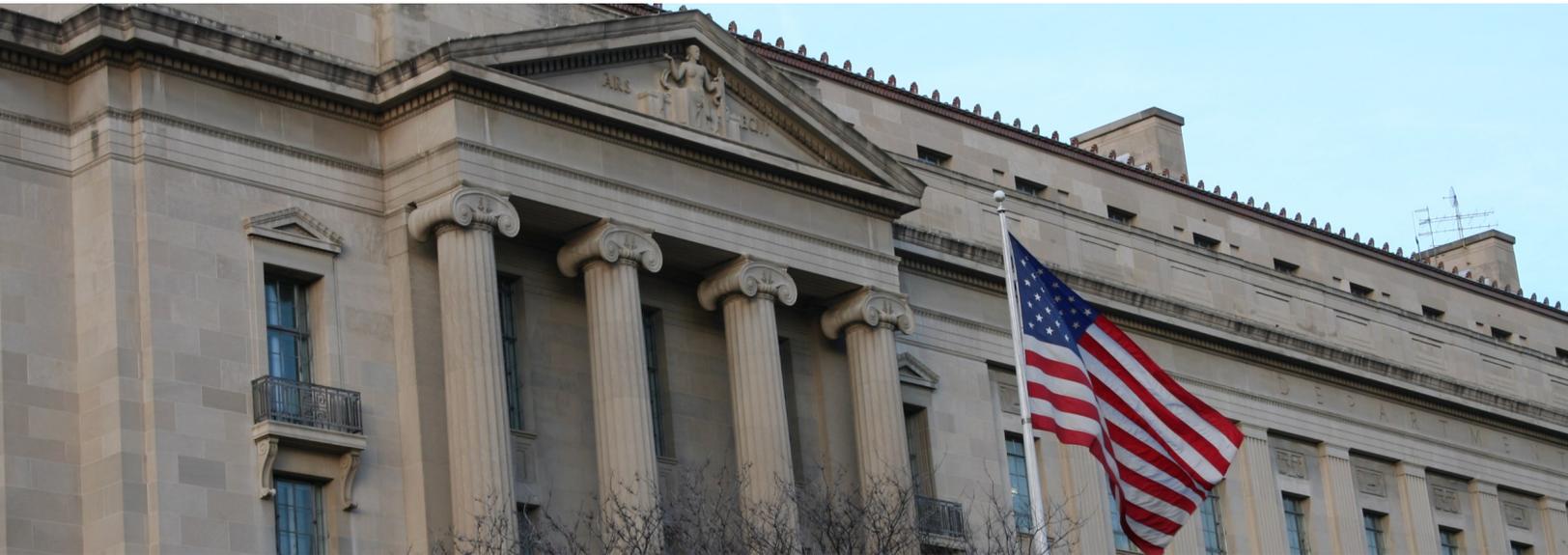




Office of the Inspector General
U.S. Department of Justice

OVERSIGHT ★ INTEGRITY ★ GUIDANCE



**Audit of the Office of Justice
Programs Grants and Cooperative
Agreements Awarded to the
Pueblo of Jemez, Sandoval County,
New Mexico**



Executive Summary

Audit of the Office of Justice Programs Grants and Cooperative Agreements Awarded to the Pueblo of Jemez, Sandoval County, New Mexico

Objectives

The Office of Justice Programs (OJP) awarded the Pueblo of Jemez (Jemez) four grants and two cooperative agreements totaling \$2,344,376. The objectives of this audit were to determine whether costs claimed under the grants were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the award; and to determine whether the grantee demonstrated adequate progress towards achieving program goals and objectives.

Results in Brief

As a result of our audit, we concluded that there were no indications that Jemez was not adequately achieving the stated goals and objectives of the awards. However, we found that Jemez did not comply with essential award conditions related to the use of award funds, progress reports, and Federal Financial Reports (FFRs).

Specifically, we found that Jemez charged unallowable and unsupported contractor and consultant, and other direct costs to the awards; Jemez did not maintain essential award documentation for three years after the closure of an award; and progress reports and FFRs were not accurate. Our audit identified \$160,161 in unallowable and unsupported questioned costs.

Recommendations

Our report contains six recommendations to OJP to assist the Pueblo of Jemez improve its grant management and administration, and remedy questioned costs. We requested a response to our draft audit report from Jemez and OJP, which can be found in Appendices 3 and 4, respectively. Our analysis of those responses is included in Appendix 5.

Audit Results

The purposes of the six awards we reviewed were to support the enhancement of Jemez's criminal justice systems. The project period for the awards was from October 2012 through September 2018. Jemez drew down a cumulative amount of \$2,344,376 for all of the grants we reviewed.

Program Performance and Accomplishments – We reviewed Jemez's stated accomplishments for the six awards and found no indications that Jemez was not on track towards achieving the program goals.

Progress Reports – We found that 9 of the 43 grant accomplishments we tested that Jemez reported on its progress reports were not adequately supported by source documentation. Additionally, Jemez did not have adequate policies and procedures to track award performance measures.

Contractor and Consultant Costs – We determined that there appeared to be a conflict of interest between Jemez and a consultant who found and applied for the awards, which included developing the award budgets. The conflict of interest exists in the fact that the consultant assisted in the creation of the award budgets that resulted in it receiving a financial benefit through consulting agreements for awards. In addition, the audit identified \$156,665 in unsupported contractor and consultant costs related to the same consultant.

Other Direct Costs – We identified \$2,969 in unallowable office furniture and bottled water, as well as \$527 in unsupported other direct costs.

Federal Financial Reports – We found that the quarterly and cumulative grant expenditures reported on the FFRs submitted by Jemez were inaccurate and did not match Jemez's accounting reports for five of the six awards.

**AUDIT OF THE OFFICE OF JUSTICE PROGRAMS
GRANTS AND COOPERATIVE AGREEMENTS
AWARDED TO THE PUEBLO OF JEMEZ
SANDOVAL COUNTY, NEW MEXICO**

TABLE OF CONTENTS

| | |
|---|----|
| INTRODUCTION | 1 |
| The Grantee | 2 |
| OIG Audit Approach | 2 |
| AUDIT RESULTS..... | 3 |
| Program Performance and Accomplishments | 3 |
| Program Goals and Objectives..... | 3 |
| Progress Reports | 4 |
| Compliance with Special Conditions..... | 7 |
| Award Financial Management | 7 |
| Award Expenditures | 7 |
| Personnel Costs..... | 8 |
| Contractor and Consultant Costs..... | 8 |
| Other Direct Costs | 10 |
| Indirect Costs..... | 11 |
| Budget Management and Control | 11 |
| Drawdowns | 12 |
| Federal Financial Reports | 12 |
| CONCLUSION AND RECOMMENDATIONS..... | 14 |
| APPENDIX 1: OBJECTIVES, SCOPE, AND METHODOLOGY | 15 |
| APPENDIX 2: SCHEDULE OF DOLLAR-RELATED FINDINGS..... | 16 |
| APPENDIX 3: PUEBLO OF JEMEZ’S RESPONSE TO THE DRAFT AUDIT REPORT..... | 17 |
| APPENDIX 4: OFFICE OF JUSTICE PROGRAMS’ RESPONSE TO THE DRAFT AUDIT REPORT | 40 |

APPENDIX 5: OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND
SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT..... 45

**AUDIT OF THE OFFICE OF JUSTICE PROGRAMS
GRANTS AND COOPERATIVE AGREEMENTS
AWARDED TO THE PUEBLO OF JEMEZ
SANDOVAL COUNTY, NEW MEXICO**

INTRODUCTION

The U.S. Department of Justice (DOJ) Office of the Inspector General (OIG) completed an audit of four grants and two cooperative agreements awarded by the Office of Justice Programs (OJP), to the Pueblo of Jemez (Jemez), in Sandoval County, New Mexico. Jemez was awarded four grants and two cooperative agreements, totaling \$2,344,376, as shown in Table 1.

Table 1

Grants and Cooperative Agreements Awarded to the Pueblo of Jemez

| Award Number | Award Date | Project Period Start Date | Project Period End Date | Award Amount |
|---------------------|-------------------|----------------------------------|--------------------------------|---------------------|
| 2012-IC-BX-0018 | 09/27/2012 | 10/01/2012 | 09/30/2017 | \$375,461 |
| 2012-IC-BX-0023 | 09/27/2012 | 10/01/2012 | 12/31/2014 | 75,000 |
| 2013-VR-GX-K021 | 09/18/2013 | 10/01/2013 | 03/31/2017 | 377,071 |
| 2015-AC-BX-0016 | 09/16/2015 | 10/01/2015 | 09/30/2018 | 748,709 |
| 2015-DC-BX-0040 | 09/16/2015 | 10/01/2015 | 09/30/2018 | 318,135 |
| 2015-VI-GX-K029 | 09/16/2015 | 10/01/2015 | 09/30/2018 | 450,000 |
| Total: | | | | \$2,344,376 |

Source: OJP's Grants Management System

The following awards were funded through the Coordinated Tribal Assistance Solicitation.

- Award Number 2012-IC-BX-0018 supports the strengthening of indigenous justice methods including diversion, to handle cases involving alcohol or substance abuse related crime, particularly among veterans.
- Award Number 2012-IC-BX-0023 supports the recipient in engaging in a data-informed planning process to develop a written strategic plan that will guide justice system development to promote community wellness and safety.
- Award Number 2015-DC-BX-0040 supports the enhancing of the capacity of tribal courts to respond to the alcohol-related issues of youth under the age of 21. This can include the development of a new juvenile healing to wellness court or enhancements to an existing tribal healing to wellness court.
- Award Number 2015-AC-BX-0016 supports the development and enhancement of the operation of Tribal justice systems; the training of

Tribal justice staff; the planning of new or the enhancement of existing various Tribal courts, such as peacemaking courts, healing to wellness courts, sentencing circles, and other alternative justice courts; and diversion programs, Tribal probation services, and alternative dispute resolution methods.

- Award Number 2013-VR-GX-K021 was funded through the Comprehensive Tribal Victim Assistance Program, which supports the enhancement of victim services, and the building of education and awareness on intimate partner violence, elder abuse, sexual violence, theft, and vandalism victims of crime.
- Award Number 2015-VI-GX-K029 was funded through the Children's Justice Act Partnerships for Indian Communities Program, which supports programs to provide comprehensive and coordinated multidisciplinary responses to child abuse victims and provide trauma-informed, culturally competent, holistic services to child abuse victims and their families.

The Grantee

The Pueblo of Jemez is a sovereign nation located in Sandoval County, New Mexico, approximately 55 miles northwest of Albuquerque, New Mexico. As 1 of 19 New Mexico pueblos, it is a federally recognized tribe with approximately 3,400 tribal members, with about 58 percent of that number living in Jemez.

OIG Audit Approach

The objectives of this audit were to determine whether costs claimed under the awards were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the awards; and to determine whether the grantee demonstrated adequate progress towards achieving the program goals and objectives. To accomplish these objectives, we assessed performance in the following areas of award management: program performance, financial management, expenditures, budget management and control, drawdowns, and federal financial reports.

We tested compliance with what we consider to be the most important conditions of the awards. The 2011 and 2014 OJP Financial Guides, 2015 DOJ Grants Financial Guide, and the award documents contain the primary criteria we applied during the audit.

The results of our analysis are discussed in detail later in this report. Appendix 1 contains additional information on this audit's objectives, scope, and methodology. The Schedule of Dollar-Related Findings appears in Appendix 2.

AUDIT RESULTS

Program Performance and Accomplishments

We reviewed required performance reports, award documentation, and interviewed recipient program officials to determine whether Jemez demonstrated adequate progress towards achieving the program goals and objectives. We also reviewed the progress reports, to determine if the required reports were accurate. Finally, we reviewed Jemez's compliance with the special conditions identified in the award documentation.

Program Goals and Objectives

The goals and objectives for Award Number 2012-IC-BX-0018 were to address the enhancement and use of Pueblo-based indigenous justice approaches and methods for processing pretrial diversion cases; address the needs of the underserved population through a jail diversion program targeting veterans; and design an overall Tribal Action Plan to address alcohol and substance abuse and other co-occurring disorders, and justice system involvement. The program looked to accomplish these goals by increasing the use of Pueblo-based indigenous justice methods and approaches to handle cases; creating culturally relevant policies and procedures supporting the use of indigenous justice; increase veterans' outcome through a jail diversion program; increasing understanding and support to address veteran needs; increasing access to resources available to veterans by creating a Service Coordinator position and justice liaison services; and increasing strategies to prevent and address alcohol and substance abuse issues through the creation of a Tribal Action Plan.

The goals and objectives for Award Number 2012-IC-BX-0023 were to improve the Pueblo's blended traditional and contemporary justice system of peacekeeping and law enforcement, and peacemaking and tribal court functions, and their connection with allied services and systems. The program looked to accomplish these goals by strengthening the use of customary law and indigenous methods and approaches to address criminal justice issues, problems, and needs; creating a long-term resource development component covering financial and program development strategies; increasing knowledge of the scope and prevalence of crime and what each justice component needs to do to address ongoing, urgent and emerging crime problems; increase strategies to address offender needs and community safety by creating supervision alternatives, sentencing options, reentry and aftercare plans; and increase understanding of the Tribal Law and Order Act by identifying how it can be applied to the traditional and contemporary justice system for courts, law enforcement, and corrections.

The goals and objectives for Award Number 2013-VR-GX-K021 were to address ongoing victim services expansion needs, ongoing education and training, and code and policy needs by increasing services to assist victims of interpersonal violence, property crimes, and elder abuse; increasing community involvement through outreach and education conferences aimed at providing education on

interpersonal violence, property crimes, and victim issues; increasing the tribal capacity to address victim needs through enactment of new or amended laws and policy; and strengthening financial and programmatic reports.

The goals and objectives for Award Number 2015-AC-BX-0016 were to increase the capacity and capabilities of the Tribal Court by updating existing codes and policies; strengthen the Traditional Court by redesigning court procedures and processes and providing relevant training; strengthen court management by creating policies and procedures to guide court operations in management and staff development; and enhance relationships with allied tribal service programs through the development of collaboration policies to create coordinated referral and service delivery systems, co-develop culturally relevant programs for victims and offenders, and conduct cross-training opportunities.

The goals and objectives for Award Number 2015-DC-BX-0040 were to address issues that justice-involved youth and minors and their families face due to alcohol and/or substance abuse related crime, delinquency, and family problems by improving the process for handling alcohol and/or substance abuse-related cases affecting youth and family functioning through reform within the Jemez Children's Code; increasing service coordination, collaboration, and cost sharing across programs serving families; increasing incorporation of cultural elements in Jemez Healing to Wellness Court, treatment and services; increasing incarcerations alternatives through intensive community-based supervision and monitoring, and linkages to reentry and/or relapse support; and increasing comprehensive problem-solving strategies through the implementation of Good Road of Life and American Indian Strengthening Families curricula.

The goals and objectives for Award Number 2015-VI-GX-K029 were to improve strategies addressing specific victimization areas: children exposed to violence, alcohol and drug endangered children, children of arrested parents, and Indian Child Welfare cases; increase victim response through specialized training events; increase foster care homes through the creation of local regulations, training and support for foster care parents; and increase program support by creating or revising code and policies.

Based on our review, there were no indications that Jemez was not adequately achieving the stated goals and objectives of the awards.

Progress Reports

According to the OJP Financial Guides and the 2015 DOJ Grants Financial Guide, the funding recipient should ensure that valid and auditable source documentation is available to support all data collected for each performance measure specified in the program solicitation. In order to verify the information in progress reports, we selected a sample of 43 performance measures from the two most recent reports submitted for each award. We then traced the items to supporting documentation maintained by Jemez. Based on our analysis during fieldwork, we found that 12 of the 43 performance measures were not supported. In response to the draft report, Jemez provided additional documentation that

supported 3 of the 12 progress report facts previously identified as unsupported. However, as discussed in the following sections, 9 of the 43 progress report facts we tested remain unsupported.

For Award Number 2012-IC-BX-0018, we identified three performance measures in our sample that were not supported by the documentation provided by Jemez, as shown in Table 2.

Table 2

Unsupported Progress Report Facts for Award Number 2012-IC-BX-0018

| Progress Report Fact | Issue with Support Provided |
|--|---|
| January – June 2016 | |
| The Jail Diversion Program Coordinator is a member of the Justice Advisory Committee and attended six Jemez Justice Advisory Committee/Coordinated Tribal Assistance Solicitation meetings during this reporting period. | Jemez provided sign in sheets, from which we were only able to verify five attended meetings, instead of the six meetings reported by Jemez. |
| July – December 2016 | |
| As a result of the Coordinator’s outreach and collaboration with veteran services and resources outside the Jemez community, one Jemez veteran was placed in a halfway house for veterans in Albuquerque, New Mexico and one other will be continuing his education at the beginning of the next reporting period. | We were able to verify that the veteran was placed in a halfway house; however, the placement occurred January 2017, which was outside the specific reporting period. |
| The Jail Diversion Program held a Trauma and Reduction Stress Clinic on November 30, 2016 for veterans and family members with issues. Ten veterans from the community attended. | Jemez was unable to provide sign in sheets or any other documentation supporting the number of attendees. |

Source: OJP’s Grant Management System and Jemez

For Award Number 2012-IC-BX-0023, we identified two performance measures in our sample that were not supported by the documentation provided by Jemez, as shown in Table 3.

Table 3

Unsupported Progress Report Facts for Award Number 2012-IC-BX-0023

| Progress Report Fact | Issue with Support Provided |
|---|---|
| July – December 2014 | |
| Individuals included as part of the planning process during the reporting period: 23 community members, 20 tribal elders, 29 tribal elected officials, and 57 local justice system representatives. | We were only able to verify 15 of the elected officials. We were unable to verify any of the community members or local justice system representatives. |
| January – June 2014 | |
| Individuals included as part of the planning process during the reporting period: 4 local justice system representatives between January and March, and 7 between April and June. | We were unable to verify this claim. |

Source: OJP’s Grant Management System and Jemez

For Award Number 2013-VR-GX-K021, we identified one performance measure in our sample that was not supported by the documentation provided by Jemez, as shown in Table 4.

Table 4

Unsupported Progress Report Facts for Award Number 2013-VR-GX-K021

| Progress Report Fact | Issue with Support Provided |
|---|---|
| July – December 2016 | |
| The Pueblo of Jemez provided 20 Outreach Activity services from July 2016 to December 2016. | We were only able to verify 8 of the outreach activities. Jemez stated that it did not have the documentation for the other 12. |

Source: OJP’s Grant Management System and Jemez

For Award Number 2015-DC-BX-0040, we identified two performance measures in our sample that were not supported by the documentation provided by Jemez, as shown in Table 5.

Table 5

Unsupported Progress Report Facts for Award Number 2015-DC-BX-0040

| Progress Report Fact | Issue with Support Provided |
|---|--|
| January – June 2016 | |
| A representative of the Probation Office attended two Jemez Justice Advisory Committee meetings and the former Supervisory Probation Officer attended two meetings. | We were only able to verify that the Probation Office representative attended one meeting and the former Supervisory Probation Officer attended two. |
| Eight partnerships with tribal agencies were developed during the period. | Jemez stated that no partnerships with other tribal agencies were established. |

Source: OJP’s Grant Management System and Jemez

For Award Number 2015-AC-BX-0016, we identified one performance measures in our sample that were not supported by the documentation provided by, as shown in Table 6.

Table 6

Unsupported Progress Report Facts for Award Number 2015-AC-BX-0016

| Progress Report Fact | Issue with Support Provided |
|--|---|
| July – December 2016 | |
| 25 criminal cases were heard before a judge during the reporting period. | Jemez officials stated that the number of cases reported in the progress report were inaccurate. However, we were able to verify support for 23 cases reported. |

Source: OJP’s Grant Management System and Jemez

Based on the information outlined above, we determined that Jemez does not have adequate policies and procedures to track award performance measures reported in its progress reports. Therefore, we recommend that OJP coordinate with Jemez to develop policies and procedures to ensure that valid and auditable source

documentation is available to support all data collected for each performance measure.

Compliance with Special Conditions

Special conditions are the terms and conditions that are included with the awards. We evaluated the special conditions for each award and selected a judgmental sample of the requirements that are significant to performance under the awards and are not addressed in another section of this report. We evaluated a total of 24 special conditions for the awards in our scope. Based on our sample, we did not identify any instances of Jemez violating these additional special conditions we reviewed.

Award Financial Management

According to the OJP Financial Guides and the 2015 DOJ Grants Financial Guide all award recipients and subrecipients are required to establish and maintain adequate accounting systems and financial records and to accurately account for funds awarded to them. To assess Jemez's financial management of the awards covered by this audit, we conducted interviews with financial staff, examined policies and procedures, and inspected award documents to determine whether Jemez adequately safeguards the award funds we audited. We also reviewed Jemez's Single Audit Reports for fiscal years (FY) 2012, 2013, 2014, and 2015 to identify internal control weaknesses and significant non-compliance issues related to federal awards. Finally, we performed testing in the areas that were relevant for the management of this award, as discussed throughout this report.

Based on our review, we identified weakness in Jemez's financial management. Specifically, we found that Jemez charged unallowable and unsupported contractor and consultant, and other direct costs to the awards. Additionally, we found that there appeared to be a conflict of interest between Jemez and two of its consultants, the Federal Financial Reports (FFR) were generally not supported by the accounting records for the awards, and that Jemez failed to maintain essential award documentation for three years after the closure of an award, as required by the financial guides. These deficiencies are discussed in more detail in the Contactor and Consultant Costs, Other Direct Costs, and Federal Financial Reports section of the report.

Based on the above information, we have concluded that award financial management related to the use of award funds, and accounting for and documenting award expenditures could be improved. As a result, we made five recommendations to OJP to address these deficiencies.

Award Expenditures

For the awards in our scope, Jemez's approved budgets included personnel, fringe benefits, travel, equipment, supplies, contractual, indirect, and other costs. To determine whether costs charged to the awards were allowable, supported, and properly allocated in compliance with award requirements, we tested a sample of

210 transactions totaling \$292,005, which included 40 transactions from Award Number 2012-IC-BX-0018, 11 transactions from Award Number 2012-IC-BX-0023, 44 transactions from Award Number 2013-VR-GX-K021, 35 transactions from Award Number 2015-AC-BX-0016, 35 transactions from Award Number 2015-DC-BX-0040, and 45 transactions from Award Number 2015-VI-GX-K029. We reviewed documentation, accounting records, and performed verification testing related to award expenditures. As discussed in the following sections, we identified \$160,656 in unallowable and unsupported questioned costs. Subsequent to the issuance of the draft report, Jemez requested and OJP approved a GAN that remedied \$495 in unallowable questioned costs; as result, the remaining questioned costs total \$160,161.

Personnel Costs

As a part of our sample, we reviewed payroll transactions totaling \$36,859, which included all salary and fringe benefits expenditures for two non-consecutive pay periods, to determine if labor charges were computed correctly, properly authorized, accurately recorded, and properly allocated to the award. We determined that the payroll costs for the periods we tested were computed correctly, properly authorized, accurately recorded, and properly allocated to the award.

Contractor and Consultant Costs

As part of our sample, we reviewed 32 contractor and consultant transactions totaling \$176,504. For five of the six awards included in our audit, we found that Jemez paid American Indian Development Associates (AIDA) to provide data management, and technical assistance. However, based on our review of the relationship between AIDA and Jemez, we determined that there appeared to be a conflict of interest.

The DOJ Grants Financial Guide requires a recipient to identify any potential conflict of interest issues and disclose them to the awarding agency for specific guidance and advice. According to Jemez, AIDA was involved in finding and applying for DOJ awards, which included developing the award budgets. In our judgment, the fact that the tribe allowed AIDA to assist in the creation of award budgets that resulted in it receiving a financial benefit through consulting agreements for DOJ awards it worked on appears to be a conflict of interest. We also found that for Award Number 2015-VI-GX-K029 Jemez awarded a contract to an AIDA employee to provide policies and procedures, and code development services. An AIDA official stated that the individual is no longer an employee of AIDA, and has not been for "years." However, in our judgment, awarding a contract to an AIDA employee, current or not, also appears to be a conflict of interest.

In addition, according to the OJP Financial Guides and 2015 DOJ Grants Financial Guide a recipient cannot pay any bonus or commission to any individual or organization to obtain approval of an application for award assistance. However,

based on the following information, it appears that Jemez was indirectly using DOJ award funds to compensate AIDA for finding and applying for DOJ awards.

- In 2010 Jemez approved a resolution to waive its procurement policy to competitively bid contracts over \$10,000 so that it could award a sole source agreement to AIDA, for research and data collection services. In their resolution, they note that the services are to be provided for multiple DOJ Awards.
- In 2013, Jemez approved an additional resolution to waive its procurement policy for AIDA. In the resolution, they specifically noted that since 2010 they have received multiple DOJ awards totaling \$4,180,274 as a result of AIDA's work.

Based on the concerns outlined above, we believe there is a conflict of interest between Jemez and AIDA. Additionally, it appears that the consulting agreements were used as a means to indirectly compensate AIDA for its assistance in finding and obtaining the DOJ awards, which is expressly prohibited. Further, the contracting practices used to award contracts to AIDA OJP Financial Guide, which require all procurement transactions to be conducted in a manner to provide, to the maximum extent practical, open, free, and fair competition. The recipient must be alert to organizational conflicts of interest, as well as noncompetitive practices among contractors that may restrict or eliminate competition. As a result, we recommend that OJP coordinate with Jemez to develop policies and procedures to ensure conflicts of interest are avoided and contracting practices are followed.

Additionally, during our fieldwork we reviewed several invoices charged to the awards for work completed by AIDA. Based on our initial review of the sample of the invoices, we determined that they were often vague, and did not sufficiently support the work completed. As a result we asked Jemez to provide us with additional documentation to support the charges. In response, Jemez provided timesheets developed by AIDA that detailed the work performed for each invoice. However, based on our review of the timesheets provided by AIDA, we determined that there were strong indications that the timesheets were created as a result of our audit and did not exist at the time the AIDA invoices were submitted and paid by Jemez. Specifically, we identified the following concerns related to the timesheets provided by AIDA.

- The timesheets included the calculation of the total charge (Hours Worked x Hourly Rate); however, the hourly rate used was consistently \$81.25 (the current maximum allowable consultant hourly rate) for all of the timesheets, including timesheets as early as January 2013. This is an issue, because prior to 2014, the maximum hourly rate was \$56.25. The maximum hourly rate was not increased to \$81.25 until 2014; therefore, neither AIDA nor the Pueblo of Jemez would have known of the \$81.25 rate prior to the issuance of the 2014 OJP Financial Guide.
- Several timesheets reported unusual intervals of time worked (for example one timesheet reported 1.8 hours worked) which equate to unlikely amounts

of time worked (1.8 hours equates to 1 hour and 48 minutes of work) In other instances, the timesheets indicated that 4.62 hours were worked, which equates to 277 minutes and 12 seconds. In our judgement, the unusual time recordings are an additional indication that the timesheets were created in response to our request for supporting documentation, and the numbers reported as "hours worked" were arrived at by dividing the invoiced amount by \$81.25.

- The work performed per the invoices did not always match the work performed per the timesheets. Additionally, some of the timesheets included work on weekends and holidays that would have required coordination with Jemez staff when the office was closed. The timesheets also included unallowable charges for services not covered by the consulting agreement, such as consultant contract administration.
- The payments to AIDA for Award Numbers 2012-IC-BX-0018 and 2013-VR-GX-K021 appear to have been monthly payments, rather than hourly. Many of the invoices for these awards were for the same amount every month; as a result, the timesheets developed by AIDA showed the same hours every month. For the invoices that included multiple months of work, the timesheets developed by AIDA indicate that the hours worked varied by month. However, when we divided the total amount of the invoices by the total number of months included on the invoice, the amount per month was the same as the amount billed for invoices that only covered one month of work, indicating that AIDA was charging the same amount every month regardless of the amount of time spent on the award.

Given the issues discussed above regarding the timesheets provided by AIDA in support of the invoices, in our judgment, the timesheets were created as a result of this audit and did not exist at the time the invoices were submitted and paid by Jemez. Further, we do not believe the timesheets are an accurate accounting of the hours worked by AIDA. Therefore, we are not accepting the timesheets as adequate supporting documentation for the \$156,665 charged to the awards for the consulting agreements with AIDA. Therefore, we recommend OJP coordinate with Jemez to remedy the \$156,665 in unsupported contractor and consultant costs.

Other Direct Costs

As part of our sample, we reviewed 93 transactions of Other Direct Costs totaling \$78,642. For Award Number 2013-VR-GX-K021, Jemez purchased office furniture totaling \$2,416, which was not included in the budget or a Grant Adjustment Notice (GAN). Therefore, we question the \$2,416 for office furniture as unallowable.

For Award Number 2012-IC-BX-0018, Jemez purchased an AV Cart totaling \$495, which was not included in the budget or a GAN. Therefore, we question the \$495 for the AV Cart as unallowable. As discussed later in this section, subsequent to the issuance of the draft report, Jemez requested and received a GAN to include the AV Cart in the award budget.

Our sample for Award Number 2012-IC-BX-0018 also included \$136 in unallowable costs for bottled water that was not included in the approved award budget. As a result, we expanded our analysis to include all transactions related to bottled water for Award Number 2012-IC-BX-0018, and identified a total of \$554 in unallowable costs.

Our sample for Award Number 2012-IC-BX-0023 included two unsupported transactions for reimbursements totaling \$527. Jemez officials stated that they only maintained documentation for 3 years after the expenses were paid on February 28, 2013. As a result, Jemez was unable to provide supporting documentation for these transactions. According to the OJP financial guide, recipients must maintain all financial records, supporting documents, statistical records, and all other records pertinent to the award for at least 3 years after receiving notification from the awarding agency that the award has been financially and programmatically closed. Award Number 2012-IC-BX-0023 was not closed until April 2015, meaning that Jemez was required to maintain the award documentation until April 2018. As a result, we question the \$527 as unsupported and recommend that OJP ensure that Jemez implements policies to ensure documentation is maintained for at least 3 years after the award has been financially and programmatically closed.

In total, we identified \$3,464 in unallowable other direct costs related to office furniture, bottled water, and an AV cart; and \$527 in unsupported reimbursements. Subsequent to the issuance of the draft report, Jemez filed and OJP approved a GAN to include the AV cart in the award budget; as a result, we consider the \$495 in unallowable questioned costs related to the AV cart remedied. Therefore, we recommend OJP coordinate with Jemez to remedy the remaining \$2,969 in unallowable and unsupported other direct costs. In addition, we recommend that OJP coordinate with Jemez to develop policies requiring that documentation is maintained for at least 3 years after the award has been financially and programmatically closed.

Indirect Costs

Indirect costs are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. We did not identify any issues related to indirect costs.

Budget Management and Control

According to the OJP Financial Guide and the 2015 DOJ Grants Financial Guide, the recipient is responsible for establishing and maintaining an adequate accounting system, which includes the ability to compare actual expenditures or outlays with budgeted amounts for each award. Additionally, the award recipient must initiate a GAN for a budget modification that reallocates funds among budget categories if the proposed cumulative change is greater than 10 percent of the total award amount.

According to the 2015 DOJ Grants Financial Guide, the 10 percent rule does not apply to an award of less than \$150,000. Award Number 2012-IC-BX-0023 was under \$150,000; therefore, we did not complete the budget management analysis for this award.

For the remaining five awards, we compared award expenditures to the approved budgets to determine whether Jemez transferred funds among budget categories in excess of 10 percent. We determined that the cumulative difference between category expenditures and approved budget category totals was not greater than 10 percent.

Drawdowns

According to the OJP Financial Guides and the 2015 DOJ Grants Financial Guide, an adequate accounting system should be established to maintain documentation to support all receipts of federal funds. If, at the end of the award, recipients have drawn down funds in excess of federal expenditures, unused funds must be returned to the awarding agency. As of March 22, 2017, Jemez had drawn down a total of \$948,858 from the six audited awards.

To assess whether Jemez managed award receipts in accordance with federal requirements, we compared the total amount reimbursed to the total expenditures in the accounting records.

During this audit, we did not identify material deficiencies related to the recipient's process for developing drawdown requests. However, we identified deficiencies related to individual award expenditures that resulted in unsupported and unallowable questioned costs. We address those deficiencies in the Award Expenditures section in this report.

Federal Financial Reports

According to the OJP Financial Guides and the 2015 DOJ Grants Financial Guide recipients shall report the actual expenditures and unliquidated obligations incurred for the reporting period on each financial report as well as cumulative expenditures. To determine whether Jemez submitted accurate FFRs, we compared the four most recent reports to Jemez's accounting records for each award.

We found that the FFRs were inaccurate and did not match Jemez's accounting records for five of the six awards in our scope. Of the 24 total FFRs reviewed, 18 reported cumulative expenditures that did not match the accounting records, 17 reported quarterly expenditures that did not match accounting records, and 15 reported indirect costs that did not match the accounting records, as shown in Table 7.

Table 7

Differences between FFR Reports and the Award General Ledgers

| Report # | Quarterly Expenditures Difference (Qtr. Exp. Per GL – Qtr. Exp. Per FFR) | Cumulative Expenditures Difference (Cumulative Exp. Per GL – Cumulative Exp. Per FFR) | Indirect Costs Difference (IC Per GL – IC Per FFR) |
|-------------------------------------|---|--|---|
| Award Number 2012-IC-BX-0018 | | | |
| 14 | (\$580) | (\$1,028) | \$40 |
| 15 | (\$2,711) | (\$3,739) | \$356 |
| 16 | \$9,328 | \$5,590 | (\$6,572) |
| 17 | \$163 | \$5,752 | (\$668) |
| Award Number 2013-VR-GX-K021 | | | |
| 10 | \$12,410 | \$8,612 | N/A |
| 11 | \$3,075 | \$11,687 | \$442 |
| 12 | (\$3,600) | \$8,087 | (\$2,809) |
| 13 | \$2,509 | \$10,597 | N/A |
| Award Number 2015-AC-BX-0016 | | | |
| 2 | (\$459) | (\$459) | (\$459) |
| 3 | \$3,398 | \$2,939 | \$1,008 |
| 4 | (\$2,455) | \$484 | (\$8,098) |
| 5 | (\$2,686) | (\$2,202) | (\$4,348) |
| Award Number 2015-DC-BX-0040 | | | |
| 2 | (\$3,766) | (\$3,092) | N/A |
| 3 | N/A | (\$3,092) | N/A |
| 4 | (\$69) | (\$3,162) | (\$2,109) |
| 5 | (\$746) | (\$3,907) | (\$1,128) |
| Award Number 2015-VI-GX-K029 | | | |
| 2 | N/A | N/A | \$100 |
| 3 | N/A | N/A | N/A |
| 4 | \$228 | \$228 | (\$14,852) |
| 5 | (\$1,038) | (\$811) | (\$2,288) |

Source: OJP's Grants Management System and Jemez

As a result, we recommend that OJP ensures that Jemez implements policies to accurately report expenditures and indirect costs on future FFRs.

CONCLUSION AND RECOMMENDATIONS

The objectives of this audit were to determine whether costs claimed under the awards were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the award; and to determine whether the grantee demonstrated adequate progress towards achieving program goals and objectives. We assessed Jemez's program performance, financial management, expenditures, budget management and control, drawdowns, and federal financial reports. Based on our audit testing, we identified \$160,656 in unallowable and unsupported costs related to contractors and consultants, and other direct costs. In addition, we determined that the progress reports and FFRs were inaccurate, Jemez was not properly maintaining award documentation, and there appeared to be a conflict of interest between Jemez and two of its consultants. As a result, we made six recommendations to OJP.

We recommend that OJP:

1. Coordinate with Jemez to develop policies and procedures to ensure that valid and auditable source documentation is available to support all data collected for each performance measure.
2. Coordinate with Jemez to develop policies and procedures to ensure conflicts of interest are avoided and contracting practices are followed.
3. Remedy the \$157,192 in unsupported questions costs related payments to Contractor and Consultant Costs and Other Direct Costs.
4. Remedy the remaining \$2,969 remaining of the original \$3,464 in unallowable questioned costs related to Other Direct Costs.¹
5. Coordinate with Jemez to develop policies requiring that documentation is maintained for at least 3 years after the award has been financially and programmatically closed.
6. Ensure that Jemez implements policies to accurately report expenditures and indirect costs on future FFRs.

¹ In a draft of this report, we originally identified \$3,464 in unallowable costs. In its response, Jemez provided support for \$495 of these costs, and shown here are the remaining costs for remedy. See Appendix 5 for a more detailed explanation.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of this audit were to determine whether costs claimed under the awards were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the award; and to determine whether the grantee demonstrated adequate progress towards achieving the program goals and objectives. To accomplish these objectives, we assessed performance in the following areas of award management: program performance, financial management, expenditures, budget management and control, drawdowns, and federal financial reports.

We conducted this performance 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This was an audit of Office of Justice Programs grants and cooperative agreements awarded to the Pueblo of Jemez. Jemez was awarded \$2,344,376 under Award Numbers 2012-IC-BX-0018, 2012-IC-BX-0023, 2013-VR-GX-K021, 2015-AC-BX-0016, 2015-DC-BX-0040, and 2015-VI-GX-K029, and as of March 22, 2017, Jemez had drawn down \$948,858 of the total funds awarded. Our audit concentrated on, but was not limited to September 27, 2012, the award date for Award Number 2012-IC-BX-0023 through April 7, 2017, the last day of our field work. Award Number 2012-IC-BX-0023 ended on December 31, 2014, and Award Number 2013-VR-GX-K021 ended on March 31, 2017. Award Numbers 2012-IC-BX-0018, 2015-AC-BX-0016, 2015-DC-BX-0040, and 2015-VI-GX-K029 were ongoing at the time of our review.

To accomplish our objectives, we tested compliance with what we consider to be the most important conditions of Jemez's activities related to the audited awards. We performed sample-based audit testing for award expenditures including payroll and fringe benefit charges, financial reports, and progress reports. In this effort, we employed a judgmental sampling design to obtain broad exposure to numerous facets of the awards reviewed. This non-statistical sample design did not allow projection of the test results to the universe from which the samples were selected. The 2011 and 2014 OJP Financial Guides, the 2015 DOJ Grants Financial Guide and the award documents contain the primary criteria we applied during the audit.

During our audit, we obtained information from OJP's Grants Management System, as well as Jemez's accounting system specific to the management of DOJ funds during the audit period. We did not test the reliability of those systems as a whole, therefore any findings identified involving information from those systems was verified with documentation from other sources.

APPENDIX 2

SCHEDULE OF DOLLAR-RELATED FINDINGS

| <u>Description</u> | <u>Amount</u> | <u>Page</u> |
|--------------------------------------|----------------------------|-------------|
| Questioned Costs:² | | |
| <u>Unallowable Costs</u> | | |
| Other Direct Costs | \$2,969 | 11-12 |
| <i>Total Unallowable Costs</i> | <i>\$2,969³</i> | |
| <u>Unsupported Costs</u> | | |
| Contractor and Consultant Costs | \$156,665 | 9-11 |
| Other Direct Costs | \$527 | 11-12 |
| <i>Total Unsupported Costs</i> | <i>\$157,192</i> | |
| Net Questioned Costs | \$160,161 | |

² **Questioned Costs** are expenditures that do not comply with legal, regulatory, or contractual requirements, or are not supported by adequate documentation at the time of the audit, or are unnecessary or unreasonable. Questioned costs may be remedied by offset, waiver, recovery of funds, or the provision of supporting documentation.

³ In a draft of this report, we originally identified \$3,464 in unallowable costs. In its response, Jemez provided support for \$495 of these costs, and shown here are the remaining costs for remedy. See Appendix 5 for a more detailed explanation.

**PUEBLO OF JEMEZ'S
RESPONSE TO THE DRAFT AUDIT REPORT⁴**



November 03, 2017

David M. Sheeren
Regional Audit Manager
Denver Regional Audit Office
Office of the Inspector General
U.S. Department of Justice
1120 Lincoln St., Suite 1500
Denver, CO 80203

Dear Mr. Sheeren:

The Pueblo of Jemez provides the following response to the Department of Justice (DOJ) Office of Inspector General (OIG) Draft Audit Report. The attached document responds to each of the proposed findings in the Draft Audit Report. We appreciate the opportunity to respond to the audit report.

The Pueblo of Jemez does not concur with all of the findings identified in the report and stresses that the grants were properly implemented and achieved their purposes. As a result of our response, we believe several of the findings will not be sustained. After going through the audit process, the Pueblo of Jemez offers the following recommendations to the OIG for future audits conducted with DOJ grantees:

1. Provide the grantee with the evaluation tool.
 - a. The Pueblo of Jemez did request a copy of the evaluation tool prior to OIG's visit to the Pueblo of Jemez. The Pueblo of Jemez is a small organization and beginning the process of pulling the documents for the auditors upon their arrival created an administrative burden on the tribal staff and inefficient response times to the OIG auditors.
2. OIG Auditors should work with the assigned DOJ Program Specialists assigned to the CTAS grantee.
 - a. The DOJ Program Specialists work closely with the grantees and approve progress reports, data collection strategies, work products and deliverables. A majority of the findings in the Draft Audit Report were of progress report deliverables that the auditor was unable to verify. These progress reports were already reviewed and accepted by the Program Specialists. For example, the OJP conducted a desk audit

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⁴ Attachments to this response were not included in this final report.

of the Jail Diversion grant in April 2016 and found that the Pueblo of Jemez was in full compliance. This report can be provided to you upon request. The report can also be verified in the monitoring letter in the Grants Management System (GMS). The DOJ Program Specialists' expertise would have contributed greatly in helping the OIG auditors to identify alternative verification methods for progress report activities, that would include, but not be limited to sign in sheets, and to explain, for example, why the confidentiality of survey participants is important and thus limited the methods by which Jemez could satisfy OIG's request for sign in sheets. The DOJ Program Specialists could also have assisted the OIG with clarifying the quarterly and annual aggregate data versus reporting period data, and how the program managers have found that representation at meetings is satisfied when either the individual tribal employee or a designee attends.

3. Properly reflect in the Draft Audit Report the documentation provided by the grantee.
 - a. Many of the exhibits contained in our response were provided via email or in person to the auditors at the time of the audit. We acknowledge that the amount of the information and the transition between two OIG auditors may have caused an overload of documentation, but several issues appeared in the Draft Audit Report that were discussed during the OIG visit, which the Pueblo of Jemez thought were resolved. For example, the Pueblo of Jemez representatives stated during the audit that its consultant was directly compensated for work preparing grant proposals for DOJ grants, as evidenced by separate grant writing contracts and purchase orders that reflect funding sources unrelated to the DOJ grants. Still, the Draft Audit Report incorrectly states that the consulting agreements to provide data management appear to be a "means to indirectly compensate [the consultant] for its assistance in finding and obtaining the DOJ awards." We have again provided the documents to verify that direct compensation in our response.
4. Transition audit response documentation between OIG auditors assigned to the grantee.
 - a. The Pueblo of Jemez worked with two separate auditors during the course of the recent audit. Both auditors were professional and courteous. The Pueblo of Jemez believe that our staff worked well with the auditors, but documentation provided to one had to later be provided to the other. Again, the Pueblo of Jemez believes this transition and the volume of information passed between our personnel and the auditors resulted in issues being presented in the Draft Audit Report that the Pueblo of Jemez believed were resolved.

Per the language of the Draft Audit Report, the audit was conducted using A-110 OMB Circular for compliance. The Pueblo of Jemez is a federally recognized tribal government. Therefore, the applicable OMB Circular is A-87, which is now found at 2 C.F.R. Part 225. Despite the use of the inapplicable circular, the Pueblo of Jemez has provided a response to the audit.

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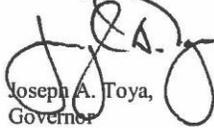
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David M. Sheeren, Audit Manager
Denver Regional Audit Office
November 3, 2017
Page Three

The Pueblo of Jemez firmly requests a revised draft of the OIG Audit Report because of the use of the inaccurate OMB Circular and the submission of the documentation that resolves the findings.

Please contact Benny Shendo, Jr, Tribal Administrator or Margie King-Toledo, Director of Finance, both at 575-834-7359 and via email at Benny.Shendo@jemezpuablo.org or mktoledo@jemezpuablo.org, if you have any questions or need clarification. Thank you for your consideration.

Sincerely,


Joseph A. Toya,
Governor

cc: William Waquie, 1st Lt. Governor
Jonathan C. Romero, 2nd Lt. Governor
Benny Shendo, Jr., Tribal Administrator
Margie King-Toledo, Finance Director

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Pueblo of Jemez
Response to Draft OIG Audit Report of
Department of Justice (DOJ) Grants

November 03, 2017

Pueblo of Jemez Response to Draft OIG Audit Report of Department of Justice Grants

Table of Contents

Letter to David M. Sheeren

| | | |
|-------------|---|-----------|
| I. | Pueblo of Jemez Response to Executive Summary | 3 |
| II. | Pueblo of Jemez Response to Audit Findings | 5 |
| | Finding No. 1: "Jemez charged unallowable and unsupported contractor and consultant... costs to the awards" | 5 |
| | Finding No. 2: "Jemez charged unallowable and unsupported... direct costs to the awards" | 11 |
| | Finding No. 3: "Jemez did not maintain essential award documentation for 3 years after closure of an award" | 12 |
| | Finding No. 4: "There appeared to be a conflict of interest between Jemez and two of its consultants" | 13 |
| | Finding No. 5: "Progress reports... were not accurate" | 15 |
| | Finding No. 6: "FFRs were not accurate" | |
| III. | Conclusion | 20 |
| IV. | Exhibits | 21 |

I. Pueblo of Jemez Response to Executive Summary

In its executive summary, the Department of Justice (DOJ) Office of Inspector General (OIG) draft audit report found that "Jemez did not comply with essential award conditions related to the use of award funds, progress reports and Federal Financial Reports (FFRs)." The OIG findings include:

Finding No. 1: "Jemez charged unallowable and unsupported contractor and consultant... costs to the awards"

Finding No. 2: "Jemez charged unallowable and unsupported... direct costs to the awards"

Finding No. 3: "Jemez did not maintain essential award documentation for 3 years after closure of an award"

Finding No. 4: "There appeared to be a conflict of interest between Jemez and two of its consultants"

Finding No. 5: "Progress reports... were not accurate"

Finding No. 6: "FFRs were not accurate"

Each of these finding will be addressed with specificity in this response.

The draft audit report also contains six recommendations for the Office of Justice Programs (OJP) to undertake. They are:

1. Coordinate with Jemez to develop policies and procedures to ensure that valid and auditable source documentation is available to support all data collected for each performance measure.
2. Coordinate with Jemez to develop policies and procedures to ensure conflicts of interest are avoided and contracting practices are followed.
3. Remedy the \$157,192 in unsupported questioned costs related to \$156,665 in supported contractor and consultant costs, and \$527 in unsupported other costs.
4. Remedy the \$3,464 in unallowable questioned costs related to other Direct Costs.
5. Coordinate with Jemez to develop policies requiring that documentation is maintained for at least 3 years after the award has been financially and programmatically closed.
6. Ensure that Jemez implements policies and procedures to accurately report expenditures and indirect costs on future FFRs.

The Pueblo of Jemez has reviewed the recommendations and welcomes technical assistance from OJP to improve its administrative capacity to manage the grants. However, Jemez will contend that all costs claimed under the awards were allowable, supported and in accordance with applicable laws, regulations, guidelines and terms and conditions of the awards. Jemez will also contend that the progress reports were accurate.

The Pueblo of Jemez has identified several deficiencies in the audit report. As an example, the OIG auditor based the determination of unallowable costs by applying A-110 as the applicable circular: "the contracting practices used to award contracts to AIDA violated OMB circular A-110, as well as OJP

Financial Guide.” Draft Audit Report, Page 10. The OIG auditor identifies the 2011 and 2014 OJP Financial Guides and the 2015 DOJ Grants Financial Guide as those applied to the audit. See Draft Audit Report, Page 2.

The Draft Audit Report identifies the “Recipient” as the Pueblo of Jemez, “a sovereign nation.” As such, and referring to page 3 of the 2011 OJP Financial Guide (Exhibit 1-1), page 2 of the 2014 OJP Financial Guide (Exhibit 1-2) and page 3 of the 2015 DOJ Grants Financial Guide (Exhibit 1-3), the appropriate OMB Circular and Code of Federal Regulations is Title 2 C.F.R., Part 225 (formerly OMB A-87). The Pueblo of Jemez also acknowledges that per the 2015 DOJ Grants Financial Guide, 2 C.F.R. Part 200 is the new guidance for grants management, but for grants awarded prior to December 26, 2014, OMB A-102 Administrative Requirements (28 C.F.R. Part 66) and OJP Financial Guides continue to apply. Under the new guidance (2 C.F.R. Part 200) Indian tribes are defined at §200.54 (Exhibit 1-4) and are included in the definition of “Non-Federal Entity” at §200.69. Exhibit 1-5. The purpose of 2 C.F.R. Part 200 is to establish “uniform cost principles, and audit requirements for Federal awards to non-Federal entities.” §200.100(a)(1). Exhibit 1-6. Therefore, Jemez will contend that costs claimed under the awards were allowable by making reference to both 2 C.F.R. Parts 200 and 225, and when applicable, to 28 C.F.R. Part 66 and OJP guidance for 2011 and 2014, but will not discuss A-110 because A-110 does not apply to the Pueblo of Jemez as a tribal government.

The Pueblo of Jemez would also like to highlight that it has been a grantee for the DOJ since 2010 and has recently been notified that it was awarded funding for 2018, as well. The OIG Draft Audit Report states “Based on our review there were no indications that Jemez was not adequately achieving the stated goals and objectives of the awards,” and “Based on our sample, we did not identify any instances of Jemez violating these additional special conditions we reviewed.” See Draft Audit Report, Page 4, 7. The Pueblo of Jemez is surprised by the OIG’s finding that the costs associated with its contractor and consultant were unallowable while also acknowledging the Pueblo of Jemez’s strong performance under the grants, which include the work of the contractor/consultant as part of the budget and work plan. However, the Pueblo of Jemez acknowledges the OIG’s authority to conduct such an audit and appreciates the opportunity to present its response to the findings.

The OIG completed an audit of four grants and two cooperative agreements. The grants and cooperative agreements are referred to collectively as “grants” in the following response.

II. Pueblo of Jemez Response to Findings

Finding No. 1: "Jemez charged unallowable and unsupported contractor and consultant... costs to the awards"

This finding appears to be based on four conclusions made by the auditor:

- A. The consultant was indirectly compensated. *See Draft Audit Report, Page 10*
- B. The services of the consultant and the contractor were improperly procured. *See Draft Audit Report, Page 10*
- C. The invoices submitted by the consultant are vague. *See Draft Audit Report, Page 10.*
- D. The timesheets produced by the contractor are not an accurate accounting of the hours worked by AIDA. *See Draft Audit Report, Page 10.*

Response to Finding 1(A): The consultant was indirectly compensated.

OIG Draft Audit Report: "...a recipient cannot pay any bonus or commission to any individual or organization to obtain approval of an application for award assistance."
See Draft Audit Report, Page 9, citing to 2015 DOJ Grants Financial Guide, Section 3.13 Unallowable Costs.

Specific Finding: "...it appears that Jemez was indirectly using DOJ award funds to compensate AIDA for finding and applying for DOJ awards." *See Draft Audit Report, Page 10.*

AIDA was directly and separately compensated for grant writing and proposal development. The following table sets forth the contracts with AIDA for the preparation of the proposals.

TABLE 1: Grant Writing Contracts with Consultant

| Grant Awarded | AIDA Grant Writing Contract Execution Date and Amount | Pueblo of Jemez Purchase Order Budget Code | Budget Code Funding Source Description | Exhibit |
|---|---|--|--|--------------|
| 2012 IC BX 0018 Jail Diversion and Tribal Action Plan | 2/27/12 \$4,500 | 19-00-01-5550 | Pueblo of Jemez Indirect Cost Funds | Exhibit 1-7 |
| 2012 IC BX 0023 Justice Plan and Juvenile Advisory Committee | | | | |
| 2013 VR GX K021 Comprehensive Tribal Victim Assistance Program | 03/04/13 \$4,500 | 48-13-14-5140 | Pueblo of Jemez IHS Self-Governance Compact Funds | Exhibit 1-8 |
| 2015 AC BX 0016 Tribal Court and Probation Improvement | 2/09/15 \$4,800 | 31-15-02-5140 | Pueblo of Jemez Bureau of Indian Affairs (BIA) Self-Governance Compact Funds | Exhibit 1-9 |
| 2015 DC BX 0040 Healing to Wellness | | | | |
| 2015-VI-GX-K029 CJA Program | 1/15/15 \$4,800 | 48-15-14-5140 | Pueblo of Jemez IHS Self-Governance Compact Funds | Exhibit 1-10 |

These grant writing contracts were entered into prior to the Pueblo of Jemez receiving the identified grants. In the table, the cost code and a description of the cost code funding source has been provided. AIDA was directly compensated for proposal preparation from funding sources with no relation to the DOJ grants.

The cost for proposal preparation is allowable, and the Pueblo of Jemez may use its sources of funding to pay for the preparation of proposals under Title 2 C.F.R., Part 225, Appendix B, Section 32 (formerly OMB A-87).

The Pueblo of Jemez does not concur with this finding by the OIG.

Response to Finding 1(B): The services of the consultant and the contractor were improperly procured.

OIG Draft Audit Report: "...the contracting practices used to award contracts to AIDA violated OMB Circular A-110, as well as the OJP Financial Guide, which require all procurement transactions to be conducted in a manner to provide, the maximum extent, practical, open, free, and fair competition." See Draft Audit Report, Page 10.

Specific Finding: "In 2010, Jemez approved a resolution to waive its procurement policy to competitively bid contracts over \$10,000 so that it could award a sole source agreement to AIDA, for research and data collection services." See Draft Audit Report, Page 9.

Specific Finding: "In 2013, Jemez approved an additional resolution to waive its procurement policy for AIDA. In the resolution, they specifically noted that since 2010 they have received multiple DOJ awards totaling \$4,180,274 as a result of her work." See Draft Audit Report, Page 9.

Specific Finding: "We also found that for Award Number 2015-VI-GX-K029 Jemez awarded a contract to an AIDA employee to provide policy and procedures, and code development services. An AIDA official stated that the individual is no longer an employee of AIDA, and has not been for "years." However, in our judgement, awarding a contract to an AIDA employee, current or not, also appears to be a conflict of interest." See Draft Audit Report, Page 9.

a. AIDA Consultant

As stated before, the applicable section of 2 CFR is Section 225 (formerly OMB A-87). The OIG audit reports identified A-110 as the applicable circular used to determine that the consultant costs were unallowable due to lack of competition for the data management contract awarded to AIDA. Jemez will not discuss A-110. Under 2 C.F.R. § 225, Appendix A, Section C(1)(c) identifies a factor affecting allowability of cost is that the cost "Be authorized or not prohibited under State or local laws or regulations." Exhibit 1-11. Section 5(D)(x)(e) Pueblo of Jemez Procurement Policy authorizes procurement by noncompetitive proposal for goods and services if the items or services are available from a single source, or the awarding agency authorizes noncompetitive proposals. Exhibit 1-12.

In this case, both requirements for AIDA are satisfied. The contract to AIDA was awarded as a single source, discussed below, and the awarding agency does authorize noncompetitive proposals.¹

Pursuant to the 2011 OJP Financial Guide, "A sole source procurement process may be used when [the grantee] can document... the item or service is available from a single source." 2011 OJP Financial Guide, Page 54. Exhibit 1-14. Only sole source procurements in excess of \$100,000 require prior approval. *Id.*

Further, the two resolutions specified above were regarding grants awarded prior to December 26, 2014. Therefore, OMB A-102 Administrative Requirements (28 C.F.R. Part 66) applies. 28 C.F.R. § 66.36(d)(4) identifies procurements by noncompetitive proposals as the "solicitation of a proposal from only one source," which may be used when the item is only available from a single source. §66.36(d)(4)(i)(A). Exhibit 1-15.

Therefore, the procurement of the contract with AIDA as a single source is an allowable procurement method because AIDA is a single source for the data management contracts awarded.

Single Source applies when it can be substantiated that a commodity or service can be obtained only from one contractor. Single source purchases generally involve a contractor whose product or service is discernibly distinguishable from all others in the market and singularly meets all significant elements of the tribe's requirements.

In this case, AIDA is "discernibly distinguishable." The consultant is the only tribal member with the scope and breadth of criminal justice education, experience and ability to successfully perform the data management technical assistance work, which includes data collection and data analysis, facilitation of group participation, surveying and coordination. See Resume at Exhibit 1-16. Consideration pursuant to 28 C.F.R § 66.36(b)(8) was given to the consultant's ability to speak the Towa language, her membership in the Pueblo of Jemez tribe (cultural competence), her record of past performance, and the technical resources to perform the data management function.

In line with 28 C.F.R. § 66.36(e), Jemez made the effort to solicit AIDA, LLC, a small, Native American woman owned business. Exhibit 1-17.

The Pueblo of Jemez believes the OIG Draft Audit Report mischaracterized the tribal resolution of January 2013 as waiving the procurement policy in its entirety in order to award the contract to AIDA. As discussed above, the Pueblo of Jemez Procurement Policy aligns with both the OJP Financial Guide and the Administrative Requirements at 28 C.F.R. Part 66. Read carefully, the tribal resolution waives the "bidding requirements" for competitive contracts, but takes the action of passing a resolution as a Tribal Council approving the procurement of AIDA as a contractor pursuant to its adopted policy at Section

¹ The OIG auditor identified in the Draft Audit Report that the 2011 and 2014 OJP Financial Guides applied to the audit. Since the two grants specified above were awarded prior to 2014, we assume the OIG's reference to "OJP Financial Guide" is a reference to the 2011 OJP Guide. This determination is supported by an email from the OJP to the Pueblo of Jemez notifying the tribe that September 30, 2013 is date for the 2013 edition of the OJP Financial Guide to be made effective. Exhibit 1-13. The OIG Draft Audit Report did not specify the date of the resolutions identified above. We have determined that the 2011 OJP Financial Guide absolutely applies to the 2010 resolution time period, and the 2013 resolution was passed in January 2013, prior to the effective date of the 2013 OJP Financial Guide. Therefore, the Pueblo of Jemez will refer to the 2011 OJP Financial Guide.

5(D)(x)(e), which requires Tribal Council approval. The language of the resolution identifies AIDA as possessing “expert knowledge, skills [and] culturally competent abilities.” Exhibit 1-18. Therefore, the Tribal Council did not use its authority as the governing body of a sovereign nation to waive all procurement policy requirements “as a means to indirectly compensate AIDA for its assistance in finding and obtaining the DOJ Awards.” See Draft Audit Report, Page 10. Instead, the Tribal Council’s resolution is evidence of the governing body acting pursuant to its adopted policy; a policy that complies with both the OJP Financial Guide and the Administrative Requirements at 28 C.F.R. Part 66 and 2 CFR Part 225.

Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the government unit, are allowable. 2 CFR Part 225, Appendix B, Section 32.

(b) Procurement Standards. (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section. 28 C.F.R. §66.36(b)(1)

Thus, the contracts the Pueblo of Jemez awarded to AIDA are validly procured single source contracts and are an allowable cost.

Further, the type of procurement instrument the Pueblo of Jemez used was a fixed price contract, determined to be the most appropriate for this particular procurement and for promoting the best interest of the program or project.

Finally, in compliance with 28 C.F.R § 66.36(g)(1), the Pueblo of Jemez submitted, upon request of the awarding agency, the basis for computation of cost for the consultant contract with AIDA. Exhibit 1-19. This was a pre-award request for grant 2012-IC-BX-0018, one of the grants audited by the OIG, and was included as part of the that grant award documentation, along with the special conditions. The Pueblo of Jemez can assume pursuant to 28 C.F.R § 66.36(g)(2)(i), that the awarding agency made this pre-award request because it sought to determine whether the Pueblo of Jemez’s complied with the procurement standards found at 28 C.F.R § 66.36. Because the grant was awarded and similar justifications for the contractor’s costs were not requested for subsequent grant awards, the Pueblo of Jemez reasonably assumes the awarding agency made the tribe exempt from pre-award review because it “determine[d] that its procurement systems comply with the standards of this section.” *Id.* at § 66.36(g)(3).

Therefore, the Pueblo of Jemez does not concur with the finding that the consultant costs are unallowable.

a. Steve Wall, Contractor

Steve Wall is not an employee of AIDA, LLC. Steve Wall has not been employed by AIDA since 2009. Exhibit 1-20. The OIG Draft Audit Report has identified the appearance of a conflict of interest because the Pueblo of Jemez independently procured the services of Steve Wall as a contractor. The conflict of interest finding will be addressed in a later section. Here, the procedure to independently and properly procure the contract services will be discussed.

Pursuant to the 2015 DOJ Grants Financial Guide, the “non-federal entity must use its own documented procurement procedures consistent with applicable, State, local and tribal laws and regulations.” See Page 63. Exhibit 1-21.

The purpose of 2 C.F.R. Part 200 is to establish “uniform cost principles, and audit requirements for Federal awards to non-Federal entities.” 2 C.F.R. § 200.100(a)(1). Under 2 C.F.R. Part 200, Indian tribes are defined at §200.54 (Exhibit 4) and are included in the definition of “Non-Federal Entity” at § 200.69. Exhibit 5. 2 C.F.R § 200.320(d) requires a non-federal entity to use specific procurement methods, one of which is “Procurement by competitive proposals.” See also 28 C.F.R §66.36(d)(3). Exhibit 1-15.

2 C.F.R. § 225, Appendix A, Section C(1)(c) identifies a factor affecting allowability of cost is that the cost “Be authorized or not prohibited under State or local laws or regulations.” Exhibit 1-10. Section 5(D)(x)(d) of the Pueblo of Jemez Procurement Policy authorizes procurement by competitive proposal for professional services. Exhibit 1-22.

In this case, the contractor, Steve Wall, responded to a request for proposals. Out of the three responses received, Steve Wall was selected and was awarded a firm fixed price contract. Exhibit 1-23. He has the education, experience and ability to successfully perform the scope of work of policy and code development. See Resume at Exhibit 1-24. Consideration pursuant to 28 C.F.R § 66.36(b)(8) was given to the contractor’s record of past performance in working with the Pueblo of Jemez.

In line with 28 C.F.R. § 66.36(e), Jemez made the effort to solicit Steve Wall, a small, Native American owned business. Exhibit 1-16.

The Pueblo of Jemez does not concur with the finding that the contractor costs are unallowable.

Response to Finding 1(C): The invoices submitted by the consultant are vague.

OIG Draft Audit Report: Based on our initial review of the sample of the invoices, we determined that they were often vague, and did not sufficiently support the work completed.” See Draft Audit Report, Page 10.

Language of the OIG Draft Audit report analyzing the sufficiency of the submitted invoices states that the invoices are unallowable because of their vagueness in description of work completed for the billing period.

First, as indicated in the cover letter, Jemez welcomes technical assistance from OJP to coordinate with Jemez to develop policies and procedures to ensure that valid and auditable source documentation is available to support all data collected for each performance measure.

The Pueblo of Jemez reiterates the OIG’s finding that the Pueblo of Jemez performances are strongly supported under the grants, which include the work of the contractor/consultant as part of the awarded grant budget.

Next, 2 C.F.R. § 225, Appendix B(32) “Professional Service Costs” identifies selected items of cost as allowable based on the necessity of the cost and the “Adequacy of the contractual agreement of the services.” 2 C.F.R. § 225, Appendix B(32)(b)(2,7-8). Exhibit 1-25. The type of procurement instrument the Pueblo of Jemez used was a fixed price contract, determined to be the most appropriate for this

particular procurement and for promoting the best interest of the program or project. The Pueblo of Jemez contract requires that invoices detail the following:

- Name
- Invoice Date
- Description, Quantity and Unit Price
- Amount Due
- Name and address of official to whom payment is to be sent
- Name, title and phone number of person to be notified in event of a defective invoice.

Exhibit 1-26. The submitted invoices satisfy the Invoice requirements of the Pueblo of Jemez contract. Exhibit 1-27. For this reason, the Pueblo of Jemez asserts that the invoices contain sufficient detail and “adequately document” the consultant’s work cost to meet the standards of allowability.

In addition, the Pueblo of Jemez contends that the submitted invoices are reasonable and allocable to the federal award and should not be deemed unallowable.

Per the 2015 DOJ Grants Financial Guide: “Reasonable means those costs that a prudent person would have incurred under the circumstances prevailing at the time the decision to incur the cost was made.” See Section 5.2, Page 156. Exhibit 1-28. The Pueblo of Jemez has determined the costs identified in the invoice as allowable and reasonable per 2 C.F.R §§ 200.403 and 200.404 because the costs of the contract are of a type generally recognized as ordinary and necessary for the operation of performance of the Federal award because the awarded grant budget included costs for a consultant and because the contract was properly procured using sound business practices, arm’s-length bargaining, and compliance with Federal and tribal regulations. Exhibit 1-29. In addition, the costs for the consultant was within market prices for comparable goods or services and compliant with the rate per hour limits set by the funding agency. The consultant acted with prudence and accomplished the scope of work, as verified by the OIG Draft Audit Report that states “Based on our review there were no indications that Jemez was not adequately achieving the stated goals and objectives of the awards.” See Draft Audit Report, Page 4.

Finally, the Pueblo of Jemez finds that pursuant to 2 C.F.R. §200.405, the work the contractor invoiced the Pueblo of Jemez for was part of the awarded grant budget. Allocability is found “if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with benefits received.” *Id.* at §200.405(a). Exhibit 1-29. In this case, AIDA’s invoices meet this standard because the costs were incurred specifically for the grant and the work of the consultant was necessary for the Pueblo of Jemez to meet with requirements of the grant award.

Even if the Pueblo of Jemez and the OIG disagree on the sufficiency of detail in the invoices submitted by AIDA, the invoices are nonetheless allowable costs under the grant awards because they satisfy the requirements of allowability, reasonability and allocability, as required by the OMB regulations and DOJ guidance.

The Pueblo of Jemez does not concur with the finding that the consultant invoices were vague.

Response to Finding 1(D): The timesheets produced by the contractor are not an accurate accounting of the hours worked by AIDA.

OIG Draft Audit Report: "Further, we do not believe the timesheets are an accurate accounting of the hours worked by AIDA." See Draft Audit Report, Page 11.

Specific Finding: "We are not accepting the timesheets as supporting documentation for the \$156,665 charged to the awards for the consulting agreements with AIDA." See Draft Audit Report, Page 11.

The timesheets were prepared by the consultant and given in response to requests by the OIG auditors for more supporting documentation. See OIG Draft Audit Report, Page 10. These timesheets are not standard, auditable documentation created by the Pueblo of Jemez itself. As stated above, the Pueblo of Jemez contends that the submitted invoices are in compliance with its contract requirements, are auditable and are both reasonable and allocable to the federal award. The Pueblo of Jemez asserts that the invoices are sufficient to support the work completed, thereby making the costs of the contractor allowable and making the timesheets unnecessary additional documentation. Further, the Pueblo of Jemez maintains timesheets for employees only.

The Pueblo of Jemez welcomes technical assistance from OJP to improve its business practices in ensure that valid and auditable source documentation is available to support all data collected for each performance measure.

Finding No. 2: "Jemez charged unallowable and unsupported... direct costs to the awards"

OIG Draft Audit Report: "We found that Jemez charged unallowable and unsupported...direct costs to the awards."

Specific Finding: "For Award Number 2013-VR-GX-K021, Jemez purchased office furniture totaling \$2,416, which was not included in the budget or a Grant Adjustment Notice (GAN). Therefore, we question the \$2,416 for office furniture as unallowable." See Draft Audit Report Page #11.

Specific Finding: "For Award Number 2012-IC-BX-0018, Jemez purchased an AV cart totaling \$495, which was not included in the budget or a GAN." See Draft Audit Report, Page #11

Specific Finding: "Our sample for Award Number 2012-IC-BX-0018 also included \$136 in unallowable cost for bottled water that was not included in the approved award budget... we expanded our analysis to include all transactions related to bottled water for 2012-IC-BX-0018, and identified a total of \$554 in unallowable costs."

The 2011 OJP Financial Guide is applicable to these two grants. Per that guidance, a grantee "...must initiate a GAN for budget modification if: The proposed cumulative change is greater than 10 percent of the total award amount." See Page 40. Exhibit 2-1.

For Award Number 2013-VR-GX-K021, the approved Office for Victims of Crime (OVC) budget contained the following approved budget line items:

- Personnel
- Fringe Rates
- Travel
- Equipment
- Supplies
- Contractual
- Other cost
- Indirect cost

Exhibit 2-2. Jemez had an equipment line item to purchase a laptop and computer. Jemez purchased the laptop and computer and had some funds remaining in the line item. A Victim Services Coordinator (VSC) was hired under the Cooperative Agreement, and furniture was needed for the VSC. The Pueblo of Jemez Program Manager modified the budget to put more money into the equipment line item to purchase the furniture. This modification was for \$2,416, which is less than 10% of the total award amount of \$377,071, and, thus, did not require prior approval for purchase or prior approval for budget modification.

Therefore, the budget modification is allowable; the direct cost to the award is allowable. The Pueblo of Jemez disagrees with this finding.

Similarly, for Award Number 2012-IC-BX-0018, the approved budget contained

- Personnel
- Fringe Rates
- Travel
- Equipment
- Supplies
- Contractual
- Other cost
- Indirect cost

Exhibit 2-3. Jemez had a supplies line item to purchase a desktop computer, laptop, office supplies and furniture, to include nesting tables, nesting chairs, armchairs, tables, sofas and storage units and utility tables. The AV cart satisfies the definition of a storage unit and utility table. It is used to store paper and other office supplies, and used as a media cart for storing the computer printer for the Jail Diversion Program. The cost is allowable under the budget.

The Pueblo of Jemez disagrees with this finding.

The Pueblo of Jemez can find no prohibition in the 2011 OJP Financial Guidance or the 28 C.F.R. Part 66 Regulations for the cost of bottled water for consumption by employees. Therefore, the Pueblo of Jemez disagrees with this finding and has deemed the cost allowable. The Pueblo of Jemez requests that the OIG provide the citation to the regulation that prohibits the purchase of bottled water and the requirement that existed in 2012 that made the *Principles of Federal Appropriations Law* applicable to the grantee.

Finding No. 3: "Jemez did not maintain essential award documentation for 3 years after closure of an award."

OIG Draft Audit Report: "Our sample for Award Number 2012-IC-BX-0023 included two unsupported transactions for reimbursement totaling \$527. Jemez officials stated that they only maintained documentation for 3 years after the expenses were paid on February 28, 2013. As a result, Jemez was unable to provide supporting documentation for these transactions." See Draft Audit Report, Page 12.

Specific Finding: "As a result, we question the \$527 as unsupported documentation is maintained for at least 3 years after the award has been financially and programmatically closed." See Draft Audit Report, Page 12.

This finding was based on the OIG being unable to verify two transactions out of eleven samples and for expenses paid in FY 2013. The Pueblo of Jemez does have adequate systems for financial record retention. Exhibit 3-1. The Pueblo of Jemez finance department retains all copies of invoices, reports and associated documentation for all grant information for more than 3 years or greater. The Pueblo of Jemez does not have a practice of purging financial data and has scanned all invoices and related documents back to 2012.

The Pueblo of Jemez agrees that the documentation related to the two transactions was not provided to the auditor. The Pueblo of Jemez has reviewed the OIG recommendation regarding the requirement that essential award documentation be maintained for 3 years, which suggests the OJP "Coordinate with Jemez to develop policies requiring that documentation is maintained for at least 3 years after the award has been financially and programmatically closed." The Pueblo of Jemez agrees with this recommendation even though the normal practice is not to purge financial documents or information and welcomes technical assistance from OJP to improve and update or strengthen the control of maintaining all grant documents related to the management of the grants.

Finding No. 4: "There appeared to be a conflict of interest between Jemez and two of its consultants"

OIG Draft Audit Report: "The recipient must be alert to organizational conflicts of interest, as well as noncompetitive practices among contractors that may restrict or eliminate competition." See Draft Audit Report, Page 10.

Specific Finding: "In our judgement, the fact that the tribe allowed AIDA to assist in the creation of award budgets that resulted in it receiving financial benefit through consulting agreements for DOJ awards it worked on appears to be a conflict of interest." See Draft Audit Report, Page 9.

Specific Finding: "We also found that for Award Number 2015-VI-GX-K029 Jemez awarded a contract to an AIDA employee to provide policy and procedures, and code development services. An AIDA official stated that the individual is no longer an employee of AIDA, and has not been for "years." However, in our judgement, awarding a contract to an AIDA employee, current or not, also appears to be a conflict of interest." See Draft Audit Report, Page 9.

Pursuant to 2 C.F.R. § 200.112 “The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.” Exhibit 4-1.

The 2015 DOJ Grants and 2011, 2014 OJP Financial Guides similarly discuss the appearance of a conflict of interest as it relates to “Grant Fraud, Waste and Abuse.” For the purposes of this response, the Pueblo of Jemez will address the appearance of a conflict of interest by citing to 2015 DOJ Grants Financial Guide, the most recently issued guidance.

The 2015 DOJ Grants Financial Guide defines an appearance of a conflict of interest as:

Conflict in Appearance.

In the use of award funds, you and your subrecipients should avoid any action which might result in, or create the appearance of:

- Using your official position for private gain;
- Giving special treatment to any person;
- Losing complete independence or objectivity;
- Making an official decision outside official channels; or
- Affecting negatively the confidence of the public in the integrity of the Government or the program.

See 2015 DOJ Grants Financial Guide, Section 3.20, Page 141. Exhibit 4-2. It has already been established that AIDA was directly and separately compensated for assisting the Pueblo of Jemez develop proposals for DOJ grants. It has also been established that AIDA was properly procured through noncompetitive proposal for the consultant work performed. It has also been established that the contractor in question has not been an employee of AIDA since 2009 and was separately and properly procured by the Pueblo of Jemez via competitive proposals for the code and policy development work provided. Therefore, there is no basis for the appearance of a conflict of interest under the DOJ Grants Financial Guide.

Further, 2 C.F.R. § 200.318(c) requires that non-federal entities “must maintain written standards of conduct covering conflicts of interest,” and prohibits an employee, officer or agent to participate in the selection, award or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Exhibit 4-3. See also 2015 DOJ Grants Financial Guide, Section 3.8, Page 63. Exhibit 4-2. Exhibit 1-20.

2 C.F.R. § 200.319(a) requires that all procurement transactions be conducted in a manner that promotes open and free competition, and to eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. Exhibit 4-4.

Section 5(l)(i)(d) of the Pueblo of Jemez Procurement Policy states that in all instances the Pueblo of Jemez will conduct contract transactions in a fair and open manner and make every effort to avoid a conflict of interest. Exhibit 4-5. The Pueblo of Jemez maintains these written standards in compliance with 2 C.F.R. §§ 200.318(c) and 200.319(a). The procurements for both the consultant and contractor were independently undertaken by the Pueblo of Jemez pursuant to and in compliance with its adopted procurement policy.

In addition, AIDA did not participate in the selection or procurement of the consultant contract for the data management work that was awarded to AIDA or the policy and code development work that was awarded to the contractor. AIDA did participate in the drafting of the grant application proposals, but the consultant descriptions in the proposals were written using generalized language that did not restrict competition. As evidence that competition was not restricted, the proposals contain no unreasonable requirements or unnecessary experience written into any of the consultant/contractor descriptions in any year of the grants proposals; no noncompetitive awards were given to consultants on retainer contracts; no organizational conflicts of interest were identified by the Pueblo of Jemez or the awarding agency pursuant to its guidelines, policies or the OMB circulars. See Section 3.8, 2015 DOJ Grants Financial Guide, Page 64. Exhibit 4-6.

Finally, the OIG auditors contend that AIDA's assistance in developing the grant proposal budget is sufficient to establish the appearance of a conflict of interest. However, 2 C.F.R. § 200.319(a) states that the conflict of interest arises when the contractor assists in the development of bids or request for proposals, which would be a post award activity. Preparation of a grant application proposal budget is insufficient to satisfy a conflict of interest under this regulation.

The Pueblo of Jemez contends there is no appearance of a conflict of interest and does not concur with this finding. The finding is unfounded and is based on a misunderstanding about how AIDA was compensated for proposal development, a mischaracterization of the action of the Pueblo of Jemez Tribal Council in waiving its bidding requirements in compliance with its own adopted policy, and an inappropriate restriction placed on a qualified contractor because nearly a decade ago he was employed by a current consultant to the Pueblo of Jemez.

Finding No. 5: Progress reports... were not accurate

OIG Draft Audit Report: "Based on the information... we determined that Jemez does not have adequate policies and procedures to track award performance measures." See Draft Audit Report, Page 7.

Because of the number of specific findings that the OIG identified as inaccurate in the progress reports, the Pueblo of Jemez has formatted Table 2 for this portion of its response. Table 2 begins on Page 16 of this report and sets forth the reported progress report activity in the first column, OIG's finding in the second column and the Pueblo of Jemez response in the third column. Documentation to verify the progress activity has been provided in the exhibits section of this report.

The Pueblo of Jemez has identified corrective action for several of the findings. In addition, the Pueblo of Jemez agrees and welcomes technical assistance from OJP to improve its administrative capacity to manage the grants.

TABLE 2: UNSUPPORTED PROGRESS REPORT FACTS FOR AWARD NUMBER 2012-IC-BX-0018

| PROGRESS REPORT FACT | OIG DRAFT AUDIT REPORT FINDING REGARDING SUPPORT DOCUMENTATION PROVIDED | Jail Diversion Program (JDP) Responses |
|---|--|---|
| JANUARY – JUNE 2016 | | |
| <p>The Jail Diversion Program (JDP) Coordinator is a member of the Justice Advisory Committee and attended six Jemez Justice Advisory Committee/Coordinated Tribal Assistance Solicitation meetings during this reporting period.</p> | <p>Jemez provided sign in sheets, from which we were only able to verify 4 attended meetings.</p> | <p>We do not concur with this finding for the following reasons: From January to February 2016, the JDP was represented at the monthly JJAC meetings by Supervisory Probation Officer (SPO), Sandra S. who oversaw the program and attended the JJAC meetings in January and February. From February to May the new JDP Coordinator attended the meetings. In June, the JDP Coordinator's supervisors—the Judge and new SPO attended the JJAC meeting (See Exhibits 5-1a-f). Action Taken: The intent of the JJAC meetings is to ensure there is consistent representation by partner entities; however, staff representation may differ due to availability. Future reports will indicate representation of JDP at meetings rather than identifying the JDP Coordinator as attending meetings. The JJAC Secretary will continue to take notes and sign in sheets. Meeting documentation procedures will be added to the JJAC Charter policies.</p> |
| JULY – DECEMBER 2016 | | |
| <p>As a result of the Coordinator's outreach and collaboration with veteran services and resources outside the Jemez community, one Jemez veteran was placed in a halfway house for veterans in Albuquerque, New Mexico and one other will be continuing his education at the beginning of the next reporting period.</p> | <p>We were unable to verify the veteran continuing his education. We were able to verify the veteran placed in a halfway house; however, the placement occurred January 2017, which was out of the reporting period.</p> | <p>We do not concur with this finding for the following reasons: 1) The Veteran's course schedule is attached as verification of continuing education (See Exhibit 5-2a). 2) The Veteran's outpatient services and treatment began in previous reporting periods Exhibit 5-2b and continued during the July to December 2016 reporting period with coordinated service delivery by the JDP and Behavioral Health Program. Information about the January halfway house placement was included only because the Semi-Annual report was written and submitted in January. Action Taken: Going forward, reports will only include activities that occurred during the reporting period.</p> |
| <p>The Jail Diversion Program held a Trauma and Reduction Stress Clinic on November 30, 2016, for veterans and family members with issues. Ten veterans from the community attended.</p> | <p>Jemez was unable to provide sign in sheets or any other documentation supporting the number of attendees.</p> | <p>Although a veteran participant count was taken, we concur that a sign in sheet was not prepared for this event. Action Taken: Starting October 1, 2017, the Program will maintain sign in sheets identifying the event, date, time and location for all program events.</p> |

| | | |
|---|--|---|
| JULY – DECEMBER 2016 | | |
| Four Jemez Justice Advisory Committee members applied and were accepted to attend Tribal Action Plan training offered by the USDOJ at the National Advocacy Center in Columbia, South Carolina. | We were unable to verify 3 of the 4 attendees. | We do not concur with this finding for the following reasons: The following verification is provided, 1) The DOJ Acceptance Memo dated December 16, 2016 listing the four Jemez TAP Workshop attendees receiving scholarships and 2) 3 missing Certificates (See Exhibit 5-2c-d). |

TABLE 2: UNSUPPORTED PROGRESS REPORT FACTS FOR AWARD NUMBER 2012-IC-BX-0023

| PROGRESS REPORT FACT | OIG DRAFT AUDIT REPORT FINDING REGARDING SUPPORT DOCUMENTATION PROVIDED | COMPREHENSIVE JUSTICE PLAN (CJP) RESPONSES |
|--|--|---|
| JULY – DECEMBER 2014 | | |
| New partnerships initiated during the reporting period: 1 Tribal judge, 3 Tribal law enforcement, 4 local partners, 3 behavioral health professionals and service providers, 1 correction department, and 1 other partner. | We were only able to verify the tribal judge, tribal law enforcement, and the behavioral health representatives. | We do not concur with this finding for the following reasons: Although the auditor indicates the Performance Measuring Tool (PMT) was for the July to December 2014 reporting period, the data highlighted by the auditor is from the PMT Final Report, which covered the entire project from 01/01/13 to 12/ 31/14 (noted on page 3 of 5 of the referenced PMT report indicates the creation date noted on the right corner of the report as 01/26/2015). This Report summed up the "Yes or No" responses from Question 23 and 25 entered for previous reporting periods under Question 27 in the Final Report. The PMT definition of "A partnership may be a ...informal (unwritten) agreement between agencies or individuals to provide support or services to the Tribal justice system." Sign-in sheets were not required and not collected for most meetings, but notes indicate their participation in CJP meetings (See Exhibit 5-3a). |
| JULY – DECEMBER 2014 | | |
| Individuals included as part of the planning process during the reporting period: 23 community members, 20 tribal elders, 29 tribal elected officials, and 57 local justice system representatives. | We were only able to verify 9 of the elected officials and 8 of the local justice system representatives. | We do not concur with this finding for the following reasons: Similar to the above, the auditor inaccurately thought this data was only for the July-December 2014 reporting period. The Lead Consultant for AIDA explained this to the auditor during a telephone call, in which the auditor indicated he had misunderstood the report. This data was calculated from Question 24 in the Jan-Dec 2013 PMT and Question 26 for from the Jan to Jun 2014 PMT, and summed up in Question 28 in the Final PMT Report dated 01/26/15 on page 4 (See Exhibit 5-3b-1-14). |

| | | |
|---|--------------------------------------|--|
| JANUARY – JUNE 2014 | | |
| Individuals included as part of the planning process during the reporting period: 4 local justice system representatives between January and March, and 7 between April and June. | We were unable to verify this claim. | We do not concur with this finding for the following reasons: Four represents the CJP Subcommittee members informed about the TO/TC preliminary results and use of findings for resource development (See Exhibit 5-3b-10: 1/10/14 JJAC Notes). Seven represents the CJP Subcommittee updated about the staff survey & CP-SAT (See Exhibit 5-3b-11: 4/11/14 JJAC Notes) who were also updated on the data analysis and final planning with the CP-SAT (See Exhibit 5-3b-12: 5/19/14 JJAC Notes). |

TABLE 2: UNSUPPORTED PROGRESS REPORT FACTS FOR AWARD NUMBER 2013-VR-GX-K021

| PROGRESS REPORT FACT | OIG DRAFT AUDIT REPORT FINDING REGARDING SUPPORT DOCUMENTATION PROVIDED | TRIBAL VICTIM ASSISTANCE (TVA) RESPONSES |
|--|---|--|
| JULY – DECEMBER 2016 | | |
| The Pueblo of Jemez provided 20 Outreach Activity services from Jul-16 to Dec-16 | We were only able to verify 8 of the outreach activities. Jemez stated that they did not have the documentation for the other 12. | We concur that sign in sheets were not collected for all activities. Action Taken: We have revised the program reporting for services to clients, which will be implemented in October 2017, and include services to clients from June 1, 2017. Outreach may have been confused with the TVA Coordinator's participation in community events where information was provided to the public and sign-in sheets were not appropriate or necessary; however, as feasible sign in sheets will be collected. |

TABLE 2: UNSUPPORTED PROGRESS REPORT FACTS FOR AWARD NUMBER 2015-DC-BX-0040

| PROGRESS REPORT FACT | OIG DRAFT AUDIT REPORT FINDING REGARDING SUPPORT PROVIDED | Healing to Wellness Program (HTW) Responses |
|--|--|---|
| JANUARY – JUNE 2016 | | |
| A representative of the Probation Office attended two Jemez Justice Advisory Committee meetings and the former Supervisory Probation Officer attended two meetings | We were only able to confirm that the representative attended one meeting and the former Supervisory Probation Officer attended two. | We do not concur with this finding for the following reasons: A JJAC Subcommittee meeting was conducted to provide an overview of the Comprehensive Justice Plan with four new JJAC members that were hired in the Tribal Court—Judge, SPO, and Court Clerk and Behavioral Health—BH Program Manager (Exhibit 5-4a and 5-4b). Action Taken: Sign in sheets now included as a protocol for meeting attendance. |

| | | |
|---|--|---|
| JANUARY – JUNE 2016 | | |
| 8 partnerships were developed during the period | Jemez stated that there were no partnerships with other providers that were established. | Although we do not concur with this finding, the transition of the previous Supervisory Probation Officer (SPO) and current SPO during February to 2016 contributed to missing documents. Action Taken: Program data will be collected with each quarterly report to support activities, i.e., letters of agreement, MOUs, etc. for partnerships. |

TABLE 2: UNSUPPORTED PROGRESS REPORT FACTS FOR AWARD NUMBER 2015-AC-BX-0016

| PROGRESS REPORT FACT | OIG DRAFT AUDIT REPORT FINDING REGARDING SUPPORT DOCUMENTATION PROVIDED | TRIBAL COURT & PROBATION RESPONSES |
|--|---|---|
| JULY – DECEMBER 2016 | | |
| 25 criminal cases were heard before a judge during the reporting period. | The support provided was an overview for the period. As a result, we were unable to verify which 25 were reported for the period. | We do not concur with this finding for the following reasons: The data referenced is from the July to September 2016 reporting period. Exhibit 5-5a provides a redacted list of cases that were "Heard before a Judge". These were calculated from the Arraignment Date and Trial Date columns of the data provided on October 25, 2016. |
| 10 civil cases were heard before a judge during the reporting period. | The support provided was an overview for the period. As a result, we were unable to verify which 10 were reported for the period. | We do not concur with this finding for the following reasons: The data referenced is from the July to September 2016 reporting period. Exhibit 5-5b provides a redacted list of cases that were filed and "Heard before a Judge" extracted from data provided on October 27, 2016. |

Finding No. 6: Federal Financial Reports (FFRs) were not accurate

OIG Draft Audit Report: "FFRs were not accurate." See Draft Audit Report, Page i.

Specific Finding: "We found that the FFRs did not match Jemez's accounting records for five of the six awards in our scope." See Draft Audit Report, Page 13.

The Pueblo of Jemez has reviewed the OIG recommendation regarding the FFRs, which suggests the OJP "Ensure that Jemez implements policies and procedures to accurately report expenditures and indirect costs on future FFRs." The Pueblo of Jemez agrees with this recommendation even though it is normal practice to report accurate expenditures at the time FFRs are submitted using current financial data at the time of submission. We welcome technical assistance from OJP to update and strengthen the administrative management of the grants.

The Pueblo of Jemez has reviewed its process for preparing quarterly FFRs. We found that at the time the FFRs were prepared, the financial data were accurate for the quarterly period reported and had

supporting documents of the expenditures. However, the Pueblo of Jemez had not revised the submitted financial reports for the prior quarters when correction or changes are made to the expenditures.

To correct this, future fiscal year FFRs will be revised to reflect final financial data for each quarter. In our annual A-133 compliant financial audit, the financial data are accurate and reviewed annually by the Finance Department.

III. Conclusion

The Pueblo of Jemez appreciates the opportunity to present its response to the findings of the OIG Draft Audit Report. The Pueblo of Jemez recognizes that its response to the OIG report is lengthy. We believe this is necessary to fully respond to the draft audit report.

Throughout its response and here again, the Pueblo of Jemez contends that all costs claimed under the awards are allowable, are sufficiently supported and are in accordance with applicable laws, regulations, guidelines and terms and conditions of the awards. Jemez also contends that the progress reports were accurate.

To the extent the OIG report has recommended technical assistance to improve the Pueblo of Jemez's administrative capacity to manage its grants, we welcome the assistance from OJP.

The Pueblo of Jemez has used this OIG audit experience to examine its internal financial reporting, procurement and records management procedures to ensure that these issues are avoided in the future.

The Pueblo of Jemez believes it has met its fundamental obligations to account for proper use of grant funds and has effectively used those funds to deliver quality programming with outstanding benefits to the target populations identified in the awarded grants.

We look forward to both working with OIG to resolve any outstanding issues and receiving a revised version of the Draft Audit Report acknowledging that the Pueblo of Jemez response resolved the audit findings.

**OFFICE OF JUSTICE PROGRAMS'
RESPONSE TO THE DRAFT AUDIT REPORT**



U.S. Department of Justice

Office of Justice Programs

Office of Audit, Assessment, and Management

Washington, D.C. 20531

NOV 15 2017

MEMORANDUM TO: David M. Sheeren
Regional Audit Manager
Denver Regional Audit Office
Office of the Inspector General

FROM: Ralph E. Martin 
Director

SUBJECT: Response to the Draft Audit Report, *Audit of the Office of Justice Programs Grants and Cooperative Agreements Awarded to the Pueblo of Jemez, Sandoval County, New Mexico*

This memorandum is in reference to your correspondence, dated September 29, 2017, transmitting the above-referenced draft audit report for the Pueblo of Jemez (Jemez). We consider the subject report resolved and request written acceptance of this action from your office.

The draft report contains **six** recommendations and **\$160,656** in questioned costs. The following is the Office of Justice Programs' (OJP) analysis of the draft audit report recommendations. For ease of review, the recommendations are restated in bold and are followed by our response.

1. **We recommend that OJP coordinate with Jemez to develop policies and procedures to ensure that valid and auditable source documentation is available to support all data collected for each performance measure.**

OJP agrees with this recommendation. We will coordinate with Jemez to obtain a copy of written policies and procedures, developed and implemented, to ensure that it maintains adequate source documentation to support all data collected for each performance measure.

2. **We recommend that OJP coordinate with Jemez to develop policies and procedures to ensure conflicts of interest are avoided and contracting practices are followed.**

OJP agrees with this recommendation. We will coordinate with Jemez to obtain a copy of written policies and procedures, developed and implemented, to ensure that conflicts of interest are avoided, and contracting practices are followed.

3. **We recommend that OJP remedy the \$157,192 in unsupported questioned costs related to \$156,665 in unsupported contractor and consultant costs, and \$527 in unsupported other direct costs.**

OJP agrees with this recommendation. We will coordinate with Jemez to remedy the \$157,192 in unsupported contractor and consultant costs, and other direct costs, that were charged to Grant Numbers 2012-IC-BX-0018 and 2012-IC-BX-0023, and Cooperative Agreement Number 2013-VR-GX-K021.

4. **We recommend that OJP remedy the \$3,464 in unallowable questioned costs related to other direct costs.**

OJP agrees with this recommendation. We will review the \$3,464 in questioned costs, related to other direct costs that were charged to Grant Number 2012-IC-BX-0018 and Cooperative Agreement Number 2013-VR-GX-K021, and will work with Jemez to remedy, as appropriate.

5. **We recommend that OJP coordinate with Jemez to develop policies requiring that documentation is maintained for at least three years after the award has been financially and programmatically closed.**

OJP agrees with this recommendation. We will coordinate with Jemez to obtain a copy of written policies and procedures, developed and implemented, to ensure that documentation is maintained for at least three years after the award has been financially and programmatically closed.

6. **We recommend that OJP ensure that Jemez implements policies and procedures to accurately report expenditures and indirect costs on future Federal Financial Reports.**

OJP agrees with this recommendation. We will coordinate with Jemez to obtain a copy of written policies and procedures, developed and implemented, to ensure that information reported on future Federal Financial Reports is accurate.

We appreciate the opportunity to review and comment on the draft audit report. If you have any questions or require additional information, please contact Jeffery A. Haley, Deputy Director, Audit and Review Division, on (202) 616-2936.

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APPENDIX 5

OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF THE ACTIONS NECESSARY TO CLOSE THE REPORT

The OIG provided a draft of this audit report to OJP and the Pueblo of Jemez (Jemez) for review and official comment. Jemez's response is incorporated in Appendix 3 and OJP's response is incorporated in Appendix 4 of this final report. In response to our draft audit report, OJP concurred with all six of our recommendations. As a result, the status of the audit report is resolved. Jemez disagreed with our recommendations concerning progress reports, conflicts of interest, unallowable other direct costs, and unsupported contractor and consultant costs. The following provides the OIG analysis of the responses and summary of actions necessary to close the report.

Analysis of Jemez's Response

In its response, Jemez raised several concerns about our audit that did not pertain to the recommendations. We address these concerns below before discussing our analysis of OJP's and Jemez's responses to specific recommendations and the summary of actions necessary to close the report.

Jemez's response included four recommendations to the OIG for future audits. Jemez's first recommendation was that the OIG provide recipients with the evaluation tool because it is a small organization and pulling the documents for the auditors upon their arrival created an administrative burden and inefficient response times. We understand that audits create additional work for the auditee; therefore, the OIG makes every effort to minimize the administrative burden while still ensuring that we obtain the documentation necessary to conduct the audit. Additionally, the documentation we requested is required to be maintained by the award recipient. Further, while we are unsure what Jemez means by the "evaluation tool" as it relates to the administrative burden, we provided Jemez with an audit notification letter that included the audit objectives, as well a listing of the documentation necessary to conduct our analysis related to those objectives, more than 2 weeks prior to the start of our site visit. Throughout the audit, we worked with Jemez to identify the documentation necessary to support transactions and its reported performance, and we appreciate the cooperation we received.

Jemez's second recommendation is that the OIG Auditors should work with the assigned OJP Program Specialists because it believes the progress report facts that we identified as unsupported were already reviewed and accepted by the OJP Program Specialists. Jemez also noted that OJP conducted a desk review of the "Jail Diversion" award in April 2016 and found that it was in full compliance. However, the OIG performs its audits independent of OJP's management functions, which involves the OIG's objective assessment of Jemez's activities and documentation pertaining to DOJ grants and cooperative agreements. Further, OJP's acceptance of progress reports is only an acknowledgement that the reports were received. OJP does not verify the accuracy of the progress reports prior to

acceptance. Additionally, OJP does not verify the accuracy of the financial and progress reports submitted during its desk reviews.

Jemez's third recommendation is that the OIG properly reflect in the draft report the documentation that had already been provided by the grantee during the audit. According to Jemez, many of the exhibits Jemez provided to the OIG in its response to the draft report were previously provided to the OIG auditors at the time of the audit. It appears from this recommendation that Jemez is of the mistaken impression that some of the concerns identified in our draft report arise because the OIG was not aware of, or did not consider, documents that Jemez previously submitted. In fact, the OIG did consider during the audit the previously submitted documentation; however, we concluded that the materials did not resolve the findings identified during our audit.

Jemez also stated that, during the audit, Jemez representatives informed us that its consultant [AIDA] was directly compensated from funding sources not related to DOJ award funds for preparing the award proposals, as evidenced by separate award writing contracts and purchase orders. Jemez further stated that the draft report incorrectly concluded that the consulting agreements awarded to AIDA appear to be a means to indirectly compensate the consultant for finding and obtaining DOJ awards. We disagree. During the course of the audit we repeatedly asked Jemez for documentation supporting that AIDA was paid with tribal funds to prepare the award applications. Instead, as noted in the *Contractor and Consultant Costs* section of the report, Jemez provided us with two tribal resolutions waiving its procurement policy so that it could award sole source contracts to AIDA for the award-funded consulting services because of the DOJ awards they received as a result of AIDA's work. In our judgment, as stated in the report, these tribal resolutions give the appearance that the award-funded consulting agreements were a means to indirectly compensate AIDA for its assistance in finding and obtaining the DOJ awards. Jemez provided additional documentation with its response to the draft report to support its position that the AIDA was compensated by the tribe for writing the award applications. However, as discussed further in our analysis of Jemez's response to Recommendation 2, we remain concerned with the appearance that the consulting agreements were a means for Jemez to indirectly compensate AIDA for obtaining the DOJ awards. Our concern arises from Jemez's use of the tribal resolutions to seemingly circumvent its competitive procurement policy to ensure that AIDA was awarded consulting contracts because Jemez received the DOJ awards as a result of AIDA's work. The fact that AIDA also received tribal funds for award writing services does not negate our finding.

Jemez's fourth recommendation is that the OIG transition audit response documentation between OIG auditors assigned. The reason Jemez provided for this recommendation was that it worked with two auditors during the course of the audit and that documentation provided to one auditor had to later be provided to the other. We want to assure Jemez that all documentation it provided was contained in a single audit file and shared between all OIG staff assigned to this audit. Throughout our audit, the OIG made additional documentation requests was because the documentation that Jemez originally provided did not resolve the findings we identified in our testing. In response to those requests, Jemez

frequently provided duplicate documentation in an attempt to provide support for the deficiencies we identified.

Finally, in its response to the draft report, Jemez expressed concern that the draft report referenced OMB Circular A-110. This reference was cited in error in the *Contractor and Consultants Costs* section of the draft report; and we removed it from the report. The primary criteria we used for our audit, as stated in the *OIG Audit Approach* section of this report, were the 2011 and 2014 OJP Financial Guides, 2015 DOJ Grants Financial Guide, and OJP requirements stated in the awards documentation.

Recommendations to OJP:

1. Coordinate with Jemez to develop policies and procedures to ensure that valid and auditable source documentation is available to support all data collected for each performance measure.

Resolved. OJP agreed with our recommendation and stated in its response that it will coordinate with Jemez to obtain a copy of written policies and procedures, developed and implemented, to ensure that it maintains adequate support documentation to support all data collected for each performance measure.

Jemez partially agreed with our recommendation. In its response, Jemez provided a table addressing each specific progress report fact that that we found was not supported by the documentation provided during our audit. It should be noted that we discussed these issues with Jemez throughout the audit and provided Jemez every opportunity to provide additional documentation to support the progress report facts included in our analysis. Nonetheless, in response to the draft report, Jemez provided additional documentation, for some of the 12 progress report facts that we identified as unsupported. As discussed in the Progress Reports section of this report, we found that the additional documentation supported 3 of 12 progress report facts; however, 9 of the 12 progress report facts remain unsupported. Therefore, the additional documentation provided by Jemez does not fully address our finding or recommendation.

Jemez also stated in its response that data was reported cumulatively instead of by progress report period for one unsupported progress report. However, Jemez did not provide adequate documentation to support the data in the progress report, whether that data was cumulative or period-based.

In its response, Jemez also provided corrective action plans to ensure that sufficient documentation is maintained to support some of the individual progress report facts. Additionally, Jemez stated that it agrees and welcomes technical assistance from OJP to improve its administrative capacity to manage its awards. However, Jemez did not respond to the specific recommendation that it develop policies and procedures to ensure that valid and auditable source documentation is available to support all data collected for each performance measure.

This recommendation can be closed when we receive documentation showing that Jemez has developed and implemented written policies and procedures to ensure that valid and auditable source documentation is available to support all data collected for each performance measure.

2. Coordinate with Jemez to develop policies and procedures to ensure conflicts of interest are avoided and contracting practices are followed.

Resolved. OJP agreed with our recommendation and stated in its response that it will coordinate with Jemez to obtain a copy of written policies and procedures, developed and implemented, to ensure that conflicts of interest are avoided, and contracting practices are followed.

Jemez did not agree with our recommendation and stated in its response that Jemez contends there is no appearance of a conflict of interest, and believes that the finding was based on a misunderstanding about how AIDA was compensated for the proposal development, a mischaracterization of the action of the Jemez Tribal Council waiving its bidding requirements in compliance with its own adopted policy, and an inappropriate restriction placed on a qualified contractor because nearly a decade ago he was employed by a current consultant to Jemez.

Jemez stated that it believes there is no basis for the appearance of a conflict of interest under the 2015 DOJ Grants Financial Guide. We disagree with this statement. The 2015 DOJ Grants Financial Guide states that recipients should avoid any action which might result in, or create the appearance of: (1) using your official position for private gain; (2) giving special treatment to any person; (3) losing complete independence or objectivity; (4) making an official decision outside of official channels; and (5) affecting negatively the confidence of the public in the integrity of Government or the program. The guide also states that decisions related to federal funds must be free of undisclosed personal or organizational conflicts of interests, both in fact and in appearance. As stated in the Contractor and Consultant section of this report, AIDA was involved in finding and applying for DOJ awards, which included developing the award budgets. In our judgment, the fact that the tribe allowed AIDA to assist in the creation of award budgets that resulted in AIDA receiving a financial benefit through consulting agreements for DOJ awards it worked on is a conflict of interest as defined by the Financial Guide. While Jemez provided documentation in response to the draft report supporting that AIDA was paid with tribal funds for its grant writing services, it does not change the fact that awarding grant-funded consulting agreements to AIDA, who was involved in writing the award budgets that included funding for the consulting services intended to be awarded to AIDA, is a conflict of interest.

Jemez stated that AIDA did not participate in the selection or procurement of the consultant awarded to itself or the policy and code development work that was awarded to the former AIDA employee. Jemez also stated that

while AIDA assisted in developing the award budgets, it is not a conflict of interest because the budgets included generalized language related to the data management consulting services that did not restrict competition. We disagree with these statements. As noted above, AIDA was paid to write award budgets that including data management consulting services for which, according to both Jemez, AIDA was uniquely qualified to provide. Just because the award budgets did not specifically mention AIDA by name, does not change the fact that AIDA was the intended recipient of the consulting services agreements for not only the awards we audited but all other DOJ awards received by Jemez during the same period. This conflict of interest is further supported by the fact that Jemez issued two tribal resolutions waiving its procurement policy so that it could award sole source contracts to AIDA for the award-funded consulting services because, as stated in the resolutions, of the DOJ awards Jemez received as a result of AIDA's work.

Jemez believes the OIG Draft Audit Report mischaracterized the tribal resolution of January 2013 as waiving the procurement policy in its entirety in order to award the contract to AIDA. Jemez stated that it believes the sole source was justified because AIDA was "discernible distinguishable" (uniquely qualified) to provide data management services. Jemez stated that consideration was given to the consultant's ability to speak the Towa language, her membership in the Jemez tribe, her past record of performance, and the technical resources to perform the data management function. As a result, it did not waive the procurement policy as a means to indirectly compensate AIDA for its assistance in finding the DOJ awards, and instead, the resolution is evidence of the governing body acting pursuant to its adopted policy, which it believes align with the OJP Financial Guide and 28 C.F.R. Part 66 and 2 C.F.R. Part 225. However, this statement does not negate the fact that AIDA's work in writing the award budgets that resulted in it receiving a financial benefit through consulting agreements for the DOJ awards that AIDA worked on is conflict of interest. Further, as stated above the tribal resolutions also cite AIDA's work in obtaining the DOJ awards as a justification for waiving its procurement policy in order to ensure that AIDA received the consulting agreements.

Jemez also stated in its response that it believes that OJP considered the tribe exempt from pre-award review because the OJP determined that Jemez's procurement systems for award 2012-IC-BX-0018 complied with the standards of 28 C.F.R. 66.36(g)(1). We disagree with this statement. The fact that the OJP determined that Jemez's procurement systems complied with of 28 C.F.R. 66.36(g)(1), does not change the fact that, as discussed previously, there was a conflict of interest between Jemez and AIDA. Additionally, the awarding agencies were not notified of the fact that Jemez issued tribal resolutions to waive its procurement policies to award the consulting agreements to AIDA. Finally, the awarding agencies were not specifically notified about the conflict of interest between Jemez and AIDA resulting from the fact that AIDA was involved in applying for the awards and

writing the award budgets that included consulting services that were awarded to AIDA.

Jemez also stated that Stephen Wall has not been an employee of AIDA since 2009, and that his services were not a conflict of interest because Mr. Wall responded to a request to provide a proposal for services. Jemez stated that it believes he had the education, experience and ability to successfully perform the scope of work of policy and code development. Additionally they considered his past performance in working with Jemez, and made an effort to solicit him, because he is a small, Native American owned business. While we made no assessment of Stephen Wall's qualifications or his past performance in working with Jemez, potentially while still an AIDA employee, we disagree with Jemez that a conflict of interest did not exist. As stated in the report, given the conflict of interest between Jemez and AIDA, in our judgment, awarding a contract to an AIDA employee, current or not, appears to be a conflict of interest.

This recommendation can be closed when we receive documentation that shows Jemez has developed and implemented policies and procedures to ensure conflicts of interest are avoided and contracting practices are followed.

3. Remedy the \$157,192 in unsupported questions costs related payments to Contractor and Consultant Costs and Other Direct Costs.

Resolved. OJP agreed with our recommendation and stated in its response that it will coordinate with Jemez to remedy the \$157,192 in unsupported questioned costs related to \$156,665 in unsupported contractor and consultant costs, and \$527 in unsupported other direct costs.

Jemez disagreed with our recommendation and responded to four specific statements made in our report. As discussed in our analysis of Jemez's response to Recommendation 2, Jemez disagreed with our findings related to the conflict of interest between Jemez and AIDA, as well as Jemez and Stephen Wall. Jemez also disagreed with our finding that the tribal resolutions gave the appearance that the award-funded consulting agreements were a means to indirectly compensate AIDA for her work in applying for and obtaining the DOJ awards. For the reasons discussed above, we disagree with these statements.

Jemez cited 2 C.F.R. 225 in its response, which states that costs are allowable if they are authorized or not prohibited under state or local laws or regulations, and stated that the Pueblo of Jemez Procurement Policy authorizes procurement by noncompetitive proposal for goods and services if the items are available from a single source, or the awarding agency authorizes noncompetitive proposals, and stated that it believes both requirements were satisfied. Additionally, Jemez stated that the procurement was within the OJP Financial Guide, because it was under the requirement of \$100,000. However, as discussed above, there was a conflict

of interest between Jemez and AIDA that was not disclosed to OJP. Additionally, the tribal resolutions to sole source the data management consulting services to AIDA, give the appearance that the awards were used to further compensate AIDA for its work in obtaining the DOJ awards.

Jemez also stated that the invoices provided by AIDA satisfied the invoice requirements of the Jemez contract, adequately document the AIDA's work, and meet the standards of allowability. Additionally, Jemez stated that it believes the submitted invoices were reasonable and allocable to the federal award and that the invoices are allowable costs because they satisfy the requirements of allowability, reasonability and allocability as required by the OMB regulations and DOJ guidance. In regards to the timesheets, which were prepared by the consultant and given in response to requests by OIG auditors for more supporting documentation, Jemez stated that it believes the invoices are sufficient to support the work completed, thereby making the costs of the contractor allowable and making the timesheets unnecessary additional documentation.

We continue to disagree with Jemez regarding the adequacy of the invoices submitted by AIDA. According to the contract language, which was outlined by Jemez in its response; it requires that invoices detail "description, quantity, and unit price." Many of the AIDA invoices did not meet Jemez's on requirements related to quantity and unit price. The AIDA consulting agreements were based on an hourly rate, which would require that AIDA's invoice include the number of hours worked on the award, as well as a detailed description of the services provided for the time charged. However, we found that many of the AIDA invoices did not include the hours worked. Additionally, we noted that many of AIDA's invoices were for the same amount every month and no hours were included. Finally, many of the invoices charged hourly rates that appeared improbable, which equated to even dollar amounts for each type of service listed. As a result, Jemez provided additional documentation. However, as noted in the report, we determined that this additional documentation exhibited irregularities that caused us to determine it was unreliable. For example, AIDA used incorrect hourly rates and the work performed per the timesheets did not match to work performed on the invoices. We determined this documentation was created for our audit and unreliable. As a result, we determined that the AIDA invoices paid by Jemez were unsupported.

Finally, Jemez stated that it welcomes technical assistance from OJP to improve its business practices to ensure that valid and auditable source documentation is available to support all data collected for each performance measure.

This recommendation can be closed when we receive documentation showing that OJP has remedied the \$157,192 in unsupported contractor and consultant costs and other direct costs.

4. Remedy the \$2,969 remaining of the original \$3,464 in unallowable questioned costs related to Other Direct Costs.⁵

Resolved. OJP agreed with our recommendation and stated in its response that it will review the \$3,464 in questioned costs related to other direct costs that were charged to Grant Number 2012-IC-BX-0018 and Cooperative Agreement Number 2013-VR-GX-K021 and will work with Jemez to remedy, as appropriate.

Jemez disagreed with our recommendation and stated in its response that the questioned costs were allowable. For the furniture costs, totaling \$2,416 charged to Award Number 2013-VR-GX-K021, which were not included in the budget, Jemez stated that it believes the amount is allowable because Jemez had an equipment line item to purchase a laptop and computer, and the furniture was needed. Jemez also stated that the purchased furniture equated to less than 10 percent of the total award, and it believed the purchase did not require prior approval pursuant to the OJP Financial Guide. We disagree with this statement. The 10 percent rule is not applicable because office furniture was not included within the equipment line item in the approved award budget; therefore, the amount is unallowable.

For the AV cart costs, totaling \$495, Jemez disagreed with our finding that the cost was unallowable because it was not included in the award budget. However, subsequent to the issuance of the draft report, Jemez requested and OJP approved a GAN to include the AV cart in the award budget. As a result, we consider the \$495 in questioned costs related to the AV cart remedied.

In response to the unallowable bottled water costs, totaling \$554, charged to award 2012-IC-BX-0018, Jemez stated that it does not believe that the use of federal to purchase bottled water for the personal use of employees is unallowable. However, the bottled water was not included in the approved budget; therefore, as stated in the report, the expenditures charged to the award for bottled water are unallowable.

This recommendation can be closed when we receive documentation showing that Jemez has remedied the remaining \$2,552 in unallowable costs other direct costs related to office furniture and bottled water.

5. Coordinate with Jemez to develop policies requiring that documentation is maintained for at least 3 years after the award has been financially and programmatically closed.

Resolved. OJP agreed with our recommendation and stated in its response that it will coordinated with Jemez to obtain a copy of written policies and procedures, developed and implemented, to ensure that documentation is

⁵ In a draft of this report, we originally identified \$3,464 in unallowable costs. In its response, Jemez provided support for \$495 of these costs, and shown here are the remaining costs for remedy.

maintained for at least three years after the award has been financial and programmatically closed.

Jemez agreed with our recommendation and stated in its response that it welcomes technical assistance from OJP to improve and update or strengthen the control of maintaining all award documents related to the management of awards, although it is not normal practice to purge financial documents or information.

This recommendation can be closed when we receive documentation showing that Jemez has developed and implemented written policies and procedures to ensure that documentation is maintained for at least three years after the award has been financially and programmatically closed.

6. Ensure that Jemez implements policies to accurately report expenditures and indirect costs on future FFRs.

Resolved. OJP agreed with our recommendation and stated in its response that it will coordinated with Jemez to obtain a copy of written policies and procedures, developed and implemented, to ensure that information reported on future Federal Financial Reports is accurate.

Jemez agreed with our recommendation and sated in its response that it welcomes technical assistance from OJP to update and strengthen the administrative management of the awards, although it believes its normal practice is to report accurate expenditures at the time FFRs are submitted using current financial data set at the time of submission.

This recommendation can be closed when receive documentation showing that Jemez has developed and implement policies and procedures to ensure that information reported on future Federal Financial Reports is accurate.



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