



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 29, 2026

CBCA 8784-FEMA

In the Matter of ARIZONA DEPARTMENT OF EMERGENCY
AND MILITARY AFFAIRS

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Before the Arbitration Panel consisting of Board Judges **LESTER**, **RUSSELL**, and **ZISCHKAU**.

LESTER, Board Judge, writing for the Panel.

In support of its request for 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), the applicant, the Arizona Department of Emergency and Military Affairs (Arizona), has provided mission logs and other documents that it believes establish the eligibility of costs incurred to pay National Guard personnel who were activated to support food distribution efforts early during the COVID-19 pandemic, which Arizona believes should be sufficient to show the time worked. In 2020 and 2021, FEMA prepaid Arizona fifty percent of Arizona's anticipated costs for the National Guard food distribution efforts (including travel and lodging costs, as well as labor hour costs) on an emergency basis, with a total payment to Arizona of \$2,049,505.19, but Arizona believes that it is eligible for an additional \$729,113.49 beyond that amount. FEMA denied Arizona's request,

finding that its documentation does not identify the daily work that each National Guard member performed in a manner that would allow FEMA to distinguish eligible work from ineligible work (or even if work was performed). Even though Arizona significantly supplemented its supporting documentation when developing the record for this arbitration, FEMA still cannot find sufficient documentation allowing it to conduct the necessary analysis and argued in its briefing that it sees no basis for paying Arizona more than what it has already received.

During oral argument in this matter, Arizona informed us that, outside the context of this arbitration, FEMA has recently requested the return of all but approximately \$500,000 of the previously paid \$2,049,505.19. Arizona now asks us not only to decide whether it is entitled to more than \$2,049,505.19 but, if we decline to order an increase in eligibility, to evaluate how much of the originally prepaid \$2,049,505.19 it should be allowed to keep. Because dollar amounts below \$2,049,505.19 were not a part of Arizona's first-level appeal, we decline Arizona's request to expand the scope of this arbitration to include the parties' new dispute, particularly since Arizona apparently has not yet initiated a challenge to the new demand through the administrative process available to it and since we lack information about defenses that Arizona might raise in response to the repayment demand. We decide here only that Arizona has not supported a request for payment of monies beyond the \$2,049,505.19 payment that it already received. Although Arizona's claim includes some additional costs, such as the costs of hand washing stations and some materials costs, we cannot find that Arizona has established that the total of its potentially eligible costs exceeds the \$2,049,505.19 threshold. To the extent that Arizona wants to challenge FEMA's request (outside the context of this arbitration) for the return of monies that FEMA previously prepaid, it will have to follow the procedures for such a challenge that exist outside the context of this arbitration.

Background

I. FEMA COVID-19 Food Safety Distribution and National Guard Policies

In response to the COVID-19 pandemic, the President issued a major disaster declaration for Arizona (DR-4524-AZ) on April 4, 2020. Ultimately, the incident period for the disaster was defined as January 20, 2020, through May 11, 2023. *See* <https://www.fema.gov/disaster/4524> (last visited Sept. 28, 2026).

Following the President's declaration, FEMA issued Policy 104-010-03, "Purchase and Distribution of Food Eligible for Public Assistance" (Food Safety Policy). *See* <https://www.fema.gov/news-release/20200514/coronavirus-covid-19-pandemic-purchase-and-distribution-food-eligible-public> (Apr. 12, 2020) (last visited Sept. 28, 2026)); *see*

also Request for Arbitration (RFA) Exhibit 1. The Food Safety Policy expanded the scope of eligible Category B work set forth in the Public Assistance Program and Policy Guide (PAPPG) (Apr. 2018) to include the “[p]urchasing, packaging, and/or preparing of food, including food commodities, fresh foods, shelf-stable food products, and prepared meals” and the delivery of that food “to distribution points and/or individuals, when conditions constitute a level of severity that food is not easily accessible for purchase.” RFA Exhibit 1 at 3. The policy also recognized the lease of “vehicles, and necessary equipment” supporting this effort as an eligible cost. *Id.*

In the PAPPG, FEMA recognizes that governors may activate state National Guard personnel to active duty to assist in responding to a disaster. PAPPG at 34. “Labor costs and per diem, if applicable, are eligible for State Active Duty personnel performing eligible work,” and “[b]oth straight-time and overtime are eligible, including fringe benefits.” *Id.* Although costs for National Guard members called to active duty by the Department of Defense, even if at the request of a state governor, are generally the responsibility of the Department of Defense, *id.* at 34-35, the President issued a memorandum on January 21, 2021, to the Secretary of Defense and the Secretary of Homeland Security titled “Memorandum To Extend Federal Support to Governors’ Use of the National Guard To Respond to COVID-19 and To Increase Reimbursement and Other Assistance Provided to States,” 86 Fed. Reg. 7481 (Jan. 21, 2021), directing that “FEMA shall fund 100 percent of the cost of activities associated with all mission assignments for the use of the National Guard under 32 U.S.C. 502(f) to respond to COVID-19, as authorized by . . . the Stafford Act.” 86 Fed. Reg. at 7481 (section 2(b)). It also required FEMA, in accordance with sections 403 and 502 of the Stafford Act (42 U.S.C. §§ 5170b, 5192), to make available under Category B of the PA program, as appropriate, “such assistance as may be required by States (including territories and the District of Columbia), local governments, and Tribal governments to provide for the safe opening and operation of eligible schools, child-care facilities, healthcare facilities, non-congregate shelters, domestic violence shelters, transit systems, and other eligible applicants,” at a 100-percent federal cost share. 86 Fed. Reg. at 7481 (sections 3(a), 3(b)). It directed advanced reimbursement to those governments, as follows:

To make reimbursements for approved work under the Stafford Act to respond to COVID-19 available more quickly, FEMA shall expedite reimbursement for eligible emergency work projects and, as appropriate and consistent with applicable law, provide an advance of the Federal share on a percentage of the expected reimbursement from FEMA-approved projects.

Id. at 7482 (section 4).

II. The Applicant's Initial Funding Request for National Guard Personnel

On March 19, 2020, the governor of Arizona activated the Arizona National Guard “to provide logistical support to [Arizona’s] grocery and food bank supply chain in order to ease fears about food shortages.” RFA Exhibit 2 at 1. During the next thirty days, National Guard personnel were assigned to package and distribute meals across six food bank and warehouse operations at regional distribution centers at forty-eight retail locations. RFA Exhibit 4 at 1-2.

On April 2, 2020, the applicant requested, and FEMA authorized, PA funding on an expedited basis to cover the costs of National Guard labor, travel, lodging, equipment, and vehicle rentals supporting the applicant’s emergency feeding program. FEMA Exhibit 2; RFA at 2. On April 28, 2020, FEMA created Project Worksheet (PW) 136303 to address those costs, estimating the first thirty days of those costs to be \$4,099,010.37. RFA Exhibit 4 at 2. On May 17, 2020, FEMA approved an expedited payment to the applicant of \$2,049,505.19, which equated to fifty percent of the estimated project cost, with the understanding that the project’s final cost would be determined at a later date using actual cost data. *Id.* at 3; RFA at 2 (citing PAPPG at 134).¹ FEMA subsequently approved several extensions of Arizona’s feeding program, but the costs of those extensions were assigned to other projects and are not before us in this arbitration. *See* RFA at 2.

In June 2022, the applicant submitted actual cost data to recover its remaining costs (beyond the \$2,049,505.19 prepayment) on PW 136303. RFA Exhibits 3, 6. Because the ultimate National Guard cost for the first thirty days of deployment was less than the original estimate of \$4,099,010.37, the PA funding amount that the applicant sought to supplement the money already received was \$1,553,577.57. RFA at 2-3; RFA Exhibit 3 at 11.

On January 9, 2023, FEMA issued a request for information (RFI), which it uploaded in its Grants Portal, containing questions about discrepancies in the summary of reported employee hours; a missing invoice for a hand washing station; the location of and other information about additional hand washing stations; and missing invoices and documentation for claimed travel expenses. FEMA Exhibit 3; RFA Exhibit 14 at 3. The costs tied to the questions that FEMA asked in the RFI totaled approximately \$79,000. RFA at 4. At that time, FEMA did not ask for or comment about defects in documentation describing or detailing the work that each National Guard member was performing on a given day.

¹ The approved amount was paid on a somewhat staggered basis, but, by April 15, 2021, the applicant had received the entire \$2,049,505.19. RFA at 2 n.3.

Arizona did not respond to the RFI by the identified January 18, 2023, deadline, and, on February 27, 2023, FEMA canceled the RFI. FEMA Exhibit 4.

On October 11, 2024, FEMA issued a determination memorandum (DM) denying Arizona's request for funding in its entirety because "FEMA lacks the necessary information to verify that these costs meet eligibility criteria for [emergency protective measures] under FEMA policy." RFA Exhibit 9 at 4. It asserted that, "[a]s part of the eligibility determination, FEMA requires information and documentation to substantiate the eligibility of a project." *Id.* at 3. FEMA represented that, "[a]t a minimum, FEMA usually requires the 'who, what, when, where, why, and how much' for each item claimed." *Id.* (quoting PAPPG at 133). It indicated that, "[i]f the Applicant does not provide sufficient documentation to support its claim as eligible, FEMA cannot provide PA funding for the work." *Id.* Because "[t]he Applicant did not respond to FEMA's request for clarification on the pay discrepancies and additional information regarding the expenses claimed by the Applicant," FEMA found the entire project ineligible for PA funding. *Id.* at 4. In the DM, FEMA did not address any insufficiency in documentation outside the context of the questions asked in the RFI.

III. The Applicant's First-Level Appeal

Arizona filed a first-level appeal with FEMA on January 19, 2025, and explained that its prior failure to respond to the RFI was the result of high turnover in its finance office:

Due to high turnover in the finance office, FEMA's request for additional information was not forwarded to the correct points of contact and the agency subsequently did not respond in the time allotted. For consideration, during this same period, the Division changed Chief Financial Officers (CFO) three times with additional high turnover in associated and/or supporting positions. We would like to appeal to the DM and request an opportunity to provide the requisite documentation. After a canvass of our records, we believe we have all the required documents indicated in the RFI.

RFA Exhibit 10 at 1. Yet, Arizona did not provide the previously requested information with its appeal. Instead, it represented that, "[i]f our appeal is approved, we will immediately provide the requested documentation." *Id.* In its RFA, Arizona asserts that it did not provide documentation with its appeal request because of "discussions with Region 9 representatives prior to appeal submission," RFA at 4, but the applicant does not identify the nature of or participants in those discussions.

Arizona represents that, on May 21, 2025, after having not heard anything from FEMA about its first-level appeal, it "acted on its own initiative to upload the additional

documents requested in [the RFI] to FEMA's Grants Portal" but "received no acknowledgement from Region 9 of its additional documentation." RFA at 4.

On November 13, 2025, the FEMA Region 9 Regional Administrator issued a decision on FEMA's behalf denying the applicant's first-level appeal, finding that "the Applicant has not tied the requested costs to the performance of eligible work." RFA Exhibit 14 at 1. He represented that, "[f]or emergency protective measures to be eligible, the applicant is responsible for showing the work is required due to an immediate threat resulting from the declared incident." *Id.* at 3 (citing 44 CFR 206.223(a)(1), 206.225(a)(3)(i) (2020); PAPPG at 19, 57). He further represented that "[t]he appeal must contain all documented justification supporting the applicant's position, specify the amount in dispute, and specify the provisions in Federal law, regulation, or policy with which the applicant believes the FEMA determination was inconsistent." *Id.* at 4. He recognized that "the Applicant states after a review of its records, it believes it has the required documentation and that if FEMA [will] grant the appeal, it will promptly provide the documentation to FEMA." *Id.* Yet, as recognized in the decision, "the Applicant's appeal does not include any documentation to support its claim that the costs claimed are for the performance of eligible work." *Id.* Accordingly, FEMA denied the first-level appeal. *Id.*

IV. Proceedings Before the Board

The applicant filed its RFA with the Board on January 12, 2026, seeking reimbursement of a revised amount of \$1,269,793.46 "reflecting the remaining unpaid costs [the applicant] incurred in the performance of eligible work on this project." RFA at 1. It asserted that "[t]his dispute arises from a series of simple miscommunications" that was originally caused "by [the applicant's] administrative oversight" that resulted in the applicant's failure to provide documentation that FEMA has requested to support its claimed costs. *Id.* It represented that it sought arbitration "so that the totality of its documentation will be considered in determining [its] eligibility for [PA]." *Id.* With its RFA, the applicant submitted to the Board the supporting documentation that it asserts FEMA was originally asking it to provide. In addition, it provided the Board with other documentation that it had originally included with its PA funding request, which it asserted was identified in "a Cost Summary document that divided [its] total costs into four categories: Force Account Labor; Materials; Vehicle Rental, and Other Expenses." *Id.* at 6. "For Force Account Labor," the applicant represented, it had "documented its costs by retaining the daily performance logs of mobilized guardsmen." *Id.* It "then cross-referenced these records with the Arizona Human Resources Information System (HRIS) database to ensure that each guardsman's pay and entitlements were reflected accurately in the performance logs." *Id.* Arizona asserted that it "has adequately documented its eligible work and costs while addressing the only

concerns raised by FEMA about its documentation” and that, as a result, the panel should find it eligible for the \$1,269,793.46 being sought. *Id.* at 9.

In a response brief filed April 10, 2026, FEMA asserted that, despite the documentation that the applicant had provided, “the Applicant has not provided documentation demonstrating that the National Guard performed eligible emergency work.” FEMA Response Brief at 2. FEMA represented that the documentation deficiencies extended beyond the specific documentation that it had sought through the RFI and included, more generally, inadequate documentation about the work that the National Guard had performed. Specifically, it asserted that “[t]he Applicant’s documentation omits what work was performed by the National Guard” and that, “[t]hrough all [of] the documentation provided by the Applicant, there is little to no description of what individual National Guard personnel performed during their missions.” *Id.* at 11. FEMA indicated that “the majority of [the applicant’s document support] do[es] not include mission assignments, making it even harder for FEMA to determine what work National Guard personnel performed throughout the course of this project.” *Id.* at 17. “Of the 971 line items FEMA sampled,” FEMA reported, “just 182 line items (18.74%) include mission assignments,” and “[t]he outstanding 789 line items (81.26%) do not include mission assignments.” *Id.* FEMA represented that, without any indication of what work National Guard members were performing or where, it was impossible for it to determine whether there were periods of time in which Guard members were not performing missions, which would not be eligible, and whether work that the Guard members actually performed was eligible. *See id.* at 21.

In the reply that it filed on May 22, 2026, Arizona withdrew its requests for costs associated with rental vehicles (\$54,089.75) and boxed meals (\$58,110) for National Guard members, and it reduced the labor costs that it was seeking. Using its new figures, Arizona requested that the panel find it eligible for a total of \$2,778,618.68 in costs, inclusive of the \$2,049,505.19 amount that FEMA had already paid, leaving an unpaid balance of \$729,113.49. *See Applicant’s Reply Brief* at 3-6. In its revised cost claim, Arizona seeks the following:

Labor Costs for National Guard Members	\$ 2,431,923.56
Travel Reimbursements for Guard Members	\$ 25,254.59
Lodging Costs for National Guard Members	\$ 314,461.78
Hand Sanitizer Materials Costs	\$ 6,050.89
Hand Washing Station Rental Costs	\$ 927.86
	<u>\$ 2,778,618.68</u>
Less Monies that FEMA Has Prepaid	<u>(\$ 2,049,505.19)</u>
Amount Currently Sought	\$ 729,113.49

Applicant Exhibit 36 at 1; *see* Applicant’s Reply Brief at 10, 21-24. When submitting its reply brief, Arizona also significantly supplemented the documents upon which it was relying to support its cost claims. It argued, however, that it should not have to document the work that National Guard personnel perform in the same way that it might have to do when addressing emergency work by non-military employee personnel and that the panel should find its existing documentation sufficient. *See* Applicant’s Reply Brief at 2, 13.

In its surreply filed June 5, 2026, FEMA reported that the additional documentation that Arizona provided with its reply brief did not remedy the deficiencies in the documentation needed to show what work individual National Guard personnel performed on each day for which Arizona was seeking PA funding for labor costs. FEMA acknowledged that a new cost summary which Arizona provided with its reply made it “certainly easier to see which missions National Guardsmen allegedly performed” than Arizona’s earlier submissions, but it complained that it was still not sufficient to “validat[e] its claims.” FEMA’s Surreply at 6. FEMA represented that, “[d]espite the Applicant’s attempt to provide relevant supporting information, many mission assignments in the cost summary remain blank,” “spreadsheets . . . contain little description or any apparent documentation validating the Applicant’s claims,” and “there was no information describing work performed by the Arizona National Guard” that would “move the project closer to eligibility.” *Id.*

The parties did not request a hearing, but, at the applicant’s request, the panel allowed the parties on July 10, 2026, to present oral argument in support of their respective positions. During the hearing, counsel for the applicant acknowledged that only about thirty percent of its mission logs, upon which the applicant is relying to support its labor cost claims, include any information about what specific work, if any, a particular Guard member was performing on a particular day and that the total labor costs supported by any kind of description were approximately \$600,000. Hearing Transcript at 13, 86, 92-93. The parties also informed the panel that, recently, FEMA notified the applicant that FEMA is seeking the return of all but approximately \$500,000 of the \$2,049,505.19 that FEMA previously paid the applicant. *Id.* at 42-44. The applicant has not yet taken steps to challenge that repayment demand, *id.* at 45, but counsel for the applicant indicated that, “if the [panel] would define that some portion of these costs [is] eligible, then that would affect the claw back.” *Id.* at 44.

Discussion

I. The Availability of PA Funding for National Guard Food Distribution Assistance

“Under the COVID-19 declarations, FEMA may provide assistance for the purchase and distribution of food under limited circumstances to meet the immediate needs of those

who do not have access to food as a result of COVID-19, and to protect the public from the spread of the virus.” FEMA Second Appeal Decision, *Butler Area School District (Butler County)*, FEMA-4056-DR-PA, GMP 816554 (Sept. 8, 2022) (available at <https://www.fema.gov/appeal/appeals-immediate-threat> (last visited Sept. 28, 2026)). “In the COVID-19 Food Policy, FEMA established indicators that demonstrate the need for food distribution as an emergency protective measure.” *Id.* “The indicators that demonstrate the need for food distribution are: (1) reduced mobility of people in need due to government-imposed restrictions, including ‘stay-at-home’ orders which prevent certain populations from accessing food; (2) marked increase or atypical demand for feeding resources; and (3) disruptions to the typical food supply chain within a given jurisdiction.” *Id.* at n.15 (citing Food Safety Policy at 3).

For purposes of this arbitration, FEMA does not dispute that food disruptions occurred in Arizona early in the COVID-19 pandemic or that the National Guard, in mobilizing, was responding to a request from the state to support food distribution efforts. Hearing Transcript at 46-47.² It also does not dispute that, pursuant to the PAPPG and the President’s January 21, 2021, memorandum, the use of the National Guard to assist with eligible food distribution is an eligible cost. FEMA bases its denial of additional PA funding (beyond the \$2,049,505.19 already prepaid) on the absence of documentary support showing what specific work was performed for approximately seventy percent of the time claimed.

II. FEMA’s Failure to Follow Its Document Request Policies

We cannot commend FEMA for the manner in which this matter developed prior to arbitration. Until arbitration proceedings were underway, FEMA never expressly and clearly told Arizona that it had questions about the documentation that Arizona provided to support its labor costs. Although FEMA sent an unanswered RFI to Arizona in response to Arizona’s initial PA request, the costs questioned in that RFI did not relate to the adequacy of support for Arizona’s claimed labor hours and totaled only about \$79,000. Because, in the DM, FEMA tied the denial of additional PA funding to Arizona’s failure to answer the RFI, it made FEMA’s denial of the totality of Arizona’s original PA funding request, which at that time exceeded \$1 million, confusing.

² Although, in its briefing in response to the RFA, FEMA raised arguments indicating that Arizona had not sufficiently tied the claimed costs to an actual need for eligible food distribution assistance, *see* FEMA’s Response Brief at 12-15, FEMA appeared to back away from that position during oral argument. *See* Hearing Transcript at 47.

At the end of the project formulation process, FEMA is supposed to “conduct an Exit Briefing with the Applicant when project formulation is complete and all claimed damage is documented.” PAPPG at 141. One purpose of that briefing is to “[e]nsure all claimed damage is sufficiently and accurately documented.” *Id.* Presumably, during such a meeting, FEMA would have relayed its concerns about the lack of adequate documentation identifying what work Arizona National Guard personnel were performing on an individualized basis and FEMA’s inability to distinguish eligible and ineligible work. It appears from the record that, for whatever reason, the exit briefing never happened.

After FEMA issued its DM denying Arizona’s request for additional PA funding, Arizona submitted its first appeal to FEMA. Under 44 CFR 206.206(b)(1)(ii)(B) (2024), “[w]ithin 90 calendar days following receipt of a first appeal, if there is a need for additional information, the Regional Administrator will provide electronic notice to the recipient and applicant.” Yet, in this instance, FEMA did not do that. Arizona was not informed that there were deficiencies in its labor cost support documentation.

It was not until FEMA filed its response to Arizona’s RFA that it clearly explained its position that there was inadequate documentation identifying the work that National Guard personnel performed, making it impossible for FEMA to determine if and when eligible work was performed. In response, Arizona significantly supplemented its prior document productions with personal status (PERSTAT) reports, “Alpha” reports, expanded mission logs, time records, and travel receipts, all of which were filed with the Board. We question whether, had FEMA earlier disclosed its concerns about the adequacy of Arizona’s labor hour support, some of the issues that are now before us could have been addressed and resolved between the parties. Because FEMA failed to provide such express disclosures to Arizona during the project formulation or first appeal processes, that opportunity is now lost. FEMA’s conduct in the development of this matter seems to have exacerbated the dispute now before us.

That being said, in light of the nature of this arbitration, we cannot find a basis for returning this matter to FEMA for further development. By statute, the Board reviews matters de novo, *Trinity Spiritual Center, Inc.*, CBCA 8483-FEMA, 25-1 BCA ¶ 38,924, at 189,446, and an applicant is free to introduce new evidence in support of its arbitration positions, even if that evidence was not introduced during the first appeal. 42 U.S.C. § 5189a(d)(5)(B); *see* Board Rule 608 (48 CFR 6106.608 (published in eCFR)). Arizona took advantage of that opportunity here, and FEMA has reviewed that information and addressed it in its surreply and at oral argument. At oral argument, Arizona was unable definitively to identify any additional information that it could or would present to remedy the concerns that FEMA has raised about deficiencies in the documentation. Further, the regulation providing for arbitration before the Board provides that “[a]n eligible applicant

may request arbitration to dispute the eligibility for assistance or repayment of assistance,” 44 CFR 206.206(b) (2025), and that “regulation does not anticipate that the panel will direct FEMA to assist an applicant with identifying information to support its application nor does the regulation anticipate that the panel will order FEMA to conduct a general reconsideration of an application, absent any specific errors.” *Housing Authority of the City of Lumberton, North Carolina*, CBCA 7904-FEMA, 24-1 BCA ¶ 38,520, at 187,231.

In such circumstances, while we do not approve of FEMA’s apparent failure to comply with its own policies during the development of this matter prior to arbitration, we cannot return this matter to FEMA at this time for further development. We resolve this matter on the record that has been presented to us.

III. FEMA’s Recent Repayment Demand

During oral argument, Arizona informed the panel that FEMA has recently demanded the return of all but approximately \$500,000 of the \$2,049,505.19 amount that FEMA prepaid Arizona in 2020 and 2021 for its National Guard food distribution activities. The funding request to FEMA that is now before us focused on dollars in *excess* of the \$2,049,505.19 previously paid and did not specifically address Arizona’s entitlement to the \$2,049,505.19 prepayment. Now that FEMA, outside the context of this arbitration, has questioned much of the original prepayment, Arizona asks that, if we do not find costs above the \$2,049,505.19 threshold eligible for PA funding, we define what level of labor cost documentation is necessary for eligibility and indicate how much of the previously paid dollars Arizona may retain.

We recognize that, to resolve the matter originally presented to us (which sought only monies above the \$2,049,505.19 threshold), we will have to evaluate the entirety of Arizona’s cost support for all incurred costs. That is, unless we determine that Arizona is entitled to *at least* \$2,049,505.19, we cannot determine whether Arizona is entitled to *more* than \$2,049,505.19. Further, the cost support for monies *below* the \$2,049,505.19 threshold is the same as or directly related to that for monies *above* the threshold. That being said, the first appeal in this matter did not involve FEMA’s request for repayment of any monies or raise any challenge to Arizona’s entitlement to monies below the \$2,049,505.19 threshold.

“Pursuant to statute, the panel serves as a second appeal authority to resolve disputes between applicants and FEMA on requests for PA.” *Housing Authority of the City of Fort Myers, Florida*, CBCA 8138-FEMA, 25-1 BCA ¶ 38,749, at 188,378 (citing 42 U.S.C. § 5189a). “A dispute requires FEMA to have decided an issue and applicant to have appealed that determination.” *Blackhawk Geologic Hazard Abatement District*, CBCA 8688-FEMA, 26-1 BCA ¶ 38,995, at 189,852. Neither FEMA’s original determination nor

its first-level appeal decision involved a challenge to Arizona's entitlement to the \$2,049,505.19 previously prepaid. "Because FEMA has not made a determination" as part of a first-level appeal decision regarding Arizona's entitlement to retain the \$2,049,505.19 prepayment, "there is no dispute [about that issue] for the panel to resolve." *Housing Authority of the City of Fort Myers*, 25-1 BCA at 188,378; see *Pedernales Electric Cooperative, Inc.*, CBCA 8383-FEMA, 25-1 BCA ¶ 38,867, at 189,157-58 (declining to consider cost claim that was not considered in the first appeal). Even if we could consider issues involving Arizona's entitlement to amounts below \$2,049,505.19, we do not know what defenses Arizona might present in response to the repayment demand, including the extent to which section 705(c) of the Stafford Act, 42 U.S.C. § 5205(c), which limits FEMA's ability to deobligate or require reimbursement of PA funds from an applicant in certain instances, might apply. Arizona will have to challenge FEMA's recent reimbursement demand through the regular FEMA administrative process. We cannot add it to this arbitration.

IV. Arizona's Support for Costs Beyond \$2,049,505.19

As part of its request for PA funding of an additional \$729,113.49 beyond the \$2,049,505.19 amount that FEMA prepaid, Arizona includes several smaller dollar funding requests—travel and lodging costs for Guard members, hand sanitizer materials costs, and hand washing station rental costs—that total \$346,695.12, but the bulk of the costs that Arizona believes are eligible for funding are its National Guard labor costs (a total of \$2,431,923.56). As noted above, to find Arizona eligible for any of the \$729,113.49 that it seeks here, we must find that Arizona has established work and cost eligibility in excess of the \$2,049,505.19 that it was already paid.

To demonstrate the eligibility of Category B work, "FEMA requires documentation to support that the work is eligible in accordance with laws, regulations, Executive Orders (EOs), and policies." PAPPG at 133. "Documentation should provide the 'who, what, when, where, why, and how much' for each item claimed." *Id.* "[I]t is the Applicant's responsibility to substantiate its claim as eligible," and, "[i]f the Applicant does not provide sufficient documentation to support its claim as eligible, FEMA cannot provide PA funding for the work." *Id.*; see *University of North Carolina at Asheville Foundation, Inc.*, CBCA 8610-FEMA, 26-1 BCA ¶ 38,975, at 189,757-58 (discussing applicant's burden to establish all components of PA eligibility).

FEMA's complaint about Arizona's labor hours documentation is that Arizona's records, for the most part, do not identify, on an individual basis for the time for which PA funding is being requested for each individual National Guard member, what the member was doing or even if he or she was performing work that day. FEMA asserts that, from the

records provided, it often cannot determine whether an individual whose time it is being asked to fund was working or, if he or she was, what work was being performed and whether it was eligible or ineligible. Arizona believes that FEMA is demanding that it provide the same type and degree of time card or other documentation granularity that FEMA might require for claims involving a private non-profit company's use of force account labor (FAL), as set forth in table 10 of the PAPPG. *See* PAPPG at 139; Hearing Transcript at 48-49. It is not. Nevertheless, as FEMA describes it, "we do have to know what [the National Guard members] actually were doing" and, "in this case, we really don't." *Id.* at 49. FEMA cannot simply assume, as Arizona suggests it should, *see* Hearing Transcript at 40, that every Guard member was performing eligible food stocking work every day, including days when there is no record of a mission assignment.

A review of the record supports FEMA's position. To support its labor-hours claim, the applicant points to its mission logs, which contain the only descriptions of each Guard member's work on any given day (to the extent that it exists), and its PERSTAT and Alpha reports. *See* Applicant Exhibits 17, 18, 35.5 through 35.45, 39.1 through 39.205, 47. Some of the line items in the mission logs identify specific work that Guard members were performing, such as "58 pallets boxed/1210 customers," "[u]nload 5600 Food Bags," "[w]iped down shelves," and "[s]tocked shelves," *see* Applicant Exhibit 47 at 1 (mission log entries for 3/26, 3/27, and 3/28/2000); *see also* Applicant Exhibit 43.1 at 1 (contemporaneous email describing specific requests for assistance from groceries and food banks), although most of the mission log descriptions say only "FOOD BANK" or "WAREHOUSE." Applicant Exhibit 47 at 1-3. Nevertheless, those descriptors appear for only about thirty percent of the labor hours being claimed. Hearing Transcript at 13, 17, 41, 86, 93. For a few other days, there are descriptions such as "Turned away by customer" with "No work completed," Applicant Exhibit 47 at 1 (entry for 4/14/2000), and "BC reports store not serviced." *Id.* at 2 (entry for 4/2/2000).

For approximately seventy percent of the mission log line items, there is no description of work performed at all, and often there is no mission even identified. *See* Applicant Exhibit 47 at 1-3; Hearing Transcript at 17, 41; *see also* Applicant Exhibit 36. We just have lists of time for various National Guard personnel, with no indication of what they were doing or, sometimes, whether they were actually assigned to a mission. We know from the record that National Guard members were given days off from work, and we know that some of the food distribution centers to which members might be assigned would indicate that they did not need workers at given times. Arizona has supplemented its mission logs and related time records with declarations from the Deputy Chief of Staff of Operations for the Arizona Army National Guard and the Logistics Chief and Logistics Branch Manager of the Division of Emergency Management for the Arizona Department of Emergency and Military Affairs, both of whom discuss the necessity of food distribution efforts, how National Guard

members were assigned to missions, and how time and work was recorded (or not recorded). *See* Applicant Exhibits 42, 48. But neither of the declarations provide sufficient information to establish that National Guard members were working full-time on eligible work for all time that is being claimed and to overcome the lack of information in mission logs and other time records that would allow FEMA to evaluate and verify the extent to which eligible (versus ineligible) work was performed. They tell us about the type of work that National Guard personnel were generally performing rather than its frequency and specific duration. FEMA is entitled to find the declarations insufficient to overcome the complete absence of mission identification and/or work descriptions in seventy percent of the mission logs and related documents.

Arizona argues that, when reviewing requests for FAL outside the context of the National Guard, FEMA will review only a representative sample of time cards, rather than every single time card, to establish eligible work. Hearing Transcript at 18-19 (citing PAPPG at 139 (table 10)). It asserts that, because thirty percent of the mission log entries contain some kind of description of work performed (even if some of it is not particularly descriptive), we can look to those entries as a thirty-percent “sampling” of work performed and apply the descriptions in those samples to the remaining seventy percent of time that have no work and/or mission descriptions. *See* Hearing Transcript at 25, 39-40, 84-85. What the applicant presents is not a “sampling” of the work documented by its records—it has instead presented us with the universe of its documentary support, only thirty percent of which is supported by work descriptions. Its intentional selection of entries from the mission logs is not a viable random statistical sampling. *See* David H. Kaye & David A. Freedman, Reference Guide on Statistics, Reference Manual on Scientific Evidence 211, 225 n.34 (Fed. Judicial Ctr. 3d ed. 2011) (“In simple random sampling, units are drawn at random . . . [and have] the same probability of being chosen for the sample”). If a random sample of mission log line items were used here, many of the mission log line items selected for the sample likely would contain no description of work performed. In fact, FEMA undertook its own random sampling of 971 line items in Arizona’s cost summary, and only 182 of those line items (18.74%) included mission assignments, leaving 81.26% of the randomly selected line items without any such description. *See* FEMA’s Response Brief at 17-18 (citing exhibits). Arizona’s purposeful selection of all mission log entries containing work descriptions as its “sample,” to the intentional exclusion of all mission log listings with *no* descriptions, provides no basis for excusing or overcoming the absence of any work description for seventy percent of the labor hours claimed.

Arizona also claims disparate treatment between this project and at least one other. Arizona tells us that, for a different project on which Arizona used the services of National Guard personnel, FEMA did not require mission logs and made payment for labor hours based on lesser records than those that are available here. Applicant’s Reply Brief at 16-17.

It argues that, “[s]ince FEMA’s documentation policy for National Guard labor has not changed since its approval of [the project worksheet that authorized PA funding for the other project], FEMA may not now demand documentation FEMA previously acknowledged as unnecessary.” *Id.* at 17 (citing *Sawnee Electric Membership Corp.*, CBCA 7548-FEMA, 23-1 BCA ¶ 38,336). It claims that, “[b]ecause the PAPPG is intended to create ‘a consistent implementation of [FEMA] programs,’ FEMA may not deny eligibility for documentation that it accepted in other instances.” *Id.* (quoting *BJC Health System*, CBCA 8460-FEMA, 25-1 BCA ¶ 38,934, at 189,492 (quoting PAPPG at 8)). Yet, the other project upon which Arizona is relying involved payment of \$165,684.36 through FEMA’s Streamlined Project Application, which allows applicants with Category B work of less than \$1 million to apply for PA “directly without relying on FEMA or Recipient staff,” which “reduces documentation requirements for projects below the large project threshold.” FEMA Second-Filed Exhibit 9 at 8 (FEMA Streamlined Project Application Reference Guide for Emergency Protective Measures (Category B) (Nov. 4, 2020));³ *see* FEMA’s Surreply at 12. Here, Arizona’s total cost claim for the use of the National Guard is more than \$2.5 million. We cannot find that FEMA is required to apply the same reduced documentation policy from its Streamlined Project Application program to PA funding requests that exceed that program’s \$1 million threshold.

Arizona tells us that, if we were to include only those line items from its labor cost support that contain some kind of description (even if minimal) of work performed and/or mission assigned, the costs associated with that labor would be approximately only about \$600,000. Even if we assume (without finding) that this \$600,000 amount is eligible and that Arizona’s \$346,695.12 in claimed costs for travel and lodging, hand sanitizer materials, and hand washing rental stations are also eligible,⁴ we would still, after adding those two amounts together, be far below the \$2,049,505.19 threshold that Arizona needs to surpass for us to find additional PA funding eligibility in this matter. Based on the deficiencies in Arizona’s labor documentation, we cannot find that Arizona has established a basis for an award beyond the \$2,049,505.19 that it has already been paid.

³ FEMA filed two separate documents designated as FEMA Exhibit 9—one on April 17, 2026, and the other on June 5, 2026. The exhibit cited here was filed with the Board on June 5, 2026.

⁴ We note that, in another recent FEMA arbitration, the panel there found that the hand washing station rental costs at issue in that case were not eligible. *See City and County of San Francisco, California*, CBCA 8853-FEMA, slip op. at 28-31 (Sept. 15, 2026). Nevertheless, we need not decide the eligibility of Arizona’s hand washing station rental costs here.

To the extent that Arizona challenges the repayment demand that it recently received from FEMA, nothing in this arbitration decision precludes Arizona from presenting additional materials beyond what it has provided in this arbitration to support its labor costs or precludes FEMA from relying on alternate methods of allowing Arizona to support at least some of the claimed labor costs. We decide here only that Arizona has not supported a request for an eligibility amount in excess of the prior \$2,049,505.19 payment.

Decision

For the foregoing reasons, Arizona is not entitled to PA funding in excess of the \$2,049,505.19 prepayment that it previously received. Its request for funding beyond that amount is denied.

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.

Board Judge

Beverly M. Russell

BEVERLY M. RUSSELL

Board Judge

Jonathan D. Zischkau

JONATHAN D. ZISCHKAU

Board Judge