

DIAMONDHEAD WATER AND SEWER DISTRICT
SPECIAL MEETING MINUTES
June 20, 2018 – 6:00pm (Central Time)
City Hall, Diamondhead, MS 39525

1. Call to order.

PRESENT: Chairman David Boan, Vice-Chairman John Kirschenbaum, Secretary/Treasurer Kenny Edmonds, and Commissioner Ben Taylor.
ABSENT: Commissioner Robert Redd.

2. Approve Agenda.

Motion by Commissioner Edmonds, second by Commissioner Taylor to approve the agenda. Motion carried unanimously.

3. Miscellaneous Items.

3.1. Motion by Commissioner Kirschenbaum, second by Commissioner Edmonds to approve the Diamondhead Water and Sewer District official response to the Office of Inspector General Report 18-63 dated May 4, 2018. AYE: Kirschenbaum, Edmonds, Boan, and Taylor. NAY: None. Motion carried unanimously. (Attachment A).

3.2. Motion by Commissioner Kirschenbaum, second by Commissioner Edmonds to authorize Commissioner David Boan, Commissioner Ben Taylor, Business/Office Manager John Cumberland, and Robyn Reiter to observe operations at an existing Advanced Metering Infrastructure Radio Read System Facility at the Spanish Fort Water System in Spanish Fort, Alabama on June 22, 2018. Motion carried unanimously.

4. Adjournment at 6:13pm.

Motion by Commissioner Kirschenbaum, second by Commissioner Taylor. Motion carried unanimously.

The next meeting of the Board of Commissioners is scheduled for June 28, 2018 at 6:00 p.m. at Diamondhead City Hall, 5000 Diamondhead Circle, Diamondhead, MS.


Chairman



6/28/2018
Date



Water Is Life

June 22, 2018

Ms. Gracia B. Szczech
Regional Administrator
U.S. Department of Homeland Security
Federal Emergency Management Agency
Region IV
3003 Chamblee Tucker Road
Atlanta, Georgia 30341-4112

Attn: Terry Quarles
Recovery Division Director

C/O: Stephen C. McCraney, Deputy Director
Mississippi Emergency Management Agency
P.O. Box 5644
Pearl, Mississippi 39288-5644

**Re: RESPONSE TO OIG-18-63 (May 4, 2018)
FEMA-1604-DR-MS-DIAMONDHEAD WATER & SEWER DISTRICT**

Dear Ms. Szczech and Mr. Quarles:

This correspondence is intended to serve as the official response of the Diamondhead Water & Sewer District, (the "District"), to the Department of Homeland Security – Office of Inspector General Report 18-63 dated May 4, 2018. The District strongly disagrees with the findings and recommendations contained within OIG 18-63. The District respectfully requests that FEMA consider the comments provided below prior to making any determination that would serve to de-obligate funds awarded to the District.

Recommendation 1: Provide better oversight of Mississippi to ensure it performs its grantee responsibilities required by 44 CFR 13.37(a)(2) and CFR 13.40(a) (finding A).

The District is of the opinion that the oversight provided by federal and state agencies was invaluable to the successful completion of the project.

Recommendation 2: Direct Mississippi to provide additional technical assistance and monitoring to the District to correct the deficiencies we identified in this report and to ensure compliance with grant requirements (finding A).

See Response to Recommendation 1.

Recommendation 3: Disallow \$18,896,508 of ineligible replacement costs, unless FEMA decides to grant an exception for all or part of the costs as 44 CFR 13.6(c) allows (finding B).

The Diamondhead Water & Sewer District disagrees with this finding.

The District entered into a Settlement Agreement on November 19, 2010 with the Federal Emergency Management Agency and the Mississippi Emergency Management Agency in order to resolve a pending arbitration proceeding that was then pending before the Civilian Board of Contract Appeals, CBCA-2135-FEMA, whereby FEMA agreed to fund the cost to replace and elevate the wastewater treatment facility in an amount not to exceed Thirty-Six Million Four Hundred Sixty-Six Thousand Dollars (\$36,466,000), inclusive of engineering and architectural fees, project management costs, and demolition costs. The Settlement Agreement specifically stated that the aforementioned \$36,466,000 could be used to relocate the wastewater treatment plant to a location chosen by the District. As a result of the Settlement Agreement, the parties entered into a Joint Stipulation to Dismiss with Prejudice on January 5, 2011. Copies of said Settlement Agreement and Joint Stipulation to Dismiss are attached hereto as Exhibits "3A" and "3B". There was no appeal by any party of the Settlement Agreement or Joint Stipulation to Dismiss. As a result of the Settlement Agreement, the District (with MEMA oversight) constructed a new wastewater treatment facility and demolished the pre-Katrina facility.

Section 705(c) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act states that a local government "shall not be liable for reimbursement or any other penalty for any payment made under this Act if – (1) the payment was authorized by an approved agreement specifying the costs; (2) the costs were reasonable; and (3) the purpose of the grant was accomplished." The District has complied with all three criteria of Section 705(c): (1) all payments were made under the Act as authorized by an approved agreement specifying the costs, *see* Settlement Agreement attached; (2) the costs were reasonable; and (3) the purpose of the grant was accomplished.

Without waiving any of the rights and guarantees provided to the District by virtue of the Settlement Agreement, the District would also respectfully state the following with regard to the replacement and relocation of the facility rather than repair thereof at the pre-Katrina site:

1. Soil conditions, *i.e.* sand, at the pre-Katrina site did not support either repair or replacement. Storm surges caused soil liquefaction resulting in the horizontal and vertical movement of the oxidation ditch basins. Said movement caused extensive cracking in the basins. Future storms at the site would encounter the same issues; therefore, it was deemed to be more cost efficient to relocate the facility.
2. The pre-Katrina site was located immediately adjacent to the Jourdan River and subject to frequent site flooding. In addition, the storm surge from Katrina completely engulfed the facility at its then existing site. FEMA's Supplemental Floodplain Review, as required by Executive Order 11988 and 44 CFR Part 9, analyzed the alternatives of repair, replacement and relocation and confirmed that relocation of the facility was the preferred alternative to repair or replacement at the existing site.
3. FEMA engineers required relocation of the facility after Hurricane Katrina.
4. As a critical facility necessary to promote the health, safety and welfare of the community, the wastewater treatment facility was rebuilt in the most feasible and cost effective manner that would pose the least amount of risk of damage in future storms.

OIG's basis for Recommendation 3 centered on the calculation of damages to the pre-Katrina facility. While respecting the purpose of the audit process to promote economy, efficiency, and effectiveness in the administration of programs and operations, the District takes the position that, for purposes of Recommendation 3, OIG's auditors were subjective in their approach to calculating damages, lacked the requisite expertise required to make a repair versus replacement calculation and were biased when it recommended FEMA "de-obligate \$18,896,508 of ineligible replacement costs". Rather, the District submits that preference should be given, in this instance, to the calculations formulated by the FEMA field engineers assigned to this project. Engineers assigned by FEMA to this project were experts in the field of water and sewer infrastructure. FEMA engineers had the requisite education, expertise and field experience needed when calculating whether to repair or replace the facility. Multiple hours were expended by FEMA, MEMA and District representatives calculating damages, cost effectiveness and feasibility when determining whether to repair or replace. Conversely, OIG's auditors were not professional engineers and did not have requisite expertise needed in the field of water and sewer infrastructure to make sound, well-reasoned opinions regarding the repair versus replacement calculation.

OIG's recommendation to de-obligate funding based upon a meritless, subjective standard should be denied. Actions taken by FEMA, MEMA and the District with regard to the repair and relocation of the wastewater treatment facility were proper and correct. Relocation was well reasoned, well supported, cost efficient, feasible and in the public interest.

Reversal of the effects of the terms of the Settlement Agreement, which the District has detrimentally relied upon, would have catastrophic results for the District and its ratepayers.

The District respectfully requests that FEMA decline to "de-obligate \$18,896,508 of ineligible replacement costs."

Recommendation 4: Disallow \$990,179 of ineligible contract costs that the District did not procure in accordance with Federal requirements, unless FEMA decides to grant an exception for all or part of the costs as 44 CFR 13.6 allows and determines that the costs are reasonable (finding C).

The Diamondhead Water & Sewer District disagrees with this finding.

OIG found that the District failed to (1) take all necessary affirmative steps to ensure the use of small and minority firms, women's business enterprises, and labor surplus area firms when possible; (2) conduct all procurement transactions in a manner providing full and open competition (subgrantees may use noncompetitive procurement under certain circumstances, one of which is when the public exigency or emergency will not permit a delay resulting from competitive solicitation); and (3) perform a cost or price analysis in connection with every procurement action, including contract modifications, to determine the reasonableness of the proposed contract price resulting in recommendation that \$990,179 be de-obligated. Prior to August 29, 2005, the District was in the process of seeking professional services for the redesign and modification of its then existing wastewater treatment facility. Exhibit "4A", attached hereto, includes advertisements, proofs of publication, mail out lists, evaluations and correspondence reflect the District's efforts to attract as many proposals as possible. In the aftermath of Katrina, which was at that time, the largest natural disaster our nation had encountered, the District, like virtually every community in south Mississippi and Louisiana, struggled to provide residents with basic life sustaining services. Potable water and

wastewater treatment services are requisite public services necessary for the health, safety and welfare of the public. Thus, in the face of an emergency the likes of which had never been encountered before, the District submits that it complied with the intent of the procurement requirements even if not done so in a step by step process palatable to OIG. At a time when the overwhelming majority of the District's customers were trying to repair/salvage both their personal and commercial properties, the District made a determination that any delays caused by restarting the competitive bidding process would not only possibly negatively impact the health, safety and welfare of the community, but also result in additional and unnecessary hardship on District customers. Given the District's prior procurement for professional services as identified in Exhibit "4A" combined with the dire, emergency living conditions that existed within the community in the aftermath of Hurricane Katrina, the District is of the position that the District sufficiently complied with procurement requirements so as to qualify with the requirements of 44 CFR §13.36(e)(1), 44 CFR §13.36(c)(1), 44 CFR §13.36(d)(4)(i)(B) and 44 CFR §13.36(f)(1). OIG's recommendation to de-obligate funds pursuant to this Recommendation 4 is without merit.

The District respectfully requests that FEMA decline to "disallow \$990,179 of ineligible contract costs" or, in the alternative, grant the Diamondhead Water and Sewer District an exception to Federal administrative grant requirements pursuant to the provisions of 44 CFR §13.6(c) for Recommendation 4.

Recommendation 5: Disallow \$332,138 as unsupported contract costs unless the District provides additional documentation that FEMA determines is sufficient to support the costs (finding D)."

The Diamondhead Water & Sewer District disagrees with this finding.

Prior to submitting this response, the District requested from OIG and/or MEMA a more detailed explanation as to why OIG was recommending the costs in Recommendation 5 be disallowed. Neither OIG nor MEMA provided the District with said explanation, but rather, provided the District with a "Breakdown of Unsupported Costs by Contractor" as identified in Exhibit "5A". No information contained with Exhibit "5A" supports OIG's position for de-obligation of funds. The District has voluntarily attempted to identify the expenditures questioned by OIG as unsupported contract costs. To date, the District has identified \$52,032.55 of those expenditures and is continuing to review its files. Copies of invoices relating to said expenditures are attached hereto as Exhibit "5B". Without supporting evidence to the contrary, OIG's recommendation to de-obligate funds pursuant to this Recommendation 5 is without merit.

The District respectfully requests that FEMA decline to "disallow \$332,138 as unsupported contract costs".

Recommendation 6: Disallow \$172,861 as ineligible duplicate benefits that insurance provided and review the District's insurance policies to ensure FEMA has applied all proceeds to reduce applicable projects (finding E).

The Diamondhead Water & Sewer District disagrees with this finding.

PW8067. The District received insurance proceeds totaling \$90,224.07 for PW8067. Closeout documentation reflects FEMA made an insurance reduction for PW8067 in the amount of \$58,574.44.

After review, the District recommends an additional reduction of \$31,649.63 to PW8067 which represents duplicate funds received. OIG recommends an additional reduction of \$35,411.00 to PW8067 which represents uncaptured Depreciation/Holdback Funds. The District remained unaware of its ability to apply for and possibly recapture any remaining insurance proceeds for PW8067 until presented with OIG's recommendation. The District is prepared to file additional claims on all replacement policies held by the District in an effort to recapture any outstanding proceeds due to the District.

PW6226. The District received no insurance proceeds for this project worksheet, thus, there is no dispute.

PW11240. This project remains open and closeout is yet to occur. The District is of the position that any recommendation regarding the de-obligation of any funds pursuant to the closure of this project worksheet is premature. In the interim, the District will expend all efforts to recapture any Depreciation/Holdback Funds remaining on insurance proceeds for PW11240. The District is of the position that any evaluation regarding de-obligation of funds occur only after such time as the closeout process is complete and all insurance proceeds received have been verified.

The District respectfully requests that FEMA restrict any de-obligation of funds to actual duplicate funds received by the District. The District remains committed to reimbursing any and all duplicate funds if and when received.

Recommendation 7: De-obligate \$21,045 of unused Federal funds and put those funds to better use (finding F).

The Diamondhead Water & Sewer District agrees with this finding.

PW 5029 obligated \$21,045 in Federal funds to repair the brick façade and canopy at the District's administrative building. On December 8, 2016, the Board of Commissioners of the Diamondhead Water & Sewer District approved a motion to withdraw PW 5029 and return all funding previously received. Check #53886 in the amount of \$21,150.09 was tendered by the District to FEMA on April 27, 2017. A copy of the cancelled check is attached hereto as Exhibit "7A". The District considers this matter to resolved and closed as of that date.

As evidenced by Exhibit "7A", Recommendation 7 was resolved prior to the date of OIG's draft report. At OIG's Exit Interview, District representatives requested removal of Recommendation 7 (finding F) due to the matter being concluded prior to the date of said report. As of the date of the final report being released by OIG on May 4, 2018, finding F remained as originally drafted without benefit of clarification to reflect that the District promptly corrected the oversight when brought to its attention and has returned all questioned funds. OIG's failure to remove the recommendation or, in the alternative, revise said recommendation to accurately reflect the prompt corrective action taken by the District to correct and remedy this issue, serves no useful purpose in these proceedings and negatively impacts the District.

The District respectfully requests that Recommendation 7 be removed from the Audit.

The above constitutes the District's comments regarding OIG 18-63. Should you have any additional questions or require further information please contact David Carden, General Manager of the Diamondhead Water & Sewer District, at (228) 255-5813.

DIAMONDHEAD WATER & SEWER DISTRICT



David F. Boan, Applicant Agent