



OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

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Memorandum

To: Assistant Secretaries  
Heads of Bureaus and Offices

From: Kimberly Elmore *Kimberly Elmore*  
Assistant Inspector General for Audits, Inspections, and Evaluations

Subject: Closeout – Public Law 93-638 Contracts Process  
Assignment No. C-IN-MOA-0016-2010

We have completed the survey phase of our audit pertaining to the Public Law 93-638 (Indian Self-Determination and Education Assistance Act) contracts process. During the survey, we reviewed 16 contracts at 4 Bureau of Indian Affairs (BIA) regional offices. Our work confirmed that previously identified issues still exist. Specifically, prior reviews identified problems with 93-638 contracts and grants monitoring and funds spent for purposes other than those designated. We have decided to terminate the audit at this point because any recommendations resulting from a full audit would duplicate existing open recommendations. Although we are closing this assignment without issuing a report, we have identified issues we found during our survey work. These issues are discussed below.

### **Background**

Government monitoring of contracts and grants awarded under Public Law 93-638 is limited. The intent of 93-638 is to provide American Indians and Indian tribes with the ability to participate, to the maximum extent possible, in: (1) tribal government affairs; (2) programs and services available on reservations or to American Indians; and (3) the education of American Indians. To ensure the intent of the law is met, the Secretary of the Interior's policy, as stated in 25 Code of Federal Regulations, Part 900, is:

When an Indian tribe contracts, there is a transfer of the responsibility with the associated funding. The tribal contractor is accountable for managing the day-to-day operations of the contracted Federal programs, functions, services, and activities. The contracting tribe thereby accepts responsibility and accountability with respect to the use of the funds and the satisfactory performance of the programs, functions, services, and activities funded under the contract.

### **Issues Identified from Prior Audit Coverage**

*Financial Statement Reports.* The Fiscal Year (FY) 2009 annual financial statement audit found that the Department should improve controls over monitoring of 93-638 grants and contracts. Specifically, KPMG found that responsible Department officials did not:

- Have a complete listing of awarded grants necessary to ensure that all grants were properly monitored and that single audit reports were obtained;
- Review or approve funding requests in a timely manner or maintain proposal documentation for 26 of the 45 grants and related contracts we reviewed;
- Obtain or follow-up on past due financial status or performance reports for 27 of the 134 grantees tested;
- Obtain single audit reports within 9 months after the grantee's fiscal year-end for 19 of the 59 grantees tested; and
- Issue management decisions on audit findings within 6 months after receipt of the single audit report.

Similar issues had been identified in the FY 2008 annual financial statement audit, and were found again in the FY 2010 annual financial statement audit.

*OIG Reports.* OIG audit reports dating back to early 2004 identified problems with both awards and monitoring. Specifically, recipients used awarded funds for other than designated purposes. For example, one audit identified that funds received for roadway construction were instead used on a contract to build a restaurant/saloon.

Appropriate officials also did not monitor grants properly. For example, one audit identified that reports required by the Single Audit Act were not completed in a timely manner, financial reports were not submitted, and follow-up on required corrective actions did not occur. Further, in addition to the problems identified by our audits, a total of 90 investigations of 93-638 contracts and grants occurred between 2001 and 2010. Of these, 26 cases involved the misuse of funds. For example, one tribe used 93-638 funds designated for operation of a fish hatchery to send tribal members to an annual basket-weavers conference. Two investigations identified poor performance by awarding officials. One of these revealed that an awarding official continued to award new contracts to operate a tribal fish hatchery despite knowing that the tribe did not have a fish hatchery.

### **Universe of Contracts**

BIA, the primary bureau dealing with 93-638 contracts and grants, could not provide us with a complete listing of 93-638 contracts, grants, and cooperative agreements. Instead, bureau staff directed us to individual awarding officials. Only about half of these individuals could provide us with a complete listing of the number and value of the contracts and grants that they were responsible for administering. Without a complete, accurate universe of contracts and grants, a bureau cannot properly monitor contractor activity or ensure that contracted services are received.

### **Awarding and Monitoring**

Despite the fact the PL 93-638 limits Government monitoring of contracts and grants, some monitoring is necessary to ensure that funds are spent for their designated purpose. During the past 10 years, 26 investigations conducted by our Office of Investigations involved misuse of

93-638 funds, a problem that might have been prevented had the contracts been monitored adequately. Additionally, the annual monitoring site visit mandated by the BIA Handbook had not been conducted for approximately 40 percent of the contracts we reviewed in our audit survey.

Even when awarding officials could identify the contracts under their purview, most still could not demonstrate that they took the necessary steps to ensure proper awarding and monitoring of these contracts. Specifically, based on BIA key policies, we identified 22 critical activities that need to be completed on service contracts and 25 critical activities that need to be completed on construction contracts. For example, critical activities required for all contracts (service and construction) include having a copy of all modifications in the awarding official's files, as well as evidence of a corrective action plan to address any weaknesses reported in the Single Audit report. Our review of 16 contracts (6 service contracts and 10 construction contracts) at 4 BIA regional offices revealed that these critical activities were not performed consistently. We found that only two service contracts had 17 or more critical activities completed, three service contracts had 13 to 16 critical activities completed, and one service contract had 12 or fewer critical activities completed. Similarly, we found that only two construction contracts had 13 or more critical activities completed and eight construction contracts had 12 or fewer critical activities completed.

## **Conclusion**

Longstanding issues need to be addressed to ensure the proper use of Federal funds under 93-638 contracts and grants. We encourage the Department to implement existing recommendations to correct the issues identified here and in other reports. We appreciate the cooperation and assistance provided by your staff during our survey work. If you have any questions, please call Mr. Charles Haman at 303-236-9243.

cc: Division Chief, Internal Control and Audit Follow-up, Office of Financial Management  
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Bureau and Office Audit Liaison Officers