform COVID-related work during their “normal season of employment,” neither of the third or fourth factors apply. Accordingly, the only way in which the straight-time labor costs for the City's TEX employees could qualify for PA funding is under the second category—that is, if the City's TEX employees were “funded from [an] external source” that would not pay for the COVID-related work.⁵ That is the category under which the City relies in seeking funding of its TEX employees' straight-time labor costs here.

The PAPPG provides, in explaining the second category of “unbudgeted” employee, that “[s]traight-time of a permanent employee [or presumably an in-season temporary employee] funded from an external source (such as a grant from a Federal agency or

⁵ We assume, without deciding, for purposes of this decision that, although the second category refers to “permanent” employees funded from an external source, the rationale for allowing PA funding would apply equally to a temporary employee working within his or her season of employment but funded from an external source.

statutorily dedicated funds) is eligible if the employee is reassigned to perform eligible Emergency Work that the external source does not fund.” PAPPG at 24. The City has not identified any such source, external to the City itself, that funds the TEX employees. Instead, the TEX employees were normally paid by the City but for work in departments *other than* TIS, the department that was responsible for and ultimately utilized TEX employees for the COVID-related emergency work. Yet, the applicant in this matter is not TIS. It is the City. Nothing in the PAPPG’s description of an “external source” would allow us to find that, in seeking PA funding, the City can focus solely on the operating budget of a particular department within the City and then claim that, because that department utilized the employees of other City departments to assist in emergency work, those employees were funded by an “external source” unrelated to the using department. Clearly, by referencing an “external source,” the PAPPG is indicating a source external to the City itself, not a source merely external to the utilizing department. Because the TEX employees were paid by the City, it matters not which internal department normally processed or funded their paychecks and which one actually utilized their services during the emergency. Under the PAPPG, unless funding for the TEX employees came from a source external to the City that the City was unable to use to pay for the TEX employees’ disaster-related emergency work, the City cannot claim them as “unbudgeted”—that is, “unfunded”—employees and cannot obtain PA funding to cover their straight-time labor costs.

To support its belief that its TEX employees should be considered as unbudgeted and therefore eligible for straight-time labor cost PA funding, the City cites to decisions in which FEMA authorized funding to cover straight-time pay for what were described in the decisions as unbudgeted employees. Applicant’s Reply Brief at 3-4 (citing Second Appeal Decision, *Embry-Riddle Aeronautical University, Inc.*, FEMA-4468-DR-FL, GMP 130519/PW 228 (Oct. 21, 2024) (available at <https://www.fema.gov/appeal/immediate-threat-force-account-labor-equipment> (last visited Sept. 15, 2026)) (describing pilots who flew emergency relief missions with overnight stays as unbudgeted), and Second Appeal Decision, *City of San Antonio*, FEMA-4586-DR-TX, GMP 184059/PW 821 (May 15, 2025) (available at <https://www.fema.gov/appeal/force-account-labor-equipment-costs-immediate-threat-28> (last visited Sept. 15, 2026)) (describing certain police and public works employees who assisted with emergency water distribution as unbudgeted)). The decisions to which the City cites provide no detail about the nature of those employees’ duties and schedules or the regular payment sources for their typical work. The vague descriptions in those decisions do not create some kind of presumption that, because those employees were identified as unbudgeted, the City’s TEX employees must also be considered unbudgeted.

The City also argues that, had it not needed the TEX employees to assist with COVID-related work, it would have released or fired them as soon as the COVID-19 pandemic began because work on the regular projects to which they had been assigned shut

down beginning in March 2020. The City believes that, because it did not budget for the COVID-19 pandemic and because the City would not have continued to employ the TEX workers but for the need to have them perform COVID-related work once the pandemic began, the TEX workers are “unbudgeted.” That is an abject misapplication of FEMA policy. Because, prior to the disaster, the City had included these eighty-nine TEX employees’ labor time in its budget, they were “budgeted,” regardless of what work the City ultimately pulled them from performing so that they could instead assist with COVID safety efforts.

To the extent that the City believes that FEMA should adopt a policy based on something other than the “budgeted” and “unbudgeted” employee guideline that it currently uses, the Board does not make policy for FEMA. It applies the policies that FEMA has put into place to ensure consistency in their application. *See Franciscan Alliance, Inc.*, CBCA 7530-FEMA, 23-1 BCA ¶ 38,278, at 185,868 (“[A]s arbitrators, our job is not to make public policy but to follow the applicable [FEMA] regulations and policy.”); *New York Society for the Relief of the Ruptured & Crippled Maintaining the Hospital for Special Surgery*, CBCA 7543, 23-1 BCA ¶ 38,268, at 185,810 (“In our role as arbitrators, we look to determine whether FEMA has properly applied its policies in the factual circumstances presented to us. We do not set policy for FEMA.”).

FEMA’s denial of PA funding for TEX employees here is consistent with its policy. Because the City has not identified its TEX employees as routinely being paid by sources external to the City itself, it has no basis for identifying them as “unbudgeted employees” for purposes of the PAPPG. The City’s PA funding request for FAL straight-time TEX labor-hour costs is denied.

B. EPM Supplies

The City seeks PA funding for \$918,430.30 in costs for supplies purchased between March and June 2020 as EPMs, including personal protective equipment (such as gloves, aprons, and masks), computer equipment (such as Universal Serial Bus (USB) data readers, wristband thermal printers, healthcare point-of-care computing carts, routers, and monitors), construction materials to build physical COVID-19 barriers for deployment across the City (including at public transit sites), and other supplies (such as two hand trucks) necessary to operate the EOC and coordinate the City’s pandemic response. *See* RFA at 19-20; RFA Exhibit 12. Although some of these supplies were purchased for and used at the EOC itself, others were used in temporary field offices and medical clinics across the City.

Under the PAPPG, “[c]osts associated with operating the EOC are . . . eligible, including, but not limited to . . . [s]upply costs.” PAPPG at 62. Such supplies are “eligible

if . . . [p]urchased and justifiably needed to effectively respond to and/or recover from the incident; or . . . [t]aken from the Applicant's stock and used for the incident." *Id.* at 28. The FEMA Safe O&O Policy goes a step further and defines specific supply costs that are eligible for PA funding as follows:

FEMA may provide assistance to all eligible PA Applicants . . . for the following measures implemented to facilitate the safe opening and operation of all eligible facilities in response to COVID-19 declared events:

- I. Purchase and distribution of face masks, including cloth face coverings, and personal protective equipment (PPE).
- ii. Cleaning and disinfection, including the purchase and provision of necessary supplies and equipment in excess of the Applicant's regularly budgeted costs.

. . . .

- v. Acquisition and installation of temporary physical barriers, such as plexiglass barriers and screens/dividers, and signage to support social distancing, such as floor decals.

FEMA Safe O&O Policy at 5 (footnotes omitted). The March 2020 Fact Sheet also authorizes costs associated with "[m]ovement of supplies and persons" and "[EOC] costs," including "[d]isinfection of eligible public facilities." March 2020 Fact Sheet at 1-2.

In its response to the RFA, FEMA challenged this claim by arguing that the City's summary documentation "fails to either demonstrate that the items were necessary to conduct an eligible COVID-19 EPM or related to the safe opening and operating of an eligible facility." FEMA's Response Brief at 21. The City replied by adding all of the invoices supporting these requested costs to the arbitration record and subdividing them by the City Department that incurred the costs in question. The City explained that "[d]ifferent departments had different responsibilities in setting up the EOC," Applicant's Reply Brief at 21, and it detailed each department's EPM costs, some of which we summarize below:

- \$9432.98 in costs, supported by receipts with contemporaneous notations by employees identifying the purpose of each purchase, that the City's Department of Emergency Management incurred for painter blue tape to post COVID-19 posters and flyers outside and around the EOC; cleaning wipes and soap dispensers for the EOC, along with other cleaning supplies; and forehead thermometers, Ziploc bags,

earbuds, headphones with built-in microphones, and light blue safety vests for the San Francisco Joint Information Center's Community Outreach branch team house at the Moscone Center (Applicant Exhibit 36; Applicant's Reply Brief at 17-18);

- \$650,852.08 in costs, supported by receipts, that the City's Department of Public Health incurred for computer equipment and printers at COVID-19 screening, isolation, and temporary clinic locations and triage tents, plus \$74,954.81 in costs, supported by receipts and also incurred by the City's Department of Public Health, for face masks, disposable gloves, bathroom tissue, aprons, and a hand truck, some for delivery to the EOC and others for delivery to field clinics (Applicant Exhibit 25; Applicant's Reply Brief at 18-20);
- \$57,044.63 in costs, supported by Incident Command System (ICS) Standard Form (SF) 213 Resource Requests, receipts, and contemporaneous written explanations of need, that the City's Department of Public Works incurred for security barricades, cubicle partitions, and equipment needed to create such barricades and partitions to reduce the opportunity for COVID-19 transmission at the EOC (Applicant Exhibit 26; Applicant's Reply Brief at 20-21);
- \$922.46 in costs, supported by invoices, that the City's Department of Human Resources incurred to purchase a printer, printer ink, whiteboards, a dry erase pens, and glass cleaner for the EOC (Applicant Exhibits 28, 29, 30, 31; Applicant's Reply Brief at 23-24); and
- \$15,679.80 in costs, supported by an ICS SF 213 Resource Request, that the City's Department of Technology incurred for materials and communication equipment provided by Converge One to accommodate the increase in call center usage by the EOC (Applicant Exhibit 34 at 3; Applicant's Reply Brief at 26-27).

On their face, those claimed costs appear to fall within the category of eligible EPMs. With regard to the City's purchase of computer equipment and printers for its field clinics, the PAPPG provides that, "[i]f the Applicant purchases equipment that it justifiably needs to respond effectively to the incident, FEMA provides PA funding for both the purchase price and either . . . [t]he use of the equipment based on equipment rates . . . or . . . [t]he actual fuel and maintenance costs." PAPPG at 26. Similarly, the incremental costs of the types of cleaning and disinfecting supplies that the City has identified are generally eligible

for PA funding. FEMA Safe O&O Policy at 5; March 2020 Fact Sheet at 2. Further, the documentation that the City has provided appears consistent with that described in tables 7 and 10 of the PAPPG. *See* PAPPG at 134, 139-40.

Yet, in its surreply, FEMA tells us that the documentation is insufficient to “provide that link” tying “those costs directly to eligible [EPMs].” FEMA’s Surreply Brief at 9. It cites to the PAPPG, which provides that “[t]he Applicant is responsible for showing that work is required . . . [d]ue to an immediate threat resulting from the declared incident (for Emergency Work).” PAPPG at 19. FEMA does not tell us with any specificity what is missing and what more it needs to make an eligibility determination in the City’s favor. Given the nature of the documentation (including contemporaneous notations as to the reasons for certain purchases by the individuals purchasing on behalf of the City), the explanations from the City about the need for each of the supplies, and the fact that the supplies at issue are clearly the types that were necessary early in the COVID-19 pandemic, it is difficult to see what more FEMA expects. Telling the panel that there needs to be “more,” without providing a detailed explanation identifying specific defects in the applicant’s presentation, is not helpful to the panel. It provides us with no reasoned basis for denying the applicant’s funding request.

In the circumstances here, we find that the EPM costs that the City has claimed are eligible for PA funding, with the following exceptions:

First, the City seeks \$3975.44 in costs that the City’s Recreation and Park Department incurred to purchase chains and padlocks to preclude access to city parks during emergency shelter-in-place orders. *See* Applicant’s Reply Brief at 24-26; Applicant Exhibits 32, 33. Although the FEMA Safe O&O Policy allows funding for the “[a]cquisition and installation of temporary physical barriers,” the types of barriers that it addresses are “plexiglass barriers and screens/dividers” that would reduce the likelihood of airborne virus spread between individuals in close proximity to one another. FEMA Safe O&O Policy at 5. If, as it appears, the chains and padlocks were purchased to be a security measure to protect park property, the City has not identified a basis for PA funding. Even if they were acquired to preclude the spread of COVID-19, “FEMA does not extend emergency work eligibility to implement community-wide mitigation efforts to reduce a future event, such as the anticipated or potential transmission of COVID-19.” FEMA Second Appeal Decision, *City of Miami Beach*, FEMA-4486-DR-FL, GMP 680008/PW 1030 (Mar. 26, 2025) (available at https://www.fema.gov/appeal/immediate-threat-107#_ftnref11 (last visited Sept. 15, 2026)). This cost is ineligible.

Second, FEMA challenges \$31,699.11 in costs that the City’s Fire Department incurred to purchase stairchairs, cots, grocery bags, uniforms, and washing machines,

asserting that the City “provides little to no explanation as to how these items are directly related to the performance of eligible, COVID-19-related [EPMs] nor does it provide an actual policy that allows such items.” FEMA’s Surreply Brief at 9-10. We will allow the Fire Department’s claim for \$2164.93, which represents the cost of paper bags that the City asserts were purchased to allow for the “safe and sanitary storage of N95 masks.” Applicant’s Reply Brief at 22. We deny PA funding for the other costs. With regard to the purchase of new uniforms, there is no allegation that there was anything special or different about the uniforms being purchased that would make them more protective than the firefighters’ regular uniforms. “Increased costs of operating a facility or providing a service are generally not eligible, even when directly related to the incident.” PAPPG at 42. “[S]hort-term increased costs that are directly related to accomplishing specific emergency health and safety tasks as part of emergency protective measures may be eligible,” *id.*, but only if the “services are specifically related to eligible emergency actions to save lives or protect public health and safety or improved property” and “[t]he costs are for a limited period of time based on the exigency of the circumstances.” *Id.* at 61. There is simply insufficient information in the record to support PA funding for new firefighting uniforms, new washing machines (presumably for placement at fire stations), and new stairchairs.

Third, FEMA challenges costs of \$67,448.42 and \$6420.36 (totaling \$73,868.78) that the City’s Department of Technology paid to two companies to set up virtual communications platforms and obtain licenses to support “offsite/remote Board of Supervisor . . . meetings” and “other Commission meetings.” Applicant Exhibit 34 at 1, 7; *see* FEMA’s Surreply Brief at 10. FEMA asserts that “[n]one of FEMA’s PA policies, COVID-19 related or not, list the provision of legislative or commission meetings as an eligible [EPM]” and that “the measures fall squarely under the type [of] administrative operating costs that FEMA has determined are outright ineligible for reimbursement.” FEMA’s Surreply Brief at 10-11. Although the City argues, through the written testimony of one of its witnesses, that this work promoted public health and safety by “allowing for virtual attendance of both government officials and members of the public to reduce the spread of COVID-19,” Bechelli Testimony ¶ 13, FEMA policy provides that activities coordinated through an EOC are eligible only “provided they are associated with eligible work,” PAPPG at 62, which, with regard specifically to the COVID-19 pandemic, must be “necessary to save lives and protect public health and safety.” FEMA Safe O&O Policy at 4. FEMA has identified the EPMs that might constitute eligible work in response to COVID-19 as the purchase and distribution of face masks, cleaning and disinfection supplies and equipment, COVID-19 diagnostic testing, COVID-19 screening and temperature scanning, acquisition and installation of temporary physical barriers, and the purchase of personal protective equipment. *Id.* at 4-5. We cannot find anything in FEMA’s COVID-19 policies that would extend PA funding to A/V equipment for local government commission meetings. To the extent that the City’s documentation indicates that the EOC could have used these platforms

for press conferences, the EOC was not the primary intended user of this technology. We exclude \$73,868.78 from the City's funding request for Department of Technology costs.

Accordingly, of the City's request for \$918,430.30 in EPM supply costs, we authorize PA funding of \$811,051.90.

IV. Portable Toilets and Handwashing Stations at a Field Care Clinic

Although the bulk of the City's PA funding request addresses costs incurred for its EOC at the Moscone Center, the City has also requested \$51,025 in funding for the cost of renting portable toilets and handwashing stations to support an outdoor COVID-19 testing clinic at 2401 Keith Street. That outdoor clinic sat next door to the Southwest Family Health Center medical facility, which sits within a fully constructed permanent building at 2403 Keith Street.

Under FEMA Policy FP 104-010-04, "Coronavirus (COVID-19) Pandemic: Medical Care Costs Eligible for Public Assistance" (May 2020), FEMA may provide PA funding for medical care and associated costs related to COVID-19 diagnostic testing provided by a state or local government. *Id.* at 2, 5, 9. Such costs include "eligible facility, equipment, supplies, staffing, and wraparound services" costs. *Id.* at 2. "Wraparound services . . . include, but are not limited to, . . . linen and laundry services; food preparation and delivery; biomedical waste removal, including contaminated items such as personal protective equipment; perimeter fencing; contracted security guards; professional cleaning; and other related services." *Id.* at 10. Included in allowable costs are administrative activities and "associated costs" needed to allow for the provision of medical services:

For temporary and expanded medical facilities, and the specific type of temporary medical facilities known as Alternate Care Sites, administrative activities and associated costs necessary for the provision of essential medical services are eligible.

Id. at 5.

FEMA acknowledges "that portable toilets and handwashing stations may qualify as EPMS" but only if they "are necessary for safely opening and operating an eligible facility." FEMA's Response Brief at 23 (citing FEMA Second Appeal Decision, *City of Tallahassee*, FEMA-4486-DR-FL, GMP 672376 (July 3, 2025) (available at <https://www.fema.gov/appeal/immediate-threat-123> (last visited Sept. 15, 2026))). *But see* FEMA Second Appeal Decision, *City and County of San Francisco*, FEMA-4482-DR-CA, GMP 710625/PW 5755 (June 4, 2026) ("Portable toilets are not an eligible emergency

protective measure that is included under any of the categories in the *O&O Policy*.”) (available at <https://www.fema.gov/appeal/immediate-threat-153> (last visited Sept. 15, 2026)); FEMA Second Appeal Decision, *City of San Luis Obispo*, FEMA-4482-DR-CA, GMP 693733/PW 2262 (Nov. 24, 2025) (finding portable toilets ineligible under the O&O Policy) (available at <https://www.fema.gov/appeal/immediate-threat-142> (last visited Sept. 15, 2026)); FEMA Second Appeal Decision, *City of Miami Beach*, FEMA-4486-DR-FL, GMP 680008/PW 1030 (Mar. 26, 2025) (same) (available at https://www.fema.gov/appeal/immediate-threat-107#_ftnref11 (last visited Sept. 15, 2026)). FEMA claims that, in this particular case, the Southeast Family Health Center adjoining the outdoor field clinic “had restroom facilities onsite” and that the City “has not shown why additional portable toilets and handwashing stations,” beyond what was already available, “were necessary to operate the testing site.” FEMA’s Response Brief at 24.

Originally, during its first appeal and again in its RFA and reply brief to the Board, the City asserted that the portable toilets and handwashing stations, which were distributed at various locations throughout the City through a program known as the Pit Stop program, were eligible for PA funding for the following reasons:

[W]hile there may have been restrooms directly at some sites, the volume of people seeking services was likely to exceed those restrooms’ capacity, the testing or vaccination sites ran during hours the host location was not open and on-site restrooms were unavailable (e.g., weekends), or the City was requested by the host location to provide handwashing or bathroom facilities.

RFA at 25 (citing RFA Exhibit 17). Yet, the evidence of record relating to the 2401 Keith Street site, to the extent that it exists, conflicts with those representations. Specifically, the City has identified the Keith Street field clinic’s operating hours as 9 a.m. to 3 p.m. Monday through Friday (with no service on weekends), which overlapped with and were fully encompassed within the Southwest Family Health Center’s opening hours (8 a.m. to 5 p.m. Monday to Friday). Further, when the portable toilets were rented, COVID-19 testing at the Keith Street clinic was on an appointment-only basis, limiting the number of people visiting at any one time, and nothing in the record suggests that Southwest Family Health Center requested the portable toilets or that the number of visitors making appointments overwhelmed the site. In any event, as FEMA correctly notes, “[i]t is the Applicant’s responsibility to provide documentation substantiating the necessity and reasonableness of . . . measures” taken for medical purposes. FEMA’s Response Brief at 23 (citing 2 CFR 200.403(a) (2024); PAPPG at 21, 133). The City has provided no contemporaneous support indicating why additional bathroom facilities were needed at the Keith Street site.

Just before the hearing in this matter, the City identified a new reason for the portable toilets and handwashing stations, which was to provide facilities for use by those who tested positive for COVID-19. The City indicated that only those who tested negative could use the Southwest Family Health Center’s indoor toilets and that it needed other restroom facilities for those who tested positive. Even if its argument that only individuals who tested positive for COVID-19 would use the portable toilets might appear reasonable on its face,⁶ that new argument, to the extent that it is not inconsistent with its earlier positions, is also unsupported by any contemporaneous evidence in the record, such as written instructions given at the time to on-site field clinic staff to segregate restroom facility use between positive and negative test recipients or photographs of the portable toilets with signs indicating use only by COVID-19 positive individuals. Without any such evidence, the City has failed to satisfy FEMA’s documentation requirements.

Our decision here is consistent with FEMA’s recent denials in second appeal decisions of at least two other requests from the City for PA funding for portable toilets and handwashing stations at *other* field COVID-19 testing clinics that, like those at issue here, were placed through the Pit Stop program. According to its website, the Pit Stop program “provides clean and safe public toilets, as well as used-needle receptacles and dog waste stations, in San Francisco’s most impacted neighborhoods.” <https://sfpublicworks.org/pitstop> (last visited Sept. 15, 2026). In its second appeal decisions, FEMA found that the Pit Stop program is “a city-wide effort that is not tied to COVID-19 testing or vaccination.” FEMA Second Appeal Decision, *City and County of San Francisco*, FEMA-4482-DR-CA, GMP 710645 / PW 5757 (May 11, 2026) (available at <https://www.fema.gov/appeal/immediate-threat-154> (last visited Sept. 15, 2026)); *see* FEMA Second Appeal Decision, *City and County of San Francisco*, FEMA-4482-DR-CA, GMP 710645 / PW 5755 (June 4, 2026) (available at <https://www.fema.gov/appeal/immediate-threat-153> (last visited Sept. 15, 2026)). In those matters, the City, as it does here, asserted that, despite the availability of restrooms in permanent buildings next to the COVID-19 testing sites, “portable restrooms were required due to the volume of people seeking services, irregular operating hours at the testing and vaccination sites, or due to outside requests.” FEMA denied funding after determining that

⁶ Given the time frames at issue here, it seems likely (although the record does not tell us) that the City was providing polymerase chain reaction (PCR) tests at its outdoor field clinic rather than rapid tests. If so, we do not understand how the City would have the necessary information when individuals were being tested at the field clinic to distinguish between those testing positive and those testing negative. A PCR test must be sent to a laboratory for analysis, and the individuals being tested would not receive their test results until after they had departed the field clinic site.

the toilets “were not at the same location as the testing and vaccination sites in question,” meaning that, contrary to the City’s representations, they could not provide support to the cited testing sites. The situation here is somewhat different in that the portable toilets for which the City now seeks PA funding were, in fact, placed next to the 2401 Keith Street site. That being said, the randomness with which the Pit Stop program was placing portable restrooms around the City does not support the City’s assertion (without any contemporaneous evidence) that, in this particular case, there was a special need that did not exist in other placements.

Decision

For the foregoing reasons, the City may receive PA funding of \$55,740.39 for disinfecting supplies for the Moscone Center EOC and \$811,051.90 for EPM supplies, for a total of \$866,792.29. We return the City’s requests for EOC contract labor costs, EOC utilities, A/V equipment rental and labor costs, and EOC internet, telecom, and electrical service alterations to FEMA for further review and evaluation. The City’s funding requests are otherwise denied.

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.

Board Judge

Patricia J. Sheridan

PATRICIA J. SHERIDAN

Board Judge

Elizabeth W. Newsom

ELIZABETH W. NEWSOM

Board Judge