



Issue Date May 13, 2010

Audit Report Number 2010-FW-1003

TO: Wayne Sims
Administrator, Southern Plains Office of Native American Programs, 6IPI

/signed/

FROM: Gerald R. Kirkland
Regional Inspector General for Audit, Fort Worth Region, 6AGA

SUBJECT: The Housing Authority of the Sac and Fox Nation of Oklahoma, Shawnee, OK,
Did Not Demonstrate the Administrative Capacity To Appropriately Expend
Its Recovery Act Funding

HIGHLIGHTS

What We Audited and Why

We audited the Housing Authority of the Sac and Fox Nation of Oklahoma's (Authority) American Recovery and Reinvestment Act of 2009 (Recovery Act) funds. The objective was to determine whether the Authority had the capacity to use its Recovery Act funds in accordance with U. S. Department of Housing and Urban Development (HUD) requirements. We reviewed the Authority because of concerns identified in a previous audit¹ of the Authority.

What We Found

The Authority did not always administer its procurement contracts or acquire property for planned Recovery Act activities in accordance with requirements.

¹ Audit Report 2010-FW-1002, "The Housing Authority of the Sac and Fox Nation of Oklahoma, Shawnee, OK, Improperly Spent More Than \$800,000 in Contracts and Did Not Always Operate in Accordance With HUD Rules and Regulations or Its Own Policies," dated January 20, 2010

Specifically, it did not prepare a cost estimate or technical evaluation factors for its architectural services contract or acquire two low-rent homes in accordance with HUD regulations. Further, it charged Recovery Act expenditures to other grants, which resulted in an inaccurate Recovery Act report. Until the Authority implements the necessary controls, it lacks the administrative capacity to expend its Recovery Act funding in accordance with requirements.

What We Recommend

We recommend that the Administrator for the Southern Plains Office of Native American Programs initiate enforcement actions to require the Authority to follow procurement and acquisition requirements; ensure that staff understands and complies with procurement and environmental review requirements; and properly report Recovery Act activities. Further, the Administrator should increase monitoring and oversight of the Authority's Recovery Act planned activities and/or provide technical assistance and enter into a performance agreement with the Authority.

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 held an exit conference with the Authority on May 5, 2010. The auditee comments were due on May 11, 2010. We received the comments on May 12, 2010. The Authority generally agreed with the report. The Authority provided attachments which are available upon request. The attachments were in response to our previous audit of the Authority and did not address this report specifically. The auditee's response, along with our evaluation of that response, is located in appendix B of this report.

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BACKGROUND AND OBJECTIVE

Since November 1965, the Housing Authority of the Sac and Fox Nation of Oklahoma (Authority) has been the tribally designated housing entity² for the Sac and Fox Nation of Oklahoma (Nation). The Nation requested that the U. S. Department of Housing and Urban Development (HUD) grant the Authority ordinance under Sac and Fox tribal law instead of Oklahoma State law in 1993. The Assistant Secretary of HUD granted this request. In June 2004, the Nation took over the Authority and its operations as a result of poor management. However, in September 2007, the Nation reestablished the Authority as the tribally designated housing entity due to its lack of administrative knowledge as a housing authority.

Five board members with staggered 4-year terms oversee the Authority. The Authority provides mutual help programs to enable low-income individuals to become homeowners; low-rent programs to help provide decent, safe, and sanitary housing for low-income individuals; renovation for homeowners that cannot afford to renovate; and model activities that include nonresidential development projects that support housing activities.

In 2006, HUD reviewed the Nation for fiscal years 2001 to 2005. HUD had 19 findings and 3 concerns, many of which are still open. The major findings included inadequate internal and financial management control, which resulted in HUD's questioning more than \$8 million;³ failure to obtain environmental reviews before spending Federal funds on a housing activity; improper administration of procurement contracts; and noncompliance with maintenance requirements of the United States Housing Act of 1937 (1937 Act) as amended.

In January 2010, we issued an audit report⁴ concerning the Authority's Indian Housing Block Grant (Block Grant). The major findings included failure to obtain the correct level of environmental reviews before spending Federal funds on housing activities, which resulted in our questioning more than \$800,000; improper administration of procurement contracts; and noncompliance with maintenance requirements of the 1937 Act as amended.

Through the same grant formula used for Block Grant funds, HUD approved more than \$700,000 in American Recovery and Reinvestment Act (Recovery Act) funds for the Authority to acquire two homes and develop two homes.

Our audit objective was to determine whether the Authority had the capacity to expend its Recovery Act funds in accordance with HUD's regulations.

² Under Oklahoma State law

³ The \$8 million amount included funds from fiscal years 2002 through 2005.

⁴ Audit Report 2010-FW-1002, "The Housing Authority of the Sac and Fox Nation of Oklahoma, Shawnee, OK, Improperly Spent More Than \$800,000 in Contracts and Did Not Always Operate in Accordance With HUD Rules and Regulations or Its Own Policies," dated January 20, 2010.

RESULTS OF AUDIT

Finding: The Authority Did Not Demonstrate the Administrative Capacity to Appropriately Expend Its Recovery Act Funding

The Authority did not properly administer its procurement contracts or acquire property for planned Recovery Act funded activities. The Authority planned to acquire two low-rent homes and develop two low-rent homes with its Recovery Act funds. However, it did not follow HUD requirements when procuring architectural services, notifying and negotiating with the seller concerning property acquisitions, and using Block Grant funds to pay for Recovery Act related expenses. The Authority was either unaware of or did not follow HUD requirements. In addition, it did not set up its Recovery Act funds in its accounting system until February 2010. As a result, it did not demonstrate the administrative capacity to expend its Recovery Act funds in accordance with HUD requirements and put itself at unnecessary risk, which could result in HUD's requiring it to return the funds. The Authority needs to improve its administrative capacity to appropriately expend and report its Recovery Act funding.

Planned Low-Rent Home Acquisition Not in Accordance With HUD Requirements

The Authority did not follow requirements when it acquired two low-rent homes with its Recovery Act funds. The planned acquisition began with the developer notifying the Authority of two homes that the developer planned to build with the expected prices. The Authority did not provide documentation showing that it sought other properties or attempted to procure either properties or developers. According to an Authority employee, the developer and the Authority had previously worked together so the developer had an understanding of the type of homes the Authority wanted. While the Authority did not consult with the developer on the design or the development stages of the homes, it did not follow HUD requirements⁵ in the acquisition process.

When acquiring property, the Authority must contact the seller in writing about its interest in the property, what it believes to be the fair market value, and what to expect if the parties fail to reach an amicable agreement.⁶ The Authority did not have documentation to support that it contacted the developer. Since the Authority did not follow this requirement, it was subject to additional requirements that included obtaining appraisals and a negotiation process.⁷ The Authority did obtain appraisals; however, it did not produce documentation showing that it initiated a

⁵ 49 CFR (Code of Federal Regulations) Part 24, Subpart B

⁶ 49 CFR 24.101(b)(1)

⁷ 49 CFR 24.102(c), (d), and (f)

negotiation process. Instead, the Authority paid the price in the original developer's solicitation. A timeline of activities is as follows.

Date	Event
July 6, 2009	The Authority received a solicitation letter from a development company proposing to develop two new homes at a turnkey price for the Authority.
July 13, 2009	The development company took out a construction loan to build one of the homes. ⁸
September 14, 2009	The Authority started the environmental review process for each home.
September 29, 2009	The development company obtained a certificate of occupancy from the City of Shawnee for the completion of each home.
November 10, 2009	The Authority received appraisals on both homes that equaled the original solicitation price quote in the development company's July 6, 2009, letter.
November 19, 2009	The Authority completed the environmental review process for each home.
November 30, 2009	The Authority signed an unbinding purchase contract with the development company for each home in the amount of the appraised value.
January 8, 2010	The Authority published a combined notice of finding of no significant impact and notice of intent to request release of funds for each home.
March 31, 2010	The expected settlement date for the purchase of each home.

The Authority did not follow HUD requirements by purchasing homes in this manner.⁹ It did not allow for formal competition from other developers or develop a cost estimate as required in a typical new development transaction.¹⁰ The developer initiated a negotiation price before it started building the homes. The Authority entered into unbinding sales contracts without presenting a written offer to the development company. These contracts may not have been in the best interest of the Authority. The Authority should follow HUD requirements to ensure that it uses its Recovery Act funds appropriately.

⁸ The development company took a risk by taking out a loan to build the home without a written guarantee that the Authority would purchase the home once completed.

⁹ According to an Authority employee, the Authority looked at other homes on the market, which were too expensive or too large for the Authority's needs.

¹⁰ 24 CFR 85.36(d)(2) and (f)

Planned Low-Rent Home Development Procurement Not in Accordance With HUD Requirements

In addition to acquiring two homes, the Authority planned to use its Recovery Act funds to build two homes on land it owned in Prague, OK. The Authority acquired three lots in 2003. It contracted with a surveying company to split one of the lots and provide new dimensions for the remaining two lots.

After the Authority received the new lot dimensions, it contracted with an architect to develop plans for the two homes. However, when the Authority made its selection for the architect, it did not adequately advertise technical evaluation factors, have a method for assessing technical evaluations, or develop a cost estimate.¹¹ The Authority selected the lowest bidder.

In accordance with HUD requirements,¹² the Authority should have prepared a cost estimate before it received bids or proposals or performed a cost analysis for the architectural services. In addition, HUD¹³ and Authority regulations¹⁴ required it to develop and analyze technical evaluation factors in selecting an architect. While the Authority could consider price as one factor, it should have also compared other factors to determine whether the architect met all of its needs. The Authority did neither; therefore, it did not know whether it received the best price or the most qualified architect for the service. The Authority needs to follow HUD's and its own procurement policy when procuring the new development of low-rent homes.

Funding and Other Administrative Matters

The Authority did not properly account for Federal funding. It planned to use its Line of Credit Control System drawdown reports to report its Recovery Act expenditures as required under the Recovery Act.¹⁵ It incorrectly drew down \$850 in Recovery Act expenditures as Block Grant funds.¹⁶ As a result, it did not correctly report these expenditures in its Recovery Act report due in January 2010. The Authority will need to correctly report these expenditures in its next Recovery Act report.

¹¹ In Office of Inspector General (OIG) audit report 2010-FW-1002, we noted that the Authority also did not always prepare the necessary cost estimates when procuring services.

¹² 24 CFR 85.36(f)

¹³ 24 CFR 85.36(d)(3)

¹⁴ Authority Procurement Regulations, section IV(C)

¹⁵ Public law 111-5, section 1512

¹⁶ The Authority also did not properly record Federal funding noted in OIG Audit Report 2010-FW-1002.

While the Authority showed initiative in improving its environmental review process, it performed more work than necessary. The Authority performed an environmental review when it purchased the land in Prague, OK, in 2003. The purpose of purchasing the land was to develop homes on it. This purpose had not changed. Therefore, the Authority only needed to confirm that nothing had changed instead of performing the environmental review again. The Authority also published a combined finding of no significant impact statement and notice of intent/request for release of funds for the acquisition of the two new homes, which was not required.¹⁷ These actions occurred because the Authority did not fully understand the environmental review process. HUD should provide technical assistance to the Authority to ensure that it complies with the requirements.

The Authority had other minor administrative issues that it had inconsistently completed. These issues included not advertising its Indian preference policy¹⁸ when advertising for architectural services and not checking the General Services Administration's Excluded Parties List System¹⁹ before using advertising companies and a surveying company.

Conclusion

The Authority did not follow HUD requirements when procuring services or acquiring property for its Recovery Act activities. It continued to have deficiencies similar to findings previously reported,²⁰ including a lack of cost estimates, improperly accounting for funds, and not checking the Excluded Parties List System before using contractors. The Authority was either unaware of or did not follow the necessary requirements. As a result, it did not demonstrate that it had the administrative capacity to expend its Recovery Act funds in accordance with HUD requirements.

Since the Authority did not demonstrate administrative capacity to expend its Recovery Act funding, HUD should ensure that it obtains the needed technical assistance in procurement, environmental reviews, and financial and reporting controls to aid it in strengthening its internal controls and operations.

¹⁷ 24 CFR 58.34(a)(12) and (b) and 58.35(a)(5)

¹⁸ 24 CFR 1000.52

¹⁹ 24 CFR 1000.44

²⁰ OIG Audit Report 2010-FW-1002

Recommendations

We recommend that the Administrator for the Southern Plains Office of Native American Programs

- 1A. Initiate enforcement actions to require the Authority to
 - Follow HUD requirements when acquiring or procuring new homes,
 - Ensure that its staff has the needed skills to perform its administrative duties, including procurement of goods and services, environmental reviews, and financial operations, and
 - Properly account for and report the use of Recovery Act funds. By doing so, it will put \$850 to better use since the Authority inappropriately used Block Grant funds for Recovery Act related activities.
- 1B. Increase monitoring and oversight of the Authority's Recovery Act planned activities and/or provide technical assistance and enter into a performance agreement with the Authority.

SCOPE AND METHODOLOGY

Our audit period covered March 2009 through February 2010. To accomplish the audit objective, we

- Reviewed relevant Federal regulations and Authority policies and procedures;
- Reviewed Indian Housing Plan amendments, Authority Recovery Act activities, and Authority Recovery Act reporting;
- Interviewed HUD and Authority staff; and
- Reviewed previous audit work for repeat findings.

We reviewed all Recovery Act related activities that documented the progress the Authority has made toward the completion of expending its Recovery Act funding. We also reviewed the two reporting periods the Authority was required to publish on the Recovery.gov Web site.

We performed fieldwork at the Authority's office in Shawnee, OK, from January through April 2010.

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 the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

INTERNAL CONTROLS

Internal control is an integral component of an organization's management that provides reasonable assurance that the following controls are achieved:

- Program operations,
- Relevance and reliability of information,
- Compliance with applicable laws and regulations, and
- Safeguarding of assets and resources.

Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals, and objectives. They include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the 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 Recovery Act contracts meet their objective.
- Compliance with laws and regulations – Policies and procedures that management has implemented to reasonably ensure that resource use is in compliance with applicable laws and regulations.
- Validity and reliability of data – Policies and procedures that management has implemented to reasonably ensure that it obtains, maintains, and fairly discloses valid and reliable data in reports.

We assessed the relevant controls identified above.

A significant weakness exists if management controls do not provide reasonable assurance that the process for planning, organizing, directing, and controlling program operations will meet the organization's objectives.

Significant Weaknesses

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

- The Authority did not have adequate controls for acquisition and procurement activities.
- The Authority did not accurately report Recovery Act funding.

FOLLOW-UP ON PRIOR AUDITS

Audit Report Number
2010-FW-1002

We issued an audit report on the Authority's Block Grants in January 2010 with the following recommendations:

- Support or reimburse \$800,547 and put to better use \$269,604 for the contracts without appropriate environmental reviews and for the ineligible hotel expenditure;
- Correct both the deficiencies identified during our inspections and the inaccurate record keeping of funding requested for specific grant years;
- Implement policies and procedures to ensure that it maintains units, follows up on inspections, and turns around units within the established timeframes; and
- Continue to work with its accounting firm to determine the correct amount of funding the Nation needs to return to the Authority.

The recommendations in the previous audit report are in an open status. We noted similar findings in this audit listed below.

- The Authority did not properly perform environmental reviews,
- The Authority incorrectly accounted for funds from the Block Grant funds and Recovery Act funding,
- The Authority did not always perform cost estimates before accepting bids, and
- The Authority did not consistently check the General Services Administration's Excluded Parties List System before using a contractor.

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS AND FUNDS TO BE PUT TO BETTER USE

Recommendation number	Funds to be put to better use <u>1/</u>
1A	\$850

1/ Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an Office of Inspector General (OIG) recommendation is implemented. These amounts include reductions in outlays, deobligation of funds, withdrawal of interest, costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in preaward reviews, and any other savings that are specifically identified. In this instance, it represents the amount the Authority will need to deobligate from its Block Grant funds, thereby making the funds available for eligible uses. Further, the Authority will accurately report the use of Recovery Act funds.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

Housing Authority of the Sac and Fox Nation

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May 10, 2010

Mr. William Nixon, Assistant Regional Inspector
Department of Housing and Urban Development
Office of Inspector General, Region VI
819 Taylor Street, Suite 13A09
Fort Worth, TX 76102

Dear Sir:

Comment 1 Enclosed is the response to the Office of Inspector General's Stimulus Funding Audit of the Housing Authority of the Sac and Fox Nation for 2010.

The Department of Housing and Urban Development has training scheduled for August of this year on environmental, the staff from the Sac and Fox Housing Authority will be in attendance to meet the requirement called for in the audit. We will use NAIHC training on Procurement.

In the future, we will make sure that cost estimates will be done before receiving bids or proposals on all projects.

We have adjusted our books to put expenditures of Stimulus funds in proper line item budgets.

With the proper training the staff will perform all environmental in the correct manner. We have adjusted our records to now show the correct documentation on the environmental's.

We now check the Excluded Parties List on all projects before using contractors.

Documentation is provided on the following; Addresses, Environmental's

Sincerely,

/signed/

John R. Thorpe, Executive Director

OIG Evaluation of Auditee Comments

Comment 1 We commend the Authority for planning to take the necessary corrective actions to ensure it follows regulations.