



Issue Date	September 22, 2011
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Audit Report Number	2011-LA-1018
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TO: Carolyn O'Neil, Administrator, Southwest Office of Native American Programs, 9EPI

Tanya E. Schulze

FROM: Tanya E. Schulze, Regional Inspector General for Audit, Region IX, 9DGA

SUBJECT: The Tule River Indian Housing Authority, Porterville, CA, Did Not Administer the Procurement and Contracting of Its Recovery Act Native American Housing Block Grant in Accordance With HUD requirements

HIGHLIGHTS

What We Audited and Why

We audited the Tule River Indian Housing Authority in response to a complaint involving the Authority's alleged misuse and improper procurement of \$303,721 in Recovery and Reinvestment Act of 2009 Native American Housing Block Grant funding to be used for cabinet construction work on 38 of its housing units. Our overall objective was to determine whether the Authority followed procurement and contracting requirements and used its Recovery Act Native American Housing Block Grant funding in accordance with U.S. Department of Housing and Urban Development (HUD) requirements.

What We Found

The Authority did not follow procurement and contracting requirements and did not use its Recovery Act Native American Housing Block Grant funding in accordance with HUD requirements under 24 CFR (Code of Federal

Regulations) 85.36 (Procurement), 29 CFR Parts 3 and 5, and its own internal policies and procedures (see appendix C). The Authority also did not have sufficient policies, procedures, and controls in place to ensure that it complied with Federal procurement and contracting requirements, which led to improper cash disbursements and a lack of segregation of duties in its program. As a result, it used \$36,884 for ineligible expenditures and failed to obligate \$95,831 in Recovery Act Native American Housing Block Grant funds.

What We Recommend

We recommend that HUD require the Authority to reimburse its Recovery Act Native American Housing Block Grant \$36,884 from non-Federal funds for the ineligible overpayments made to the contractor for cabinet construction work. We also recommend that HUD recover the remaining unobligated Recovery Act grant funds of \$95,831 from the Authority for return to the U.S. Treasury. Further, we recommend that HUD require the Authority to establish and implement sufficient written procurement policies and procedures. In addition, we recommend that the Authority implement sufficient written internal control procedures for cash disbursements, including proper segregation of duties.

For each recommendation without a management decision, please respond and provide status reports in accordance with HUD Handbook 2000.06, REV-3. Please furnish us copies of any correspondence or directives issued because of the audit.

Auditee's Response

We provided a draft report to the Authority on August 24, 2011, and held an exit conference with Authority officials on August 29, 2011. The Authority provided written comments on September 6, 2011. It generally agreed with our report recommendations regarding implementation of policies and procedures but disagreed with our report recommendations related to repayment of Native American Housing Block Grant funds.

The complete text of the auditee's response, along with our evaluation of that response, can be found in appendix B of this report. The auditee also provided additional documentation related to the Native American Housing Block Grant in question. We did not include this in the report because it was too voluminous; however, it is available upon request.

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BACKGROUND AND OBJECTIVE

The American Recovery and Reinvestment Act

The American Recovery and Reinvestment Act of 2009 became Public Law 111-5 on February 17, 2009. The purpose of the Recovery Act is to (1) preserve and create jobs and promote economic recovery; (2) assist those most impacted by the recession; (3) provide investments needed to increase economic efficiency by spurring technological advances in science and health; (4) invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; and (5) stabilize State and local government budgets to minimize and avoid reductions in essential services and counterproductive State and local tax increases.

Native American Housing Block Grant Program

The Native American Housing Block Grant program (also known as the Indian Housing Block Grant program) is a formula grant that allows tribes or tribally designated housing entities to provide a range of affordable housing activities on a reservation or Indian area. These activities are identified and described in an Indian housing plan, which is prepared each year and submitted to the U.S. Department of Housing and Urban Development (HUD) for review and to ensure compliance with the Native American Housing Assistance and Self-Determination Act of 1996.

Tule River Indian Housing Authority

The Tule River Indian Housing Authority, a component of the Tule River Indian Tribe, was established to administer Mutual Help Homeownership Opportunity Programs for Low-Income Indian Families and the low-rent housing program funded by HUD. The primary purpose of the Authority is to provide safe, decent, sanitary, and affordable housing to low-income, elderly, and disabled families of the Tule River Indian Tribe.

The Authority receives HUD funding under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). Under the provisions of NAHASDA, the Authority was designated by the Tule River Indian Tribe as the tribal designated housing entity to receive and implement grants to provide housing assistance. The Authority received \$303,721 in Native American Housing Block Grant funds under the Recovery Act. Under the terms of its Native American Housing Block Grant with HUD, it was required to obligate all of its grant funds within 1 year. The Authority received its funding on April 23, 2009. Therefore, it was required to obligate all \$303,721 of its Recovery Act funds by April 23, 2010.

Audit Objective

Our overall objective was to determine whether the Authority procured and administered its Recovery Act Native Housing Block Grant in accordance with HUD requirements.

RESULTS OF AUDIT

Finding: The Authority Did Not Administer the Procurement and Contracting of Its Recovery Act Native American Housing Block Grant in Accordance With HUD Requirements

The Authority did not administer the procurement and contracting of its Recovery Act Native American Housing Block Grant in accordance with HUD requirements, thereby allowing improper payments to be made to its contractor. This condition occurred because the Authority did not have sufficient procurement personnel, policies, procedures, and controls in place to provide proper procurement and contract administration and it did not adequately plan for the use of its Recovery Act funds. As a result, the Authority used \$36,884 in grant funds for ineligible purposes and did not obligate \$95,831 in Recovery Act Native American Housing Block Grant funds.

The Authority's Request for Proposals Violated HUD Procurement Requirements

Contrary to 24 CFR (Code of Federal Regulations) 85.36, Procurement, the Authority did not follow procurement and contracting requirements and did not use its Recovery Act Native American Housing Block Grant funding in accordance with HUD requirements. We identified aspects of the Authority's procurement and contracting process for its Recovery Act Native American Housing Block Grant that did not meet the standards required by 24 CFR 85.36 (see appendix C). These deficiencies led to an insufficient request for proposals and the improper procurement of its cabinet construction contract. The specific procurement deficiencies included the following:

- The Authority did not conduct an independent cost or price analysis as required by 24 CFR 85.36(f)(1) (see appendix C) for its cabinet construction request for proposals, issued on April 10, 2010. Without conducting an independent cost or price analysis, the Authority did not have a method to determine whether the bids it received were reasonable. The request did not include a detailed, clear, or accurate description of the scope or technical requirements of work and materials to be used as required under 24 CFR 85.36(c)(3)(i)(ii) (see appendix C). The request consisted of a one-page document with a one-sentence scope of work stating that it was requesting proposals from qualified contractors for removing and replacing kitchen and bathroom cabinets and vanities, including sinks and faucet supply lines for 13 Low-Rent 1937 Housing act units and 25 Mutual Help 1937 Housing Act units.

- The request for proposals and contract documentation failed to include bonding requirements as a condition for prospective bidders as required under 24 CFR 85.36(h)(1),(2), and (3) (see appendix C). These bonds are required to ensure that bidders will honor their bids, complete work as contracted, and pay their subcontractors and suppliers. The Authority's failure to include bonding requirements subjected it to additional risks
- The request for proposals was not publicly advertised as required under 24 CFR 85.36(d)(2)(ii) (see appendix C). The procurement process also lacked full and open competition as required by 24 CFR 85.36(c). Since the procurement was not publically advertised, prospective contractors were informed of the request by the Authority's tenant relations officer. The Authority received sealed bids from four contractors within the April 15, 2010, due date. Two prospective contractors (E&K Maintenance and Pacific Coast Cabinets) met with the tenant relations officer at the Authority on separate occasions, reviewed the unit floor plans, and discussed the specific work to be performed before submitting bids. The other two bidders (Garza's Custom Cabinets and Welker Interiors, Inc.) did not obtain additional information from the Authority before bidding and did not review floor plans of the housing units. As a result, two contractors (Welker Interiors, Inc., and Garza's Custom Cabinets) were bidding on the brief scope of work in the request for proposals, while the other two contractors (E&K Maintenance and Pacific Coast Cabinets) were bidding on the scope of work in the request plus the information obtained during its meetings with the Authority's tenant relations officer. As a result, the procurement lacked full and open competition, since bidders were inconsistently informed of all factors used to evaluate bids.
- The Authority did not document its reasoning for rejecting losing bidders, including rejection of the lowest bidder as required under 24 CFR 85.36(d)(2)(ii)(E) (see appendix C). On April 20, 2010, the Authority opened all four sealed bids, which ranged from \$119,000 to \$540,000. Two of the four bids were approximately half the amount of the other two bids. The Authority disqualified the lowest bidder, Garza's Custom Cabinets. It did not document the reason for the disqualification, but we later learned that it was due to Garza's lack of a general contractor's license. The Authority awarded the contract to the second lowest bidder, Welker Interiors, Inc., in the amount of \$261,000.
- The Authority did not issue a new request for proposals when change orders increased the construction contract amount beyond the simplified acquisition threshold under 24 CFR 85.36(d)(1) and (f)(1) (see appendix C). On April 22, 2010 (1 day before the grant obligation deadline), the Authority contracted with Welker Interiors, Inc., for \$261,000 to install new cabinets in 38 housing units. Since the scope of work lacked sufficient detail, Welker and the Authority discussed the specific work needed for construction. Just 4 days after the original contract (April 26, 2010), the Authority entered into a change

- order totaling an additional \$216,200 for labor and materials for cabinets, vanity finish, and countertops. A second change order was executed on May 5, 2010. This change order was for labor and materials for linen, laundry, and pantry cabinets. The change orders doubled the amount of the original contract and increased it by \$280,157. As a result, the total contract amount with the change orders increased to \$541,157. It was also well in excess of the Authority's \$303,721 grant. Further, the change orders significantly exceeded the simplified procurement acquisition threshold of \$100,000, and a new procurement should have been conducted.
- The request for proposals failed to include contract provisions required for all Federal contracts to reduce the legal and financial risk to the Authority under 24 CFR 85.36(i)(1-13) (see appendix C). Also, the contract did not contain administrative, contractual, or legal remedies for contract termination. The Authority did include provisions requiring the contractor to possess a valid contractor's license, follow Davis-Bacon Act wage rates, and specify the number of hours required to complete the contract. However, it did not obtain weekly certified payroll reports to verify that the contractor paid Davis-Bacon wage rates. Therefore, there was no assurance that the contractor paid Davis-Bacon wage rates.

We attribute the Authority's failure to provide a sufficient request for proposals, leading to large change orders, to insufficient written procurement and contract policies and procedures under 24 CFR 85.36.

The Authority Made Improper Payments to the Contractor

The Authority made improper progress payments for the cabinet construction work in violation of HUD regulations and the Authority's own policies and procedures. The Authority's policy specified that an inspection of the work be conducted and documented in an inspection form that showed the work completed and the amount to be paid to the contractor (see appendix C). The executive director was required to approve the inspection form before payment to the contractor. The Authority did not perform these steps when it made its payments to Welker. As a result, it made payments without sufficiently reviewing and monitoring the contractor's work.

The Authority made a total of two payments under the terms of its compensation contract with Welker. The compensation contract required that the Authority make an initial progress payment of 25 percent of the contract amount (\$119,300) before beginning construction work. The contract further required progress payments throughout the duration of the contract. Although the contract specified that an 8 percent retention allowance would be withheld from each progress payment, the Authority did not withhold a retention amount from its payments to the contractor.

The Authority made the two payments to Welker totaling \$207,890 out of the \$541,157 contract. This amount represents 38.4 percent ($\$207,890 / \$541,157$) of the total contract amount. Thus, the prorated amount to be paid for 12 of the 38 units would be \$171,006 (31.6 percent x \$541,157). Since the Authority paid the contractor \$207,890, the amount overpaid by the Authority totaled \$36,884 ($\$207,890 - \$171,006$) in ineligible costs (see table below).

Description of progress payments to Welker	Percentage of completion (per invoice)	Total percentage of contract dollar amount	Amount
Initial payment on May 18, 2010, of 25% contract, plus approved change orders	0%	25%	\$119,300
July billing paid July 29, 2010, for 21% completion of contract	21%	38%	88,590
Total payments on contract for 12 units completed	21%	38%	\$207,890
Less: actual cost for 12 units completed			(171,006)
Total overpayment			\$ 36,884

On November 5, 2010, the Authority terminated its contract with Welker due to the improper progress payments, low number of units completed, and insufficient grant funds remaining to complete the contract.

Since the Authority terminated its contract with Welker, \$95,831 ($\$303,721 - 207,890$) of its Recovery Act Native American Housing Block Grant was never expended. Further, since the Authority's grant funds are no longer obligated to this contract, all \$95,831 in unobligated and unexpended funds must be returned to the U.S. Treasury.

We attribute the improper payments made to the contractor to a lack of internal controls for cash disbursements and inadequate policies and procedures regarding the segregation of duties. The Authority also did not sufficiently review and monitor payments submitted by the bookkeeper for approval.

During our review of Authority payments to the contractor, we determined that the Authority lacked sufficient segregation of accounting and banking functions. The bookkeeper made accounting entries, prepared checks, mailed

the checks, and prepared monthly bank reconciliations. Although the Authority is small, it had an adequate number of employees to segregate its accounting and banking functions. The lack of segregation of duties was a significant internal control weakness.

The Authority's Procurement Policies and Procedures Were Not in Accordance With Procurement Requirements

The Authority's procurement policies and procedures were not in accordance with HUD's procurement requirements under 24 CFR 85.36. We identified deficiencies in the Authority's procurement policy, which did not include several elements that are specifically required by 24 CFR 85.36 for proper procurement of construction contracts (see appendix C). For example, the Authority's policy lacked language requiring a clear and accurate description of the material, product, or service to be procured. The policy also did not include a requirement that any or all bids be rejected if there was a sound documented reason. The policy also lacked requirements for contractor bonding and public advertising of procurements. The Authority's lack of proper procurement policies and procedures significantly contributed to its difficulties with the procurement and administration of its cabinet construction contract.

Conclusion

The Authority did not procure and administer its Recovery Act Native American Housing Block Grant funding in accordance with HUD requirements. It also made improper payments to its cabinet construction contractor. We attribute these deficiencies to the Authority's lack of sufficient personnel, policies, procedures, and controls relating to procurement and contract administration and its failure to adequately plan for the use of its Recovery Act funds. As a result, the Authority used Recovery Act Native American Housing Block Grant funds of \$36,884 for ineligible costs and did not obligate \$95,831 in Recovery Act Native American Housing Block Grant funds.

Recommendations

We recommend that the Administrator of the Southwest Office of Native American Programs require the Authority to

- 1A Recover the remaining Recovery Act Native American Housing Block Grant funds of \$95,831 (\$303,721 - \$207,890) for return to the U.S. Treasury in accordance with the Recovery Act, as amended for the sole purpose of deficit reduction (classified as ineligible costs).
- 1B Reimburse the Recovery Act Native American Housing Block Grant project fund account \$36,884 for ineligible expenses from non-Federal funds.
- 1C. Establish and implement policies and procedures to ensure that all procurements include sufficient instructions and descriptions that accurately describes the scope of work and materials to be used in accordance with 24 CFR 85.36.
- 1D. Implement sufficient written procurement policies and procedures in accordance with 24 CFR 85.36, including those relating to procurement standards, competition, procurement methods, contract cost and price, and bonding requirements.
- 1E. Ensure compliance with contractor wage requirements in accordance with NAHASDA Section 104(b) and Office of Native American Programs Guidance 2003-04 through one of the following methods:
 - 1) Implement sufficient written policies and procedures to ensure that it obtains and reviews weekly Davis-Bacon certified payrolls for its construction contractors.
 - 2) Provide evidence that it has a) adopted Tribally Determined Wage Standards in accordance with requirements and b) designed sufficient monitoring and enforcement mechanisms to ensure compliance with its adopted wage standards.
- 1F. Implement sufficient written cash disbursement procedures, thereby allowing greater internal control and sufficient segregation of duties.

SCOPE AND METHODOLOGY

We performed our onsite audit work at the Authority, located in Porterville, CA, from March through August 2011. The audit generally covered the period January 1, 2009, to December 31, 2010. We expanded our audit period as needed to accomplish our objective.

To accomplish our objective, we

- Conducted interviews with pertinent personnel at the Authority, including supervisors, staff employees, accounting staff, contractors, commissioners, and former employees;
- Reviewed the Recovery Act Native American Housing Block Grant contract between the Authority and HUD;
- Reviewed the Authority's procurement policies and procedures;
- Reviewed the Authority's Recovery Act Native American Housing Block Grant request for proposals;
- Reviewed applicable cabinet construction contract documents, including change orders, billings, payments, and subcontractor documentation;
- Conducted onsite reviews of cabinet construction in tenant homes;
- Reviewed the Authority's accounting policies and procedures;
- Reviewed the Authority's internal control policies and procedures, including procedures related to segregation of duties;
- Reviewed all Recovery Act grant funds drawn down by the Authority through the Line of Credit Control System for payment of the construction contract, which totaled \$263,398¹ of the \$303,721 in Recovery Act grant funds awarded to the Authority; The computer processed data was used for background purposes only; therefore, we did not assess the reliability of the data.
- Reviewed the Authority's organizational charts;
- Reviewed the Authority's audited financial statements for fiscal years 2009 and 2010; and
- Reviewed applicable rules and regulations, including Recovery Act regulations, NAHASDA, the Code of Federal Regulations, and Indian housing guidance.

We conducted the audit in accordance with 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 on our audit objective. We believe that evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

¹ \$263,398 was drawn down through the Line of Credit Control System. However, \$55,508 was returned through the system. Therefore, the Authority used \$207,890 in grant funds (\$263,398 - \$55,508).

INTERNAL CONTROLS

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

We determined that the following internal controls were relevant to our audit objective:

- Program operations - Policies and procedures that management has implemented to reasonably ensure that procurement activities are conducted in accordance with applicable laws and regulations.
- Reliability of financial reporting - Policies and procedures implemented to reasonably ensure that reliable data are obtained, monitored, and reported to adequately support procurement and contracting activities.
- Compliance with laws and regulations - Policies and procedures to ensure that payments made to vendors and procurement activities comply with applicable laws and regulations.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

Significant Deficiencies

Based on our review, we believe that the following items are significant deficiencies:

- The Authority did not have sufficient procurement policies and procedures in place to ensure compliance with procurement requirements for Recovery Act Native American Housing Block Grant funds (finding).
- The Authority did not have sufficient internal control procedures for cash disbursements, including inadequate segregation of duties (finding).

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS

Recommendation number	Ineligible <u>1/</u>
1A	\$95,831
1B	\$36,884
Total	\$132,715



1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or Federal, State, or local policies or regulations. The costs represent unexpended funds that must be returned to the U.S. Treasury (recommendation 1A) and expended funds that were used for ineligible purposes and must be reimbursed to the program (recommendation 1B).

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

	<div data-bbox="483 583 587 705"></div> <div data-bbox="625 581 1240 636"><h2>Tule River Indian Housing Authority</h2></div> <div data-bbox="740 634 1117 701"><p>Tule River Indian Reservation POST OFFICE BOX 748 - PORTERVILLE, CALIFORNIA 93258 (559) 784-3155 FAX (559) 784-0401</p></div> <div data-bbox="1268 583 1372 705"></div>	
	<p>September 2, 2011</p> <p><u>VIA ELECTRONIC MAIL & CERTIFIED RETURN RECEIPT REQUESTED</u></p> <p>Tanya E. Schulze, Regional Inspector General for Audit U.S. Department of Housing and Urban Development Office of Inspector General, Region IX 611 West Sixth Street, Suite 1160 Los Angeles, CA 90017-3101</p> <p>Re: Tule River Indian Housing Authority Draft Audit Report—ARN 2011-LA-100X</p> <p>Dear Ms. Schulze:</p> <p>While we do not contest the findings in the Draft Audit Report (Report), we feel it best to respond to ensure that steps taken by the Tule River Indian Housing Authority (TRIHA) after its discovery of the problem are properly reflected in the final report. Specifically, TRIHA has completely revamped its procurement processes and has developed and instituted new contract documents that fully comply with requirements of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) and its implementing regulations, 24 C.F.R. Part 100 and the HUD procurement regulations found at 24 C.F.R. §85.36. Additionally, TRIHA is in the process of adopting a new financial management policy and accounting and cash handling procedures. While the financial controls were presented to TRIHA previously, they have not yet been adopted as they are being modified to specifically address the needs and practices of TRIHA. We respectfully request that the steps taken by TRIHA in its attempts to resolve the issues subject to the Report be reflected in the final audit report.</p> <p>We also wish to point out that the issues related to the Welker Cabinetry contract were brought to the attention of to the Southwest Office of Native American Programs (SWONAP) shortly after discovery by the TRIHA Board of Commissioners (Board). Then, with the encouragement of SWONAP, TRIHA reported its findings to your office in writing. <u>We do not believe that the issues were brought to the attention of the Office of Inspector General (OIG) by a Hot Line tip.</u> If they were brought by an anonymous caller, we feel that such call could not have been prior to presentation of the issues to SWONAP by the Board, as that report came immediately after discovery of the issues by the Board. We believe that the majority of findings expressed in the Report were provided to the OIG by TRIHA at the request of the Board and, therefore, are not unexpected. We also have no real objection to the operational recommendations made in the Outline, as TRIHA already has instituted steps that meet the proposed corrective actions.</p> <p>To ensure that the final report acknowledges the corrective actions already taken by TRIHA to address the issues, and to emphasis that they were undertaken prior to commencement of the OIG investigation, please find enclosed the following documents addressing the issues:</p>	
Comment 1		
Comment 2		
Comment 3		

1. The TRIHA Procurement, Inventory, Acquisition, Disposition, and Housing Standards Policy, Adopted by Resolution No. 10-07-10 on October 7, 2010 (with provisions addressing the findings highlighted);
2. TRIHA Short Form Agreement for Construction;
3. TRIHA General Conditions of the Contract for Construction;
4. Sample Short Form Request for Proposal (for publication); and
5. Sample Long Form Request for Proposal (to be provided to interested proposers).

These documents along with practices instituted under the Procurement Policy ensure that what happened with the Welker cabinetry contract will not happen again. In an attempt to address the financial issues apparent and raised in the Outline, the Board has taken under advisement and review a proposed Financial Management Policy and a proposed set of Accounting and Cash Handling Procedures that will be adopted once it they are conformed to staffing patterns of TRIHA, copies of which also are enclosed.

Specifically, the policies and contracts adopted and implemented after the discovery of the problems with the Welker cabinetry contract address the proposed findings as follows:

1. **FINDING:** *Contrary to 24 C.F.R. (Code of Federal Regulations) 85.36, Procurement, the Authority did not follow procurement and contracting requirements and did not use its Recovery Act Native American Housing Block Grant funding in accordance with HUD requirements.*

RESPONSE: When TRIHA discovered the problems with the contract discussed herein, the Board immediately stopped all continuing payments to the contractor, secured the release of the responsible individual, [REDACTED], and undertook a review of policies and procedures that culminated in adoption of several new policies, including the TRIHA Procurement, Inventory, Acquisition, Disposition, and Housing Standards Policy, Adopted by Resolution No. 10-07-10 on October 7, 2010. Such policy is fully NAHASDA compliant and complies with the conditions addressed at 24 C.F.R. § 85.36. In addition, TRIHA has implemented the use of new contract documents that include all mandatory terms required by § 85.36. In the final audit report, this finding should be modified to show that TRIHA has taken the necessary steps to ensure that procurement occurs in compliance with law, regulations, and policy.

2. **FINDING:** *The Authority did not conduct an independent cost or price analysis as required by 24 C.F.R. 85.36(f)(1) (see appendix C) for its cabinet construction request for proposals, issued on April 10, 2010.*

RESPONSE: TRIHA acknowledges that the former Executive Director failed to conduct an independent cost or price analysis as required by HUD procurement regulations. TRIHA must note that the procurement policy in effect at that time did not include such a requirement, but that the current Procurement Policy does require the analysis. See TRIHA Procurement,

Comment 1

Comment 4

Name has been redacted for privacy reason

Inventory, Acquisition, Disposition, and Housing Standards Policy at § III(F). In the final audit report, this finding should be modified to show that TRIHA has taken the necessary steps to ensure that procurement occurs in compliance with law, regulations, and policy.

3. **FINDING:** *The request for proposals failed to include bonding requirements as a condition for prospective bidders as required under 24 C.F.R. 85.36(h)(1)(2) (see appendix C).*

RESPONSE: TRIHA acknowledges that neither the request for proposals (RFP) nor the contract documents required bonding, and further acknowledges that HUD regulations requires bonds or adequate alternative assurances for all construction projects in excess of the small purchase threshold. However, TRIHA disputes the OIG's statement that, as a condition of 24 C.F.R. § 85.36(h)(1) & (2), the RFP must include bonding requirements. Section 85.36(h)(1) & (2) states:

Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

TRIHA understands the requirement of bonding, and, to that effect has included it in its Contract Documents. See TRIHA General Conditions of the Contract For Construction, § 11.4 and TRIHA Procurement, Inventory, Acquisition, Disposition, and Housing Standards Policy, § III(A)(7) (both of which are provided to prospective contractors prior to close of procurement. In the final audit report, this finding should be modified to show that TRIHA has taken the necessary steps to ensure that procurement occurs in compliance with law, regulations, and policy.

4. **FINDING:** *The request for proposals was not publicly advertised as required under 24 C.F.R. 85.36(d)(2)(ii) (see appendix C). The procurement process also lacked full and open competition as required by 24 C.F.R. 85.36(c).*

RESPONSE: TRIHA acknowledges that the RFP failed in regard to public advertisement and full and open competition and that its procedures and policies at that time did not provide adequate guidance to contracting officers. However, since discovery of the problems, TRIHA has

Comment 5

Comment 1

Comment 1

adopted new policies and contract documents that address the problem. Section III(D) of the TRIHA Procurement, Inventory, Acquisition, Disposition, and Housing Standards Policy addresses the need for public advertising if the contract is expected to exceed the small purchase threshold. Section III(D)(1) discusses the only circumstances when full and open competition is not required in full compliance with 24 C.F.R. § 85.36(c). See also, Sample short and long form Requests for Proposals. In the final audit report, this finding should be modified to show that TRIHA has taken the necessary steps to ensure that procurement occurs in compliance with law, regulations, and policy.

5. **FINDING:** *The Authority did not document its reasoning for rejecting losing bidders, including rejection of the lowest bidder as required under 24 C.F.R. 85.36(d)(2)(ii)(E) (see appendix C).*

RESPONSE: TRIHA concurs with the finding that it did not document its reasoning for rejecting losing bidders. After discovery of the problems with the contract under review, TRIHA adopted the TRIHA Procurement, Inventory, Acquisition, Disposition, and Housing Standards Policy, which states at § III(A)(8)(d). In the final audit report, this finding should be modified to show that TRIHA has taken the necessary steps to ensure that procurement occurs in compliance with law, regulations, and policy.

6. **FINDING:** *The Authority did not issue a new request for proposals when change orders increased the construction contract amount beyond the simplified acquisition threshold under 24 C.F.R. 85.36(d)(1) and (f)(1) (see appendix C).*

RESPONSE: The nature of the first and second change order discussed in the Report brought this problem to the attention of the Board. A change order that exceeded the simplified procurement threshold and resulted in a doubling of the contract price seemed unreasonable. In response to the problem, the Board adopted the TRIHA Procurement, Inventory, Acquisition, Disposition, and Housing Standards Policy, which policy describes when a change order would be allowed and when the requested change would require a new procurement. See Section III(G). In the final audit report, this finding should be modified to show that TRIHA has taken the necessary steps to ensure that procurement occurs in compliance with law, regulations, and policy.

Comment 1

7. **FINDING:** *The request for proposals failed to include contract provisions required for all Federal contracts to reduce the legal and financial risks to the Authority under 24 C.F.R. 85.36(i)(1-13) (see appendix C). Also, the contract did not contain administrative, contractual, or legal remedies for contract termination.*

RESPONSE: TRIHA admits that the required contract terms contained in 24 C.F.R. § 85.36(i) were missing from the contract reviewed by OIG. However, since the execution of the contract and discovery of the problems with the procurement, TRIHA has adopted provisions that require inclusion of the HUD required contract terms (See TRIHA Procurement, Inventory, Acquisition, Disposition, and Housing Standards Policy, § VIII(A)) and has included such requirement in its General Conditions of the Contract for Construction (See Article 13, §§ 13.8-20). In the final

Comment 1

audit report, this finding should be modified to show that TRIHA has taken the necessary steps to ensure that procurement occurs in compliance with law, regulations, and policy.

Comment 6

8. **FINDING:** *The Authority made improper progress payments for the cabinet construction work in violation of HUD regulations and the Authority's own policies and procedures.*

RESPONSE: TRIHA concedes that it allowed improper progress payments for work under the contract. After discovery of the problem the Board adopted new policies and procedures to ensure payment is made in compliance therewith. Payment restrictions are found at Article 9 of the TRIHA General Conditions of the Contract for Construction. In the final audit report, this finding should be modified to show that TRIHA has taken the necessary steps to ensure that procurement occurs in compliance with law, regulations, and policy.

9. **FINDING:** *The Authority Made Improper Payments to the Contractor. We attribute the improper payments made to the contractor to a lack of internal controls for cash disbursements and inadequate policies and procedures regarding the segregation of duties. The Authority also did not sufficiently review and monitor payments submitted by the bookkeeper for approval.*

Comment 7

RESPONSE: TRIHA recognizes that there is a general lack of accounting and cash handling procedures. To correct that deficiency, TRIHA has under review a proposed Financial Management Policy and proposed Accounting and Cash Handling Procedures. The final audit report should note the work in progress to correct this finding.

10. **FINDING:** *The Authority lacked sufficient segregation of accounting and banking functions. The bookkeeper made accounting entries, prepared checks, mailed the checks, and prepared monthly bank reconciliations.*

Comment 7

RESPONSE: TRIHA recognizes that there may not be sufficient segregation of accounting and banking functions. To correct that deficiency, TRIHA has under review a proposed Financial Management Policy and proposed Accounting and Cash Handling Procedures. The final audit report should note the work in progress to correct this finding.

11. **FINDING:** *The Authority's procurement policies and procedures were not in accordance with HUD's procurement requirements under 24 C.F.R. 85.36. We identified deficiencies in the Authority's procurement policy, which did not include several elements that are specifically required by 24 C.F.R. 85.36 for proper procurement of construction contracts (see appendix C).*

Comment 1

RESPONSE: As stated above, TRIHA has taken all necessary steps to ensure that its procurement policies and procedures are in compliance with 24 C.F.R. § 35.86 and the NAHASDA implementing regulations related to procurement. In the final audit report, this finding should be modified to show that TRIHA has taken the necessary steps to ensure that procurement occurs in compliance with law, regulations, and policy.

OIG Recommendations.

Comment 8

- IA. Recommendations.** *Recover the remaining Recovery Act Native American Housing Block Grant funds of \$95,831 (\$303,721 - \$207,890) for return to the U.S. Treasury in accordance with the Recovery Act, as amended for the sole purpose of deficit reduction. (classified as ineligible costs).*

RESPONSE: The reason such funds were not obligated when required is because the Board recognized issues with procurement and contracting and stopped all such activities until such time that the issues were corrected. TRIHA should be allowed to use such funding to complete as much of the work as possible.

Comment 9

- IB. Recommendations.** *Reimburse the Recovery Act Native American Housing Block Grant project fund account \$36,884 for ineligible expenses from non-Federal funds.*

RESPONSE: Because TRIHA initially discovered the problems with the Welker cabinetry contract prior to it becoming an audit or monitoring review finding and self-reported the problems to both SWONAP and the OIG, it should not be penalized for actions taken by a former employee without full knowledge of the Board. This recommendation should be eliminated.

Comment 10

- IC. Recommendations.** *Establish and implement policies and procedures to ensure that all procurements include sufficient instructions and descriptions that accurately describe the scope of work and materials to be used in accordance with 24 C.F.R. 85.36.*

RESPONSE: As stated above, TRIHA has adopted procurement policies and procedures and contract documents that are fully compliant with the requirements of 24 C.F.R. § 85.36. This recommendation should be deemed fully met.

Comment 1

- ID. Recommendations.** *Implement sufficient written procurement policies and procedures in accordance with 24 C.F.R. 85.36, including those relating to procurement standards, competition, procurement methods, contract cost and price, and bonding requirements.*

RESPONSE: As stated above, TRIHA has adopted procurement policies and procedures that are fully compliant with the requirements of 24 C.F.R. § 85.36. This recommendation should be deemed fully met.

Comment 11

- IE. Recommendations.** *Implement sufficient written policies and procedures to ensure that it obtains and reviews weekly Davis-Bacon certified payrolls for its construction contractors.*

RESPONSE: The Tule River Indian Tribe recently has adopted tribally determined wage standards as authorized by § 104(b)(3), which statement provides that, in relation to projects funded through the Indian Housing Block Grant, the Davis-Bacon Act, 40 U.S.C. § 276a *et seq.*, does not apply if the tribe has adopted one or more laws or regulations that requires the payment of not less than prevailing wages, as determined by the Indian tribe. This provision must be deleted.

- IF. Recommendations.** *Implement sufficient written cash disbursement procedures, thereby allowing greater internal control and sufficient segregation of duties.*

Comment 7

RESPONSE: TRIHA currently is reviewing proposed Financial Management Policy and Accounting and Cash Handling Procedures, copies of which are attached. The Recommendation should be modified to direct TRIHA to take all reasonable steps to ensure adoption of such policies and procedures as soon as reasonably possible, recognizing that the documents must be adjusted to meet the current staffing patterns of TRIHA.

IG. Recommendations. *HUD's Associate Counsel for Program Enforcement Pursue civil money penalties and administrative sanctions, as appropriate, against the Authority, its appropriate personnel, or both for improperly charging its Recovery Act program for construction work in advance of completion.*

Comment 12

RESPONSE: TRIHA has no objection to HUD's Associate Counsel for Program Enforcement pursuing civil money penalties as may be appropriate, so long as such actions are limited to the responsible party, the former Executive Director Lorita Silva. During her tenure as Executive Director, Ms. Silva purposefully ensured that the Board was not advised of the procurement or contracting practices of the TRIHA administration and directed employees working with the contracts to do as she directed. It was not until one Commissioner objected to a payment did the practices become known. It must be acknowledged by OIG and all others concerned that, upon discovery of the problems, the TRIHA Board immediately to all steps necessary to correct the problems, including but not limited to obtaining the resignation of the Executive Director, stopping all pending payments, and terminating the contract for cabinetry. Except for the former Executive Director, no action should be taken against any Commissioner or employee.

Comment 13

We hope that these documents and this information will help the OIG to prepare a final report that not only properly states the facts behind the investigation and the findings of concern, but also acknowledges the work that TRIHA has done to correct the issues. If we can provide any more assistance, please let me know.

Cordially,

TULE RIVER INDIAN HOUSING AUTHORITY

By: 

Debra Hopkins, Executive Director-Interim

cc: TRIHA Board of Commissioners
Timothy J. Humphrey, Sr., Stetson Law Offices, P.C.
Peter Grace, Special Assistant to the Secretary, Office of the Secretary
Catherine Neale, Office of Strategic Planning and Management,
Christopher K. Murphy, Deputy Chief of Staff for Operations and Strategy,
Office of the Secretary
Carolyn O'Neil, Administrator, SWONAP
Robert Holden, Supervisor of Grant Management, SWONAP
John Fernandes, Supervisor of Grants Evaluation, SWONAP
Dane Narode, Associate General Counsel for Program Enforcement

OIG Evaluation of Auditee Comments

- Comment 1** We acknowledge that the board took action when it determined that there were problems with the cabinet construction contract. We also acknowledge that the Authority has taken steps to address the issues stated in the report by revising its existing written procurement and contracting policies and procedures to be in accordance with HUD requirements. However, these additions to the procurement and contracting policies and procedures should be approved by the Board of Commissioners through the board resolution process. Furthermore, the Authority can work with HUD during the audit resolution phase to ensure that the Authority's policies and procedures are compliant with NAHASDA and 24 CFR 85.36 requirements.
- Comment 2** We acknowledge the Authority's position that the issues related to the cabinet construction contract were brought to the attention of the Office of Inspector General (OIG) by the Authority's Board of Commissioners and not as a hotline tip. Due to the audit process, the issues stated in the complaint letter were recorded as a hotline complaint with the Program Integrity (Hotline) Division, as standard practice. OIG removed the phrase "hotline" from the report.
- Comment 3** We reviewed the Authority's comments and the documentation provided with its comments. We have addressed the Authority's response in this section of the report.
- Comment 4** We agree that the Authority's old procurement guidelines during the time of the cabinet construction contract did not include requirements for an independent cost or price analysis. We also agree that the Authority has since included new requirements to correct this deficiency. However, the Authority still should obtain Board approval for proper implementation of these requirements through the board resolution process. Further, the Authority must work with HUD to ensure that the new policies are compliant with 24 CFR 85.36 procurement requirements.
- Comment 5** We agree that it's not always necessary to include all bonding requirements in an RFP. However, the RFP and contract documentation should meet all the bonding requirements of 24 CFR 85.36(h). The report was revised to clarify that the RFP and contract documentation should include a bid bond, performance bond, and payment bond. At a minimum, the Authority should have required a bid bond or guarantee from each bidder to ensure that the awarding bidder will honor its bid and execute contractual documents. The Authority would then execute the performance and payment bonds at the time of the construction contract. The requirements of 24 CFR 85.36 also give the Authority an alternative option to meet bonding requirements. Specifically, 24 CFR 85.36(h) states that "...the awarding agency may accept the bonding policy and requirements of the grantee or sub-grantee provided the awarding agency has made a determination that the awarding agency's interest is

adequately protected.” Neither the RFP nor any contract documents state that the Authority made a written determination that their interests were adequately protected during the procurement and contracting process. Since the Authority did not provide evidence that it made a determination that its interests were adequately protected, the Authority must follow the bonding requirements under 24 CFR 85.36(h)(1), (h)(2), and (h)(3).

Comment 6 We acknowledge the Authority’s recognition of the improper progress payments made for the cabinet contract and their efforts to adopt new policies and procedures to ensure future payments are made properly. These new policies and procedures in the Authority’s General Conditions of Contract for Construction should be approved by the Board of Commissioners through the board resolution process. We further advise these new policies be incorporated in future construction contracts to ensure that proper payments are made.

Comment 7 We have reviewed the Authority’s draft Financial Management Internal Controls Policy and draft Accounting Procedures and Guidelines. We commend the Authority for improving its accounting and cash handling and segregation of duties policies and procedures. However, this appears to be a draft or template of the proposed policy. We advise the Authority to work with HUD to define who the “authorized individual/s” and “employee/s responsible” will be to conduct the functions under these policies.

Comment 8 We disagree with the Authority’s assertion for Recommendation 1A that they should be allowed to use the remaining \$95,831 (\$303,721 - \$207,890) of Recovery Act Native American Housing Block Grant funds to complete construction work. On November 5, 2010, the Authority terminated its contract with Welker. Since the Authority terminated its contract with Welker, the \$95,831 of its Recovery Act Native American Housing Block Grant was never obligated nor expended. Since the Authority’s grant funds are no longer obligated to this contract, all \$95,831 in unobligated and unexpended funds must be returned to the U.S. Treasury in accordance with Public Law 111-203.

Comment 9 We disagree with the Authority that Recommendation 1B should be eliminated. Regardless of the fact that the Authority discovered the problems prior to this audit and self-reported the problems to HUD and the OIG, the Authority still paid for work that was not performed. Further, these problems occurred because the Authority did not follow procurement and contracting requirements and lacked sufficient policies and procedures. The Authority over paid for construction work that was not completed. The Authority’s Board of Commissioners in place at the time of the payments were also aware of the improper payments made on the construction contract since approval for both payments were signed by two Board members. As a result, the Authority obtained board approval to pay \$36,884 for work that was not performed.

Comment 10 We disagree with the Authority that it has adopted procurement policies and procedures that fully meet the requirements of 24 CFR 85.36 (c)(3)(i) and (ii). Specifically, the policy does not include requirements that all procurement solicitations: “(i)[i] incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured” and “(ii)[i] identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.” The Authority should work with HUD during the audit resolution process to ensure full compliance with procurement requirements.

Comment 11 We disagree with the Authority that Recommendation 1E be deleted. The Authority did not provide any documentation to show that it adopted Tribally Determined Wage Standards in place of Davis-Bacon wage rates. If the Authority provides evidence that it adopted its own wage standards, it should follow Office of Native American Programs Guidance 2003-04 which require that the tribe design sufficient monitoring and enforcement mechanisms to ensure compliance with its adopted wage standards. Whether the Authority is using Davis-Bacon wage rates or Tribally Determined Wage Rates, it must have sufficient monitoring and enforcement mechanisms in place. We have revised the recommendation to require the Authority to implement sufficient policies and procedures for Tribally Determined Wage Standards OR Davis-Bacon wage rates.

Comment 12 Based on discussions with HUD’s Office of General Counsel, we removed this recommendation from the report.

Comment 13 We appreciate the Authority’s assistance throughout the audit process. We also acknowledge that the Authority is taking steps to correct deficiencies and improve its operations. We have taken the Authority’s comments into consideration and have addressed them in this section of the report.

Appendix C

CRITERIA

The following sections of HUD laws and regulations and Authority procurement policies and procedures were relevant to our audit of the Authority’s administration of grant funds.

Native American Housing Activities - 24 CFR 1000.26(a): Except as addressed in §1000.28, recipients shall comply with the requirements and standards of OMB [Office of Management and Budget] Circular No. A-87, “Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally recognized Indian Tribal Governments,” and with the following sections of 24 CFR part 85 “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.” For purposes of this part, “grantee” as defined in 24 CFR part 85 has the same meaning as “recipient.”

Public Law 111-5 – The American Recovery and Reinvestment Act of 2009, Native American Housing Block Grants states, “...recipients of funds under this heading shall obligate 100 percent of such funds within 1 year of the date funds are made available to a recipient, expend at least 50 percent of such funds within 2 years of the date on which funds become available to such recipients for obligation and expend 100 percent of such funds within 3 years of such date: Provided further, That if a recipient fails to comply with the 2-year expenditure requirement, the Secretary shall recapture all remaining funds awarded to the recipient and reallocate such funds through the funding formula to recipients that are in compliance with the requirements...”

Public Law 111-203-Dodd-Frank Wall Street Reform and Consumer Protection Act

SECTION. 1306. REPAYMENT OF UNOBLIGATED ARRA FUNDS.

(b) WITHDRAWAL OR RECAPTURE OF UNOBLIGATED FUNDS.— Title XVI of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 302) is amended by adding at the end the following:

“SECTION 1613. WITHDRAWAL OR RECAPTURE OF UNOBLIGATED FUNDS

“Notwithstanding any other provision of this Act, if the head of any executive agency withdraws or recaptures for any reason funds appropriated or otherwise made available under this division, and such funds have not been obligated by a State to a local government or for a specific project, such recaptured funds shall be—

“(1) rescinded; and

“(2) deposited in the General Fund of the Treasury where such amounts shall be—

“(A) dedicated for the sole purpose of deficit reduction;

and

“(B) prohibited from use as an offset for other spending increases or revenue reductions.”

24 CFR PART 85, Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments – PROCUREMENT: 85.36 Procurement(a) - When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (I) in this section.

24 CFR 85.36(b)(2) states, “Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.”

24 CFR 85.36(c)(3) states, “Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly state; and (ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.”

24 CFR 85.36(d)(1), Methods of procurement to be followed, states, “Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.”

24 CFR 85.36(d)(2)(i) states, “In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;
(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and
(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.”

24 CFR 85.36(d)(2)(ii) states, “If sealed bids are used, the following requirements apply:

- (A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
- (B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond.
- (E) Any or all bids may be rejected if there is a sound documented reason.”

24 CFR 85.36(f)(1) states, “Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.”

24 CFR 85.36(h) states, “Bonding Requirements

For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency’s interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

- (1) A bid guarantee from each bidder equivalent to five percent of the bid price. The ‘bid guarantee’ shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- (2) A performance bond on the part of the contractor for 100 percent of the contract price. A ‘performance bond’ is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- (3) A payment bond on the part of the contractor for 100 percent of the contract price. A ‘payment bond’ is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.”

24 CFR 85.36(i) Contract provisions.

A grantee’s and subgrantee’s contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

1. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)
2. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)
3. Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)
4. Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)
5. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)
6. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327A 330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)
7. Notice of awarding agency requirements and regulations pertaining to reporting.
8. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
9. Awarding agency requirements and regulations pertaining to copyrights and rights in data.
10. Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
11. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
12. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C.

1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

13. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94A 163, 89 Stat. 871).

29 CFR Part 3, - § 3.3 Weekly statement with respect to payment of wages

Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by this part 3 and part 5 of this title during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be on the back of Form WH 347, "Payroll (For Contractors Optional Use)" or on any form with identical wording.

29 CFR Part 3, - § 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.

(a) Each weekly statement required under § 3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State agency at the site of the building or work, the statement shall be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.

(b) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

29 CFR Part 5, Subpart A—Davis-Bacon and Related acts Provisions and Procedures -

Sec. 5.1 Purpose and scope (a) - The regulations contained in this part are promulgated under the authority conferred upon the Secretary of Labor by Reorganization Plan No. 14 of 1950 and the Copeland Act in order to coordinate the administration and enforcement of the labor standards provisions of each of the following acts by the Federal agencies responsible for their administration and of such additional statutes as may from time to time confer upon the Secretary of Labor additional duties and responsibilities similar to those conferred upon the Secretary of Labor under Reorganization Plan No. 14 of 1950.

Native American Housing Assistance and Self-Determination Act of 1996.

SEC. 104. Treatment of Program Income and Labor Standards.

(b) LABOR STANDARDS-

(1) **IN GENERAL-** Any contract or agreement for assistance, sale, or lease pursuant to this Act shall contain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State, tribal, or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation, of the affordable housing project involved; and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Act of March 3, 1931 (commonly known as the Davis-Bacon Act; chapter 411; 46 Stat. 1494; 40 U.S.C. 276a et seq.), shall be paid to all laborers and mechanics employed in the development of the affordable housing involved, and the Secretary shall require certification as to compliance with the provisions of this paragraph before making any payment under such contract or agreement.

(3) **APPLICATION OF TRIBAL LAWS-** Paragraph (1) shall not apply to any contract or agreement for assistance, sale, or lease pursuant to this Act, if such contract or agreement is otherwise covered by one or more laws or regulations adopted by an Indian tribe that requires the payment of not less than prevailing wages, as determined by the Indian tribe.

Office of Native American Programs Guidance, No. 2003-04, February 5, 2003.

Developing and Enacting a TDW Law or Regulation: States, "...NAHASDA now provides that Davis-Bacon and HUD-determined rates shall not apply to a contract or agreement if the contract/agreement is otherwise covered by a law or regulation adopted by an Indian tribe that provides for the payment of not less than prevailing wages as determined by the tribe...tribes are responsible for designing whatever monitoring and enforcement mechanisms they choose to ensure compliance with their tribally determined prevailing wage rates."

HUD Notification: States, "...IHBG recipients must annually certify as to their compliance with Section 104(b)(1) of the Act."

The Authority's **Contract Register Policy & Procedures Manual V.**

E. Bookkeeper - Upon receipt of request for payment by contractor the bookkeeper shall review the contract register for that specific contract. After review the bookkeeper will determine if the specified percentage of work is completed and will determine this by checking the following information.

- A. Inspection section to see if the work has been inspected.
- B. Percentage of work completed to see if the amount requested is reconciled with the percentage of work actually completed.
- C. Make sure that the Executive Director has approved the inspection form.