

**FEMA Should Recover
\$6.2 Million of Ineligible
and Unused Grant Funds
Awarded to the Imperial
Irrigation District,
California**





HIGHLIGHTS

FEMA Should Recover \$6.2 Million of Ineligible and Unused Grant Funds Awarded to the Imperial Irrigation District, California

February 13, 2015

Why We Did This

The Imperial Irrigation District (District) received a \$10.5 million award of Federal Emergency Management Agency (FEMA) Public Assistance grant funds for damages resulting from an April 2010 earthquake. We audited \$7.8 million, or 74 percent of the total award.

What We Recommend

FEMA should disallow \$3.6 million of ineligible and unsupported costs, deobligate \$2.5 million of unused funds, and take steps to improve California's grant management.

For Further Information:

Contact our Office of Public Affairs at (202) 254-4100, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

The District did not always account for and expend FEMA grant funds according to Federal requirements. The District awarded contracts totaling \$3.6 million without taking the required affirmative steps to ensure the use of small and minority firms, women's business enterprises, and labor surplus area firms when possible. As a result, FEMA has no assurance that these types of firms had opportunities to bid on Federal work as Congress intended. The District's claim also included \$45,408 of ineligible contract costs and \$1,473 of unsupported equipment costs. In addition, FEMA should deobligate \$2.5 million and put those funds to better use because the District completed disaster work and no longer needs those funds.

The majority of these findings occurred because California, as the grantee, should have managed the grant better. Grantees are responsible for ensuring that subgrantees are aware of and follow Federal regulations. They are also responsible for closing projects promptly so that unneeded Federal funds do not remain obligated for long periods.

FEMA Response

FEMA officials generally agreed with our findings and recommendations. FEMA's written response is due within 90 days



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Department of Homeland Security

February 13, 2015

MEMORANDUM FOR: Karen Armes
Acting Regional Administrator, Region IX
Federal Emergency Management Agency

FROM: 
John V. Kelly
Assistant Inspector General
Office of Emergency Management Oversight

SUBJECT: *FEMA Should Recover \$6.2 Million of Ineligible and
Unused Grant Funds Awarded to the Imperial Irrigation
District, California*
Audit Report Number OIG-15-35-D

We audited Federal Emergency Management Agency (FEMA) Public Assistance grant funds awarded to the Imperial Irrigation District, California (District). The California Governor's Office of Emergency Services (California), a FEMA grantee, awarded the District \$10.5 million for damages resulting from an April 2010 earthquake. We audited eight projects totaling \$7.8 million, or 74 percent of the award (see appendix A). At the time of our audit, the District had completed all projects, and California was preparing to review the District's final claim totaling \$8 million for all projects.

Background

The Imperial Irrigation District is a countywide "special district" established in 1911 under California's Irrigation District Act. Although the District is a local government, a board of directors manages operations as a "public agency,"¹ relying primarily on non-tax revenue such as user charges. The District provides water for agricultural and municipal use and is a source of energy for residential, commercial, and industrial use. With facilities such as the All-American Canal, the District provides water and energy to an area of approximately 1,658 square miles, including approximately 521,800 acres of farmland. On April 4, 2010, a magnitude 7.2 earthquake, centered 29 miles southwest of Mexicali, Mexico, causing widespread damage throughout Imperial County, California, and to the District's facilities at All-American Canal. Specifically, the earthquake damaged the canal's embankments;

¹ "Public agency" means a city, county, city and county, including chartered cities and chartered counties, any special district, and any other agency of the state for the local performance of governmental or proprietary functions within limited boundaries. (California Public Contract Code, section 22002(a))



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concrete linings and structures; drain embankments; and gates, pipes, and roads (see figure 1).

Figure 1: Earthquake Damage to the All-American Canal Embankment



Source: Imperial Irrigation District

Results of Audit

The District did not always account for and expend FEMA grant funds according to Federal regulations and FEMA guidelines. The District awarded contracts totaling \$3.6 million without taking the required affirmative steps to ensure the use of small and minority firms, women’s business enterprises, and labor surplus area firms when possible. As a result, FEMA has no assurance that these types of firms had opportunities to bid on Federal work as Congress intended. The District’s claim also included \$45,408 of ineligible contract costs and \$1,473 of unsupported equipment costs. Therefore, as table 1 shows, FEMA should disallow \$3.6 million of ineligible and unsupported costs. FEMA should also deobligate \$2.5 million from four large projects and put those funds to better use because the District completed those projects and no longer needs those funds.

Table 1: Questioned Costs and Unneeded Funds by Finding

Finding	Subject	Questioned Costs	Unneeded Funds
A	Non-compliance with Federal Procurement Standards	\$3,597,189	
B	Unneeded Funds		\$2,514,344
C	Ineligible Contract Costs	45,408	
D	Unsupported Equipment Costs	1,473	
Totals		\$3,644,070	\$2,514,344

Source: FEMA, the District, and DHS Office of Inspector General (OIG)



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The majority of these findings occurred because California, as the grantee, should have managed the grant better. Grantees are responsible for ensuring that their subgrantees are aware of and follow Federal regulations. They are also responsible for closing projects promptly so that unneeded Federal funds do not remain obligated for long periods.

Finding A: Non-compliance with Federal Procurement Standards

The District did not follow all Federal procurement regulations in awarding contracts totaling \$3,642,597 for the eight large projects we reviewed (see table 3 in appendix A). Although the District competitively awarded the contracts, it did not comply with Federal requirements to take affirmative steps to ensure the use of small and minority firms, women's business enterprises, and labor surplus area firms when possible (44 Code of Federal Regulations (CFR) 13.36(e)). As a result, FEMA has no assurance that these types of firms had opportunities to bid on Federal work as Congress intended. The required affirmative steps should include using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce. Therefore, we question as ineligible the \$3,642,597 for contracts costs that do not comply with CFR 13.36. This amount includes \$45,408 that we also question in finding C for other reasons. Therefore, to avoid duplicate questioned costs, we question the net amount of \$3,597,189 in this finding (\$3,642,597 less \$45,408). If FEMA allows the \$45,408 we question in finding C, it should add that amount back to the total amount we question in finding A. District officials stated that they would work with the State and FEMA to implement the affirmative steps in the event of future FEMA-funded repair work.

Finding B: Unneeded Funds

FEMA should deobligate \$2,514,344 and put those funds to better use because the District no longer needs these funds to complete four large projects (see table 2). The District confirmed that its final claim for the four projects totaled \$3,886,522, which is \$2,514,344 less than the \$6,400,866 FEMA obligated for disaster repairs.



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Table 2: Unneeded Funds by Large Project

Project	Award Amount	Project Costs Incurred	Project Completion Date	Unneeded Funds
121	\$ 744,091	\$ 232,547	10/31/2011	\$ 511,544
141	124,689	59,351	10/25/2011	65,338
142	465,467	311,560	10/27/2011	153,907
156	5,066,619	3,283,064	6/28/2012	1,783,555
Total	\$6,400,866	\$3,886,522		\$2,514,344

Source: FEMA and the District

Federal appropriations laws and the Statement of Federal Financial Accounting Standards (SFFAS) require Federal agencies to record obligations in the accounting records on a factual and consistent basis throughout the government.² That is, the agency must increase or decrease obligated funds when probable and measurable information becomes known. The overrecording and the underrecording of obligations are equally improper. Both practices make it impossible to determine the precise status of Federal appropriations (*7 Government Accountability Office-Policy and Procedures Manual* § 3.5.D; B-300480, April 9, 2003, and SFFAS Number 5, paragraphs 19, 24, 25, and 29).

The District completed the four projects between October 2011 and June 2012, and the unneeded Federal funding for the projects remains obligated. Therefore, FEMA should deobligate the Federal funds and put them to better use. District officials agreed with this finding.

Finding C: Ineligible Contract Costs

The District's claim for Project 156 included \$45,408 in contract costs that did not comply with Federal regulations and the contract agreement.

Federal regulations stipulate that—

- The qualifications of the individual rendering the service under contract and the fees charged must be consistent with the firm's customary practice, especially with those for non-Federal contracts. (2 CFR 225, Appendix B, 32.b (7))

² U.S. Government Accountability Office's (GAO), *Principles of Federal Appropriations Law*, Third Edition, Volume II, February 2006, chapter 7, section B: Criteria for Recording Obligations (31 U.S.C. § 1501).



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- Subgrantees must maintain a contract administration system to ensure contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. (44 CFR 13.36(b)(2))

The District, however, did not comply with these criteria.

- The District's claim included \$39,888 in costs for professional services billed in excess of the contract rates. The contractor billed \$299,949 under Project 156 for construction management and inspection services at the hourly rates the contract specified for licensed professionals. However, the contractor billed \$208,018 (69 percent of the total \$299,949) for individuals who were not licensed and, therefore, did not qualify for the licensed professional rates. The \$39,888, we question, represents the difference between the rates the contractor billed the District and the applicable contract rates based on actual employee qualifications.
- The District's claim also included \$5,520 in costs for professional services that pre-dated the District's written notification to the contractor to proceed with the work. The contract agreement required the contractor to start work only after the District issued a written authorization (Notice to Proceed). The District issued a Notice to Proceed on February 10, 2011. However, the contractor billed the District \$5,520 for work completed during a 2-week period before the date of the Notice to Proceed.
- Additionally, the contractor did not comply with the contract terms requiring it to request or obtain the District's written approval before substituting key personnel. The contractor's invoices indicated that substituted personnel performed about 70 percent of the work. Because the District selected the contractor based on its qualifications, including the qualifications of the key personnel in its proposal, substituting the key personnel altered the competitive nature of the procurement process. Thus, the District officials have no assurance of the quality of services the contractor provided.

District officials concurred with the finding. They told us that they would not seek Federal reimbursement for the \$45,408 (\$39,888 plus \$5,520) we question in this finding. District officials also stated that the contractor did not obtain District approval for substituting the key personnel. They agreed to re-evaluate the work completed under this construction management and



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inspection services contract for Project 156 to ensure that the services met contract specifications.

Finding D: Unsupported Equipment Costs

The District's claim for Project 156 included \$1,473 in unsupported equipment costs. Federal cost principles state that a cost must be adequately documented to be allowable (2 CFR 225, Appendix A, (C)(1)(j)). The District supported its claim for equipment cost with a project cost report that identified the name of the employee, the task, and hours applied. The District collected this information from employee logs. We found instances, where the project cost report included more hours than those actually recorded in the employee logs. For example, for one equipment operator, the District claimed reimbursement for 17 hours of equipment use, whereas the employee log identified only 9 hours.

District officials concurred with the finding. They told us that District employees probably recorded the wrong hours when preparing the project cost report and overstated the claim for Project 156 by \$1,473.

Finding E: Grant Management

Generally, the contracting and project cost issues we identified resulted because California, as the grantee, did not effectively execute its grantee responsibilities. Federal regulations at 44 CFR 13.37(a)(2) require grantees to ensure that subgrantees are aware of requirements that Federal regulations impose on them. Further, 44 CFR 13.40(a) requires grantees to manage the day-to-day operations of subgrant activity and monitor subgrant activity to ensure compliance with applicable Federal requirements.

In addition, California's Administrative Plan for DR 1911-CA requires it to conduct the subgrantee's closeout as soon as practicable. The District submitted its closeout documentation for the Public Assistance grant on October 10, 2013. However, as of July 22, 2014, the date we completed our fieldwork (more than 9 months after the District's submission), California had not completed its review of the District's closeout records. According to FEMA Standard Operating Procedure 9570.14, Section 9.2.1, the State should reconcile costs within 90 days from the date the District completes its projects; California did not meet this FEMA guideline. Therefore, it needs to review closeout documentation from subgrantees promptly to ensure adherence with FEMA guidelines.



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Recommendations

We recommend that the Acting Regional Administrator, FEMA Region IX:

Recommendation 1: Disallow \$3,597,189 (Federal share \$2,697,892) as ineligible contract costs because the District did not comply with Federal procurement standards, unless FEMA grants an exception for all or part of the costs as provided for in 44 CFR 13.6(c) and determines that the costs are reasonable (finding A).

Recommendation 2: Direct California, as the grantee, to assist the District to establish the necessary affirmative steps to assure the use of small businesses, minority-owned firms, woman's business enterprises, and labor surplus area firms when possible (finding A).

Recommendation 3: Deobligate \$2,514,344 (Federal share \$1,885,758) of unneeded funds and put them to better use (finding B).

Recommendation 4: Disallow \$45,408 (Federal share \$34,056) of ineligible contract costs for Project 156 (finding C). See the note in table 3 in appendix A regarding duplicate questioned costs.

Recommendation 5: Direct California to ensure that the District reviews the contract work for Project 156 to ensure that it meets the applicable engineering standards (finding C).

Recommendation 6: Disallow \$1,473 (Federal share \$1,105) of unsupported equipment costs (finding D).

Recommendation 7: Direct California to review the District's closeout documentation promptly to ensure adherence with FEMA guidelines (finding E).



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Discussion with FEMA and Audit Follow-up

We discussed these findings with District officials during the course of this audit and included their comments in this report, as appropriate. We also provided a draft report in advance to California, District, and FEMA officials and discussed it at exit conferences with these officials on July 22, 2014, and with FEMA officials on October 3, 2014. District officials agreed with findings B and C and did not comment on findings A, D, and E. FEMA and California officials withheld comments pending issuance of the final report.

Within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include the contact information of responsible parties and any other supporting documentation necessary to inform us about the status of the recommendations. Please email a signed pdf copy of all responses and closeout request to Humberto Melara, Director, Western Regional Office, Office of Emergency Management Oversight, at Humberto.Melara@oig.dhs.gov. Until we receive and evaluate your response, we will consider the recommendations open and unresolved.

Major contributors to this report are Humberto Melara, Director; Louis Ochoa, Audit Manager; Connie Tan, Auditor-In-Charge; and Auditors Renee Gradin, Montul Long, and Willard Stark.

Please call me with any questions at (202) 254-4100, or your staff may contact Humberto Melara, Director, Western Regional Office, at (510) 637-1463.



Appendix A

Objective, Scope, and Methodology

We conducted this performance audit between April 2014 and September 2014, pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objective. We conducted this audit by applying the statutes, regulations, and FEMA policies and guidelines in effect at the time of the disaster.

We audited FEMA Public Assistance grant funds awarded to the District, Public Assistance Identification Number 025-1B386-00. Our audit objective was to determine whether the District accounted for and expended FEMA grant funds according to Federal regulations and FEMA guidelines for FEMA Disaster Number 1911-DR-CA. California awarded the District \$10.5 million for damages resulting from an earthquake that occurred on April 4, 2010. The incident period continued through July 4, 2010. The award provided 75 percent FEMA funding for 33 large projects and 2 small projects.³ The audit covered the period April 4, 2010, to October 10, 2013.

We interviewed FEMA, California, and District officials; reviewed judgmentally selected project costs (generally based on dollar value); and performed other procedures considered necessary to accomplish our objective. As part of our normal audit procedures, we also notified the Recovery Accountability and Transparency Board of all contracts the District awarded under the grant to determine whether the contractors were debarred or whether there were any indications of other issues related to those contractors that would indicate fraud, waste, or abuse. As of the end of our fieldwork, the Recovery Accountability and Transparency Board's analysis of contracts was ongoing. When it is complete, we will review the results and determine whether additional action is necessary. We did not assess the adequacy of the District's internal controls applicable to grant activities because it was not necessary to accomplish our audit objective. However, we did gain an understanding of the District's method of accounting for disaster-related costs and its procurement policies and procedures.

³ Federal regulations in effect at the time of the disaster set the large project threshold at \$63,200.



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Appendix A (Continued)

Table 3: Projects Audited, Funds Put to Better Use, and Questioned Costs

Project Number-Category of Work**	Project Award Amount	Costs Claimed	Funds Put to Better Use Finding B	Questioned Costs			
				Finding A	Finding C	Finding D	Totals
121-D	\$ 744,091	\$ 232,547	\$ 511,544	\$ 184,837	\$ 0	\$ 0	\$ 184,837
122-D	513,083	513,083	0	436,051	0	0	436,051
139-D	423,783	423,783	0	373,293	0	0	373,293
141-F	124,689	59,351	65,338	34,500	0	0	34,500
142-D	465,467	311,560	153,907	285,425	0	0	285,425
149-D	315,410	315,410	0	236,771	0	0	236,771
156-D	5,066,619	3,283,064	1,783,555	2,047,614	45,408	1,473	2,094,495
157-B	130,367	130,367	0	44,106	0		44,106
Subtotals	\$7,783,509	\$5,269,165	\$2,514,344	\$3,642,597	\$45,408	\$1,473	\$3,689,478
Less Costs Questioned Twice*				45,408			45,408
Totals	\$7,783,509	\$5,269,165	\$2,514,344	\$3,597,189	\$45,408	\$1,473	\$3,644,070

Source: FEMA, the District, and DHS OIG

*Note: To avoid duplicate questioned costs, we deducted \$45,408 from the totals because we question this amount in both findings A and C for Project 156. If FEMA allows the \$45,408 we question in finding C, it should add that amount back to the total amount we question in finding A.

**FEMA identifies type of work by category: A for debris removal, B for emergency protective measures, and C–G for permanent work.



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Appendix B
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Appendix B (Continued)

External (Continued)

California State Auditor, Bureau of State Audits
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