



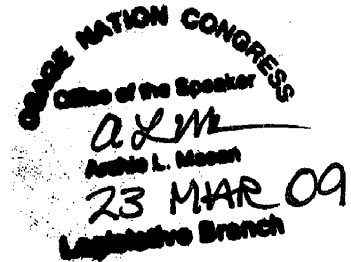
FILE

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Oklahoma City Field Office, Region VI
Southern Plains Office of Native American Programs
301 N.W. 6th Street, Suite 200
Oklahoma City, Oklahoma 73102-2807
Phone (405) 609-8520 - Fax (405) 609-8403

MAR 02 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

The Honorable Jim Gray
Principal Chief
Osage Tribe
P.O. Box 779
627 Grandview
Pawhuska, OK 74056



Dear Principal Chief Gray:

**SUBJECT: Past Due Notice/Letter of Warning
FY 2007 Final Monitoring Review Final Report
Indian Housing Block Grant (IHBG) Project Numbers: 00IT4023120,
01IT4023120, 02IT4023120, 03IT4023120, 04IT4023120, 05IT4023120 and
06IT4023120; and Indian Community Development Grant (ICDBG) Project
Numbers: B03SR402312, B04SR402312 and B05SR402312**

The Southern Plains Office of Native American Programs (SPONAP) conducted a monitoring review August 13, 2007 through August 17, 2007, to evaluate your performance in implementing the Indian Housing Block Grants (IHBG) and the Indian Community Development Block Grants (ICDBG). The final monitoring report was issued November 17, 2008, with Recommended Corrective Actions, and a target date of December 17, 2008 in which to implement the Recommended Corrective Actions and close the open findings. SPONAP received a request for an extension to respond to the final monitoring report and the extension was approved to January 16, 2009. The Osage Tribe of Oklahoma provided a response to the Final Monitoring Report via email on January 30, 2009, a follow-up response to finding numbers 5, 6 & 7 was provided via email on February 13, 2009. A written response was received on February 26, 2009 providing adequate information to close finding numbers 1 and 2. The response provided for findings 3 through 7 has been determined substantially non-responsive. None of the corrective action items for these findings have been completed, nor does it appear adequate progress has been made toward compliance. This constitutes a formal letter of Warning pursuant to 24 CFR §1000.530(a)(1).

Since the required documentation has not been provided, it will be necessary for HUD to review payment requests through the Line of Credit Control System (LOCCS) before funds can be disbursed. Therefore, before requesting funds from LOCCS, the recipient must submit for SPONAP review, the LOCCS Request Voucher for Grant Payment form HUD-50080-IHBG activities, with supporting documentation for the disbursement. Fax transmissions will be accepted. Examples of supporting documentation include copies of billing documents, a copy of

your contract register, a copy of your project expenditure register, or other documentation as requested that would substantiate that the payment corresponds to the progress that you are making on the activities planned in your Indian Housing Plans. Upon receipt of documentation sufficient to address and close the open findings of non-compliance, this requirement will be discontinued.

As a grant recipient and beneficiary, the Osage Tribe of Oklahoma is responsible to ensure compliance with all program requirements. In accordance with 24 CFR §1000.530 and 24 CFR §1003.701 failure of recipient to address identified problems may result in the imposition of sanctions.

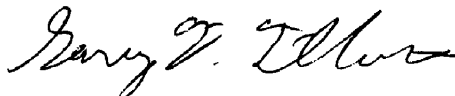
For the Indian Housing Block Grant, as described in 24 CFR §1000.532 and/or 24 CFR §1000.538, upon due process, determination that a recipient has failed to comply substantially with any provision of the NAHASDA, HUD may 1) terminate payments, 2) reduce payments, 3) limit the availability of payments, or 4) provide a replacement for the recipient.

For the Indian Community Development Block Grant as described in 24 CFR §1003.701, 24 CFR §1003.702 and 24 CFR §1003.703, upon due process, determination that a recipient has failed to comply substantially with any provision of the ICDBG, HUD may 1) terminate payments, 2) reduce payments, 3) limit the availability of payments, or 3) forward for secretarial action, which could include referral to the Attorney General including civil action to recover the amount of the assistance furnished.

If a response to the corrective actions or documentation supporting official action taken by the Osage Tribe is not received within 30 days of the date of receipt of this letter, HUD will consider taking necessary actions to enforce the regulatory requirement pursuant to 24 CFR §1000.532. After that time has expired, the Osage Tribe of Oklahoma will be provided with an opportunity for an informal meeting; and if the issue remains unresolved, the Osage Tribe of Oklahoma will be provided with the opportunity for a hearing.

HUD hopes that the Osage Tribe of Oklahoma is able to respond to this matter as soon as possible. If we may provide you with any assistance or you have questions on this matter, please contact Teresa Cook, Grants Evaluation Specialist, at (405) 609-8558 or by email at teresa.c.cook@hud.gov.

Sincerely,



Garry T. Tillotson
Director
Grants Evaluation Division

Enclosure

cc:

Mr. Joe Freeman, Compliance Officer
Ms. Dawna Bowman, Executive Director

**Osage Tribe of Oklahoma
FY 2007 Status of Final Monitoring Report
Field Dates: August 13-17, 2007
Osage Tribe January 30, 2009 Response**

Procurement and Contract Administration – IHBG only

Program regulations at 24 CFR §1000.26(a)(11) require recipients to comply with 24 CFR §85.36 when procuring goods and services. These regulations also require that all procurement transactions be conducted in a manner providing full and open competition consistent with the standards set forth in that section.

Additionally, the regulations at 24 CFR §85.36(b)(9) require the maintenance of procurement records sufficient to detail the significant history of the procurement. These records are to include, but are not necessarily limited to documentation of the rationale for: 1) the method of procurement (small purchase, sealed bid, competitive or noncompetitive proposals); 2) the selection of contract type; 3) the contractor selection or rejection; and 4) the basis for the contract price, including the cost or price analysis required by 24 CFR §85.36(f).

Further, for a cost to be allowable, under OMB Circular A-87, it must be “*necessary and reasonable*” and conform to the program requirements. The regulations, at 24 CFR §85.36(b)(2), also require grantees have a contract administration system in place to ensure that contractors perform in accordance with the terms, conditions and specifications of their contracts.

HUD regulations at 24 CFR §85.36(b)(3) also require that grantees maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. The written code of conduct must contain a conflict of interest provision specifically prohibiting the grantee’s employees, officers or agents from participating in the selection, or in the award or administration of a contract if a conflict of interest, whether real or apparent, would be involved.

A conflict of interest arises when: (i) such an employee, officer or agent of the grantee, (ii) any member of his immediate family, (iii) his or her partner, or (iv) an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. To the extent permitted by State and local law, this written code of conduct must also provide for penalties, sanctions or other disciplinary action for violations.

Program regulations, at 24 CFR §1000.44, prohibit the use of debarred, suspended or ineligible contractors. The regulations, at 24 CFR §1000.52, also require that, to the greatest extent feasible, recipients give preference in the award of contracts to Indian organizations and Indian-owned economic enterprises.

Finally, the program regulations at 24 CFR §1000.16 reference the Labor Standards requirements set forth in Section 104(b) of NAHASDA. This section requires that any contract or agreement for assistance, sale, or lease pursuant to the Act, contain a provision requiring that all laborers and mechanics employed in the development of the affordable housing projects be

paid wage rates not less than those prevailing in the locality as determined by the Department of Labor pursuant to the Davis-Bacon Act. Advice and direction was provided to all tribes in NAHASDA Guidance No. 98-17 (enclosed for your convenience).

During the review, the following documents, information or procedures were viewed or inspected:

- Procurement Policy
- Publications of Invitations for Bid
- IHBG Construction Contracts

The following conclusions were reached as a result of the review:

On December 5, 2007, SPONAP requested additional information to continue the monitoring review. The items below were requested to be provided by the Osage Housing Division.

- All procurement documentation pertaining to paved parking for 16 unit senior housing complex.
- All procurement documentation pertaining to the new construction of 8 rental units.
- All procurement documentation pertaining to the new construction of 2 homeownership units (2001 IHBG funds).

On January 23, 2008, the above mentioned additional information was received by the SPONAP office.

The procurement policy provided while on site for the Osage Housing Division appears to be compliant with the regulations at 24 CFR § 85.36 and Indian preference requirements of 24 CFR §1000.52.

The documentation provided includes but is not limited to the advertisement, bid opening, notice to proceed, evidence of checking the debarred list, contract letter of credit, etc. SPONAP did not locate any evidence of a cost or price analysis conducted with every procurement transaction as required by 24 CFR §85.36(f). There is one finding for this portion of the review.

Finding No. 1: Failure to conduct contract cost and price analysis as required by 24 CFR §85.36 (f)

Evidence that the Osage Tribe conducted a contract cost and price analysis in connection with every procurement action including contract modifications was not provided.

Recommended Corrective Action: Please provide a certification that a cost or price analysis will be completed in all future procurement transactions.

Osage Response dated January 30, 2009: A certification will be provided that a cost or price analysis will be completed on all future procurement transactions by **February 27, 2009.**

Osage Response dated February 26, 2009: A certification that a contract cost and price analysis will be completed and filed with all future procurement transactions as required by 24 CFR §85.36(f) was provided.

SPONAP Response: Thank you for your response, it has been acknowledged and accepted. No further action is required.

Status of Finding: Closed.

Indian Preference in Procurement and Contracting - ICDBG

The IHBG program regulations at 24 CFR §1000.52 and the ICDBG program regulations at 24 CFR §1003.510 require that, "*to the greatest extent feasible, recipients give preference in the award of contracts to Indian organizations and Indian-owned economic enterprises.*" Also, the following non-discrimination requirements are applicable:

- The Age Discrimination Act of 1975 (42 U.S.C. 6101-6107)
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)
- The Indian Civil Rights Act (Title II of the Civil Rights Act of 1968)

During the review, the following documents, information or procedures were viewed or inspected:

- Procurement Policy (for Indian Preference)
- Publications of Invitations for Bid
- ICDBG A & E and Construction Contracts

The following conclusions were reached as a result of the review:

The advertisements for invitations to bid were limited to Indian organizations/enterprises for the construction of ICDBG projects; awards were made to the lowest, responsive, responsible bidder in compliance with 24 CFR §85.36(d)(2)(ii)(D). The Osage Tribe's project numbers B03-SR-40-2312 and B04-SR-40-2312 construction contracts; however, do not contain the required Section 7(b) clause (Indian preference) as referenced at 24 CFR §1003.510(d)(6).

The SPONAP reviewers located a copy of "General Conditions" which contain the Section 7(b) clause but were unable to determine whether the conditions were part of the construction contract. Procurement records are well documented and efficiently organized, information was easily obtainable. Staff is to be commended for their knowledge and due diligence in adhering to policies and maintaining complete files. There is one finding for this portion of the review.

Finding No. 2: Failure to include the Section 7(b) clause in each contract as identified at 24 CFR §1003.510 (d)(6) and to ensure that contractors utilize the Section 7 (b) clause in every sub-contract

Contracts for project numbers B03-SR-40-2312 and B04-SR-40-2312 did not include the following citation in accordance with the regulatory requirements found at §1003.510(d)(6).

- i. The work to be performed under this contract is on a project that is subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b) (Indian Act). Section 7(b) requires that to the greatest extent feasible:
 - a) Preferences and opportunities for training and employment shall be given to Indians, and
 - b) Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.
- ii. The parties to this contract shall comply with the provisions of Section 7(b) of the Indian Act.
- iii. In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians.
- iv. The contractor shall include this Section 7(b) clause in every sub-contract in connection with the project, and shall, at the direction of the grantee, take appropriate action pursuant to the sub-contract upon a finding by the grantee or HUD that the sub-contractor has violated the Section 7(b) clause of the Indian Act.

Recommended Corrective Action: Provide SPONAP with a certification by the Osage Tribal Business Committee or the Chief Executive Officer that states all future contracts will be executed using a standard construction contract form that contains the Section 7(b) clause and that contractors will be required to include the clause in every sub-contract awarded.

Osage Response dated January 30, 2009: A certification will be provided that states all future contracts will be executed using a standard construction contract form that contains the Section 7 (b) clause and that contractors will be required to include the clause in every sub-contract by **February 27, 2009.**

Osage Response dated February 26, 2009: A certification that all future contracts will be executed using a standard form of contract that contains the Section 7(b) clause and contractors will be required to include the clause in every sub-contract awarded as identified at 24 CFR §1003.510(d)(6) was provided.

SPONAP Response: Thank you for your response, it has been acknowledged and accepted. No further action is required.

Status of Finding: Closed.

Useful Life Requirements

NAHASDA Section 205 (a)(2) of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), as amended, requires that housing units assisted with IHBG funds remain affordable for either (1) the remaining useful life of the property (as determined by the Secretary) or (2) for such other period that the Secretary determines are the longest feasible period of time consistent with sound economics and the purpose of the Act. The Act also requires that this affordability be secured through binding commitments satisfactory to the Secretary. The useful life provisions apply to all housing assisted with IHBG funds except for Mutual Help homes developed under the U.S. Housing Act of 1937.

The following conclusions were reached as a result of the review:

The review team was informed the Osage Tribe is experiencing difficulty with the Bureau of Indian Affairs (BIA) and issuing binding commitments on trust land. The Housing Division has the required commitments in the IHBG participant files reviewed. The commitments have not been filed on trust land due to the conflict with the BIA, however; they have not been filed for homes on fee simple land either. This is a violation of the NAHASDA requirements and there is one finding for this portion of the review.

Finding No. 3: Useful life commitments are not being executed in compliance with NAHASDA section 205 (a)(2) and 24 CFR §1000.142

IHBG funds used to provide affordable housing under NAHASDA must comply with section 205 (a)(2) and 24 CFR §1000.142. The useful life provisions apply to all housing assisted with IHBG funds except Mutual Help homes developed under the U.S. Housing Act of 1937.

Recommended Corrective Action Step 1: Provide evidence the Osage Tribe has obtained binding useful life commitments from all participants assisted with IHBG funds.

Recommended Corrective Action Step 2: Please provide HUD a certification that useful life binding commitments are consistently obtained and filed in the homeownership, rehabilitation (including privately-owned units), modernization, mortgage assistance, down-payment and closing cost programs.

Osage Response dated January 30, 2009: Binding Agreements from all participants and a certification stating that useful life binding commitments are consistently obtained and filed in all IHBG assisted programs provided by the Osage Nation will be provided by **March 31, 2009.**

SPONAP Response: Response provided by the Osage Tribe of Oklahoma is considered substantially non-responsive.

