



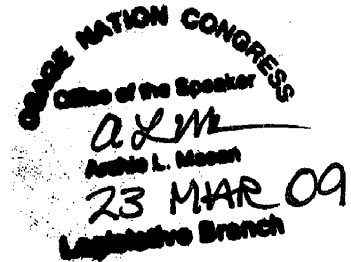
**FILE**

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
Oklahoma City Field Office, Region VI  
Southern Plains Office of Native American Programs  
301 N.W. 6<sup>th</sup> 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.

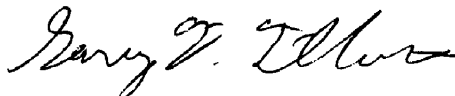
For the Indian Housing Block Grant, as described in 24 CFR §1000.532 and/or 24 CFR §1000.538, upon due process, determination that a recipient has failed to comply substantially with any provision of the NAHASDA, HUD may 1) terminate payments, 2) reduce payments, 3) limit the availability of payments,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

### Local Cooperation Agreements

Pursuant to Section 101(c) and (d) of NAHASDA and 24 CFR §§1000.240 and 1000.242 and before IHBG funds are used for rental and lease-purchase homeownership units owned by the recipient, the recipient is required to enter into a cooperation agreement with the governing body of the locality within which the rental and lease-purchase homeownership units are situated and the units are required to be exempt from taxation.

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

At the time of the review, the Tribe had failed to reach local cooperation agreement with local governing bodies. During the review, it was revealed to SPONAP staff that Tribal representatives had made efforts to execute cooperation agreements with local governing bodies in an effort to comply with NAHASDA regulation. These efforts proved unsuccessful and were without effect. Additionally revealed during the review was that the Tribe had paid taxes and late penalties to the Osage County Treasurer for 17 parcels of homeownership property violating NAHASDA Sections 101 (c) and (d), 24 CFR §§1000.240 and 1000.242, and OMB Circular A-87 now relocated to 2 CFR, Part 225. Accordingly we are questioning the cost of assistance where there is no Local Cooperation Agreement or where the units are not exempt from taxation.

#### Finding No. 4: Non-Compliance with Section 101 (c) and (d) of NAHASDA, 24 CFR §§1000.240 and 1000.242 and 2 CFR, Part 225 – Local Cooperation Agreement Requirements and Payment of Taxes and Penalties with NAHASDA funds

There exists no local cooperation agreement between the Osage Tribe and local governing bodies and the Tribe has been paying taxes and penalties to the Osage County Treasurer.

#### Recommended Corrective Actions:

1. Research, determine and document all rental and/or lease purchase units assisted with IHBG funds for which a local cooperation agreement is necessary or is required to be exempt from taxation. Please forward the results of your review to SPONAP.
2. Identify localities for which a cooperation agreement is necessary or is required to be exempt from taxation; provide a copy or copies of executed local cooperation agreements between the Osage Tribe and the governing body of the locality within which the NAHASDA funded properties are located.
3. Repay from Non-Federal funds the cost of taxes and penalties for any units not exempt from taxation.

**Osage Response dated January 30, 2009:** A waiver request and documentation that the Osage Tribe made a good faith effort to obtain a cooperation agreement with the Osage County Government on November 29, 2004 as recommended in the IHBG Program Guidance No. 2003-02 will be submitted by **March 31, 2009.**

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

**Indian Housing Plan Compliance – IHBG only**

24 CFR §1000.520 of NAHASDA regulations require that HUD review each grant recipient's performance to determine whether they have carried out the eligible activities outlined in the 5-year and 1-year IHP's in a timely manner, has carried out the eligible activities and certifications in accordance with the requirements and the primary objectives of NAHASDA and other applicable laws, and has a continuing capacity to carry out the activities in a timely manner. The review is completed in accordance with the IHBG performance measures outlined at 24 CFR §1000.524. The accuracy and completeness of Osage Tribe's Annual Performance Report (APR) submissions are also evaluated as part of this review.

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

The sections of the APR that are identified as regulatory or statutory violations will be addressed in the portion of the monitoring report that references the specific area of comment.

**APR Review comments Part I:**

**Grant Closeout:** The APR identified the current submission as the final report for IHBG 00IT4023120 and 02IT4023120. The APR also reflects that all eligible program activities, as identified in the most current, compliant IHP on record, are complete. In addition, Table II reflected that all IHBG funds had been expended. Based on the 2005 audit results and potential ineligible costs, some of the funds may need to be repaid to these grants, therefore; we will not be able to close them at this time.

**Table II:** Comparison of table data revealed discrepancies between the information reported in the 2006 APR and the 2007 APR. Based on discussions with Osage Tribe staff on January 23, 2008, SPONAP corrected Table II, as instructed for grant number 04IT4023120.

The FY 07 APR submitted for reporting period October 1, 2006 to September 30, 2007 identified the following:

<b>Grant Number</b>	<b>Award Date</b>	<b>Award Amount</b>	<b>Amount Expended Per 2007 APR</b>	<b>Amount Drawn LOCCS</b>	<b>Amount Invested</b>	<b>% Obligated Per APR</b>
00IT4023120	08/04/2000	\$ 2,159,833.00	\$ 2,159,833.00	\$ 2,159,833.00	\$ - 0 -	100%
01IT4023120	11/16/2001	\$ 2,308,678.00	\$ 1,738,243.00	\$ 2,308,678.00	\$ 899,543.56	75%
02IT4023120	02/03/2003	\$ 2,391,835.00	\$ 2,391,835.00	\$ 2,391,835.00	\$1,486,435.00	100%
03IT4023120	08/25/2003	\$ 2,315,464.00	\$ 2,237,595.00	\$ 2,315,464.00	\$2,116,464.00	98%
04IT4023120	08/25/2004	\$ 2,324,828.00	\$ 2,267,439.00	\$ 2,246,150.00	\$ - 0 -	92%
05IT4023120	07/22/2005	\$ 1,951,655.00	\$ 1,131,952.00	\$ 379,500.00	\$ - 0 -	58%
06IT4023120	08/04/2006	\$ 1,864,986.00	\$ 329,383.00	\$ 185,430.00	\$ - 0 -	20%
07IT4023120	09/11/2007	\$ 1,795,530.00	\$ - 0 -	\$ - 0 -	\$ - 0 -	0%
<b>TOTAL</b>		<b>\$17,112, 809.00</b>	<b>\$12,256,280.00</b>	<b>\$11,986,890.00</b>	<b>\$4,502,442.56</b>	

**Finding No. 5: Violation of 24 CFR §1000.58 – Limitations on Investments for IHBG funds and PIH-2007-24**

The Nation initially received authorization to draw NAHASDA funds for investment purposes on July 30, 2003. The Osage Nation's policies and procedures dated June 2, 2003 provide that a maturity schedule will be maintained. 24 CFR §1000.58 (g) states "Investments under this section may be for a period no longer than two years."

PIH Notice 2007-24(7)(c), Additional Information: Maturity Schedule: Investments may be for a period no longer than 2 years. The 2-year period starts on the date the recipient draws down funds for investment purposes. The 2-year requirement is the maximum period of time that any amount drawn down for investment can be invested before disbursement on an affordable housing activity.

Prior to drawing down funds for investment purposes, the recipient should do an analysis of anticipated cash needs for this 2-year period, and identify those acceptable investment options or instruments with varying dates of maturity (shorter and longer term) within the projected 2-year period. The recipient shall maintain a schedule evidencing that the proposed investments will mature on the approximate dates the funds will be needed and that investment maturity dates do not exceed 2 years.

When an investment instrument matures, the funds made available should be expended for an affordable housing activity. Disbursement for this purpose means actual expenditure, not just the obligation of funds. If the funds are not needed for an activity at that time, the funds could be reinvested as long as on the 2-year anniversary of the drawdown from LOCCS, all funds drawn down for investment purposes have been disbursed for affordable housing activities. **Any invested funds not expended on affordable housing activities by the 2-year anniversary would have to be returned to LOCCS by the recipient.** Any interest accrued prior to the expiration of the 2-year period is program income. **Because the regulation at 24 CFR §1000.58(g) restricts the investment period to 2 years, any interest accrued after the**

expiration of the 2-year period must be returned to the Department. A copy of PIH Notice 2007-24 is enclosed.

PIH Notice 2007-24(7)(b), Term of Approval: Once a recipient has been approved for investing IHBG funds, the approval is valid as long as the requirements outlined in section 4 of this notice can be met. Due to the audit findings for the 05IT4023120 audit, the Osage Nation is not meeting the requirements of Section 4 of this notice and is hereby notified that Investment approval for the Osage Nation may be revoked.

The Osage Nation's investment activity was reviewed for grant numbers 01IT4023120, 02IT4023120 and 03IT4023120. It was determined the Osage Nation is not in compliance with their policies and procedures or the regulations found at 24 CFR §1000.58 (g) that require IHBG funds be invested for a period no longer than two years.

**Finding #5 - Recommended Corrective Action Step 1:** Provide current, complete, and accurate records to support the remaining balance of grant funds invested and the investment income earned for the grant numbers 01IT4023120, 02IT4023120 and 03IT4023120 to SPONAP.

**Finding #5 - Recommended Corrective Action Step 2:** Determine any invested funds not expended on affordable housing activities by the 2 year anniversary and provide documentation to SPONAP showing how this determination was made. Provide documentation to SPONAP that these funds have been returned to LOCCS. If needed, please contact your Grants Management Specialist to discuss how funds should be returned.

**Finding #5 - Recommended Corrective Action Step 3:** Determine any interest accrued prior to the expiration of the 2 year anniversary which is considered program income and provide documentation to SPONAP showing how this determination was made.

**Finding #5 - Recommended Corrective Action Step 4:** Determine any interest accrued after the expiration of the 2 year anniversary and provide documentation to SPONAP showing how this determination was made. Provide documentation to SPONAP that these funds have been returned to the Department.

**Osage Response dated January 30, 2009:** A revised target date for Findings No. 5, No. 6 and No.7 will be submitted before but no later than **February 16, 2009**. Additional time was needed due to the recent weather conditions that resulted in the tribal offices closing for two days and staffs from other departments were unavailable to consult with for a realistic target date.

**Osage Response dated February 13, 2009:** The Osage Nation Accounting Department is currently addressing the recommended four (4) Corrective Action Steps and all documentation and action required will be submitted by **March 31, 2009**.

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

**Finding #6: Failure to meet 90% obligation IHBG funds within 2 years as required** 24 CFR §1000.524(a) states within 2 years of grant award under NAHASDA, no less than 90 percent of the grant must be obligated. According to the 2007 APR Table II expenditures, grant number 01IT4023120 was 75% obligated and grant number 05IT4023120 was 58% obligated. Based on the grant agreements, grant number 01IT4023120 was executed on November 6, 2001 and grant number 05IT4023120 was executed on July 22, 2005. Each of these grants have exceeded the approved time-frame for obligation.

**Recommended Corrective Action:** Provide documentation to SPONAP that these grants have been obligated for eligible activities that are already planned in the respective Indian Housing Plans. Enclosed is a copy of PIH Notice 2000-26 for your guidance regarding what constitutes an obligation of grant funds.

**Osage Response dated January 30, 2009:** A revised target date for Findings No. 5, No. 6 and No.7 will be submitted before but no later than **February 16, 2009**. Additional time was needed due to the recent weather conditions that resulted in the tribal offices closing for two days and staffs from other departments were unavailable to consult with for a realistic target date.

**Osage Response dated February 13, 2009:** Osage Nation IHBG Grant # 01IT4023120 will be 90% obligated and documentation submitted by **July 31, 2009**. Osage Nation IHBG Grant # 05IT4023120 will be obligated and documentation submitted by **August 31, 2009**.

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

### **Financial and Fiscal Management and Audits**

The purpose of the financial and fiscal management review is to determine the recipient's compliance with IHBG program regulations at 24 CFR §1000.26(a) and §1000.544, which reference the applicability of 24 CFR §85.20 and §85.21, OMB Circular A-87 on allowable costs, and OMB Circular A-133 on audit requirements. IHBG recipients are required to maintain accurate, current, and complete records of the grant activities. Under 24 CFR §85.20(b), accounting records must identify the source and application of funds including the grant awards and authorizations, obligations, unobligated balances, assets, liabilities, out-lays or expenditures and income. Effective internal controls must be maintained for all IHBG cash, real and personal property and other assets. Recipients are required to safeguard all such property and assure that it is used solely for authorized purposes. Budget controls are required to compare actual expenditures with budgeted amounts for each grant. Financial information must be related to performance and productivity data. Costs must be eligible and allowable pursuant to the IHP, program requirements, and OMB cost principles. Source documentation must also be maintained to support all expenditures. The scope of the monitoring review for financial and fiscal management include funds drawn down, accounting records, internal controls, cash management, budget controls, and audits.

The regulations at 24 CFR §85.20 further require fiscal control and accounting procedures sufficient to permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of

applicable statutes. In general, a compliant A-133 audit assists us in making the determination that the recipient's IHBG funds have not been used in violation of the restrictions and prohibitions of NAHASDA, and implementing regulations.

The Single Audit Act, at 31 U.S.C. §7502(a)(1)(A), states "Each non-Federal entity that expends a total amount of Federal awards equal to or in excess of \$300,000 or such other amount specified by the Director [of the Office of Management and Budget] in any fiscal year of such non-Federal entity shall have either a single audit or a program-specific audit made for such fiscal year in accordance with the requirements of this chapter." In accordance with this provision of the Single Audit Act, the Director of the Office of Management and Budget increased the audit threshold from \$300,000 to \$500,000 for fiscal years ending after December 31, 2003 (68 Federal Register 38401 [June 27, 2003]). OMB Circular A-133, at §§\_\_.235(c) and \_\_.320(a), requires that a copy of the annual single audit or a program-specific audit be submitted to the Federal Audit Clearinghouse within the earlier of 30 days after receipt of the audit report or nine months after the end of the audit period. In addition, OMB Circular A-133 requires that the auditee shall follow up and take corrective action on audit findings.

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

The Osage Tribe was not keeping the voucher and backup documentation on file to support expenditures. Vouchers only had summary data to support the requested voucher. During the review, the Osage Tribe was not able to timely provide the support for the LOCCS vouchers. We are concerned about the Osage Tribes' inability to provide timely support for LOCCS vouchers in light of the adverse audit opinion on NAHASDA funds in 2005, the ineligible and fraudulent costs in 2004 and 2005 and the Osage Tribe's apparent misreporting of grant expenditures on its Schedule of Federal Awards noted elsewhere in this report.

The Osage Tribe's audit for the period ended September 30, 2005, was due on June 30, 2006, and received by the SPONAP office on July 12, 2007. The 2005 audit was received and accepted by the Federal Audit Clearinghouse (FAC) on June 28, 2006. SPONAP processed the Osage Tribe 2005 audit and issued a letter on January 15, 2008. The audit coverage included nine HUD-funded grants. The auditor expressed an unqualified opinion on the financial statement balance sheets, but expressed an adverse opinion on the Federal Programs for the September 30, 2005 audit. The audit report contained several findings that are repeat findings that have significant impact on HUD programs.

The Osage Tribe 2006 audit for the period ended September 30, 2006, was initially received by the Federal Audit Clearinghouse (FAC) on October 1, 2007, however; the audit was not accepted due to missing components. On November 5, 2007, FAC accepted the Osage Tribe 2006 audit. The Osage Tribe's audit for the period ended September 30, 2006, was due to SPONAP by June 30, 2007, and received on November 6, 2007. The audit contained one finding directly related to HUD-funded programs. The audit will be processed and addressed under separate cover.

### Audit 2005 for the 12-Month Period ended September 30, 2005

The audit coverage included nine HUD funded grants. Based on current and past audit information, the following shows the status of the grants as of September 30, 2005.

Grant Number	Award Amount	Cumulative Expenditures Per Prior Audits	Expenses Audited During FYE 9/30/05	Cumulative Audited Expenses as of 9/30/05	Balance To Be Audited as of 9/30/05
B01SR402312**	\$600,000	\$725,150	\$1,500	\$726,650	\$-126,650
B02SR402312**	\$528,500	\$170,714	\$424,173	\$594,887	\$-66,387
B03SR402312	\$800,000	\$0	\$1,931	\$1,931	\$798,069
98IT4023120 *	\$1,581,689.93	\$915,325	\$0	\$915,325	\$666,364.93
00IT4023120 **	\$2,159,833	\$3,825,318	\$119,763	\$3,945,081	\$-1,785,248
01IT4023120	\$2,308,678	\$1,398,472	\$18,374	\$1,416,846	\$891,832
02IT4023120**	\$2,391,835	\$1,478,675	\$915,206	\$2,393,881	\$-2,046
03IT4023120	\$2,315,464	\$1,342,312	\$784,075	\$2,126,387	\$189,077
04IT4023120	\$2,324,828	\$60,128	\$923,257	\$983,385	\$1,341,443
05IT4023120	\$1,951,655	\$0	\$8,598	\$8,598	\$1,943,057

\*The last audit showing this grant was FYE 2002.

\*\* It is assumed funding deficits were funded with other sources that were not reflected in the audit covering the period September 30, 2005.

IHBG Grant No. 98IT4023120 was closed subject to final audit on April 20, 2005. The last audit that reported expenditures for this grant was the 2002 audit. According to the above table, there was a remaining balance of \$666,364.93 to be expended and audited, therefore the remaining funds/costs should have been included in the Tribe's following year's audits until all funds were expended and audited. Documentation provided through the audits does not substantiate that the Tribe expended all of these funds as reported.

Our 2004 Audit transmittal letter dated December 21, 2005 requested that the Tribe reconcile the historical grant expenditures for the 1998-2000 grants in its accounting system to the amounts provided in the audit reports for all IHBG expenditures. The information was to be provided to the SPONAP office within 30 days of receipt of the above mentioned transmittal letter or advise of the status of submitting the information. The information requested had not been provided and was not reflected in the above audit.

As a result of the Tribe's failure to provide the requested information, SPONAP requested the Tribe reimburse \$666,364 to the program through LOCCS by February 29, 2008. As of the date of this letter, there has been no reconciliation of expenditures or repayment of funds.

In the 2005 audit, Section II, HUD-Related Financial Statement Audit findings for the 12-Month Period ended September 30, 2005 listed on audit page 115 there was a finding for fraud in expenses charged to the homeowner's rehabilitation program and the housing improvement program. The auditor identified the grant funds involved as IHBG grant numbers 00IT4023120 through 05IT4023120 for fiscal years 2004 and 2005. The fraud that has been identified is as follows:

- The construction manager did not retain proper supporting documents (such as contracts, vendor invoices and competitive bids) for expenses charged to NAHASDA and Housing Improvements.
- Expenses were charged to client's accounts when no work was actually done for that client. The wrong client account was charged.
- Clients had expenses charged to their account but no actual work was done for their homes.
- A vendor admitted performing work on a home and billing it to another home.
- Vendors have admitted to receiving payments for work that was not done. The program manager has notified HUD and the BIA to inform them of the fraud. **This is a repeat finding 04-1.**

In the 2005 audit, Section II, HUD-Related Financial Statement Audit findings for the 12-Month Period ended September 30, 2005 listed on audit page 116 there was a finding for fraud in the homeowner's rehabilitation program pertaining to missing documentation from client files. The auditor identified the grant funds involved as IHBG grant numbers 01IT4023120 through 05IT4023120. **This is a repeat finding 04-2.**

A sample of 30 expenses from the rehabilitation homeownership program was tested and it was noted that the following information was missing from the client files:

- 24 were missing contracts to specify the work to be performed;
- 29 expenses did not have a vendor invoice to support the payment;
- 25 were missing evidence of a final inspection;
- 11 files did not contain evidence that competitive bids were obtained.

In the 2005 audit, Section II, HUD-Related Financial Statement Audit findings for the 12-Month Period ended September 30, 2005 listed on audit page 118 there was a finding for missing documentation for the rehabilitation program. The auditor identified the grant funds involved as IHBG grant numbers 01IT4023120 through 05IT402310. **This is a repeat finding 04-7.**

Of 30 clients tested for the homeowner's rehabilitation program, the auditor noted the following information to support eligibility was missing:

- 10 files were missing utility commitments;
- One (1) of the clients selected did not have a client file at all, as such, they were missing all documentation to support eligibility.

In the 2005 audit, Section II HUD-Related Financial Statement Audit findings for the 12-Month Period ended September 30, 2005 listed on audit page 119 there was a finding for non-compliance with the 90% Obligation of Grant Funds within Two Years requirement. The auditor identified the grant funds involved as IHBG grant number 01IT4023120. **This is a repeat finding 04-8.**

There was one finding for this portion of the review and review of the 2005 audit.

**Finding # 7a: Non-compliance with OMB Circular A-133**

OMB Circular A-133, at §\_\_.315 (a) states the auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings. The auditee shall also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan shall include the reference numbers the auditor assigns to audit findings under §\_.510(c). Since the summary schedule may include audit findings from multiple years, it shall include the fiscal year in which the finding initially occurred.

**Recommended Corrective Action Finding #7a:** Prepare a summary schedule of prior audit findings and a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan shall include the reference numbers the auditor assigns to audit findings under §\_.510(c) and submit to SPONAP. Since the summary schedule may include audit findings from multiple years, it shall include the fiscal year in which the finding initially occurred.

**Osage Response dated January 30, 2009:** A revised target date for Findings No. 5, No. 6 and No.7 will be submitted before but no later than **February 16, 2009**. Additional time was needed due to the recent weather conditions that resulted in the tribal offices closing for two days and staffs from other departments were unavailable to consult with for a realistic target date.

**Osage Response dated February 13, 2009:** Findings will be submitted by **April 30, 2009**.

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

**Finding #7b: Adverse opinion on Federal Programs for the September 30, 2005 audit**

In the 2005 audit, the auditor expressed an adverse opinion on compliance of requirements regarding activities allowed, allowable cost principles, eligibility and procurement that are applicable to its NAHASDA program.

**Recommended Corrective Action Finding #7b - Step 1:** Hire an Independent Public Accountant (IPA) to review its accounting records and costs charged to all HUD programs listed in the 2005 audit. Provide verification that all HUD costs listed in the 2005 audit are allowable, necessary, reasonable, allocable and authorized; consistent with all policies, regulations and procedures; are accorded consistent treatment; and are adequately documented as required by OMB Circular A-87 and other requirements. We recommend that you include this recommendation in with the Recommended Corrective Finding #7c, Step 1.

**Recommended Corrective Action Finding #7b - Step 2:** Reimburse the appropriate IHBG projects from non-Federal funds for all costs charged to all HUD programs listed in the 2005 audit, if action steps 1 and 2 are not completed. Please provide evidence of reimbursement to the appropriate IHBG project.

**Osage Response dated January 30, 2009:** A revised target date for Findings No. 5, No. 6 and No.7 will be submitted before but no later than **February 16, 2009**. Additional time was needed due to the recent weather conditions that resulted in the tribal offices closing for two days and staffs from other departments were unavailable to consult with for a realistic target date.

**Osage Response dated February 13, 2009:** Findings will be submitted by **April 30, 2009**.

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

**Finding #7c: Failure to provide documentation requested in the 2005 audit letter**

IHBG Grant No. 98IT4023120 was closed subject to final audit on April 20, 2005. The last audit that reported expenditures for this grant was the 2002 audit. According to the previously listed table, there was remaining balance of \$666,364.93 to be expended and audited, therefore the remaining funds/costs should have been included in the Tribe's following year audits until all funds were expended and audited. Documentation provided through the audits does not substantiate that the Tribe expended all of these funds as reported.

Our 2004 Audit transmittal letter dated December 21, 2005 requested that the Tribe reconcile the historical grant expenditures for the 1998-2000 grants in its accounting system to the amounts provided in the audit reports for all IHBG expenditures. The information was to be provided to the SPONAP office within 30 days of receipt of the above mentioned transmittal letter or advise of the status of submitting the information. This information requested has not been provided and is not reflected in the above audit.

**Recommended Corrective Action Finding #7c - Step 1:** Reconcile the historical grant expenditures for the 1998-2000 grants in your accounting system to the amounts provided in the audit reports for all IHBG expenditures. Provide documentation to SPONAP that the reconciliation has been completed and the results of the reconciliation.

**Recommended Corrective Action Finding #7c - Step 2:** Include the questioned expenditures in the 07 audit and the Schedule of Expenditures of Federal Awards (SEFA) and agree to repay any unaudited amounts based on the 2007 audit. Provide SPONAP with a time line for the completion of the 2007 audit.

**Recommended Corrective Action Finding #7c - Step 3:** Reimburse the appropriate IHBG project from non-Federal funds in the amount of \$666,364.93, if action steps 1 and 2 are not completed. Please provide evidence of reimbursement to the appropriate IHBG project.

**Recommended Corrective Action Finding #7c - Step 4:** The Osage Tribe certifies that it will establish detailed backup documentation on file with each LOCCS voucher. Please inform our office once detailed documentation has been established for each LOCCS draw after October 1, 2006.

**Osage Response dated January 30, 2009:** A revised target date for Findings No. 5, No. 6 and No.7 will be submitted before but no later than **February 16, 2009**. Additional time was needed due to the recent weather conditions that resulted in the tribal offices closing for two days and staffs from other departments were unavailable to consult with for a realistic target date.

**Osage Response dated February 13, 2009:** Findings will be submitted by **April 30, 2009**.

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

**Finding #7d: 2005 Audit Finding 05-01 (repeat finding 04-1) – Fraud in Homeowner’s Rehabilitation and Improvement Programs**

The program director for NAHASDA identified fraud in expenses charged to the homeowner’s rehabilitation program and the housing improvement program. Proper supporting documentation was not retained for expenses charged to NAHASDA and Housing Improvements programs. Expenses were charged to client’s accounts when no work was done and/or the wrong client account was charged, work performed on one home and billed to another home and vendors admission to receiving payments for work that was not done.

**Recommended Corrective Action Finding #7d - Step 1:** The Tribe must hire an Independent Public Accountant (IPA) to review its accounting records and costs charged to the IHBG rehabilitation program from all available documentation. Verification should be made to determine that actual costs are reasonable in relation to contract amounts, including inspection of work accomplished. The IPA should determine and submit a report stating that all rehabilitation costs charged to all IHBGs **during the audit periods October 1, 2004 through September 30, 2007** are allowable, necessary, reasonable, allocable and authorized; consistent with all policies, regulations and procedures; are accorded consistent treatment; and are adequately documented as required by OMB Circular A-87 and other requirements. **The IPA’s report must provide documentation confirming the review of and detailing the allowable and unallowable costs for each HUD grant during the period stated above.** SPONAP recommends that the Request for Proposal (RFP) for the contract of the IPA give weight to the IPA’s ability to start and complete the report promptly and experience in reviewing the reconciling accounting records with Federal grants.

**Recommended Corrective Action Finding #7d - Step 2:** Agree to repay the appropriate IHBG project from non-Federal funds any questioned costs that result from the independent audit. Provide documentation to SPONAP that these funds have been repaid. Please contact your Grants Management Specialist for assistance, if needed.

**Recommended Corrective Action Finding #7d - Step 3:** Provide the following to SPONAP within the target dates given below:

1. A copy of the contract with the IPA within 30 days of the date of this letter.
2. Submit confirmation that engagement has started within 60 days of the date of this letter.
3. Submit confirmation that review of file documentation has been completed within 90 days of the date of this letter.
4. Provide verification that rehabilitation costs are reasonable in relation to contracts and a copy of the report submitted within six (6) months from the date of this letter.
5. Provide details of the revised internal control procedures that have been established in order to prevent future occurrences and possible misuse of HUD funds within 30 days of the date of this letter.

**Recommended Corrective Action Finding #7d - Step 4:** Reimburse the appropriate IHBG projects from non-Federal funds for all expenses charged to NAHASDA for the Homeowner's Rehabilitation and Housing Improvement Programs, if action steps 1, 2 and 3 are not completed. Please provide documentation to SPONAP of reimbursement to the appropriate IHBG projects.

**Osage Response dated January 30, 2009:** A revised target date for Findings No. 5, No. 6 and No.7 will be submitted before but no later than **February 16, 2009**. Additional time was needed due to the recent weather conditions that resulted in the tribal offices closing for two days and staffs from other departments were unavailable to consult with for a realistic target date.

**Osage Response dated February 13, 2009:** Findings related the Osage Nation Homeowner's Rehabilitation Program will be submitted by **August 31, 2009**.

**SPONAP Response:** Response provided by the Osage Tribe of Oklahoma is considered substantially non-responsive and the time extension is unreasonable.

**Finding #7e: 2005 Audit Finding 05-02 (repeat finding 04-2) – Fraud in Homeowner's Rehabilitation Program**

The auditor tested 30 expenses from the Homeowner's Rehabilitation Program and it was noted that the client files were missing contracts to specify the work to be performed, expenses did not have a vendor invoice to support the payment, evidence of a final inspection and evidence that competitive bids were obtained.

**Recommended Corrective Action Finding #7e, - Steps 1 through 5:** The corrective actions for Finding #7e are the same as for Finding #7d, Steps 1 through 5.

**Osage Response dated January 30, 2009:** A revised target date for Findings No. 5, No. 6 and No.7 will be submitted before but no later than **February 16, 2009**. Additional time was needed due to the recent weather conditions that resulted in the tribal offices closing for two days and staffs from other departments were unavailable to consult with for a realistic target date.

**Osage Response dated February 13, 2009:** Findings related the Osage Nation Homeowner's Rehabilitation Program will be submitted by **August 31, 2009**.

**SPONAP Response:** Response provided by the Osage Tribe of Oklahoma is considered substantially non-responsive and the time extension is unreasonable.

**Finding #7f: 2005 Audit Finding 05-4 – Missing Documentation for Rehabilitation Program (Repeat Finding 04-7)**

Of 30 clients tested for the homeowner's rehabilitation program, the auditor noted that information to support eligibility was not in the client's files and some of the client's files were missing all documentation.

**Recommended Corrective Action Finding #7f, - Step 1:** The Corrective Action Plan states that an internal review will be conducted and any missing documentation filed to ensure compliance. Please provide a certifying statement that all rehabilitation files have been reviewed and any missing documentation obtained and provide details of revised procedures that have been established in order to prevent future missing eligibility documentation within 30 days from the date of this letter.

**Recommended Corrective Action Finding #7f - Step 2:** Reimburse the appropriate IHBG projects from non-Federal funds for all expenses charged to NAHASDA for the Homeowner's Rehabilitation Program, if action step 1 is not completed. Please provide documentation to SPONAP of reimbursement to the appropriate IHBG projects.

**Osage Response dated January 30, 2009:** A revised target date for Findings No. 5, No. 6 and No.7 will be submitted before but no later than **February 16, 2009**. Additional time was needed due to the recent weather conditions that resulted in the tribal offices closing for two days and staffs from other departments were unavailable to consult with for a realistic target date.

**Osage Response dated February 13, 2009:** Findings related the Osage Nation Homeowner's Rehabilitation Program will be submitted by **August 31, 2009**.

**SPONAP Response:** Response provided by the Osage Tribe of Oklahoma is considered substantially non-responsive and the time extension is unreasonable.

**Finding #7g: 2005 Audit Finding 05-5 – 90% Obligation of Grant Funds within Two Years (repeat Finding 04-8)**

Grant requirements listed at 24 CFR §1000.524 state that within two years of grant award, no less than 90% of the grant must be obligated; it is a performance measure. The 2001 IHBG grant was awarded on November 6, 2001. The Annual Performance Report for September 30, 2006 (an entire year after the 2005 audit period) reflects it is only 62% obligated.

**Recommended Corrective Action Finding #7g:** Review the grant and advise SPONAP of the specific plans/target dates for the 2001 IHBG funds to be obligated in a timely manner in order to meet the performance measure as stated in the regulation. Please provide this information to SPONAP within 30 days from the date of this letter.

**Osage Response dated January 30, 2009:** A revised target date for Findings No. 5, No. 6 and No.7 will be submitted before but no later than **February 16, 2009**. Additional time was needed due to the recent weather conditions that resulted in the tribal offices closing for two days and staffs from other departments were unavailable to consult with for a realistic target date.

**Osage Response dated February 13, 2009:** Findings will be submitted by **April 30, 2009**.

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

### **Recipient Self-Monitoring - IHBG only**

Section 403(b) of NAHASDA requires that each recipient review the performance of its IHBG housing activities to assess compliance with Federal requirements. In accordance with IHBG regulations at 24 CFR §§1000.502(a), 1000.506, and 1000.508, the recipient is responsible for preparing at least annually a compliance assessment, submitting the results of the assessment to the tribe, and identifying corrective actions to address program concerns.

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

The review disclosed that the Osage Tribe has not implemented a self-monitoring system sufficient to maintain compliance with Section 403(b) of NAHASDA and its implementing regulations. There is one finding for this portion of the review.

### **Finding No. 8: Lack of Monitoring for Compliance with Federal Requirements**

Unable to locate evidence of self-monitoring by the Osage Tribe of the subrecipient, Osage Tribe Housing Authority.

The NAHASDA program regulations at 24 CFR §1000.502(a) require that the recipient establish an effective system to monitor its grant activities, ensure compliance with applicable Federal requirements, and monitor its IHP performance goals. The recipient is responsible for preparing at least annually: a compliance assessment in accordance with section 403(b) of NAHASDA; a performance report covering the assessment of program progress and goal attainment under the IHP, and an audit in accordance with the Single Audit Act, as applicable.

Implementation of a self-monitoring system is a critical management tool for the Osage Tribe to ensure compliance with program requirements and track performance in obtaining or achieving IHP goals and objectives. Utilization of a self-monitoring system will assist in

identifying deficiencies so that appropriate and immediate measures can be taken to correct those deficiencies.

**Recommended Corrective Action:** Enclosed is Program Guidance number 2005-4, which clarifies and addresses a recipient's responsibility for self-monitoring. Additionally, enclosed is a copy of the Self-Monitoring Guidebook published March 2002 to assist the tribe in developing an effective self-monitoring system.

**Osage Response dated January 30, 2009:** A proof of publication for monitoring services will be provided by **February 27, 2009** and an executed contract with the firm to perform monitoring services will be provided by **April 30, 2009**.

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