

**FEMA Should Recover
\$337,135 of Ineligible or
Unused Grant Funds Awarded
to the Port of Tillamook Bay,
Oregon**





DHS OIG HIGHLIGHTS

FEMA Should Recover \$337,135 of Ineligible or Unused Grant Funds Awarded to the Port of Tillamook Bay, Oregon

June 15, 2015

Why We Did This

We audited Federal Emergency Management Agency (FEMA) Public Assistance grant funds awarded to the Port of Tillamook Bay, Oregon (Port), for damages resulting from severe storms, flooding, landslides, and mudslides that occurred in December 2007.

What We Recommend

FEMA should disallow \$248,851 of ineligible costs and deobligate \$88,284 of unused funds and direct Oregon, FEMA's grantee, to work with the Port to ensure it complies with Federal requirements.

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 Port properly accounted for FEMA funds, but did not always expend the funds according to Federal regulations and FEMA guidelines. Of the \$1,886,343 we reviewed, \$248,851 was ineligible, including:

- \$135,000 in duplicate benefits,
- \$102,120 in excessive locomotive costs,
- \$9,712 in excessive fringe benefit costs, and
- \$2,019 in excessive equipment costs.

In addition, FEMA mistakenly obligated \$88,284 because of a mathematical error. Although the Port timely informed Oregon of the error, Oregon took an inordinate amount of time to address the issue.

FEMA Response

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



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security
Washington, DC 20528

June 15, 2015

MEMORANDUM FOR: Kenneth Murphy
Regional Administrator, Region X
Federal Emergency Management Agency



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

SUBJECT: *FEMA Should Recover \$337,135 of Ineligible or Unused Grant Funds Awarded to the Port of Tillamook Bay, Oregon*
Audit Report Number OIG-15-104-D

We audited Federal Emergency Management Agency (FEMA) Public Assistance grant funds awarded to the Port of Tillamook Bay, Oregon (Port). The Oregon Governor's Office of Emergency Management (Oregon), a FEMA grantee, awarded the Port \$48,239,572 for costs resulting from a December 2007 disaster. The award provided 75 percent FEMA funding for 6 large projects and 12 small projects.¹ Because of the significant total dollars involved and the complexity of the projects, we divided this audit into two phases. The first phase focused on FEMA's application of its Cost Estimating Format for the Port's largest project (Project 936) valued at \$44,596,845.² In this (second) phase, we audited three large projects and four small projects totaling \$1,886,343 (see appendix A).

Background

Local citizens formed the Port of Tillamook Bay as an Oregon Municipal Corporation in 1911 to manage land at the entrance to the Tillamook Bay.³ In 1953, the Port acquired the decommissioned U.S. Naval Air Station with its two blimp hangars, administrative and residential quarters, a 5.5-mile railroad spur (which connected with the Southern Pacific Railroad in downtown Tillamook), and more than 1,600 acres of land. The Port expanded its business operations in 1990 with the purchase of a 95-mile railroad line from Tillamook, up the coast to Wheeler, then east through the Coast Range to Portland, Oregon, area.

¹ Federal regulations in effect at the time of the disaster set the large project threshold at \$60,900.

² OIG-15-89-D: *FEMA Misapplied the Cost Estimating Format Resulting in an \$8 Million Overfund to the Port of Tillamook Bay, Oregon* (May 2015).

³ The Port of Tillamook Bay, Oregon, obtained its current name in 1953; previously, its official name was the Port of Bay Ocean, Oregon.



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The 2007 disaster event's heavy rains and high winds (in excess of 100 miles per hour) damaged the roof of the Port's Blimp Hangar, toppled trees and branches, and generated other debris that blocked tracks across 87 miles of the rail system.

Results of Audit

The Port properly accounted for FEMA funds, but did not always expend the funds according to Federal regulations and FEMA guidelines. Of the \$1,886,343 we reviewed, \$248,851 was ineligible, including:

- \$135,000 in duplicate benefits,
- \$102,120 in excessive locomotive costs,
- \$9,712 in excessive fringe benefit costs, and
- \$2,019 in excessive equipment costs.

In addition, FEMA mistakenly obligated \$88,284 because of a mathematical error. Although the Port timely informed Oregon of the error, Oregon took an inordinate amount of time to address the issue.

Finding A: Duplication of Benefits

FEMA awarded the Port \$1,044,907 for Project 870 to repair its Blimp Hangar.⁴ However, the Port also received an insurance payment of \$135,000 to repair the hangar, and Port officials did not deduct the (duplicate) proceeds from its costs claimed to FEMA, as required. The *Stafford Act* prohibits FEMA from providing financial assistance twice for the same loss from a major disaster or emergency (*Robert T. Stafford Disaster Relief and Emergency Assistance Act*, Section 312, *Duplication of Benefits*).

At our exit conference, FEMA officials agreed with this finding and said they had initiated the process to deobligate the \$135,000 in duplicate Public Assistance funding. FEMA subsequently provided us with a Port-prepared cost summary of construction and engineering costs for the blimp hangar repairs. This summary indicates that the Port retained the \$135,000 and applied these insurance proceeds to its 25 percent cost share, instead of deducting the proceeds from the costs it claimed for the project, as required.⁵ Port and Oregon officials did not respond to our request for comment, although we provided them with documentation demonstrating that the Port retained the insurance payment.

⁴ FEMA based this award on the total costs Port officials certified they incurred to repair the Hangar.

⁵ The Port's blimp hangar cost summary totaled \$938,630, and documented that the Port applied the \$135,000 insurance proceeds to its 25 percent cost share (or \$234,658), leaving the Port with only a \$99,658 cost share balance (\$234,658 minus \$135,000).



Finding B: Excessive Locomotive Costs

Port officials improperly claimed \$102,120 in excessive locomotive costs under three projects totaling \$705,529. FEMA provides equipment rates when applicants have not established their own rates (44 Code of Federal Regulations (CFR) 206.228(a)(1)(iii)). FEMA’s Schedule of Equipment Rates assigns different hourly rates based on equipment capacity. The rates generally include all costs of operation such as insurance, depreciation, maintenance, and fuel (FEMA 322, *Public Assistance Guide*, June 2007, Chapter 2, p. 48).

The Port did not comply with these criteria when claiming locomotive costs. FEMA’s Equipment Rate Agreement with the Port authorized a work train that required only *one* modern locomotive built after 1999, at an hourly rate of \$120. However, the Port used two older, less capable locomotives to pull the work train and claimed \$120 per hour for each locomotive, thus doubling the claimed amount. We therefore question \$102,120 in ineligible costs attributed to the use of the second work train locomotive (see table 1).

Table 1: Excessive Locomotive Costs by Project

Project	Award Amount	Hours Employed at \$120/Hour	Excessive Costs Questioned
912	\$491,556	746.5	\$89,580
868	37,028	34.0	4,080
759	176,945	70.5	8,460
Total	\$705,529	851.0	\$102,120

Source: Port’s Equipment Summary Records and Office of Inspector General (OIG) Analyses.

FEMA officials told us that they will review the impact of the older, less powerful locomotives on the applicable equipment rate the Port used. Oregon and Port officials declined comment until after we issue our final audit report.

Finding C: Funding Error/Delay of Funding Reconciliation

FEMA inadvertently over-obligated funds for Project 912 by \$88,284, and Oregon officials took 4 years to identify and notify FEMA of the error. As a result, these funds remained unavailable for better use longer than necessary. According to the Port’s final cost adjustment (project closeout) for Project 912, the Port was eligible for additional funding of \$8,828. However, FEMA officials mistakenly obligated \$97,112 rather than \$8,828, thereby over-obligating the project by \$88,284.⁶

⁶ FEMA officials mistakenly entered an ‘11’ rather than a ‘1’ in the quantity section of its funding worksheet, which generated additional funding as \$97,111.96 rather than the intended \$8,828—thereby over-obligating \$88,283.96 (rounded to \$88,284).



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The Port submitted its closeout documentation for Project 912 to Oregon officials in March 2010, and subsequently requested clarification from them regarding the over-obligated amount. In August 2013, or 3 years after receipt of the Port's closeout documentation, Oregon confirmed to the Port that FEMA had over obligated \$88,284 for Project 912. In October 2013, we requested that Oregon provide a status of the corrective action to reverse the over-obligated amount; Oregon finally notified FEMA of the error in March 2014. This 4-year timeframe is concerning because Federal rules stipulate that:

- Federal agencies must record obligations in the accounting records on a factual and consistent basis throughout the government, and must periodically adjust obligated funding when precise data on the liability become available (Federal appropriations laws and the Statement of Federal Financial Accounting Standards⁷).
- The grantee (State) shall make an accounting to the FEMA Regional Administrator of eligible costs for each large project and shall certify that the recipient did incur the reported costs in performing eligible work (44 CFR 206.205(b)(1)).
- The State submits the verified final project costs so that FEMA can determine whether funds should be obligated or deobligated for the project (*Public Assistance Guide*, FEMA 322, June 2007, Chapter 3, p. 114).

FEMA officials agreed with our finding and provided us with documentation showing that they deobligated \$88,284 from Project 912 in July 2014. Therefore, we consider our recommendation to deobligate the funds and put them to better use as resolved and closed. They also acknowledged Oregon's lack of timeliness and said that it was most likely the result of understaffing. Port and Oregon officials told us they are withholding comment until after we issue our final report.

⁷ Government Accountability Office, *Principles of Federal Appropriations Law*, 3rd Edition, Volume II, February 2006, Chapter 7, Section B: *Criteria for Recording Obligations* (31 U.S.C. Section 1501) pages 7–9; and Office of Management and Budget, *Statement of Federal Financial Accounting Standards*, Number 5, paragraphs 19 and 29, September 1995.



Finding D: Excessive Fringe Benefit Charges

The Port used overstated fringe benefit rates for two large projects, resulting in excessive reimbursements totaling \$9,712:⁸

Table 2: Excessive Fringe Benefit Charges

Large Project	Regular Time	Overtime	Total
759		\$744	\$744
912	\$7,711	1,257	8,968
Total	\$7,711	\$2,001	\$9,712

Source: Port Documentation and OIG Analyses.

We determined that the appropriate fringe benefit rates were 62.38 percent for regular time and 22.40 percent for overtime. However, for some pay periods, Port officials claimed higher fringe benefit rates of 75.73 percent and 39.91 percent, respectively.

We reviewed Port records for this disaster, as well as for a prior disaster (DR-1672), where the Port also used higher fringe benefit rates for both regular and overtime (i.e., 75.50 percent and 33.04 percent, respectively).⁹ We determined that the Port improperly included:

- an *additional* 6.50 percent for worker’s compensation, a fringe benefit cost not applicable to overtime; and
- Social Security charges (for both regular and overtime) in *addition* to (and duplicative of) the *Defined Benefit Retirement Plan for Railroad Workers*, despite that railroad workers are exempt from Social Security and participate only in the Defined Benefit Plan.

Federal regulations require allowable costs to be adequately documented (2 CFR 225 Appendix A.C. 1. j) and consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities (2 CFR 225 Appendix A.C.1.e). Therefore, we question \$9,712 as ineligible fringe benefit costs the Port received for Projects 759 and 912.

FEMA and Oregon officials withheld formal comment pending issuance of our final report. Port officials did not comment on this finding, but provided

⁸ We also reviewed force account labor with fringe benefits costs claimed under the Port’s small projects and determined that the Port also applied overstated fringe benefit rates in its reimbursement calculations. We did not question these costs due to immateriality.

⁹ Our analysis determined that the Port overstated its fringe benefit rate for prior disaster assistance. Although we elected not to retroactively question costs for the previous disaster, we recommend that Oregon and FEMA ensure that the Port properly determine and apply fringe benefit rates for any future disaster (see recommendation 7).



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insurance vendor records and employment history information in their effort to document their fringe benefit components. We reviewed the documentation and determined that it did not justify the percentages the Port claimed.

Finding E: Equipment Overcharge

In two isolated instances for Project 912, the Port mistakenly applied a (‘hy-rail’) vehicle rate of \$75 per hour to—

- a chainsaw, used for 26 hours—with an actual rate of \$3.10 per hour, and
- a link belt excavator, used for 4 hours—with an actual rate of \$37.50 per hour.

These errors resulted in a combined overstated claimed cost of \$2,019. Federal regulations require accuracy when accounting for grant financially assisted activities (44 CFR 13.20 (2)(b)(1)). Therefore, we question \$2,019 as ineligible costs associated with inaccurate rates applied to the equipment the Port used.

FEMA, Oregon, and Port officials concurred with this finding upon their review of supporting documentation.

Recommendations

We recommend that the Regional Administrator, FEMA Region X:

Recommendation 1: Disallow \$135,000 (Federal share \$101,250) in ineligible costs where FEMA’s disaster grant assistance duplicated the Port’s insurance benefits (finding A).

Recommendation 2: Direct Oregon to instruct its subgrantees to pursue all insurance proceeds for which they are entitled and then verify proper processing of insurance proceeds as a reduction of the subgrantees’ final eligible claim (finding A).

Recommendation 3: Disallow \$102,120 (Federal share \$76,590) as ineligible under Projects 912, 868, and 759 because the Port claimed equipment costs that exceeded the amount FEMA authorized (finding B).

Recommendation 4: Deobligate \$88,284 (Federal share \$66,213) from Project 912 that FEMA mistakenly obligated and put those funds to better use (finding C).¹⁰

¹⁰ As we discuss in finding C, we consider this recommendation resolved and closed.



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Recommendation 5: Direct Oregon to timely account for and submit all claimed subgrantee costs upon project completion to FEMA; and communicate to FEMA any necessary obligation adjustments (finding C).

Recommendation 6: Disallow \$9,712 (Federal share \$7,284) in ineligible (excessive) fringe benefit costs the Port claimed (finding D).

Recommendation 7: Instruct Oregon to direct its subgrantees to justify their fringe benefit rates as the rates they actually paid or incurred on behalf of their employees (finding D).

Recommendation 8: Disallow \$2,019 (Federal share \$1,514) in ineligible (overstated) equipment costs claimed for Project 912 (finding E).

Discussion with FEMA and Audit Follow-up

We discussed the results of this audit with Port officials during our audit and included their comments in this report, as appropriate. We also provided information in a written summary of our findings and recommendations in advance to FEMA on June 9, 2014, and July 7, 2014. FEMA forwarded the materials to Oregon and Port officials. We discussed our findings and recommendations with FEMA during a pre-exit conference on June 13, 2014, and again at an exit conference on July 30, 2014. We discussed our findings and recommendations at a joint exit conference with Oregon and District officials (which FEMA also attended) on September 3, 2014.

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.

The Office of Emergency Management Oversight major contributors to this report are Humberto Melara, Director; Devin Polster, Audit Manager; and Curtis Johnson, Senior Auditor.

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 audited FEMA Public Assistance grant funds awarded to the Port of Tillamook Bay, Oregon (Port), Public Assistance Identification Number 057-U1ZZV-00. Our audit objective was to determine whether the Port accounted for and expended FEMA grant funds according to Federal regulations and FEMA guidelines for FEMA Disaster Number 1733-DR-OR. Oregon awarded the Port \$48,239,572 for costs resulting from severe storms, flooding, landslides, and mudslides from December 1, 2007, through December 17, 2007.

Our audit covered the period from December 1, 2007, to July 29, 2014. Because of the significant total dollars involved and the complexity of the projects, we divided this audit into two phases. The first phase focused on FEMA’s application of its Cost Estimating Format for the Port’s largest project (Project 936), valued at \$44,596,845 for damages to the Port’s railroad. In this (second) phase of the audit (the focus of this report), we reviewed \$1,886,343 for three large projects (\$1,713,407) and four small projects (\$172,936) (see the following table). We reviewed \$46,585,892, or 97 percent of the total award, through both phases of the audit.

Table 3: Projects Audited and Costs Questioned

Project/ Category of Work*	Net Project Amount ¹¹	Costs Questioned by Finding					Funds Put to Better Use
		A	B	D	E	Total	C
56/A	\$44,337						
83/G	47,833						
759/A	176,945		\$8,460	\$744		\$9,204	
868/A	37,028		4,080			4,080	
870/E	1,044,906	\$135,000				135,000	
907/A	43,738						
912/A	491,556		89,580	8,968	\$2,019	100,567	\$88,284
Total	\$1,886,343	\$135,000	\$102,120	\$9,712	\$2,019	\$248,851	\$88,284

Source: Port Documentation and OIG Analyses.

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

¹¹ The Port’s gross and net project funding of \$1,886,343 reflects that FEMA did not adjust Project 870 for the insurance proceeds of \$135,000 for its blimp hangar (see finding A). The hangar was the Port’s only insurable structure that the disaster impacted.



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Appendix A (continued)

We interviewed Port, Oregon, and FEMA officials; judgmentally selected and reviewed (generally based on dollar amounts) project costs and procurement transactions for the projects included in our scope; reviewed applicable Federal regulations and FEMA guidelines; and performed other procedures considered necessary to accomplish our audit objective. As part of our standard auditing procedures, we also notified the Recovery Accountability and Transparency Board of all contracts the Port awarded under the grant that we reviewed 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 date of this report, 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 perform a detailed assessment of the County's internal controls applicable to its grant activities because it was not necessary to accomplish our audit objective.

We conducted this performance audit between September 2013 and July 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.



Appendix B

Potential Monetary Benefits

Table 4: Summary of Potential Monetary Benefits

Type of Potential Monetary Benefit	Total	Federal Share
Questioned Costs – Ineligible	\$248,851	\$186,638
Questioned Costs – Unsupported	0	0
Funds Put to Better Use	88,284	66,213
Totals	\$337,135	\$252,851

Source: FEMA and Office of Inspector General Analysis.



Appendix C

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