UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 19, 2026

CBCA 8976-FEMA

In the Matter of CITY OF BEAUMONT, TEXAS

Wendy Huff Ellard of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Jackson, MS; and Danielle Aymond of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Baton Rouge, LA, counsel for Applicant.

Alecia Frye and John Ebersole, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Federal Emergency Management Agency.

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

VOLK, Board Judge, writing for the Panel.

Applicant, the City of Beaumont, Texas (the City), seeks arbitration regarding a determination by the Federal Emergency Management Agency (FEMA) that overtime costs incurred by the City during the COVID-19 pandemic for its paramedics, emergency medical technicians (EMTs), firefighters, and police officers are not eligible for public assistance (PA). We conclude that the City's documentation is not adequate to establish that the overtime hours at issue were spent performing eligible emergency protective measures (EPMs).

Background

On March 25, 2020, the President declared the COVID-19 pandemic a major disaster for the State of Texas. The incident period ran from January 20, 2020, through May 11, 2023. During the pandemic, the City's overtime costs for its paramedics, EMTs, firefighters, and police officers increased dramatically compared with the years before and after the

pandemic. The City requested PA to reimburse $4,688,823.29 in force account labor (FAL) overtime costs incurred by the City during the pandemic.[1]

FEMA denied the City's FAL overtime request, as well as the City's first appeal of that denial, concluding that the City's documentation did not establish that eligible EPMs were performed during the overtime hours claimed by the City. The City then requested arbitration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5207 (2024).

Discussion

To be eligible for PA, costs must be "[d]irectly tied to the performance of eligible work" and "[a]dequately documented," among other requirements. Public Assistance Program and Policy Guide (PAPPG) (Apr. 2018) at 21. FEMA's PAPPG states that the applicant's "[d]ocumentation should provide the 'who, what, when, where, why, and how much' for each item claimed." PAPPG at 133.

We find the City's documentation insufficient to establish the extent to which the City's emergency responders performed eligible EPMs during the overtime hours claimed. Although the hours at issue were contemporaneously recorded by the City's emergency responders using an overtime code that was to be used only for COVID-19 work, the documentation presented by the City does not make clear what specific, eligible activities the employees performed during the time periods claimed. The City presents spreadsheets that include a column labeled "COVID-19 Activity," but nearly all of the cells in that column contain this identical generic description.

- Dispatch screening/COVID triage
- PPE donning and doffing
- Sanitization protocols
- Staff protection measures

Exhibits 10, 11. We do not find that these spreadsheets constitute reliable records of the specific activities that each employee performed during the overtime hours claimed.

While the City also presents more detailed activity logs, those logs do not advance its position. The activity logs often describe activities that have no apparent connection to

[1] The City also requested PA for other non-labor costs. FEMA approved those requests in part, and the City requests arbitration of only its FAL overtime request.

COVID-19. For example, one activity log from a City paramedic indicates that he responded to five calls during a shift, with the following descriptions for the call types: "AUTO PED," "FALL," "BLEEDING," "BREATHING," and "GENERAL PAIN." Exhibit 12A at 1. Most of those descriptions have no apparent connection to COVID-19.[2]

The City asserts that its emergency response "personnel operated under mandatory, pandemic-specific protocols on every response, including dispatch screening, enhanced [personal protective equipment (PPE)] procedures, post-contact decontamination, and modified patient care and transport protocols." Request for Arbitration (RFA) at 2. But those assertions do not establish the amounts of time spent on those activities, and the activity logs presented by the City suggest that much of the employees' time was spent on activities that are not eligible for PA.

The City contends that FEMA's approval of PA for PPE purchases supports its FAL overtime claims, reasoning that the employees must have been performing eligible COVID-19 EPMs because they were using the PA-eligible PPE during the claimed hours. The City's reasoning is not persuasive. When a paramedic responds to an injury unrelated to COVID-19, such as from a patient's fall, the paramedic cannot be considered to have been performing eligible COVID-19 EPMs for the duration of the call simply because the paramedic may have been wearing enhanced PPE to protect against COVID-19.

The City argues that the totality of its evidence, including the drastic increase in its overtime expenditures during the pandemic, provides the necessary documentation. *E.g.*, RFA at 17 ("[T]he City submits that when baseline data is combined with activity logs describing COVID protocols, labor spreadsheets identifying employees and hours, narrative explanations of operational changes, and [a] sworn declaration, the totality of the evidence provides a strong evidentiary basis for concluding the overtime was incurred for eligible

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[2] On September 11, 2026, after briefing concluded but before the arbitration record closed, the City sought to add an additional exhibit to the record. The exhibit contains what the City describes as a representative sample of its "ICS-211p" incident check-in forms. FEMA objected to the City's request to add this exhibit to the record at this stage of the arbitration. Under Rule 608 (48 CFR 6106.608 (published in eCFR)), a "panel may not exclude as untimely evidence proffered before arbitration closes." *Id.* Accordingly, we accept the City's additional exhibit into the record. However, the additional exhibit does nothing to cure the deficiency in the City's documentation because these forms do not contain information regarding the specific activity each employee was performing during the times listed. Therefore, we need not "consider the timing or surprise nature of [this] evidence when assessing [its] significance, credibility, or probative value." *Id.*

emergency protective measures."). We disagree. None of the information presented by the City adequately identifies the eligible EPM that was performed during the time claimed. Merely establishing that many COVID-19 EPMs were undertaken, and that elevated overtime occurred, does not provide the link showing *how much* of the overtime was undertaken to perform the EPMs. This is particularly problematic where, as here, the employees' activity logs indicate that much of the time at issue was spent responding to the types of calls that would occur regardless of the existence of the pandemic, such as medical calls unrelated to COVID-19.[3]

Finally, the City argues, in the alternative, that it ought to recover a pro-rata portion of its $4,688,823.29 FAL overtime request—totaling $3,990,394.79—based on a ratio that it calculates comparing its pre-pandemic overtime expenditures to its pandemic-era overtime expenditures. This alternative approach fares no better than the City's primary arguments. Even if we assumed that the City's increased pandemic overtime costs were exclusively the result of pandemic-related factors, FEMA policy does not provide PA funding for every cost resulting from the pandemic. Rather, FEMA has limited PA to costs incurred for specific, eligible EPMs. Showing that the City's overtime costs increased dramatically during the pandemic is not sufficient to establish that the increased overtime hours claimed were necessarily spent performing eligible EPMs.

Decision

The City's COVID-19 FAL overtime expenses are not eligible for PA.

Daniel B. Volk

DANIEL B. VOLK
Board Judge

[3] The City contends that prior panel decisions in *Miami-Dade County, Florida*, CBCA 8142-FEMA, 25-1 BCA ¶ 38,881, and *City of Miami Beach, Florida*, CBCA 8205-FEMA, 25-1 BCA ¶ 38,738, support its position. But neither of those decisions suggests that the City may recover PA when its records do not adequately identify the specific EPMs undertaken or how much time was spent performing those activities.

Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Board Judge

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